



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

June 5, 2020

CERTIFIED MAIL: 7017 1450 0000 8310 3312

Prologis
c/o The Prentice-Hall Corporation System, Inc., Registered Agent
1127 Broadway St. NE, Suite 310
Salem, OR 97301

Re: Notice of Civil Penalty Assessment and Order
Case No. WQ/SW-NWR-2020-060

DEQ is committed to balancing its vital obligation to enforce the law and protect the environment with a consideration of the dramatic disruptions to public health and the economy caused by the COVID-19 outbreak. We understand the outbreak may impact your ability to timely appeal, pay the assessed civil penalty, or comply with this order. You may submit to DEQ documentation identifying whether COVID-19-related disruption affects your ability to comply with this order. Visit our webpage <https://www.oregon.gov/deq/Pages/covid-19.aspx> for more information about documenting specific COVID-19 disruptions your facility may be encountering and how that affects your ability to comply. DEQ will exercise reasonable discretion regarding settlement of this order.

This letter is to inform you that DEQ has issued you a total civil penalty of \$18,397 for water quality violations at the PDX23 construction site in Portland. You have coverage under the NPDES Stormwater Discharge Permit No. 1200-C for construction activities at the site. On March 5, 2020, DEQ inspected the site and found that you failed to implement many conditions of your Erosion and Sediment Control Plan (ESCP). Also, you failed to conduct visual monitoring as required in the Permit. These are violations of Oregon environmental law.

DEQ issued this penalty because implementing the ESCP is essential to ensure compliance with the terms of your NPDES 1200-C Permit, as it includes pollution control measures that are specific to your site. These measures are intended to prevent the discharge of sediment to surface waters, as sediment can harm aquatic life and impact beneficial uses of those waters. The Permit requires regular visual monitoring of the entire site so that any problems or deficiencies with erosion and sediment control measures can be identified and promptly corrected.

DEQ appreciates your efforts to correct the violation by implementing the required erosion and sediment control measures at the site. DEQ considered these efforts when determining the amount of civil penalty.

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.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.

If you have any questions, please contact Esther Westbrook at 503-229-5374 or toll free in Oregon at 800-452-4011, extension 5374.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Kieran O'Donnell', is written over a horizontal line.

Kieran O'Donnell, Manager
Office of Compliance and Enforcement

Enclosures

cc: Jake Maxwell, Prologis, 12720 Gateway Drive S., Suite 110, Tukwila, WA 98168
Michael Kennedy, Northwest Region, DEQ
Christine Svetkovich, Northwest Region, DEQ
Accounting, DEQ

1 BEFORE THE ENVIRONMENTAL QUALITY COMMISSION
2 OF THE STATE OF OREGON

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4 IN THE MATTER OF:)
5 PROLOGIS,)
6 a Maryland business trust,)
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I. AUTHORITY

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

II. FINDINGS OF FACT

1. On April 16, 2019, DEQ issued coverage to Respondent under the National Pollutant Discharge Elimination System (NPDES) General Permit No. 1200-C (Permit). The Permit expires on December 14, 2020, and was effective at all material times.

2. The Permit authorizes construction activities that may discharge to surface waters or conveyance systems leading to the Columbia Slough, surface waters of the state. Specifically, Respondent's coverage under the Permit authorizes construction activities at "Prologis PDX23," an industrial construction project located at 4615 NE 158th Avenue in Portland, Multnomah County, Oregon (Site). The total disturbed area at the Site is approximately 19.31 acres.

3. Respondent began construction activities at the Site on or about July 5, 2019.

4. DEQ inspected the Site on March 5, 2020. At the time of the inspection:

- a. There was no construction entrance onto NE 158th Avenue;
- b. The construction entrance onto NE Airport Way was not properly installed and there was visible sediment trackout on the road;

- c. The vehicle wheel wash was not installed according to the specifications in the erosion and sediment control plan (ESCP);
- d. On the South portion of the Site adjacent to the Columbia Slough, pre-existing ground cover was removed leaving bare soil. The vegetated buffer area was not marked. There were no erosion and sediment controls implemented within the buffer area in order to prevent the discharge of sediment to the Columbia Slough.
- e. There were multiple large uncovered, unstabilized soil stockpiles throughout the Site.
- f. On the South portion of the Site adjacent to the Columbia Slough, there was a large area with exposed soils that was not actively being worked. The area was not stabilized.
- g. Respondent was doing concrete work without any concrete washout facilities nearby. Workers were rinsing concrete waste off equipment and allowing the wastewater to discharge directly to the ground.
- h. Dropboxes for waste generated at the Site were uncovered, allowing stormwater to be exposed to the waste.

