



# 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

September 8, 2022

CERTIFIED MAIL: 7020 2450 0000 3349 5123

Henseler Family Real Estate Oregon LLC  
c/o Hutchinson Cox LLC, Registered Agent  
1259 Willamette St.  
Eugene, OR 97401

Re: Notice of Civil Penalty Assessment and Order  
Case No. WQ/SW-NWR-2021-543

This letter is to inform you that the Oregon Department of Environmental Quality (DEQ) has issued you a civil penalty of \$13,600 for engaging in construction activities associated with the Joe Mushroom Facility at 211 S. Danebo Ave., in Eugene, Oregon, and for discharging wastes to wetlands without coverage under the National Pollutant Discharge Elimination System Construction Stormwater General Permit No. 1200-CN.

Specifically, you engaged in construction activities on tax lot 3100, outside of the boundary of the local permit the City of Eugene issued for the Joe Mushroom Facility. Because you did not receive a local permit for construction activities in taxlot 3100, your construction activities at that location were not covered under the National Pollutant Discharge Elimination System Construction Stormwater Discharge General Permit No.1200-CN.

DEQ issued this penalty because your failure to obtain permit coverage posed a risk of harm to waters of the state, including wetlands and Amazon Creek. Permits require 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.

DEQ appreciates your efforts to correct the violation by implementing erosion and sediment controls and obtaining full permit coverage in May 2022. DEQ considered these efforts when determining the amount of civil penalty.

You may pay the civil penalty as follows:

Pay online with e-check (ACH) or Credit Card. Go to Your DEQ Online here: <https://ydo.oregon.gov>. Select Register Account or Login, then select Pay Invoices/Fees on your account dashboard. Enter the Invoice number and Account ID included on the attached payment slip. Note: US Bank charges a 2.3% convenience charge for credit card transactions. ACH payments have no additional charges.

Pay by check or money order: Make checks payable to "Department of Environmental Quality" and mail to the address on the enclosed payment slip. Please make sure to include the payment slip with your check or money order.

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.oregon.gov](mailto:DEQappeals@deq.oregon.gov)

Via fax – 503-229-6762

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.

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  
Christine Svetkovich, Northwest Region, DEQ  
Zach Loboy, Western Region, DEQ  
Accounting, DEQ  
Ed Fredette, City of Eugene, *via email: [EFredette@eugene-or.gov](mailto:EFredette@eugene-or.gov)*



1 c. Uncovered stockpiles had been placed in and adjacent to wetlands;  
2 d. There were exposed, unstabilized soils;  
3 e. Some sediment fencing was installed; it was not properly installed or maintained;  
4 f. Vehicle tracks created a haul route across the eastern portion of the Site into  
5 taxlot 3100 causing extensive ground disturbance and exposed soils;

6 7. On November 15, 2021, sediment-laden turbid water discharged from tax lot 3100 to  
7 adjacent wetlands.

8 8. At all relevant times Respondent did not have a local permit from the City of Eugene  
9 authorizing construction activities in tax lot 3100 and did not have Permit coverage for construction  
10 activities in tax lot 3100.

11 9. Permit coverage is required for “[C]onstruction activities including clearing, grading, ...  
12 and stockpiling that will disturb one or more acres but less than 5 acres and may discharge to surface  
13 waters or conveyance systems leading to surface waters of the state.”

14 10. Construction activity may cause an increase in the discharge of wastes into waters of the  
15 state.

16 11. Respondent applied for coverage under the Permit for tax lot 3100 on December 16,  
17 2021.

### 18 III. CONCLUSIONS

19 1. On or about October 1, 2021, through December 16, 2021, Respondent violated ORS  
20 468B.050(1)(d) and OAR 340-045-0033(6) by engaging in an activity which would cause an increase  
21 in the discharge of wastes into waters of the state and would otherwise alter the physical, chemical, or  
22 biological properties of waters of the state without a permit, as described in Section II above.  
23 Specifically, without having a permit from the City of Eugene and therefore coverage under the Permit,  
24 Respondent engaged in construction activities by placing fill material and engaging in land disturbing  
25 activities at tax lot 3100. Stormwater runoff carrying sediment from Respondent’s construction  
26 activities is “waste” pursuant to ORS 468B.005(9) and had the potential to discharge to wetlands as  
27 well as to a stormwater conveyance that ultimately discharges to Amazon Creek, both of which are



1 considered a “water of the state,” pursuant to ORS 468B.005(10). This is a Class I violation, according  
2 to OAR 340-012-0055(1)(d). DEQ hereby assesses a \$7,600 civil penalty for this violation.

