



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

February 27, 2024

CERTIFIED MAIL: 9589 0710 5270 0688 6529 25

Gilbert Gramson
15 NW 17th Place
Warrenton, OR 97146

Re: Notice of Civil Penalty Assessment and Order
Case No. WQ-SW-NWR-2022-596

This letter is to inform you that the Oregon Department of Environmental Quality (DEQ) has issued you a civil penalty of \$24,054 for conducting construction activities without a National Pollutant Discharge Elimination System Construction Stormwater General Permit No. 1200-C (the Permit) from the site located at the north end of Kalmia Ave in Warrenton, Oregon (the Site).

DEQ issued this penalty because your failure to obtain coverage under the Permit for construction activities at the Site posed a risk of harm to waters of the state, including Clear Lake and Shag Lake. The Permit requires that registrants implement and maintain sufficient erosion and sediment controls and best management practices to prevent the discharge of sediment and sediment-laden stormwater from the site and into waters of the state. Sediment carried in stormwater runoff from construction sites is considered pollution that poses a risk of harm to beneficial uses of state waters, including the use of those waters as habitat for aquatic organisms. Sediment pollution can degrade water quality and harm aquatic life by covering food sources and smothering invertebrate organisms. Without permit coverage, you failed to implement proper controls, and your activities posed a risk to waters of the state.

Included in Section IV is an order requiring you to apply for permit coverage and implement erosion and sediment controls by 60 days from the date this order becomes final. \$21,054 of the civil penalty represents the economic benefit you gained by failing to obtain Permit coverage and implement the Permit. If you complete these requirements, DEQ will consider recalculating the costs as delayed rather than avoided and will reduce the civil penalty accordingly.

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 or emily.knobbe@deq.oregon.gov.

Sincerely,



Becka Puskas, Interim Manager
Office of Compliance and Enforcement

Enclosures

cc: Blair Edwards, Northwest Region
Benjamin Benninghoff, DEQ
Accounting, DEQ

1 BEFORE THE ENVIRONMENTAL QUALITY COMMISSION

2 OF THE STATE OF OREGON

3 IN THE MATTER OF:
4 GILBERT GRAMSON,

5 Respondent.

) NOTICE OF CIVIL PENALTY
) ASSESSMENT AND ORDER

) CASE NO. WQ-SW-NWR-2022-596

6 I. AUTHORITY

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

11 II. FINDINGS OF FACT

12 1. Respondent owns the 3-acre property located at the north end of Kalmia Avenue in
13 Warrenton, Oregon (the Site).

14 2. The Site is located to the west of Clear Lake and to the east of a wetland, which drains
15 south to Shag Lake.

16 3. At all relevant times, Respondent was not assigned coverage under the National
17 Pollutant Discharge Elimination System Construction Stormwater General Permit No. 1200-C (the
18 Permit).

19 4. On September 1, 2022, DEQ inspected the Site. At the time of the inspection:

20 a. There was significant excavation underway that had disturbed at least one acre;

21 b. There was waste material deposited at the Site;

22 c. There was a sand berm constructed at the west edge of the Site bordering the
23 wetland;

24 d. The sand berm had eroded in one location along the wetland border; and

25 e. Other than the degrading sand berm, there were no erosion and sediment control
26 measures in place.

27 \\\

\\

1 III. CONCLUSIONS

2 1. Respondent violated ORS 468B.050(1)(d) and OAR 340-045-0015(1)(d) by conducting
3 activity that would cause an increase in the discharge of wastes to waters of the state without holding a
4 DEQ permit. Specifically, from at least September 1, 2022, to the date of this Notice, Respondent
5 conducted construction activities at the Site including excavating. Stormwater run-off carrying
6 sediment from Respondent’s activities is “waste” pursuant to ORS 468B.005(9) because it tends to be
7 detrimental to beneficial uses of waters of the state. The wetland is a “water of the state,” pursuant to
8 ORS 468B.005(15). This is a Class I violation, according to OAR 340-012-0055(1)(d). DEQ hereby
9 assesses a \$24,054 civil penalty for this violation.

