



Oregon

Kate Brown, Governor

Department of Environmental Quality

Headquarters

811 SW 6th Ave

Portland, OR 97204-1390

(503) 229-5696

FAX (503) 229-6124

TTY: 711

August 11, 2016

CERTIFIED MAIL: 70142870000133736149

G & G Pipeline Excavating, Inc.
dba Drainpros of Klamath
c/o Bob Decker, Registered Agent
5506 Altamont Drive
Klamath Falls, OR 97603

Re: Notice of Civil Penalty Assessment and Order
Case No. WQ/OI-ER-2016-105

This letter is to inform you that the Oregon Department of Environmental Quality (DEQ) has issued you a total civil penalty of \$6,450 for performing sewage disposal services, including installing an onsite wastewater treatment and disposal system and disposing of septage, without the required DEQ license, and for constructing, altering or repairing three onsite systems without first obtaining a permit. These are violations of Oregon environmental law.

DEQ issued this penalty because Oregon law requires persons performing sewage disposal services to be licensed and bonded in order to ensure the protection of the public's health and the environment. Sewage poses a public health hazard through either direct human contact or through contact with insects or other animals that have been in contact with the sewage, and is also a significant pollutant that can harm aquatic life, contaminate drinking water and impair recreational and commercial uses of water. Oregon law requires a permit for construction, alteration and repair of onsite systems so that DEQ or its agent can inspect the system to ensure that it was installed properly and functions in a manner that protects human health and the environment. DEQ is concerned that as a formerly licensed onsite installer and pumper, you were aware of these requirements when you performed this work.

If you wish to appeal this matter, DEQ must receive a request for a contested case hearing within 20 calendar days from your receipt of this letter. The hearing request must be in writing. Send your hearing request to DEQ Office of Compliance and Enforcement – Appeals:

Via mail - 811 S.W. 6th Ave., Portland, OR 97204

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 it 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 in lieu of paying your penalty. Enclosed is more detail on how to pursue a SEP. SEP documents are available



G & G Pipeline Excavating, Inc.
dba Drainpros of Klamath
Case No. WQ/OI-ER-2016-105
Page 2

on the internet at <http://www.deq.state.or.us/programs/enforcement/SEP.htm>, or by calling the number below to request a paper copy.

DEQ's rules are available on the internet at <http://www.deq.state.or.us/regulations/rules.htm>, or by calling the number below to request a paper copy.

If you have any questions, please contact DEQ Environmental Law Specialist Esther Westbrook, at (503) 229-5374. You may call toll-free within Oregon at 1-800-452-4011, extension 5374.

Sincerely,



Leah K. Feldon, Manager
Office of Compliance and Enforcement

Enclosures

cc: Bob Baggett, Bend Office, DEQ
John Koestler, WQ, HQ, DEQ
Debbie Lawhorn, Klamath County Community Development: dlawhorn@co.klamath.or.us

1 BEFORE THE ENVIRONMENTAL QUALITY COMMISSION

2 OF THE STATE OF OREGON

3	IN THE MATTER OF:)	NOTICE OF CIVIL PENALTY
4	G & G PIPELINE EXCAVATING, INC.,)	ASSESSMENT AND ORDER
5	a California corporation, doing business as)	
6	DRAINPROS OF KLAMATH FALLS,)	CASE NO. WQ/OI-ER-2016-105
	Respondent.)	

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 and 468.126 through 468.140,
10 ORS Chapters 183, 454 and 468B and Oregon Administrative Rules (OAR) Chapter 340, Divisions 011,
11 012 and 071.

12 II. FINDINGS OF FACT

13 1. On or about April 9, 2013, DEQ issued to Respondent sewage disposal service
14 installer/pumper license no. 38902, which allowed Respondent to construct or install onsite wastewater
15 treatment and disposal systems or parts of onsite systems and to perform the grading, excavating, or earth-
16 moving work associated with the construction or installation of onsite systems; and to pump or clean out
17 onsite systems, including portable toilets, and to dispose of the material derived from the pumping out or
18 cleaning of onsite systems or portable toilets.

19 2. On or about June 30, 2015, Respondent's installer/pumper license expired.

20 3. On September 3, 2015, DEQ mistakenly renewed Respondent's installer/pumper license
21 although Respondent had not provided a bond as required in ORS 454.695(3) and ORS 454.705.

22 4. On September 29, 2015, DEQ issued to Respondent a Notice of Intent to Suspend its
23 installer/pumper license.

24 5. On October 12, 2015, DEQ suspended Respondent's installer/pumper license.

25 6. On April 19, 2016, DEQ reissued Respondent's installer/pumper license.

26 ///

27 ///

1 7. On or about June 6, 2014, Respondent installed an onsite system or part thereof at a
2 residential property located at 19441 Eagle Ridge Road in Klamath Falls, Klamath County, Oregon
3 (Eagle Ridge Property).

