



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

August 11, 2021

CERTIFIED MAIL: 7018 1830 0001 5903 8778

John Hyland Construction Inc.
c/o Shaun E. Hyland, Registered Agent
2100 Hayden Bridge Rd.
Springfield, OR 97477

Re: Notice of Civil Penalty Assessment and Order
Case No. WQ/SW-NWR-2021-107

DEQ is committed to balancing its vital obligation to enforce the law and protect the environment with a consideration of the dramatic disruptions to public health and the economy caused by the COVID-19 outbreak. We understand the outbreak may impact your ability to timely appeal, pay the assessed civil penalty, or comply with this order. You may submit to DEQ documentation identifying whether COVID-19-related disruption affects your ability to comply with this order. Visit our webpage <https://www.oregon.gov/deq/Pages/covid-19.aspx> for more information about documenting specific COVID-19 disruptions your facility may be encountering and how that affects your ability to comply. DEQ will exercise reasonable discretion regarding settlement of this order.

This letter is to inform you that the Oregon Department of Environmental Quality (DEQ) has issued you a civil penalty of \$134,734 for engaging in construction activities prior to obtaining registration under the National Pollutant Discharge Elimination System Construction Stormwater General Permit No. 1200-C (the Permit) at the intersection of Ed Cone Blvd. and West 11th Ave., in Eugene, Oregon (the Site).

DEQ issued this penalty because your failure to obtain coverage under the Permit for your construction activities posed a risk of harm to waters of the state, including wetlands and Dead Cow Creek. The Permit requires that registrants implement and maintain sufficient erosion and sediment controls and best management practices to prevent the discharge of sediment and sediment-laden stormwater from the site and into waters of the state. Sediment carried in stormwater runoff from construction sites is considered a waste that poses a risk of harm to beneficial uses of state waters, including the use of those waters as habitat for aquatic organisms. The discharge of sediment can degrade water quality and harm aquatic life by covering up food sources and smothering invertebrate organisms living in wetlands and creeks. Without permit coverage, you failed to implement proper controls and discharged sediment-laden stormwater runoff into adjacent wetlands as well as Dead Cow Creek.

Additionally, DEQ is concerned that since the Stop Work Order was issued by the City of Eugene the nature and scope of the project has changed. In particular the stated purpose of the project in your DEQ Permit application is different from the purpose given to the City and Department of State Lands. DEQ

encourages you to consider seeking new authorization from the City and or Department of State Lands for any work you continue at the Site.

\$125,134 of the civil penalty represents the economic benefit you gained by failing to comply with the conditions of the Permit that would apply if you were lawfully conducting work at the Site.

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,



Kieran O'Donnell, Manager
Office of Compliance and Enforcement

Enclosures

cc: Blair Edwards, Northwest Region, DEQ
Zach Loboy, Western Region, DEQ
Accounting, DEQ
Ed Fredette, City of Eugene, *via email: EFredette@eugene-or.gov*

1 BEFORE THE ENVIRONMENTAL QUALITY COMMISSION

2 OF THE STATE OF OREGON

3 IN THE MATTER OF:) NOTICE OF CIVIL PENALTY
4 JOHN HYLAND CONSTRUCTION, INC.) ASSESSMENT AND ORDER
an Oregon corporation,)
5 Respondent.) CASE NO. WQ/SW-WR-2021-107

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

12 II. FINDINGS OF FACT

13 1. Respondent is the owner and operator of the “Vinci” development located at the
14 intersection of Ed Cone Blvd and West 11th Ave. in Eugene, Oregon (the Site).

15 2. The Site includes wetlands and has the potential to discharge to other wetlands to the
16 west, Dead Cow creek, and Amazon creek, all of which are waters of the state according to ORS
17 468B.005(10).

18 3. On or about January 1, 2021 Respondent began land clearing, grading, and grubbing
19 activities at the Site that disturbed 17.40 acres.

20 4. On or about February 17, 2021 the City of Eugene inspected the Site. At the time of the
21 inspection:

22 a. sediment-laden stormwater run-off discharged from the Site to a conveyance
23 that flows to a wetland and to Dead Cow Creek;

24 b. Except for one sediment fence that was not properly installed or maintained,
25 Respondent did not implement any best management practices to control stormwater runoff, turbidity
26 curtains, jute matting, straw wattles, and plastic sheeting.

