



Oregon

Kate Brown, Governor

Department of Environmental Quality

Headquarters
811 SW 6th Ave
Portland, OR 97204-1390
(503) 229-5696
FAX (503) 229-6124
TTY: 711

March 31, 2016

CERTIFIED MAIL: 7014 2870 0001 3378 2887

Heritage Homes of Molalla, Oregon, Inc.
c/o Scott Miller, Registered Agent
602 NW Culpepper Terrace
Portland, OR 97210

Re: Notice of Civil Penalty Assessment and Order
Case No. WQ/SW-NWR-16-017

This letter is to inform you that the Oregon Department of Environmental Quality (DEQ) has issued you a civil penalty of \$13,468 for failing to implement erosion and sediment control measures to prevent the discharge of significant amounts of sediment laden stormwater to surface water conveyances and "trackout" onto roads. In addition, DEQ has cited you, without civil penalty, for failing to stabilize and cover piles of soil and stockpiles of woodchips.

DEQ issued this penalty because the failure to implement erosion and sediment control measures creates the risk of sediment laden discharges from your construction site. Sediment laden stormwater discharges may negatively impact the water quality of receiving streams. Specifically, sediment laden discharges pose a threat to fish and other aquatic life because they can disrupt the food web, have an adverse effect on juvenile fish rearing and migration, clog fish gills, reduce photosynthesis in aquatic flora, and increase the temperature of the affected water body.

DEQ appreciates your efforts to minimize the impacts of the violation by eventually installing the required erosion and sediment control measures. DEQ considered these efforts when determining the amount of civil penalty.

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. 6th 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.



Heritage Homes of Molalla, Oregon, Inc.
Case No. WQ/SW-NWR-16-017
Page 2

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: Michael Kennedy, NWR, 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 HERITAGE HOMES OF MOLALLA,) ASSESSMENT AND ORDER
5 OREGON, INC.)
6 *an Oregon Corporation*) CASE NO. WQ/SW-NWR-16-017
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 and 468.126 through 468.140,
11 468B, ORS Chapter 183 and Oregon Administrative Rules (OAR) Chapter 340, Divisions 011, 012, and
12 045.

13 II. FINDINGS OF FACT

14 1. On August 3, 2015 Respondent was issued coverage under the National Pollutant Discharge
15 Elimination System (NPDES) 1200-C General Permit for stormwater discharges that expired on
16 November 30, 2015 (the 2010 Permit).

17 2. On November 23, 2015 DEQ received Respondent's complete renewal application for
18 coverage under the NDPEs 1200-C General Permit for stormwater discharges from a construction
19 activity that expires on December 14, 2020 (the 2015 Permit).

20 3. The 2010 Permit and the 2015 Permit were issued pursuant to ORS 468B.050 and the
21 Federal Clean Water Act.

22 4. Under the 2010 Permit and the 2015 Permit Respondent was authorized to discharge from
23 construction activities at an approximately nine-acre site named Scouters Meadow, Tax Lots 300 &
24 301, Tax Map 1 3E 31B in Clackamas county (the Facility).

25 5. On January 13, 2016, DEQ staff performed an inspection of the Facility. At the time of the
26 inspection:

27 a. A sediment laden channel, dug around the perimeter of the Facility, flowed unimpeded
and under a sediment fence into a tributary of Rock Creek,

- 1 b. "Trackout" and sediment laden stormwater flowed freely offsite from the project
2 entrance driveway and into a roadside ditch and an unprotected stormdrain,
3 c. Unstable and uncovered patches of dug soil throughout the Facility,
4 d. Uncovered and unstable stockpiles of woodchips, and
5 e. No erosion controls or vehicle wheel washing equipment in the staging area of the
6 Facility.

7 6. Schedule A, Condition 8(a) of the 2010 Permit and the 2015 Permit states that a "[f]ailure to
8 implement any of the control measures or practices described in the ESCP is a violation of the Permit."

9 7. Condition 11 of Respondent's Erosion and Sediment Control Plan (ESCP) requires that
10 erosion control measures be in place and maintained for the duration of construction, including
11 protection for catch basins.

12 8. Condition 15 of the ESCP requires the prevention of tracking of sediment onto public or
13 private roads.

14 9. Condition 23 of the ESCP requires that at the end of each workday soil stockpiles must be
15 stabilized or covered.

16 10. The construction of a perimeter channel to convey stormwater was not included in the
17 ESCP.

18 III. CONCLUSIONS

19 1. Respondent has violated ORS 468B.025(2) and Schedule A, Condition 8 of the 2015 Permit,
20 and Condition 11 of the Erosion and Sediment Control Plan (ESCP) by failing to implement required
21 stormwater control measures, as described in Section II above. Specifically, Respondent failed to
22 implement adequate sediment control measures when it discharged significant amounts of sediment to
23 conveyance systems leading to surface water when a sediment laden channel, dug around the perimeter
24 of the Facility, flowed unimpeded and under a sediment fence into a tributary of Rock Creek. The
25 construction of the perimeter channel was not included in the ESCP as an approved control measure.
26 This is a Class I violation according to OAR 340-012-0055(1)(r). DEQ hereby assesses a \$7,068 civil
27 penalty for this violation.

