



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 30, 2022

CERTIFIED MAIL: 7020 2450 0000 3349 5260

Hurteo, LLC
c/o Braden Hurt
1212 SE 181st Ave
Vancouver, WA 98683

Re: Notice of Civil Penalty Assessment and Order
Case No. WQ-SW-NWR-2022-545

This letter is to inform you that the Oregon Department of Environmental Quality (DEQ) has issued Hurteo, LLC, a civil penalty of \$19,135 for causing pollution to waters of the state and for engaging in construction activities without registration under the National Pollutant Discharge Elimination System Construction Stormwater General Permit No. 1200-C (the Permit) at the property located at 92692 Ivy Station Road in Astoria, 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 Ferris 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 pollution that poses a risk of harm to beneficial uses of state waters, including the use of those waters as habitat for aquatic organisms. Sediment pollution 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 sediment-laden stormwater runoff from the Site caused pollution to waters of the state.

Included in Section IV of the enclosed Notice is an order requiring you to obtain 1200-C permit coverage within 60 days of this order becoming final by operation of law or on appeal. DEQ appreciates your efforts to minimize the impacts of the violation by placing silt fence, erosion seed control, and straw at the Site and commissioning the development of an Erosion and Sediment Control Plan. 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

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 Emily at 971-300-9770.

Sincerely,



Kieran O'Donnell, Manager
Office of Compliance and Enforcement

Enclosures

cc: Boris Barrera, Northwest Region
Mike Kennedy, Northwest Region
Christine Svetkovich, DEQ
Accounting, DEQ

1 BEFORE THE ENVIRONMENTAL QUALITY COMMISSION

2 OF THE STATE OF OREGON

3 IN THE MATTER OF:) NOTICE OF CIVIL PENALTY
4 HURTCO, LLC,) ASSESSMENT AND ORDER
5 Respondent.) CASE NO. WQ-SW-NWR-2022-545

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. Respondent is the the owner of the project “Hanson Development,” an approximately
13 six acre parcel of land located at 92692 Ivy Station Road in Astoria, Oregon (the Site).

14 2. The Site is located in close proximity to a conveyance system that feeds to Ferris Creek.

15 3. The Site was registered under the National Pollutant Discharge Elimination System
16 Construction Stormwater Permit No. 1200-C Permit (the Permit) until the Permit expired on December
17 14, 2020. At all relevant times Respondent was not assigned coverage under the Permit.

18 4. Clearing, grading, and land disturbing activities at the Site have continued since the
19 Permit’s expiration on December 14, 2020.

20 5. On May 6, 2022, Clatsop Code enforcement inspected the Site. At the time of the
21 inspection:

22 a. There was stormwater run-off coming from a breach in the levy/pond retaining device in
23 the southwest corner of the Site;

24 b. A pond had been drained, resulting in sediment run-off that had visibly caused the
25 standing water to be turbid and discolored;

26 c. Sediment-laden stormwater run-off discharged from the Site and entered a conveyance
27 that flows into Ferris Creek;

1 d. Respondent did not implement any best management practices to control stormwater
2 runoff, such as turbidity curtains, jute matting, straw wattles, and plastic sheeting.

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

5 7. Construction activity may cause an increase in the discharge of wastes into waters of the
6 state.

7 III. CONCLUSIONS

8 1. On at least May 6, 2022, Respondent violated ORS 468B.025(1)(a) by causing pollution to
9 waters of the state as described in section II above. Specifically, Respondent's activities caused turbid
10 construction stormwater run-off to enter a conveyance system that flows into Ferris Creek. Turbid
11 stormwater run-off carrying sediment is "pollution" pursuant to ORS 468B.005(5) because it alters the
12 physical, chemical or biological properties of waters of the state, which tends to be detrimental to aquatic
13 life. It was discharged to a conveyance system that drains to Ferris Creek, which is considered a "water of
14 the state" pursuant to ORS 468B.005(10). This is a Class I violation, according to OAR 340-012-
15 0055(1)(c). DEQ hereby assesses a \$9,600 civil penalty for this violation.