4 8. Respondent did not obtain a repair or construction permit from Klamath County, DEQ's
5 agent, prior to causing or allowing the construction, alteration, or repair of the onsite system at the
6 Eagle Ridge Property.

7 9. On or about June 20, 2015, Respondent installed a new septic tank at a residential property
8 located at 41920 Outpost Road in Chiloquin, Klamath County, Oregon (Outpost Property).

9 10. Respondent did not obtain a repair or construction permit from Klamath County prior to
10 causing or allowing the construction, alteration, or repair of the onsite system at the Outpost Property.

11 11. On or about September 30, 2015, Respondent installed an onsite system at a residential
12 property located at 2659 Highway 422 in Chiloquin, Klamath County, Oregon (Highway 422 Property).

13 12. Respondent did not obtain a repair or construction permit from Klamath County prior to
14 causing or allowing the construction, alteration, or repair of the onsite system at the Highway 422
15 Property.

16 13. On or about October 26, 2015, Respondent installed an onsite system at a multi-family
17 residential property located at 38561 Highway 140 in Klamath Falls, Klamath County, Oregon
18 (Highway 140 Property).

19 14. Respondent did not obtain a repair or construction permit from Klamath County prior to
20 causing or allowing the construction, alteration, or repair of the onsite system at the Highway 140
21 Property.

22 15. On or about October 26, 2015, Respondent did not hold a valid installer license.

23 16. On or about each of the following dates, Respondent disposed of approximately 3,170
24 gallons of septage at the City of Merrill sewage treatment plant located in Merrill, Oregon: July 2, 6, 9,
25 and 15, 2015, August 11, 2015, October 27, 2015, December 9, 2015, and January 20, 2016.

26 17. On the dates set forth in paragraph 16 above, Respondent did not hold a valid pumper
27 license.

1 18. The activities described in paragraphs 13 and 16 above are “sewage disposal services” as
2 defined in ORS 454.605(13) and OAR 340-071-0100(141).

3 III. CONCLUSIONS

4 1. Respondent violated ORS 454.695(1) and OAR 340-071-0600(1) by performing sewage
5 disposal services without the required license, as described in Section II, paragraphs 1-5, 13, and 16-18
6 above. These are Class I violations according to OAR 340-012-0060(1)(a). DEQ hereby assesses a
7 \$3,450 civil penalty for these violations.

8 2. Respondent violated ORS 454.655(1) and OAR 340-071-0130(15)(a) by causing or
9 allowing the construction, alteration, or repair of three onsite systems or parts thereof without first
10 obtaining the required permit, as described in Section II, Paragraphs 7-14 above. These are Class I
11 violations according to OAR 340-012-0060(1)(b). DEQ hereby assesses a \$3,000 civil penalty for these
12 violations.

13 IV. ORDER TO PAY CIVIL PENALTY

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

16 Pay a total civil penalty of \$6,450. The determination of the civil penalties is attached as Exhibit
17 Nos. 1 and 2, and incorporated as part of this Notice.

18 If you do not file a request for hearing as set forth in Section V below, your check or money order
19 must be made payable to "**State Treasurer, State of Oregon**" and sent to the **DEQ, Business Office,**
20 **811 S.W. Sixth Avenue, Portland, Oregon 97204**. Once you pay the penalty, the Findings of Fact,
21 Conclusions and Order become final.

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

23 You have a right to a contested case hearing on this Notice, if you request one in writing. You
24 must ensure that DEQ receives the request for hearing **within 20 calendar days** from the date you
25 receive this Notice. If you have any affirmative defenses or wish to dispute any allegations of fact in
26 this Notice or attached exhibit, you must include them in your request for hearing, as factual matters
27 not denied will be considered admitted, and failure to raise a defense will be a waiver of the defense.

1 (See OAR 340-011-0530 for further information about requests for hearing.) You must mail the request
2 for hearing to: **DEQ, Office of Compliance and Enforcement - Appeals, 811 SW Sixth Avenue,**
3 **Portland, Oregon 97204,** or fax it to **503-229-5100.** An administrative law judge employed by the
4 Office of Administrative Hearings will conduct the hearing, according to ORS Chapter 183, OAR
5 Chapter 340, Division 011 and OAR 137-003-0501 to 0700. You have a right to be represented by an
6 attorney at the hearing, or you may represent yourself unless you are a corporation, agency or
7 association.

