



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

May 8, 2020

CERTIFIED MAIL: 7017 1450 0000 8310 3169

Columbia Northwest Recycling, Inc. doing business as
Construction Materials Recycling
Thomas K. Wolf, Registered Agent
5200 S.W. Meadows Road, Suite 150
Lake Oswego OR 97035

Re: Notice of Civil Penalty Assessment and Order
Case No. LQ/SW-NWR-2020-016

DEQ is committed to balancing its vital obligation to enforce the law and protect the environment with a consideration of the dramatic disruptions to public health and the economy caused by the COVID-19 outbreak. We understand the outbreak may impact your ability to timely appeal, pay the assessed civil penalty, or comply with this order. You may submit to DEQ documentation identifying whether COVID-19-related disruption affects your ability to comply with this order. Visit our webpage <https://www.oregon.gov/deq/Pages/covid-19.aspx> for more information about documenting specific COVID-19 disruptions your facility may be encountering and how that affects your ability to comply. DEQ will exercise reasonable discretion regarding settlement of this order.

This letter is to inform you that DEQ has issued you a civil penalty of \$611,403 for operating a solid waste disposal site without a permit at a property located at 6655 Hergert Road, in Cornelius (the Property). Since December 2018, you have stored approximately 10,000 tons of glass waste, which was contaminated with plastic and metal, and 3,000 tons of asphalt shingle waste at the Property. In addition, you have shredded the asphalt paving waste, ground the glass waste, and provided wastes to others for use as fill without approval from DEQ. Despite DEQ sending you letters in January and June of 2019 requesting that you properly dispose of the waste by December 31, 2019, you have continued to store and process the wastes at the Property. The continuing storage and processing of the waste without a permit is a violation of Oregon law.

DEQ issued this penalty because the disposal of asphalt shingles and plastics can impact the environment by releasing chemicals including metals, polyaromatic hydrocarbons (PAHs) and bisphenol A (BPA) into soil and surface waters. Plastics, which are left on the land, create micro-plastics, which change both the chemical makeup and characteristics of soil. In addition, DEQ is concerned that you have not been able to demonstrate proper land use approval for the storage and processing of the waste at the Property.

Included in Section IV of the attached Notice is an order requiring you to immediately cease accepting, grinding, and shredding the wastes. Additionally, you must submit a written plan to DEQ for approval detailing the proper disposal of all of the waste at the Property and submit documentation to DEQ upon implementation of the plan. \$580,203 of the civil penalty represents the economic benefit you gained by

avoiding the costs of proper disposal of the waste. If you complete these requirements, 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 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.state.or.us

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 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 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 Susan Elworth at 503-229-5152 or toll free in Oregon at 800-452-4011, extension 5152.

Sincerely,



Kieran O'Donnell, Manager
Office of Compliance and Enforcement

Enclosures

cc: Jeremy Fleming, NWR, DEQ
Lisa Reinhart, DOGAMI, 229 Broadalbin Street SW, Albany OR 97312-2246

1 BEFORE THE ENVIRONMENTAL QUALITY COMMISSION

2 OF THE STATE OF OREGON

3	IN THE MATTER OF:)	
4	COLUMBIA NORTHWEST RECYCLING)	NOTICE OF CIVIL PENALTY
4	INC. doing business as CONSTRUCTION)	ASSESSMENT AND ORDER
5	MATERIALS RECYCLING,)	
5	Respondent.)	CASE NO. LQ/SW-NWR-2020-016

6
7 I. AUTHORITY

8 DEQ issues this Notice of Civil Penalty Assessment and Order (Notice) pursuant to Oregon
9 Revised Statutes (ORS) 468.100, ORS 468.126 through 468.140, ORS 459.995, ORS Chapter 183 and
10 Oregon Administrative Rules (OAR) Chapter 340, Divisions 011, 012, and 093.

11 II. FINDINGS OF FACT

12 1. Respondent operates a waste processing and recycling business at a property located at 6655
13 Hergert Road in Cornelius (the Property).

14 2. Since at least 2017, Respondent has been accepting and storing at the Property glass waste
15 generated from the processing of recyclable glass into glass cullet which is used to manufacture glass
16 (the Glass Waste). The Glass Waste is either of an insufficient size or is contaminated with plastic or
17 metal such that it cannot be used as cullet to manufacture glass.

18 3. Since at least 2016, Respondent has been accepting and storing at the Property asphalt
19 shingle waste generated by asphalt shingle manufacturers, that includes trimmings from the
20 manufacturing process and off-specification shingles and sheets which cannot be used in their normal
21 application (the Asphalt Shingle Waste).

22 4. Since 2017, Respondent has provided Glass Waste to others to be used as fill material at
23 unknown locations (Unknown Locations).

