



Oregon

Tina Kotek, 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

May 16, 2023

CERTIFIED MAIL: 7018 1830 0001 5906 2957

D. A. Grey Limited
c/o David A. Grey, Registered Agent
1905 SW 257th Ave.
Troutdale, OR 97060

Re: Notice of Civil Penalty Assessment and Order
Case No. WQ/SW-NWR-2023-506

This letter is to inform you that the Oregon Department of Environmental Quality (DEQ) has issued you a civil penalty of \$9,600 for stormwater violations at the Dugan Estates Phase 1 and 2 construction site in Estacada. You failed to substantially implement the Erosion and Sediment Control Plan (ESCP) for the site and failed to prevent the discharge of sediment from the site. These are violations of Oregon environmental law.

DEQ issued this penalty because implementing the ESCP is essential to ensure compliance with the terms of the NPDES 1200-C Permit, as it includes pollution control measures that are specific to your site. These measures are intended to prevent the discharge of sediment to surface waters, as sediment can harm aquatic life and impact beneficial uses of those waters. By failing to implement and maintain many of these measures, you failed to prevent the discharge of sediment from the site, which may have impacted Currin Creek.

DEQ appreciates your efforts to correct the violation by implementing corrective actions at the site. 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: Scott Clayton, 21632 SE Stark St., Gresham, OR 97030
Hannah Smiley, Portland Office, DEQ
Blair Edwards, Portland Office, DEQ
Accounting, DEQ

1 a. The construction entrance was either not properly installed or not properly
2 maintained. The rock was compacted into the soil. There was visible sediment track out onto SE
3 Duus Road.

4 b. There were several areas of sediment fencing that were not maintained, where
5 sediment had left the Site.

6 c. There were multiple large uncovered soil stockpiles throughout the Site.

7 d. The eastern part of the Site was mostly bare soil without temporary ground cover.

8 e. There was visible evidence of erosion, including rills and sheet flow, and ponded
9 sediment-laden water throughout the Site.

10 6. Respondent's ESCP dated April 2022 contains the following conditions or
11 requirements:

12 a. Stabilized gravel entrances shall be installed at the beginning of construction and
13 maintained for the duration of the project. Additional measures may be required to ensure that all
14 paved areas are kept clean for the duration of the project. Note on Sheet EC1. The entrance shall
15 be maintained in a condition that will prevent tracking or flowing of sediment onto public right-
16 of-ways (sic). This may require top dressing, repair and/or clean out of any measures used to trap
17 sediment. Construction Entrance Detail Drawing 4-12 on Sheet EC6.

18 b. The BMPs shall be upgraded as needed for unexpected storm events and to ensure
19 that sediment and sediment laden water do not leave the site. Note on Sheet EC1; Sediment
20 Fence Detail Drawing 4-23 on Sheet EC6.

21 c. As needed based on weather conditions, at the end of each workday soil
22 stockpiles must be stabilized or covered, or other BMPs must be implemented to prevent
23 discharges to surface waters or conveyance systems leading to surface waters. Note 34 on Sheet
24 EC1; Plastic Sheeting Detail Drawing 4-3 on Sheet EC6.

25 d. Apply temporary and/or permanent soil stabilization measures immediately on all
26 disturbed areas as grading progresses. Note 17 on Sheet EC1.

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1 7. Currin Creek runs through the southern portion of the Site. Currin Creek is a natural
2 body of surface water and is “waters of the state” under ORS 468B.005(10). There are wetlands
3 that drain to Currin Creek located along the perimeter of the Site’s disturbed area.

4 8. On November 1, 2022, turbid water from the Site flowed under a sediment fence at
5 the edge of the wetland adjacent to Currin Creek.

6 9. On or about November 1, 2022, highly turbid water from the Site discharged into a
7 sewer manhole on NE Pinebreak Drive and NE Samson Avenue. The manhole discharges to the
8 City of Estacada’s sanitary sewer system.

9 III. CONCLUSIONS

10 1. On or before November 1, 2022, Respondent violated Schedule A, Condition
11 (8)(a) of the Permit and ORS 468B.025(2) by failing to substantially implement the ESCP, as
12 described in Section II, paragraphs 1 through 6 above. This is a Class I violation according to
13 OAR 340-012-0055(1)(r). DEQ hereby assesses a \$9,600 civil penalty for this violation.

14 2. On or about November 1, 2022, Respondent violated Schedule A, Condition
15 2.2.11 of the Permit and ORS 468B.025(2) by failing to prevent the discharge of sediment to
16 surface waters or conveyance systems leading to surface waters of the state, as described in
17 Section II, Paragraphs 7 – 9 above. This is a Class II violation according to OAR 340-012-
18 0053(2). DEQ has not assessed a civil penalty for this violation.

19 IV. ORDER TO PAY CIVIL PENALTY

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

22 Pay a total civil penalty of \$9,600. The determination of the civil penalty is attached as
23 Exhibit No. 1, which is incorporated as part of this Notice.

