



# 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 19, 2017

CERTIFIED MAIL: 7014 2870 0001 3378 4881

Joseph A. Kaufman & Melody Ann Kaufman  
28170 Hunter Creek Road  
Gold Beach, OR 97444

Re: Notice of Civil Penalty Assessment and Order  
Case No. WQ/SW-WR-2017-070

This letter is to inform you that the Oregon Department of Environmental Quality (DEQ) has issued you a civil penalty of \$7,807 for discharging wastes into waters of the state as a result of your unpermitted construction activities at the lot you own located at the end of Wallace Street in Gold Beach, Oregon.

DEQ issued this penalty because your activities resulted in the discharge of turbid stormwater. Turbidity and any alteration in the physical characteristics of water are included in the definition of pollution under Oregon environmental law.

Included in Section IV is an order requiring you to immediately cease all discharges of stormwater from the lot and to complete your application for coverage under the NPDES 1200-C permit, including developing and submitting to DEQ an Erosion and Sediment Control Plan that covers additional construction activities planned at the lot and that meets the requirements of the NPDES 1200-C Permit. \$4,507 of the civil penalty represents the economic benefit you gained by failing to install erosion and sediment control BMPs. If you complete these requirements, DEQ will consider recalculating the costs as delayed rather than avoided and will reduce the civil penalty accordingly.

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

Sincerely,



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

Enclosures

cc: Bryan Duggan, Coos Bay  
Zach Loboy, DEQ  
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 JOSEPH A. KAUFMAN & MELODY ) NOTICE OF CIVIL PENALTY  
 ANN KAUFMAN, ) ASSESSMENT AND ORDER  
 5 Respondents. ) CASE NO. WQ/SW-WR-2017-070

6 I. AUTHORITY

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

11 II. FINDINGS OF FACT

12 1. Respondents own tax lot 1708 located at the end of Wallace Street in Gold Beach,  
 13 Oregon (Township 37 Range 15W Section 1, referred to hereafter as “the lot”).

14 2. The lot is 1.5 acres.

15 3. On or before October 24, 2016, through at least on or about February 24, 2017,  
 16 Respondents engaged in construction activity at the lot including land clearing and excavation that  
 17 resulted in discharges of sediment and turbid stormwater through constructed piping that discharges to  
 18 an unnamed surface water.

19 4. Sediment and turbid stormwater are considered “wastes” according to ORS 468B.050 as  
 20 turbidity is included in the definition of “pollution” in ORS 468B.005(5).

21 5. The unnamed surface water referred to in paragraph 3, above is “waters of the state”  
 22 according to ORS 468B.005(10).

23 6. The constructed piping is a disposal system.

24 7. Respondents are not registered under the National Pollutant Discharge Elimination  
 25 System General Permit Number 1200-C permit (the Permit).

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1 III. CONCLUSIONS

2 Respondents have violated ORS 468B.050(1)(b) by constructing, installing and operating a  
3 disposal system without holding a permit from DEQ. Specifically, on or before October 24, 2016,  
4 through the present, Respondents engaged in construction activities at the lot which included installing  
5 a pipe that acted as a conveyance of stormwater discharges to surface waters. This is a Class I violation,  
6 according to OAR 340-012-0055(1)(c). DEQ hereby assess a civil penalty of \$7,708 for this violation

7 IV. ORDER TO PAY CIVIL PENALTY AND TO COMPLY:

8 Based upon the foregoing FINDINGS OF FACTS AND CONCLUSIONS, Respondents are  
9 hereby ORDERED TO:

10 I. Pay a total civil penalty of \$7,807. The determination of the civil penalty is attached as Exhibit  
11 No. 1 and is incorporated as part of this Notice.

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

16 2. Immediately cease all off-site discharges of stormwater via constructed conveyance or  
17 otherwise at the lot.

18 3. Within 20 days after the order becomes final by operation of law or on appeal, Respondents  
19 must submit a complete application for coverage under the Permit, including an Erosion and Sediment  
20 Control Plan that applies to future planned construction activities at the lot and meets the requirements  
21 of the Permit, the receiving stream information, and an electronic form of the site drawings and plans to  
22 LeeAnn Gates, Stormwater Permit Coordinator, DEQ, 165 East 7<sup>th</sup> Avenue, Suite 100, Eugene, Oregon  
23 97401.

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

25 You have a right to a contested case hearing on this Notice, if you request one in writing. DEQ  
26 must receive your request for hearing **within 20 calendar days** from the date you receive this Notice. If  
27 you have any affirmative defenses or wish to dispute any allegations of fact in this Notice or attached

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

12 Active duty service-members have a right to stay proceedings under the federal Service  
13 Members Civil Relief Act. For more information, please call the Oregon State Bar at 1-800-  
14 452-8260 or the Oregon Military Department at 1-800-452-7500. Additional information can be found  
15 online at the United States Armed Forces Legal Assistance (AFLA) Legal Services Locator website  
16 <http://legalassistance.law.af.mil/content/locator.php>.

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

23  
24  
25 June 19, 2017

26 Date

25 Sarah Wheeler

26 Sarah G. Wheeler, Acting Manager  
27 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: Discharging wastes into waters of the state without a permit in violation of ORS 468B.050(1)(a) between October 24, 2016, through at least February 24, 2017.

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

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 site is more than one and less than 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 4 according to OAR 340-012-0145(4)(d) because there were more than 28 occurrences of the violation. The violation lasted from October 24, 2016, through at least February 24, 2017, resulting in more than 28 occurrences of the violation. Each day of violation is a separate occurrence.

"M" is the mental state of the Respondent, and receives a value of 8 according to OAR 340-012-0145(5)(d) because Respondent's conduct was reckless. By clearing the lot of all vegetation, failing to place erosion and sediment controls, and constructing a pipe to convey stormwater off-site into an unnamed tributary, Respondent consciously disregarded a substantial and unjustifiable risk that it would discharge turbid stormwater to waters of the state. Disregarding this risk constituted a gross deviation from the standard of care a reasonable person would observe in this situation.

"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 there is insufficient information to make a finding under paragraphs (6)(a) through (6)(e), or (6)(g).

"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 \$4,507. This is the amount Respondent gained by avoiding spending approximately \$6,652 to install erosion and sediment control best management practices at the lot. This "EB" was calculated pursuant to OAR 340-012-0150(1) using the U.S. Environmental Protection Agency's BEN computer model.

PENALTY CALCULATION:  $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$   
 $= \$1,500 + [(0.1 \times \$1,500) \times (0 + 0 + 4 + 8 + 0)] + \$4,507$   
 $= \$1,500 + (\$150 \times 12) + \$4,507$   
 $= \$1,500 + \$1,800 + \$4,507$   
 $= \$7,807$