



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 15, 2023

CERTIFIED MAIL: 7016 2710 0000 4221 4100

Venture Properties Inc.
c/o Don Morissette, Registered Agent
4320 Galewood Street, Suite 100
Lake Oswego, OR 97035

Re: Notice of Civil Penalty Assessment and Order
Case No. WQ/SW-NWR-2022-582

This letter is to inform you that the Oregon Department of Environmental Quality (DEQ) has issued you a civil penalty of \$12,389 for violating a condition of the National Pollutant Discharge Elimination System (NPDES) Construction Stormwater General Permit No. 1200-C (the Permit) assigned to the "Frog Pond Ridge" construction project located at 6720 SW Frog Pond Lane, in Wilsonville, Oregon. Specifically, you failed to implement the Erosion and Sediment Control Plan (ESCP) that was submitted to DEQ as part of your application for Permit coverage and engaged in construction activities outside of the area described in the ESCP and authorized by the Permit. In addition, DEQ has cited you for causing pollution to a wetland and Willow Creek by discharging sediment from the Project to these waters of the state.

DEQ issued this penalty because your failure to properly install and maintain erosion controls posed a risk of harm to water quality and is a violation of Oregon law. The Permit requires implementation of the ESCP as the primary mechanism to reduce pollutants in stormwater discharges resulting from construction activities.

DEQ appreciates your efforts to correct the violations by submitting documentation of your corrective actions on November 4, 2022. 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 Courtney Brown at 503-229-6839 or toll free in Oregon at 800-452-4011, extension 6839.

Sincerely,



Kieran O'Donnell, Manager
Office of Compliance and Enforcement

Enclosures

cc: Blair Edwards, Northwest Region Office, DEQ
Accounting, DEQ

1 BEFORE THE ENVIRONMENTAL QUALITY COMMISSION

2 OF THE STATE OF OREGON

3	IN THE MATTER OF:)	NOTICE OF CIVIL PENALTY
4	VENTURE PROPERTIES INC., an)	ASSESSMENT AND ORDER
4	Oregon corporation,)	
5)	
5	Respondent.)	CASE NO. WQ/SW-NWR-2022-582

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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 468B, ORS Chapter 183 and Oregon Administrative Rules (OAR) Chapter 340, Divisions 011, 012,
12 and 045.

13 II. FINDINGS OF FACT

14 1. On June 3, 2021, DEQ assigned Respondent coverage under the National Pollutant Discharge
15 Elimination System Construction Stormwater General Permit No. 1200-C (the Permit) for stormwater
16 discharges from the "Frog Pond Ridge" project located at 6720 SW Frog Pond Lane, in Wilsonville,
17 Oregon (the Project). The Permit was in effect at all material times.

18 2. The Project's stormwater discharges to a wetland and to Willow Creek.

19 Failing to Implement the Erosion and Sediment Control Plan (ESCP)

20 3. Schedule A, condition 4 of the Permit requires that permit registrants implement the Erosion
21 and Sediment Control Plan (ESCP) at all times, from initial soil disturbance until permit registration is
22 terminated.

23 4. Respondent's ESCP described the following best management practices: a construction
24 entrance, catch basin inlet protection, perimeter controls on the north side of the Project, trash
25 receptacles, perimeter controls (sediment fence and straw wattles) and check dams in the stormwater
26 conveyance channel, stabilization measures on soil stockpiles and concrete washwater cleanouts.

27 ///

1 5. On August 8, 2022, DEQ conducted an inspection of the Project. At the time of the inspection,
2 none of the best management practices listed in paragraph #4 had been implemented at the Project. In
3 addition, there was a soil stockpile located north of Frog Pond Lane that was placed in a lot adjacent to
4 the Project, outside of the permitted area and construction materials and stockpiles were placed to the
5 west of Frog Pond Lane, also outside of the permitted area.

6 6. On November 4, 2022, Respondent installed erosion and sediment control measures consistent
7 with its ESCP, including silt fencing, straw wattles, hydroseeding, a construction entrance, sheeting,
8 bales, and mulch.

9 Causing pollution to waters of the state

10 7. On or about August 8, 2022, sediment deposits were present in a wetland at the Project and in
11 the channel of Willow Creek.

12 8. Wetlands and Willow Creek and are considered “waters of the state” according to ORS
13 468B.005(10).

