



# 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 15, 2024

CERTIFIED MAIL: 9589 0710 5270 0688 6528 40

Curtis and Nicole Graham  
3375 SW Ridgewood Ave  
Portland, OR 97225

CERTIFIED MAIL: 9589 0710 5270 0688 6528 64

Curtis and Nicole Graham  
Brookside Inn on Abbey Rd  
8243 NE Abbey Rd  
Carlton, OR 97111

Re: Notice of Civil Penalty Assessment and Order  
Case No. WQ-NP-WR-2023-082

This letter is to inform you that the Oregon Department of Environmental Quality (DEQ) has issued you a civil penalty of \$8,400 for causing pollution to Millican Creek. Specifically, you released a large quantity of turbid water from your pond into the creek, altering the characteristics of the creek, which is harmful to aquatic life.

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. 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 portion of the penalty. Further information is available by calling the number below or at <http://www.oregon.gov/deq/Regulations/Pages/SEP.aspx>.

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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](mailto:emily.knobbe@deq.oregon.gov).

Sincerely,

A handwritten signature in cursive script that reads "Rebecca L Puskas".

Becka Puskas, Interim Manager  
Office of Compliance and Enforcement

Enclosures

cc: Grace Goldrich-Middaugh, Eugene  
Heather Tugaw, 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 CURTIS AND NICOLE GRAHAM, ) ASSESSMENT AND ORDER  
5 Respondents. ) CASE NO. WQ-NP-WR-2023-082

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. Respondents own the property located at 8243 NE Abbey Rd in Carlton, Oregon (the  
13 Site).
- 14 2. There is an approximately 2.5-acre pond at the Site. The pond receives flow from  
15 Millican Creek at the northeast end and discharges to Millican Creek at the southwest end. The water  
16 level of the pond is controlled by a headgate at the southwest end.
- 17 3. On or about May 23, 2023, Respondents lowered the headgate of the pond by  
18 approximately 5.5 inches, releasing approximately 370,000 gallons of water into Millican Creek.
- 19 4. The sudden increase in flow of water in the creek caused the water level to rise above  
20 the normal waterline and onto the banks, causing the water in the creek to become turbid.

21 III. CONCLUSIONS

- 22 1. Respondents violated ORS 468B.025(1)(a) by causing pollution to waters of the state.  
23 Specifically, Respondents released a large quantity of turbid water from a pond on their property into  
24 Millican Creek, as described in Section II above. Millican Creek is “waters of the state,” pursuant to  
25 ORS 468B.005(10). Turbidity is “pollution” according to ORS 468B.005(5) because it alters the  
26 physical and chemical properties of waters of the state, which tends to be detrimental to aquatic life.  
27 This is a Class I violation, according to OAR 340-012-0055(1)(a). DEQ hereby assesses a \$8,400 civil  
penalty for this violation.

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 \$8,400. The determination of the civil penalty is attached as Exhibit  
5 1 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, your check or money  
7 order must be made payable to "**Department of Environmental Quality**" and sent to the **DEQ,**  
8 **Business Office, 700 NE Multnomah Street, Suite 600, Portland, Oregon 97232.**

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

24 \\\n25 \\\n26 \\\n27 \\\n

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.

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15 2/15/2024  
16 Date

Becka Puskas  
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Becka Puskas, Interim 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 NO. 1 Violating ORS 468B.025(1)(a) by causing pollution to waters of the state.

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 \$6,000 for a Class I, moderate magnitude violation in the matrix listed in OAR 340-012-0140(2)(b)(A)(ii) and applicable pursuant to OAR 340-012-0140(2)(a)(D) because Respondents did not have a permit to discharge to waters of the state.

"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 was only one occurrence of the violation. Respondents discharged turbid water to Millican Creek on one day, May 23, 2023.

"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. The outflow of water from the pond located at the Site is controlled by a headgate with boards at different levels. On or about May 23, 2023, the height of the headgate was lowered by approximately 5.5 inches. It was a foreseeable risk that lowering the height of the headgate on a 2.5-acre pond would cause a significant quantity of water to enter Millican Creek and increase the turbidity of the creek. Respondents failed to take reasonable care to avoid the risk of the violation.

"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 or the effects of the violation could not be corrected or minimized.

"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 any benefit was likely de minimis.

PENALTY CALCULATION:  $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$   
= \$6,000 + [(0.1 x \$6,000) x (0 + 0 + 0 + 4 + 0)] + \$0  
= \$6,000 + (\$600 x 4) + \$0  
= \$6,000 + \$2,400 + \$0  
= \$8,400