



Oregon

Kate Brown, Governor

Department of Environmental Quality
Office of Compliance and Enforcement
700 NE Multnomah Street, Suite 600
Portland, OR 97232
(503) 229-5382
FAX (503) 229-5787
TTY 711

January 21, 2022

CERTIFIED MAIL No. 7018 1830 0001 5906 2582

Red Hills Construction Inc.
c/o Sergey Krasnogorov, Registered Agent
14128 SE Sunshadow Street
Happy Valley, OR 97086

Re: Notice of Civil Penalty Assessment and Order
No. WQ/SW-NWR-2021-516

DEQ is committed to balancing its vital obligation to enforce the law and protect the environment with a consideration of the dramatic disruptions to public health and the economy caused by the COVID-19 outbreak. We understand the outbreak may impact your ability to timely appeal, pay the assessed civil penalty, or comply with this order. You may submit to DEQ documentation identifying whether COVID-19-related disruption affects your ability to comply with this order. Visit our webpage at: <https://www.oregon.gov/deq/Pages/covid-19.aspx> for more information about documenting specific COVID-19 disruptions your facility may be encountering and how that affects your ability to comply. DEQ will exercise reasonable discretion regarding settlement of this order.

This letter is to inform you that DEQ has issued you a civil penalty of \$4,146 for a stormwater violation at the Heritage Crest construction site in Happy Valley. You have coverage under the NPDES Construction Stormwater Discharge General Permit No. 1200-C for construction activities at the site. On May 26, 2021, DEQ inspected the site and found that you failed to adequately implement many aspects of your Erosion and Sediment Control Plan. This is a violation of the Permit and Oregon environmental law.

DEQ issued this penalty because implementing the ESCP is essential to ensure compliance with the terms of your NPDES 1200-C Permit, as it includes pollution control measures that are specific to your site. These measures are intended to prevent the discharge of sediment to surface waters, as sediment can harm aquatic life and impact beneficial uses of those waters.

Included in Section IV of the enclosed Notice is an order requiring you to fully implement the ESCP by installing or maintaining erosion and sediment control measures at the site within thirty (30) days.

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 – 503-229-5100

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 via check, money order, or e-check (ACH) by following the instructions on the attached invoice and logging in to Your DEQ Online here: <https://ordeq-edms-public.govonlinesaas.com/pub/login>. Payments sent by mail must be sent to the address on the invoice.

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

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 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 Esther Westbrook at 503-229-5374 or toll free in Oregon at 800-452-4011, extension 5374.

Sincerely,



Kieran O'Donnell, Manager
Office of Compliance and Enforcement

Enclosures

cc: Boris Barrera, Northwest Region, DEQ
Christine Svetkovich, Northwest Region, DEQ
Accounting, DEQ

1 6. DEQ inspected the Site on May 26, 2021. At the time of the inspection:

- 2 a. There were several areas where the sediment fencing had fallen down, was
3 installed incorrectly with a large gap at the bottom, or had soil reaching more than
4 halfway to the top of the fence, rendering these sections of sediment fencing
5 ineffective.
- 6 b. There were large soil stockpiles that were not covered with plastic sheeting or
7 other temporary stabilization measures.
- 8 c. The stormwater catch basin next to the concrete washout pit needed cleaning and
9 maintenance, including new biobags installed.
- 10 d. The concrete washout pit was at capacity with dirty wastewater and needed to
11 have maintenance done or be reinstalled in order to function as intended.
- 12 e. There was visible trackout from the construction entrance onto SE Mount Scott
13 Boulevard.

14 7. Respondent's ESCP that was submitted to DEQ on or about May 28, 2019 contains
15 the following conditions or requirements:

- 16 a. Install sediment fence along perimeter and around Tract A. (Sheet C052, Detail
17 Drawing 4-23 on Sheet C062.) Remove trapped sediment before it reaches one-
18 third of the above ground fence height and before fence removal. (Standard Note
19 29 on Sheet C050.)
- 20 b. As needed based on weather conditions, at the end of each workday soil
21 stockpiles must be stabilized or covered, or other BMPs must be implemented to
22 prevent discharges. (Standard Erosion and Sediment Control Plan Drawing Note
23 27 on Sheet C050; Detail Drawing 4-3 on Sheet C061).
- 24 c. Install inlet protection. (Sheet C052, Detail Drawing 4-18 on Sheet C061.)
- 25 d. Install concrete washout. (Sheet C054, Concrete Truck Washout Detail Drawing
26 on Sheet C062.)

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2 e. Prevent tracking of sediment onto public or private roads using BMPs such as:
3 graveled (or paved) exits and parking areas, gravel all unpaved roads located
4 onsite, or use an exit tire wash. (Standard Note 18 on Sheet C050.) Additional
5 measures including, but not limited to, tire washes, street sweeping, and
6 vacuuming, may be required to ensure that all paved areas are kept clean for the
7 duration of the project. (Pre-construction, Clearing and Demolition Note 4 on
8 Sheet C060.)

9 8. Respondent's erosion and sediment control inspector conducted an inspection at the
10 Site on April 5, 2021. The inspection report identified similar problems and conditions as those
11 described in Section II, Paragraph 6 above, including compromised sediment fencing,
12 unprotected catch basins, uncovered stockpiles and areas with bare soil, and the concrete
13 washout needing maintenance. Four additional inspections conducted between April 5, 2021 and
14 May 26, 2021 described similar conditions.

15 III. CONCLUSION

16 Since on or about April 5, 2021, Respondent violated Schedule A, Condition 4 of the
17 Permit and ORS 468B.025(2) by failing to substantially implement the ESCP, as described in
18 Section II above. This is a Class I violation according to OAR 340-012-0055(1)(r). DEQ hereby
19 assesses a \$4,146 civil penalty for this violation.

