



# Oregon

Kate Brown, Governor

## Department of Environmental Quality

Office of Compliance and Enforcement

700 NE Multnomah St Ste 600

Portland, OR 97232-4100

(503) 229-5696

FAX (503) 229-5100

TTY: 711

June 1, 2017

CERTIFIED MAIL: 7014 2870 0001 3378 4782

4300 BHH Partners SP, LLC  
c/o National Registered Agents, Registered Agent  
388 State Street, Suite 420  
Salem, OR 97301

Re: Notice of Civil Penalty Assessment and Order  
Case No. WQ/SW-NWR-2017-041

This letter is to inform you that the Oregon Department of Environmental Quality (DEQ) has issued you a civil penalty of \$1,950 for violating your National Pollutant Discharge Elimination System (NPDES) Stormwater Discharge General Permit Number 1200-C by failing to substantially implement your erosion and sediment control plan at your property located at 4304 Beaverton-Hillsdale Highway in Portland. DEQ previously offered to resolve this matter through an Expedited Enforcement Offer, but the offer was not accepted.

On November 30, 2016, Portland Bureau of Environmental Services staff observed turbid stormwater being routed around erosion and sediment controls and discharged to a catch basin that leads to Fanno Creek. Sediment discharges to waterways degrade aquatic habitat and can directly harm fish and other aquatic life.

DEQ appreciates your efforts to ensure the violation would not be repeated by removing the hose and contracting to remove the gutters. 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 Jeff Bachman at 503-229-5950 or toll free in Oregon at 800-452-4011.

Sincerely,



Sarah G. Wheeler, Acting Manager  
Office of Compliance and Enforcement

Enclosures

cc: E. Jay Murphy, Northwest Region  
Shaumae Hall, Accounting, DEQ  
John Koestler, WQ, DEQ

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

3 IN THE MATTER OF: )  
4 4300 BHH Partners SP, LLC ) NOTICE OF CIVIL PENALTY  
5 Respondent. ) ASSESSMENT AND ORDER  
6 CASE NO. WQ/SW-NWR-2017-041

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, ORS 468.126 through 468.140,  
10 ORS Chapter 183 and 468B and Oregon Administrative Rules (OAR) Chapter 340, Divisions 011, 012,  
11 and 045.

12 II. FINDINGS OF FACT

13 1. On or about February 23, 2016, the Department of Environmental Quality (DEQ or the  
14 Department) assigned Respondent coverage under National Pollutant Discharge Elimination System  
15 General Permit 1200-C (permit) for Respondent’s facility “StorQuest Portland,” located at 4304 SW  
16 Beaverton Hillsdale Highway, in Portland, Oregon (“facility”).

17 2. The permit authorizes Respondent to construct, install, modify or operate stormwater  
18 treatment or control facilities and to discharge stormwater to public waters in conformance with the  
19 requirements, limitations and conditions of the permit.

20 3. Schedule A, Condition 8.a of the permit requires Respondent to implement an erosion and  
21 sediment control plan (ESCP).

22 4. On or about November 30, 2016, City of Portland staff inspected of the facility and  
23 observed turbid stormwater bypassing erosion and sediment controls by means of a hose and  
24 discharging directly to a catch basin that flows to Fanno Creek.

25 III. CONCLUSIONS

26 On or about November 30, 2016, Respondent violated ORS 468B.025(2) by violating a  
27 wastewater discharge permit condition. Specifically, Respondent violated Schedule A, Condition 8(a)

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1 of the permit by failing to implement its ESCP as described in Section II, above. This is a Class I  
2 violation, according to OAR 340-012-0055(1)(r). DEQ assesses a \$1,950 civil penalty for this violation.

#### 3 IV. ORDER TO PAY CIVIL PENALTY

4 Based upon the foregoing FINDINGS OF FACTS AND CONCLUSIONS, Respondent is  
5 hereby ORDERED TO: Pay a total civil penalty of \$1,950. The determination of the civil penalty is  
6 attached as Exhibit 1 and is incorporated as part of this Notice.

7 If you do not file a request for hearing as set forth in Section V below, your check or money  
8 order must be made payable to "**State Treasurer, State of Oregon**" and sent to the **DEQ, Business**  
9 **Office, 700 NE Multnomah Street, Suite 600, Portland, Oregon 97232**. Once you pay the penalty,  
10 the Findings of Fact, Conclusions and Order become final.

#### 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(s), 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**. 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, please call the Oregon State Bar at 1-800-

1 452-8260 or the Oregon Military Department at 1-800-452-7500. Additional information can be found  
2 online at the United States Armed Forces Legal Assistance (AFLA) Legal Services Locator website  
3 <http://legalassistance.law.af.mil/content/locator.php>.

4 If you fail to file a timely request for hearing, the Notice will become a final order by default  
5 without further action by DEQ, as per OAR 340-011-0535(1). If you do request a hearing but later  
6 withdraw your request, fail to attend the hearing or notify DEQ that you will not be attending the  
7 hearing, DEQ will issue a final order by default pursuant to OAR 340-011-0535(3). DEQ designates  
8 the relevant portions of its files, including information submitted by you, as the record for purposes of  
9 proving a prima facie case.  
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13 June 1, 2017

14 Date

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13 Sarah Wheeler

14 Sarah G. Wheeler, Acting Manager  
Office of Compliance and Enforcement  
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## EXHIBIT 1

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

VIOLATION: Violating conditions of a wastewater discharge permit, in violation of 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 the disturbed area was between one and five 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 0 according to OAR 340-012-0145(4)(a) because there was only one occurrence of the violation. The inspector observed the violation on one occasion, November 30, 2016.

"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 requirement to implement a SWPCP is express in Respondent's permit. Respondent is in the construction business in Oregon and knows or should have known of the requirement. By failing to take action to ensure that its plan was substantially implemented, Respondent failed to exercise reasonable care to avoid the foreseeable risk of committing the violation.

"C" is Respondent's efforts to correct or mitigate the violation, and receives a value of -1 according to OAR 340-012-0145(6)(e) because Respondent made reasonable efforts to ensure the violation would not be repeated. Upon inspection by DEQ, Respondent stopped

work and removed the hose that was directing discharge and directed the flow back into the excavation. Respondent also hired a contractor to disconnect the gutters and downspouts from the hillside.

"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, because the violation did not result from Respondent avoiding or delaying any compliance costs.

PENALTY CALCULATION:  $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$

$$\begin{aligned} &= \$1,500 + [(0.1 \times \$1,500) \times (0 + 0 + 0 + 4 + (-1))] + \$0 \\ &= \$1,500 + (\$150 \times 3) + \$0 \\ &= \$1,500 + \$450 + \$0 \\ &= \$1,950 \end{aligned}$$