



# Oregon

Kate Brown, Governor

## Department of Environmental Quality

Office of Compliance and Enforcement

700 NE Multnomah St Ste 600

Portland, OR 97232-4100

(503) 229-5696

FAX (503) 229-5100

TTY: 711

May 19, 2017

CERTIFIED MAIL: 7016 2140 0000 2420 3099

Specht Properties, Inc.  
c/o Gregory L. Specht, Registered Agent  
10260 SW Greenburg Road, Suite 170  
Portland, OR, 97223

CERTIFIED MAIL: 7016 2140 0000 2420 3112

Perkins Coie LLP  
c/o Christopher Rich, Attorney for Respondent  
1120 NW Couch, 10<sup>th</sup> Floor  
Portland, OR. 97209

Re: Notice of Civil Penalty Assessment and Order  
Case No. WQ/SW-NWR-2017-034

This letter is to inform you that the Oregon Department of Environmental Quality (DEQ) has issued Specht Properties, Inc., (Specht) a civil penalty of \$34,361 for disposing construction stormwater into four underground injection control (UIC) systems not registered to dispose of construction stormwater, failing to implement stormwater erosion controls, and failing to perform visual monitoring inspections at an approximately 37.4 acre construction site in Gresham. In addition, DEQ cited Specht, without civil penalty, for depositing sediment from its construction activity onto a neighboring property.

DEQ issued this penalty because the failure to implement stormwater erosion controls creates the risk of sediment laden discharges from Specht's construction site. Sediment laden stormwater discharges may negatively impact the water quality of receiving streams. Specifically, sediment laden discharges pose a threat to fish and other aquatic life because they can disrupt the food web, have an adverse effect on juvenile fish rearing and migration, clog fish gills, reduce photosynthesis in aquatic flora, and increase the temperature of the affected water body. In addition, DEQ issued this penalty because the unregistered disposal of construction stormwater through UICs may negatively impact groundwater resources.

DEQ appreciates your efforts to respond to the violations by implementing proper stormwater controls after DEQ's inspection of the Facility. 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](mailto: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 Kieran O'Donnell at 503-229-5012 or toll free in Oregon at 800-452-4011, extension 5012.

Sincerely,



Sarah G. Wheeler, Acting Manager  
Office of Compliance and Enforcement

Enclosures

cc: Daria Gneckow, DEQ, NWR  
Christine Svetkovich, DEQ, NWR  
Shaumae Hall, DEQ, Accounting  
John Koestler, DEQ, WQ

1 BEFORE THE ENVIRONMENTAL QUALITY COMMISSION

2 OF THE STATE OF OREGON

3	IN THE MATTER OF:	)	NOTICE OF CIVIL PENALTY
4	SPECHT PROPERTIES, INC.	)	ASSESSMENT AND ORDER
5		)	
	Respondent.	)	CASE NO. WQ/SW-NWR-2017-034

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 and 468.126 through 468.140,  
9 468B, ORS Chapter 183 and Oregon Administrative Rules (OAR) Chapter 340, Divisions 011, 012, and  
10 045.

11 II. FINDINGS OF FACT

12 1. On July 20, 2016, DEQ issued Respondent coverage under the National Pollutant Discharge  
13 Elimination System (NPDES) 1200-C General Permit for stormwater discharges that expires on  
14 December 14, 2020 (the Permit).

15 2. The Permit was issued pursuant to ORS 468B.050 and the Federal Clean Water Act.

16 3. Under the Permit, Respondent is authorized to discharge stormwater from construction  
17 activities at an approximately 37.4 acre site named the Gresham Vista Business Park – Lot 9, located  
18 on 223<sup>rd</sup> street, between Stark and Glisan, in Gresham, Oregon (the Facility).