20 IV. ORDER TO PAY CIVIL PENALTY AND TO COMPLY

21 Based upon the foregoing FINDINGS OF FACTS AND CONCLUSION, Respondent is
22 hereby ORDERED TO:

23 1. Pay a civil penalty of \$4,146. The determination of the civil penalty is attached as
24 Exhibit No. 1 and incorporated as part of this Notice.

25 If you do not file a request for hearing as set forth in Section V below, please pay the
26 penalty via check, money order, or e-check (ACH) by following the instructions on the attached
27 invoice and logging in to Your DEQ Online here: <https://ordeq-edms->

1 public.govonlinesaas.com/pub/login. Payments sent by mail must be sent to the address on the
2 invoice.

3 2. Comply with Oregon law by taking the following actions within thirty (30) days of this
4 Order becoming final by operation of law or on appeal:

5 a. Fully implement the ESCP by reinstalling failed sediment fencing and removing
6 accumulated sediment as needed, reinstalling or performing maintenance on the concrete washout
7 pit, covering any unprotected stockpiles, and installing inlet protection on any unprotected catch
8 basins.

9 b. Submit photo documentation that you have completed these actions to Boris Barrera,
10 DEQ via email at boris.barrera@deq.oregon.gov.

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

12 You have a right to a contested case hearing on this Notice, if you request one in writing.
13 DEQ must receive your request for hearing **within 20 calendar days** from the date you receive
14 this Notice. If you have any affirmative defenses or wish to dispute any allegations of fact in this
15 Notice or attached exhibit, you must do so in your request for hearing, as factual matters not
16 denied will be considered admitted, and failure to raise a defense will be a waiver of the defense.
17 (See OAR 340-011-0530 for further information about requests for hearing.) You must send your
18 request to: **DEQ, Office of Compliance and Enforcement, 700 NE Multnomah Street, Suite**
19 **600, Portland, Oregon 97232**, fax it to **503-229-5100** or email it to

20 DEQappeals@deq.oregon.gov. An administrative law judge employed by the Office of
21 Administrative Hearings will conduct the hearing, according to ORS Chapter 183, OAR Chapter
22 340, Division 011 and OAR 137-003-0501 to 0700. You have a right to be represented by an
23 attorney at the hearing, however you are not required to be. If you are an individual, you may
24 represent yourself. If you are a corporation, partnership, limited liability company,
25 unincorporated association, trust or government body, you must be represented by an attorney or
26 a duly authorized representative, as set forth in OAR 137-003-0555.

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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 contact the Oregon State Bar at 1-800-
3 452-8260, the Oregon Military Department at 503-584-3571, or the nearest United States Armed
4 Forces Legal Assistance Office through <http://legalassistance.law.af.mil>. The Oregon Military
5 Department does not have a toll-free telephone number.

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

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16 Date

1/21/2022

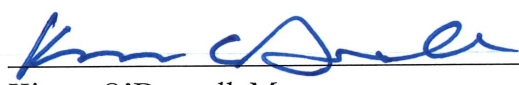

Kieran O'Donnell, Manager
Office of Compliance and Enforcement

EXHIBIT NO. 1

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

VIOLATION: Failing to substantially implement the Erosion and Sediment Control Plan (ESCP), in violation of Schedule A, Condition 4 of the Permit and ORS 468B.025(2).

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

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 \$1,500 for a Class I, moderate magnitude violation in the matrix listed in OAR 340-012-0140(4)(b)(A)(ii) and applicable pursuant to OAR 340-012-0140(4)(a)(F)(ii) because Respondent has coverage under the NPDES 1200-C General Permit for a construction site that is more than one but less than five acres in size. The disturbed area at the Site is approximately 4.41 acres.

"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 1 according to OAR 340-012-0145(2)(a)(B), because Respondent had one Class II violation in Case No. NWR-WQ-2020-EEO-5915.

"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 insufficient information to make a finding under paragraphs (3)(a) or (b).

"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. Each day of violation constitutes a separate occurrence. Respondent failed to substantially implement the plan from approximately April 5, 2021 through the date of this Notice, which is more than 28 days.

"M" is the mental state of the Respondent and receives a 8 according to OAR 340-012-0145(5)(d), because Respondent's conduct was reckless. The 1200-C Permit and the ESCP prepared by Respondent's engineer require implementation of erosion and sediment control measures in order to prevent the discharge of significant amounts of sediment from the Site.

Also, Respondent received an EEO for a previous violation at the Site. The erosion and sediment control inspector notified Respondent on at least five occasions prior to DEQ's inspection that the ESCP was not properly implemented, and he identified specific problems that needed to be addressed. By failing to install or maintain many erosion control measures included in the ESCP and identified by its inspector, Respondent consciously disregarded a substantial and unjustifiable risk that it would violate its Permit. Because the ESCP and the Permit are intended to protect water quality, disregarding this risk constituted a gross deviation from the standard of care a reasonable person would observe in that situation.

"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 has not addressed the violation as described in paragraphs (6)(a) through (6)(e) and the facts do not support a finding under paragraph (g)(f). As of the date of this Notice, Respondent has not implemented corrective actions at the Site.

"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 \$396. This is the amount Respondent gained by avoiding spending a total of \$518 for implementation of erosion and sediment controls at the Site, including sediment fencing, plastic sheeting and catch basin protection. This "EB" was calculated pursuant to OAR 340-012-0150(1) using the U.S. Environmental Protection Agency's BEN computer model.

PENALTY CALCULATION: $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$
= \$1,500 + [(0.1x \$1,500) x (1 + 0 + 4 + 8 + 2)] + \$396
= \$1,500 + [\$150 x 15] + \$396
= \$1,500 + \$2,250 + \$396
= \$4,146