



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 27, 2022

CERTIFIED MAIL: 9589 0710 5270 0110 6010 33

Justin Willett
333 NE Evergreen Road
Hillsboro, OR 97124

Re: Notice of Civil Penalty Assessment and Order
Case No. WQ/SW-NWR-2023-503

This letter is to inform you that the Oregon Department of Environmental Quality (DEQ) has issued you a civil penalty of \$13,558 for violations of the National Pollutant Discharge Elimination System (NPDES) Construction Stormwater General Permit No. 1200-C (the Permit) issued to you for a construction project located on adjacent properties at 221 and 235 NE Evergreen Road in Hillsboro. Specifically, you failed to substantially implement the Erosion and Sediment Control Plan (ESCP) approved for the project, failed to complete the minimum number of visual monitoring inspections, and failed to revise and submit to DEQ an updated ESCP reflective of changes in both the project's scope and the assigned visual monitoring inspector for the project.

DEQ issued this penalty because your failure to properly install and maintain erosion controls and your failure to conduct visual monitoring posed a risk of harm to water quality. The Permit requires implementation of the ESCP as the primary mechanism to reduce pollutants in stormwater discharges resulting from construction activities. In addition, the Permit requires you to visually monitor all areas of the site disturbed by construction activity to ensure that best management practices are in proper working order. By failing to properly maintain and monitor your construction site, you created a risk that the stormwater discharge from the site contained high levels of sediment and other pollutants.

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 Erin Saylor at 503-229-5422 or toll free in Oregon at 800-452-4011, extension 5422.

Sincerely,



Kieran O'Donnell, Manager
Office of Compliance and Enforcement

Enclosures

cc: Mike Kennedy, DEQ NWR
Accounting, DEQ

1 BEFORE THE ENVIRONMENTAL QUALITY COMMISSION
2 OF THE STATE OF OREGON
3

4 IN THE MATTER OF:

5 JUSTIN WILLETT

6 Respondent.

)
) NOTICE OF CIVIL PENALTY
) ASSESSMENT AND ORDER

)
) CASE NO. WQ/SW-NWR-2023-503
)

7
8 I. AUTHORITY

9 The Department of Environmental Quality (DEQ) issues this Notice of Civil Penalty Assessment
10 and Order (Notice) pursuant to Oregon Revised Statutes (ORS) 468.100, ORS 468.126 through 468.140,
11 ORS Chapter 468B, ORS Chapter 183 and Oregon Administrative Rules (OAR) Chapter 340, Divisions
12 011, 012, and 045.

13 II. FINDINGS OF FACT

14 1. On April 4, 2022, Respondent was issued coverage under DEQ's National Pollutant
15 Discharge Elimination System (NPDES) 1200-C Construction Stormwater Discharge General Permit
16 (the Permit) under Permit/PLC No. NGEN12C-ORR10H136 for the construction of two homes (the
17 Diaz and Ellis residences) on adjacent properties located at 221 and 235 NE Evergreen Road in
18 Hillsboro (the Properties). Respondent was the permit registrant at all material times.

19 2. The Properties are located approximately 2,400 feet from McKay Creek, a water of the
20 state pursuant to ORS 468B.005(10). Runoff from the project flows overland to a culvert under
21 Glencoe Road then to McKay Creek.

22 3. The total area of the site is 12.03 acres, with a total disturbed area of 2.36 acres.

23 4. Construction at the Properties began on April 18, 2022.

24 5. On December 19, 2022, DEQ conducted an inspection at the Properties. At the time of
25 the inspection, the work was in the vertical construction phase.

26 6. Pursuant to Schedule A, Condition 4 of the Permit, permit registrants must implement
27 the Erosion and Sediment Control Plan (ESCP) submitted and approved with their permit application,

1 from initial soil disturbance until permit registration is terminated. Failure to implement any of the
2 control measures or practices described in the ESCP is a permit violation. Additionally, Schedule A,
3 Condition 4 of the Permit requires that the ESCP be kept up-to-date throughout the term of coverage
4 under the Permit and that the ESCP be revised as necessary to accurately reflect site conditions.

5 7. Pursuant to Schedule A, Condition 2.1.3 of the Permit, permit registrants must complete
6 installation of stormwater controls, including the installation and implementation of downgradient
7 sediment controls, before each phase of construction activities. Permit registrants must also install
8 erosion prevention measures—such as matting, straw mulch or compost blankets—on cleared areas that
9 will not be worked on for 14 days.

10 8. Pursuant to Schedule A, Condition 2.2.6 of the Permit, permit registrants must install
11 sediment controls along all perimeter areas of the site that will receive stormwater runoff.

12 9. Pursuant to Schedule A, Condition 2.2.19, the construction site must be maintained to
13 prevent sediment from leaving the site.

14 10. Pursuant to Page 2, Item 13 of the project's ESCP, perimeter sediment controls must be
15 installed prior to land disturbance. Pursuant to Page 2, Item 17 of the ESCP, soil stabilization measures
16 must be immediately applied on all disturbed areas as grading progresses.

