



Oregon

Kate Brown, Governor

Department of Environmental Quality

Office of the Director
811 SW Sixth Avenue
Portland, OR 97204-1390
(503) 229-5343
FAX (503) 229-5100
TTY: 711

March 22, 2016

CERTIFIED MAIL: 7014 2870 3378 2573

Donald Salvey
P.O. Box 539
Scappoose, OR 97056

Re: Notice of Civil Penalty Assessment and Order
Case No. WQ/I-NWR-16-030

This letter is to inform you that the Oregon Department of Environmental Quality (DEQ) has issued you a civil penalty of \$19,243 for discharging paint and paint chips from the vessel Henrietta W causing pollution to the Skipanon River at the Warrenton Marina on or about September 23, 2015.

DEQ issued this penalty because discharging paint and paint chips into waters of the state poses a risk of harm to beneficial uses of the river including recreation and aquatic life. The Department is concerned with the adverse impact discharges of this kind could have on Oregon's water quality.

\$8,443 of the civil penalty represents the economic benefit you gained by failing to properly have the boat painted by taking the boat out of the water and putting it in a dry dock.

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 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.



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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,

*Summerville
fw*

Leah K. Feldon, Manager
Office of Compliance and Enforcement

Enclosures

cc: Michael Kennedy, Northwest Region
John Koestler, WQ, HQ

1 BEFORE THE ENVIRONMENTAL QUALITY COMMISSION

2 OF THE STATE OF OREGON

3	IN THE MATTER OF:)	NOTICE OF CIVIL PENALTY
4	DONALD SALVEY,)	ASSESSMENT AND ORDER
5	an individual,)	
6)	CASE NO. WQ/I-NWR-16-030
7	Respondent.)	

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 and 468.126 through 468.140,
10 ORS Chapter 468B, ORS Chapter 183 and Oregon Administrative Rules (OAR) Chapter 340, Divisions
11 011 and 012.

12 II. FINDINGS OF FACT

13 1. On or about September 23, 2015, Respondent was in control of the vessel Henrietta W (the
14 “vessel”) moored at the Warrenton Marina, located at 550 NE Harbor Place in Warrenton, Oregon, in
15 the Skipanon River, waters of the state.

16 2. On or about September 23, 2015, individuals under the direction of Respondent were
17 grinding and sanding paint from the hull of the vessel and painting the hull while the vessel was
18 moored at the dock.

19 3. Paint chips and paint were observed in the water around the vessel.

20 4. Individuals under the direction of Respondent were also observed cleaning paint from paint
21 roller brushes in the Warrenton Marina mooring basin.

22 5. Paint commonly contains chemicals which may be detrimental to aquatic life and habitat.

23 6. Respondent does not have a National Pollutant Discharge Elimination System (NPDES)
24 Permit.

25 III. CONCLUSIONS

26 1. The Skipanon River and the Warrenton Marina mooring basin are considered “waters of the
27 state” according ORS 468B.005(10).

1 2. Respondent has violated ORS 468B.025(1)(a) by causing pollution to waters of the state.
2 Specifically, on or about September 23, 2015, Respondent caused paint and paint chips to be
3 discharged from the vessel to the Skipanon River. The discharge of paint solids and liquids
4 caused pollution, as it is defined in ORS 468B.005(5), because it altered the physical, chemical
5 or biological properties of the river and will or tends to render such waters harmful, detrimental
6 or injurious to beneficial uses of the waters of the state. This is a Class I violation, according to
7 OAR 340-012-0055(1)(a). DEQ hereby assesses a \$19,243 civil penalty for this violation.

8 IV. ORDER TO PAY CIVIL PENALTY

9 Based upon the foregoing FINDINGS OF FACTS AND CONCLUSIONS, Respondent is
10 hereby ORDERED TO: pay a total civil penalty \$19,243. The determination of the civil penalty is
11 attached as Exhibit No.1 and is incorporated as part of this Notice.

