



Oregon

Kate Brown, Governor

Department of Environmental Quality

Headquarters
811 SW 6th Ave
Portland, OR 97204-1390
(503) 229-5696
FAX (503) 229-6124
TTY: 711

March 30, 2016

CERTIFIED MAIL# 7014 2870 0001 3378 2566

Clackamas Compost Products, LLC
c/o Casey E. Stroupe, Registered Agent
20200 SW Stafford Rd.
Tualatin, OR 97062

Re: Notice of Civil Penalty Assessment and Order
Case No. WQ/I-NWR-16-032

This letter is to inform you that the Oregon Department of Environmental Quality (DEQ) has issued you a civil penalty of \$21,357 for placing wastes in a location where they are likely to enter waters of the state by any means.

DEQ issued this penalty because stormwater mixed with compost leachate and other wastes discharged from your composting Facility located at 11620 SE Capps Road in Clackamas, Oregon, to the floodplain of the Clackamas River where they were likely to discharge to groundwater or directly to the river. Any wastes which have the potential to change the physical, biological and chemical properties of waters of the state and have the potential to render such waters harmful, detrimental or injurious to beneficial uses are prohibited from being placed in an area where they are likely to escape or be carried into the waters of the state by any means. \$14,757 of the civil penalty represents the economic benefit you gained by failing to spending approximately \$26,500 to pump the accumulated stormwater and compost leachate mixture through a treatment system and have it transported off-site into the sanitary sewer.

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



Clackamas Compost Products, LLC
Case No. WQ/I-NWR-16-032
Page 2

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,



Leah K. Feldon, Manager
Office of Compliance and Enforcement

Enclosures

cc: Pat Heins, DEQ, Northwest Region
Daniel Hough, DEQ, Northwest Region
John Koestler, WQ, HQ
Clackamas Compost Products, Attn: Rick Franklin, 11620 SE Capps Road, Clackamas, OR 97015
Clackamas County Development Agency, Attn David Queener, 150 Beaver Creek Rd, Oregon City, Oregon, 97045

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

3 IN THE MATTER OF:) NOTICE OF CIVIL PENALTY
4 CLACKAMAS COMPOST PRODUCTS,) ASSESSMENT AND ORDER
a limited liability corporation,)
5 Respondent.) CASE NO. WQ/I-NWR-16-032

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, 468.126 through 468.140, and
10 468B, ORS Chapter 183 and Oregon Administrative Rules (OAR) Chapter 340, Divisions 011 and 012.

11 II. FINDINGS OF FACT

12 1. Respondent managed a composting facility located at 11620 SE Capps Road, in Clackamas,
13 Oregon (the "Facility").

14 2. On or about January 8, 2014, DEQ staff conducted an inspection of the Facility and
15 observed a mixture of untreated leachate from composting activities and stormwater had been
16 discharged from the Facility to the floodplain of the Clackamas River.

17 3. On or about December 14, 2015, DEQ conducted an inspection of the Facility and observed
18 an eight foot wide breach in the berm surrounding the Facility. During the inspection DEQ staff also
19 observed a fan of fresh sediment on the Clackamas River floodplain indicating a discharge from the
20 Facility to the floodplain.

21 4. Discharges to the floodplain of the Clackamas River infiltrate groundwater.

22 III. CONCLUSIONS

23 1. Untreated leachate from composting activities mixed with stormwater is a substance
24 which will or may cause pollution or tends to cause pollution of any waters of the state and is
25 considered a "waste" pursuant to ORS 468B.005(9).

26 2. The Clackamas River is considered "waters of the state" according to ORS
27 468B.005(10). Groundwater is considered "waters of the state" according to ORS 468B.005(10).

1 Active duty service-members have a right to stay proceedings under the federal Service
2 members Civil Relief Act. For more information, please call the Oregon State Bar at 1-800-
3 452-8260 or the Oregon Military Department at 1-800-452-7500. Additional information can be found
4 online at the United States Armed Forces Legal Assistance (AFLA) Legal Services Locator website
5 <http://legalassistance.law.af.mil/content/locator.php>. If you fail to file a request for hearing in writing
6 within 20 calendar days of receipt of the Notice, the Notice will become a final order by default without
7 further action by DEQ, as per OAR 340-011-0535(1). If you do request a hearing but later withdraw
8 your request, fail to attend the hearing or notify DEQ that you will not be attending the hearing, DEQ
9 will issue a final order by default pursuant to OAR 340-011-0535(3). DEQ designates the relevant
10 portions of its files, including information submitted by you, as the record for purposes of proving a
11 prima facie case.

12
13
14
15 March 30, 2016
16 Date

15 Suzanne Wheeler for
16 Leah K. Feldon, Manager
Office of Compliance and Enforcement

EXHIBIT No.1

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

VIOLATION: Placing wastes in a location where such wastes are likely to escape or be carried into the waters of the state by any means.

CLASSIFICATION: This is a Class II violation pursuant to OAR 340-012-0055(2)(c).

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)(D).

"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 2 according to OAR 340-012-0145(4)(b), because there was more than one but less than seven occurrences of the violation. Each day of violation constitutes a separate occurrence. The violation occurred on at least the two days that DEQ inspected the Facility; January 8, 2014, and December 14, 2015. Therefore, there were at least two occurrences of the violation.

"M" is the mental state of the Respondent and receives a value of 8 according to OAR 340-012-0145(5)(d), because Respondent acted intentionally with actual knowledge of the requirement. DEQ issued Respondent a Warning Letter with Opportunity to Correct dated May 13, 2014, for violating ORS 468B.025(1) on or about January 8, 2014, by discharging untreated leachate mixed with stormwater from its Facility to the Clackamas River floodplain. Respondent therefore had actual knowledge that discharging wastes from its Facility to the floodplain was a violation of Oregon law. By bulldozing a berm that prevented the discharge of untreated leachate and stormwater mixture Respondent acted intentionally with actual knowledge that its actions would constitute a violation of law.

"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 the 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 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 \$14,757. This is the amount Respondent gained by avoiding spending \$26,500 to pump the accumulated stormwater and compost leachate mixture through a treatment system and have it transported off-site into the sanitary sewer. This 'EB' was calculated pursuant to OAR 340-012-0150(1) using the U.S. Environmental Protection Agency's BEN computer model.

PENALTY CALCULATION: $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$
= \$3,000 + [(0.1 x \$3,000) x (0 + 0 + 2 + 8 + 2)] + \$14,757
= \$3,000 + [\$300 x 12] + \$14,757
= \$3,000 + \$3,600 + \$14,757
= \$21,357