3 2. On or about November 15, 2021, Respondent violated ORS 468B.050(1)(a) and OAR  
4 340-045-0033(6) by discharging wastes into waters of the state from its construction activity without a  
5 permit, as described in Section II above. Specifically, without having a permit from the City of Eugene  
6 and therefore coverage under the Permit, Respondent discharged sediment-laden stormwater to  
7 wetlands adjacent to tax lot 3100. Stormwater runoff carrying sediment from Respondent’s  
8 construction activities is “waste” pursuant to ORS 468B.005(9). Wetlands are considered “water of the  
9 state,” pursuant to ORS 468B.005(10). This is a Class I violation, according OAR 340-012-0055(1)(c).  
10 DEQ hereby assesses a \$6,000 civil penalty for this violation.

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

12 Based upon the foregoing FINDINGS OF FACTS AND CONCLUSIONS, Respondent is  
13 hereby ORDERED TO: Pay a total civil penalty of \$13,600. The determinations of the civil penalties are  
14 attached as Exhibits No.1 and No. 2 and are incorporated as part of this Notice.

15 If you do not file a request for hearing as set forth in Section V below, please pay the penalty as  
16 follows:

17 Pay online with e-check (ACH) or Credit Card. Go to Your DEQ Online here:  
18 <https://ydo.oregon.gov>. Select Register Account or Login, then select Pay Invoices/Fees on your account  
19 dashboard. Enter the Invoice number and Account ID included on the attached payment slip. Note: US  
20 Bank charges a 2.3% convenience charge for credit card transactions. ACH payments have no additional  
21 charges.

22 Pay by check or money order: Make checks payable to “Department of Environmental  
23 Quality” and mail to the address on the enclosed payment slip. Please make sure to include the payment  
24 slip with your check or money order.

#### 25 V. NOTICE OF RIGHT TO REQUEST A CONTESTED CASE HEARING

26 You have a right to a contested case hearing on this Notice, if you request one in writing. DEQ  
27 must receive your request for hearing **within 20 calendar days** from the date you receive this Notice. If

1 you have any affirmative defenses or wish to dispute any allegations of fact in this Notice or attached  
2 exhibits, you must do so in your request for hearing, as factual matters not denied will be considered  
3 admitted, and failure to raise a defense will be a waiver of the defense. (See OAR 340-011-0530 for  
4 further information about requests for hearing.) You must send your request to: **DEQ, Office of**  
5 **Compliance and Enforcement, 700 NE Multnomah Street, Suite 600, Portland, Oregon 97232**, fax  
6 it to **503-229-6762** or email it to [DEQappeals@deq.oregon.gov](mailto:DEQappeals@deq.oregon.gov). An administrative law judge  
7 employed by the Office of Administrative Hearings will conduct the hearing, according to ORS  
8 Chapter 183, OAR Chapter 340, Division 011 and OAR 137-003-0501 to 0700. You have a right to be  
9 represented by an attorney at the hearing, however you are not required to be. If you are an individual,  
10 you may represent yourself. If you are a corporation, partnership, limited liability company,  
11 unincorporated association, trust or government body, you must be represented by an attorney or a duly  
12 authorized representative, as set forth in OAR 137-003-0555.

13 Active duty Service members have a right to stay proceedings under the federal Service  
14 Members Civil Relief Act. For more information contact the Oregon State Bar at 1-800-  
15 452-8260, the Oregon Military Department at 503-584-3571, or the nearest United States Armed  
16 Forces Legal Assistance Office through <http://legalassistance.law.af.mil>. The Oregon Military  
17 Department does not have a toll free telephone number.

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

24  
25  
26 9/8/2022

27 Date



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 is between five and twenty acres in size.

"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 October 1, 2021. On November 4, 2021, land disturbance and stockpiles were observed in the unpermitted tax lot 3100. Respondent applied for Permit coverage on December 16, 2021, for a total of more than 28 days.

