



# 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

May 29, 2020

CERTIFIED MAIL: 7017 1450 0000 8310 3299

MHC Mt. Hood Village LLC  
c/o CT Corporation System, Registered Agent  
780 Commercial St. SE Suite 100  
Salem OR 97301-3465

Re: Notice of Civil Penalty Assessment and Order  
Case No. WQ/SW-NWR-2020-004

This letter is to inform you that the Oregon Department of Environmental Quality (DEQ) has issued you a civil penalty of \$11,200 for violating state water quality standards and failing to comply with your NPDES 1200-C General Permit in connection with construction work at Mt. Hood Village in Welches, Oregon.

DEQ issued this penalty because your permit requires you to ensure the pollution controls you selected in your erosion and sediment control plan are effective. Your construction activities resulted in the discharge of highly turbid water to a side channel of the Salmon River. The Salmon River provides pristine core cold water habitat, is designated for salmonid spawning use, and is a national wild and scenic river. The introduction of sediment to surface waters can harm aquatic life, impact beneficial uses of those waters, and increase temperatures.

Included in Section IV of the Notice is an order requiring you to revise your erosion and sediment control plan to reflect current site conditions and designated Site inspector within 30 days of the final order.

DEQ appreciates your efforts to address turbid discharges from your Site by installing additional erosion and sediment controls at the site. 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 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](mailto: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 Anzie St. Clair at 503-229-5422 or toll free in Oregon at 800-452-4011, extension 5422.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Kieran O'Donnell', is written over a horizontal line.

Kieran O'Donnell, Manager  
Office of Compliance and Enforcement

Enclosures

cc: Brandon Bertilson, DEQ, Northwest Region  
Christine Svetkovich, DEQ  
Accounting, DEQ

BEFORE THE ENVIRONMENTAL QUALITY COMMISSION  
OF THE STATE OF OREGON

IN THE MATTER OF: )  
MHC MT. HOOD VILLAGE LLC, an ) NOTICE OF CIVIL PENALTY  
Oregon limited liability company, ) ASSESSMENT AND ORDER  
Respondent. ) CASE NO. WQ/SW-NWR-2020-004

I. AUTHORITY

The Department of Environmental Quality (DEQ) issues this Notice of Civil Penalty Assessment and Order (Notice) pursuant to Oregon Revised Statutes (ORS) 468.100, ORS 468.126 through 468.140, ORS Chapters 183 and 468B and Oregon Administrative Rules (OAR) Chapter 340, Divisions 011, 012, 041 and 045.

II. FINDINGS OF FACT

1. Since on or about October 23, 2019 through to present, Respondent has engaged in construction activities to build an RV park at or adjacent to 6500 E Highway 26 in Welches, Clackamas County, Oregon (the Site). The Site has a total disturbance area of approximately 6.27 acres.

2. The Site is adjacent and drains to the Salmon River directly via overland sheet flow and through creeks and side channels which flow through the Site into the Salmon River.

3. The Salmon River is designated as a National Wild and Scenic River at 16 U.S.C. 1274(1)(a)(99). Adjacent to the Site, the Salmon River and its tributaries provide core coldwater habitat for salmon and steelhead and are designated for salmon and steelhead spawning use. A downstream portion of the Salmon River is listed as impaired for temperature. The upland areas within and adjacent to the Site are used for recreation activities such as hiking.

4. On or about August 29, 2017, DEQ assigned Respondent coverage under the National Pollutant Discharge Elimination System General Permit Number 1200-C (the Permit) for its construction activities, which was in effect at all material times.

5. The Permit authorizes Respondent to engage in construction activities that may discharge to surface waters or conveyance systems leading to surface waters of the state only in conformance with the conditions and limitations of the Permit.

1           6. Schedule A, condition 8.b. of the Permit requires Respondent to prevent the discharge of  
2 significant amounts of sediment to surface waters or conveyance systems leading to surface waters.  
3 Conditions that indicate “a significant amount of sediment has left or is likely to leave the site” include  
4 mud flows, concentrated flows of stormwater such as rills, rivulets or channels without filtration or  
5 treatment, and deposits of sediment in areas that drain to unprotected inlets or conveyance structures  
6 and on property outside of the construction activity. (Permit, Schedule A, conditions 8.b.iv. and 8.b.v.)

7           7. Schedule A, condition 10.a. of the Permit requires Respondent to not cause or contribute to  
8 a violation of in-stream water quality standards.

9           8. On December 12, 2019, milky brown, visibly turbid stormwater runoff left Respondent’s  
10 Site and discharged via an unnamed channel into a side channel of the Salmon River. Before  
11 commingling with Respondent’s discharge, the rocky bottom of the side channel was clearly visible.  
12 Where Respondent’s discharge entered the side channel and in the plume extending downstream,  
13 bottom features were not visible through the turbidity.