12 If you do not file a request for hearing as set forth in Section V below, your check or money
13 order must be made payable to "State Treasurer, State of Oregon" and sent to the **DEQ, Business**
14 **Office, 811 S.W. Sixth Avenue, Portland, Oregon 97204**. Once you pay the penalty, the Findings of
15 Fact, Conclusions and Order become final.

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

17 You have a right to a contested case hearing on this Notice, if you request one in writing. You
18 must ensure that DEQ receives the request for hearing **within 20 calendar days** from the date you
19 receive this Notice. If you have any affirmative defenses or wish to dispute any allegations of fact in
20 this Notice or attached exhibit(s), you must include them in your request for hearing, as factual matters
21 not denied will be considered admitted, and failure to raise a defense will be a waiver of the defense.
22 (See OAR 340-011-0530 for further information about requests for hearing.) You must mail the request
23 for hearing to: **DEQ, Office of Compliance and Enforcement - Appeals, 811 SW Sixth Avenue,**
24 **Portland, Oregon 97204**, or fax it to **503-229-5100**. An administrative law judge employed by the
25 Office of Administrative Hearings will conduct the hearing, according to ORS Chapter 183, OAR
26 Chapter 340, Division 011 and OAR 137-003-0501 to 0700. You have a right to be represented by an
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1 attorney at the hearing, or you may represent yourself unless you are a corporation, agency or
2 association.

3 Active duty service-members have a right to stay proceedings under the federal Service
4 members Civil Relief Act. For more information, please call the Oregon State Bar at 1-800-
5 452-8260 or the Oregon Military Department at 1-800-452-7500. Additional information can be found
6 online at the United States Armed Forces Legal Assistance (AFLA) Legal Services Locator website
7 <http://legalassistance.law.af.mil/content/locator.php>.

8 If you fail to file a request for hearing in writing within 20 calendar days of receipt of the
9 Notice, the Notice will become a final order by default without further action by DEQ, as per OAR
10 340-011-0535(1). If you do request a hearing but later withdraw your request, fail to attend the hearing
11 or notify DEQ that you will not be attending the hearing, DEQ will issue a final order by default
12 pursuant to OAR 340-011-0535(3). DEQ designates the relevant portions of its files, including
13 information submitted by you, as the record for purposes of proving a prima facie case.
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17 March 22, 2016

18 Date

17 Samuel Weber for

18 Leah K. Feldon, Manager
19 Office of Compliance and Enforcement
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EXHIBIT No.1

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

VIOLATION: Discharging paint and paint chips which caused pollution to waters of the state in violation of ORS 468B.025(1)(a).

CLASSIFICATION: This is a Class I violation pursuant to OAR 340-012-0055(1)(a).

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)(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 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 8 according to OAR 340-012-0145(5)(d), because Respondent's conduct was reckless. Respondent consciously disregarded the risk of causing pollution to waters of the state. A reasonable person would not paint a vessel while it was moored in waters of the state as doing so substantially increases the risk that paint could discharge to those waters. The risk was a substantial and unjustifiable risk that constituted a gross deviation from the standard of care a reasonable person would observe in that situation.

"C" is Respondent's efforts to correct or mitigate the violation and receives a value of 0 according to OAR 340-012-0145(6)(f), because there is insufficient information to make a finding under paragraphs (6)(a) through (6)(e), or (6)(g).

"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 \$8,443. This is the amount Respondent gained by avoiding spending \$15,000 to dry dock the boat to have it painted. This "EB" was calculated pursuant to OAR 340-012-0150(1) using the U.S. Environmental Protection Agency's BEN computer model.

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

$$\begin{aligned} &= \$6,000 + [(0.1 \times \$6,000) \times (0 + 0 + 0 + 8 + 0)] + \$8,443 \\ &= \$6,000 + [\$600 \times 8] + \$8,443 \\ &= \$6,000 + \$4,800 + \$8,443 \\ &= \$19,243 \end{aligned}$$