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

13 If you fail to file a request for hearing in writing within 20 calendar days of receipt of the
14 Notice, the Notice will become a final order by default without further action by DEQ, as per OAR
15 340-011-0535(1). If you do request a hearing but later withdraw your request, fail to attend the hearing
16 or notify DEQ that you will not be attending the hearing, DEQ will issue a final order by default
17 pursuant to OAR 340-011-0535(3). DEQ designates the relevant portions of its files, including
18 information submitted by you, as the record for purposes of proving a prima facie case.
19
20
21

22 August 11, 2016
23 Date

22 Sarah Wheeler for
23 Leah K. Feldon, Manager
24 Office of Compliance and Enforcement
25
26
27

EXHIBIT NO. 1

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

VIOLATION 1: Performing sewage disposal services without first obtaining the required license, in violation of ORS 454.695(1) and OAR 340-071-0600(1).

CLASSIFICATION: These are Class I violations pursuant to OAR 340-012-0060(1)(a).

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)(G) because Respondent violated an onsite sewage disposal statute, rule, permit or related order and is not a residential owner-occupant.

"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 3 according to OAR 340-012-0145(2)(a)(C) and (D), because Respondent had two Class I violations in EEO No. WQ-OS-0202, issued on February 20, 2013.

"H" is Respondent's history of correcting prior significant actions and receives a value of -1 according to OAR 340-012-0145(3)(c), because there is insufficient information on which to base a finding under paragraphs (3)(a) or (b).

"O" is whether the violation was repeated or ongoing and receives a value of 3 according to OAR 340-012-0145(4)(c), because there were from seven to 28 occurrences of the violation. Respondent disposed of septage without a license on eight days, and performed onsite system installation and repairs without a license on at least one day, for a total of nine occurrences.

"M" is the mental state of the Respondent and receives a value of 8 according to OAR 340-012-0145(5)(d), because Respondent acted or failed to act intentionally with actual knowledge of the requirement. Respondent was previously cited for performing sewage disposal services without a license in EEO No. WQ-OS-0202, and subsequently obtained an installer/pumper license in April 2013. Respondent's license expired on or about June 30, 2015. After

discovering Respondent did not have the required surety bond, DEQ provided notice of its intent to suspend Respondent's license on September 29, 2015, and subsequently suspended the license on October 12, 2015. Respondent continued to work as an installer/pumper without being properly licensed and bonded. When Respondent performed sewage disposal services by installing an onsite system and disposing of septage on numerous occasions, it had actual knowledge that it did not have a current sewage disposal service license and that the license was required to perform this work.

"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. After Respondent applied for reinstatement of its installer/pumper license, DEQ reinstated the license on April 19, 2016.

"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, as the economic benefit gained by delaying the \$300 license reinstatement fee was de minimis.

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 x \$1,500) x (3 + 0 + 3 + 8 + (-1))] + \$0
= \$1,500 + [\$150 x 13] + \$0
= \$1,500 + \$1,950 + \$0
= \$3,450

EXHIBIT NO. 2

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

VIOLATION 2: Causing or allowing the construction, alteration, or repair of four onsite systems or parts thereof without first obtaining the required permit, in violation of ORS 454.655(1) and OAR 340-071-0130(15)(a).

CLASSIFICATION: These are Class I violations pursuant to OAR 340-012-0060(1)(b).

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)(G) because Respondent violated an onsite sewage disposal statute, rule, permit or related order and is not a residential owner-occupant.

"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 3 according to OAR 340-012-0145(2)(a)(C) and (D), because Respondent had two Class I violations in EEO No. WQ-OS-0202.

"H" is Respondent's history of correcting prior significant actions and receives a value of 0 according to OAR 340-012-0145(3)(b), because there is insufficient information on which to base a finding under paragraphs (3)(a) or (b).

"O" is whether the violation was repeated or ongoing and receives a value of 2 according to OAR 340-012-0145(4)(c), because there were more than one but less than seven occurrences of the violation. Respondent performed onsite system construction and repairs without a permit on at least three 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 acted or failed to act intentionally with actual knowledge of the requirement. Prior to these violations, Respondent was a licensed onsite system installer and pumper, and had actual knowledge of DEQ rules requiring permits for installation and repair of onsite systems. Additionally, Klamath County sent Respondent a

Notice of Noncompliance on June 6, 2014, informing it that its installation of the septic system at the Eagle Ridge Property without a permit was a violation. When Respondent intentionally constructed, altered or repaired three onsite systems after the Notice of Noncompliance was issued, it had actual knowledge that he was required to first obtain a permit from DEQ or its agent for this work.

"C" is Respondent's efforts to correct or mitigate the violation and receives a value of -3 according to OAR 340-012-0145(6)(c), because Respondent made reasonable efforts to minimize the effects of the violation by obtaining the required permits for all three properties in February and March of 2016.

"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, as the economic benefit gained by delaying obtaining permits was de minimis.

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 x \$1,500) x (3 + 0 + 2 + 8 + (-3))] + \$0
= \$1,500 + [\$150 x 10] + \$0
= \$1,500 + \$1,500 + \$0
= \$3,000