

Oregon

John A. Kitzhaber, MD, Governor

Department of State Lands

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Salem, OR 97301-1279

(503) 986-5200

FAX (503) 378-4844

www.oregonstatelands.us

CERTIFIED MAIL

March 4, 2014

CLL600/7418ENF

PORT OF NEHALEM

ATTN DALE STOCKTON

PO BOX 476

NEHALEM OR 97131

State Land Board

John A. Kitzhaber, MD

Governor

Kate Brown

Secretary of State

Ted Wheeler

State Treasurer

RE: Final Enforcement Order for Corrective Action and Civil Penalty for
Permit Non-compliance, DSL Enforcement File No. 7418-ENF

Dear Mr. Stockton:

You received our Proposed Enforcement Order for Corrective Action and Civil Penalty for
Permit Non-compliance dated January 31, 2014.

We did not receive your request for a contested case by the legal deadline. Accordingly,
we issued a final order (enclosed). Please read the order carefully.

The 2013-2014 in-water work period has closed; therefore, the Department expects the
Port of Nehalem to comply with the corrective action described in this final order between
November 1 and November 16, 2014.

The Port has stated that using a bucket and barge to remove dredge spoils from Nehalem
River is problematic. Please note that this final order requires that you remove spoils
using a method approved by the Department. The Port should start investigating
alternative methods of removing spoils so that a method can be approved prior to the
start of the 2014-2015 in-water work period, November 1, 2014.

If you have any questions about the Enforcement Order or submittal of the Civil Penalty,
please call Carrie Landrum at (503)-986-5285. Thank you for your cooperation.

Sincerely,

Kirk Jarvie

Northern Region Manager

Wetlands and Waterways Conservation Division

Oregon Department of State Lands

CLL:jar

Enclosure

cc: Amber Johnson, Oregon Dept. of Fish & Wildlife
Tillamook County Planning Dept.
Kristin Hafer, US Army Corps of Engineers, Portland Office

BEFORE THE DIRECTOR OF THE DEPARTMENT OF STATE LANDS
OF THE STATE OF OREGON

In the Matter of Alleged Violation)	
of the Oregon Removal-Fill Law by)	FINAL ORDER FOR
Port of Nehalem)	CORRECTIVE ACTION AND
Enforcement File No. 7418-ENF)	CIVIL PENALTY

I. BACKGROUND

On January 31, 2014, the Department of State Lands sent you a Proposed Order for Corrective Action and Civil Penalty that alleged that you violated the Removal-Fill Law and proposed to impose certain sanctions on you. That Order also gave you twenty days in which to request a hearing to challenge the Order. You did not submit a request for hearing within that time period. Therefore, the Department is now (as authorized by law) issuing this Final Order for Corrective Action and Civil Penalty to you. This Final Order is based upon a prima facie case supported by the Department's enforcement file. Oregon Revised Statute 196.860(1)(e).

II. FINDINGS OF FACT

These are the facts of the situation as understood by the Department:

1. You obtained a permit from the Department (48275-RF) to conduct removal and or fill activities in "waters of this state".
2. The Permit contains the following conditions:
 - a. Undispersed material at the spoils discharge site shall be removed with a bucket. Spoils shall be taken to an upland location or the Port must obtain authorization for ocean disposal. This work must be complete by February 15, 2014.
3. In email correspondence dated January 24, 2014, you indicated that the work would not be complete by the February 15, 2014 deadline.
4. You were aware of the Removal-Fill Law.
5. You have not implemented corrective action as requested by the Department.
6. Failure to correct the deficiency could result in reasonably expected adverse impacts to waters of this state.

III. CONCLUSIONS OF LAW

This is a summary of how the Department thinks the law applies to the facts of this situation.

1. By failing to comply with the conditions of your permit, you violated the Removal-Fill Law.
2. For this violation, you are subject to a civil penalty and an order for corrective action.

IV. AMOUNT OF PENALTY

This is a summary of how the Department calculated the amount of the proposed civil penalty, using factors specified in the law.

1. The calculated amount of civil penalty is determined to be \$6,000 by using the criteria at OAR 141-085-0785(6).
2. Base fine (B) is \$1,000.
3. Prior violation or knowledge value (P) was determined to be 2 because you were aware of the Removal-Fill Law.
4. Cooperation value (C) was determined to be 1 because you have responded to some communications from the Department.
5. Water resource impact value (I) was determined to be 3 because failure to correct the deficiency will result in reasonably expected adverse impacts to waters of this state.
6. The number of days of violation was determined to be 1.
7. The calculated penalty is derived by the formula: 1 day(s) of violation times $\$B(P \times C \times I) = \$6,000$.

V. ASSESSMENT OF PENALTY

1. The Director imposes upon you a civil penalty of \$6,000 for the violation alleged in Section II above.
2. You must, within 20 days of the service of this Final Order, submit a check or money order in the amount of \$6,000 made payable to the "State of Oregon, Department of State Lands" to the Director, Department of State Lands. The payment must be sent to:

Department of State Lands
775 Summer St. NE, Ste. 100
Salem, OR 97301-1279

VI. ORDER TO RESTORE WATERS OF THE STATE


The Department orders you to implement the following corrective actions to resolve the violation:

1. The Port will remove the dredge spoils from Nehalem River using a method approved by the Department and restore the channel to a depth of -20 NGVD29. The dredge spoils are located between Deer Island and the Nehalem Bridge, as shown in the attached figure.
2. Spoils must be taken to an upland location, as approved by the Department.
3. Work must be complete by February 15, 2014 or otherwise by the latest date of any allowed in-water work period extension.

