



# 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

May 2, 2023

CERTIFIED MAIL: 7018 1830 0001 5906 2889

Diamond Properties Oregon LLC  
c/o Sladan Antanasijevic, Manager  
521 Dredger Place  
Junction City, CA 96048

Re: Notice of Civil Penalty Assessment and Order  
Case No.: WQ/SW-WR-2022-538

This letter is to inform you that the Oregon Department of Environmental Quality (DEQ) has issued you a civil penalty of \$7,309 for engaging in construction activities at property you own in Selma, Oregon without applying for coverage under the National Pollutant Discharge Elimination System Construction Stormwater General Permit No.1200-C.

DEQ issued this penalty because your failure to obtain permit coverage posed a risk of pollution to waters of the state. Permits require that registrants implement and maintain sufficient erosion and sediment controls and best management practices to prevent the discharge of sediment and sediment-laden stormwater from the site and into waters of the state. Sediment carried in stormwater runoff from construction sites is considered a waste that 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 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:

Diamond Properties LLC  
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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 Courtney Brown at 503-229-6839 or toll free in Oregon at 800-452-4011, extension 6839.

Sincerely,



Kieran O'Donnell, Manager  
Office of Compliance and Enforcement

Enclosures

cc: Kathy Jacobsen, Eugene  
Heather Tugaw, DEQ  
Accounting, DEQ  
Stephanie Davidson, 2140 Crooks Creek Road, Selma, OR 97538



1 8. Construction activity may cause an increase in the discharge of wastes into waters of the  
2 state.

3 9. Construction activity is defined at Section 7.5.1 of the Permit to include: “clearing,  
4 grading, excavating, grubbing, stumping, demolition, and land disturbing activities.”

5 10. As of the date of this Notice and Order, Respondent has not submitted an application for  
6 coverage under the Permit.

### 7 III. CONCLUSIONS

8 On or before November 22, 2021, through at least December 22, 2021, Respondent violated  
9 ORS 468B.050(1)(d) and OAR 340-045-0033(6) by engaging in an activity which would cause an  
10 increase in the discharge of wastes into waters of the state and would otherwise alter the physical,  
11 chemical, or biological properties of waters of the state without a permit, as described in Section II  
12 above. Specifically, without having coverage under the Permit, Respondent engaged in construction  
13 activities by clearing, grading and stockpiling at the Site. Stormwater runoff carrying sediment from  
14 Respondent’s construction activities is “waste” pursuant to ORS 468B.005(9) and had the potential to  
15 discharge to the Pacific Ocean which is considered a “water of the state,” pursuant to ORS  
16 468B.005(10). This is a Class I violation, according to OAR 340-012-0055(1)(d). DEQ hereby assesses a  
17 \$7,309 civil penalty for this violation.

### 18 IV. ORDER TO PAY CIVIL PENALTY

19 Based upon the foregoing FINDINGS OF FACTS AND CONCLUSIONS, Respondent is  
20 hereby ORDERED TO: Pay a total civil penalty of \$7,309. The determination of the civil penalty is  
21 attached as Exhibit No.1 and is incorporated as part of this Notice.

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

24 Pay online with e-check (ACH) or Credit Card. Go to Your DEQ Online here:  
25 <https://ydo.oregon.gov>. Select Register Account or Login, then select Pay Invoices/Fees on your account  
26 dashboard. Enter the Invoice number and Account ID included on the attached payment slip. Note: US

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1 Bank charges a 2.3% convenience charge for credit card transactions. ACH payments have no additional  
2 charges.

3 Pay by check or money order: Make checks payable to “Department of Environmental  
4 Quality” and mail to the address on the enclosed payment slip. Please make sure to include the payment  
5 slip with your check or money order.

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

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

21 Active duty Service members have a right to stay proceedings under the federal Service  
22 Members Civil Relief Act. For more information contact the Oregon State Bar at 1-800-  
23 452-8260, the Oregon Military Department at 503-584-3571, or the nearest United States Armed  
24 Forces Legal Assistance Office through <http://legalassistance.law.af.mil>. The Oregon Military  
25 Department does not have a toll free telephone number.