17 11. At the time of the inspection, no stormwater controls were installed at the Properties.
18 Most notably, no downgradient controls or sediment fencing had been installed, and no ground cover
19 was installed on disturbed soils.

20 12. Pursuant to Schedule A, Condition 2.2.8 of the Permit, permit registrants must manage
21 stockpiles by, among other things, installing sediment barriers such as berms, dikes, fiber rolls, silt
22 fences, sandbags, gravel bags, or straw bale along all downgradient perimeter areas. Soil stockpiles
23 must be stabilized or covered at the end of each workday, and before weekends, holidays, or extended
24 breaks in construction activities if needed based on weather forecasts. Piles not in use must be covered
25 or temporarily stabilized in compliance with Schedule A, Condition 2.2.20 of the Permit.

26 13. At the time of the inspection, stockpiles were uncovered and uncontrolled. No supplies
27 were present on site to implement this permit condition.

1 14. Pursuant to Schedule A, Condition 2.2.15 of the Permit, material and waste storage areas
2 must be established before construction activities begin.

3 15. Pursuant to Schedule A, Condition 2.3 of the Permit, the permit registrant must
4 implement controls to prevent the discharge of pollutants to stormwater, including building materials,
5 building products, construction wastes, trash, landscape materials and other materials.

6 16. At the time of the inspection, there was widespread accumulation of building materials,
7 construction wastes, and trash at the Properties. A single uncovered and inadequate waste container was
8 present at the Ellis property; no construction waste control measures were apparent at the Diaz
9 property.

10 17. Pursuant to Schedule A, Condition 4.8 of the Permit, the ESCP must be revised to
11 accurately reflect any changes in the construction activities or erosion and sediment control measures at
12 the site within seven days of the change occurring. Pursuant to Schedule A, Condition 4.9 of the
13 Permit, if there is an increase or decrease of the project size, an increase or decrease of the size or
14 location of the disturbed areas, or a change of the certified visual monitoring inspector, the revised
15 ESCP must be submitted to DEQ within ten calendar days of the revision.

16 18. At the time of the inspection, the area of soil disturbance at the Properties had been
17 increased beyond what was approved on the ESCP, a stormwater facility at the Ellis residence had been
18 relocated, the configuration of the road and driveway had changed, and an auxiliary building had been
19 constructed at the Ellis residence that was not included on the ESCP or noted in Respondent's
20 application materials.

21 19. During the inspection, DEQ was informed that the certified visual monitoring inspector
22 listed in the ESCP for the project had changed.

23 20. A revised ESCP reflecting the changes identified in Paragraphs 17 and 18 above was not
24 submitted to DEQ within ten calendar days of when the changes occurred.

25 21. Pursuant to Schedule B, Condition 6.2 of the Permit, a Certified Erosion and Sediment
26 Control or Storm Water Quality Inspector must complete and document visual monitoring inspections:
27 a) on the date construction activities begin; b) once every 14 calendar days; and c) within 24 hours of

1 any storm event, including snowmelt that results in discharge from the site. In the Permit, DEQ adopted
2 EPA's definition of "storm event," which pursuant to 40 C.F.R. § 122.21(g)(7)(ii) means a rainfall
3 event with greater than 0.1 inches of rainfall and at least 72 hours from the previously measurable—
4 greater than 0.1 inch rainfall—storm event. Where a storm event continues for multiple days, an
5 inspection must be conducted within 24 hours of the first day of the storm and within 24 hours after the
6 end of the storm.

7 22. Respondent did not perform visual monitoring when construction activities commenced
8 on April 18, 2022.

9 23. Between the date construction activities started on April 18, 2022, and the date of the
10 inspection on December 19, 2022, the following storm events occurred for which Respondent failed to
11 perform visual monitoring:

- 12 a. April 19–22, 2022;
- 13 b. April 27–May 9, 2022;
- 14 c. May 13–18, 2022;
- 15 d. May 29, 2022;
- 16 e. June 6, 2022;
- 17 f. June 10–11, 2022;
- 18 g. June 18, 2022;
- 19 h. July 6, 2022;
- 20 i. September 29, 2022;
- 21 j. October 22–November 7, 2022;
- 22 k. November 12, 2022;
- 23 l. November 23–30, 2022;
- 24 m. December 5, 2022; and
- 25 n. December 8–10, 2022.

26 24. Respondent failed to perform visual monitoring on the following day when it would
27 have been more than 14 days since the last visual inspection: October 20, 2022.

1 IV. ORDER TO PAY CIVIL PENALTY

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

- 4 1. Pay a total civil penalty of \$13,558. The determination of the civil penalty is attached as Exhibits
5 Nos.1-2 and is incorporated as part of this Notice.

