



# 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

April 4, 2024

CERTIFIED MAIL: 9589 0710 5270 0688 6530 38

St. Helens Assets, LLC  
c/o Registered Agents Inc, Registered Agent  
2355 State St, Ste 101  
Salem, OR 97301

Re: Notice of Civil Penalty Assessment and Order  
Case No. WQ-SW-NWR-2024-504

This letter is to inform you that the Oregon Department of Environmental Quality (DEQ) has issued you a civil penalty of \$14,800 for causing pollution to waters of the state and for violating your National Pollutant Discharge Elimination System (NPDES) Construction Stormwater General Permit No. 1200-C (the Permit) for the site located at latitude 45.8692, longitude -122.8329 in St. Helens, Oregon.

DEQ issued this penalty because your failure to implement your Erosion and Sediment Control Plan for your activities at the Site resulted in turbid stormwater run-off causing pollution to Perry Creek. The Permit requires that registrants implement and maintain sufficient erosion and sediment controls and best management practices to prevent the discharge of sediment and turbid stormwater from the site and into waters of the state. Sediment-laden stormwater run-off from construction sites poses a risk of harm to beneficial uses of state waters, including the use of those waters as habitat for aquatic organisms. The discharge of sediment can degrade water quality and harm aquatic life by covering up food sources and smothering invertebrate organisms living in wetlands and creeks. You failed to implement proper controls required by the Permit and caused pollution to waters of the state.

DEQ appreciates your efforts to correct the violation by implementing erosion and sediment controls pursuant to your Erosion and Sediment Control Plan. 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](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 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](mailto:emily.knobbe@deq.oregon.gov).

Sincerely,



Becca Puskas, Interim Manager  
Office of Compliance and Enforcement

Enclosures

cc: Hannah Smiley, Northwest Region  
Benjamin Benninghoff, 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 ST. HELENS ASSETS, LLC, ) ASSESSMENT AND ORDER  
5 Respondent. ) CASE NO. WQ-SW-NWR-2024-504

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 468B, ORS Chapter 183 and Oregon Administrative Rules (OAR) Chapter 340, Divisions  
10 011, 012, and 045.

11 II. FINDINGS OF FACT

12 1. At all relevant times, Respondent was assigned coverage under the National Pollutant  
13 Discharge Elimination System Construction Stormwater Discharge General Permit No. 1200-C (the  
14 Permit), which authorizes Respondent to discharge only in conformance with the Permit from the 15.7-  
15 acre project site located at latitude 45.8692, longitude -122.8329 in St. Helens, Oregon (the Site).

16 2. The Site is located to the east of Perry Creek and to the northeast of Milton Creek.

17 3. Pursuant to Schedule A.4 of the Permit, “the registrant must implement the [Erosion and  
18 Sediment Control Plan (ESCP)] at all times. . . Failure to implement any of the control measures or  
19 practices described in the ESCP is a permit violation.”

20 4. Respondent’s ESCP requires the following:

21 a. Standard Erosion and Sediment Control Notes (page 1):

22 i. Retain a copy of the ESCP at the Site and make it available on request to DEQ  
23 (3);

24 ii. Maintain, repair, and implement erosion and control measures, including  
25 protection for catch basins (11).

26 iii. Apply soil stabilization measures on all disturbed areas (13);  
27

- iv. Within 24 hours, significant sediment that has left the construction site, must be remediated. Investigate the cause of the sediment release and implement steps to prevent a recurrence of the discharge within the same 24 hours (28);
      - v. Properly dispose of waste, including sediment retained by BMPs [Best Management Practices] (32).
    - b. Erosion Prevention Techniques & Methods (page 1):
      - i. A gravel construction entrance is required (a);
      - ii. The erosion and sediment control measures shall remain in place and be maintained in good condition until all disturbed soil areas are permanently stabilized by installation and establishment of landscaping, grass, mulching, or otherwise covered and protected from erosion (d).
    - c. Erosion and Sediment Control BMP Implementation (page 2):
      - i. All base ESC measures (inlet protection, perimeter sediment control, gravel construction entrances, etc.) must be in place, functional, and approved in an initial inspection prior to commencement of construction activities (1);
      - ii. All “sediment barriers (to be installed after grading)” shall be installed immediately following the establishment of finished grade as shown on these plans (2); and
      - iii. Long term slope stabilization measures “including matting” shall be in place over all exposed soils by October 1 (3).
    - d. Grading and Utility, Erosion and Sediment Construction Notes (page 2):
      - i. Temporary slope stabilization measures shall include: covering exposed soil with plastic sheeting, straw mulching, wood chips, or other approved measures (4).
  5. On December 27, 2022, the City of St. Helens visited the Site. At the time of the inspection:
    - a. The catchbasin that drains to Perry Creek was entirely covered with sediment;
    - b. Highly turbid stormwater was ponding at the edge of the Site; and
    - c. Turbid stormwater was bypassing portions of the sediment fence.



