Oregon
Kate Brown, Governor

Department of Environmental Quality
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TTY: 711

May 13, 2016

CERTIFIED MAIL: 7014 2870 0001 3378 2672

Anthony Allen Hoover
4202 Redwood Hwy
Grants Pass, OR 97527

Re: Notice of Civil Penalty Assessment and Order
Case No. LQ/SW-WR-16-068

This letter is to inform you that the Oregon Department of Environmental Quality (DEQ) has issued you a civil penalty of $500 for disposing of solid waste at an unpermitted location. Specifically, you collected approximately two cubic yards of household garbage and other solid waste in a pit at your residential property in Grants Pass.

DEQ issued this penalty because it is against the law to dispose of solid waste anywhere except at a permitted disposal facility, such as a landfill or transfer station. In addition, DEQ has given you previous warnings about illegal dumps. Illegal dumps diminish livability, depress the value of the surrounding land and neighborhoods and can threaten human health and the environment by creating habitat for disease carrying insects and rodents and polluting ground and surface water.

DEQ appreciates your efforts to correct the violation by properly removing and disposing of the solidwaste. DEQ considered these efforts when determining the amount of civil penalty.

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.

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 Kieran O'Donnell, at (503) 229-5012. You may call toll-free within Oregon at 1-800-452-4011, extension 5012.

Sincerely,

Leah K. Feldon, Manager
Office of Compliance and Enforcement

Enclosures

cc: David Esch, DEQ, Medford Office

BEFORE THE ENVIRONMENTAL QUALITY COMMISSION

OF THE STATE OF OREGON

IN THE MATTER OF: ANTHONY ALLEN HOOVER *an individual* Respondent.	)))))	NOTICE OF CIVIL PENALTY ASSESSMENT AND ORDER CASE NO. LQ/SW-WR-16-068

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 and 468.126 through 468.140, ORS 459.995, ORS Chapter 183 and Oregon Administrative Rules (OAR) Chapter 340, Divisions 011, 012, and 093.

II. FINDINGS OF FACT

1. Respondent resides at real property located at 4202 Redwood Highway, Grants Pass, OR (the Facility).

2. On March 7, 2016, DEQ performed an inspection of the Facility. At the time of the inspection Respondent had collected approximately two cubic yards of household trash, used appliances, toys, and garden equipment in a pit at the Facility.

3. Respondent is not authorized to dispose of solid waste at the Facility by a Solid Waste Disposal Permit.

III. CONCLUSIONS

1. Respondent has violated ORS 459.205(1) and OAR 340-093-0040(1) by establishing a solid waste disposal site without a permit, as described in Section II above. Specifically, Respondent established an unpermitted solid waste disposal site when he placed household trash, used appliances, toys, and garden equipment in a pit at the Facility. The household trash, used appliances, toys, and garden equipment are "solid waste," as defined by ORS 459.005(25) because they are useless and discarded materials. This is a Class I violation according to OAR 340-012-0065(1)(c). DEQ hereby assesses a $500 civil penalty for this violation.

IV. ORDER TO PAY CIVIL PENALTY

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

Pay a total civil penalty of $500. 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.

V. NOTICE OF RIGHT TO REQUEST A CONTESTED CASE HEARING

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

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

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

May 13, 2016
Date

Leah K. Feldon, Manager
Office of Compliance and Enforcement

EXHIBIT No. 1

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

VIOLATION No. 1: Establishing a solid waste disposal site without a permit, in violation of ORS 459.205(1) and OAR 340-093-0040(1).

CLASSIFICATION: This is a Class I violation pursuant to OAR 340-012-0065(1)(c).

MAGNITUDE: The magnitude of the violation is minor pursuant to OAR 340-012-0135(3)(a)(C) because the volume of the unpermitted disposed solid waste was less than 40 cubic yards. Respondent disposed of approximately two cubic yards of solid 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 $250 for a Class I, minor magnitude violation in the matrix listed in OAR 340-012-0140(5)(b)(A)(iii) and applicable pursuant to OAR 340-012-0140(5)(a)(H) because Respondent is the residential owner-occupant of the Facility.

"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. Each day of violation constitutes a separate occurrence. The violation began on at least March 7, 2016, the day of the DEQ inspection. The solid waste was not removed until April 26, 2016, fifty days after the violation began. Therefore, there were more than 28 occurrences of the violation.

"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 June of 2014 Respondent was issued a warning by DEQ for dumping solid waste. Despite the previous warning by DEQ, Respondent accumulated household garbage and other solid waste in a pit at the Facility. By repeating the illegal disposal, Respondent demonstrated a conscious disregard of a substantial and unjustifiable risk that Respondent would commit a violation. In addition, the nature of this disregard demonstrates a gross deviation from the standard of care a reasonable person would observe in a similar situation.

"C" is Respondent's efforts to correct or mitigate the violation and receives a value of -2 according to OAR 340-012-0145(6)(d), because Respondent eventually made some efforts to correct the violation. On April 26, 2016, the solid waste was removed from the Facility and properly disposed.

"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 the economic benefit in this case was likely de minimis.

PENALTY CALCULATION: Penalty = BP + [(0.1 x BP) x (P + H + O + M + C)] + EB
= $250 + [(0.1 x $250) x (0 + 0 + 4 + 8 + -2)] + $0
= $250 + [$25 x 10] + $0
= $250 + $250 + $0
= $500