14           9. On December 12, 2019, Respondent’s discharge caused greater than a ten percent increase  
15 in the turbidity of the side channel of the Salmon River.

16           10. On December 13, 2019, DEQ inspected the Site and observed Site conditions.

17           11. On December 13, 2019, the Site had large quantities of exposed and unstable soils.

18           12. On December 13, 2019, the drainage ditch exiting Respondent’s Site had deposits of  
19 sediment along the bottom, indicating that a significant amount of sediment-laden stormwater had  
20 recently left the Site. Respondent had installed check dams and biobags in the drainage ditch, but after  
21 concentrated flows of sediment had passed through.

22           13. On or about February 5 and 6, 2020, milky brown, visibly turbid stormwater runoff left  
23 Respondent’s Site and pooled near the side channel without any intervening filtration methods or other  
24 controls to prevent it from entering the Salmon River.

25           14. Silt, suspended solids, and associated turbidity in stormwater runoff that enter waters are  
26 likely to harm resident aquatic life through abrasion and by interfering with respiration, feeding, and  
27 reproduction. Suspended solids absorb and concentrate trace metals and other contaminants, increasing

1 their bioavailability to aquatic life. Increases in sediment inputs to waters decrease pH and harm  
2 resident aquatic life by covering food sources, eggs, and smothering invertebrate organisms. High  
3 turbidity causes light to be scattered and absorbed, reducing light penetration and photosynthetic  
4 activity, and increasing water temperatures.

5 15. Schedule A, conditions 12.a.i., 12.b.iv.(2), 12.b.v.(1), 12.b.v.(3)(g), and 12.c. of the Permit  
6 require Respondent to design, and update as necessary, adequate erosion and sediment control  
7 measures for the Site and to identify those measures or best management practices (BMPs) in an  
8 erosion and sediment control plan (ESCP). Schedule A, conditions 12.a.i. and 12.c.i. of the Permit  
9 require the ESCP to be accurate and reflect Site conditions. The ESCP must include a map or drawing  
10 that identifies all discharge points, temporary and permanent stormwater conveyance systems, and all  
11 springs, wetlands, and other surface waters on the Site or adjacent to the Site. (Permit, Schedule A,  
12 conditions 12.b.v.(3)(d), (i), and (j) and 12.b.iv.(5); Schedule D, condition 5). Schedule A, condition  
13 12.b.iii. of the Permit requires Respondent to identify in its ESCP an erosion and sediment control  
14 inspector to perform Site inspections. Respondent must submit its revised ESCP to DEQ within 10  
15 days if there is a change to in its designated erosion and sediment control inspector. (Permit, Schedule  
16 A, condition 12.c.iv.(6).)

17 16. Respondent's ESCP did not identify the unnamed channel, the side channel of the Salmon  
18 River, its discharge points, and all stormwater conveyance systems at the Site.

19 17. For Site inspections in December 2019, Respondent was using a different erosion and  
20 sediment control inspector for Site inspections than the one identified in its ESCP.

### 21 III. CONCLUSIONS

22 1. On December 12, 2019, Respondent violated ORS 468B.025(1)(a) and (1)(b), where  
23 Respondent caused pollution, in violation of its Permit and discharged wastes into waters of the state  
24 which caused a reduction in the quality of the waters below water quality standards established by the  
25 Environmental Quality Commission. Specifically, as described in Section II, paragraphs 8 through 12,  
26 Respondent's Site discharged sediment to a side channel of the Salmon River, a "water of the state"  
27 pursuant to ORS 468B.005(10), during Respondent's construction of a RV park. The discharge altered

1 the physical, chemical, and biological properties of waters of the state, increased instream turbidity by  
2 more than 10%, and caused conditions deleterious to aquatic life, which is in violation of water quality  
3 standards pursuant to OAR 340-041-0036 and OAR 340-041-0007(10). The discharge from Respondent's  
4 activities are "wastes" pursuant to ORS 468B.005(9) and was not authorized under the Permit, as  
5 described in Section II, paragraphs 5 through 7. This is Class I violation according to OAR 340-012-  
6 0055(1)(b). DEQ hereby assesses Respondent an \$11,200 penalty for this violation.

7 2. On at least February 5 and 6, 2020, Respondent violated ORS 468B.025(1)(a) by placing  
8 wastes in a location where they are likely to enter waters of the state by any means. Specifically, as  
9 described in Section II, paragraph 13 above, Respondent placed sediment-laden runoff in close proximity  
10 to the unprotected side channel of the Salmon River, a water of the state pursuant to ORS 468B.005(10).  
11 Such activities are not authorized under Respondent's Permit. Sediment-laden stormwater runoff from the  
12 Site is a "waste" according to ORS 468B.005(9). These are Class II violations according to OAR 340-  
13 012-0055(2)(c). DEQ has not assessed a civil penalty for these violations.

