



# Oregon

Kate Brown, Governor

## Department of Environmental Quality

Headquarters  
811 SW Sixth Avenue  
Portland, OR 97204-1390  
(503) 229-5696  
FAX (503) 229-6124  
TTY: 711

January 8, 2016

CERTIFIED MAIL: 7011 2000 0000 5122 9244

Michael Alan Dickerson  
96126 Saunders Creek Rd.  
Gold Beach, OR 97444

Re: Notice of Civil Penalty Assessment and Order  
Case No. WQ/I-WR-15-151

This letter is to inform you that the Oregon Department of Environmental Quality (DEQ) has issued you a civil penalty of \$3,661 for violating a water quality standard. Specifically, you discharged soil fill into a tributary of Saunders Creek, creating appreciable bottom deposits. In addition, DEQ has cited you, without penalty, for placing soil fill in a location where it is likely to be carried into Saunders Creek.

DEQ issued this penalty because the discharges of soil fill to the tributary of Saunders Creek may have caused environmental harm. Excessively turbid discharge poses a threat to fish and other aquatic life because it can disrupt the food web, have an adverse effect on juvenile fish rearing and migration, and kill fish. In addition, turbid discharge can clog fish gills, reduce photosynthesis in aquatic flora, and lower fish feeding success and growth.

Included in Section IV of the attached Notice of Civil Penalty Assessment and Order is an order requiring you to create and implement a plan for surface runoff diversion, soil stabilization, erosion control, and visual monitoring of the affected area. \$2,861 of the civil penalty represents the economic benefit you gained by failing to restore the tributary and take preventative measures. If you complete these requirements, DEQ will consider recalculating the costs as delayed rather than avoided and will reduce the civil penalty accordingly.

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

Via mail - 811 S.W. 6<sup>th</sup> Ave., Portland, OR 97204

Via fax - 503-229-5100

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. Alternatively, you can pay the penalty by sending a check or money order to the above address.

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



Michael Alan Dickerson  
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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 in lieu of paying your penalty. Enclosed is more detail on how to pursue a SEP. SEP documents are available on the internet at <http://www.deq.state.or.us/programs/enforcement/SEP.htm>, or by calling the number below to request a paper copy.

DEQ's rules are available on the internet at <http://www.deq.state.or.us/regulations/rules.htm>, or by calling the number below to request a paper copy.

If you have any questions, please contact DEQ Environmental Law Specialist Kieran O'Donnell, at (503) 229-5012. You may call toll-free within Oregon at 1-800-452-4011, extension 5012.

Sincerely,



Leah K. Feldon, Manager  
Office of Compliance and Enforcement

Enclosures

cc: Pam Blake, Coos Bay Office, DEQ  
John Koestler, WQ, HQ

1 BEFORE THE ENVIRONMENTAL QUALITY COMMISSION  
2 OF THE STATE OF OREGON

3 IN THE MATTER OF: ) NOTICE OF CIVIL PENALTY  
4 MICHAEL ALAN DICKERSON ) ASSESSMENT AND ORDER  
5 Respondent. ) CASE NO. WQ/I-WR-15-151  
6

7 I. AUTHORITY

8 The Department of Environmental Quality (DEQ) issues this Notice of Civil Penalty Assessment  
9 and Order (Notice) pursuant to Oregon Revised Statutes (ORS) 468.100 and 468.126 through 468.140,  
10 ORS Chapter 183 and 468B and Oregon Administrative Rules (OAR) Chapter 340, Divisions 011, 012,  
11 and 041.

12 II. FINDINGS OF FACT

- 13 1. Respondent owns real property adjacent to Saunders Creek, located in Curry County,  
14 Oregon with the legal description of T36S, R14W Section 22 TL03700 (the "Property").
- 15 2. Prior to April 7, 2015, Respondent placed soil fill on the Property to create a building pad.
- 16 3. On or about April 7, 2015, the soil fill became saturated and slid off the property, down a  
17 slope, across Saunders Creek Road, and into a tributary of Saunders Creek (the Tributary).
- 18 4. On April 20, 2015, DEQ performed an inspection of the Property and the adjacent portion of  
19 Saunders Creek. At the time of the inspection saturated soil fill from the Property had entered the  
20 Tributary and accumulated on its banks.
- 21 5. As of the date of this Notice, the portion of Tributary impacted by the soil fill remains  
22 heavily sedimented.

