

Department of Environmental Quality
Office of Compliance and Enforcement
700 NE Multnomah Street, Suite 600
Portland, OR 97232-4100
(503) 229-5696
FAX (503) 229-5100
TTY 711

January 4, 2024

CERTIFIED MAIL: 9589 0710 5270 0688 6540 73

Agri-Plas, Inc. c/o Meriane Deri Jongsma, Registered Agent 9755 Willamette St Aumsville OR 97325

Re:

Notice of Civil Penalty Assessment and Order

Case No. WQ-SW-WR-2022-508

This letter is to inform you that the Oregon Department of Environmental Quality (DEQ) has issued Agri-Plas, Inc. a civil penalty of \$33,320 for operating its facility without a stormwater permit and without a solid waste permit. In the enclosed Notice of Civil Penalty Assessment and Order (Notice), DEQ also cites Agri-Plas, Inc., without penalty, for additional violations of water quality, hazardous waste, and used oil regulations.

DEQ issued this penalty because discharges of wastes generated from your solid waste processing facility can contaminate the environment, including nearby Patterson Creek. Additionally, the used containers you receive at your facility previously contained materials such as pesticides that pose a risk to the environment if not properly managed.

Included in Section IV of the enclosed Notice is an order requiring you to submit the revisions necessary to complete your application for the stormwater permit, and additional information to document compliance with water quality laws. DEQ appreciates your efforts to address the other violations, including by obtaining a solid waste permit, and DEQ considered these efforts when determining the amount of civil penalty.

You may pay the civil penalty as follows:

Pay online with e-check (ACH) or Credit Card. Go to Your DEQ Online here: https://ydo.oregon.gov. Select Register Account or Login, then select Pay Invoices/Fees on your account dashboard. Enter the Invoice number and Account ID included on the attached payment slip. Note: US Bank charges a 2.3% convenience charge for credit card transactions. ACH payments have no additional charges.

Pay by check or money order: Make checks payable to "Department of Environmental Quality" and mail to the address on the enclosed payment slip. Please make sure to include the payment slip with your check or money order.

Agri-Plas, Inc. Case No. WQ-SW-WR-2022-508 Page 2

If you wish to appeal this matter, DEQ must receive a request for a hearing within 20 calendar days from your receipt of this letter. The hearing request must be in writing. Send your request to DEQ Office of Compliance and Enforcement:

Via mail – 700 NE Multnomah Street, Suite 600, Portland, Oregon 97232

Via email – DEQappeals@deq.oregon.gov

Via fax - 503-229-6762

Once DEQ receives your request, we will arrange to meet with you to discuss this matter. If DEQ does not receive a timely written hearing request, the penalty will become due.

The attached Notice further details DEQ's reasons for issuing the penalty and provides further instructions for appealing the penalty. <u>Please review and refer to it when discussing this case with DEQ</u>.

DEQ may allow you to resolve part of your penalty through the completion of a Supplemental Environmental Project (SEP). SEPs are environmental improvement projects that you sponsor instead of paying a portion of your penalty. Further information is available by calling the number below or at http://www.oregon.gov/deq/Regulations/Pages/SEP.aspx.

DEQ's rules are available at http://www.oregon.gov/deq/Regulations/Pages/Statutes.aspx or by calling the number below.

If you have any questions, please contact Sarah Wheeler at 971-301-0622.

Sincerely,

Kieran O'Donnell, Manager

Office of Compliance and Enforcement

for One

Enclosures

cc:

Craig Filip, DEQ Kendra Girard, DEQ

Killian Condon, DEO

1	BEFORE THE ENVIRONMENTAL QUALITY COMMISSION
2	OF THE STATE OF OREGON
3	IN THE MATTER OF: AGRI-PLAS, INC., NOTICE OF CIVIL PENALTY ASSESSMENT AND ORDER
5	Respondent.) CASE NO. WQ-SW-WR-2022-508
5	I. AUTHORITY
7	The Department of Environmental Quality (DEQ) issues this Notice of Civil Penalty Assessment
8	and Order (Notice) pursuant to Oregon Revised Statutes (ORS) 468.100, ORS 468.126 through 468.140,
9	ORS 459.995, ORS 466.990, ORS Chapters 183 and 468B, and Oregon Administrative Rules (OAR)
10	Chapter 340, Divisions 011, 012, 045, 093, and 100-102.
11	II. FINDINGS OF FACT
12	1. Respondent operates a plastics recycling business at 5016 Waconda Road NE, in
13	Brooks, Oregon (the Facility).
14	2. Respondent receives plastic containers that previously held food, pesticides, and other
15	materials at the Facility for cleaning, processing, and recycling.
16	3. On September 23, 2021, there was orange or bronze-colored liquid (process wastewater)
17	with a decay-like odor in a drainage ditch along 50th Avenue NE, just south of the intersection with
18	Waconda Rd NE and immediately adjacent to the Facility. A flexible hose extended from the Facility to
19	the ditch. PVC piping from the western retention pond at the Facility also extended towards the ditch.
20	4. Contrary to direction from Marion County, Respondent unblocked the drainage ditch on
21	September 23, 2021, so that the process wastewater flowed north in the drainage ditch along Waconda
22	Road NE.
23	5. On September 24, 2021, the western retention pond at the Facility had an oily, orange
24	residue on its surface and contained a thick sludge. Additionally, there was an oily residue on the
25	surrounding asphalted areas. Facility representatives did not know what the material in the pond was
26	and intended to dispose of it.
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- 6. Contrary to direction from DEQ, on September 27, 2021, Respondent discharged process wastewater from the western retention pond to the drainage ditch through the PVC piping and flexible hose. There was an orange sheen from the discharge in the ditch on the west side of the Facility, traveling north and then east in a ditch along Waconda Road NE, to catch basins and a culvert leading to drain tile ditch which discharges into Patterson Creek, a tributary of the Willamette River. The sheen was also present on the drain tile in the ditch.
- 7. Stormwater runoff from the Facility drains into an underground conduit extending north to a catch basin, where orange material was present on September 23, 2021, which ultimately flows towards Patterson Creek, a tributary of the Willamette River.
- 8. On and for at least one year prior to December 7, 2021, Respondent stored approximately 2,000 super-sacks of waste plastic material (estimated to be approximately 500,000 pounds), outside at the Facility.
- 9. On and before September 24, 2021, Respondent stored various other wastes at the Facility, including two 55-gallon drums of oily liquid, 11 175-gallon totes of various oily and emulsified liquid/sludge mixtures, numerous containers of unknown liquids associated with the pyrolysis process, including one container that was bulging and 18 full totes of waste stored for over ten years, and additional super-sacks of waste plastic stored prior to disposal or recycling.
- 10. Respondent did not obtain a solid waste disposal site permit for the Facility until December 28, 2022.
- 11. As of the date of this Notice, Respondent does not have coverage under the National Pollutant Discharge Elimination System Industrial Stormwater General Permit No. 1200-Z for the Facility.
- 12. In August of 2021, Respondent disposed of 400 gallons of waste, primarily an unknown oily liquid and a small amount of sludge, as non-hazardous waste, without identifying what it was or testing it for any hazardous properties or constituents. This waste was received at the Facility in 55-gallon drums from an off-site source.

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On September 24, 2021, Respondent stored four one-gallon containers of used oil at the 13. Facility without labeling the containers with the words "used oil."

III. CONCLUSIONS

Based upon the foregoing Findings of Fact, DEO has determined that Respondent violated the following provisions of Oregon law, including hazardous waste and used oil laws adopted by OAR $340-100-0002^{1}$.

- Respondent violated ORS 459.205(1) and OAR 340-093-0050(1) by establishing. 1. operating, and maintaining an unpermitted material recovery solid waste disposal site, as defined by ORS 459,005(8)(a), (16), (21), and (24)-(26), and OAR 340-093-0030(65), and as described in Section II above, at the Facility. By accepting and processing solid waste (used drums and contents) for recovery at the Facility, and by storing solid waste at the Facility, Respondent was operating a material recovery facility solid waste disposal site. Additionally, the nature, amount, and location of the materials and operations at the Facilities (including but not limited to the type of materials received, such as pesticides, the amount of waste plastic and other wastes stored on site, and the unpermitted discharges of stormwater and process wastewater) pose a potential adverse impact to the environment and public health. This is a Class I violation according to OAR 340-012-0065(1)(a). DEQ hereby assesses a \$18,000 civil penalty for this violation.
- 2. Respondent violated ORS 468B.050(1)(d) by operating an industrial and commercial activity which would cause an increase in the discharge of wastes into the waters of the state or which would otherwise alter the physical, chemical or biological properties of any waters of the state in any manner not already lawfully authorized, and without a permit, as described in Section II above. The process wastewater and stormwater runoff are wastes as defined in ORS 468B.005(9) because they will or may cause or tend to cause pollution, as defined in ORS 468B.005(5), of waters of the state. Patterson Creek is waters of the state as defined in ORS 468B.005(10). This is a Class I violation, according to OAR 340-012-0055(1)(d). DEO hereby assesses a \$15,320 civil penalty for this violation.