16 2. On or about December 15, 2020, through the date of this Notice, Respondent violated ORS
17 468B.050(1)(d) by engaging in an activity that would cause an increase in the discharge of wastes into
18 waters of the state, as described in Section II above. Specifically, after Respondent's coverage under the
19 Permit expired on December 14, 2020, Respondent continued to engaged in construction activities that
20 disturbed land at the Site. Stormwater run-off carrying sediment from Respondent's activities and
21 disturbed areas of the Site is "waste" pursuant to ORS 468B.005(9) and was discharged from the Site to
22 a conveyance where it was likely to drain into Ferris Creek, which is a "water of the state," pursuant to
23 ORS 468B.005(10). This is a Class I violation, according to OAR 340-012-0055(1)(d). DEQ hereby
24 assesses a \$9,535 civil penalty for this violation.

25 IV. ORDER TO PAY CIVIL PENALTY AND TO COMPLY

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

1 1. Pay a total civil penalty of \$19,135. The determination of the civil penalties are attached as
2 Exhibits 1 and 2 and are incorporated as part of this Notice.

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

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

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

13 2. Obtain coverage under a 1200-C permit and comply with permit requirements. Within 60
14 days of this order becoming final by operation of law or on appeal, written documentation
15 demonstrating Respondent's compliance must be submitted to DEQ through Your DEQ Online.

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

17 You have a right to a contested case hearing on this Notice, if you request one in writing. DEQ
18 must receive your request for hearing **within 20 calendar days** from the date you receive this Notice. If
19 you have any affirmative defenses or wish to dispute any allegations of fact in this Notice or attached
20 exhibits, you must do so in your request for hearing, as factual matters not denied will be considered
21 admitted, and failure to raise a defense will be a waiver of the defense. (See OAR 340-011-0530 for
22 further information about requests for hearing.) You must send your request to: **DEQ, Office of**
23 **Compliance and Enforcement, 700 NE Multnomah Street, Suite 600, Portland, Oregon 97232**, fax
24 it to **503-229-6762** or email it to DEQappeals@deq.oregon.gov. An administrative law judge
25 employed by the Office of Administrative Hearings will conduct the hearing, according to ORS
26 Chapter 183, OAR Chapter 340, Division 011 and OAR 137-003-0501 to 0700. You have a right to be
27 represented by an attorney at the hearing, however you are not required to be. If you are an individual,

1 you may represent yourself. If you are a corporation, partnership, limited liability company,
2 unincorporated association, trust or government body, you must be represented by an attorney or a duly
3 authorized representative, as set forth in OAR 137-003-0555.

4 Active duty Service members have a right to stay proceedings under the federal Service
5 Members Civil Relief Act. For more information contact the Oregon State Bar at 1-800-
6 452-8260, the Oregon Military Department at 503-584-3571, or the nearest United States Armed
7 Forces Legal Assistance Office through <http://legalassistance.law.af.mil>. The Oregon Military
8 Department does not have a toll free telephone number.

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

15
16
17
18 9 / 30 / 2022
19 Date



Kieran O'Donnell, Manager
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 NO. 1 Violated ORS 468B.025(1)(a) by causing pollution to waters of the state.

CLASSIFICATION: This is a Class I violation pursuant to OAR 340-012-0055(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 \$6,000 for a Class I, moderate magnitude violation in the matrix listed in OAR 340-012-0140(2)(b)(A)(ii) and applicable pursuant to OAR 340-012-0140(2)(a)(D).

"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. Each day of violation is a separate offence. The violation occurred on at least one day, May 6, 022.

"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. According to OAR 340-012-0030(20), reckless means the respondent consciously disregarded a substantial and unjustifiable risk that the result would occur or that the circumstance existed. The risk must be of such a nature and degree that disregarding that risk constituted a gross deviation from the standard of care a reasonable person would observe in that situation. Respondent is a developer and previously applied for and received Permit coverage for the Site. Engaging in unpermitted construction activities created a substantial and unjustifiable risk that the disturbed land would cause turbid construction stormwater run-off into the nearby conveyance to Ferris Creek. This risk is a gross deviation from the standard of care that a developer would reasonably observe.

"C" is Respondent's efforts to correct or mitigate the violation, and receives a value of -2 according to OAR 340-012-0145(6)(d) because Respondent eventually made some efforts to minimize the effects of the violation. On or around May 17, 2022, Respondent placed silt fence, erosion control seed, and straw on the property to stabilize the site. Respondent hired Bridgewater Group to design an Erosion Control Sediment Plan and assist with applying for a new Permit. On July 26, 2022, Respondent paid fees for a new 1200-C permit. Respondent is now working with DEQ to obtain permit coverage.

