



# 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

August 3, 2023

CERTIFIED MAIL: 9589 0710 5270 0110 6007 22

Eagle Landing Resources, LLC  
c/o Neil B. Nedelisky, Registered Agent  
17650 S. Hidden Lake Drive  
Oregon City, OR 97045

Re: Notice of Civil Penalty Assessment and Order  
Case No. WQ/SW-NWR-2023-507

This letter is to inform you that the Oregon Department of Environmental Quality (DEQ) has issued you a civil penalty of \$2,850 for stormwater violations at the Eagle Landing construction site in Happy Valley. 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 into a stormwater system that discharges to waters of the state.

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](mailto: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: Hannah Smiley, Portland Office, DEQ  
Benjamin Benninghoff, Portland Office, DEQ  
Accounting, DEQ

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

4 IN THE MATTER OF:                                   )           NOTICE OF CIVIL PENALTY  
5 EAGLE LANDING RESOURCES, LLC,           )           ASSESSMENT AND ORDER  
6 an Oregon limited liability company,       )           NO. WQ/SW-NWR-2023-507  
7                                   Respondent.                                   )

8                                   I. AUTHORITY

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

13                                   II. FINDINGS OF FACT

14           1. At all material times, Respondent had coverage under the National Pollutant  
15 Discharge Elimination System (NPDES) Construction Stormwater General Permit No. 1200-C  
16 (the Permit). The Permit expires on December 14, 2025.

17           2. The Permit authorizes construction activities that may discharge to surface waters or  
18 conveyance systems leading to surface waters of the state. Specifically, Respondent’s coverage  
19 under the Permit authorizes construction activities at “Eagle Landing,” a commercial and  
20 residential construction project located at Stevens Road and Monterey Avenue in Happy Valley,  
21 Clackamas County, Oregon (the Site). The Site is approximately 10.96 acres in size, and the total  
22 disturbed area at the Site is approximately 4.1 acres plus 0.65 acres of off-site road  
23 improvements.

24           3. Schedule A, Condition 4 of the Permit requires a registrant to implement the erosion  
25 and sediment control plan (ESCP).

26           4. Respondent began construction activities at the Site in the fall of 2021.

27           5. DEQ inspected the Site on December 1, 2022. At the time of the inspection:

- a. The Site had been cleared and graded and construction activities had ceased;
- b. There were several areas with exposed, unstabilized soils;
- c. Some areas had no perimeter controls installed and some areas had sediment fencing that had gaps or was falling down, rendering it ineffective;
- d. There were several large unprotected stockpiles;
- e. There was waste such as plastic sheeting, pieces of piping and other construction waste scattered throughout the Site and there was not a waste container on-site; and
- f. An area that had been excavated for the footings of a building was being used as a sediment basin without DEQ approval.

6. Respondent's ESCP dated August 26, 2019, contains the following conditions or requirements:

a. The entire site shall be temporarily stabilized using vegetation or a heavy mulch layer, temporary seeding, or other method should all construction activities cease for 30 days or more. Note 34 on Sheet EC1.

b. Control sediment as needed along the site perimeter and at all operational internal storm drain inlets at all times during construction, both internally and at the site boundary. Note 14 on Sheet EC1; Sediment Fence Detail Drawing 4-23 on Sheet EC4.

c. 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 discharges to surface waters or conveyance systems leading to surface waters. Note 27 on Sheet EC1; Plastic Sheeting Detail Drawing 4-3 on Sheet EC4.

d. Establish material and waste storage areas, and other non-stormwater controls. Note 17 on Sheet EC1.

e. The sediment basin was not indicated on the ESCP.

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1 7. On or about November 30, 2022, highly turbid stormwater from the Site discharged  
2 into stormwater drains on SE Stevens Road, which discharge to the City of Happy Valley's  
3 stormwater system and eventually to Phillips Creek.

4 8. Phillips Creek is a natural body of surface water and is "waters of the state" under  
5 ORS 468B.005(10).