¹ On November 17, 2021, the Environmental Quality Commission adopted new hazardous waste regulations, which became effective in Oregon as of January 1, 2022. This Notice cites the CFRs that were in effect at the time the violations occurred, enacted through June 30, 2015. NOTICE OF CIVIL PENALTY ASSESSMENT AND ORDER CASE NO. WQ-SW-WR-2022-508

- 3. Respondent violated ORS 468B.025(1)(a) by placing wastes in a location where such wastes are likely to be carried to waters of the state by any means. Specifically, on at least September 23-24 and 27, 2021, Respondent discharged wastes from the western retention pond into the drainage ditch, a public stormwater conveyance system, as described in Paragraphs 3-7 and 11 of Section II above. These are Class II violations, according to OAR 340-012-0055(2)(c). DEQ has not assessed a civil penalty for these violations.
- 4. Respondent violated OAR 340-102-0011(2) by failing to conduct a complete and accurate hazardous waste determination upon generation of all residues, as defined in 40 CFR 261.2, that Respondent generated at the Facility, as described in Section II above. Specifically, on and before September 23 and September 27, 2021, Respondent did not determine whether the process wastewater Respondent pumped from the western retention pond to the drainage ditch was hazardous waste, and in August 2021, Respondent disposed of 400 gallons of oil/water waste disposed of as non-hazardous waste without first determining whether the oil/water waste was hazardous. These wastes were solid wastes according to 40 CFR 261.2(a)(1), 261.2(a)(2)(i)(A), and 261.2(b)(1) and (3), because they were disposed of or accumulated or stored before of or in lieu of being disposed. These are Class I violations, according to OAR 340-012-0068(1)(a). DEQ has not assessed a civil penalty for these violations.
- 5. Respondent violated 40 CFR 279.22(c) by failing to label containers storing used oil with the words "used oil," as described in Paragraph 13 of Section II above. Specifically, on September 24, 2021, Respondent stored used oil in four, one-gallon containers, without labeling the containers as "used oil." These are Class II violations, according to OAR 340-012-0072(2)(e). DEQ has not assessed a civil penalty for this violation.

IV. ORDER TO PAY CIVIL PENALTY AND TO COMPLY

Based upon the foregoing FINDINGS OF FACTS AND CONCLUSIONS, Respondent is hereby ORDERED TO:

1. Pay a total civil penalty of \$33,320. The determination of the civil penalty is attached as Exhibits 1-2 and is incorporated as part of this Notice.

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NOTICE OF CIVIL PENALTY ASSESSMENT AND ORDER

If you do not file a request for hearing as set forth in Section V below, please pay the penalty as follows:

Pay online with e-check (ACH) or Credit Card. Go to Your DEQ Online here: https://ydo.oregon.gov. Select Register Account or Login, then select Pay Invoices/Fees on your account dashboard. Enter the Invoice number and Account ID included on the attached payment slip. Note: US Bank charges a 2.3% convenience charge for credit card transactions. ACH payments have no additional charges.

Pay by check or money order: Make checks payable to "Department of Environmental Quality" and mail to the address on the enclosed payment slip. Please make sure to include the payment slip with your check or money order.

- 2. Within 30 days of the date this Notice becomes final on appeal or by operation of law, submit all requested revisions to the 1200-Z permit application to DEQ.
- 3. Additionally, submit documentation that process wastewater is not being comingled with stormwater or discharged from the ponds at the Facility to Kendra Girard, DEQ, at kendra.girard@deq.oregon.gov.

