



Oregon

Kate Brown, 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

January 10, 2020

CERTIFIED MAIL: 70171450000083100397

Summit Excavation LLC, A Washington LLC
c/o Sandi Sohler, Registered Agent
3816 Summit Drive
Hood River, OR 97031

Re: Notice of Civil Penalty Assessment and Order
Case No. WQ/OS-ER-2019-207

This letter is to inform you that DEQ has issued you a civil penalty of \$3,769 for performing sewage disposal services without a DEQ license. In May 2019, you installed an onsite system in Parkdale without holding an installer's license. This is a violation of Oregon environmental law.

DEQ issued this penalty because Oregon law requires persons performing sewage disposal services to be licensed and bonded in order to ensure the protection of the public's health and the environment. Sewage poses a public health hazard through either direct human exposure or human exposure to insects or other animals that have been in contact with the sewage. Sewage is also a significant pollutant that can harm aquatic life, contaminate drinking water and impair recreational and commercial uses of water.

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, OR 97232

Via email – DEQappeals@deq.state.or.us

Via fax – 503-229-5100

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 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.

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If you have any questions, please contact DEQ Environmental Law Specialist Esther Westbrook at (503) 229-5374. You may call toll-free within Oregon at 1-800-452-4011, extension 5374.

Sincerely,



Kieran O'Donnell, Manager
Office of Compliance and Enforcement

Enclosures

cc: Summit Excavation, LLC, PO Box 530, Dallesport, WA, 98617
Mike Matthews, Hood River County Health Department, 1109 June Street, Hood River, OR,
97031
Randy Trox, Eugene Office, DEQ
Accounting, DEQ
John Koestler, WQ, DEQ

1 BEFORE THE ENVIRONMENTAL QUALITY COMMISSION

2 OF THE STATE OF OREGON

3	IN THE MATTER OF:)	
4	SUMMIT EXCAVATION LLC,)	NOTICE OF CIVIL PENALTY
5	A WASHINGTON LLC,)	ASSESSMENT AND ORDER
6	a Washington limited liability company,)	
7	Respondent.)	CASE NO. WQ/OS-ER-2019-207

7 I. AUTHORITY

8 The Department of Environmental Quality (DEQ) issues this Notice of Civil Penalty Assessment
9 and Order (Notice) pursuant to Oregon Revised Statutes (ORS) 468.100 and 468.126 through 468.140,
10 ORS Chapters 183, 454 and 468B and Oregon Administrative Rules (OAR) Chapter 340, Divisions 011,
11 012 and 071.

12 II. FINDINGS OF FACT

13 1. On or about May 10, 2019, Respondent constructed a new onsite wastewater treatment
14 system at a commercial property located at 6670 Trout Creek Ridge Road in Parkdale, Hood River
15 County, Oregon.

16 2. According to OAR 340-071-0100(141), "sewage disposal service" includes the construction
17 of onsite wastewater treatment systems.

18 3. On or about May 10, 2019, Respondent did not hold a sewage disposal service installer's
19 license from DEQ.

20 III. CONCLUSION

21 On or about May 10, 2019, Respondent violated ORS 454.695(1) and OAR 340-071-
22 0600(1) by performing sewage disposal services without the required DEQ license, as described in
23 Section II, paragraphs 1-3 above. This is a Class I violation according to OAR 340-012-0060(1)(a).
24 DEQ hereby assesses a \$3,769 civil penalty for this violation. The determination of this civil penalty is
25 attached and incorporated as Exhibit No. 1.

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1 IV. ORDER TO PAY CIVIL PENALTY

2 Based upon the foregoing FINDINGS OF FACTS AND CONCLUSION, Respondent is hereby
3 ORDERED TO:

4 Pay a civil penalty of \$3,769. The determination of the civil penalty is attached as Exhibit No. 1,
5 and 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 order
7 must be made payable to "**State Treasurer, State of Oregon**" and sent to the **DEQ, Business Office,**
8 **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 **503-229-5100** or email it to **DEQappeals@deq.state.or.us**. 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 Active duty Service members have a right to stay proceedings under the federal Service
25 Members Civil Relief Act. For more information contact the Oregon State Bar at 1-800-
26 452-8260, the Oregon Military Department at 503-584-3571, or the nearest United States Armed

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1 Forces Legal Assistance Office through <http://legalassistance.law.af.mil>. The Oregon Military
2 Department does not have a toll free telephone number.

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

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1/10/2020

Date



Kieran O'Donnell, Manager
Office of Compliance and Enforcement

EXHIBIT NO. 1

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

VIOLATION: Performing sewage disposal services without first obtaining the required DEQ license, in violation of ORS 454.695(1) and OAR 340-071-0600(1).

CLASSIFICATION: This is a Class I violation pursuant to OAR 340-012-0060(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 \$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)(G) because Respondent violated an onsite sewage disposal statute, rule, permit or related order and is not a residential owner-occupant.

"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 installed an onsite system without holding a DEQ license on one day, on or about May 10, 2019.

"M" is the mental state of the Respondent and receives a value of 8 according to OAR 340-012-0145(5)(d), because Respondent acted or failed to act intentionally with actual knowledge of the requirement. Respondent's employee Justin Strain completed the onsite installer certification class and passed the exam, so he knew that a DEQ license is required to perform sewage disposal services in Oregon. Additionally, the new construction permit issued by Hood River County states that work must be done by the permittee or a licensed sewage disposal business and references the administrative rules that apply to onsite installers. When Respondent installed the onsite system, it had actual knowledge that it did

not have a current sewage disposal service license and that the license was required to perform this work.

"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 \$1,069. This is the amount Respondent gained by avoiding spending approximately \$1,414 to apply for a DEQ sewage disposal services license and \$25 for the cost of the bond for one month. This "EB" was calculated pursuant to OAR 340-012-0150(1) using the U.S. Environmental Protection Agency's BEN computer model.

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

$$\begin{aligned} &= \$1,500 + [(0.1 \times \$1,500) \times (0 + 0 + 0 + 8 + 0)] + \$1,069 \\ &= \$1,500 + [\$150 \times 8] + \$1,069 \\ &= \$1,500 + \$1,200 + \$1,069 \\ &= \$3,769 \end{aligned}$$