



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

March 7, 2024

CERTIFIED MAIL: 9859 0710 5270 0688 6529 32

Caswell Thompson LLC
c/o V Corp Services, LLC Registered Agent
780 Commercial Street SE, Suite 100
Salem, OR 97301

Re: Notice of Civil Penalty Assessment and Order
Case No.: WQ/SW-WR-2023-624

This letter is to inform you that the Oregon Department of Environmental Quality (DEQ) has issued you a civil penalty of \$7,511 for engaging in construction activities at property you own on North Fork Louse Creek Road near Grants Pass, Oregon (Tax Lot R302412) without applying for coverage under the National Pollutant Discharge Elimination System General Permit No. 1200-C.

DEQ issued this penalty because your failure to obtain a permit and implement its requirements 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.

Included in Section IV is an order requiring you to implement erosion and sediment controls and prevent discharges of sediment off Site within 14 days of the Order becoming final. \$3,911 of the civil penalty represents the economic benefit you gained by failing to apply for permit coverage and implement permit requirements. If you comply with the Order, DEQ will consider recalculating the costs as delayed rather than avoided and will reduce the civil penalty accordingly.

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:

Via mail – 700 NE Multnomah Street, Suite 600, Portland, Oregon 97232

Via email – 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,



Becca Puskas, Interim Manager
Office of Compliance and Enforcement

Enclosures

cc: Joel Caswell, Caswell Thompson LLC, 16 N. Riverside Ave. Suite 210, Medford, OR 97501
Bill Meyers, Medford
Heather Tugaw, DEQ
Accounting, DEQ

1 BEFORE THE ENVIRONMENTAL QUALITY COMMISSION

2 OF THE STATE OF OREGON

3 IN THE MATTER OF:
4 CASWELL THOMPSON LLC,
a limited liability corporation,

5 Respondent.

) NOTICE OF CIVIL PENALTY
) ASSESSMENT AND ORDER

) CASE NO. WQ/SW-WR-2023-624

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. Respondent is the owner of property located at T35S, R5W, Sec 26, TL 300 (Tax Lot
13 R302412) on the North Fork Louse Creek Road in Grants Pass, Oregon (the Site).

14 2. On or before June 29, 2021, Respondent cleared trees and vegetation at the Site.

15 3. On or before June 29, 2023, Respondent constructed several greenhouses.

16 4. Respondent's activities disturbed at least 2.7 acres at the Site.

17 5. Respondent's activities caused significant erosion and deposition of sediment
18 approximately 100 feet above Louse Creek, waters of the state of Oregon.

19 6. The Site has the potential to discharge to Louse Creek, waters of the state of Oregon.

20 7. Coverage under the National Pollutant Discharge Elimination System General Permit
21 No. 1200-C (the Permit) is required for any construction activity that will disturb one or more acres of
22 land and have the potential to discharge to surface waters or to a conveyance system that leads to
23 surface waters of the state in Oregon.

24 8. Section 7.5.1.i of the Permit defines "construction activity" as "including but not limited
25 to; clearing, grading, excavating, grubbing, stumping, demolition, and land disturbing activities."

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1 9. At all relevant times Respondent has not applied for or obtained registration under the
2 National Pollutant Discharge Elimination System General Permit No. 1200-C (the Permit) for
3 construction activities at the Site.

4 10. The construction activity described in paragraphs 2 and 3 above caused an increased risk
5 that the Site would discharge sediment-laden stormwater runoff to Louse Creek.

6 III. CONCLUSIONS

7 On or before June 29, 2023, Respondent violated ORS 468B.050(1)(d) and OAR 340-045-
8 0033(6) by conducting an activity described in a general permit which would cause an increase in the
9 discharge of wastes into waters of the state and would otherwise alter the physical, chemical, or
10 biological properties of waters of the state without a permit, as described in Section II above.
11 Specifically, without having coverage under the Permit, Respondent engaged in construction activities
12 by clearing and grading at the Site. Stormwater runoff carrying sediment from Respondent's
13 construction activities is "waste" pursuant to ORS 468B.005(9) and had the potential to discharge to
14 Louse Creek which is considered a "water of the state," pursuant to ORS 468B.005(10). This is a Class
15 I violation, according to OAR 340-012-0055(1)(d). DEQ hereby assesses a \$7,511 civil penalty for this
16 violation.

17 IV. ORDER TO PAY CIVIL PENALTY AND TO COMPLY

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

- 20 1. Pay a total civil penalty of \$7,511. The determination of the civil penalty is attached as Exhibit
21 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
27 Bank charges a 2.3% convenience charge for credit card transactions. ACH payments have no additional
charges.

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

4 2. Immediately implement erosion and sediment controls and prevent discharges of sediment
5 off Site. Submit documentation of these corrective actions within 14 days of the Notice and Order
6 becoming final to: Bill Meyers at bill.meyers@deq.oregon.gov.

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

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

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

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

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9 3/7/2024
10 Date

Rebecca J Puskas
11 Becca Puskas, Interim Manager
12 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 June 29, 2021. Unpermitted construction activities were known to have occurred on or about June 29, 2023. 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 July 20, 2023, 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 within 30 days. 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 \$3,911. This the amount Respondent gained by avoiding the costs of the Permit application and annual fee (\$3,013.92) and costs of a consultant to prepare an erosion and sediment control plan and permit application (\$3,000).

PENALTY CALCULATION: $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$
= \$1,500 + [(0.1 x \$1,500) x (0 + 0 + 4 + 8 + 2)] + \$3,911
= \$1,500 + (\$150 x 14) + \$3,911
= \$1,500 + \$2,100 + \$3,911
= \$7,511

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

JOEL CASWELL
 CASWELL THOMPSON
 16 N RIVERSIDE AVE
 MEDFORD, OR 97501-6023

CIVIL PENALTY - ORS 468.135(2)

DATE:	March 7, 2024
RESPONSE DATE :	May 16, 2024
TOTAL PENALTY:	\$7,511.00

Account Name:	CASWELL THOMPSON LLC		
Account Type:	Vendor/Organization/Company	Reference Number:	CPGFD2400047
SubSystem ID:	940	FIMS Acct. ID:	15629

Penalty Summary

Penalty Amount	Interest	Adjustment	Amount Paid	Total Penalty
\$ 7,511.00	\$ 0.00	\$ 0.00	\$ 0.00	\$ 7,511.00

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'



PLEASE RETURN THIS PORTION WITH YOUR PAYMENT



JOEL CASWELL
 CASWELL THOMPSON
 16 N RIVERSIDE AVE
 MEDFORD, OR 97501-6023

REFERENCE NO.	CPGFD2400047		
PAYCODE:	00401 7400 10040 74001 0500 000000 00		
FEE PROGRAM ID:	950	RESPONSE DATE:	May 16, 2024
FIMS ACCT. ID:	15629	TOTAL PENALTY DUE:	\$7511.00

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 0095000156290CPGF D240004700007511002



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
3/6/2024	2023-624 WQ-SW-WR-2023-624	\$7,511.00

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 _____