



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

November 26, 2018

CERTIFIED MAIL: 7016 0750 000 3470 3074

Walter & Susette Bottelsen
93404 Orchard Lane
Gold Beach, OR 97444

Re: Notice of Civil Penalty Assessment and Order
Case No. WQ/SW-WR-2018-128

This letter is to inform you that the Oregon Department of Environmental Quality (DEQ) has issued you a civil penalty of \$700 for causing pollution to Hunter Creek as a result of the land clearing and fill work done at property you own located at 93404 Orchard Lane, Gold Beach, Oregon.

DEQ issued this penalty because the land clearing activity deposited sediments into Hunter Creek. The deposition of sediments 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 river. In addition, Hunter Creek is important habitat for coho and chinook salmon.

DEQ appreciates your efforts to correct the violation and ensure that it would not be repeated by stabilizing the banks of Hunter Creek and preventing additional deposition of sediment. DEQ considered these efforts when determining the amount of civil penalty.

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.state.or.us

Via fax – 503-229-5100

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 Courtney Brown at 503-229-6839 or toll free in Oregon at 800-452-4011, extension 6839.

Sincerely,

A handwritten signature in blue ink, appearing to read "Kieran O'Donnell".

Kieran O'Donnell, Manager
Office of Compliance and Enforcement

Enclosures

cc: Kendra Girard, DEQ, Coos Bay

1 III. CONCLUSIONS

2 Respondents have violated ORS 468B.025(1)(a) by causing pollution to waters of the state
3 on or before July 23, 2018, through on or before October 25, 2018. Specifically, Respondents dumped
4 dirt, debris and sediment into Hunter Creek, waters of the state according to ORS 468B.005(10).
5 Sediment, dirt and debris are considered "pollution" according to ORS 468B.005(5) as they may alter
6 the physical properties of waters of the state and may cause turbidity which is harmful to fish and other
7 aquatic life and habitat thereof. This is a Class I violation, according to OAR 340-012-0055(1)(a). DEQ
8 hereby assesses a \$700 civil penalty for this violation.

9 IV. ORDER TO PAY CIVIL PENALTY

10 Based upon the foregoing FINDINGS OF FACTS AND CONCLUSIONS, Respondents are
11 hereby ORDERED TO: pay a total civil penalty of \$700. The determination of the civil penalty is
12 attached as Exhibit No.1 and is incorporated as part of this Notice.

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

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

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

1 represented by an attorney at the hearing, however you are not required to be. If you are an individual,
2 you may represent yourself. If you are a corporation, partnership, limited liability company,
3 unincorporated association, trust or government body, you must be represented by an attorney or a duly
4 authorized representative, as set forth in OAR 137-003-0555.

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

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

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19 11/26/18
20 Date



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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: Causing pollution to Hunter Creek on or before August 1, 2018 in violation of ORS 468B.025(1)(a).

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 \$500 for a Class I, moderate magnitude violation in the matrix listed in OAR 340-012-0140(5)(b)(A)(ii) and applicable pursuant to OAR 340-012-0140(5)(a)(M) as the violation was caused by a residential use of the Property disturbing less than one acre in size.

"P" is whether Respondents have 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 Respondents, and receives a value of 0 according to OAR 340-012-0145(2)(a)(A), because there are no prior significant actions.

"H" is Respondents' 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 constitutes a separate occurrence. The violation was first observed on July 23, 2018, and the sediment still rests in the bed of Hunter Creek.

"M" is the mental state of the Respondents, and receives a value of 4 according to OAR 340-012-0145(5)(c) because Respondents' conduct was negligent. Respondents Property is adjacent to Hunter Creek, waters of the state and essential salmonid habitat. By failing to implement erosion and sediment controls at the Property, Respondents failed to take reasonable care to avoid a foreseeable risk that the clearing and grading would discharge sediment and cause pollution to Hunter Creek.

"C" is Respondents' efforts to correct or mitigate the violation, and receives a value of -4 according to OAR 340-012-0145(6)(b) because Respondents made extraordinary efforts to ensure that the violation would not be repeated by hiring a professional engineer to create an Erosion and Sediment Control plan and implement erosion and sediment controls at the Property to stabilize soils and the banks and to establish permanent vegetation.

"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 value of \$0. Respondents gained no economic benefit through this violation. The cost to correct the violation likely eclipsed any economic benefit Respondents gained.

PENALTY CALCULATION: $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$
 $= \$500 + [(0.1 \times \$500) \times (0 + 0 + 4 + 4 + -4)] + \0
 $= \$500 + (\$50 \times 4) + \$0$
 $= \$500 + \$200 + \$0$
 $= \$700$