



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
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TTY 711

June 10, 2022

CERTIFIED MAIL: 7018 1830 0001 5906 3527

1800 Cordon Rd LLC
c/o Charles Sides, Registered Agent
925 Commercial Street SE, Suite 350
Salem, OR 97308

CERTIFIED MAIL: 7018 1830 0001 6172 5840

Charles Sides
PO Box 2087
Salem, OR 97308-2087

Re: Amended Notice of Civil Penalty Assessment and Order
Case No. AQ-OB-2021-181

Pursuant to Oregon Administrative Rules (OAR) 137-003-0530(4), please find enclosed DEQ's Amended Notice of Civil Penalty Assessment and Order (Amended Notice) in the above referenced case.

DEQ is issuing this Amended Notice to remove Alpha 3, LLC as a Respondent in the case, based on documentation provided by Alpha 3, LLC to DEQ in April and May 2022 that demonstrates that Alpha 3, LLC was not an owner of the property at the time the violations began in October 2021.

DEQ accepts your request for a contested case hearing, dated April 26, 2022, as applied to the Amended Notice. You do not need to submit a request for hearing in response to the Amended Notice, although you may do so. DEQ has scheduled an information meeting to discuss this matter with you on June 9, 2021.

If you have any questions, please contact Becka Puskas at 503-229-5058 or becka.puskas@deq.state.or.us.

Sincerely,

Kieran O'Donnell, Manager
Office of Compliance and Enforcement

1800 Cordon Rd LLC & Charles Sides
Case No. AQ-OB-2021-181
Page 2

Enclosures

cc: Nick Taylor, Code Enforcement Officer, Marion County Sheriff's Office
(jtaylor@co.marion.or.us)
Paula Smith, Salem Fire Marshal (paulas@mcf1.com)
R. Hunter Bitner II, Attorney for Alpha 3, LLC (Hunter@slindenelson.com)
Jeff Zeeb, Member, Alpha 3 LLC (jeff.z@jetindustries.net)
Peter Susi, DEQ
Claudia Davis, DEQ
Accounting, DEQ
Donald Hendrix, AQ, DEQ

BEFORE THE ENVIRONMENTAL QUALITY COMMISSION

OF THE STATE OF OREGON

IN THE MATTER OF:)
1800 CORDON RD LLC,)
an Oregon limited liability company, &)
Charles Sides,)
an individual.)
Respondents.)

AMENDED NOTICE OF CIVIL PENALTY
ASSESSMENT AND ORDER
CASE NO. AQ-OB-2021-181

I. AUTHORITY

The Department of Environmental Quality (DEQ) issues this Notice of Civil Penalty Assessment and Order (Notice) pursuant to Oregon Revised Statutes (ORS) 468.100, ORS 468.126 through 468.140, ORS 468A, ORS Chapter 183 and Oregon Administrative Rules (OAR) Chapter 340, Divisions 011, 012, and 264.

II. FINDINGS OF FACT

1. Respondent 1800 Cordon Rd LLC was organized in July 2021.
2. Respondent Charles Sides is the Registered Agent and sole member of 1800 Cordon Rd LLC. Mr. Sides is a developer who has completed numerous commercial and mixed-use development projects in and around Salem, Oregon.
3. From August 6, 2021, to the date of this Notice, Respondents have owned an approximately 19-acre property located at 1800 Cordon Road SE, Salem, Oregon 97317 (Property). The Property is made up of two tax lots, no. 082W050001700 (9.92 acres) and no. 082W050001701 (9.34 acres).
4. The Property is located in Marion County within the City of Salem Urban Growth Boundary and directly adjacent to the city limit for the City of Salem, which borders two sides of the Property.
5. Prior to the fall of 2021, most of the Property was covered with vegetation, including trees and woody bushes.
6. On or before October 12, 2021, Respondents cleared most of the vegetation from the property and placed the vegetation in large brush piles scattered throughout the Property.

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1 7. Respondents conducted the clearing described in Section II, Paragraph 7, above, in order to
2 develop the property at a later time.

3 8. On or about October 12, 2021, Respondents burned at least three of the vegetation piles on
4 the Property.

