



Oregon

Kate Brown, Governor

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

March 26, 2021

CERTIFIED MAIL: 7017 0530 0000 7760 2959

Steve A. Oien,
doing business as, Steve Oien Construction
35321 Kings Valley Hwy
Philomath, OR 97370

Re: Notice of Civil Penalty Assessment and Order
Case No. WQ/SW-WR-2020-214

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 <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 the Oregon Department of Environmental Quality (DEQ) has issued you a civil penalty of \$7,815 for violating conditions of the National Pollutant Discharge Elimination System (NPDES) Construction Stormwater General Permit No. 1200-C (the Permit) assigned to the "Heather Glen Subdivision" located at 458 N. 10th St., in Philomath, Oregon (the Site). Specifically, you failed to implement the Erosion and Sediment Control Plan (ESCP) that was developed and submitted to DEQ as part of your application for Permit coverage of the Project and failed to conduct any visual monitoring.

DEQ issued this penalty because the Permit requires implementation of the ESCP as the primary mechanism to reduce pollutants in discharges resulting from construction activities. DEQ performed site visits on May 26, 2020, and February 23, 2021 and observed that erosion and sediment controls described in the ESCP had not been implemented and other features such as a stockpile and a concrete washout area were not installed as described in the ESCP. DEQ understands that the site is currently inactive; however, you must still implement these erosion and sediment controls to ensure the site is stabilized.

In addition, the Permit requires you to visually monitor all areas of the site disturbed by construction activity at the Site in order to ensure that best management practices are in proper working order. The Permit requires visual monitoring at least once every 14 days, regardless of whether stormwater runoff is

occurring. DEQ requested visual monitoring records from you on May 27, 2020 and at least five times since then. Despite these repeated requests, you have failed to produce any visual monitoring records.

Included in Section IV of the attached Notice is an order requiring you to implement the erosion and sediment control plan developed for the site and submit documentation to DEQ immediately.

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.state.or.us

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 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 Courtney Brown at 503-229-6839 or toll free in Oregon at 800-452-4011, extension 6839.

Sincerely,



Kieran O'Donnell, Manager
Office of Compliance and Enforcement

Enclosures

cc: Kim Singleton, Western Region, Eugene Office, DEQ
Zach Loboy, Western Region, Eugene Office, DEQ
Accounting, DEQ

1 BEFORE THE ENVIRONMENTAL QUALITY COMMISSION

2 OF THE STATE OF OREGON

3 IN THE MATTER OF:) NOTICE OF CIVIL PENALTY
4 STEVE A. OIEN, an individual, doing) ASSESSMENT AND ORDER
5 business as STEVE A. OIEN)
6 CONSTRUCTION,) CASE NO. WQ/SW-WR-2020-214
7 Respondent.)

8 I. AUTHORITY

9 The Department of Environmental Quality (DEQ) issues this Notice of Civil Penalty Assessment
10 and Order (Notice) pursuant to Oregon Revised Statutes (ORS) 468.100, ORS 468.126 through 468.140,
11 ORS Chapter 468B, ORS Chapter 183 and Oregon Administrative Rules (OAR) Chapter 340, Divisions
12 011, 012, and 045.

13 II. FINDINGS OF FACT

14 1. Respondent is the owner and operator of the "Heather Glen Subdivision" located 458 N.
15 10th St., in Philomath, Oregon (the Site).

16 2. On or about January 1, 2020, Respondent began construction activities at the Site,
17 including clearing, grading, excavating, and stockpiling, and disturbing approximately 1.41 acres.

18 3. DEQ assigned Respondent coverage under the National Pollutant Discharge Elimination
19 System General Permit Number 1200-C (the Permit) on May 22, 2019. This Permit was in effect at all
20 material times.

21 4. Schedule A, condition 12.a of the Permit requires Respondent to ensure that an erosion
22 and sediment control plan (ESCP) is prepared and revised as necessary to reflect site conditions for the
23 construction activity regulated by the Permit.

24 5. Schedule A, condition 8.a of the Permit states that permit registrants must implement the
25 ESCP.

26 6. Respondent's ESCP requires installation of inlet and outlet protection at the detention
27 basin, sediment fence on the west side of the detention basin, a concrete washout on the east side of the
Site, and straw wattles at a stockpile on the northeast portion of the Site.

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1 7. On May 26, 2020, DEQ performed an inspection of the Project. At the time of the
2 inspection, there was no inlet or outlet protection installed at the detention basin, no sediment fence, no
3 straw wattles on the stockpile on the northeast portion of the Site, and a stockpile had been placed in
4 the southeast part of the Project which was not identified in the ESCP.

5 8. Schedule A, condition 8.c.ii.2.a of the Permit states that for activities involving concrete,
6 permit registrants must wash concrete trucks and equipment off site (in an appropriately protected area)
7 or in designated concrete washout areas only.

8 9. Schedule A, condition 8.c.ii.2.c of the Permit states that for activities involving concrete
9 permit registrants must not dispose of concrete wash water onto the ground.