V. NOTICE OF RIGHT TO REQUEST A CONTESTED CASE HEARING

You have a right to a contested case hearing on this Notice, if you request one in writing. DEQ must receive your request for hearing within 20 calendar days from the date you receive this Notice. If you have any affirmative defenses or wish to dispute any allegations of fact in this Notice or attached exhibits, you must do so in your request for hearing, as factual matters not denied will be considered admitted, and failure to raise a defense will be a waiver of the defense. (See OAR 340-011-0530 for further information about requests for hearing.) You must send your request to: DEQ, Office of Compliance and Enforcement, 700 NE Multnomah Street, Suite 600, Portland, Oregon 97232, fax it to 503-229-6762 or email it to DEQappeals@deq.oregon.gov. An administrative law judge employed by the Office of Administrative Hearings will conduct the hearing, according to ORS Chapter 183, OAR Chapter 340, Division 011 and OAR 137-003-0501 to 0700. You have a right to be represented by an attorney at the hearing, however you are not required to be. If you are an individual,

	you may represent yourself. If you are a corporation, partnership, limited liability company,					
2	unincorporated association, trust or government body, you must be represented by an attorney or a duly					
3	authorized representative, as set forth in OAR 137-003-0555.					
1	Active duty Service members have a right to stay proceedings under the federal Service					
5	Members Civil Relief Act. For more information contact the Oregon State Bar at 1-800-					
5	452-8260, the Oregon Military Department at 503-584-3571, or the nearest United States Armed					
7	Forces Legal Assistance Office through http://legalassistance.law.af.mil . The Oregon Military					
3	Department does not have a toll free telephone number.					
•	If you fail to file a timely request for hearing, the Notice will become a final order by default					
10	without further action by DEQ, as per OAR 340-011-0535(1). If you do request a hearing but later					
11	withdraw your request, fail to attend the hearing or notify DEQ that you will not be attending the					
12	hearing, DEQ will issue a final order by default pursuant to OAR 340-011-0535(3). DEQ designates					
13	the relevant portions of its files, including information submitted by you, as the record for purposes of					
14	proving a prima facie case.					
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18	1/4/2024 km John					
19	Date Kieran O'Donnell, Manager Office of Compliance and Enforcement					
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EXHIBIT 1

FINDINGS AND DETERMINATION OF RESPONDENT'S CIVIL PENALTY PURSUANT TO OREGON ADMINISTRATIVE RULE (OAR) 340-012-0045

<u>VIOLATION 1</u> Operating and maintaining an unpermitted solid waste disposal

site, in violation of ORS 459.205(1) and OAR 340-093-0050(1).

<u>CLASSIFICATION</u>: This is a Class I violation pursuant to OAR 340-012-0065(1)(a).

MAGNITUDE: The magnitude of the violation is major pursuant to OAR 340-012-

0135(3)(a)(A) because Respondent established an unpermitted disposal site with more than 400 cubic yards of solid waste.

<u>CIVIL PENALTY FORMULA</u>: The formula for determining the amount of penalty of each

violation is: $BP + [(0.1 \times BP) \times (P + H + O + M + C)] + EB$

"BP" is the base penalty, which is \$12,000 for a Class I, major magnitude violation in the matrix listed in OAR 340-012-0140(2)(b)(A)(i) and applicable pursuant to OAR 340-012-0140(2)(a)(Q)(i) because Respondent should have had a solid waste disposal permit.

- "P" is whether Respondent has any prior significant actions, as defined in OAR 340-012-0030(19), in the same media as the violation at issue that occurred at a facility owned or operated by the same Respondent, and receives a value of 0 according to OAR 340-012-0145(2) (a) (A), because there are no prior significant actions.
- "H" is Respondent's history of correcting prior significant actions, and receives a value of 0 according to OAR 340-012-0145(3)(c) because there is no prior history.
- "O" is whether the violation was repeated or ongoing, and receives a value of 4 according to OAR 340-012-0145(4)(d) because there were more than 28 occurrences of the violation. The violation was ongoing for at least 28 days, from at least September 24, 2021, until Respondent obtained the permit on December 28, 2022.
- "M" is the mental state of the Respondent, and receives a value of 4 according to OAR 340-012-0145(5)(c) because Respondent's conduct was negligent, as defined in OAR 340-012-0030(15). DEQ formally notified Respondent of the violation and requested corrective action in a Warning Letter with Opportunity to Correct sent to Respondent on July 26, 2017, a follow up letter in 2020, and again in a Pre-Enforcement Notice in August 2022. By continuing to receive and process solid waste at the Facility without applying for a solid waste permit, Respondent failed to take reasonable care to avoid a foreseeable risk of conduct constituting or resulting in a violation.
- "C" is Respondent's efforts to correct or mitigate the violation, and receives a value of -3 according to OAR 340-012-0145(6)(c) because Respondent made reasonable efforts to correct the violation, On August 9, 2022, Respondent submitted a solid waste permit