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

26 Pay online with e-check (ACH) or credit card. Go to Your DEQ Online here:
27 <https://ydo.oregon.gov>. Select Register Account or Login, then select Pay Invoices/Fees on your

1 account dashboard. Enter the reference number and Account ID included on the attached payment
2 slip. Note: US Bank charges a 2.3% convenience charge for credit card transactions. ACH payments
3 have no additional charges, or

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

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

8 You have a right to a contested case hearing on this Notice, if you request one in writing.
9 DEQ must receive your request for hearing **within 20 calendar days** from the date you receive
10 this Notice. If you have any affirmative defenses or wish to dispute any allegations of fact in this
11 Notice or attached exhibit, you must do so in your request for hearing, as factual matters not
12 denied will be considered admitted, and failure to raise a defense will be a waiver of the defense.
13 (See OAR 340-011-0530 for further information about requests for hearing.) You must send your
14 request to: **DEQ, Office of Compliance and Enforcement, 700 NE Multnomah Street, Suite**
15 **600, Portland, Oregon 97232**, fax it to **503-229-5100** or email it to
16 DEQappeals@deq.oregon.gov. An administrative law judge employed by the Office of
17 Administrative Hearings will conduct the hearing, according to ORS Chapter 183, OAR Chapter
18 340, Division 011 and OAR 137-003-0501 to 0700. You have a right to be represented by an
19 attorney at the hearing, however you are not required to be. If you are an individual, you may
20 represent yourself. If you are a corporation, partnership, limited liability company,
21 unincorporated association, trust, or government body, you must be represented by an attorney or
22 a duly authorized representative, as set forth in OAR 137-003-0555.

23 Active-duty Service members have a right to stay proceedings under the federal Service
24 Members Civil Relief Act. For more information contact the Oregon State Bar at 1-800-
25 452-8260, the Oregon Military Department at 503-584-3571, or the nearest United States Armed
26 Forces Legal Assistance Office through <http://legalassistance.law.af.mil>. The Oregon Military
27 Department does not have a toll-free telephone number.

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

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9 5/16/2023

10 Date

Kieran O'Donnell

11 Kieran O'Donnell, Manager
12 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 1: Failing to substantially implement the Erosion and Sediment Control Plan (ESCP) for Currin Creek Estates Phase 2, in violation of Schedule A, Condition 4 of the Permit and ORS 468B.025(2).

CLASSIFICATION: This is a Class I violation pursuant to OAR 340-012-0055(1)(r).

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)(E)(v) because Respondent has coverage under the NPDES 1200-C General Permit for a construction site that disturbs 20 or more 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 4 according to OAR 340-012-0145(2)(a)(B) and (D) because Respondent had three Class I violations and one Class II violation in Case No. WQ/SW-NWR-2021-511.

"H" is Respondent's history of correcting prior significant actions and receives a value of -1 according to OAR 340-012-0145(3)(b) because the violations were uncorrectable, and Respondent took reasonable efforts to minimize the effects of the violations cited as PSAs.

"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 were more than one but less than seven occurrences of the violation. Each day of violation constitutes a separate occurrence. DEQ received a complaint about turbid discharge from the site on or about October 28, 2022. DEQ inspected the site and documented the violation on November 1, 2022. The violation was ongoing for at least 5 days.

"M" is the mental state of the Respondent and receives a 4 according to OAR 340-012-0145(5)(c), because Respondent's conduct was negligent. The 1200-C Permit and the ESCP prepared by Respondent's engineer require implementation of erosion and sediment control measures in order to prevent the discharge of significant amounts of sediment from the site.

By failing to implement or maintain many of the measures and features included in the ESCP, Respondent failed to take reasonable care to avoid a foreseeable risk that it would violate the Permit.

"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 by implementing corrective actions at the site.

"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 installing and maintaining erosion and sediment controls was de minimis.

PENALTY CALCULATION: $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$
= \$6,000 + [(0.1 x \$6,000) x (4 - 1 + 2 + 4 - 3)] + \$0
= \$6,000 + [\$600 x 6] + \$0
= \$6,000 + \$3,600 + \$0
= \$9,600

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:	May 16, 2023
RESPONSE DATE :	July 25, 2023
TOTAL PENALTY:	\$9,600.00

Account Name:	DUGAN ESTATES		
Account Type:	Vendor/Organization/Company	Reference Number:	CPGFD2300075
SubSystem ID:	205239	FIMS Acct. ID:	10213

Penalty Summary

Penalty Amount	Interest	Adjustment	Amount Paid	Total Penalty
\$ 9,600.00	\$ 0.00	\$ 0.00	\$ 0.00	\$ 9,600.00

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.	CPGFD2300075		
PAYCODE:	00401 7400 10040 74001 0500 000000 00		
FEE PROGRAM ID:	950	RESPONSE DATE:	July 25, 2023
FIMS ACCT. ID:	10213	TOTAL PENALTY DUE:	\$9600.00

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 0095000102138(CPGF)230007500009600002



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
5/15/2023	2023-506 WQ-SW-NWR-2023-506	\$9,600.00

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 _____