### 6 III. CONCLUSIONS

7 1. On or before December 1, 2022, Respondent violated Schedule A, Condition 4 of  
8 the Permit and ORS 468B.025(2) by failing to substantially implement the ESCP, as described in  
9 Section II, paragraphs 1 through 6 above. This is a Class I violation according to OAR 340-012-  
10 0055(1)(r). DEQ hereby assesses a \$2,850 civil penalty for this violation.

11 2. On or about November 30, 2022, Respondent violated Schedule A, Condition  
12 2.2.11 of the Permit and ORS 468B.025(2) by failing to prevent the discharge of sediment to  
13 surface waters or conveyance systems leading to surface waters of the state, as described in  
14 Section II, Paragraphs 7 and 8 above. This is a Class II violation according to OAR 340-012-  
15 0053(2). DEQ has not assessed a civil penalty for this violation.

### 16 IV. ORDER TO PAY CIVIL PENALTY

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

19 Pay a total civil penalty of \$2,850. The determination of the civil penalty is attached as  
20 Exhibit No. 1, which is incorporated as part of this Notice.

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

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

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

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

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

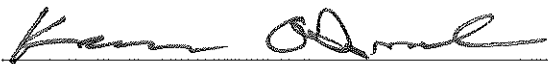
20 Active-duty Service members have a right to stay proceedings under the federal Service  
21 Members Civil Relief Act. For more information contact the Oregon State Bar at 1-800-  
22 452-8260, the Oregon Military Department at 503-584-3571, or the nearest United States Armed  
23 Forces Legal Assistance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

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

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

5  
6 8/3/2023

7 Date

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9 Kieran O'Donnell, Manager  
10 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 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 constitutes a separate occurrence. Respondent failed to substantially implement the plan from at least November 30, 2023 through February 7, 2023, when it completed implementing corrective actions at the site, which was more than 28 days.

"M" is the mental state of the Respondent and receives an 8 according to OAR 340-012-0145(5)(d), because Respondent's conduct was reckless. 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. Also, Respondent's representative and owner, Neil Nedelisky, is an experienced developer. Additionally, the City of Happy Valley had informed Respondent of stormwater issues at the site on several occasions prior to DEQ's inspection, had placed hay bales on the street to



address the turbid discharge, and had issued a stop work order due to the site's non-compliance. By failing to implement or maintain many of the measures in the ESCP and allowing the discharge of sediment from the site, Respondent consciously disregarded the substantial and unjustifiable risk that it would violate its Permit. This risk was of such a nature and degree that disregarding it constituted a gross deviation from the standard of care a reasonable permittee would observe in that situation.

"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 and updating the ESCP.

"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:  $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$   
 $= \$1,500 + [(0.1 \times \$1,500) \times (0 + 0 + 4 + 8 - 3)] + \$0$   
 $= \$1,500 + [\$150 \times 9] + \$0$   
 $= \$1,500 + \$1,350 + \$0$   
 $= \$2,850$

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:	August 3, 2023
RESPONSE DATE :	October 12, 2023
TOTAL PENALTY:	\$2,850.00

Account Name:	EAGLE LANDING RESOURCES, LLC <EAGLE LANDING> <126528>		
Account Type:	Vendor/Organization/Company	Reference Number:	CPGFD2400002
SubSystem ID:	194418	FIMS Acct. ID:	3695

**Penalty Summary**

Penalty Amount	Interest	Adjustment	Amount Paid	Total Penalty
\$ 2,850.00	\$ 0.00	\$ 0.00	\$ 0.00	\$ 2,850.00

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'



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 PLEASE RETURN THIS PORTION WITH YOUR PAYMENT



REFERENCE NO.:	CPGFD2400002		
PAYCODE:	00401 7400 10040 74001 0500 000000 00		
FEE PROGRAM ID:	950	RESPONSE DATE:	October 12, 2023
FIMS ACCT. ID:	3695	TOTAL PENALTY DUE:	\$2850.00

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 0095000036953CPGFD240000200002850002



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
8/2/2023	2023-507 WQ-SW-NWR-2023-507	\$2,850.00

## 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 \_\_\_\_\_