5. Respondent's ESCP dated January 4, 2019 contains the following conditions or requirements:

- a. Construction entrances shall be installed at the beginning of construction and maintained for the duration of the project. Note 4 on Sheet C1.41. The drawing shows construction entrances onto NE Airport Way and NE 158th Avenue.
- b. Install construction entrances as specified in Detail Drawing 4.2-A on Sheet C1.43.
- c. Install wheel wash as specified in Detail Drawing 4.2-B on Sheet C1.43.
- d. Maintain and delineate any existing natural buffer within 50 feet of water of the state. Note 11 on Sheet C1.40. Preserve existing vegetation when practical and re-vegetate open areas. Note 10 on Sheet C1.40.

- e. As needed based on weather conditions, at the end of each workday soil stockpiles must be stabilized or covered. Note 27 on Sheet C1.40; Stockpile Detail Drawing 4.5-E on Sheet C1.43.
- f. All exposed and unworked soils shall be stabilized by a suitable application of BMPs (revegetated, mulched, covered with plastic or burlap etc.) during the wet weather period. Temporary stabilization of the site must occur at the end of each work day. BMP Implementation Note 5 on Sheet C1.42.
- g. Establish concrete truck and other concrete equipment washout areas before beginning concrete work. Note 15 on Sheet C1.40.
- h. Provide covered storage areas for waste and supplies. Note 22 on Sheet C1.40.

6. Schedule B, Condition (1)(b) of the Permit requires that when the site is active, all ESCP controls and practices must be monitored visually on a daily basis when stormwater runoff, including runoff from snowmelt, is occurring, and at least once every fourteen (14) calendar days, regardless of whether stormwater runoff is occurring.

7. According to rain gauge data, there were at least 56 days when Respondent should have conducted visual monitoring at the Site between July 5, 2019 and March 5, 2020.

8. Between July 5, 2019 and March 5, 2020, Respondent conducted visual monitoring at the Site on only thirteen (13) days.

III. CONCLUSIONS

1. From on or about July 5, 2019 through March 5, 2020, Respondent violated Schedule A, Condition (8)(a) of the Permit and ORS 468B.025(2) by failing to substantially implement the ESCP, as described in Section II, paragraphs 1 through 5 above. This is a Class I violation according to OAR 340-012-0055(1)(r). DEQ hereby assesses a \$6,527 civil penalty for this violation.

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2. Between July 5, 2019 and March 5, 2020, Respondent violated Schedule B, Condition (1)(a) of the Permit by failing to conduct visual monitoring on at least 43 days, as described in Section II, paragraphs 6 through 8 above. These are Class I violations according to OAR 340-012-0055(1)(o). DEQ hereby assesses an \$11,870 civil penalty for these violations.

IV. ORDER TO PAY CIVIL PENALTY

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

Pay a total civil penalty of \$18,397. The determination of the civil penalties are attached as Exhibit Nos. 1 and 2, and incorporated as part of this Notice.

If you do not file a request for hearing as set forth in Section V below, your check or money order must be made payable to "**State Treasurer, State of Oregon**" and sent to the **DEQ, Business Office, 700 NE Multnomah Street, Suite 600, Portland, Oregon 97232**.