26 If you fail to file a timely request for hearing, the Notice will become a final order by default  
27 without further action by DEQ, as per OAR 340-011-0535(1). If you do request a hearing but later

1 withdraw your request, fail to attend the hearing or notify DEQ that you will not be attending the  
2 hearing, DEQ will issue a final order by default pursuant to OAR 340-011-0535(3). DEQ designates  
3 the relevant portions of its files, including information submitted by you, as the record for purposes of  
4 proving a prima facie case.

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6  
7 5/2/2023

8 Date

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12 Kieran O'Donnell, Manager  
13 Office of Compliance and Enforcement  
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EXHIBIT No.1

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

VIOLATION: Violating ORS 468B.050(1)(d) by engaging in construction activity without a permit.

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

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)(E)(ii), as Respondent should have applied for coverage under an NPDES General Permit for a construction site that is between one and five 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. Respondent began construction activities on or before November 22, 2021. Unpermitted construction activities occurred until on or about December 22, 2021. As of the date of this Notice and Order Respondent has not applied for Permit coverage for a total of well over 28 days of violation.

"M" is the mental state of Respondent and receives a value of 8 according to OAR 340-012-0145(5)(d) because Respondent acted recklessly. Respondent received an Expedited Enforcement Offer from DEQ issued on February 2, 2022, and therefore knew permit coverage was required for its land disturbing activities at the Site. However, Respondent failed to comply with the EEO's order that it obtain Permit coverage. By engaging in construction activities at the Site without first obtaining a permit, and then not applying for a

Permit after being informed of the permit requirement, Respondent consciously disregarded a substantial and unjustifiable risk that it would violate Oregon law.

"C" is Respondent's efforts to correct or mitigate the violation and receives a value of 2 according to OAR 340-012-0145(6)(g) because Respondent did not address the violation as described in paragraphs (6)(a) through (6)(e) and the facts do not support a finding under paragraph (6)(f).

"EB" is the approximate dollar value of the benefit gained and the costs avoided or delayed as a result of the Respondents' 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 total value of \$3,709. This the amount Respondent gained by avoiding the costs of the Permit fee (\$2,734) and costs of a consultant to prepare an erosion and sediment control plan and permit application (\$3,000).

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

$$\begin{aligned} &= \$1,500 + [(0.1 \times \$1,500) \times (0 + 0 + 4 + 8 + 2)] + \$3,709 \\ &= \$1,500 + (\$150 \times 14) + \$3,709 \\ &= \$1,500 + \$2,100 + \$3,709 \\ &= \$7,309 \end{aligned}$$



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>	May 2, 2023
<b>RESPONSE DATE :</b>	July 11, 2023
<b>TOTAL PENALTY:</b>	\$7,309.00

<b>Account Name:</b>	DIAMOND PROPERTIES OREGON, LLC		
<b>Account Type:</b>	Vendor/Organization/Company	<b>Reference Number:</b>	CPGFD2300069
<b>SubSystem ID:</b>	204982	<b>FIMS Acct. ID:</b>	6464

**Penalty Summary**

Penalty Amount	Interest	Adjustment	Amount Paid	Total Penalty
\$ 7,309.00	\$ 0.00	\$ 0.00	\$ 0.00	\$ 7,309.00

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>	CPGFD2300069		
<b>PAYCODE:</b>	00401 7400 10040 74001 0500 000000 00		
<b>FEE PROGRAM ID:</b>	950	<b>RESPONSE DATE:</b>	July 11, 2023
<b>FIMS ACCT. ID:</b>	6464	<b>TOTAL PENALTY DUE:</b>	\$7309.00

**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 0095000064641CPGFD230006900007309006



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
5/1/2023	2022-538 WQ-SW-ER-2022-538	\$7,309.00

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