14 9. The discharge of sediment from construction activity alters the physical properties of waters of
15 the state and will or tends to render those waters harmful or detrimental to legitimate beneficial uses
16 including and to aquatic life and the habitat thereof and is considered “pollution” according to ORS
17 468B.005(5).

18 III. CONCLUSIONS

19 1. Respondent has violated ORS 468B.025(2) and Schedule A, condition 4 of the Permit by
20 failing to implement its ESCP. Specifically, Respondent failed to implement best management practices
21 described in its ESCP and expanded its construction activities (specifically, stockpiling and equipment
22 and material storage and staging) outside of the location described in its ESCP, as described in Section
23 II, paragraphs 3-5, above. This is a Class I violation according to OAR 340-012-0055(1)(r). DEQ
24 hereby assesses a \$7,189 civil penalty for this violation.

25 2. On or about August 8, 2022, Respondent violated ORS 468B.025(1)(a) by causing pollution to
26 waters of the state. Specifically, Respondent violated a condition of the Permit by failing to implement the
27 ESCP, as described above, and discharged sediment from the Project that altered the physical properties of

1 the wetland and Willow Creek, in a manner that will or tends to render such waters detrimental to aquatic
2 life and habitat thereof, as described in Section II, paragraphs 7-9. Such alterations are considered
3 “pollution” according to ORS 468B.005(5). This is a class I violation according to OAR 340-012-
4 0055(2)(1)(a). DEQ hereby assesses a \$5,200 civil penalty for this violation.

5 IV. ORDER TO PAY CIVIL PENALTY

6 Based upon the foregoing FINDINGS OF FACTS AND CONCLUSIONS, Respondent is
7 hereby ORDERED TO: Pay a total civil penalty of \$12,389. The determinations of the civil penalties are
8 attached as Exhibits No.1 and No.2 and are incorporated as part of this Notice.

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

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

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

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

20 You have a right to a contested case hearing on this Notice, if you request one in writing. DEQ
21 must receive your request for hearing **within 20 calendar days** from the date you receive this Notice. If
22 you have any affirmative defenses or wish to dispute any allegations of fact in this Notice or attached
23 exhibits, you must do so in your request for hearing, as factual matters not denied will be considered
24 admitted, and failure to raise a defense will be a waiver of the defense. (See OAR 340-011-0530 for
25 further information about requests for hearing.) You must send your request to: **DEQ, Office of**
26 **Compliance and Enforcement, 700 NE Multnomah Street, Suite 600, Portland, Oregon 97232**, fax
27 it to **503-229-6762** or email it to DEQappeals@deq.oregon.gov. An administrative law judge

1 employed by the Office of Administrative Hearings will conduct the hearing, according to ORS
2 Chapter 183, OAR Chapter 340, Division 011 and OAR 137-003-0501 to 0700. You have a right to be
3 represented by an attorney at the hearing, however you are not required to be. If you are an individual,
4 you may represent yourself. If you are a corporation, partnership, limited liability company,
5 unincorporated association, trust or government body, you must be represented by an attorney or a duly
6 authorized representative, as set forth in OAR 137-003-0555.

7 Active duty Service members have a right to stay proceedings under the federal Service
8 Members Civil Relief Act. For more information contact the Oregon State Bar at 1-800-
9 452-8260, the Oregon Military Department at 503-584-3571, or the nearest United States Armed
10 Forces Legal Assistance Office through <http://legalassistance.law.af.mil>. The Oregon Military
11 Department does not have a toll free telephone number.

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

18
19
20 8/15/2023
21 Date


20 
21 Kieran O'Donnell, Manager
22 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 1: Violating Schedule A, Condition 4 of the Permit in violation of ORS 468B.025(2) by failing to implement the ESCP developed for the Project.

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 \$4,000 for a Class I, moderate magnitude violation in the matrix listed in OAR 340-012-0140(3)(b)(A)(ii) and applicable pursuant to OAR 340-012-0140(3)(a)(E)(iii), because Respondent has coverage under an NPDES Stormwater Discharge General Permit for a construction site that is 17 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 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 a violation with a duration of more than one day is a separate occurrence when determining the O factor. The ESCP was not implemented on August 8, 2022. Respondent submitted documentation that it had taken corrective action on November 4, 2022, for a total of more than 28 days.