5 9. On October 15, 2021, DEQ inspected the Property. On October 15, 2021:

- 6 a. There were approximately ten staged burn piles, including several large piles of woody
7 debris actively burning at the Property;
- 8 b. Some piles of debris were almost completely burned;
- 9 c. Mixed in many of the piles, including the piles that were burning, was an unknown but
10 substantial amount of plastic and other garbage;
- 11 d. The burning was being conducted in open, outdoor fires; and
- 12 e. The air was thick with smoke and smelled of burning wood and plastic.

13 10. At least some of the burning conducted between October 12, 2021, and October 15, 2021, was
14 conducted in the nighttime.

15 11. On October 20, 2021, DEQ observed from the road adjacent to the Property that at least one
16 pile on the Property was burning.

17 12. On October 26, 2021, DEQ issued a Pre-Enforcement Notice, notifying Respondent Charles
18 Sides that DEQ considered the burning conducted at the Property to be in violation of Oregon law. The
19 Pre-Enforcement Notice also directed Mr. Sides to stop burning demolition waste and prohibited material
20 immediately and to submit a plan for the proper disposal of the waste located at the Property.

21 13. On November 1, 2021, DEQ observed from the road adjacent to the Property that at least one
22 pile on the Property was burning.

23 14. On November 12, 2021, DEQ inspected the Property. Some of the piles were smoldering but
24 there were no active fires burning and Respondents had begun the process of separating out and disposing
25 of the garbage that was mixed in in the various piles.

26 15. On February 9, 2022, DEQ observed from the road adjacent to the Property that at least one
27 pile on the Property was burning.

1 16. On February 9, 2022, upon being notified of the fire observed by DEQ, Respondents promptly
2 extinguished the fire.

3 17. On March 4, 2022, more than 1,300 cubic yards of demolition waste remained at the property
4 stored in piles. Some of the piles contained comingled garbage, and several of these piles had been
5 partially burned. There were two additional garbage-only piles, containing approximately 14 cubic yards in
6 total of waste material. In addition, approximately 60 waste tires were being stored on the Property.

7 III. CONCLUSIONS

8 1. On at least 5 days on October 12, 2021, October 15, 2021, October 20, 2021, November 1,
9 2021, and February 9, 2022, Respondents violated OAR 340-264-0110(4) by conducting demolition
10 open burning in a special open burning control area, as described in Section II, Paragraphs 1-16, above.
11 Specifically, Respondents conducted demolition open burning as defined in OAR 340-264-0030(13)
12 because Respondents conducted open burning of demolition waste. The large piles of woody debris burned
13 at the Property were “demolition waste” as defined in OAR 340-264-0030(14) because the piles were
14 made up of material resulting from or produced by the clearing of the Property for land improvement or
15 cleanup. The Property, which is located directly adjacent to the Salem city limits, is a special open burning
16 control area according to OAR 340-264-0110(4)(a)(B) because it is within six miles of the corporate city
17 limit of Salem in Marion County. These are Class II violations according to OAR 340-012-0054(2)(j).
18 DEQ hereby assesses a \$3,209 civil penalty for these violations.

19 2. On at least one day on October 15, 2021, Respondents violated OAR 340-264-0060(3) by
20 causing or allowing to be initiated or maintained open burning of prohibited materials, as described in
21 Section II, Paragraph 10, above. Specifically, the waste piles being burned at the Property on October 15,
22 2021, contained an unknown but substantial amount of garbage, including plastic. This is a Class I
23 violation according to OAR 340-012-0054(1)(w). DEQ hereby assesses a \$2,100 civil penalty for this
24 violation.

25 3. On at least one occasion between October 12, 2021, and October 15, 2021, Respondents
26 violated OAR 340-264-0070(3) by conducting open burning outside of daylight hours, as described in
27 Section II, Paragraph 11, above. This is a Class II violation according to OAR 340-012-0054(2)(k). DEQ
has not assessed a civil penalty for this violation.

1 IV. ORDER TO PAY CIVIL PENALTY

2 Based upon the foregoing FINDINGS OF FACTS AND CONCLUSIONS, Respondents are
3 hereby ORDERED TO:

4 Pay a total civil penalty of \$5,309. The determination of the civil penalties are attached as
5 Exhibits 1 and 2 and are incorporated as part of this Notice.