application to DEQ and DEQ issued a solid waste permit to Respondent as operator of the Facility on December 28, 2022.

"EB" is the approximate dollar value of the benefit gained and the costs avoided or delayed as a result of the Respondent's noncompliance. It is designed to "level the playing field" by taking away any economic advantage the entity gained and to deter potential violators from deciding it is cheaper to violate and pay the penalty than to pay the costs of compliance. In this case, "EB" receives a value of \$0 as the economic benefit gained by delaying the cost of solid waste permit fees in this case is de minimis. This "EB" was calculated pursuant to OAR 340-012-0150(1) using the U.S. Environmental Protection Agency's BEN computer model.

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<u>PENALTY CALCULATION</u>: Penalty = BP + [(0.1 \times BP) \times (P + H + O + M + C)] + EB
= $12,000 + [(0.1 \times $12,000) \times (0 + 0 + 4 + 4 + (-3))] + $0
= $12,000 + ($1,200 \times 5) + $0
= $12,000 + $6,000 + $0
= $18,000
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EXHIBIT 2

FINDINGS AND DETERMINATION OF RESPONDENT'S CIVIL PENALTY PURSUANT TO OREGON ADMINISTRATIVE RULE (OAR) 340-012-0045

<u>VIOLATION 2</u>: Operating an industrial or commercial activity which would cause

an increase in the discharge of wastes into waters of the state or which would otherwise alter the physical, chemical, or biological properties of waters of the state in a manner not already lawfully

authorized, and without a permit, in violation of ORS

468B.050(1)(d).

<u>CLASSIFICATION</u>: This is a Class I violation pursuant to OAR 340-012-0055(1)(d).

MAGNITUDE: The magnitude of the violation is moderate pursuant to OAR 340-

012-0130(1), as there is no selected magnitude specified in OAR 340-012-0135 applicable to this violation, and the information reasonably available to DEQ does not indicate a minor or major

magnitude.

<u>CIVIL PENALTY FORMULA</u>: The formula for determining the amount of penalty of each

violation is: $BP + [(0.1 \times BP) \times (P + H + O + M + C)] + EB$

"BP" is the base penalty, which is \$4,000 for a Class I, moderate magnitude violation in the matrix listed in OAR 340-012-0140(3)(b)(A)(ii) and applicable pursuant to OAR 340-012-0140(3)(a)(E)(iii) because Respondent violated a water quality statute and should have applied for coverage under an NPDES General Permit.

"P" is whether Respondent has any prior significant actions, as defined in OAR 340-012-0030(19), in the same media as the violation at issue that occurred at a facility owned or operated by the same Respondent, and receives a value of 0 according to OAR 340-012-0145(2)(a)(A), because there are no prior significant actions.

"H" is Respondent's history of correcting prior significant actions, and receives a value of 0 according to OAR 340-012-0145(3)(c) because there is no prior history.

"O" is whether the violation was repeated or ongoing, and receives a value of 4 according to OAR 340-012-0145(4)(d) because the violation is ongoing from at least September 23, 2021.

"M" is the mental state of the Respondent, and receives a value of 10 according to OAR 340-012-0145(5)(e) because Respondent's conduct was flagrant, as defined in OAR 012-0030(11). In 2008 and 2009, DEQ told Respondent that the Facility needed coverage under the 1200-Z permit. Marion County directed Respondent not to unblock the drainage ditch on September 23, 2021, but Respondent cleared the blockage to allow the contaminated wastewater to discharge. On September 24, 2021, DEQ directed Respondent to disconnect the piping and

hose from the pond to the ditch and to cease discharging, but on September 27, 2021, Respondent again discharged into the ditch through the hose. The December 28, 2021, Pre-Enforcement Notice (PEN) again directed Respondent to apply for coverage. On July 1, 2022, Respondent applied for permit coverage. In July of 2022, DEQ responded to the application with requests for revisions. As of the date of this Notice, Respondent has not submitted the requested revisions, or submitted the documentation requested in the PEN that Respondent has taken the corrective actions regarding stormwater management and ceasing comingling of process wastewater into stormwater ponds and discharging from the ponds. By repeatedly discharging without a permit, and in failing to apply for permit coverage for many years, despite DEQ instruction to cease discharge and apply for a permit, Respondent consciously committed the violation with actual knowledge that doing so was unlawful.

