



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 28, 2016

CERTIFIED MAIL No. 7011 2000 0000 5122 8902

Sarbanand Enterprises, LLC
c/o CH Registered Services, LLC
1001 SW Fifth Avenue, Suite 2000
Portland, OR 97204

Re: Notice of Civil Penalty Assessment and Order
Sarbanand Enterprises, LLC
Case No. AQ/OB-WR-15-211

This letter is to inform you that DEQ has issued you a civil penalty of \$10,900 for illegal open burning on June 26, 2014, at your property at 16720 Kreder Road, Dayton, Oregon.

According to the Yamhill County Sheriff's office, one of your employees was burning a large pile of black plastic drain pipe, metal cans containing polyvinyl chloride (PVC) glue and other chemicals, and other materials that normally emit dense smoke or noxious odors when burned.

DEQ issued this penalty because open burning these materials is prohibited at all times statewide. Burning these materials poses a threat to the environment and public health, especially for the young, elderly, and those with respiratory conditions. Toxic chemical exposure can result from such burning, and each illegal burn contributes to the cumulative amount of pollution in the atmosphere.

DEQ appreciates your effort to minimize the effects of the violation by extinguishing the fire with the company water truck once informed of the fire on the property. DEQ considered this effort when determining the amount of civil penalty.

If you wish to appeal this matter, you have 20 calendar days from receipt of this letter to request a contested case hearing. This 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 written hearing request from you within 20 days, the penalty will become due.

The enclosed 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 the 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.



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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 Jenny Root, at (503) 229-5874.

Sincerely,



Leah K. Feldon, Manager
Office of Compliance and Enforcement

Enclosures

cc: Martin Abts, Western Region – Coos Bay Office, DEQ

1 Pay a total civil penalty of \$10,900. The determination of the civil penalty is attached as
2 Exhibit No. 1 and is incorporated as part of this Notice.

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

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

8 You have a right to a contested case hearing on this Notice, if you request one in writing.
9 You must ensure that DEQ receives the request for hearing **within 20 calendar days** from the
10 date you receive this Notice. If you have any affirmative defenses or wish to dispute any
11 allegations of fact in this Notice or attached exhibits, you must include them in your request for
12 hearing, as factual matters not denied will be considered admitted, and failure to raise a defense
13 will be a waiver of the defense. (See OAR 340-011-0530 for further information about requests
14 for hearing.) You must mail the request for hearing to: **DEQ, Office of Compliance and**
15 **Enforcement - Appeals, 811 SW Sixth Avenue, Portland, Oregon 97204,** or fax it to **503-229-**
16 **5100.** An administrative law judge employed by the Office of Administrative Hearings will
17 conduct the hearing, according to ORS Chapter 183, OAR Chapter 340, Division 011 and OAR
18 137-003-0501 to 0700. You have a right to be represented by an attorney at the hearing, or you
19 may represent yourself unless you are a corporation, agency or association.

20 Active duty servicemembers have a right to stay proceedings under the federal
21 Servicemembers Civil Relief Act. For more information, please call the Oregon State Bar at
22 1(800) 452-8260 or the Oregon Military Department at 1-800-452-7500. Additional information
23 can be found online at the United States Armed Forces Legal Assistance (AFLA) Legal Services
24 Locator website, <http://legalassistance.law.af.mil/content/locator.php>.

25 If you fail to file a request for hearing in writing within 20 calendar days of receipt of the
26 Notice, the Notice will become a final order by default without further action by DEQ, as per
27 OAR 340-011-0535(1). If you do request a hearing but later withdraw your request, fail to attend

1 the hearing, or notify DEQ that you will not be attending the hearing, DEQ will issue a final
2 order by default pursuant to OAR 340-011-0535(3). DEQ designates the relevant portions of its
3 files, including information submitted by you, as the record for purposes of proving a prima facie
4 case.

5
6 March 28, 2016

7 Date

8 Leah K. Feldon

9 Leah K. Feldon, Manager
10 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: Causing or allowing to be initiated or maintained, the open burning of materials that are prohibited from being open burned, in violation of OAR 340-264-0060(3).

CLASSIFICATION: This is a Class 1 violation pursuant to OAR 340-012-0054(1)(q).

MAGNITUDE: The magnitude of the violation is major pursuant to OAR 340-012-0135(1)(i)(A) because Respondent initiated or allowed the initiation of open burning of five or more cubic yards of prohibited materials.

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)(B)(ii) because Respondent is not a residential owner-occupant and Respondent caused or allowed the open burning of at least 25 cubic yards of prohibited materials.

"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.

"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 Respondent has 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 2 according to OAR 340-012-0145(5)(b), because Respondent reasonably should have known that burning materials such as plastic drain pipe, metal cans, PVC glue and other chemicals, which emit black smoke or noxious odors when burned, is prohibited.

"C" is Respondent's efforts to correct the violation and receives a value of -3 according to OAR 340-012-0145(6)(c), because Respondent took reasonable efforts to minimize the effects of the violation by extinguishing the fire with the company water truck once informed of the fire on the property.

"EB" is the approximate economic benefit that an entity gained by not complying with the law. 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 \$100. This is the amount Respondent gained by avoiding spending approximately \$161 to transport and properly dispose of the prohibited materials at Riverbend Landfill. 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 + 0 + 2 + -3)] + \$100
= \$12,000 + [(\$1,200) x (-1)] + \$100
= \$12,000 - \$1,200 + \$100
= \$10,900