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

7 Pay online with e-check (ACH) or Credit Card. Go to Your DEQ Online here:

8 <https://ydo.oregon.gov>. Select Register Account or Login, then select Pay Invoices/Fees on your account
9 dashboard. Enter the Invoice number and Account ID included on the attached payment slip. Note: US
10 Bank charges a 2.3% convenience charge for credit card transactions. ACH payments have no additional
11 charges.

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

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

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

1 unincorporated association, trust or government body, you must be represented by an attorney or a duly
2 authorized representative, as set forth in OAR 137-003-0555.

3 Active duty Service members have a right to stay proceedings under the federal Service
4 Members Civil Relief Act. For more information contact the Oregon State Bar at 1-800-
5 452-8260, the Oregon Military Department at 503-584-3571, or the nearest United States Armed
6 Forces Legal Assistance Office through <http://legalassistance.law.af.mil>. The Oregon Military
7 Department does not have a toll free telephone number.

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

14
15
16
17
18 Date

6/27/2023



Kieran O'Donnell, Manager
Office of Compliance and Enforcement

EXHIBIT 1

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

VIOLATION: Respondent violated ORS 468B.025(2) and Schedule A of the Permit by failing to substantially implement the ESCP for the project.

CLASSIFICATION: These are Class I violations 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 had coverage under the NPDES 1200-C General Permit for a project with a disturbed area of 2.36 acres.

"P" is whether Respondent has any prior significant actions (PSAs), 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) because the Respondent has no prior enforcement history.

"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 occurrence. Respondent conducted work at the site for at least 245 days without installing the required erosion and sediment controls.

"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. Schedule A of the Permit clearly requires Respondent to install erosion and sediment controls and to implement the approved ESCP for the project.

"C" is Respondent's efforts to correct or mitigate the violation and receives a value of 0 according to OAR 340-012-0145(6)(f) because there is insufficient information available to make a determination under paragraphs (6)(a) through (6)(e) or (6)(g).

"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 \$6,764. By failing to install erosion and sediment controls, Respondent avoided spending approximately \$10,076 as follows: \$565 on a construction entrance; \$8,000 on haybales, and \$1,511 on sediment fencing. This "EB" was calculated pursuant to OAR 340-012-0150(1) using the U.S. Environmental Protection Agency's BEN computer model.

PENALTY CALCULATION: $Penalty = BP + [(0.1 \times BP) \times (P + H + O + M + C)] + EB$
= \$1,500 + [(0.1 x \$1,500) x (0 + 0 + 4 + 4 + 0)] + \$6,764
= \$1,500 + [\$150 x 8] + \$6,764
= \$1,500 + \$1,200 + \$6,764
= \$9,464

EXHIBIT 2

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

VIOLATION: Respondent violated ORS 468B.025(2) and Schedule B of the Permit by failing to complete the minimum number of visual inspections.

CLASSIFICATION: These are Class I violations pursuant to OAR 340-012-0055(1)(o).

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 had coverage under the NPDES 1200-C General Permit for a project with a disturbed area of 2.36 acres.

"P" is whether Respondent has any prior significant actions (PSAs), 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) because the Respondent has no prior enforcement history.

"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 3 according to OAR 340-012-0145(4)(c) because there were between seven and 28 occurrences of the violation. Respondent failed to complete 23 visual inspections.

"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. Schedule B of the Permit clearly sets forth the inspection frequency required by the permit.

"C" is Respondent's efforts to correct or mitigate the violation and receives a value of 0 according to OAR 340-012-0145(6)(f) because the violation can not be corrected.

"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 \$1,544. By failing to complete 23 visual inspections, Respondent avoided spending approximately \$2,300 (23 missed inspections x \$100 per missed event). This "EB" was calculated pursuant to OAR 340-012-0150(1) using the U.S. Environmental Protection Agency's BEN computer model.

PENALTY CALCULATION: $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$
 $= \$1,500 + [(0.1 \times \$1,500) \times (0 + 0 + 3 + 4 + 0)] + \$1,544$
 $= \$1,500 + [\$150 \times 7] + \$1,544$
 $= \$1,500 + \$1,050 + \$1,544$
 $= \$4,094$

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 27, 2023
RESPONSE DATE :	September 5, 2023
TOTAL PENALTY:	\$13,558.00

Account Name:	DIAZ / ELLIS RESIDENCE		
Account Type:	Vendor/Organization/Company	Reference Number:	CPGFD2300083
SubSystem ID:	205583	FIMS Acct. ID:	9855

Penalty Summary

Penalty Amount	Interest	Adjustment	Amount Paid	Total Penalty
\$ 13,558.00	\$ 0.00	\$ 0.00	\$ 0.00	\$ 13,558.00

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.	CPGFD2300083		
PAYCODE:	00401 7400 10040 74001 0500 000000 00		
FEE PROGRAM ID:	950	RESPONSE DATE:	September 5, 2023
FIMS ACCT. ID:	9855	TOTAL PENALTY DUE:	\$13558.00

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 0095000098557CPGF)230008300013558002



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
6/26/2023	2023-503 WQ-SW-NWR-2023-503	\$13,558.00

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 _____