



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

November 3, 2022

CERTIFIED MAIL: 7020 2450 0000 3349 5383

Even Better Homes, Inc.
c/o Mac Even, Registered Agent
5360 SE Chase Road
Gresham, OR 97030

Re: Notice of Civil Penalty Assessment and Order
Case No. WQ/SW-NWR-2022-544

This letter is to inform you that the Oregon Department of Environmental Quality (DEQ) has issued you a civil penalty of \$2,250 for conducting construction activities on ten lots at Currin Creek Estates in Estacada (the Site) without first obtaining coverage under the National Pollutant Discharge Elimination System (NPDES) Construction Stormwater Discharge General Permit No. 1200-C (the Permit). You were also cited, without penalty, for placing wastes where they were likely to be carried into waters of the state. These are violations of Oregon environmental law.

DEQ issued this penalty because you were required to obtain coverage under the Permit prior to beginning construction activities at the Site. The Permit requires that registrants implement erosion and sediment controls to prevent the discharge of sediment to waters of the state. Discharging sediment into surface waters damages habitat, can harm aquatic life and impact beneficial uses of those waters.

DEQ appreciates your efforts to correct the violation by applying for coverage under the Permit. 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 and note the case number on your check.

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 Esther Westbrook at 503-229-5374 or toll free in Oregon at 800-452-4011, extension 5374.

Sincerely,



Kieran O'Donnell, Manager
Office of Compliance and Enforcement

Enclosures

cc: Blair Edwards, Portland Office, DEQ
Christine Svetkovich, Portland Office, DEQ
Accounting, DEQ

1 BEFORE THE ENVIRONMENTAL QUALITY COMMISSION
2 OF THE STATE OF OREGON

3 IN THE MATTER OF:)
4 EVEN BETTER HOMES, INC.,) NOTICE OF CIVIL PENALTY
an Oregon corporation,) ASSESSMENT AND ORDER
5 Respondent.) CASE NO. WQ/SW-NWR-2022-544
6

7 I. AUTHORITY

8 The Department of Environmental Quality (DEQ) issues this Notice of Civil Penalty Assessment
9 and Order pursuant to Oregon Revised Statutes (ORS) 468.100 and 468.126 through 468.140, ORS
10 Chapters 183 and 468B, and Oregon Administrative Rules (OAR) Chapter 340, Divisions 011, 012, and
11 045.

12 II. FINDINGS OF FACT

13 1. On or before April 28, 2022, Respondent purchased ten lots (the Lots) in the Currin Creek
14 Estates residential subdivision construction site (the Site) in Estacada, Clackamas County, Oregon for
15 the purpose of building homes on them. The addresses of the Lots are: 1267, 1299 and 1315 NE
16 Henderson Terrace; 1271, 1278, 1298 and 1312 NE Moore Avenue; 1654 and 1701 NE Joy Lane; and
17 1673 NE Cascadia Ridge Drive. The total area of the Lots is approximately 1.7 acres.

18 2. In or around January 2022, Respondent began construction work on the Lots.

19 3. At all material times, Respondent did not have coverage under the National Pollutant
20 Discharge Elimination System Construction Stormwater Discharge General Permit No.1200-C (the
21 Permit) for its activities at the Site.

22 4. Respondent submitted an application for coverage under the Permit on June 9, 2022, and
23 coverage was issued on June 29, 2022.

24 5. On April 28, 2022, DEQ inspected the Site.

25 a. There was concrete waste on the ground on or near some of the Lots where
26 Respondent had poured concrete.

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1 b. There were no perimeter controls such as sediment fencing installed on the
2 eastern boundary of the Lots on NE Moore Avenue described above (Lots 41, 42
3 and 43) and sediment had moved off the site.

4 c. There was track out of sediment onto the roads at the Site near unprotected
5 stormwater catch basins that discharge to Currin Creek.

6 6. Currin Creek is approximately one-quarter mile south of the Site.

7 7. Currin Creek is a natural body of surface water and is “waters of the state” under ORS
8 468B.005(10). Currin Creek provides habitat for aquatic life including coastal cutthroat trout. Currin
9 Creek is a tributary of Eagle Creek, which is a tributary of the Clackamas River.

10 III. CONCLUSIONS

11 1. From January 2022 through June 29, 2022, Respondent violated ORS 468B.050(1)(d) by
12 conducting construction activity which would cause an increase in the discharge of wastes into Currin
13 Creek, which is waters of the state as defined in ORS 468B.005(10), without holding a DEQ permit, as
14 described in Section II, Paragraphs 1-4 above. Sediment discharged from construction activity tends to
15 cause pollution of waters of the state by increasing turbidity, and is therefore a “waste” as defined in
16 ORS 468B.005(9). This is a Class I violation according to OAR 340-012-0055(1)(d). DEQ hereby
17 assesses a \$2,250 civil penalty for this violation.