10 2. Respondent violated ORS 468B.025(1) by placing wastes where such wastes are likely to
11 escape or be carried into the waters of the state. Specifically, Respondent placed debris and waste material
12 at the Site with no control measures. The excavation pit lacked any stabilization measures, and the sand
13 berm had eroded, allowing for potential discharges to escape into the neighboring wetland, Clear Lake, and
14 Shag Lake. The debris and the sand are “waste” pursuant to ORS 468B.005(9) because they tend to be
15 detrimental to beneficial uses of waters of the state. The wetland is a “water of the state,” pursuant to ORS
16 468B.005(10). This is a Class II violation, according to OAR 340-012-0055(2)(c). DEQ has not assessed a
17 civil penalty for this violation.

18 IV. ORDER TO PAY CIVIL PENALTY 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 \$24,054. The determination of the civil penalty is attached as
22 Exhibit 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 2. Apply for 1200-C Permit coverage by submitting an Erosion and Sediment Control Plan
7 (ESCP) and approved Land Use Compatibility.

8 3. Install required perimeter controls, temporarily stabilize all disturbed areas at the Site, and
9 install a construction entrance in accordance with the ESCP.

10 Within 60 days of this order becoming final by operation of law or on appeal, written
11 documentation demonstrating Respondent's compliance must be sent to: Blair Edwards, 700 NE
12 Multnomah St, Ste #600, Portland, OR 97232.

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

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

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

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

12
13
14
15 2/27/2024
16 Date

15 Rebecca J Puskas
16 Becca Puskas, Interim Manager
17 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 NO. 1 Conducting unpermitted construction activities in violation of ORS 468B.050(1)(d) and OAR 340-045-0015(1)(d).

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

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). Respondent should have applied for coverage under the Permit for a construction site that is more than one but less than five 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 violation is a separate occurrence. DEQ inspected the Site on September 1, 2022. As of the date of this Notice, the Site has not obtained Permit coverage, nor has it been stabilized. Therefore, there are more than 28 occurrences of the violation.

"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. According to OAR 340-012-0030(15), negligent means the respondent failed to take reasonable care to avoid a foreseeable risk of conduct constituting or resulting in a violation. Respondent operates neighboring properties and has conducted permitted construction at those properties. Conducting significant excavation at the Site created the foreseeable risk that the Site would not be stabilized and create an increased risk of sediment discharge to waters of the state. Respondent failed to take reasonable care to prevent the risk of conduct resulting in a

violation by failing to obtain permit coverage and failing to install appropriate erosion control measures.

"C" is Respondent's efforts to correct or mitigate the violation, and receives a value of 2 according to OAR 340-012-0145(6)(g) because Respondent did not address the violation as described in paragraphs (6)(a) through (6)(e) and the facts do not support a finding under paragraph (6)(f). As of the date of this Notice, Respondent has not obtained 1200-C Permit coverage, nor has Respondent stabilized the Site.

"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 \$21,054. This is the amount Respondent gained by avoiding spending \$29,271 to obtain Permit coverage and implement the requirements of the 1200-C Permit. 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 x \$1,500) x (0 + 0 + 4 + 4 + 2)] + \$21,054
= \$1,500 + (\$150 x 10) + \$21,054
= \$1,500 + \$1,500 + \$21,054
= \$24,054

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: | February 27, 2024 |
| RESPONSE DATE : | May 7, 2024 |
| TOTAL PENALTY: | \$24,054.00 |

| | | | |
|----------------------|-----------------------------|--------------------------|--------------|
| Account Name: | KALMIA AVENUE FILL | | |
| Account Type: | Vendor/Organization/Company | Reference Number: | CPGFD2400045 |
| SubSystem ID: | 207819 | FIMS Acct. ID: | 15486 |

Penalty Summary

| Penalty Amount | Interest | Adjustment | Amount Paid | Total Penalty |
|----------------|----------|------------|-------------|---------------|
| \$ 24,054.00 | \$ 0.00 | \$ 0.00 | \$ 0.00 | \$ 24,054.00 |

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. | CPGFD2400045 | | |
| PAYCODE: | 00401 7400 10040 74001 0500 000000 00 | | |
| FEE PROGRAM ID: | 950 | RESPONSE DATE: | May 7, 2024 |
| FIMS ACCT. ID: | 15486 | TOTAL PENALTY DUE: | \$24054.00 |

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 0095000154863CPGFD240004500024054006



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 |
|------------------|-----------------------------|-------------|
| 2/26/2024 | 2022-596 WQ-SW-NWR-2022-596 | \$24,054.00 |

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 _____