



# Oregon

Kate Brown, 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

December 5, 2017

CERTIFIED MAIL: 7016 2140 0000 2409 5793

John Cole Beairsto  
785 Stewart Road  
Grants Pass, OR 97538-0068

Re: Notice of Civil Penalty Assessment and Order  
Case No. LQ/SW-WR-2017-147

This letter is to inform you that the Oregon Department of Environmental Quality (DEQ) has issued you a civil penalty of \$7,395 for the illegal burning and disposal of solid waste at your property located at 785 Stewart Road in Grants Pass, Oregon.

DEQ issued this penalty because open burning household garbage poses a threat to the environment and public health, especially for the young, elderly, and those with respiratory conditions. Toxic chemical exposure can result from such burning, and each illegal burn contributes to the cumulative amount of pollution in the atmosphere.

In addition, it appears that you have buried the debris leftover from the burning and solid wastes at your property. Those wastes pose a threat of harm to groundwater and down-gradient drinking water supplies. Solid waste may not be disposed in a manner such that it may risk causing pollution to waters of the state. It is against the law to dispose of solid waste anywhere except at a permitted disposal facility, such as a landfill or transfer station. Illegal dumps diminish livability and can threaten human health and the environment by creating habitat for disease carrying vectors and threatening groundwater.

Included in Section IV is an Order requiring you to clean up the property within 30 days. \$2,295 of the civil penalty represents the economic benefit you gained by failing to properly dispose of the solid waste. If you take corrective action, DEQ will consider recalculating the costs as delayed rather than avoided and will reduce the civil penalty accordingly.

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 – 700 NE Multnomah Street, Suite #600, Portland, Oregon 97232

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 Courtney Brown, at (503) 229-6839. You may call toll-free within Oregon at 1-800-452-4011, extension 6839.

Sincerely,



Sarah G. Wheeler, Acting Manager  
Office of Compliance and Enforcement

Enclosures

cc: David Esch, Medford  
Meghan Fagundes, Medford  
Shaumae Hall, Accounting, DEQ

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

3 IN THE MATTER OF: )  
4 JOHN COLE BEAIRSTO, ) NOTICE OF CIVIL PENALTY  
5 Respondent. ) ASSESSMENT AND ORDER  
6 CASE NO. LQ/SW-WR-2017-147

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, ORS 468.126 through 468.140,  
10 ORS 459.995; ORS Chapter 183 and Oregon Administrative Rules (OAR) Chapter 340, Divisions 011,  
11 012, 093 and 264.

12 II. FINDINGS OF FACT

- 13 1. Respondent owns and is a resident of property located at 785 Stewart Road in Grants Pass,  
14 Oregon (the Property).
- 15 2. From on or about January, 2017, through the present, Respondent has disposed of  
16 approximately 80 cubic yards of household garbage and other debris at the Property.
- 17 3. At all relevant times the Property was not authorized by DEQ as a solid waste disposal site.
- 18 4. On March 13, 2017, Respondent burned household garbage including plastic, rubber and  
19 metal at the Property.
- 20 5. On May 5, 2017, DEQ staff observed that the debris pile had been burned and some debris  
21 was buried on the Property.
- 22 6. Household garbage is a material which normally emits dense smoke or noxious odors when  
23 burned.

24 III. CONCLUSIONS

- 25 1. Since on or about January, 2017, through the present, Respondent has violated OAR 340-  
26 093-0040(1) by authorizing the disposal of solid waste in a location not authorized as a solid waste  
27 disposal site, as described in Section II above. Specifically, Respondent disposed of debris at the  
Property. The debris is "solid waste," as defined by OAR 340-093-0030(91), because it is made up of

1 useless and discarded materials, including but not limited to plastic and garbage. The Property was not  
2 an authorized disposal site at any relevant time. This is a Class I violation, according to OAR 340-012-  
3 0065(1)(c). DEQ hereby assesses a \$3,195 civil penalty for this violation.

4 2. On or about March 13, 2017, Respondent violated OAR 340-264-0060(3) adopted pursuant to  
5 ORS 468A.025, by causing or allowing to be initiated or maintained on the Property the open burning  
6 of materials prohibited from being open burned as described in Section II above. Respondent is strictly  
7 liable pursuant to OAR 340-264-0060(1)(a) and (c). This is a Class I violation, according to OAR 340-  
8 012-0054(1)(q). DEQ hereby assesses a \$4,200 civil penalty for this violation.

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

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

12 1. Pay a total civil penalty of \$7,395. The determinations of the civil penalties are attached as  
13 Exhibits No.1 and No.2 and are incorporated as part of this Notice.

14 If you do not file a request for hearing as set forth in Section V below, your check or money  
15 order must be made payable to "**State Treasurer, State of Oregon**" and sent to the **DEQ, Business**  
16 **Office, 700 NE Multnomah Street, Suite 600, Portland, Oregon 97232**. Once you pay the penalty,  
17 the Findings of Fact, Conclusions and Order become final.