1 2. Respondent violated 468B.025(2) and Schedule A.4 of the Permit by failing to implement the  
2 ESCP. Specifically, disturbed soils lacked stabilization measures, erosion controls were not maintained,  
3 sediment collected by BMPs had not been disposed of, sediment and erosion controls were improperly  
4 implemented and nonfunctional, waste was improperly disposed of, and there was no construction entrance  
5 located at the site, as described in Section II paragraphs 4-5 above. This is a Class I violation, according to  
6 OAR 340-012-0055(1)(r). DEQ hereby assesses a \$7,600 civil penalty for this violation.

#### 7 IV. ORDER TO PAY CIVIL PENALTY

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

10 1. Pay a total civil penalty of \$14,800. The determination of the civil penalties are attached as  
11 Exhibits 1-2 and are incorporated as part of this Notice.

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

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

19 Pay by check or money order: Make checks payable to "Department of Environmental  
20 Quality" and mail to the address on the enclosed payment slip. Please make sure to include the payment  
21 slip with your check or money order.

#### 22 V. NOTICE OF RIGHT TO REQUEST A CONTESTED CASE HEARING

23 You have a right to a contested case hearing on this Notice, if you request one in writing. DEQ  
24 must receive your request for hearing **within 20 calendar days** from the date you receive this Notice. If  
25 you have any affirmative defenses or wish to dispute any allegations of fact in this Notice or attached  
26 exhibits, you must do so in your request for hearing, as factual matters not denied will be considered  
27 admitted, and failure to raise a defense will be a waiver of the defense. (See OAR 340-011-0530 for

1 further information about requests for hearing.) You must send your request to: **DEQ, Office of**  
2 **Compliance and Enforcement, 700 NE Multnomah Street, Suite 600, Portland, Oregon 97232**, fax  
3 it to **503-229-6762** or email it to **DEQappeals@deq.oregon.gov**. An administrative law judge  
4 employed by the Office of Administrative Hearings will conduct the hearing, according to ORS  
5 Chapter 183, OAR Chapter 340, Division 011 and OAR 137-003-0501 to 0700. You have a right to be  
6 represented by an attorney at the hearing, however you are not required to be. If you are an individual,  
7 you may represent yourself. If you are a corporation, partnership, limited liability company,  
8 unincorporated association, trust or government body, you must be represented by an attorney or a duly  
9 authorized representative, as set forth in OAR 137-003-0555.

10 Active duty Service members have a right to stay proceedings under the federal Service  
11 Members Civil Relief Act. For more information contact the Oregon State Bar at 1-800-  
12 452-8260, the Oregon Military Department at 503-584-3571, or the nearest United States Armed  
13 Forces Legal Assistance Office through <http://legalassistance.law.af.mil>. The Oregon Military  
14 Department does not have a toll free telephone number.

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

21  
22  
23  
24 4/4/2024  
Date

Rebecca J Puskas  
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 Perry Creek.

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 the NPDES Construction Stormwater General Permit No. 1200-C for a site that disturbs 12.35 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 was only one occurrence of the violation. Respondent discharged turbid stormwater to Perry Creek on one day, December 28, 2022.

"M" is the mental state of the Respondent, and receives a value of 8 according to OAR 340-012-0145(5)(d) because Respondent's conduct was reckless. According to OAR 340-012-0030(20), reckless means the respondent consciously disregarded a substantial and unjustifiable risk that the result would occur or that the circumstance existed. The risk must be of such a nature and degree that disregarding that risk constituted a gross deviation from the standard of care a reasonable person would observe in that situation. Respondent is a permittee under the 1200-C permit. The Site has clear instructions provided in the ESCP on how to prevent sediment runoff into waters of the state. On December 28, 2022, the Site was in such poor condition that significant amount of sediment was entering the catch basin that drains to Perry Creek. This created a substantial and unjustifiable risk that pollution would

escape into Perry Creek. Respondent's disregard of Permit requirements to such an extent was a gross deviation from the standard of care a reasonable person would observe.

