



# 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 1, 2022

CERTIFIED MAIL: 7020 2450 0000 3349 5444

Wanita Parson  
92750 Anderson Ln  
Coos Bay, OR 97420

Re: Notice of Civil Penalty Assessment and Order  
Case No. WQ-NP-WR-2022-096

This letter is to inform you that the Oregon Department of Environmental Quality (DEQ) has issued you a civil penalty of \$400 for placing waste within and near a tributary to Blossom Gulch Creek at your property located at 92750 Anderson Lane in Coos Bay, Oregon (the Site).

DEQ issued this penalty because dirt from your land clearing activities at the Site was not stabilized and placed in a location where it was likely to be carried into a tributary to Blossom Gulch Creek. Sediment carried in stormwater run-off 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.

Included in Section IV of the enclosed Notice is an order requiring you to implement erosion controls and soil stabilization measures adequate to prevent stormwater runoff from the Site within 60 days of this Notice becoming final.

In response to a complaint, DEQ accompanied the Department of Geology and Mineral Industries (DOGAMI) on a visit to the Site on April 21, 2021, and observed the violation detailed in this Notice. Upon the resolution of DOGAMI's investigation, DEQ has made multiple attempts to contact you to schedule a site visit and discuss implementation of corrective actions to prevent harm to water quality. DEQ left you a message on April 4, 2022. Upon getting no response, DEQ sent a Warning Letter with Opportunity to Correct on May 10, 2022, and gave you a deadline of June 10, 2022, to send an erosion and sediment control plan to DEQ. After no response, DEQ again left you a message on June 16, 2022, reminding you of the warning letter and requested corrective measures. Finally, on July 7, 2022, DEQ issued you a Pre-Enforcement Notice. If you have implemented corrective measures at the Site, please contact Bryan Duggan at 503-367-3400 to schedule a site visit.

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. 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 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 Knobbe at 971-300-9770.

Sincerely,



Kieran O'Donnell, Manager  
Office of Compliance and Enforcement

Enclosures

cc: Bryan Duggan, Coos Bay  
Heather Tugaw, DEQ  
Zach Loboy, 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	WANITA PARSON,	)	ASSESSMENT AND ORDER
5	Respondent.	)	CASE NO. WQ-NP-WR-2022-096

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 owner of a parcel of land located at 92750 Anderson Lane in Coos Bay,  
13 Oregon (the Site).

14 2. Blossom Gulch Creek runs through the northwest corner of the Site. There is at least one  
15 tributary to Blossom Gulch Creek contained within the Site.

16 3. On or before April 21, 2021, Respondent engaged in clearing, filling, and excavation associated  
17 with road building activities at the Site.

18 4. On April 21, 2021, DEQ inspected the Site. At the time of inspection:

- 19 a. Dirt was piled on steep slopes and within a tributary to Blossom Gulch Creek with no  
20 sediment control measures;
- 21 b. Small earthen dams were constructed on three separate tributary drainages at the eastern  
22 edge of the Site with undersized plumbing pipes installed for stream outflow;
- 23 c. Respondent had not implemented any best management practices to control stormwater  
24 run-off, such as turbidity curtains, jute matting, straw wattles, or plastic sheeting.

25 III. CONCLUSIONS

26 1. On at least April 21, 2021, Respondent violated ORS 468B.025(1)(a) by placing wastes in a  
27 location where such wastes are likely to escape or be carried into waters of the state, as described in

1 Section II above. Specifically, Respondent placed dirt from land clearing and excavation associated  
2 with road building near and within a tributary to Blossom Gulch Creek. Dirt from Respondent's  
3 activities is "waste" pursuant to ORS 468B.005(9) because it may cause pollution to waters of the state.  
4 The dirt is "pollution" pursuant to ORS 468B.005(5) because it alters the physical, chemical or  
5 biological properties of waters of the state, which tends to be detrimental to aquatic life. The dirt was  
6 placed near Blossom Gulch Creek, which is considered a "water of the state" pursuant to ORS  
7 468B.005(10). This is a Class II violation according to OAR 340-012-0055(2)(c). DEQ hereby assesses  
8 a \$400 civil penalty for this violation.

#### 9 IV. ORDER TO PAY CIVIL PENALTY AND TO COMPLY

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

12 1. Pay a total civil penalty of \$400. The determination of the civil penalties is attached as Exhibits  
13 1 and is incorporated as part of this Notice.