10 10. On May 26, 2020, white concrete wash water residue was on the ground indicating that
11 concrete washwater had been discharged to the ground. This concrete washout area was not designated
12 on the ESCP.

13 11. On February 23, 2021, there was concrete washout residue at an area that is not
14 designated in the ESCP, no sediment fencing west side of the detention basin, no inlet protection at the
15 detention basin, and inadequate stabilization of the water quality facility.

16 12. Schedule B, condition 1.a.i of the Permit requires that all areas of the site disturbed by
17 construction activity must be visually monitored. Schedule B, condition 1.b of the Permit requires that
18 visual monitoring be conducted daily when stormwater runoff is occurring and at least every fourteen
19 (14) days regardless of whether stormwater runoff is occurring. Schedule B, condition 1.c requires
20 documentation of visual monitoring.

21 13. On May 27, 2020, DEQ requested Respondent submit all visual monitoring records.

22 14. Schedule B, condition 2.b. of the Permit requires the permit registrant to deliver all
23 visual monitoring records to DEQ within three (3) working days of the request.

24 15. As of the date of this Notice and Order Respondent has not submitted any visual
25 monitoring records.

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1 III. CONCLUSIONS

2 1. On or about May 26, 2020, through the present, Respondent has violated ORS 468B.025(2)
3 by violating Schedule A, conditions 8.a of the Permit by failing to implement the ESCP developed for
4 the Site. Specifically, Respondent's ESCP inlet and outlet protection at the detention basin, sediment
5 fencing, straw wattles at a stockpile, and a concrete washout area were not installed, as alleged in
6 Section II, paragraph 7. This is a Class I violation, according to OAR 340-012-0055(1)(r). DEQ hereby
7 assesses a \$4,159 civil penalty for this violation.

8 2. Respondent has violated ORS 468B.025(2) by violating a condition of the Permit.
9 Specifically, from on or about January 1, 2020, through the present, Respondent has violated Schedule B,
10 condition 1.b of the Permit by failing to conduct visual monitoring of the Site. These are Class I violations,
11 according to OAR 340-012-0055(1)(o). DEQ hereby assesses a \$3,656 civil penalty for this violation.

12 3. On or before May 26, 2020, and on or about February 23, 2021, Respondent violated ORS
13 468B.025(2) by violating Schedule A, condition 8.c.ii.2.c of the Permit by discharging concrete washwater
14 to the ground as alleged in Section II, paragraph 11. This is a Class II violation, according to OAR 340-
15 012-0053(2). DEQ has not assessed a civil penalty for this violation.

16 IV. ORDER TO PAY CIVIL PENALTY AND TO COMPLY

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

19 1. Pay a total civil penalty of \$7,815. The determinations of the civil penalties are attached as
20 Exhibits No.1 and No.2 and are incorporated as part of this Notice.

21 If you do not file a request for hearing as set forth in Section V below, your check or money
22 order must be made payable to "State Treasurer, State of Oregon" and sent to the **DEQ, Business**
23 **Office, 700 NE Multnomah Street, Suite 600, Portland, Oregon 97232.**

24 2. Within 10 days of this order becoming final by operation of law or on appeal, fully
25 implement the ESCP developed for the Project and submit written documentation demonstrating
26 compliance to: DEQ, Attn: Kim Singleton, 165 East 7th Ave., Suite 100, Eugene, OR 97401.

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

2 You have a right to a contested case hearing on this Notice, if you request one in writing. DEQ
3 must receive your request for hearing **within 20 calendar days** from the date you receive this Notice. If
4 you have any affirmative defenses or wish to dispute any allegations of fact in this Notice or attached
5 exhibits, you must do so in your request for hearing, as factual matters not denied will be considered
6 admitted, and failure to raise a defense will be a waiver of the defense. (See OAR 340-011-0530 for
7 further information about requests for hearing.) You must send your request to: **DEQ, Office of**
8 **Compliance and Enforcement, 700 NE Multnomah Street, Suite 600, Portland, Oregon 97232**, fax
9 it to **503-229-5100** or email it to DEQappeals@deq.state.or.us. An administrative law judge
10 employed by the Office of Administrative Hearings will conduct the hearing, according to ORS
11 Chapter 183, OAR Chapter 340, Division 011 and OAR 137-003-0501 to 0700. You have a right to be
12 represented by an attorney at the hearing, however you are not required to be. If you are an individual,
13 you may represent yourself. If you are a corporation, partnership, limited liability company,
14 unincorporated association, trust or government body, you must be represented by an attorney or a duly
15 authorized representative, as set forth in OAR 137-003-0555.

16 Active duty Service members have a right to stay proceedings under the federal Service
17 Members Civil Relief Act. For more information contact the Oregon State Bar at 1-800-
18 452-8260, the Oregon Military Department at 503-584-3571, or the nearest United States Armed
19 Forces Legal Assistance Office through <http://legalassistance.law.af.mil>. The Oregon Military
20 Department does not have a toll free telephone number.

