



# Oregon

Kate Brown, Governor

## Department of Environmental Quality

Headquarters  
811 SW Sixth Avenue  
Portland, OR 97204-1390  
(503) 229-5696  
FAX (503) 229-6124  
TTY: 711

March 18, 2016

CERTIFIED MAIL: 7011 2000 0000 5122 9558

Doris Annette Kimble  
3306 HPR SPC 5  
Sitka AK 99835-9554

Re: Notice of Civil Penalty Assessment and Order  
Case No. WQ/OS-WR-16-004

This letter is to inform you that the Oregon Department of Environmental Quality (DEQ) has issued you a civil penalty of \$27,860 for allowing the discharge of untreated or partially treated sewage onto the ground surface at a property you own at 69182 Wildwood Road in North Bend Oregon.

DEQ visited the property on December 8, 2015 and noted at least five occupied recreational vehicles which were discharging sewage directly onto the ground surface. Additionally, although there is an existing onsite sewage disposal system installed on the property, the buildings connected to that system and the system itself were discharging sewage directly to the ground surface.

The improper disposal of untreated or partially treated sewage onto the ground surface is 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 cease discharge of untreated or partially treated sewage to the ground surface at your property. You must submit a plan of the measures that you will take to reduce or eliminate flow to the existing on-site sewage disposal system, and evaluate the existing system. Based on the results of the evaluation, you must replace or repair the onsite sewage disposal system so that it will be able to adequately treat the amount of wastewater flow generated on the property.

\$25,760 of the civil penalty represents the economic benefit you gained by failing to complete the actions required in the order. If you complete these requirements, DEQ will consider recalculating the costs as delayed rather than avoided and will reduce the civil penalty accordingly.

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. 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 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.

If you have any questions, please contact DEQ Environmental Law Specialist Susan Elworth, at (503) 229-5152. You may call toll-free within Oregon at 1-800-452-4011, extension 5152.

Sincerely,



Leah K. Feldon, Manager  
Office of Compliance and Enforcement

Enclosures

cc: Sean Rochette, Coos Bay office, DEQ

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

3 IN THE MATTER OF: ) NOTICE OF CIVIL PENALTY  
4 DORIS ANNETTE KIMBLE, ) ASSESSMENT AND ORDER  
5 Respondent. ) CASE NO. WQ/OS-WR-16-004

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 and 468.126 through 468.140,  
10 ORS Chapters 183, 454 and 468B, and Oregon Administrative Rules (OAR) Chapter 340, Divisions 011,  
11 012, 045 and 071.

12 II. FINDINGS OF FACT

- 13 1. Respondent owns real property located at 69182 Wildwood Drive in North Bend, Oregon.  
14 2. On December 9, 2015, DEQ inspected the property. Sewage was discharging onto the  
15 ground surface from five recreational vehicles parked on the property.  
16 3. Additionally, during the December 2015 inspection, a bath/laundry building and mobile  
17 home on the property that are connected to an onsite sewage disposal system were discharging sewage  
18 onto the ground surface.

19 III. CONCLUSIONS

20 Respondent has violated OAR 340-071-0130(3) by allowing the discharge of untreated or  
21 partially treated sewage onto the ground surface as described in Section II above. This is a Class I  
22 violation, according to OAR 340-012-0060(1)(d). DEQ hereby assesses a \$27,860 civil penalty for this  
23 violation.

24 IV. ORDER TO PAY CIVIL PENALTY AND TO COMPLY

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

- 27 1. Pay a total civil penalty of \$27,860. The determination of the civil penalty is attached as

1 Exhibit 1 and is incorporated as part of this Notice. If you do not file a request for hearing as set  
2 forth in Section V below, your check or money order must be made payable to "**State Treasurer,**  
3 **State of Oregon**" and sent to the **DEQ, Business Office, 811 S.W. Sixth Avenue, Portland,**  
4 **Oregon 97204**. Once you pay the penalty, the Findings of Fact, Conclusions and Order become  
5 final.

6 2. Comply with Oregon law by:

- 7 a. Immediately cease the discharge of untreated or partially treated sewage to the ground  
8 surface from all buildings, mobile homes and recreational vehicles located on the property.
- 9 b. Within 30 days of a final order, submit a plan to DEQ identifying the measures Respondent  
10 will take to reduce or eliminate flow to the existing on-site sewage disposal system until a new  
11 on-site sewage disposal system can be installed or the existing on-site sewage disposal system  
12 can be repaired such that the wastewater flow into the system can be adequately treated.
- 13 c. Within 30 days of a final order, submit to DEQ an existing system evaluation report for the  
14 on-site sewage disposal system presently on the property, as set forth in OAR 340-071-0155.
- 15 d. Based on the results of the system evaluation report, submit a permit application to DEQ for  
16 either repairs to the existing or the installation of a replacement on-site sewage disposal system  
17 that is adequate to treat the wastewater flow at the property, as required by OAR 340-071-0160;  
18 and within 90 days of DEQ's approval of that plan, construct the replacement or repair the  
19 existing on-site sewage disposal system in compliance with DEQ's approval.