14 If you do not file a request for hearing as set forth in Section V below, your check or money  
15 order must be made payable to "**State Treasurer, State of Oregon**" and sent to the **DEQ, Business**  
16 **Office, 700 NE Multnomah Street, Suite 600, Portland, Oregon 97232.**

17 2. Implement erosion controls and soil stabilization measures adequate to prevent stormwater  
18 discharge from the Site. Within 60 days of this order becoming final by operation of law or on appeal,  
19 written documentation demonstrating Respondent's compliance must be sent to: Bryan Duggan, 456  
20 Elrod Avenue, Coos Bay, Oregon 97420.

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

22 You have a right to a contested case hearing on this Notice, if you request one in writing. DEQ  
23 must receive your request for hearing **within 20 calendar days** from the date you receive this Notice. If  
24 you have any affirmative defenses or wish to dispute any allegations of fact in this Notice or attached  
25 exhibit, you must do so in your request for hearing, as factual matters not denied will be considered  
26 admitted, and failure to raise a defense will be a waiver of the defense. (See OAR 340-011-0530 for  
27 further information about requests for hearing.) You must send your request to: **DEQ, Office of**

1 **Compliance and Enforcement, 700 NE Multnomah Street, Suite 600, Portland, Oregon 97232**, fax  
2 it to **503-229-6762** or email it to [DEQappeals@deq.oregon.gov](mailto:DEQappeals@deq.oregon.gov). An administrative law judge  
3 employed by the Office of Administrative Hearings will conduct the hearing, according to ORS  
4 Chapter 183, OAR Chapter 340, Division 011 and OAR 137-003-0501 to 0700. You have a right to be  
5 represented by an attorney at the hearing, however you are not required to be. If you are an individual,  
6 you may represent yourself. If you are a corporation, partnership, limited liability company,  
7 unincorporated association, trust or government body, you must be represented by an attorney or a duly  
8 authorized representative, as set forth in OAR 137-003-0555.

9 Active duty Service members have a right to stay proceedings under the federal Service  
10 Members Civil Relief Act. For more information contact the Oregon State Bar at 1-800-  
11 452-8260, the Oregon Military Department at 503-584-3571, or the nearest United States Armed  
12 Forces Legal Assistance Office through <http://legalassistance.law.af.mil>. The Oregon Military  
13 Department does not have a toll free telephone number.

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

22  
23 11 / 1 / 2022  
24 Date


23   
24 Kieran O'Donnell, Manager  
25 Office of Compliance and Enforcement  
26  
27

EXHIBIT 1

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

VIOLATION NO. 1 Respondent violated ORS 468B.025(1)(a) by placing wastes in a location where such wastes are likely to escape or be carried into waters of the state.

CLASSIFICATION: This is a Class II violation pursuant to OAR 340-012-0055(2)(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 \$250 for a Class II, moderate magnitude violation in the matrix listed in OAR 340-012-0140(5)(b)(B)(ii) and applicable pursuant to OAR 340-012-0140(5)(a)(M) because Respondent violated ORS 468B.025(1)(a) by engaging in land clearing activities of less than an acre at a residential property.

"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 at least one occurrence of the violation. Each day of violation constitutes a separate offence. On at least April 21, 2021, the day DEQ inspected the Site, Respondent had placed dirt placed near and within a tributary to Blossom Gulch Creek.

"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. According to OAR 340-012-0030(15), negligence means the respondent failed to take reasonable care to avoid a foreseeable risk of conduct constituting the violation. By placing a large amount of sediment near Blossom Gulch Creek and a tributary to the creek, Respondent failed to take reasonable care to avoid a discharge of sediment and turbid runoff to the waters. In addition,

Respondent has failed to respond to multiple contacts by DEQ, imploring Respondent to secure the Site in order to prevent damage to the creek and tributary.

"C" is Respondent's efforts to correct or mitigate the violation, and receives a value of 2 according to OAR 340-012-0145(6)(g) because Respondent did not address the violation as described in paragraphs (6)(a) through (6)(e) and the facts do not support a finding under paragraph (6)(f). On May 10, 2022, Respondent received a Warning Letter with an Opportunity to Correct with a response deadline of June 10, 2022. Respondent has not responded to additional communications from DEQ, and due dates for corrective actions have passed.

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

$$\begin{aligned} &= \$250 + [(0.1 \times \$250) \times (0 + 0 + 0 + 4 + 2)] + \$0 \\ &= \$250 + (\$25 \times 6) + \$0 \\ &= \$250 + \$150 + \$0 \\ &= \$400 \end{aligned}$$