



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

June 15, 2023

CERTIFIED MAIL: 7016 2710 0000 4221 2755

Coastal Housing Solutions, LLC.
c/o Marnae Halter, Registered Agent
30250 SW Parkway, Suite 11
Wilsonville, OR 97070

Re: Notice of Civil Penalty Assessment and Order
Case No. WQ/SW-NWR-2022-591

This letter is to inform you that the Oregon Department of Environmental Quality (DEQ) has issued you a civil penalty of \$3,000 for water quality violations at the Bayview construction site in Garibaldi. You have coverage under the NPDES Construction Stormwater General Permit No. 1200-C (the Permit) for construction activities at the site. On September 16, 2022, DEQ staff inspected the site and found that you had failed to fully implement the erosion and sediment control plan (ESCP). Also, you placed wastes where they were likely to escape or be carried into the waters of the state by placing fill dirt at the edge of a wetland.

DEQ issued this penalty because implementing the ESCP is essential to ensure compliance with the terms of the 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. Stormwater from the site discharges to Miami Cove, an estuary that provides important habitat for aquatic species, and provides fishing and recreational opportunities for Oregonians.

DEQ appreciates your efforts to correct the violation by properly implementing erosion and sediment controls 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.

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 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: Michael Kennedy, NWR, DEQ
Blair Edwards, NWR, DEQ

BEFORE THE ENVIRONMENTAL QUALITY COMMISSION
OF THE STATE OF OREGON

IN THE MATTER OF:)	NOTICE OF CIVIL PENALTY
COASTAL HOUSING SOLUTIONS, LLC.,)	ASSESSMENT AND ORDER
an Oregon limited liability company,)	
)	NO. WQ/SW-NWR-2022-591
Respondent.)	

I. AUTHORITY

The Department of Environmental Quality (DEQ) issues this Notice of Civil Penalty Assessment and Order pursuant to Oregon Revised Statutes (ORS) 468.100 and 468.126 through 468.140, ORS Chapters 183 and 468B, and Oregon Administrative Rules (OAR) Chapter 340, Divisions 011, 012, 041, and 045.

II. FINDINGS OF FACT

1. On April 10, 2020, DEQ issued coverage to Respondent under the National Pollutant Discharge Elimination System (NPDES) Construction Stormwater General Permit No. 1200-C (the Permit). The Permit expires on December 14, 2025, and was effective at all material times.
2. The Permit authorizes construction activities that may discharge to surface waters or conveyance systems leading to surface waters of the state only in conformance with the conditions and limitations of the Permit. Specifically, Respondent’s coverage under the Permit authorizes construction activities at “Bayview,” an apartment complex and 8-lot residential subdivision construction project located at 501 Garibaldi Avenue (Highway 101) in Garibaldi, Tillamook County, Oregon (the Site).
3. As part of resolving DEQ Case No. WQ/SW-NWR-2020-164, on or about July 29, 2022, Respondent submitted a new land use compatibility statement (LUCS) and a revised erosion and sediment control plan (ESCP) for the Site.
4. On or about August 22, 2022, DEQ approved the ESCP.
5. Schedule A, Condition 4 of the Permit requires a registrant to implement the ESCP.

1 6. According to the ESCP, the total acreage of the Site is 3.53 acres, and the total
2 disturbed area at the Site is 2.57 acres.

3 7. Stormwater from the Site discharges to Miami Cove, an inlet of Tillamook Bay,
4 which is approximately 300 feet south of the Site. Miami Cove is a natural body of surface water
5 and is “waters of the state” under ORS 468B.005(10).

6 8. On the northeast quadrant of the Site, there is a perennial stream running from north
7 to south, along the bottom of a steep gully. The perennial stream is a natural body of surface
8 water and is “waters of the state” under ORS 468B.005(10). The stream discharges to Miami
9 Cove.

10 9. According to the Preliminary Site Evaluation dated September 23, 2019, there is a
11 freshwater riverine wetland on northeast quadrant of the site that is mapped by the National
12 Wetland Inventory (“Wetland B”). Wetland B is approximately 0.05 acres in size. Wetland B is a
13 natural body of surface water and is “waters of the state” under ORS 468B.005(10).

14 10. On or about September 13, 2022, Respondent resumed construction activities on the
15 Site.

16 11. DEQ inspected the Site on September 16, 2022. At the time of the inspection:

- 17 a. The construction entrance was not built according to the specifications in the
18 ESCP, and it did not have geotextile underlayment. There was track out of
19 sediment onto the road.
 - 20 b. There were two areas where fuel had been spilled or released from equipment and
21 had not been cleaned up.
 - 22 c. Some areas along the perimeter of Wetland B were lacking perimeter sediment
23 controls. In some areas the sediment controls were placed inside the natural buffer
24 zone.
 - 25 d. Sediment fencing was installed on the adjacent property to the west of the Site
26 (Tax Lot 200) instead of along the Site’s western property boundary.
- 27

- e. Straw wattles placed on the Site were not trenched or staked, allowing stormwater to flow underneath.
- f. Field identification of natural resources or sensitive areas was poor or missing in some areas, particularly in the wetlands where there were no field markings to prevent intrusion.
- g. There were unprotected soil stockpiles on the site and no evidence of supplies or materials on hand to stabilize or cover the soil stockpiles.
- h. There was no evidence of dust control measures being implemented. Prior to the inspection, DEQ received complaints of blowing dust at the Site.
- i. There were piles of waste materials on several areas of the Site, including waste sediment fencing, an old trailer and scrap metal. There were no dumpsters or large waste containers on the Site.