1 (See OAR 340-011-0530 for further information about requests for hearing.) You must mail the
2 request for hearing to: **DEQ, Office of Compliance and Enforcement - Appeals, 811 SW Sixth**
3 **Avenue, Portland, Oregon 97204**, or fax it to **503-229-5100**. An administrative law judge employed
4 by the Office of Administrative Hearings will conduct the hearing, according to ORS Chapter 183,
5 OAR Chapter 340, Division 011 and OAR 137-003-0501 to 0700. You have a right to be represented
6 by an attorney at the hearing, or you may represent yourself unless you are a corporation, agency or
7 association.

8 Active duty service-members have a right to stay proceedings under the federal Service
9 members Civil Relief Act. For more information, please call the Oregon State Bar at 1-800-
10 452-8260 or the Oregon Military Department at 1-800-452-7500. Additional information can be found
11 online at the United States Armed Forces Legal Assistance (AFLA) Legal Services Locator website
12 <http://legalassistance.law.af.mil/content/locator.php>.

13 If you fail to file a request for hearing in writing within 20 calendar days of receipt of the
14 Notice, the Notice will become a final order by default without further action by DEQ, as per OAR
15 340-011-0535(1). If you do request a hearing but later withdraw your request, fail to attend the hearing
16 or notify DEQ that you will not be attending the hearing, DEQ will issue a final order by default
17 pursuant to OAR 340-011-0535(3). DEQ designates the relevant portions of its files, including
18 information submitted by you, as the record for purposes of proving a prima facie case.
19
20
21

22 March 31, 2016

23 Date

22 Leah K. Feldon for

23 Leah K. Feldon, Manager
24 Office of Compliance and Enforcement
25
26
27

EXHIBIT No. 1

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

VIOLATION No. 1: Failing to implement stormwater control measures, in violation of ORS 468B.025(2); Schedule A, Condition 8 of the Permit; and Condition 11 of Respondents Erosion and Sediment Control Plan.

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 \$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 has coverage under the NPDES 1200-C General Permit for a construction site with approximately 9 acres of disturbed area.

"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. Each day of violation constitutes a separate occurrence. Respondent obtained permit coverage on August 3, 2015. Respondent did not demonstrate proper installation of erosion control measures until DEQ's follow-up inspection on January 27, 2016. Therefore, there were more than 28 occurrences 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. The 1200-C General Permit and Respondent's ESCP both require implementation of erosion and sediment control measures to prevent the discharge of significant amounts of sediment to surface waters. With the assistance of a consultant, Respondent developed and drafted its own ESCP, which includes the required control measures. Therefore, Respondent's failure to implement the control

measures constitutes a failure to take reasonable care to avoid a foreseeable risk that it would violate its Permit.

"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. Respondent installed proper erosion and sediment control measures by January 27, 2016, approximately five and half months after obtaining permit coverage.

"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 \$668. This is the amount Respondent gained by delaying spending approximately \$41,763.20 at the onset of permit coverage to implement proper erosion control measures. This "EB" was calculated pursuant to OAR 340-012-0150(1) using the U.S. Environmental Protection Agency's BEN computer model.

PENALTY CALCULATION: $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$
= \$4,000 + [(0.1 x \$4,000) x (0 + 0 + 4 + 4 + -2)] + \$668
= \$4,000 + [\$400 x 6] + \$668
= \$4,000 + \$2,400 + \$668
= \$7,068

EXHIBIT No. 2

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

VIOLATION No. 2: Failing to prevent tracking of sediment on public and private roads, in violation of ORS 468B.025(2); Schedule A, Condition 8 of the Permit; and Condition 15 of Respondent's Erosion and Sediment Control Plan (ESCP).

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 \$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 has coverage under the NPDES 1200-C General Permit for a construction site with approximately nine acres of disturbed area.

"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. Each day of violation constitutes a separate occurrence. Respondent obtained permit coverage on August 3, 2015. Respondent did not demonstrate proper installation of measures to prevent tracking of sediment to roads until DEQ's follow-up inspection on January 27, 2016. Therefore, there were more than 28 occurrences 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. The 1200-C General Permit and Respondent's ESCP both require measures to prevent tracking of sediment to public and private roads. With the assistance of a consultant, Respondent developed and drafted its own ESCP, which includes the required control measures. Therefore, Respondent's failure to

implement the control measures to prevent sediment tracking constitutes a failure to take reasonable care to avoid a foreseeable risk that it would violate its Permit.

"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. Respondent installed proper erosion and sediment control measures by January 27, 2016, approximately five and half months after obtaining permit coverage.

"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. The EB for this violation is captured in Exhibit No. 1.

PENALTY CALCULATION: $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$
= $\$4,000 + [(0.1 \times \$4,000) \times (0 + 0 + 4 + 4 + -2)] + \0
= $\$4,000 + [\$400 \times 6] + \$0$
= $\$4,000 + \$2,400 + \$0$
= $\$6,400$