



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

June 14, 2018

CERTIFIED MAIL: 7016 3010 0000 6028 6947

Clear Estate 15 LLC
P.O. Box 815
Merlin, OR 97532

Re: Notice of Civil Penalty Assessment and Order
Case No. WQ/SW-WR-2018-052

This letter is to inform you that the Oregon Department of Environmental Quality (DEQ) has issued you a civil penalty of \$15,401 for placing wastes in a location where they are likely to enter waters of the state. Specifically, as the owner of the real property located at 501 Pinecrest Drive in Grants Pass (the Site), you are liable for failing to implement best management practices and stabilize bare areas of the Site that are prone to erosion and the discharge of sediment to waters of the state.

DEQ issued this penalty because you failed to correct the offending conditions described in a Warning Letter with Opportunity to Correct which DEQ issued to you on December 12, 2017. DEQ observed the same conditions, unchanged, on March 14, 2017. Moreover, sediment is considered a waste that poses a risk of harm to beneficial uses of waters of the state, including the use of those waters as aquatic habitat for fish and other organisms. The discharge of sediment can degrade water quality and may harm aquatic life by covering up food sources, abrading fish gills, and smothering fish eggs and invertebrate organisms living in the river.

Included in Section IV of the attached Notice of Civil Penalty Assessment and Order is an order requiring you to immediately implement erosion and sediment controls to prevent sediment discharges to the seasonal tributary of Lathrop creek and submit written documentation demonstrating implementation of those measures to Bill Meyers of DEQ within 20 days of this order becoming final.

\$8,201 of the civil penalty represents the economic benefit you gained by failing to implement best management practices at the Site to control erosion and sediment. 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

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,

A handwritten signature in blue ink, appearing to read "Kieran O'Donnell".

Kieran O'Donnell, Manager
Office of Compliance and Enforcement

Enclosures

cc: Bill Meyers, Medford
Jay Franklin, 1718 Wetherbee, Grants Pass, OR 97527

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

3 IN THE MATTER OF:)
4 CLEAR ESTATE 15, LLC,) NOTICE OF CIVIL PENALTY
5 a foreign limited liability corporation,) ASSESSMENT AND ORDER
6 Respondent.) CASE NO. WQ/SW-WR-2018-052

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, ORS Chapter 468B, and Oregon Administrative Rules (OAR) Chapter 340, Divisions
11 011, 012, and 041.

12 II. FINDINGS OF FACT

13 1. On or about October 24, 2017, Respondent became the owner of property located at 501
14 Pinecrest Drive in Grants Pass, Oregon (Taxlot 300) (the "Site").

15 2. On or about December 12, 2017, DEQ observed that extensive excavation on a steep
16 slope and land clearing had occurred on the Site which resulted in unstablized soils, erosion and
17 discharges of sediment from the Site into an unnamed seasonal tributary of Lathrop Creek.

18 3. On or about March 14, 2018, DEQ staff observed that Respondent had not implemented
19 erosion controls and soil stabilization measures to prevent the discharge of sediment from the Site.

20 4. The unnamed seasonal tributary provides habitat for aquatic organisms. Lathrop Creek
21 provides habitat for fish and other aquatic life and is designated as essential salmon habitat.

22 III. CONCLUSIONS

23 1. The unnamed seasonal tributary of Lathrop Creek, referred to in Section II, paragraphs 2
24 and 4, above, is a "water of the state" according to ORS 468B.005(10).

25 2. Sediment is a "waste" according to ORS 468B.005(9) as it tends to render waters of the
26 state harmful, detrimental or injurious to aquatic life or the habitat thereof and to cause pollution to
27 waters of the state.

28 ///

1 3. Since on or about December 12, 2017, through the present, Respondent has violated
2 ORS 468B.025(1)(a) by placing wastes in a location where such wastes are likely to escape or be
3 carried into waters of the state by any means. This is a Class II violation according to OAR 340-012-
4 0055(2)(c). DEQ hereby assesses a \$15,401 civil penalty for this violation.