"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. Respondent applied for coverage under the Permit and has a copy of the Permit, which expressly requires Respondent to comply with the conditions set forth in the Permit. Respondent prepared an ESCP that called for erosion and sediment controls and best management practices yet those were not

implemented at the Project. Respondent failed to take reasonable care to avoid a foreseeable risk that it would violate the Permit's requirement and Oregon law.

"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 best management practices at the Project on or about November 4, 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 \$1,189. Respondent delayed from August 8, 2022 until November 4, 2022 spending \$51,694 to install the following erosion and sediment control measures: Silt fence (3,000' x 2.50/foot) = \$7,500; Straw waddle (1,000 x \$2/foot) = \$2,000; Hydroseeding (5 acres x \$3,700/acre) = \$18,500; Construction entrance (\$925 each x 3) = \$2,775; Plastic sheeting (2 acres, 146 sheets, \$39/sheet) = \$5,694; Straw bales (50 x \$4.50 ea) = \$225; Straw mulch (5 acres) x \$3,000/acre = \$15,000. This "EB" was calculated pursuant to OAR 340-012-0150(1) using the U.S. Environmental Protection Agency's BEN computer model.

PENALTY CALCULATION: $Penalty = BP + [(0.1 \times BP) \times (P + H + O + M + C)] + EB$
 $= \$4,000 + [(0.1 \times \$4,000) \times (0 + 0 + 4 + 4 + -3)] + \$1,189$
 $= \$4,000 + (\$400 \times 5) + \$1,189$
 $= \$4,000 + \$2,000 + \$1,189$
 $= \$7,189$

EXHIBIT 2

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

VIOLATION 2: Violating ORS 468B.025(1)(a) by discharging sediment from the Project which caused pollution to waters of the state on or before August 8, 2022.

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

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 \$4,000 for a Class I, moderate magnitude violation in the matrix listed in OAR 340-012-0140 (3)(b)(A)(ii) and applicable pursuant to OAR 340-012-0140 (3)(a)(E)(iii) because Respondent has coverage under an NPDES Stormwater Discharge General Permit for a construction site that is 17 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 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 0 according to OAR 340-012-0145(4)(a) because there is insufficient information on which to base a finding under paragraphs (4)(b) and (4)(d).

"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. Respondent applied for coverage under the Permit and has a copy of the Permit, which expressly requires Respondent to comply with the conditions set forth in the Permit to minimize and control the discharge of sediment and other industrial wastes from the Project. The Permit also requires compliance with state water quality laws. By failing to adhere to the Permit conditions, designed to prevent discharge of uncontrolled pollutants and to protect waters of the state within the Project, Respondent failed to take reasonable care to avoid a foreseeable risk that it would cause pollution to waters of the state.

"C" is Respondent's efforts to correct or mitigate the violation and receives a value of -1 according to OAR 340-012-0145(6)(e) because Respondent made reasonable efforts to ensure the violation would not be repeated by implementing DEQ's requested corrective actions on November 4, 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. Any economic Respondent has gained through this violation is captured by the EB assessment in Ex.1.

PENALTY CALCULATION: $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$

$$\begin{aligned} &= \$4,000 + [(0.1 \times \$4,000) \times (0 + 0 + 0 + 4 + -1)] + \$0 \\ &= \$4,000 + (\$400 \times 3) + \$0 \\ &= \$4,000 + \$1,200 + \$0 \\ &= \$5,200 \end{aligned}$$

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 15, 2023
RESPONSE DATE :	October 24, 2023
TOTAL PENALTY:	\$12,389.00

Account Name:	FROG POND RIDGE LOT 1		
Account Type:	Vendor/Organization/Company	Reference Number:	CPGFD2400005
SubSystem ID:	207095	FIMS Acct. ID:	12116

Penalty Summary

Penalty Amount	Interest	Adjustment	Amount Paid	Total Penalty
\$ 12,389.00	\$ 0.00	\$ 0.00	\$ 0.00	\$ 12,389.00

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.	CPGFD2400005		
PAYCODE:	00401 7400 10040 74001 0500 000000 00		
FEE PROGRAM ID:	950	RESPONSE DATE:	October 24, 2023
FIMS ACCT. ID:	12116	TOTAL PENALTY DUE:	\$12389.00

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 0095000121162(CPGF)240000500012389000



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
8/14/2023	2022-582 WQ-SW-NWR-2022-582	\$12,389.00

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 _____