18 2. On or before April 28, 2022, Respondent violated ORS 468B.025(1)(a) by placing wastes
19 where they were likely to escape or be carried into waters of the state, as described in Section II,
20 Paragraphs 5-7 above. This is a Class II violation according to OAR 340-012-0053(b). DEQ has not
21 assessed a civil penalty for this violation.

22 IV. ORDER TO PAY CIVIL PENALTY

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

25 Pay a civil penalty of \$2,250. The determination of the civil penalty is attached as Exhibit No. 1
26 and is incorporated as part of this Notice.

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

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

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

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

12 You have a right to a contested case hearing on this Notice, if you request one in writing. DEQ
13 must receive your request for hearing **within 20 calendar days** from the date you receive this Notice. If
14 you have any affirmative defenses or wish to dispute any allegations of fact in this Notice or attached
15 exhibit, you must do so in your request for hearing, as factual matters not denied will be considered
16 admitted, and failure to raise a defense will be a waiver of the defense. (See OAR 340-011-0530 for
17 further information about requests for hearing.) You must send your request to: **DEQ, Office of**
18 **Compliance and Enforcement, 700 NE Multnomah Street, Suite 600, Portland, Oregon 97232**, fax
19 it to **503-229-6762** or email it to DEQappeals@deq.oregon.gov. An administrative law judge
20 employed by the Office of Administrative Hearings will conduct the hearing, according to ORS
21 Chapter 183, OAR Chapter 340, Division 011 and OAR 137-003-0501 to 0700. You have a right to be
22 represented by an attorney at the hearing, however you are not required to be. If you are an individual,
23 you may represent yourself. If you are a corporation, partnership, limited liability company,
24 unincorporated association, trust or government body, you must be represented by an attorney or a duly
25 authorized representative, as set forth in OAR 137-003-0555.

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1 Active-duty Service members have a right to stay proceedings under the federal Service
2 Members Civil Relief Act. For more information contact the Oregon State Bar at 1-800-
3 452-8260, the Oregon Military Department at 503-584-3571, or the nearest United States Armed
4 Forces Legal Assistance Office through <http://legalassistance.law.af.mil>. The Oregon Military
5 Department does not have a toll-free telephone number.

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

12
13
14
15 11/3/2022
16 Date


15 
16 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: Conducting an activity which would cause an increase in the discharge of wastes into waters of the state without holding a DEQ permit, in violation of ORS 468B.050(1)(d) and OAR 340-045-0033(6).
- 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 \$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)(F)(ii) because Respondent should have applied for coverage under an NPDES Stormwater Discharge General Permit No. 1200-C for a construction site that is more than one, but less than five 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. Respondent began construction in January 2022 without first applying for coverage under the Permit and continued construction activities through June 29, 2022, when coverage was issued, which is a duration of approximately six months. Each day of violation is a separate occurrence.

"M" is the mental state of the Respondent and receives a value of 4 according to OAR 340-012-0145(5)(c), because Respondent's conduct was negligent. Respondent is responsible for determining what environmental requirements apply to its business. By beginning construction activities without first obtaining coverage under the Permit, Respondent failed to take reasonable care to avoid a foreseeable 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. On June 9, 2022, Respondent applied for coverage under the Permit, and coverage was issued on June 29, 2022.

"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 finds that the economic benefit Respondent gained by delaying permitting costs of \$2,738 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 \times \$1,500) \times (0 + 0 + 4 + 4 - 3)] + \0
 $= \$1,500 + [\$150 \times 5] + \$0$
 $= \$1,500 + \$750 + \$0$
 $= \$2,250$

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:	November 3, 2022
RESPONSE DATE :	January 12, 2023
TOTAL PENALTY:	\$2,250.00

Account Name:	EVEN BETTER HOMES, INC. <CURRIN CREEK ESTATES> <126505>		
Account Type:	Vendor/Organization/Company	Reference Number:	CPGFD2300031
SubSystem ID:	194396	FIMS Acct. ID:	3684

Penalty Summary

Penalty Amount	Interest	Adjustment	Amount Paid	Total Penalty
\$ 2,250.00	\$ 0.00	\$ 0.00	\$ 0.00	\$ 2,250.00

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.	CPGFD2300031		
PAYCODE:	00401 7400 10040 74001 0500 000000 00		
FEE PROGRAM ID:	950	RESPONSE DATE:	January 12, 2023
FIMS ACCT. ID:	3684	TOTAL PENALTY DUE:	\$2250.00

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 0095000036841CPGFD230003100002250008



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
11/2/2022	2022-544 WQ-SW-NWR-2022-544	\$2,250.00

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 _____