12. The ESCP includes the following conditions or requirements:

- a. Install construction entrance at southeast corner of Site (Construction Entrance Detail Drawing No. 855, Sheet EC6).
- b. Follow the Spill Prevention Control and Countermeasures Plan on Sheet EC3.
- c. Install sediment fencing and straw wattles where indicated on Sheet EC2.
- d. Install straw wattles as specified in Wattle Detail Drawing No. 880 on Sheet EC7.
- e. Identify, mark, and protect (by construction fencing or other means) critical riparian areas and vegetation including important trees and associated rooting zones, and vegetation areas to be preserved. Identify vegetated buffer zones between the site and sensitive areas (e.g., wetlands), and other areas to be preserved, especially in perimeter areas (Note 10 on EC1).
- f. As needed based on weather conditions, at the end of each workday soil stockpiles must be stabilized or covered, or other BMPs must be implemented to prevent discharge to surface waters or conveyance systems leading to surface waters (Note 34 on EC1).

1 g. Use water, soil-binding agent or other dust control technique as needed to avoid
2 wind-blown soil (Note 30 on EC1).

3 h. Establish waste storage areas (Note 18 on EC1).

4 13. On or before September 16, 2022, Respondent placed fill dirt along the eastern edge
5 of Wetland B.

6 14. The fill dirt had the potential to escape or be carried by stormwater into Wetland B
7 and the perennial stream.

8 15. Fill dirt is a substance which will or may cause pollution of waters of the state by
9 increasing turbidity and is a "waste" under ORS 468B.005(9).

10 III. CONCLUSIONS

11 1. From on or about September 13, 2022, through September 28, 2022, Respondent
12 violated Schedule A, Condition 4 of the Permit and ORS 468B.025(2) by failing to substantially
13 implement the ESCP, as described in Section II, Paragraphs 1 through 11 above. This is a Class I
14 violation according to OAR 340-012-0055(1)(r). DEQ hereby assesses a \$3,000 civil penalty for
15 this violation.

16 2. On or before September 16, 2022, Respondent violated ORS 468B.025(1)(a) by
17 placing or causing to be placed any wastes in a location where such wastes are likely to escape or
18 be carried into the waters of the state by any means, as described in Section II, Paragraphs 13 and
19 14 above. This is a Class II violation according to OAR 340-012-0055(2)(c). DEQ has not
20 assessed a civil penalty for this violation.

21 IV. ORDER TO PAY CIVIL PENALTY

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

24 Pay a total civil penalty of \$3,000. The determination of the civil penalties is attached
25 as Exhibit No. 1 and incorporated as part of this Notice.

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

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

6 Pay by check or money order: Make check payable to "Department of Environmental
7 Quality" and mail to the address on the enclosed payment slip. Please make sure to include the
8 payment slip with your check or money order.

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

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


25 Active-duty Service members have a right to stay proceedings under the federal Service
26 Members Civil Relief Act. For more information contact the Oregon State Bar at 1-800-

1 452-8260, the Oregon Military Department at 503-584-3571, or the nearest United States Armed
2 Forces Legal Assistance Office through <http://legalassistance.law.af.mil>. The Oregon Military
3 Department does not have a toll-free telephone number.

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

10
11
12 6/15/2023

13 Date

14 

15 Kieran O'Donnell, Manager
16 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), 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 \$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 has coverage under the NPDES 1200-C General Permit for a construction site that is more than one but less than five acres in size.

"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 2 according to OAR 340-012-0145(2)(a)(B) and (C). Case No. WQ/SW-NWR-2020-164 included one Class I violation and one Class II violation.

"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 insufficient information on which to base a finding under paragraphs (3)(a) or (b).

"O" is whether the violation was repeated or ongoing and receives a value of 3 according to OAR 340-012-0145(4)(c), because there were from seven to 28 occurrences of the violation. Each day of violation constitutes a separate occurrence. Respondent failed to substantially implement the plan from September 13, 2022, through September 28, 2022, which was 16 days.

"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. 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. Respondent was previously cited

for the same violation in Case No. WQ/SW-NWR-2020-164 and had actual knowledge of DEQ's expectations for ESCP implementation at the site. When Respondent failed to properly install erosion control measures included in its ESCP, Respondent had actual knowledge that it was required to fully implement the ESCP and that failing to do so was a violation.

"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 implemented corrective actions at the Site on or about September 28, 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 there is insufficient information on which to base a finding of Respondent's economic benefit, if any.

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 + [(0.1x \$1,500) x (2 + 0 + 3 + 8 - 3)] + \$0
= \$1,500 + [\$150 x 10] + \$0
= \$1,500 + \$1,500 + \$0
= \$3,000

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:	June 15, 2023
RESPONSE DATE :	August 24, 2023
TOTAL PENALTY:	\$3,000.00

Account Name:	COASTAL HOUSING SOLUTIONS, LLC. <BAYVIEW APARTMENTS> <126830>		
Account Type:	Vendor/Organization/Company	Reference Number:	CPGFD2300080
SubSystem ID:	194713	FIMS Acct. ID:	3899

Penalty Summary

Penalty Amount	Interest	Adjustment	Amount Paid	Total Penalty
\$ 3,000.00	\$ 0.00	\$ 0.00	\$ 0.00	\$ 3,000.00

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.	CPGFD2300080		
PAYCODE:	00401 7400 10040 74001 0500 000000 00		
FEE PROGRAM ID:	950	RESPONSE DATE:	August 24, 2023
FIMS ACCT. ID:	3899	TOTAL PENALTY DUE:	\$3000.00

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 0095000038995(CPGFD)2300080000003000000



Slate 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
6/14/2023	2022-591 WQ-SW-NWR-2022-591	\$3,000.00

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 _____