



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 4, 2023

CERTIFIED MAIL: 9589 0710 5270 0113 1700 17

GCT Land Management Inc.
c/o Gust Tsiatsos
115 Elm St, Ste. 2
La Grande, OR 97850

Re: Notice of Civil Penalty Assessment and Order
Case No. WQ-SW-ER-2022-550

This letter is to inform you that the Oregon Department of Environmental Quality (DEQ) has issued you a civil penalty of \$1,425 for unpermitted construction activities at the site located at 1851 H Avenue in Baker City, Oregon.

DEQ issued this penalty because your failure to obtain coverage under the National Pollutant Discharge Elimination System Construction Stormwater General Permit No. 1200-C (the Permit) for your construction activities at the Site created an increased risk of stormwater runoff. The Permit requires that registrants implement and maintain sufficient erosion and sediment control measures and best management practices to prevent the discharge of sediment and visibly turbid stormwater discharge into waters of the state. Sediment carried in stormwater runoff from construction sites 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. Without permit coverage, you failed to implement proper controls.

DEQ appreciates your efforts to correct the violation by obtaining Permit coverage. 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.

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 portion of your 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: Blair Edwards, Northwest Region
Shannon Davis, DEQ
Accounting, DEQ

1 III. CONCLUSIONS

2 1. On May 11, 2022, Respondent violated ORS 468B.050(1)(d) by engaging in an activity that
3 would cause an increase in the discharge of wastes into waters of the state without authorization under a
4 DEQ permit, as described in Section II above. Specifically, Respondent started construction activities at
5 the Site that may have caused the discharge of sediment and construction stormwater to the Powder
6 River, before obtaining coverage under the Permit. Construction stormwater and sediment from
7 Respondent’s activities are “wastes” pursuant to ORS 468B.005(9) because they are substances that
8 may alter the physical properties of waters of the state. Powder River is a “water of the state,” pursuant
9 to ORS 468B.005(10). This is a Class II violation, according to OAR 340-012-0053(2). DEQ hereby
10 assesses a \$1,425 civil penalty for this violation.

11 2. On May 11, 2022, Respondent violated ORS 468B.025(1)(a) by placing waste where it was
12 likely to be carried into waters of the state, as described in Section II above. Specifically, Respondent’s
13 improperly installed stormwater measures were insufficient to prevent sediment from collecting near a
14 conveyance ditch, in the conveyance ditch, and in a catch basin inlet at the Site. Sediment from
15 Respondent’s activities and disturbed areas of the Site is “waste” pursuant to ORS 468B.005(9).
16 Powder River is a “water of the state,” pursuant to ORS 468B.005(10). This is a Class II violation
17 according to OAR 340-012-0055(2)(c). DEQ has not assessed a penalty for this violation.

18 IV. ORDER TO PAY CIVIL PENALTY IF APPLICABLE: AND TO COMPLY

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

21 1. Pay a total civil penalty of \$1,425. The determination of the civil penalty is attached as Exhibit
22 1 and is incorporated as part of this Notice.

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

25 Pay online with e-check (ACH) or Credit Card. Go to Your DEQ Online here:
26 <https://ydo.oregon.gov>. Select Register Account or Login, then select Pay Invoices/Fees on your account
27 dashboard. Enter the Invoice number and Account ID included on the attached payment slip. Note: US

1 Bank charges a 2.3% convenience charge for credit card transactions. ACH payments have no additional
2 charges.

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

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

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

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

26 If you fail to file a timely request for hearing, the Notice will become a final order by default
27 without further action by DEQ, as per OAR 340-011-0535(1). If you do request a hearing but later
withdraw your request, fail to attend the hearing or notify DEQ that you will not be attending the

1 hearing, DEQ will issue a final order by default pursuant to OAR 340-011-0535(3). DEQ designates
2 the relevant portions of its files, including information submitted by you, as the record for purposes of
3 proving a prima facie case.
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7 5/4/2023

8 Date

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10 Kieran O'Donnell, Manager
11 Office of Compliance and Enforcement
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EXHIBIT 1

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

VIOLATION NO. 1 Violated ORS 468B.050(1)(d) by engaging in construction activity without a permit.

CLASSIFICATION: This is a Class II violation pursuant to OAR 340-012-0053(2).

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 \$750 for a Class II, moderate magnitude violation in the matrix listed in OAR 340-012-0140 (4)(b)(B)(ii) and applicable pursuant to OAR 340-012-0140(4)(a)(F)(ii).

"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. Each day of violation is a separate offence. Respondent engaged in unpermitted construction activities from, at a minimum, May 11, 2022, to August 5, 2022 when Respondent obtained permit coverage.

"M" is the mental state of the Respondent, and receives a value of 8 according to OAR 340-012-0145(5)(d) because Respondent acted or failed to act intentionally with actual knowledge of the requirement. Respondent applied for Permit coverage on March 24, 2022. Respondent knew of the requirement to obtain coverage, as indicated by the application. However, Respondent started construction activities on at least May 11, 2022, before Permit coverage was issued.

"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. Respondent obtained Permit coverage on August 5, 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 any benefit gained by Respondent by delaying the cost of implementing an Erosion and Sediment Control Plan were de minimis.

PENALTY CALCULATION: $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$
= $\$750 + [(0.1 \times \$750) \times (0 + 0 + 4 + 8 + -3)] + \0
= $\$750 + (\$75 \times 9) + \$0$
= $\$750 + \$675 + \$0$
= $\$1,425$