



# 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

January 15, 2020

CERTIFIED MAIL: 7016 3010 0000 6028 8675

LKQ Foster Auto Parts, Inc.  
Corporate Creations Network, Inc., Registered Agent  
5708 SE 136<sup>th</sup> Avenue  
Portland OR 97236

Re: Notice of Civil Penalty Assessment and Order  
Case No. LQ/HW-NWR-2019-240

This letter is to inform you that DEQ has issued LKQ Foster Auto Parts a civil penalty of \$5,400 for treating hazardous waste without a permit at your auto dismantling facility located at 19510 SE Sunnyside Road in Boring. Specifically, throughout 2018, LKQ Foster Auto Parts evaporated the water generated from washing vehicles. When you sampled that water in January 2019, it exceeded the regulatory limit for benzene. DEQ also cited LKQ Foster Auto Parts, without penalty, for failing to determine if the wash water was a hazardous waste and storing used oil without proper labeling. DEQ appreciates the fact that LKQ Foster Auto Parts is now managing this wash water under the used oil and fuel exemptions and took this into account when determining the amount of the civil penalty.

Additionally, the facility operates under the Stormwater Discharge 1200-Z General Permit which allows discharge of stormwater. The Permit requires that you submit to DEQ and maintain an updated Stormwater Pollution Control Plan (SWPCP) that sets forth each method you use to eliminate or reduce stormwater contamination. DEQ has cited you, without penalty, for failing to maintain an updated SWPCP. Included in Section IV of the Notice is an order requiring you to submit an updated SWPCP to DEQ for approval.

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](mailto: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.

LKQ Foster Auto Parts, Inc.  
Case No. LQ/HW-NWR-2019-240  
Page 2

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,

A handwritten signature in blue ink, appearing to read "Kieran O'Donnell".

Kieran O'Donnell, Manager  
Office of Compliance and Enforcement

Enclosures

cc: Jay Collins, NWR, DEQ  
Michael Kennedy, NWR, DEQ





1 D018 as it exceeded the regulatory limit for benzene in Table 1 of that rule (specifically, 0.5 milligrams per  
2 liter). This is a Class I violation according to OAR 340-012-0068(1)(c). DEQ assesses a \$5,400 civil  
3 penalty for this violation.

4 2. Throughout 2018, Respondent violated OAR 340-102-0011(2) by failing to determine if  
5 residues (as defined in OAR 340-100-0010(2)(ee)) generated by Respondent were hazardous waste.  
6 Respondent generated (as that term is defined in OAR 340-101-0010(5)) solid waste because it owned  
7 the wash water described in Section II, paragraph 6 when it became a solid waste. As alleged in Section  
8 II, paragraph 10, Respondent did not determine if the waste was hazardous waste throughout 2018.  
9 This is a Class I violation according to OAR 340-012-0068(1)(a). DEQ did not assess a civil penalty for  
10 this violation.

11 3. Respondent violated 40 CFR 279.22 (as adopted by 340-100-0002) by failing to label used oil  
12 containers with the words “used oil.” Specifically, during the December 2018 inspection, Respondent  
13 failed to label two mobile used oil collection containers and one five-gallon container with the words “used  
14 oil.” These are Class II violations according to OAR 340-012-0072(2)(e). DEQ did not assess a civil  
15 penalty for these violations.

16 4. Respondent violated ORS 468B.025(2) and Schedule A, condition 1.a.viii of the Permit by  
17 ensuring that all wash water drains to a proper collection system, as alleged in Section II, paragraph 7.  
18 This is a Class II violation according to OAR 340-012-0053(2). DEQ did not assess a civil penalty for this  
19 violation.

20 5. Respondent violated ORS 468B.025(2) and Schedule A, condition 6.e by failing to keep its  
21 SWPCP current by including each narrative technology-based effluent limit. Specifically, the booms and  
22 washing techniques alleged in Section II, paragraph 11 are not included in Respondent’s current  
23 SWPCP. This is a Class II violation according to OAR 340-012-0055(2)(b). DEQ did not assess a civil  
24 penalty for this violation.

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

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

1           1. Pay a total civil penalty of \$5,400. The determination of the civil penalty is attached as Exhibit  
2 1 and is incorporated as part of this Notice. If you do not file a request for hearing as set forth in Section V  
3 below, your check or money order must be made payable to "**State Treasurer, State of Oregon**" and  
4 sent to the **DEQ, Business Office, 700 NE Multnomah Street, Suite 600, Portland, Oregon 97232**.

5           2. Within 30 days of this order becoming final by operation of law or on appeal, submit a  
6 revised SWPCP that includes the measures Respondent is taking to meet the conditions in Schedule A,  
7 condition 1.a.viii of the Permit to: Michael Kennedy, DEQ, 700 NE Multnomah Boulevard, Suite 600,  
8 Portland OR 97232.

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](mailto: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 Forces Legal Assistance Office through <http://legalassistance.law.af.mil>. The Oregon Military

1 Department does not have a toll free telephone number.

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

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1/15/2020

Date



Kieran O'Donnell, Manager  
Office of Compliance and Enforcement

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## EXHIBIT 1

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

VIOLATION 1: Operating a hazardous waste treatment facility without a permit, in violation of ORS 466.095(1)(c).

CLASSIFICATION: This is a Class I violation pursuant to OAR 340-012-0068(1)(c).

MAGNITUDE: The magnitude of the violation is moderate pursuant to OAR 340-012-0130(1) because DEQ is unable to make an exact determination of the amount of hazardous waste that Respondent treated and the evidence does not support a finding under paragraph 3 or 4 of that rule.

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 \$6,000 for a Class I, moderate magnitude violation in the matrix listed in OAR 340-012-0140(2)(b)(A)(ii) and applicable pursuant to OAR 340-012-0140 (2)(a)(M)(i). Respondent is registered as a large quantity generator of hazardous waste.

"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 in the same media as this violation.

"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 0 according to OAR 340-012-0145(4)(a) because there is insufficient information on which to base a finding under paragraphs (4)(b) through (4)(d). It is unknown on how many dates in 2018 that Respondent treated hazardous waste without a permit.

"M" is the mental state of the Respondent, and receives a value of 2 according to OAR 340-012-0145(5)(b) because Respondent had constructive knowledge (reasonably should have known) of the requirement. Respondent operates multiple auto dismantler facilities in Oregon and reasonably should have been aware that its wash water could contain constituents that were hazardous such as benzene or metals which must not be evaporated but instead must be properly disposed of offsite.

"C" is Respondent's efforts to correct or mitigate the violation, and receives a value of -3 according to OAR 340-012-0145(6)(c) because Respondent made reasonable affirmative efforts to minimize the effects of the violation . Since the December 2018 inspection, Respondent has not been using the evaporator but has been shipping the wash water off-site for disposal. Additionally, Respondent is investigating the use of a closed-loop water reclamation system so it can reuse the wash water.

"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 is unable to make an estimate of costs delayed or avoided since DEQ is unable to determine the exact amount of the wash water which was hazardous waste.

PENALTY CALCULATION:  $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$   
= \$6,000 + [(0.1 x \$6,000) x (0 + 0 + 0 + 2 - 3)] + \$0  
= \$6,000 + (\$600 x -1) + \$0  
= \$6,000 + (-\$600) + \$0  
= \$5,400