



Oregon

Kate Brown, Governor

Department of Environmental Quality

Headquarters
811 SW Sixth Avenue
Portland, OR 97204-1390
(503) 229-5696
FAX (503) 229-6124
TTY: 711

December 31, 2015

CERTIFIED MAIL: 7011 2000 0000 5122 9329

Greenway Recycling, LLC
c/o Chris Garrett, Registered Agent
4135 NW St Helens Rd
Portland, OR 97210

Re: Notice of Civil Penalty Assessment and Order
Case No. LQ/SW-NWR-15-172

This letter is to inform you that the Oregon Department of Environmental Quality (DEQ) has issued you a civil penalty of \$6,225 because operations at your recycling facility have caused significant and observable depositions of dust on neighboring properties and you have not complied with permit requirements to mitigate fugitive dust.

DEQ issued this penalty because despite prior enforcement and your efforts to date to mitigate the dust from your operations, dust from your facility has continued to adversely impact neighboring properties, in violation of Oregon law and your solid waste permit. DEQ has been working with you for years on compliance with requirements to mitigate off-site dust, including issuing a civil penalty in 2008 and warning letters in 2006 and 2012. Dust generated from your tipping and wood processing areas in particular is not sufficiently controlled during dry weather. Dust is an air contaminant that can threaten public health and interfere with use and enjoyment of property.

DEQ appreciates your efforts to mitigate the effects of the violation by installing additional watering equipment and increasing sweeping, and recently revising your Operations Plan. 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 contested case hearing within 20 calendar days from your receipt of this letter. The hearing request must be in writing. Send your hearing request to DEQ Office of Compliance and Enforcement – Appeals:

Via mail - 811 S.W. 6th Ave., Portland, OR 97204

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 it 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 in lieu of paying your penalty. Enclosed is more detail on how to pursue a SEP. SEP documents are available on the internet at <http://www.deq.state.or.us/programs/enforcement/SEP.htm>, or by calling the number below to request a paper copy.

DEQ's rules are available on the internet at <http://www.deq.state.or.us/regulations/rules.htm>, or by calling the number below to request a paper copy.

If you have any questions, please contact DEQ Environmental Law Specialist Sarah Wheeler, at (503) 229-6927. You may call toll-free within Oregon at 1-800-452-4011, extension 6927.

Sincerely,



Leah K. Feldon, Manager
Office of Compliance and Enforcement

Enclosures

cc: Daniel Hough, Northwest Region, DEQ
Stephanie Rawson, Metro

1 BEFORE THE ENVIRONMENTAL QUALITY COMMISSION
2 OF THE STATE OF OREGON

3 IN THE MATTER OF:) NOTICE OF CIVIL PENALTY
4 GREENWAY RECYCLING, LLC,) ASSESSMENT AND ORDER
5 Respondent.) CASE NO. LQ/SW-NWR-15-172
6

7 I. AUTHORITY

8 The Department of Environmental Quality (DEQ) issues this Notice of Civil Penalty Assessment
9 and Order (Notice) pursuant to Oregon Revised Statutes (ORS) 468.100 and 468.126 through 468.140,
10 ORS 459.995, ORS 468A, ORS Chapter 183 and Oregon Administrative Rules (OAR) Chapter 340,
11 Divisions 011, 012, 208, and 096.

12 II. FINDINGS OF FACT

13 1. Since at least 2006, Respondent has owned and operated, and currently owns and
14 operates, a material recovery business at 4135 NW St. Helens Road in Portland, Oregon (the Facility).

15 2. On December 31, 2013, DEQ issued Respondent Solid Waste Disposal Site Permit 1336
16 for the Facility (the Permit).

17 3. Section 7.2 of the Permit requires Respondent to operate the Facility in accordance with
18 an Operations Plan approved by DEQ.

19 4. Respondent's Operations Plan in effect during July and August 2015, which was
20 approved by DEQ, included the following "Dust Control Procedures":

21 a. "At no time will dust be allowed to leave the site. When necessary, driveways
22 and materials will be watered to contain dust within the property boundaries...

23 b. During summer months there will be one person designated to watering and
24 sweeping the facility full time...

25 c. Inner roadways...will be watered and swept regularly to eliminate dust build up
26 on the property."

27 ////

1
2 IV. ORDER TO PAY CIVIL PENALTY

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

5 Pay a total civil penalty of \$6,225. The determination of the civil penalty is attached as Exhibits 1
6 and 2 which are incorporated as part of this Notice.

7 If you do not file a request for hearing as set forth in Section V below, your check or money order
8 must be made payable to "State Treasurer, State of Oregon" and sent to the **DEQ, Business Office,**
9 **811 S.W. Sixth Avenue, Portland, Oregon 97204.** Once you pay the penalty, the Findings of Fact,
10 Conclusions and Order become final.

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

12 You have a right to a contested case hearing on this Notice, if you request one in writing. You
13 must ensure that DEQ receives the request for hearing **within 20 calendar days** from the date you
14 receive this Notice. If you have any affirmative defenses or wish to dispute any allegations of fact in
15 this Notice or attached exhibits, you must include them in your request for hearing, as factual matters
16 not denied will be considered admitted, and failure to raise a defense will be a waiver of the defense.
17 (See OAR 340-011-0530 for further information about requests for hearing.) You must mail the request
18 for hearing to: **DEQ, Office of Compliance and Enforcement - Appeals, 811 SW Sixth Avenue,**
19 **Portland, Oregon 97204,** or fax it to **503-229-5100.** An administrative law judge employed by the
20 Office of Administrative Hearings will conduct the hearing, according to ORS Chapter 183, OAR
21 Chapter 340, Division 011 and OAR 137-003-0501 to 0700. You have a right to be represented by an
22 attorney at the hearing, or you may represent yourself unless you are a corporation, agency or
23 association.

