



# Oregon

Kate Brown, Governor

## Department of Environmental Quality

Office of Compliance and Enforcement

700 NE Multnomah Street, Suite 600

Portland, OR 97232

(503) 229-5696

FAX (503) 229-5100

TTY 711

September 19, 2018

CERTIFIED MAIL: 7016 3010 0000 6028 6527

Clouser Drilling Incorporated  
Db a Clouser Drilling  
c/o Kevin D. Gill  
P. O. Box 5110  
Grants Pass, OR 97527

Re: Notice of Civil Penalty Assessment and Order  
Case No. WQ/I-WR-2018-106

This letter is to inform you that the Oregon Department of Environmental Quality (DEQ) has issued Clouser Drilling Incorporated a civil penalty of \$10,800 for discharging drill cuttings into Jones Creek from a construction site without a permit in Grants Pass.

DEQ issued this penalty because the sediment contained in the drill cuttings 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 creek. This violation is especially concerning because Jones Creek is designated Essential Salmon Habitat.

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 – 700 NE Multnomah Street, Suite #600, Portland, Oregon 97232

Via fax – 503-229-5100

Via email – [DEQappeals@deq.state.or.us](mailto:DEQappeals@deq.state.or.us)

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 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>.



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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 Jane Hickman at 503-229-5692 or toll free in Oregon at 800-452-4011, extension 5692.

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, Rogue Basin Coordinator, DEQ Medford  
John Koestler, WQ, DEQ HQ







1 “pollution,” pursuant to ORS 468B.005(9) and ORS 468B.005(5), because they are substances that  
2 alter the physical, biological, and chemical properties of waters of the state, specifically by increasing  
3 turbidity. Jones Creek is a “water of the state,” pursuant to ORS 468B.005(10) because it is a creek.  
4 This is a Class I violation pursuant to OAR 340-012-0055(1)(c). DEQ hereby assesses a \$10,800 civil  
5 penalty for this violation.

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

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

9 Pay a total civil penalty of \$10,800. The determination of the civil penalty is attached as Exhibit I  
10 and is incorporated as part of this Notice.

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

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

16 You have a right to a contested case hearing on this Notice, if you request one in writing. DEQ  
17 must receive your request for hearing **within 20 calendar days** from the date you receive this Notice. If  
18 you have any affirmative defenses or wish to dispute any allegations of fact in this Notice or attached  
19 exhibit, you must do so in your request for hearing, as factual matters not denied will be considered  
20 admitted, and failure to raise a defense will be a waiver of the defense. (See OAR 340-011-0530 for  
21 further information about requests for hearing.) You must send your request to: **DEQ, Office of**  
22 **Compliance and Enforcement, 700 NE Multnomah Street, Suite 600, Portland, Oregon 97232**, fax  
23 it to **503-229-5100** or email it to **DEQappeals@deq.state.or.us**. An administrative law judge  
24 employed by the Office of Administrative Hearings will conduct the hearing, according to ORS  
25 Chapter 183, OAR Chapter 340, Division 011 and OAR 137-003-0501 to -0700. You have a right to be  
26 represented by an attorney at the hearing, however you are not required to be. If you are an individual,  
27 you may represent yourself. If you are a corporation, partnership, limited liability company,





1 unincorporated association, trust or government body, you must be represented by an attorney or a duly  
2 authorized representative, as set forth in OAR 137-003-0555.

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

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

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16  
17 9/19/18

18 Date

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21  
22 Kieran O'Donnell

23 Kieran O'Donnell, Manager  
24 Office of Compliance and Enforcement  
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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)(a) by discharging wastes into waters of the state from an industrial activity without a permit.

CLASSIFICATION: This is a Class I violation pursuant to OAR 340-012-0055(1)(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 \$6,000 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(2)(a)(D) because Respondent does not have an NPDES permit and the violation is not otherwise classified.

"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 2 according to OAR 340-012-0145(4)(b) because there was more than one but fewer than seven occurrences of the violation. Each day of a violation with a duration of more than one day is a separate occurrence. Respondent discharged drill cuttings into the creek for at least two days, on June 6 and 7, 2018.

"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. Respondent consciously disregarded a substantial and unjustifiable risk that the result would occur or that the circumstance existed. Respondent's principal place of business is located on the same street where Respondent conducted the drilling, and Respondent is aware Jones Creek flows behind the drilling site. The wellhead Respondent drilled was only a few feet from the silt fence along the embankment of Jones Creek that was intended to prevent drill cuttings from entering Jones Creek. At the initiation of the drilling activity, Respondent would have



unavoidably observed the drill cuttings overtopping the silt fence and rolling down the embankment towards the creek. However, Respondent continued to drill, ignoring the risk that the drill cuttings would enter the creek. The risk of the drill cuttings entering Jones Creek, designated as Essential Salmon Habitat, was so great that disregarding that risk constituted a gross deviation from the standard of care a reasonable person would observe in that situation.

"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. Respondent installed a new silt fence and removed the cuttings from the creek approximately two weeks after the violation began.

"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 DEQ has insufficient information to determine the amount of any economic benefit Respondent gained from these violations.

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 x \$6,000) x (0 + 0 + 2 + 8 - 2)] + \$0  
= \$6,000 + (\$600 x 8) + \$0  
= \$6,000 + \$4,800 + \$0  
= \$10,800

