



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

March 25, 2022

CERTIFIED MAIL: 7018 1830 0001 5906 3589

Riverbend Landfill Co.
780 Commercial Street SE Suite 100
Salem, Oregon 97301

Re: Notice of Civil Penalty Assessment and Order
Case No. LQ/SW-WR-2021-155

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 the Oregon Department of Environmental Quality (DEQ) has issued you a civil penalty of \$17,400 for multiple occurrences in May and June 2021 of failing to collect and control leachate as required by your Solid Waste Disposal Permit and Oregon law.

DEQ issued this penalty because the failure to control leachate at the Facility poses a threat to human health and the environment. Leachate from a landfill may contain a host of harmful pollutants, including total suspended solids (TSS), heavy metals, ammonia, arsenic, and bacteria. Discharging landfill leachate to the ground may cause offensive odors and poses a substantial threat to public health and the environment.

DEQ appreciates your efforts to promptly address and minimize the impacts of the violations by responding quickly to contain the leachate releases, excavating impacted areas, and sampling the soil. DEQ considered these efforts when determining the amount of civil penalty.

However, DEQ is concerned that leachate management is a recurring problem at the Facility. This is the fourth enforcement action issued for leachate releases at the Facility since 2014. Therefore, included in Section IV of the enclosed Notice is an order requiring you to conduct an evaluation of the Facility's leachate management system and propose improvements, including an implementation schedule, that will more effectively prevent future leachate releases.

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.oregon.gov

Via fax – 503-229-6762

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 Sarah Wheeler at 971-301-0622.

Sincerely,



Kieran O'Donnell, Manager
Office of Compliance and Enforcement

Enclosures

cc: Jim McCourt, DEQ
Brian Fuller, DEQ
Accounting, DEQ
Jim Denson, JDenson@wm.com
Ame Wellman Lewis, alewis6@wm.com
James Kincaid, jkincaid@cablehuston.com

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

3 IN THE MATTER OF:)
4 RIVERBEND LANDFILL CO.,)
)
5 Respondent.) CASE NO. LQ/SW-WR-2021-155

6 I. AUTHORITY

7 The Department of Environmental Quality (DEQ) issues this Notice of Civil Penalty Assessment
8 and Order (Notice) pursuant to Oregon Revised Statutes (ORS) 468.100, ORS 468.126 through 468.140,
9 ORS 459.995, ORS Chapter 183 and Oregon Administrative Rules (OAR) Chapter 340, Divisions 011,
10 012, and 94.

11 II. FINDINGS OF FACT

12 1. Respondent owns and operates a municipal solid waste landfill located at 13469 SW
13 Highway 18, in McMinnville, Oregon (the Facility).

14 2. DEQ issued Respondent a Solid Waste Disposal Site Permit, No. 345, (the Permit) on
15 December 3, 1999.

16 3. Section 9.9 of the Permit states that “[l]eachate must be prevented from escaping to local
17 drainage ways and to other unlined areas of the site.”

18 4. On or about May 21, 2021, leachate seeped through a defective weld on a final cover riser
19 boot, resulting in leachate flowing north onto a perimeter road outside the lined area of the Facility.

20 5. On or about June 3, 2021, Respondent’s leachate trucking vendor released an estimated total
21 of 5,000 gallons of leachate from a tanker truck to two areas on the ground at the Facility, outside the
22 lined area of the Facility.

23 6. On or about June 28, 2021, a damaged welded seam between the final cover and base liner-
24 resulted in leachate flowing onto a south perimeter access road outside the lined area of the Facility.

25 III. CONCLUSIONS

26 1. On or about May 21, 2021, Respondent violated OAR 340-094-0040(11)(c) and Section 9.9
27 of the Permit by failing to collect and control leachate within lined areas of the Facility and prevent

1 leachate from escaping to local drainage ways, as described in Section II, Paragraphs 1-4 above.

2 According to OAR 340-012-0065(1)(f), this is a Class I violation. DEQ hereby assesses a \$4,500 civil
3 penalty for this violation.

4 2. On or about June 28, 2021, Respondent violated OAR 340-094-0040(11)(c) and Section 9.9
5 of the Permit by failing to collect and control leachate within lined areas of the Facility and prevent
6 leachate from escaping to local drainage ways, as described in Section II, Paragraphs 1-3 and 6 above.
7 According to OAR 340-012-0065(1)(f), this is a Class I violation. DEQ hereby assesses a \$5,100 civil
8 penalty for this violation.

9 3. On or about June 3, 2021, Respondent violated OAR 340-094-0040(11)(c) and Section 9.9
10 of the Permit by failing to collect and control leachate within lined areas of the Facility and prevent
11 leachate from escaping to local drainage ways, as described in Section II, Paragraphs 1-3 and 5 above.
12 According to OAR 340-012-0065(1)(f), this is a Class I violation. DEQ hereby assesses a \$7,800 civil
13 penalty for this violation.