"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 economic advantage that Respondent gained was likely de minimis.

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

$$\begin{aligned} &= \$4,000 + [(0.1 \times \$4,000) \times (0 + 0 + 0 + 8 + 0)] + \$0 \\ &= \$4,000 + (\$400 \times 8) + \$0 \\ &= \$4,000 + \$3,200 + \$0 \\ &= \$7,200 \end{aligned}$$

EXHIBIT 2

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

VIOLATION NO. 2: Violating ORS 468B.025(2) and Schedule A.4 of the Permit by failing to substantially implement the Erosion and Sediment Control Plan.

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 the NPDES Construction Stormwater General Permit No. 1200-C for a site that disturbs 12.35 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 3 according to OAR 340-012-0145(4)(c) because there were from seven to 28 occurrences of the violation. Each day of violation is a separate occurrence. Respondent failed to implement the ESCP for at least 14 days from December 27, 2022, until January 10, 2023.

"M" is the mental state of the Respondent, and receives a value of 8 according to OAR 340-012-0145(5)(d) because Respondent's conduct was reckless. According to OAR 340-012-0030(20), reckless means the respondent consciously disregarded a substantial and unjustifiable risk that the result would occur or that the circumstance existed. The risk must be of such a nature and degree that disregarding that risk constituted a gross deviation from the standard of care a reasonable person would observe in that situation. Respondent's Permit and ESCP clearly describe requirements for implementation, including stabilization of disturbed soil, construction entrances, and maintenance of erosion and sediment controls.

Respondent disregarded a substantial risk that conditions of the Permit would be violated if Respondent did not implement the ESCP. Further, Respondent failed to implement the ESCP to the extent that there was significant sediment buildup outside of the Site, and sediment was discharged into waters of the state. Failing to implement the ESCP to such a degree was a gross deviation from the standard of care that a reasonable person would observe in that situation.

"C" is Respondent's efforts to correct or mitigate the violation, and receives a value of -2 according to OAR 340-012-0145(6)(d) because Respondent eventually made some efforts to correct the violation. By January 10, 2023, Respondent cleaned up the sediment and trash, repaired collapsed sediment fencing and placed new sediment fencing and some straw wattles, and installed catch basin protections at the Site. By January 25, Respondent installed some stabilization measures on the slopes such as matting and some straw wattles. By February 3, Respondent completed slope stabilization measures, including additional wattles and plastic sheeting.

"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 economic benefit that Respondent gained as a result of delaying implementation of the ESCP was de minimis.

PENALTY CALCULATION:  $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$   
= \$4,000 + [(0.1 x \$4,000) x (0 + 0 + 3 + 8 + -2)] + \$0  
= \$4,000 + (\$400 x 9) + \$0  
= \$4,000 + \$3,600 + \$0  
= \$7,600

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)**

<b>DATE:</b>	April 4, 2024
<b>RESPONSE DATE :</b>	June 13, 2024
<b>TOTAL PENALTY:</b>	\$14,800.00

<b>Account Name:</b>	ST. HELENS ASSETS LLC <ELK RIDGE 1, 2 & 4> <122878>		
<b>Account Type:</b>	Vendor/Organization/Company	<b>Reference Number:</b>	CPGFD2400054
<b>SubSystem ID:</b>	191485	<b>FIMS Acct. ID:</b>	2641

**Penalty Summary**

Penalty Amount	Interest	Adjustment	Amount Paid	Total Penalty
\$ 14,800.00	\$ 0.00	\$ 0.00	\$ 0.00	\$ 14,800.00

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



<b>REFERENCE NO.</b>	CPGFD2400054		
<b>PAYCODE:</b>	00401 7400 10040 74001 0500 000000 00		
<b>FEE PROGRAM ID:</b>	950	<b>RESPONSE DATE:</b>	June 13, 2024
<b>FIMS ACCT. ID:</b>	2641	<b>TOTAL PENALTY DUE:</b>	\$14800.00

**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 0095000026415CPGFD240005400014800007



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
4/3/2024	2024-504 WQ-SW-NWR-2024-504	\$14,800.00

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