19 4. On January 23, 2017, DEQ performed an inspection of the Facility. At the time of the  
20 inspection:

- 21 a. Respondent discharged construction stormwater into four dry wells,
- 22 b. The Facility’s sediment fence along 223<sup>rd</sup> avenue had breached, causing an inundation  
23 of sediment into a storm drain,
- 24 c. The construction entrance demonstrated significant sediment tracking (track out),
- 25 d. Respondent maintained uncovered stockpiles of sediment at the Facility,
- 26 e. No visual monitoring records were present at the Facility, and

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1 f. The north perimeter of the Facility demonstrated significant channelization and a large  
2 amount of sediment had been deposited on the adjacent property.

3 5. On September 28, 2016, Respondent registered the four dry wells with DEQ as  
4 Underground Injection Control (UIC) systems to inject stormwater originating from roof and parking  
5 lot surfaces. The UIC systems are not registered to dispose of construction stormwater.

6 6. As the date of this Notice, Respondent has not submitted to DEQ any visual monitoring  
7 records for the Facility that took place prior to DEQ's January 23, 2017, inspection.

8 7. Pursuant to Schedule A, Condition 12 of the Permit, Respondent submitted to DEQ an  
9 Erosion and Sediment Control Plan (ESCP) for the Facility.

10 8. Schedule A, Condition 8(a) of the Permit states that a "[f]ailure to implement any of the  
11 control measures or practices described in the ESCP is a violation of the Permit."

12 9. Condition 7 of the ESCP requires sediment control measures, including perimeter controls,  
13 be in place and maintained for the duration of construction, including the protection of catch basins.

14 10. Condition 11 of the ESCP requires the prevention of tracking of sediment onto public or  
15 private roads.

16 11. Condition 18 of the ESCP requires that at the end of each workday soil stockpiles must be  
17 stabilized or covered.

18 12. Schedule B, Condition 1 of the Permit requires Respondent to conduct visual monitoring  
19 daily when stormwater runoff is occurring and at least once every 14 days, regardless of whether  
20 stormwater runoff is occurring.

21 13. Schedule B, Condition 2 of the Permit requires Respondent to maintain visual monitoring  
22 records at the Facility at all times.

23 14. Schedule A, Condition 8(b) of the Permit prohibits the deposition of sediment from the  
24 construction site onto any property outside of the area of construction activity covered by the Permit.

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1 III. CONCLUSIONS

2 1. Respondent has violated OAR 340-044-0012(1) by operating a prohibited Underground  
3 Injection Control (UIC) system, as described in Section II above. Specifically, Respondent injected  
4 construction stormwater into the ground at the Facility through four dry wells, without authorization by  
5 DEQ. The four dry wells are UICs as defined by OAR 340-044-0005(24) because they are wells used  
6 for the emplacement of fluids. The UICs were permitted for the injection of stormwater from roof and  
7 parking lot surfaces after the completion of the project, but not to emplace construction stormwater  
8 during construction. These are Class I violations, according to OAR 340-012-055(1)(p). DEQ hereby  
9 assesses a \$3,300 civil penalty for these violations.

10 2. Respondent has violated ORS 468B.025(2) and Schedule A, Condition 8(a) of the Permit, and  
11 Conditions 7, 11, and 18 of the ESCP by failing to implement required stormwater control measures, as  
12 described in Section II above. Specifically, Respondent failed to adequately secure the perimeter of the  
13 Facility with a sediment fence, including breaches in sediment fences along 223<sup>rd</sup> avenue and the north  
14 perimeter of the Facility; it failed to prevent tracking from the Facility entrance; and it failed to adequately  
15 secure and cover stockpiles. These are Class I violations according to OAR 340-012-0055(1)(r). DEQ  
16 hereby assesses a \$15,432 civil penalty for these violations.

