



# 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

September 12, 2023

CERTIFIED MAIL: 7016 2710 0000 4221 4193

Daniel & Claudia Campean  
10510 SE Bull Run Rd  
Corbett, OR 97019

Re: Notice of Civil Penalty Assessment and Order  
Case No. WQ-NP-NWR-2022-113

This letter is to inform you that the Oregon Department of Environmental Quality (DEQ) has issued you a civil penalty of \$8,400 for causing pollution to Deer Creek.

DEQ issued this penalty because you placed dirt stockpiles and operated construction equipment within the riparian buffer zone of Deer Creek, which caused sediment-laden runoff to enter the creek. Sediment carried in stormwater runoff from construction activities is considered waste that poses a risk of harm to beneficial uses of state waters. 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. Furthermore, the culvert you installed was constructed with asphalt-containing fill, which has the potential to cause harm to aquatic life and other beneficial uses of the creek.

Included in Section IV of the enclosed Notice is an order requiring you to stabilize all soils, implement erosion control measures, and work with Clackamas County to bring the culvert into compliance within 30 days of the date this order becomes final.

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. 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

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paying a portion of the 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,



Kieran O'Donnell, Manager  
Office of Compliance and Enforcement

Enclosures

cc: Brian Creutzburg, DEQ  
Christine Svetkovich, 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 DANIEL AND CLAUDIA CAMPEAN, ) ASSESSMENT AND ORDER  
5 Respondents. ) CASE NO. WQ-NP-NWR-2022-113

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. Respondents own the real property located at 10510 SE Bull Run Rd in Corbett, Oregon  
13 (the Site). Deer Creek runs through the Site.
- 14 2. On or before August 17, 2022, Respondents built a culvert at the Site in Deer Creek. The  
15 culvert was constructed with road fill material containing asphalt.
- 16 3. On August 17, 2022, DEQ inspected the Site. At the time of the inspection:
- 17 a. Dirt was stockpiled within the riparian buffer zone of Deer Creek;
- 18 b. Construction machinery was being operated within the riparian buffer zone of  
19 Deer Creek;
- 20 c. There was significant sediment collected in Deer Creek downstream of the Site;
- 21 d. There was a visible sheen to the water in Deer Creek, downstream of the culvert.

22 III. CONCLUSIONS

- 23 1. On and before August 17, 2022, Respondents violated ORS 468B.025(1)(a) by causing  
24 pollution to waters of the state, as described in Section II above. Specifically, Respondents stockpiled dirt  
25 and operated construction equipment within the riparian buffer zone of Deer Creek, which caused  
26 sediment-laden runoff into Deer Creek. In addition, the culvert containing asphalt material was causing  
27 visible sheen in Deer Creek. Deer Creek is “waters of the state” pursuant to ORS 468B.005(10). The

1 sediment-laden runoff and the visible sheen caused by the asphalt containing culvert caused "pollution"  
2 according to ORS 468B.005(5) because they altered the physical and chemical properties of waters of  
3 the state, which tends to be detrimental to aquatic life. This is a Class I violation according to OAR 340-  
4 012-0055(1)(a). DEQ hereby assesses a \$8,400 civil penalty for this violation.

#### 5 IV. ORDER TO PAY CIVIL PENALTY AND TO COMPLY

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

8 1. Pay a total civil penalty of \$8,400. The determination of the civil penalty is attached as Exhibit  
9 1 and is incorporated as part of this Notice.

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

13 2. Within 30 days of this order becoming final by operation of law or on appeal:

- 14 a. Stabilize all soils and implement erosion control measures to prevent further sediment  
15 runoff from your property, including the fill on top of the culvert in Deer Creek, and
- 16 b. Implement a plan, approved by Clackamas County, to bring the culvert into compliance  
17 with the submitted application.

18 3. Written and photographic documentation demonstrating Respondents' compliance must be  
19 sent to: Brian Creutzburg, via email at [brian.creutzburg@deq.oregon.gov](mailto:brian.creutzburg@deq.oregon.gov), or via regular mail to 700 NE  
20 Multnomah Street, Suite 600, Portland, OR 97232.

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

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

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

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

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

20  
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22  
23 9/12/2023  
24 Date

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Kieran O'Donnell, 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 Respondents violated ORS 468B.025(1)(a) by causing pollution of waters of the state.
- 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 \$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)(D) because Respondents do not have a National Pollutant Discharge Elimination System (NPDES) permit.
- "P" is whether Respondents have 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 Respondents, and receives a value of 0 according to OAR 340-012-0145(2)(a)(A), because there are no prior significant actions.
- "H" is Respondents' 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 at least one occurrence of the violation. Each day of violation is a separate occurrence. On August 17, 2022, DEQ visited the Site and observed the sediment in the creek and the oily sheen coming from the culvert.
- "M" is the mental state of the Respondents, and receives a value of 4 according to OAR 340-012-0145(5)(c) because Respondents' conduct was negligent. According to OAR 340-012-0030(15), negligent means the respondent failed to take reasonable care to avoid a foreseeable risk of conduct constituting or resulting in a violation. Respondents placed fill materials in a location where they could reasonably be expected to runoff into the creek. In addition, Respondents constructed the culvert out of asphalt, which is not consistent with the application they submitted to Clackamas County. Because the culvert was not built with the materials submitted to Clackamas County, the County was not able to evaluate the risk of harm sufficiently. By constructing the culvert with the wrong materials, Respondents failed

to take reasonable care to avoid the risk of harm, which was foreseeable because it had not been evaluated properly.

"C" is Respondents' efforts to correct or mitigate the violation, and receives a value of 0 according to OAR 340-012-0145(6)(f) because there is insufficient information to make a finding under paragraphs (6)(a) through (6)(e), or (6)(g).

"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 value of \$0 because there is insufficient information on which to base an estimate.

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

$$\begin{aligned} &= \$6,000 + [(0.1 \times \$6,000) \times (0 + 0 + 0 + 4 + 0)] + \$0 \\ &= \$6,000 + (\$600 \times 4) + \$0 \\ &= \$6,000 + \$2,400 + \$0 \\ &= \$8,400 \end{aligned}$$