- "C" is Respondent's efforts to correct or mitigate the violation, and receives a value of -2 according to OAR 340-012-0145(6)(d) because Respondent eventually made some efforts to correct the violation by submitting an application for permit coverage and initial fees on July 1, 2022.
- "EB" is the approximate dollar value of the benefit gained and the costs avoided or delayed as a result of the Respondent's noncompliance. It is designed to "level the playing field" by taking away any economic advantage the entity gained and to deter potential violators from deciding it is cheaper to violate and pay the penalty than to pay the costs of compliance. In this case, "EB" receives a value of \$6,520. This is the amount Respondent gained by avoiding spending \$1,386 in 2022 and 2023 for annual stormwater permit fees, and a total of \$5,478 in sampling costs for 2022-2023. This "EB" was calculated pursuant to OAR 340-012-0150(1) using the U.S. Environmental Protection Agency's BEN computer model.

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PENALTY CALCULATION: Penalty = BP + [(0.1 \times BP) \times (P + H + O + M + C)] + EB = \$4,000 + [(0.1 \times \$4,000) \times (0 + 0 + 4 + 10 + (-2))] + \$6,520 = \$4,000 + (\$400 \times 12) + \$6,520 = \$4,000 + \$4,800 + \$6,520 = \$15,320
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Oregon Department of Environmental Quality 700 NE Multnomah Street, Suite 600 Portland, OR 97232-4100



Phone: 503-229-5437 Fax: 503-229-5850

CIVIL PENALTY - ORS 468,135(2)

DATE:	January 4, 2024
RESPONSE DATE :	March 14, 2024
TOTAL PENALTY:	\$33,320.00

Account Name:	AGRI-PLAS INC				
Account Type:	Vendor/Organization/Company	Reference Number:	CPGFD2400033		
SubSystem iD:	204299	FIMS Acct. ID:	14991		

Penalty Summary

Penalty Amount	Interest	Adjustment	7 5 5 5 5 5 7	Total Penalty
\$ 33,320.00	\$ 0.00	\$ 0.00	\$ 0.00	\$ 33,320.00

Payment of this penalty is subject to the exercise of your options or right to appeal as described in the enclosed enforcement documents.

To Pay Online with ACH or Credit Card Visit https://ydo.oregon.gov and select 'Register Account'





PLEASE RETURN THIS PORTION WITH YOUR PAYMENT

REFERENCE NO.	CPGFD2400033			
PAYCODE:	00401 7400 10040 74001 0500 000000 00			
FEE PROGRAM ID:	950	RESPONSE DATE:	March 14, 2024	
FIMS ACCT. ID:	14991	TOTAL PENALTY DUE:	\$33320.00	

AMOUNT ENCLOSED:

MAKE CHECK PAYABLE TO: Department of Environmental Quality

DEQ FINANCIAL SERVICES - LBX4244 PO BOX 4244 PORTLAND OR 97208-4244

Check this box if updated address information has
been provided on the back of the form.



State of Oregon Department of Environmental Quality

CIVIL PENALTY - ORS 468.135(2)

700 NE Multnomah Street, Suite 600 Portland, OR 97232-4100 Phone: 503-229-5437

Fax: 503-229-5850

Penalty Detail

Transaction Date	Description Control of the Control o	Amount
1/3/2024	2022-508 WQ-SW-WR-2022-508	\$33,320.00

SFMS Agencies Use:

-	ns Code		SFMS	Index	PCA (5)	Agency Object	Project#	Phase
723	3 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1	00401	7400	10040	74001	0500	00000	00

Address Changes

Please visit https://ydo.oregon.gov to update your mailing address online or provide the following information:

Name	
Address	
City, State, Zip	