17 3. Respondent has violated ORS 468.025(2) and Schedule B, Conditions 1 and 2 of the Permit by  
18 failing to conduct visual monitoring at the Facility, as described in Section II above. Specifically,  
19 Respondent has failed to submit to DEQ any visual monitoring record demonstrating that Respondent had  
20 conducted visual monitoring since the site became active in July, 2016. These are Class I violations,  
21 pursuant to OAR 340-012-0055(1)(o). DEQ hereby assesses a \$15,629 civil penalty for these violations.

22 4. Respondent has violated ORS 468B.025(2) and Schedule A, Condition 8(b) of the Permit, by  
23 depositing sediment from the Facility onto an area outside of permitted construction activity, as described  
24 in Section II above. Specifically, Respondent allowed the north side of the Facility channelize causing the  
25 deposit of significant amounts of sediment onto the neighboring property. This is a Class II violation  
26 according to OAR 340-012-0053(2)(b). DEQ has not assessed a civil penalty for this violation.

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1 IV. ORDER TO PAY CIVIL PENALTY

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

4 Pay a total civil penalty of \$34,361. The determination of the civil penalties are attached as Exhibit  
5 Nos. 1, 2, and 3, and are 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.** Once you pay the penalty, the  
9 Findings of Fact, Conclusions and Order become final.

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

11 You have a right to a contested case hearing on this Notice, if you request one in writing. DEQ  
12 must receive your request for hearing **within 20 calendar days** from the date you receive this Notice. If  
13 you have any affirmative defenses or wish to dispute any allegations of fact in this Notice or attached  
14 exhibits, you must do so in your request for hearing, as factual matters not denied will be considered  
15 admitted, and failure to raise a defense will be a waiver of the defense. (See OAR 340-011-0530 for  
16 further information about requests for hearing.) You must send your request to: **DEQ, Office of**  
17 **Compliance and Enforcement, 700 NE Multnomah Street, Suite 600, Portland, Oregon 97232,** fax  
18 it to **503-229-5100,** or email it to **DEQappeals@deq.state.or.us.** An administrative law judge  
19 employed by the Office of Administrative Hearings will conduct the hearing, according to ORS  
20 Chapter 183, OAR Chapter 340, Division 011 and OAR 137-003-0501 to 0700. You have a right to be  
21 represented by an attorney at the hearing, however you are not required to be. If you are an individual,  
22 you may represent yourself. If you are a corporation, partnership, limited liability company,  
23 unincorporated association, trust or government body, you must be represented by an attorney or a duly  
24 authorized representative, as set forth in OAR 137-003-0555.

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1 Active duty service-members have a right to stay proceedings under the federal Service  
2 Members Civil Relief Act. For more information, please call the Oregon State Bar at 1-800-  
3 452-8260 or the Oregon Military Department at 1-800-452-7500. Additional information can be found  
4 online at the United States Armed Forces Legal Assistance (AFLA) Legal Services Locator website  
5 <http://legalassistance.law.af.mil/content/locator.php>.

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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May 19, 2011  
Date

  
Sarah G. Wheeler, Acting 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 No. 1: Operating a prohibited Underground Injection Control (UIC) system, in violation of OAR 340-044-0012(1).

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

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)(v) because Respondent owns and has registered a UIC system that disposes of stormwater.

"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. In addition, an unpermitted disposal from each UIC represents a separate occurrence. The violation began at some time in November of 2016, when Respondent's consultant stated the disposal of construction stormwater into the UICs began. Respondent corrected the violation, at the earliest, on February 21, 2017, the day that it received the Pre-Enforcement Notice. Therefore, there were more than 28 occurrences of the violation.

"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. Respondent registered the UICs for stormwater originating exclusively from rooftops and parking lots, and not construction stormwater. In its UIC application it checked the box for the emplacement of stormwater discharge from the "Roof" and "Parking" areas of the Facility at least 19 times. However,

Respondent intentionally managed construction stormwater by pumping ponded areas to UICs. Therefore, Respondent consciously disregarded a substantial and unjustifiable risk that its conduct would result in a 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 could not be corrected. Once Respondent discharged construction stormwater through the UIC it could not extract that discharge.