5 IV. ORDER TO PAY CIVIL PENALTY AND TO COMPLY

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

8 1. Pay a total civil penalty of \$15,401. The determination of the civil penalty is attached as
9 Exhibit No. 1 and is incorporated as part of this Notice.

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

14 2. Immediately implement erosion and sediment controls to prevent sediment discharges to the
15 unnamed seasonal tributary of Lathrop Creek and submit written documentation demonstrating such
16 implementation within 20 days of this order becoming final by operation of law or on appeal, to: Bill
17 Meyers, DEQ, 221 Stewart Avenue, Suite 201, Medford, Oregon 97501.

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

19 You have a right to a contested case hearing on this Notice, if you request one in writing. DEQ
20 must receive your request for hearing **within 20 calendar days** from the date you receive this Notice.
21 If you have any affirmative defenses or wish to dispute any allegations of fact in this Notice or attached
22 exhibit, you must do so in your request for hearing, as factual matters not denied will be considered
23 admitted, and failure to raise a defense will be a waiver of the defense. (See OAR 340-011-0530 for
24 further information about requests for hearing.) You must send your request to: **DEQ, Office of**
25 **Compliance and Enforcement, 700 NE Multnomah Street, Suite 600, Portland, Oregon 97232**, fax
26 it to **503-229-5100**, or email it to **DEQappeals@deq.state.or.us**. An administrative law judge
27 employed by the Office of Administrative Hearings will conduct the hearing, according to ORS

1 Chapter 183, OAR Chapter 340, Division 011 and OAR 137-003-0501 to 0700. You have a right to be
2 represented by an attorney at the hearing, however you are not required to be. If you are an individual,
3 you may represent yourself. If you are a corporation, partnership, limited liability company,
4 unincorporated association, trust or government body, you must be represented by an attorney or a duly
5 authorized representative, as set forth in OAR 137-003-0555.

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

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

17
18
19
20 6 / 14 / 18

21 Date

22
23
24
25
26
27 

Kieran O'Donnell, Manager
Office of Compliance and Enforcement

EXHIBIT No.1

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

VIOLATION: Violating ORS 468B.025(1)(a) by placing wastes in a location where they are likely to escape or be carried into waters of the state by any means since on or about December 12, 2017.

CLASSIFICATION: This is a Class II violation pursuant to OAR 340-012-0055(2)(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 \$3,000 for a Class II moderate magnitude violation in the matrix listed in OAR 340-012-0140(2)(b)(B)(ii) and applicable pursuant to OAR 340-012-0140(2)(a)(C).

"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 is a separate occurrence. The conditions were observed by DEQ on December 12, 2017 and again on March 14, 2017. DEQ has received no information to indicate that the conditions have been ameliorated. It is more likely than not that the condition has persisted unchanged from December 12, 2017, through March 14, 2017, and likely into the present, for a total of more than 28 days.

"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. DEQ observed unstabilized slopes and erosion at the Site on December 12, 2017. DEQ informed Respondent in a Warning Letter with Opportunity to Correct dated December 21, 2017, of the violation and requested corrective actions which have not been implemented. DEQ observed the same conditions at the Site on March 14, 2018. By failing to take action to mitigate erosion at Site, Respondent

consciously disregarded a substantial and unjustifiable risk that it would place wastes in a location where its likely they could escape or be carried into waters of the state.

"C" is Respondents' 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).

"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 \$8,201. This is the amount Respondent gained by avoiding spending \$14,483 on best management practices (including straw mulching, matting, rock check dams, sediment fence, and seeding) to prevent erosion and discharges of sediment to waters of the state since October 24, 2017. This "EB" was calculated pursuant to OAR 340-012-0150(1) using the U.S. Environmental Protection Agency's BEN computer model.

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

$$\begin{aligned} &= \$3,000 + [(0.1 \times \$3,000) \times (0 + 0 + 4 + 8 + 2)] + \$8,201 \\ &= \$3,000 + (\$300 \times 14) + \$8,201 \\ &= \$3,000 + \$4,200 + \$8,201 \\ &= \$15,401 \end{aligned}$$