14 3. From on or about August 29, 2017 to present, Respondent has violated ORS 468B.025(2) by  
15 violating Schedule A, conditions 12.b. and 12.c. of the Permit where Respondent failed to maintain an  
16 accurate and current ESCP. Specifically, as described in Section II, paragraphs 15 through 17,  
17 Respondent's ESCP failed to identify its erosion and sediment control inspector, all discharge points,  
18 surface waters, and temporary stormwater conveyance systems. These are Class II violations according to  
19 OAR 340-012-0053(2) because these violations are otherwise unclassified. DEQ has not assessed a civil  
20 penalty for these violations.

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

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

24 1. Pay a total civil penalty of \$11,200. The determination of the civil penalty is attached as  
25 Exhibit 1 and is incorporated as part of this Notice.

26 ///

27 ///

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

4 2. Within 30 days of this order becoming final by operation of law or on appeal, submit a  
5 revised ESCP to DEQ that (a) identifies Respondent's current designated erosion and sediment control  
6 inspector, (b) clearly shows on a map any surface waters on and adjacent to the Site and all the various  
7 stormwater conveyance pathways to the Salmon River and its tributaries, and (c) identifies the  
8 appropriate corresponding erosion and sediment controls to prevent a future exceedances of state water  
9 quality standards. Submit the revised ESCP to: DEQ, Attn: Brandon Bertilson, 700 NE Multnomah St,  
10 Suite 600, Portland OR 97232.

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

26 Active duty Service members have a right to stay proceedings under the federal Service  
27 Members Civil Relief Act. For more information contact the Oregon State Bar at 1-800-




452-8260, the Oregon Military Department at 503-584-3571, or the nearest United States Armed Forces Legal Assistance Office through <http://legalassistance.law.af.mil>. The Oregon Military 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 without further action by DEQ, as per OAR 340-011-0535(1). If you do request a hearing but later withdraw your request, fail to attend the hearing or notify DEQ that you will not be attending the hearing, DEQ will issue a final order by default pursuant to OAR 340-011-0535(3). DEQ designates the relevant portions of its files, including information submitted by you, as the record for purposes of proving a prima facie case.

Date

5/29/2020

  
Kieran O'Donnell, Manager  
Office of Compliance and Enforcement



## EXHIBIT 1

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

- VIOLATION 1: Causing a violation of state water quality standards in violation of ORS 468B.025(1)(b), OAR 340-041-0036, and OAR 340-041-0007(10).
- CLASSIFICATION: This is a Class I violation pursuant to OAR 340-012-0055(1)(b).
- MAGNITUDE: The magnitude of the violation is major pursuant to OAR 340-012-0135(2)(b)(A)(v) because Respondent increased turbidity in the side channel of the Salmon River by more than 50 or more nephelometric turbidity units (NTU) over background, where the levels of turbidity in Respondent's discharge were so high that it completely obscured the bottom features of an otherwise clear channel, as described in the Notice.
- 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 \$8,000 for a Class I, major magnitude violation in the matrix listed in OAR 340-012-0140(3)(b)(A)(i) and applicable pursuant to OAR 340-012-0140(3)(a)(E)(iii) because Respondent violated a water quality statute and has coverage under an NPDES 1200-C General Permit for a Site with a 6.27-acre disturbance 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 0 according to OAR 340-012-0145(4)(a) because there was only one occurrence of the violation. On December 12, 2019 as described in the Notice, Respondent caused a violation of water quality standards in the side channel of the Salmon River. This amounts to one occurrence.
- "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 failed to take reasonable care to avoid the foreseeable risk that its activities result in sediment-laden stormwater runoff discharging to high quality waters on and immediately adjacent to the Site and violate state water quality standards. Respondent began construction in the wet season, exposing large quantities of soil in close proximity to waters of the state. The Site is

located in area that receives frequent and sometime high intensity precipitation in the winter, yet Respondent failed to properly install and maintain adequate sediment and erosion controls at its Site.

"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.

"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. Pursuant to OAR 340-012-0150(4), the EB was de minimis where Respondent delayed installing additional erosion and sediment controls by approximately 24 hours. The Site's turbid discharge was observed and reported to DEQ on December 12, 2019. By the time DEQ arrived on December 13, 2019 for an inspection, Respondent had installed additional controls in response to the occurrence.

PENALTY CALCULATION:  $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$   
= \$8,000 + [(0.1 x \$8,000) x (0 + 0 + 0 + 4 + 0)] + \$0  
= \$8,000 + (\$800 x 4) + \$0  
= \$8,000 + \$3,200 + \$0  
= \$11,200