24 Active duty service-members have a right to stay proceedings under the federal Service
25 members Civil Relief Act. For more information, please call the Oregon State Bar at 1-800-
26 452-8260 or the Oregon Military Department at 1-800-452-7500. Additional information can be found
27 online at the United States Armed Forces Legal Assistance (AFLA) Legal Services Locator website

1 <http://legalassistance.law.af.mil/content/locator.php>.

2 If you fail to file a request for hearing in writing within 20 calendar days of receipt of the
3 Notice, the Notice will become a final order by default without further action by DEQ, as per OAR
4 340-011-0535(1). If you do request a hearing but later withdraw your request, fail to attend the hearing
5 or notify DEQ that you will not be attending the hearing, DEQ will issue a final order by default
6 pursuant to OAR 340-011-0535(3). DEQ designates the relevant portions of its files, including
7 information submitted by you, as the record for purposes of proving a prima facie case.
8
9
10

11 12/31/15

12 Date

11 Leah K. Feldon

12 Leah K. Feldon, Manager
13 Office of Compliance and Enforcement
14
15
16
17
18
19
20
21
22
23
24
25
26
27

EXHIBIT 1

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

VIOLATION 1: Causing or permitting the emission of particulate matter larger than 250 microns in size at sufficient duration or quantity as to create an observable deposition upon the real property of another person, in violation of OAR 340-208-0450.

CLASSIFICATION: These are Class II violations pursuant to OAR 340-012-0053(2).

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 \$750 for a Class II, moderate magnitude violation in the matrix listed in OAR 340-012-0140(4)(b)(B)(ii) and applicable pursuant to OAR 340-012-0140(4)(a)(B), because this is a violation of an air quality rule committed by a person not listed under another penalty matrix.

"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)(C), 340-012-0145(2)(d)(A)(ii), 340-012-0145(2)(e) and 340-012-0030(2), because Respondent has two Class II violations (one Class I equivalent) in case no. AQ/D-NWR-08-164, issued October 17, 2008 (more than five years before the date of the current violation).

"H" is Respondent's history of correcting prior significant actions and receives a value of 1 according to OAR 340-012-0145(3)(d). The sum of values for "P" and "H" may not be less than one because Respondent did not take extraordinary efforts to correct or minimize the effects of all prior significant actions.

"O" is whether the violation was repeated or ongoing and receives a value of 2 according to OAR 340-012-0145(4)(b), because there were at least three occurrences of the violation, as documented by DEQ on July 2 and August 24, 2015 and by Metro on July 20, 2015.

"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 was assessed a civil penalty for this violation in 2008. Additionally, DEQ issued warning letters to Respondent

in 2006 and 2012 for the same violation. By failing to take adequate measures to fully contain the dust from the Facility, Respondent has disregarded the substantial and unjustifiable risk of committing this violation. Given the duration of the problem and prior enforcement history with DEQ and Metro, Respondent's disregard of this risk constitutes a gross deviation from the standard of care a reasonable person would observe in this situation.

"C" is Respondent's efforts to correct or mitigate the violation and receives a value of -2 according to OAR 340-012-0145(6)(d), because Respondent eventually made some efforts to minimize the effects of the violation.

"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, as DEQ has insufficient information on which to make an estimate at this time.

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

$$\begin{aligned} &= \$750 + [(0.1 \times \$750) \times (0 + 1 + 2 + 8 - 2)] + \$0 \\ &= \$750 + [\$75 \times 9] + \$0 \\ &= \$750 + \$675 + \$0 \\ &= \$1,425 \end{aligned}$$

EXHIBIT 2

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

VIOLATION 2: Failing to operate the Facility in accordance with the DEQ-approved Operations Plan, in violation of OAR 340-096-0040(4)(b)(A) and condition 7.2 of the Permit.

CLASSIFICATION: These are Class II violations pursuant to OAR 340-012-0053(2).

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 \$3,000 for a Class II, moderate magnitude violation in the matrix listed in OAR 340-012-0140(2)(b)(B)(ii) and applicable pursuant to OAR 340-012-0140(2)(a)(Q)(i), because Respondent has a solid waste disposal permit and violated a solid waste rule and permit condition.

"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 in the same media (land quality).

"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 2 according to OAR 340-012-0145(4)(b), because there were at least three occurrences of the violation, as documented by DEQ on July 2 and August 24, 2015 and by Metro on July 20, 2015.

"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. As alleged in Exhibit 1, Respondent has a prior history of air quality violations relating to insufficient dust control. By failing to follow the dust control procedures in the Operations Plan Respondent wrote for the Facility, Respondent failed to take reasonable care to avoid a foreseeable risk of committing a violation of 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.

"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, as DEQ has insufficient information on which to make an estimate at this time.

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

$$\begin{aligned} &= \$3,000 + [(0.1 \times \$3,000) \times (0 + 0 + 2 + 4 + 0)] + \$0 \\ &= \$3,000 + [\$300 \times 6] + \$0 \\ &= \$3,000 + \$1,800 + \$0 \\ &= \$4,800 \end{aligned}$$