23 III. CONCLUSIONS

- 24 1. Respondent has violated ORS 468B.025(1)(b) by discharging wastes into waters of the state  
25 in such a manner that reduces water quality below a water quality standard. Specifically, Respondent  
26 discharged soil fill into the Tributary, creating appreciable bottom deposits, in violation of a water  
27 quality standard prohibiting the "formation of any organic or inorganic deposits deleterious to fish or

1 other aquatic life.” OAR 340-041-0007(11). This is a Class I violation, according to OAR 340-012-  
2 0055(1)(b). DEQ hereby assess a \$3,661 civil penalty for this violation.

3 2. Respondent has violated ORS 468B.025(1)(a) by placing wastes in a location where they are  
4 likely to escape or be carried to a water of the state. Specifically, Respondent placed soil fill in and on  
5 the banks of the Tributary. The Tributary is a “waters of the state,” as defined by ORS 468B.005(10),  
6 because it is a surface water stream within the state of Oregon. The soil fill is “waste,” as defined by  
7 ORS 468B.005(5), because it is a solid material that may alter the physical properties of the Tributary.  
8 This is a Class II violation, according to OAR 340-012-0055(2)(c). DEQ has not assessed a civil penalty  
9 for this violation.

#### 10 IV. ORDER TO PAY CIVIL PENALTY AND TO COMPLY

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

13 1. Pay a total civil penalty of \$3,661. The determination of the civil penalty is attached as Exhibit  
14 No. 1 and is incorporated as part of this Notice.

15 If you do not file a request for hearing as set forth in Section V below, your check or money order  
16 must be made payable to "**State Treasurer, State of Oregon**" and sent to the **DEQ, Business Office,**  
17 **811 S.W. Sixth Avenue, Portland, Oregon 97204**. Once you pay the penalty, the Findings of Fact,  
18 Conclusions and Order become final.

19 2. Comply with Oregon law by doing the following:

20 a. By no later than 10 days after this Notice becomes a Final Order, Respondent must  
21 submit to DEQ a written plan (the Plan) with at least the following elements:

22 i. Actions to divert surface runoff away from loose soils that are present on the  
23 building pad and the embankment along Saunders Creek Road.

24 ii. Actions to stabilize the slide initiation area. These actions might include, but are  
25 not limited to, removal of the loose soils to a more stable location and drainage  
26 improvements.

27 ////

1           iii. Surface erosion controls to prevent the delivery of sediment laden or turbid  
2 runoff to the creek. These actions may include, but are not limited to, seeding,  
3 mulching, water diversion, structures, silt fencing, and swales. Respondent must  
4 monitor and document in writing the effectiveness of the erosion controls and  
5 maintain or adjust the erosion controls until the Property is stabilized.

6           b. By no later than 30 days after this Notice becomes a Final Order, Respondent must  
7 implement the Plan.

8           3. Written documentation demonstrating Respondent's compliance must be sent to:

9                     Department of Environment Quality  
10                    c/o Pamela Blake  
11                    381 N Second Street  
12                    Coos Bay, OR 97420