V. NOTICE OF RIGHT TO REQUEST A CONTESTED CASE HEARING

You have a right to a contested case hearing on this Notice, if you request one in writing. DEQ must receive your request for hearing **within 20 calendar days** from the date you receive this Notice. If you have any affirmative defenses or wish to dispute any allegations of fact in this Notice or attached exhibits, you must do so in your request for hearing, as factual matters not denied will be considered admitted, and failure to raise a defense will be a waiver of the defense. (See OAR 340-011-0530 for further information about requests for hearing.) You must send your request to: **DEQ, Office of Compliance and Enforcement, 700 NE Multnomah Street, Suite 600, Portland, Oregon 97232**, fax it to **503-229-5100** or email it to

DEQappeals@deq.state.or.us. An administrative law judge employed by the Office of Administrative Hearings will conduct the hearing, according to ORS Chapter 183, OAR Chapter 340, Division 011 and OAR 137-003-0501 to 0700. You have a right to be represented by an attorney at the hearing, however you are not required to be. If you are an individual, you may represent yourself. If you are a corporation, partnership, limited liability company,

1 unincorporated association, trust or government body, you must be represented by an attorney or
2 a duly authorized representative, as set forth in OAR 137-003-0555.

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

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

14
15
16 6/5/2020
17 Date


16 
17 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 1: Failing to substantially implement the Erosion and Sediment Control Plan (ESCP), in violation of Schedule A, Condition (8)(a) of the Permit and ORS 468B.025(2).

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 1200-C General Permit for a construction site between five and 20 acres in size.

"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 constitutes a separate occurrence. Respondent failed to substantially implement the plan from July 5, 2019 through at least March 5, 2020, which was more than 28 days.

"M" is the mental state of the Respondent and receives a 4 according to OAR 340-012-0145(5)(c), because Respondent's conduct was negligent. The 1200-C Permit and the ESCP prepared by Respondent's engineer require implementation of erosion and sediment control measures in order to prevent the discharge of significant amounts of from the Site. By failing to properly install and maintain many of the measures and features included in the ESCP, Respondent failed to take reasonable care to avoid a foreseeable that it would violate its Permit.

"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. In March and April of 2020, Respondent submitted documentation showing it had implemented corrective actions at the Site and revised the ESCP.

"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 \$527. This is the amount Respondent gained by delaying spending a total of \$18,970 to implement erosion and sediment control measures at the Site, including a construction entrance, straw wattles, sediment fence, stockpile covering and straw bales. This "EB" was calculated pursuant to OAR 340-012-0150(1) using the U.S. Environmental Protection Agency's BEN computer model.

PENALTY CALCULATION: $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$
= \$4,000 + [(0.1x \$4,000) x (0 + 0 + 4 + 4 - 3)] + \$527
= \$4,000 + [\$400 x 5] + \$527
= \$4,000 + \$2,000 + \$527
= \$6,527

EXHIBIT NO. 2

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

- VIOLATION 2: Failure to conduct visual monitoring in violation of Schedule B, Condition (1)(b) of NPDES Permit No. 1200-C and ORS 468B.025(2).
- CLASSIFICATION: These are Class I violations pursuant to OAR 340-012-0055(1)(o).
- 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 1200-C General Permit for a construction site between five and 20 acres in size.
- "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. Between July 5, 2019 and March 5, 2020, Respondent failed to inspect the Site on at least 43 days.
- "M" is the mental state of the Respondent and receives a 4 according to OAR 340-012-0145(5)(c), because Respondent's conduct was negligent. Respondent has coverage under the NPDES 1200-C Permit which expressly requires Respondent to visually monitor all erosion and sediment controls daily when stormwater runoff is occurring so that it may identify problems at the site in order to prevent discharges. By failing to perform any visual monitoring at the Site, Respondent failed to take reasonable care to avoid a foreseeable risk that it would violate its Permit.

"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 \$4,670. This is the amount Respondent gained by avoiding spending \$6,880 to conduct visual monitoring at the Site on at least 43 occasions. This "EB" was calculated pursuant to OAR 340-012-0150(1) using the U.S. Environmental Protection Agency's BEN computer model.

PENALTY CALCULATION: $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$
= \$4,000 + [(0.1x \$4,000) x (0 + 0 + 4 + 4 + 0)] + \$4,670
= \$4,000 + [\$400 x 8] + \$4,670
= \$4,000 + \$3,200 + \$4,670
= \$11,870