



Oregon

Kate Brown, Governor

Department of Environmental Quality

Headquarters

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Portland, OR 97204-1390

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TTY: 711

April 7, 2016

CERTIFIED MAIL No. 70142870000133783099

G & R Portables, Inc.
c/o Eladio Rodriguez, Registered Agent
808 Grove Avenue
Parma, ID 83660

Re: Notice of Civil Penalty Assessment and Order
Case No. WQ/OI-ER-15-201

This letter is to inform you that DEQ has issued you a civil penalty of \$1,650 for causing or allowing the installation or use of portable toilets without a valid and effective contract for the pumping or cleaning of the toilets with a pumping service licensed in Oregon. From April through September 2015, you provided portable toilets for use at properties in Malheur County, Oregon. This is a violation of Oregon environmental law.

DEQ issued this penalty because Oregon law requires the pumping and cleaning of portable toilets by licensed pumpers in order to ensure the protection of the public's health and the environment. Sewage 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, and is also a significant pollutant that can harm aquatic life, contaminate drinking water and impair recreational and commercial uses of water.

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.



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

Sincerely,



Leah K. Feldon, Manager
Office of Compliance and Enforcement

Enclosures

cc: Bob Baggett, Bend Office, Eastern Region, DEQ
Eric Evans, Malheur County Environmental Health, 251 B. Street W. #9, Vale, OR
97914
Brian Crawford, Southwest Idaho Public Health District:
Brian.Crawford@phd3.idaho.gov

1 BEFORE THE ENVIRONMENTAL QUALITY COMMISSION

2 OF THE STATE OF OREGON

3	IN THE MATTER OF:)	NOTICE OF CIVIL PENALTY
4	G & R PORTABLES, INC.,)	ASSESSMENT AND ORDER
5	an Idaho corporation,)	
6)	CASE NO. WQ/OI-ER-15-201
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 Chapters 183, 454 and 468B and Oregon Administrative Rules (OAR) Chapter 340, Divisions 011,
11 012 and 071.

12 II. FINDINGS OF FACT

- 13 1. From April 2015 through September 2015, Respondent provided portable toilets to Jack
14 Alcoser for placement and use in Malheur County, Oregon.
- 15 2. On or about July 23, 2015, Malheur County staff observed Respondent's portable toilets at a
16 property located at 105 E. Main Street in Nyssa, Oregon owned by Jack Alcoser.
- 17 3. On or about September 29, 2015, Malheur County staff observed Respondent's portable
18 toilets at a property located at 2040 W. Idaho Avenue in Ontario, Oregon owned by Jack Alcoser.
- 19 4. At all material times, Respondent did not have a sewage disposal services license from the
20 DEQ to perform sewage disposal services, including the placement of portable toilets.
- 21 5. At all material times, Respondent did not have a valid and effective contract with a pumping
22 service licensed under OAR 340-071-0060 for the pumping or cleaning of the portable toilets.
- 23 6. Malheur County is DEQ's agent pursuant to ORS 454.640.

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1 III. CONCLUSION

2 From April 2015 through September 2015, Respondent violated OAR 340-071-0330(7) by
3 causing or allowing the installation or use of portable toilets without a valid and effective contract for
4 the pumping or cleaning of the toilets with a pumping service licensed in Oregon, as described in
5 Section II, Paragraphs 1-6 above. This is a Class II violation according to OAR 340-012-0053(2).
6 DEQ hereby assesses a \$1,650 civil penalty for this violation. The determination of this civil penalty is
7 attached and incorporated as Exhibit No. 1.

8 IV. ORDER TO PAY CIVIL PENALTY

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

11 Pay a total civil penalty of \$1,650. The determination of the civil penalties is attached as Exhibit
12 No. 1 and incorporated as part of this Notice.

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

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

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

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 1-800-452-8260
5 or the Oregon Military Department at 1-800-452-7500. Additional information can be found online at
6 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.
14
15
16

17 april 7, 2016
18 Date

17 Shammaker for
18 Leah K. Feldon, 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: Causing or allowing the installation or use of portable toilets without a valid and effective contract for the pumping and cleaning of the toilets with a pumping service licensed under OAR 340-071-0060, in violation of OAR 340-071-0330(7).

CLASSIFICATION: This is a Class II violation pursuant to OAR 340-012-0053(2).

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 \$750 for a Class II, moderate magnitude violation in the matrix listed in OAR 340-012-0140(4)(b)(B)(ii) and applicable pursuant to OAR 340-012-0140(4)(a)(G) because Respondent violated an onsite sewage disposal statute or rule and is not 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 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 4 according to OAR 340-012-0145(4)(d), because there were more than 28 occurrences of the violation. DEQ has copies of receipts for the rental of portable toilets from Respondent for placement and use on Oregon properties from April through July of 2015, which was approximately 120 days. Also, Malheur County staff observed Respondent's portable toilets at two properties on two separate occasions, July 23, 2015 and September 29, 2015.

"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. In 1995, Malheur County informed Respondent of several violations related to performing sewage disposal services in Oregon without a DEQ license. Although Respondent apparently stopped pumping portable

toilets in Oregon, it continued to provide them for use in the state. Respondent was aware that its operations in Oregon were subject to regulation, but it failed to ensure that it was operating in compliance with Oregon requirements. Additionally, Respondent is licensed as a septic pumper in Idaho, so it is familiar with the licensing process and regulations that apply to septic pumpers. When Respondent provided portable toilets for use in Oregon without a contract with an Oregon-licensed pumper, Respondent consciously disregarded a substantial and unjustifiable risk that it would violate Oregon onsite sewage disposal regulations. Because these regulations are intended to protect public health and the environment by ensuring that portable toilets are properly pumped and cleaned, the risk was of such a nature and degree that disregarding it constituted a gross deviation from the standard of care a reasonable person would assume.

"C" is Respondent's efforts to correct or mitigate the violation and receives a value of 0 according to OAR 340-012-0145(6)(a)(D), because the violation or the effects of the violation could not be corrected or minimized.

"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 there is insufficient information on which to make an estimate of Respondent's economic benefit, if any.

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

$$\begin{aligned} &= \$750 + [(0.1 \times \$750) \times (0 + 0 + 4 + 8 + 0)] + \$0 \\ &= \$750 + [\$75 \times 12] + \$0 \\ &= \$750 + \$900 + \$0 \\ &= \$1,650 \end{aligned}$$