"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 because any economic benefit that Respondent gained as a result of this violation is de minimis.

PENALTY CALCULATION: $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$
 $= \$6,000 + [(0.1 \times \$6,000) \times (0 + 0 + 0 + 8 + -2)] + \0
 $= \$6,000 + (\$600 \times 6) + \$0$
 $= \$6,000 + \$3,600 + \$0$
 $= \$9,600$

EXHIBIT 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)(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 obtained coverage under the Permit.

"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 continued construction activities after the expiration of the Permit on December 14, 2020, through the date of this Notice, 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. According to OAR 340-012-0030(20), reckless means the respondent consciously disregarded a substantial and unjustifiable risk that the result would occur or that the circumstance existed. The risk must be of such a nature and degree that disregarding that risk constituted a gross deviation from the standard of care a reasonable person would observe in that situation. Respondent is a developer and previously applied for and obtained 1200-C permit coverage for the Site. Respondent was notified prior to the expiration of the permit that coverage would be ending unless a renewal application was submitted. Respondent continued construction activities at

the Site despite the lack of permit coverage, which is a gross deviation from the standard of care that a developer would reasonably observe.

"C" is Respondent's efforts to correct or mitigate the violation, and receives a value of -2 according to OAR 340-012-0145(6)(d) because Respondent eventually made some efforts to minimize the effects of the violation. On or around May 17, 2022, Respondent placed silt fence, erosion control seed, and straw on the property to stabilize the site. Respondent hired Bridgewater Group to design an Erosion Control Sediment Plan and assist with applying for a new Permit. On July 26, 2022, Respondent paid fees for a new 1200-C permit. Respondent is now working with DEQ to obtain permit coverage.

"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 \$1,535. This is the amount Respondent gained by avoiding spending \$2,772 in annual permit fees in 2020 and 2021. This "EB" was calculated pursuant to OAR 340-012-0150(1) using the U.S. Environmental Protection Agency's BEN computer model.

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

$$\begin{aligned} &= \$4,000 + [(0.1 \times \$4,000) \times (0 + 0 + 4 + 8 + -2)] + \$1,535 \\ &= \$4,000 + (\$400 \times 10) + \$1,535 \\ &= \$4,000 + \$4,000 + \$1,535 \\ &= \$9,535 \end{aligned}$$

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 30, 2022
RESPONSE DATE :	December 9, 2022
TOTAL PENALTY:	\$19,535.00

Account Name:	HURTCO LLC		
Account Type:	Vendor/Organization/Company	Reference Number:	CPGFD2300028
SubSystem ID:	194402	FIMS Acct. ID:	3687

Penalty Summary

Penalty Amount	Interest	Adjustment	Amount Paid	Total Penalty
\$ 19,535.00	\$ 0.00	\$ 0.00	\$ 0.00	\$ 19,535.00

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'



 PLEASE RETURN THIS PORTION WITH YOUR PAYMENT



REFERENCE NO.	CPGFD2300028		
PAYCODE:	00401 7400 10040 74001 0500 000000 00		
FEE PROGRAM ID:	950	RESPONSE DATE:	December 9, 2022
FIMS ACCT. ID:	3687	TOTAL PENALTY DUE:	\$19535.00

AMOUNT ENCLOSED:

MAKE CHECK PAYABLE TO: Department of Environmental Quality

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

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

00401 7400 10040 74001 0500 000000 0095000036871(CPGFD)230002800019535001



State of Oregon
Department of
Environmental
Quality

State of Oregon Department of Environmental Quality

CIVIL PENALTY - ORS 468.135(2)

700 NE Multnomah Street, Suite 600
Portland, OR 97232-4100
Phone: 503-229-5437
Fax: 503-229-5850

Penalty Detail

Transaction Date	Description	Amount
9/29/2022	2022-545 WQ-SW-NWR-2022-545	\$19,535.00

SFMS Agencies Use:

Trans Code	Treasury Fund	SFMS	Index	PCA (5)	Agency Object	Project #	Phase
723	00401	7400	10040	74001	0500	00000	00

Address Changes

Please visit <https://ydo.oregon.gov> to update your mailing address online or provide the following information:

Name _____
Address _____
City, State, Zip _____