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5. The City of Eugene issued a Stop Work Order to Respondent for work at the Site on or about February 19, 2021.

6. At all relevant times Respondent was not assigned coverage under the National Pollutant Discharge Elimination System General Permit No. 1200-C (the Permit).

7. "Construction Activity" is defined in Schedule D, condition 7.5.1(i) of the Permit as "including but not limited to clearing, grading, ... grubbing, and land disturbing activities."

8. Construction activity may cause an increase in the discharge of wastes into waters of the state.

III. CONCLUSIONS

On or about January 1, 2021, through on or about February 19, 2021, Respondent violated ORS 468B.050(1)(d) and OAR 340-045-0033(6) by engaging in an activity which would cause an increase in the discharge of wastes into waters of the state and would otherwise alter the physical, chemical, or biological properties of waters of the state without a permit, as described in Section II above. Specifically, without being registered under the Permit, Respondent engaged in construction activities by placing fill material, grubbing, clearing and grading at the Site. Stormwater runoff carrying sediment from Respondent's activities and disturbed areas of the Site is "waste" pursuant to ORS 468B.005(9) and was discharged from the Site to wetlands where it was likely to enter Cow Creek and Amazon Creek, all of which are considered a "water of the state," pursuant to ORS 468B.005(10). This is a Class I violation, according to OAR 340-012-0055(1)(d). DEQ hereby assesses a \$134,734 civil penalty for this violation.

IV. ORDER TO PAY CIVIL PENALTY

Based upon the foregoing FINDINGS OF FACTS AND CONCLUSIONS, Respondent is hereby ORDERED TO: Pay a total civil penalty of \$134,734. The determination of the civil penalty is attached as Exhibit No.1 and is incorporated as part of this Notice.

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

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

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

16 Active duty Service members have a right to stay proceedings under the federal Service
17 Members Civil Relief Act. For more information contact the Oregon State Bar at 1-800-
18 452-8260, the Oregon Military Department at 503-584-3571, or the nearest United States Armed
19 Forces Legal Assistance Office through <http://legalassistance.law.af.mil>. The Oregon Military
20 Department does not have a toll free telephone number.

21 If you fail to file a timely request for hearing, the Notice will become a final order by default
22 without further action by DEQ, as per OAR 340-011-0535(1). If you do request a hearing but later
23 withdraw your request, fail to attend the hearing or notify DEQ that you will not be attending the
24 hearing, DEQ will issue a final order by default pursuant to OAR 340-011-0535(3). DEQ designates

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1 the relevant portions of its files, including information submitted by you, as the record for purposes of
2 proving a prima facie case.

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6 8/11/2021

7 Date

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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.050(1)(d) by engaging in construction activity without a permit.

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

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)(iii) and applicable pursuant to OAR 340-012-0140(3)(a)(E)(iii), as Respondent should have applied for coverage under an NPDES General Permit for a construction site that disturbed 17.40 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. Each day of violation is a separate occurrence. Respondent began construction activities on or about January 1, 2021, which continued until the City of Eugene issued a stop work order on February 19, 2021, for a total of more than 28 days.

"M" is the mental state of Respondent, and receives a value of 10 according to OAR 340-012-0145(5)(e) because Respondent acted flagrantly. Respondent is an experienced contractor and has engaged in multiple construction projects that have obtained coverage under the Permit. As such, Respondent has actual knowledge that land clearing, grading and grubbing that may discharge to waters of the state requires Permit coverage. By engaging in land clearing, grading and grubbing activities at the Site without obtaining permit coverage, Respondent consciously set out to commit the violation.

"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 Respondents' 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 total value of \$125,134. Respondent gained this economic benefit by avoiding costs of actions and best management practices that would have been required under the Permit such as silt fences, turbidity curtains, jute matting, straw waddles, and plastic sheeting (\$149,492), costs associated with an environmental management plan (\$5,087), costs of an engineer to prepare an ESCP (\$7,200) and the costs of an erosion and sediment control inspector to perform 23 visual monitoring (\$2,185) since construction activities began on January 1, 2021.

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

$$\begin{aligned} &= \$4,000 + [(0.1 \times \$4,000) \times (0 + 0 + 4 + 10 + 0)] + \$125,134 \\ &= \$4,000 + (\$400 \times 14) + \$125,134 \\ &= \$4,000 + \$5,600 + \$125,134 \\ &= \$134,734 \end{aligned}$$