24 5. Sometime prior to December 2018, Respondent provided Asphalt Shingle Waste to the
25 owner of the Property to use as fill for an area of the Property approximately 500 feet long by 150 feet
26 wide.

27 ///

1 6. On December 19, 2018, DEQ inspected the Property. At the time of the inspection,
2 Respondent was storing approximately 10,000 tons of Glass Waste and 3,000 tons of Asphalt Shingle
3 Waste at the Property.

4 7. In March 2019, Respondent submitted to DEQ an Application for Solid Waste Beneficial
5 Use Determination Application for the Glass Waste under OAR 340-093-0290. Respondent proposed a
6 case-specific beneficial use for using the Glass Waste as base aggregate and trench backfill.

7 8. In March 2019, Respondent submitted an Application for Solid Waste Beneficial Use
8 Determination Application to DEQ for the Asphalt Shingle Waste under OAR 340-093-0290.
9 Respondent proposed a case-specific beneficial use for using the Asphalt Shingle Waste in a cool dry
10 mix asphalt product for low traffic asphalt projects.

11 9. In March 2019, Respondent submitted an application for a Materials Recovery Facility
12 Permit (as defined by OAR 340-093-0010(65)) to DEQ for the storage and processing of the Glass
13 Waste and the Asphalt Shingle Waste at the Property.

14 10. On April 23, 2019, DEQ informed Respondent that the applications, described in paragraphs
15 7 through 9 were incomplete and requested that Respondent submit, prior to May 8, 2019, additional
16 information regarding Respondent's applications

17 11. On May 9, 2019, DEQ granted Respondent an extension to submit the additional
18 information regarding the Applications until May 31, 2019.

19 12. As of the date of this Notice, Respondent has not submitted the information regarding the
20 Applications requested by DEQ on April 23, 2019.

21 13. In February 2020, DEQ received documentation showing that there was approximately the
22 same amount of Glass Waste and Asphalt Shingle Waste at the Property as in December 2018.

23 14. On February 28, 2020, Respondent was running Glass Waste through a grinder at the
24 Property.

25 15. As of the date of this Notice, DEQ has not issued Respondent a Solid Waste Disposal Site,
26 Material Recovery Facility Permit, nor any approved Beneficial Use Determinations, for its Glass
27 Waste and Asphalt Shingle Waste processing operations at the Property.

1 III. CONCLUSIONS

2 Respondent violated ORS 459.205(1) and OAR 340-093-0050(1) by establishing, operating and
3 maintaining a disposal site without obtaining a permit from DEQ. The Glass Waste and Asphalt
4 Shingle Waste are "Solid Wastes," as defined by ORS 459.005(24) and OAR 340-093-0010(85),
5 because they are useless or discarded materials. Specifically, the Glass Waste is an "Industrial Solid
6 Waste," as defined by OAR 340-093-0010(53), because it is generated by the industrial process of
7 creating glass cullet, cannot be used as cullet, and is not "Clean Fill," as defined by OAR 340-093-
8 0010(18). The Asphalt Shingle Waste is also an "Industrial Solid Waste" because it is generated by the
9 manufacturing process of creating asphalt shingles and sheets, cannot be used as roofing material, and
10 is not "Clean Fill." The Property, including the areas of the Property where Respondent stores the Glass
11 Waste and Asphalt Shingle Waste, grinds the Glass Waste, or has used the wastes as fill, is a "Disposal
12 Site," as defined by OAR 340-093-0010(38), because it is land used for the disposal, handling, treating,
13 and material recovery of solid waste. Respondent does not have a Solid Waste Disposal Site Permit
14 from DEQ for the disposal, handling, treating, and material recovery of the Glass Waste and Asphalt
15 Shingle Waste at the Property. This is a Class I violation according to OAR 340-012-0065(1)(a). DEQ
16 assesses a \$611,403 civil penalty for this 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 \$611,403. The determination of the civil penalty is attached as
21 Exhibit 1 and is incorporated as part of this Notice. If you do not file a request for hearing as set forth in
22 Section V below, your check or money order must be made payable to "**State Treasurer, State of
23 Oregon**" and sent to the **DEQ, Business Office, 700 NE Multnomah Street, Suite 600, Portland,
24 Oregon 97232**.
- 25 2. Immediately stop accepting, handling, and treating (including grinding or shredding) solid
26 waste (including the Glass Waste and Asphalt Shingle waste) at the Property; and
- 27 3. Within 30 days of this order becoming final by operation of law or on appeal:

- 1 a. Submit a written plan to DEQ for approval for the proper removal of the Glass Waste
2 and Asphalt Shingle Waste from the Property. Once DEQ approves the plan, dispose of
3 the waste at a solid waste disposal site that is permitted by DEQ to accept the waste and
4 submit to DEQ documentation of that disposal; and
- 5 b. Submit a list of all the Unknown Locations where Glass Waste and Asphalt Shingle
6 Waste from Respondent was disposed or used as fill material.
- 7 c. The documentation required above must be sent to: Jeremy Fleming, DEQ, 700 N.E.
8 Multnomah Boulevard, Suite 600, Portland OR 97219.