"M" is the mental state of Respondent and receives a value of 8 according to OAR 340-012-0145(5)(d) because Respondent acted recklessly. Respondent had permit coverage for construction activities at the Site and therefore knew permit coverage was required for land disturbing activities. By engaging in land clearing and stockpiling at tax lot 3100, outside of the area included in Respondent's permit coverage, Respondent consciously disregarded a substantial and unjustifiable risk that it would violate Oregon law.

"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 correct the violation by obtaining permit coverage for tax lot 3100.

"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 \$0. Respondent gained no economic benefit in avoiding the costs associated with permit compliance.

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

$$\begin{aligned} &= \$4,000 + [(0.1 \times \$4,000) \times (0 + 0 + 4 + 8 + -3)] + \$0 \\ &= \$4,000 + (\$400 \times 9) + \$0 \\ &= \$4,000 + \$3,600 + \$0 \\ &= \$7,600 \end{aligned}$$



EXHIBIT No.2

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

- VIOLATION No.2: Violating ORS 468B.050(1)(a) by discharging wastes in waters of the state without a permit on November 15, 2021.
- 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 is between five and twenty acres in size.
- "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. Sediment-laden discharges to wetlands occurred on November 15, 2021.
- "M" is the mental state of Respondent and receives a value of 8 according to OAR 340-012-0145(5)(d) because Respondent acted recklessly. Respondent had permit coverage for construction activities at the Site and therefore knew permit coverage was required for land disturbing activities. Further, Respondent was aware that erosion and sediment controls were needed to prevent sediment-laden discharges from its construction activities because it placed some sediment fencing at the Site. However, the controls Respondent placed were installed incorrectly or not maintained and were otherwise inadequate to prevent turbid discharges to the wetlands. By discharging wastes from an area not included in its permit

coverage, Respondent consciously disregarded a substantial and unjustifiable risk that it would violate Oregon law.

"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 correct the violation by stopping work and obtaining permit coverage for taxlot 3100.

"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 \$0. Respondent gained no economic benefit in avoiding the costs associated with permit compliance.

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

$$\begin{aligned} &= \$4,000 + [(0.1 \times \$4,000) \times (0 + 0 + 0 + 8 + -3)] + \$0 \\ &= \$4,000 + (\$400 \times 5) + \$0 \\ &= \$4,000 + \$2,000 + \$0 \\ &= \$6,000 \end{aligned}$$

Oregon Department of Environmental Quality  
 700 NE Multnomah Street, Suite 600  
 Portland, OR 97232-4100



State of Oregon  
 Department of Environmental Quality

Phone: 503-229-5437  
 Fax: 503-229-5850

**CIVIL PENALTY - ORS 468.135(2)**

DATE:	September 8, 2022
RESPONSE DATE :	November 10, 2022
TOTAL PENALTY:	\$13,600.00

Account Name:	HENSELER FAMILY REAL ESTATE OREGON LLC		
Account Type:	Vendor/Organization/Company	Reference Number:	CPGFD2300021
SubSystem ID:	204249	FIMS Acct. ID:	5953

**Penalty Summary**

Penalty Amount	Interest	Adjustment	Amount Paid	Total Penalty
\$ 13,600.00	\$ 0.00	\$ 0.00	\$ 0.00	\$ 13,600.00

Payment of this penalty is subject to the exercise of your options or right to appeal as described in the enclosed enforcement documents.

To Pay Online with ACH or Credit Card Visit <https://ydo.oregon.gov> and select 'Register Account'



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 PLEASE RETURN THIS PORTION WITH YOUR PAYMENT



REFERENCE NO.	CPGFD2300021		
PAYCODE:	00401 7400 10040 74001 0500 000000 00		
FEE PROGRAM ID:	950	RESPONSE DATE:	November 10, 2022
FIMS ACCT. ID:	5953	TOTAL PENALTY DUE:	\$13600.00

AMOUNT ENCLOSED:

MAKE CHECK PAYABLE TO: Department of Environmental Quality

DEQ FINANCIAL SERVICES - LBX4244  
 PO BOX 4244  
 PORTLAND OR 97208-4244

Check this box if updated address information has been provided on the back of the form.

00401 7400 10040 74001 0500 000000 0095000059534CPGFD230002100013600004