21 If you fail to file a timely request for hearing, the Notice will become a final order by default
22 without further action by DEQ, as per OAR 340-011-0535(1). If you do request a hearing but later
23 withdraw your request, fail to attend the hearing or notify DEQ that you will not be attending the
24 hearing, DEQ will issue a final order by default pursuant to OAR 340-011-0535(3). DEQ designates

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1 the relevant portions of its files, including information submitted by you, as the record for purposes of
2 proving a prima facie case.

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6 3/26/2021
7 Date

Kieran O'Donnell
8 Kieran O'Donnell, Manager
9 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: Violating Schedule A, conditions 8.a of the Permit, in violation of ORS 468B.025(2), by failing to implement the ESCP developed for the Site.

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(3)(b)(A)(ii) and applicable pursuant to OAR 340-012-0140(4)(a)(E)(ii), as Respondent has obtained coverage under an NPDES 1200-C Permit for a construction site that disturbs more than one, but less than five acres. Respondent's Site disturbed 1.41 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 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)(c) because there were more than 28 occurrences of the violation. Each day of violation is a separate occurrence. On or about May 26, 2020, erosion and sediment controls described in the ESCP were not implemented at the Site. As of the date of this Notice and Order, the ESCP has still not been fully implemented.

"M" is the mental state of Respondent, and receives a value of 8 according to OAR 340-012-0145(5)(d) because Respondent's conduct was reckless. Respondent is permitted under the NPDES 1200-C Permit which expressly requires Respondent to comply with the conditions set forth in the Permit, including implementing the ESCP. DEQ staff informed Respondent of the requirement to implement practices and controls described in the ESCP on six

different occasions yet Respondent provided DEQ no documentation demonstrating that it implemented any of the controls and practices DEQ noted as missed. By failing to ensure that erosion and sediment controls were implement at the Site, Respondent consciously disregarded a substantial and unjustifiable risk that it was in violation of the condition in the Permit that requires permittees to implement the ESCP.

"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). Respondent has not provided DEQ with documentation that it has implemented any of the BMPs in its ESCP.

"EB" is the approximate dollar value of the benefit gained and the costs avoided or delayed as a result of the Respondents' 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 \$559. This is the amount of benefit Respondent received by avoiding the costs to implement erosion and sediment controls described in its ESCP (120' of sediment fence, 3 bio bags, 150' of straw wattles for a total of \$816) at the Site. 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 + [(0.1 x \$1,500) x (0 + 0 + 4 + 8 + 2)] + \$559
= \$1,500 + (\$150 x 14) + \$559
= \$1,500 + \$2,100 + \$559
= \$4,159

EXHIBIT No.2

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

VIOLATION No.2: Violating Schedule B, condition 1.b of the Permit, in violation of ORS 468B.025(2), by failing to perform visual monitoring at the Site.

CLASSIFICATION: This is a Class I violation pursuant to OAR 340-012-0055(1)(0).

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(3)(b)(A)(ii) and applicable pursuant to OAR 340-012-0140(4)(a)(E)(ii), as Respondent has obtained coverage under an NPDES 1200-C Permit for a construction site that disturbs more than one, but less than five acres. Respondent's Site disturbed 1.41 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 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)(c) because there were more than 28 occurrences of the violation. Each day of violation is a separate occurrence. Respondent began construction on or about January 1, 2020. As of the date of this Notice and Order Respondent has failed to conduct any visual monitoring. Specifically, Respondent failed to visually monitor, as required under Schedule B, condition 1 of the Permit, at least 28 times or every 14 days from January 2020 when construction began through the date of the Notice.

"M" is the mental state of Respondent, and receives a value of 8 according to OAR 340-012-0145(5)(d) because Respondent's conduct was reckless. Respondent is permitted under the NPDES 1200-C Permit which expressly requires Respondent to comply with the conditions

set forth in the Permit, including visual monitoring at least every 14 days. DEQ staff informed Respondent of the requirement to conduct visual monitoring and provide DEQ with visual monitoring reports yet Respondent provided DEQ no documentation demonstrating that it has performed any visual monitoring. By failing to conduct any visual monitoring- even after DEQ informed the Respondent of the requirement - Respondent consciously disregarded a substantial and unjustifiable risk that it was in violation of the condition in the Permit that requires visual monitoring.

"C" is Respondent's efforts to correct or mitigate the violation, and receives a value of 0 according to OAR 340-012-0145(6)(f) because the violation or the effects of the violation could not be corrected or minimized. Respondent cannot now conduct monitoring which was required in the past.

"EB" is the approximate dollar value of the benefit gained and the costs avoided or delayed as a result of the Respondents' 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 \$356. This is the amount Respondent gained in avoiding the costs of performing 26 visual monitoring events (1 hour inspections) at a cost of \$20 each since January 1, 2020.

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 + [(0.1 x \$1,500) x (0 + 0 + 4 + 8 + 0)] + \$356
= \$1,500 + (\$150 x 12) + \$356
= \$1,500 + \$1,800 + \$356
= \$3,656