"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 the economic benefit of this violation is likely de minimis.

PENALTY CALCULATION:  $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$   
 $= \$1,500 + [(0.1 \times \$1,500) \times (0 + 0 + 4 + 8 + 0)] + \$0$   
 $= \$1,500 + (\$150 \times 12) + \$0$   
 $= \$1,500 + \$1,800 + \$0$   
 $= \$3,300$

EXHIBIT No. 2

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

VIOLATION No. 2: Failing to implement stormwater control measures, in violation of ORS 468B.025(2); Schedule A, Condition 8(a) of the Permit; and Conditions 7, 11, and 18 of the Respondent's 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 \$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)(E)(v) because Respondent has coverage under a NPDES Stormwater Discharge 1200-C General Permit for a construction site that disturbs 20 or more acres. Respondent's Facility disturbs approximately 37.4 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 constitutes a separate occurrence. The violation began, at the latest, on January 23, 2017, the day of DEQ's inspection. Respondent corrected the violation on March 24, 2017. Therefore, there were 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. The 1200-C General Permit and Respondent's ESCP both require implementation of erosion and sediment control measures to prevent the discharge of a significant amount of sediment offsite and to surface waters. With the assistance of a consultant, Respondent developed and drafted its own ESCP, which

includes the required control measures. Therefore, Respondent's failure to implement the control measures constitutes a failure to take reasonable care to avoid a foreseeable risk that it would violate the 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 minimize the effects of the violation. After DEQ's inspection, Respondent made reasonable efforts to improve its stormwater controls. Approximately one month after receiving the Pre-Enforcement Notice, Respondent had installed proper stormwater controls.

"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 \$6,432. This is the amount Respondent gained by delaying spending approximately \$99,240 to implement proper stormwater controls and avoiding spending approximately \$9,632 to maintain those controls. This "EB" was calculated pursuant to OAR 340-012-0150(1) using the U.S. Environmental Protection Agency's BEN computer model.

PENALTY CALCULATION:  $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$   
 $= \$6,000 + [(0.1 \times \$6,000) \times (0 + 0 + 4 + 4 + -3)] + \$6,432$   
 $= \$6,000 + (\$600 \times 5) + \$6,432$   
 $= \$6,000 + \$3,000 + \$6,432$   
 $= \$15,432$

EXHIBIT No. 3

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

VIOLATION No. 3: Failing to conduct visual monitoring, in violation of ORS 468B.025(2) and Schedule B, Conditions 1 and 2 of the Permit.

CLASSIFICATION: This is a Class I violation 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 \$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)(E)(v) because Respondent has coverage under a NPDES Stormwater Discharge 1200-C General Permit for a construction site that disturbs 20 or more acres. Respondent's Facility disturbs approximately 37.4 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 constitutes a separate occurrence. Based on best available rain data information regarding site conditions, DEQ estimates that the violation occurred on at least 63 separate days. Therefore, there were 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. The 1200-C General Permit requires visual monitoring as an integral condition to assess the effectiveness of measures to prevent erosion and control sediment. Respondent's complete failure to perform any visual monitoring constitutes a failure to take reasonable care to avoid a foreseeable risk that it would violate the 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 could not be corrected. Respondent cannot retroactively perform visual monitoring inspections.

"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 \$4,829. This is the amount Respondent gained by avoiding spending approximately \$7,560 to perform the required visual monitoring inspections. This "EB" was calculated pursuant to OAR 340-012-0150(1) using the U.S. Environmental Protection Agency's BEN computer model.

PENALTY CALCULATION:  $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$   
= \$6,000 + [(0.1 x \$6,000) x (0 + 0 + 4 + 4 + 0)] + \$4,829  
= \$6,000 + (\$600 x 8) + \$4,829  
= \$6,000 + \$4,800 + \$4,829  
= \$15,629