



# 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 31, 2016

CERTIFIED MAIL No. 70142870000133783044

David Michael Murawski  
63658 Shinglehouse Road  
Coos Bay, OR 97420

Re: Notice of Civil Penalty Assessment and Order to Comply  
Case No. WQ/OS-WR-15-220

This letter is to inform you that DEQ has issued you a civil penalty of \$4,553 for owning or operating an onsite system that discharged untreated or partially treated sewage onto the ground surface at your property in Coos Bay. This is a violation of Oregon environmental law.

DEQ issued this penalty because the discharge of untreated or partially treated sewage onto the ground surface poses a public health hazard through either direct human contact or through contact with insects or other animals that have been in contact with the sewage. Sewage is also a significant pollutant that can harm aquatic life, contaminate drinking water and impair recreational and commercial uses of water.

Included in Section IV is an order requiring you to apply for a major repair permit, repair the onsite system, and immediately enter into a contract with a licensed pumper and have the septic tank pumped regularly until repairs have been completed in order to prevent further discharge of sewage onto the ground surface.

Of the civil penalty amount, \$3,603 represents the economic benefit you gained by failing to obtain a major repair permit and have the septic tank pumped regularly by a licensed pumper. If you complete these requirements, DEQ will consider recalculating a portion of the costs as delayed rather than avoided and will reduce the civil penalty accordingly.

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. 6<sup>th</sup> 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. 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.



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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.

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 Esther Westbrook, at (503) 229-5374. You may call toll-free within Oregon at 1-800-452-4011, extension 5374.

Sincerely,

*Sam Wheel  
for*

Leah K. Feldon, Manager  
Office of Compliance and Enforcement

Enclosures

cc: Sean Rochette, Coos Bay Office, DEQ  
Alex Murphy, Coos County Planning Dept.: [amurphy@co.coos.or.us](mailto:amurphy@co.coos.or.us)  
Jason Patterson, Coos County Sheriff's Office: [jason.patterson@co.coos.or.us](mailto:jason.patterson@co.coos.or.us)

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

3  
4 IN THE MATTER OF: ) NOTICE OF CIVIL PENALTY  
DAVID MICHAEL MURAWSKI, ) ASSESSMENT AND ORDER  
5 an individual, ) TO COMPLY  
6 Respondent. ) NO. WQ/OS-WR-15-220

7  
8 I. AUTHORITY

9 The Department of Environmental Quality (DEQ) issues this Notice of Civil Penalty  
10 Assessment and Order pursuant to Oregon Revised Statutes (ORS) 468.100 and 468.126 through  
11 468.140, ORS Chapters 183, 454 and 468B, and Oregon Administrative Rules (OAR) Chapter 340,  
12 Divisions 011, 012, and 071.  
13

14 II. FINDINGS OF FACT

15 1. At all material times, Respondent owned or resided at the residential property located  
16 at 63658 Shinglehouse Road in Coos Bay, Coos County, Oregon (the Property).

17 2. Respondent owns or operates the onsite sewage treatment and disposal system  
18 serving the Property.

19 3. Coos County staff inspected the Property and observed untreated or partially treated  
20 sewage being discharged onto the ground surface on or about the following dates: January 9,  
21 February 20, March 9, March 30, April 3, July 15, and October 9, 2015.

22 4. On or about July 22, 2015, staff from DEQ and Coos County inspected the Property  
23 and observed untreated or partially treated sewage being discharged onto the ground surface.

24 5. On or about July 22, 2015, one of the drainfield lines at the Property was broken and  
25 not functioning properly.  
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III. CONCLUSION

From on or about January 9, 2015 through October 9, 2015, Respondent violated OAR 340-071-0130(3) by owning or operating an onsite system that was discharging untreated or partially treated sewage onto the ground surface, as described in Section II above. This is a Class I violation according to OAR 340-012-0060(1)(d). DEQ hereby assesses a \$4,553 civil penalty for this violation.