20 All documents required to be submitted under Section IV, paragraph 2 of this Notice must be  
21 sent to: Sean Rochette, DEQ, 381 N. 2<sup>nd</sup> Street, Coos Bay OR 97420.

## 22 V. NOTICE OF RIGHT TO REQUEST A CONTESTED CASE HEARING

23 You have a right to a contested case hearing on this Notice, if you request one in writing. You  
24 must ensure that DEQ receives the request for hearing **within 20 calendar days** from the date you  
25 receive this Notice. If you have any affirmative defenses or wish to dispute any allegations of fact in  
26 this Notice or attached exhibit(s), you must include them in your request for hearing, as factual matters  
27 not denied will be considered admitted, and failure to raise a defense will be a waiver of the defense.

1 (See OAR 340-011-0530 for further information about requests for hearing.) You must mail the request  
2 for hearing to: **DEQ, Office of Compliance and Enforcement - Appeals, 811 SW Sixth Avenue,**  
3 **Portland, Oregon 97204**, or fax it to **503-229-5100**. An administrative law judge employed by the  
4 Office of Administrative Hearings will conduct the hearing, according to ORS Chapter 183, OAR  
5 Chapter 340, Division 011 and OAR 137-003-0501 to 0700. You have a right to be represented by an  
6 attorney at the hearing, or you may represent yourself unless you are a corporation, agency or  
7 association.

8 Active duty service-members have a right to stay proceedings under the federal Service  
9 members Civil Relief Act. For more information, please call the Oregon State Bar at 1-800-  
10 452-8260 or the Oregon Military Department at 1-800-452-7500. Additional information can be found  
11 online at the United States Armed Forces Legal Assistance (AFLA) Legal Services Locator website  
12 <http://legalassistance.law.af.mil/content/locator.php>.

13 If you fail to file a request for hearing in writing within 20 calendar days of receipt of the  
14 Notice, the Notice will become a final order by default without further action by DEQ, as per OAR  
15 340-011-0535(1). If you do request a hearing but later withdraw your request, fail to attend the hearing  
16 or notify DEQ that you will not be attending the hearing, DEQ will issue a final order by default  
17 pursuant to OAR 340-011-0535(3). DEQ designates the relevant portions of its files, including  
18 information submitted by you, as the record for purposes of proving a prima facie case.  
19  
20  
21

22 March 18, 2016

23 Date

22 Leah K. Feldon

23 Leah K. Feldon, Manager  
24 Office of Compliance and Enforcement  
25  
26  
27

EXHIBIT 1

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

VIOLATION 1: Allowing the discharge of untreated or partially treated sewage onto 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 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 \$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)(G). Respondent violated an onsite sewage disposal rule and is not a residential owner-occupant of the property.

"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 is insufficient information on which to base a finding under paragraphs (4)(b) through (4)(d). Although the discharge of sewage has likely been on-going for a period of time, it is unknown for how long. Additionally, it is unknown how long the existing onsite sewage disposal system has been failing and discharging sewage onto the ground surface.

"M" is the mental state of the Respondent and receives a value of 2 according to OAR 340-012-0145(5)(b), because Respondent had constructive knowledge (reasonably should have known) of the requirement. Respondent reasonably should have known that discharging sewage to the ground is a violation. As the owner of the property and reasonably should have known that recreational vehicles located on the property have been discharging sewage to the ground surface.

"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 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 submitted documentation showing that the recreational vehicles are no longer discharging sewage to the ground surface or that the onsite sewage disposal system has been repaired such that it will not discharge sewage onto the ground surface.

"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 \$25,760. This is the amount Respondent gained by avoiding spending the following costs:

- \$2,800 per month to have the onsite sewage disposal system pumped since December 2015;
- \$724 for authorization notice and repair permit; and
- \$13,500 to repair the existing onsite sewage disposal system.

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 x \$1,500) x (0 + 0 + 0 + 2 + 2)] + \$25,760  
= \$1,500 + [\$150 x 4] + \$25,760  
= \$1,500 + \$600 + \$25,760  
= \$27,860