18 2. Within 30 days after the order becomes final by operation of law or on appeal, remove and  
19 properly dispose the solid waste accumulated and buried at the Property. Written documentation  
20 demonstrating Respondent's compliance, including disposal and/or recycling receipts must be sent to:  
21 DEQ, Attn: David Esch, 221 W. Stewart, Suite 201, Medford, OR 97501.

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

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

1 further information about requests for hearing.) You must send your request to: **DEQ, Office of**  
2 **Compliance and Enforcement, 700 NE Multnomah Street, Suite 600, Portland, Oregon 97232**, fax  
3 it to **503-229-5100**, or email it to **DEQappeals@deq.state.or.us**. An administrative law judge  
4 employed by the Office of Administrative Hearings will conduct the hearing, according to ORS  
5 Chapter 183, OAR Chapter 340, Division 011 and OAR 137-003-0501 to 0700. You have a right to be  
6 represented by an attorney at the hearing, however you are not required to be. If you are an individual,  
7 you may represent yourself. If you are a corporation, partnership, limited liability company,  
8 unincorporated association, trust or government body, you must be represented by an attorney or a duly  
9 authorized representative, as set forth in OAR 137-003-0555.

10 Active duty service-members have a right to stay proceedings under the federal Service  
11 Members Civil Relief Act. For more information, please call the Oregon State Bar at 1-800-  
12 452-8260 or the Oregon Military Department at 1-800-452-7500. Additional information can be found  
13 online at the United States Armed Forces Legal Assistance (AFLA) Legal Services Locator website  
14 <http://legalassistance.law.af.mil/content/locator.php>.

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

21  
22  
23  
24 December 5, 2017

25 Date

24 Sarah Wheeler

25 Sarah G. Wheeler, Acting Manager  
26 Office of Compliance and Enforcement  
27

EXHIBIT NO. 1

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

- VIOLATION 1: Disposing of or authorizing the disposal of solid waste in a location not authorized as a solid waste disposal site, in violation of OAR 340-093-0040(1).
- CLASSIFICATION: This is a Class I violation pursuant to OAR 340-012-0065(1)(c).
- MAGNITUDE: The magnitude of the violation is moderate pursuant to OAR 340-012-0135(3)(a)(B) because the volume of material disposed of by the Respondent is greater than or equal to 40 cubic yards and less than 400 cubic yards. Respondent has disposed of approximately 80 cubic yards of solid waste.
- 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 \$500 for a Class I, moderate magnitude violation in the matrix listed in OAR 340-012-0140(5)(b)(A)(ii) and applicable pursuant to OAR 340-012-0140(5)(a)(H) because Respondent is a residential owner-occupant.
- "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 constitutes a separate occurrence. The illegal disposal occurred from on or about January, 2017, through the present. Therefore, there were more than 28 occurrences of the violation.
- "M" is the mental state of the Respondent and receives a value of 2 according to OAR 340-012-0145(5)(b), because Respondent reasonably should have known that he may not dispose of and bury household garbage and other debris anywhere other than a permitted landfill.
- "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 has not addressed 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 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 \$2,295 because Respondent avoided \$4,060 in costs to dispose of 80 cubic yards of solid waste (80 yards x \$50.75/yard).

PENALTY CALCULATION:  $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$   
 $= \$500 + [(0.1 \times \$500) \times (0 + 0 + 4 + 2 + 2)] + \$2,295$   
 $= \$500 + [\$50 \times 8] + \$2,295$   
 $= \$500 + \$400 + \$2,295$   
 $= \$3,195$

EXHIBIT NO. 2

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

VIOLATION 2: Causing or allowing to be initiated or maintained the open burning of materials that are prohibited from being open burned, in violation of OAR 340-264-0060(3) on or about March 13, 2017.

CLASSIFICATION: This is a Class I violation pursuant to OAR 340-012-0054(1)(q).

MAGNITUDE: The magnitude of the violation is major pursuant to OAR 340-012-0135(1)(i)(A) because Respondent initiated or allowed the initiation of open burning of five or more cubic yards of prohibited materials.

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 I, major magnitude violation in the matrix listed in OAR 340-012-0140(4)(b)(A)(i) and applicable pursuant to OAR 340-012-0140(4)(a)(D) because Respondent is a residential owner-occupant and Respondent caused or allowed the open burning of at least 25 cubic yards of prohibited materials.

"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 Respondent has 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 Respondent has 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 only one occurrence of the violation.

"M" is the mental state of the Respondent and receives a value of 2 according to OAR 340-012-0145(5)(b), because Respondent reasonably should have known that burning materials such as plastic and household garbage is prohibited.

"C" is Respondent's efforts to correct 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 economic benefit that an entity gained by not complying with the law. 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 the economic benefit gained by Respondent is assessed in Exhibit No.1.

PENALTY CALCULATION:  $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$   
 $= \$3,000 + [(0.1 \times \$3,000) \times (0 + 0 + 0 + 2 + 2)] + \$0$   
 $= \$3,000 + [(\$300) \times (4)] + \$0$   
 $= \$3,000 - \$1,200 + \$0$   
 $= \$4,200$