14 IV. ORDER TO PAY CIVIL PENALTY AND TO COMPLY

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

17 1. Pay a total civil penalty of \$17,400. The determination of the civil penalty is attached as
18 Exhibits 1-3, which are incorporated as part of this Notice. If you do not file a request for hearing as set
19 forth in Section V below, your check or money order must be made payable to "**State Treasurer, State of**
20 **Oregon**" and sent to the **DEQ, Business Office, 700 NE Multnomah Street, Suite 600, Portland,**
21 **Oregon 97232.**

22 2. Within 60 days of the date this order becomes final by operation of law or on appeal, submit
23 to DEQ for approval a written Leachate Collection and Disposal System Evaluation and Improvement
24 Plan (the Plan). The Plan must include an evaluation and analysis of the Facility's leachate collection
25 and disposal system, proposed improvements to prevent future leachate releases more effectively, and a
26 timeline for implementation of the proposed improvements. Respondent must implement the Plan upon
27 approval by DEQ.

1 3. Submit the Plan to Jim McCourt, james.mccourt@deq.oregon.gov.

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

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

17 Active duty Service members have a right to stay proceedings under the federal Service
18 Members Civil Relief Act. For more information contact the Oregon State Bar at 1-800-452-8260, the
19 Oregon Military Department at 503-584-3571, or the nearest United States Armed Forces Legal
20 Assistance Office through <http://legalassistance.law.af.mil>. The Oregon Military Department does not
21 have a toll free telephone number.

22 If you fail to file a timely request for hearing, the Notice will become a final order by default
23 without further action by DEQ, as per OAR 340-011-0535(1). If you do request a hearing but later
24 withdraw your request, fail to attend the hearing or notify DEQ that you will not be attending the
25 hearing, DEQ will issue a final order by default pursuant to OAR 340-011-0535(3). DEQ designates

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1 the relevant portions of its files, including information submitted by you, as the record for purposes of
2 proving a prima facie case.

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6 3/25/2022

7 Date



8 Kieran O'Donnell, Manager
9 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 NO. 1 Failing to collect and control leachate as required by OAR 340-094-0040(11)(c) and Section 9.9 of the Permit, on or about May 21, 2021.

CLASSIFICATION: This is a Class I violation pursuant to OAR 340-012-0065(1)(f).

MAGNITUDE: The magnitude of the violation is minor pursuant to OAR 340-012-0130(4), as there is no selected magnitude specified in OAR 340-012-0135 applicable to this violation, and DEQ finds that the violation had no more than a de minimis adverse impact to human health or the environment and posed no more than a de minimis threat to human health or the environment. In making this finding, DEQ considered all reasonably available information, specifically including: 1) the release extended approximately 24 inches beyond the lined area onto the road, 2) the release was contained to a small area and did not reach any drainage structures, 3) the impacted soil was promptly and thoroughly excavated, and 4) the amount of leachate released onto the ground is estimated to be small based upon documentation Respondent provided to DEQ.

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, minor magnitude violation in the matrix listed in OAR 340-012-0140(2)(b)(A)(iii) and applicable pursuant to OAR 340-012-0140(2)(a)(Q)(i) because Respondent has a solid waste disposal site 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 7 according to OAR 340-012-0145(2)(a)(C) and (D), because Respondent has two Class I violations in case number LQ/SW-ER-14-059, issued May 5, 2014, three Class I violations in case number LQ/SW-WR-2017-230, issued January 23, 2018, and one Class I violation in case number LQ/SW-WR-2020-191, issued on April 29, 2021.

"H" is Respondent's history of correcting prior significant actions, and receives a value of -1 according to OAR 340-012-0145(3)(b) because the prior violations were uncorrectable and Respondent took reasonable efforts to minimize the effects of the violations cited as prior significant actions.

"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 one occurrence of the violation, on May 21, 2021.

- "M" is the mental state of the Respondent, and receives a value of 2 according to OAR 340-012-0145(5)(b) because Respondent has reasonably should have known of the requirement to properly contain leachate at the Facility. Respondent's Solid Waste Disposal Facility permit states: "Leachate must be prevented from escaping to local drainage ways and to other unlined areas of the site."
- "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 took reasonable affirmative efforts to minimize the effects of the violation. Upon discovery of the release, Respondent contained the leachate, created a sump at the area of seeping to prevent further release, over-excavated the soil to ensure removal of any contamination, and repaired the defective weld.
- "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 because Respondent likely did not obtain an economic benefit from the violations.