6 If you do not file a request for hearing as set forth in Section V below, your check or money
7 order must be made payable to "**State Treasurer, State of Oregon**" and sent to the **DEQ, Business**
8 **Office, 700 NE Multnomah Street, Suite 600, Portland, Oregon 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 exhibits, 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 **503-229-6762** or email it to DEQappeals@deq.oregon.gov. 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
Department does not have a toll free telephone number.

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

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6/10/2022

Date



Kieran O'Donnell, Manager
Office of Compliance and Enforcement

EXHIBIT 1

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

- VIOLATION NO. 1 Conducting demolition open burning in a special open burning control area, in violation of OAR 340-264-0110(4).
- CLASSIFICATION: This is a Class II violation according to OAR 340-012-0054(2)(j).
- MAGNITUDE: The magnitude of the violation is major pursuant to OAR 340-012-0135(1)(j)(A) because Respondents initiated or allowed the initiation of open burning of 20 or more cubic yards of demolition waste. Respondents burned at least 25 cubic yards of demolition waste.
- 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 \$1,500 for a Class II, major magnitude violation in the matrix listed in OAR 340-012-0140(4)(b)(B)(i) and applicable pursuant to OAR 340-012-0140(4)(a)(B).
- "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 is a separate occurrence of the violation. Respondents conducted prohibited demolition open burning in a special open burning control area on at least five days on October 12, 2021, October 15, 2021, October 20, 2021, November 1, 2021, and February 9, 2022.
- "M" is the mental state of the Respondent, and receives a value of 8 according to OAR 340-012-0145(5)(d) because Respondents acted or failed to act intentionally with actual knowledge of the requirement. Respondents conducted prohibited demolition open burning on at least two days (November 1, 2021 and February 9, 2022) after DEQ sent Respondent Charles Sides a Pre-Enforcement Notice on October 26, 2021, informing Mr. Sides that DEQ considered the burning conducted at the Property to be in violation of Oregon law, and directing Mr. Sides to stop burning demolition waste.

"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 \$209. This is the amount Respondents gained by avoiding spending \$325 in disposal costs properly dispose of at least 25 cubic yards of demolition waste that was burned between October 12, 2021 and February 9, 2022.. This "EB" was calculated pursuant to OAR 340-012-0150(1) using the U.S. Environmental Protection Agency's BEN computer model.

PENALTY CALCULATION: $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$
 $= \$1,500 + [(0.1 \times \$1,500) \times (0 + 0 + 2 + 8 + 0)] + \209
 $= \$1,500 + (\$150 \times 10) + \$209$
 $= \$1,500 + \$1,500 + \$209$
 $= \$3,209$

EXHIBIT 2

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

- VIOLATION NO. 2 Causing or allowing to be initiated or maintained open burning of prohibited materials, in violation of OAR 340-264-0060(3).
- CLASSIFICATION: This is a Class I violation according to OAR 340-012-0054(1)(w).
- MAGNITUDE: The magnitude of the violation is moderate pursuant to OAR 340-012-0135(1)(j)(B) because DEQ lacks sufficient information upon which to make a determination of the number of cubic yards of prohibited materials burned.
- 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 \$1,500 for a Class I, moderate magnitude violation in the matrix listed in OAR 340-012-0140(4)(b)(A)(ii) and applicable pursuant to OAR 340-012-0140(4)(a)(B).
- "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 one occurrence of the violation. Respondents conducted open burning of prohibited materials on at least one day on October 15, 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. According to OAR 340-012-0030(15), negligent means the Respondent failed to take reasonable care to avoid a foreseeable risk of conduct constituting or resulting in a violation. It is widely understood that burning garbage illegal, and that it can generate noxious odors. Thus, by conducting open burning of piles of demolition waste, that Respondents knew to contain garbage, including plastic, metal and other materials, Respondents failed to take reasonable care to avoid a foreseeable risk of conduct constituting or resulting in a violation.
- "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 \$0 because DEQ has insufficient information to estimate economic benefit for this violation.

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

$$\begin{aligned} &= \$1,500 + [(0.1 \times \$1,500) \times (0 + 0 + 0 + 4 + 0)] + \$0 \\ &= \$1,500 + (\$150 \times 4) + \$0 \\ &= \$1,500 + \$600 + \$0 \\ &= \$2,100 \end{aligned}$$