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

10 You have a right to a contested case hearing on this Notice, if you request one in writing. DEQ
11 must receive your request for hearing **within 20 calendar days** from the date you receive this Notice. If
12 you have any affirmative defenses or wish to dispute any allegations of fact in this Notice or attached
13 exhibit, you must do so in your request for hearing, as factual matters not denied will be considered
14 admitted, and failure to raise a defense will be a waiver of the defense. (See OAR 340-011-0530 for
15 further information about requests for hearing.) You must send your request to: **DEQ, Office of**
16 **Compliance and Enforcement, 700 NE Multnomah Street, Suite 600, Portland, Oregon 97232**, fax
17 it to **503-229-5100** or email it to DEQappeals@deq.state.or.us. An administrative law judge
18 employed by the Office of Administrative Hearings will conduct the hearing, according to ORS
19 Chapter 183, OAR Chapter 340, Division 011 and OAR 137-003-0501 to 0700. You have a right to be
20 represented by an attorney at the hearing, however you are not required to be. If you are an individual,
21 you may represent yourself. If you are a corporation, partnership, limited liability company,
22 unincorporated association, trust or government body, you must be represented by an attorney or a duly
23 authorized representative, as set forth in OAR 137-003-0555.

24 Active duty Service members have a right to stay proceedings under the federal Service
25 Members Civil Relief Act. For more information contact the Oregon State Bar at 1-800-
26 452-8260, the Oregon Military Department at 503-584-3571, or the nearest United States Armed
27 ////


1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

Forces Legal Assistance Office through <http://legalassistance.law.af.mil>. The Oregon Military Department does not have a toll free telephone number.

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

5/8/2020

Date



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 1: Establishing, operating and maintaining a disposal site without obtaining a permit from DEQ, in violation of ORS 459.205(1) and OAR 340-093-0050(1).
- CLASSIFICATION: This is a Class I violation pursuant to OAR 340-012-0065(1)(a).
- MAGNITUDE: The magnitude of the violation is major pursuant to OAR 340-012-0135(3)(a)(A) because Respondent established an unpermitted solid waste disposal site with more than 400 cubic yards of solid waste. DEQ estimates that there was approximately 10,000 tons (or 10,500 cubic yards) of Glass Waste and 3,000 tons (or 4,000 cubic yards) of Asphalt Shingle Waste on the property in December 2018 and again in February 2020.
- 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 \$12,000 for a Class I, major magnitude violation in the matrix listed in OAR 340-012-0140(2)(b)(A)(i) and applicable pursuant to OAR 340-012-0140(2)(a)(Q)(i) because Respondent should have a solid waste disposal permit.
- "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. Respondent began the illegal operation of an unpermitted disposal site on or before December 19, 2018, and continues to operate and maintain the unpermitted disposal site as of the date of this Notice. Therefore, there are more than 28 occurrences of the violation.
- "M" is the mental state of the Respondent, and receives a value of 10 according to OAR 340-012-0145(5)(e) because Respondent acted flagrantly. Flagrant means Respondent had actual knowledge that the conduct was unlawful and consciously set out to commit the violation. In January and June 2019, DEQ sent Respondent letters informing it that it needed to properly dispose of the Glass Waste and Asphalt shingle Waste stored at the

Property and that continuing to store that waste at the Property was a violation of Oregon law. The June 2019 letter also requested that Respondent remove the waste prior to December 31, 2019. Since that time, Respondent has continued to handle and store the waste at the Property including grinding the Glass Waste. Respondent has actual knowledge of fact that it cannot continue to maintain a solid waste disposal site at the Property, yet Respondent has consciously set out to continue to operate a solid waste disposal site without a permit.

"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 Respondents 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). Respondent has not removed and properly disposed of the solid waste.

"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 \$580,203. This is the amount Respondent gained by avoiding spending \$776,840 to properly dispose of approximately 10,000 tons (or 10,500 cubic yards) of Glass Waste and 3,000 tons (or 4,000 cubic yards) of Asphalt Shingle Waste since December 2018. This "EB" was calculated pursuant to OAR 340-012-0150(1) using the U.S. Environmental Protection Agency's BEN computer model.

PENALTY CALCULATION: $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$
= \$12,000 + [(0.1 x \$12,000) x (0 + 0 + 4 + 10 + 2)] + \$580,203
= \$12,000 + (\$1,200 x 16) + \$580,203
= \$12,000 + \$19,200 + \$580,203
= \$611,403