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

$$\begin{aligned} &= \$3,000 + [(0.1 \times \$3,000) \times (7 + (-1) + 0 + 2 + (-3))] + \$0 \\ &= \$3,000 + (\$300 \times 5) + \$0 \\ &= \$3,000 + \$1,500 + \$0 \\ &= \$4,500 \end{aligned}$$

EXHIBIT 2

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

VIOLATION NO. 2 Failing to collect and control leachate as required by OAR 340-094-0040(11)(c) and Section 9.9 of the Permit, on or about June 28, 2021.

CLASSIFICATION: This is a Class I violation pursuant to OAR 340-012-0065(1)(f).

MAGNITUDE: The magnitude of the violation is minor pursuant to OAR 340-012-0130(4), as there is no selected magnitude specified in OAR 340-012-0135 applicable to this violation, and DEQ finds that the violation had no more than a de minimis adverse impact to human health or the environment and posed no more than a de minimis threat to human health or the environment. In making this finding, DEQ considered all reasonably available information, specifically including: 1) Analysis of the excavated soil did not detect any contamination above background levels, 2) Respondent did not detect any free liquid or odor from the release, 3) the release was contained to a small area and did not reach any drainage structures, 4) the impacted soil was promptly and thoroughly excavated, and 5) the amount of leachate released onto the ground is estimated to be small based upon documentation Respondent provided to DEQ.

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, minor magnitude violation in the matrix listed in OAR 340-012-0140(2)(b)(A)(iii) and applicable pursuant to OAR 340-012-0140(2)(a)(Q)(i) because Respondent has a solid waste disposal site 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 7 according to OAR 340-012-0145(2)(a)(C) and (D), because Respondent has two Class I violations in case number LQ/SW-ER-14-059, issued May 5, 2014, three Class I violations in case number LQ/SW-WR-2017-230, issued January 23, 2018, and one Class I violation in case number LQ/SW-WR-2020-191, issued on April 29, 2021.

"H" is Respondent's history of correcting prior significant actions, and receives a value of -1 according to OAR 340-012-0145(3)(b) because the prior violations were uncorrectable and Respondent took reasonable efforts to minimize the effects of the violations cited as prior significant actions.

- "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 one occurrence of the violation, on June 28, 2021.
- "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. By causing or allowing the seam between the cover and base liner to be damaged, likely by a mower, and remain unaddressed until the leachate release was discovered, Respondent failed to take reasonable care to avoid the foreseeable risk of leachate escaping.
- "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 took reasonable affirmative efforts to minimize the effects of the violation. Upon discovery of the release, Respondent investigated the source, bermed and covered the areas to prevent further impacts, excavated and sampled the contaminated soils, and repaired the containment.
- "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 because Respondent likely did not obtain an economic benefit from the violations.

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

$$= \$3,000 + [(0.1 \times \$3,000) \times (7 + (-1) + 0 + 4 + (-3))] + \$0$$

$$= \$3,000 + (\$300 \times 7) + \$0$$

$$= \$3,000 + \$2,100 + \$0$$

$$= \$5,100$$

EXHIBIT 3

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

VIOLATION NO. 3 Failing to collect and control leachate as required by OAR 340-094-0040(11)(c) and Section 9.9 of the Permit, on or about June 3, 2021.

CLASSIFICATION: This is a Class I violation pursuant to OAR 340-012-0065(1)(f).

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 \$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)(Q)(i) because Respondent has a solid waste disposal site 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 7 according to OAR 340-012-0145(2)(a)(C) and (D), because Respondent has two Class I violations in case number LQ/SW-ER-14-059, issued May 5, 2014, three Class I violations in case number LQ/SW-WR-2017-230, issued January 23, 2018, and one Class I violation in case number LQ/SW-WR-2020-191, issued on April 29, 2021.

"H" is Respondent's history of correcting prior significant actions, and receives a value of -1 according to OAR 340-012-0145(3)(b) because the prior violations were uncorrectable and Respondent took reasonable efforts to minimize the effects of the violations cited as prior significant actions.

"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 one occurrence of the violation, on June 3, 2021.

"M" is the mental state of the Respondent, and receives a value of 0 according to OAR 340-012-0145(5)(a) because there is insufficient information on which to base a finding under paragraphs (5)(b) through (5)(d).

"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 took reasonable affirmative efforts to minimize the effects of the violation. Upon discovery of the release, Respondent

attempted to stop the truck driver from releasing the leachate, excavated and sampled the contaminated soils, and disposed of eight truckloads (16 cubic yards) of impacted soil, completing cleanup by June 5.

"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 because Respondent likely did not obtain an economic benefit from the violations.

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

$$\begin{aligned} &= \$6,000 + [(0.1 \times \$6,000) \times (7 + (-1) + 0 + 0 + (-3))] + \$0 \\ &= \$6,000 + (\$600 \times 3) + \$0 \\ &= \$6,000 + \$1,800 + \$0 \\ &= \$7,800 \end{aligned}$$