IV. ORDER TO PAY CIVIL PENALTY AND TO COMPLY

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

1. Pay a total civil penalty of \$4,553. The determination of the civil penalty is attached as Exhibit No. 1 and is incorporated as part of this Notice.

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

2. Comply with the Oregon law by taking the following actions:

a) Apply for a major repair permit at the DEQ Coos Bay office within ten (10) days of this Notice becoming a Final Order;

b) Repair the onsite system at the Property within thirty (30) days of applying for a repair permit; and

c) Immediately enter into a contract with a licensed pumper and have the septic tank pumped regularly until repairs have been completed in order to prevent further discharge of sewage onto the ground surface.

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

2 You have a right to a contested case hearing on this Notice, if you request one in writing.

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

15 Active duty service-members have a right to stay proceedings under the federal Service  
16 members Civil Relief Act. For more information, please call the Oregon State Bar at 1-800-  
17 452-8260 or the Oregon Military Department at 1-800-452-7500. Additional information can be  
18 found online at the United States Armed Forces Legal Assistance (AFLA) Legal Services  
19 Locator website <http://legalassistance.law.af.mil/content/locator.php>.  
20

21 If you fail to file a request for hearing in writing within 20 calendar days of receipt of the  
22 Notice, the Notice will become a final order by default without further action by DEQ, as per  
23 OAR 340-011-0535(1). If you do request a hearing but later withdraw your request, fail to attend  
24 the hearing or notify DEQ that you will not be attending the hearing, DEQ will issue a final order  
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1 by default pursuant to OAR 340-011-0535(3). DEQ designates the relevant portions of its files,  
2 including information submitted by you, as the record for purposes of proving a prima facie case.  
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4 March 31, 2016  
Date

Leah K. Feldon  
Leah K. Feldon, Manager  
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: Owing, operating or using an onsite wastewater treatment system or part thereof that is discharging sewage or effluent to the ground surface, in violation of OAR 340-071-0130(3).

CLASSIFICATION: This is a Class I violation pursuant to OAR 340-012-0060(1)(d).

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 for 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 \$500 for a Class I, moderate magnitude violation in the matrix listed in OAR 340-012-0140(5)(b)(A)(ii) and applicable pursuant to OAR 340-012-0140(5)(a)(D) because Respondent violated an onsite sewage disposal statute, rule or permit and is a residential owner-occupant.

"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 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 3 according to OAR 340-012-0145(4)(c), because there were from seven to 28 occurrences of the violation. The discharge occurred on at least eight days: January 9, February 20, March 9, March 30, April 3, July 15, July 22, and October 9, 2015.

"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. Respondent owned or resided at the property while the system was failing and discharging sewage onto the ground surface. On January 11, 2016, DEQ issued a Warning Letter informing Respondent of the violation and requesting that he take corrective action by repairing the onsite system and pumping the septic tank to prevent continued sewage discharge. Respondent did not reply to DEQ's letter or take any corrective actions. By continuing to operate the system in a manner which allowed untreated or partially treated sewage to be discharged onto the ground

surface, Respondent failed to take reasonable care to avoid a foreseeable risk that he would violate the law.

"C" is Respondent's efforts to correct the violation and receives a value of 2 according to OAR 340-012-0145(6)(g), because 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). Respondent has not repaired the onsite system or cleaned up the area where the sewage was discharged.

"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 \$3,603. This is the amount Respondent gained by avoiding spending \$635 for a major repair permit and \$2,938 to pump the septic tank regularly between January 25 and March 14, 2016. This "EB" was calculated pursuant to OAR 340-012-0150(1) using the U.S. Environmental Protection Agency's BEN computer model.

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

$$\begin{aligned} &= \$500 + [(0.1 \times \$500) \times (0 + 0 + 3 + 4 + 2)] + \$3,603 \\ &= \$500 + [(\$50) \times (9)] + \$3,603 \\ &= \$500 + \$450 + \$3,603 \\ &= \$4,553 \end{aligned}$$