13                    V. NOTICE OF RIGHT TO REQUEST A CONTESTED CASE HEARING

14           You have a right to a contested case hearing on this Notice, if you request one in writing. You  
15 must ensure that DEQ receives the request for hearing **within 20 calendar days** from the date you  
16 receive this Notice. If you have any affirmative defenses or wish to dispute any allegations of fact in  
17 this Notice or attached exhibit(s), you must include them in your request for hearing, as factual matters  
18 not denied will be considered admitted, and failure to raise a defense will be a waiver of the defense.  
19 (See OAR 340-011-0530 for further information about requests for hearing.) You must mail the request  
20 for hearing to: **DEQ, Office of Compliance and Enforcement - Appeals, 811 SW Sixth Avenue,**  
21 **Portland, Oregon 97204,** or fax it to **503-229-5100.** An administrative law judge employed by the  
22 Office of Administrative Hearings will conduct the hearing, according to ORS Chapter 183, OAR  
23 Chapter 340, Division 011 and OAR 137-003-0501 to 0700. You have a right to be represented by an  
24 attorney at the hearing, or you may represent yourself unless you are a corporation, agency or  
25 association.

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1 Active duty service-members have a right to stay proceedings under the federal Service  
2 members Civil Relief Act. For more information, please call the Oregon State Bar at 1-800-  
3 452-8260 or the Oregon Military Department at 1-800-452-7500. Additional information can be found  
4 online at the United States Armed Forces Legal Assistance (AFLA) Legal Services Locator website  
5 <http://legalassistance.law.af.mil/content/locator.php>.

6 If you fail to file a request for hearing in writing within 20 calendar days of receipt of the  
7 Notice, the Notice will become a final order by default without further action by DEQ, as per OAR  
8 340-011-0535(1). If you do request a hearing but later withdraw your request, fail to attend the hearing  
9 or notify DEQ that you will not be attending the hearing, DEQ will issue a final order by default  
10 pursuant to OAR 340-011-0535(3). DEQ designates the relevant portions of its files, including  
11 information submitted by you, as the record for purposes of proving a prima facie case.

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16 Date

1/8/16

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16 Leah K. Feldon, Manager  
17 Office of Compliance and Enforcement  
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EXHIBIT No. 1

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

VIOLATION No. 1: Discharging wastes into waters of the state in such a manner that reduces water quality below a water quality standard, in violation of ORS 468B.025(1)(b) and OAR 340-041-0007(11).

CLASSIFICATION: This is a Class I violation pursuant to OAR 340-012-0055(1)(b).

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.

CIVIL PENALTY FORMULA: 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 \$500 for a Class I, moderate magnitude violation in the matrix listed in OAR 340-012-0140 (5)(b)(A)(ii) and applicable pursuant to OAR 340-012-0140(5)(a)(M) because the violation resulted from turbid discharges to waters of the state caused by residential use of the property.

"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 0 according to OAR 340-012-0145(4)(a), because there was only one occurrence of the violation. Each day of violation constitutes a separate occurrence. The violation occurred on at least one day on or prior to April 7, 2015. Therefore, there was at least one occurrence of the violation.

"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. Respondent placed soil fill on the Property to create a building pad. Respondent states that after conducting a road improvement project spring flows shifted to the area where fill had been placed. Subsequently this fill became saturated and unstable. Respondent failed to get authorization from the Curry County Planning Department prior to disturbing soils on the Property. In addition, Respondent did not take any measures to prevent runoff from the Property to the Tributary. Therefore, Respondent's failure to apply for a permit or take preventative

measures represents a failure to take reasonable care to avoid the foreseeable risk that he would discharge soil fill into the Tributary in violation of the water quality standard.

"C" is Respondent's efforts to correct or mitigate the violation and receives a value of 2 according to OAR 340-012-0145(6)(g), because Respondent did not address the violation as described in paragraphs (6)(a) through (6)(e) and the facts do not support a finding under paragraph (6)(f).

"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 \$2,861. This is the amount Respondent gained by avoiding spending approximately \$5,027.30 to stabilize soils prior to discharge. This "EB" was calculated pursuant to OAR 340-012-0150(1) using the U.S. Environmental Protection Agency's BEN computer model.

PENALTY CALCULATION:  $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$   
 $= \$500 + [(0.1 \times \$500) \times (0 + 0 + 0 + 4 + 2)] + \$2,861$   
 $= \$500 + [\$50 \times 6] + \$2,861$   
 $= \$500 + \$300 + \$2,861$   
 $= \$3,661$