VII. FAILURE TO PAY

Unless you pay the penalty within 20 days after this final order is served, the order shall constitute a judgment and may be recorded with the county clerk in any county of this state. The clerk shall record your name and the amount of the penalty in the County Clerk Lien Record. The penalty provided in the order so recorded becomes a lien upon the title to any interest in real property you may have in the county. Execution may be issued upon the order in the same manner as execution upon a judgment of a court of record. Once the final adjudication of any civil penalty has been calculated and noticed, the amount of the civil penalty will increase by the amount of the original civil penalty for every 20 calendar days that pass without the alleged violator remitting payment to the Department for the full amount of the civil penalty and the Department taking receipt of the payment. In no case must the amount of the civil penalty be increased by more than ten times the original civil penalty amount. If a civil penalty or any portion of the civil penalty is not paid, interest must accrue at the rate of nine percent per annum on the unpaid balance (pursuant to ORS 82.010).

Issued this 4th day of March, 2014.



Kirk Jarvie
Northern Region Manager
Department of State Lands

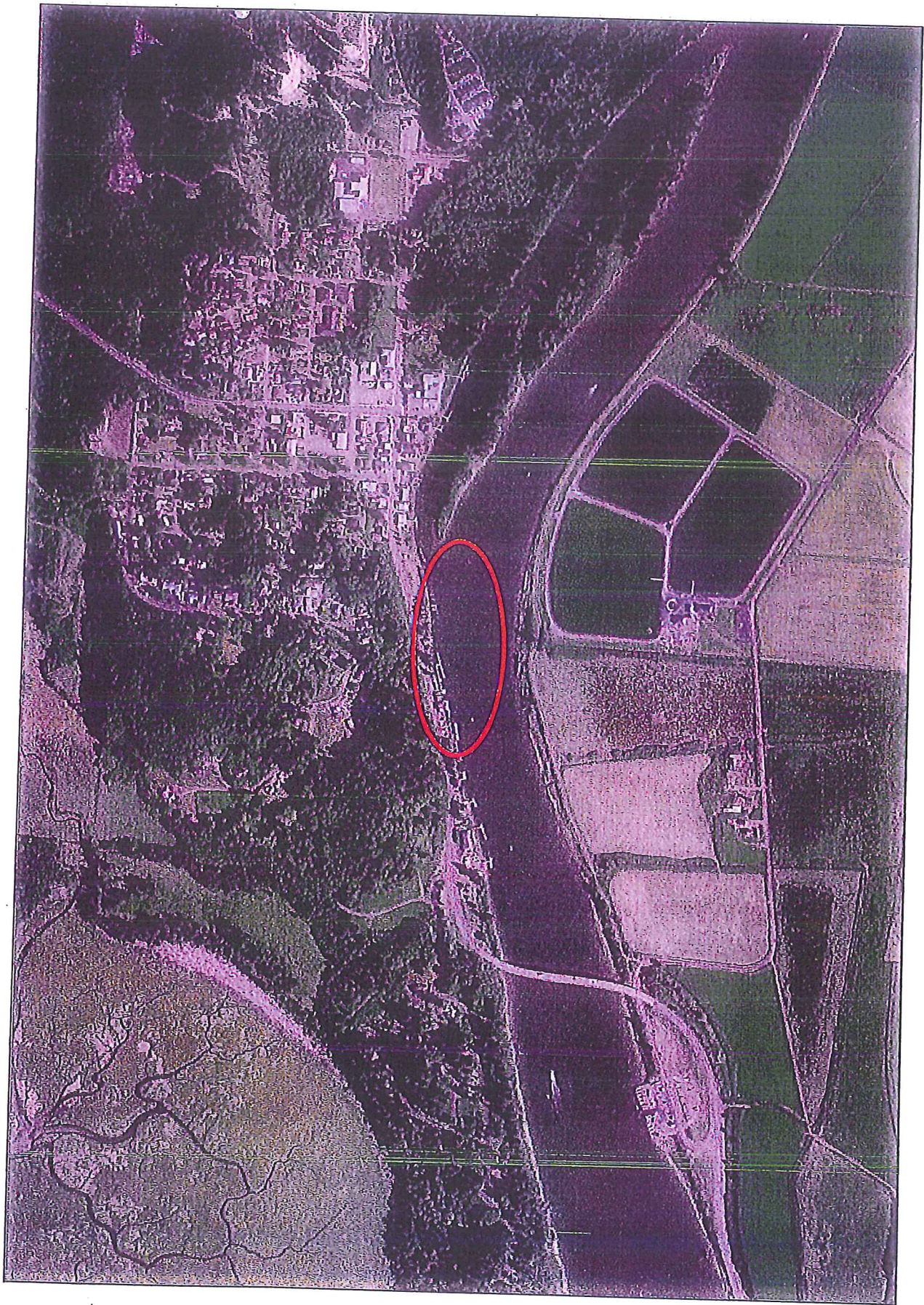
I certify that on the _____ day of _____, 2014, I served this order upon the addressee:

☐ in person

☐ by certified mail, postage prepaid

Name: _____ Signature: _____

Agency: _____



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See Reverse for Instructions