



Oregon

Kate Brown, Governor

Department of Environmental Quality

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Portland, OR 97204-1390
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May 6, 2016

CERTIFIED MAIL: 7014 2870 0001 3378 2696

Hillsboro Landfill, Inc.
c/o CT Corporation System, Registered Agent
388 State St., Ste. 420
Salem, OR 97301

Re: Notice of Civil Penalty Assessment and Order
Case No. AQ/AB-NWR-16-045

This letter is to inform you that the Oregon Department of Environmental Quality (DEQ) has issued you a civil penalty of \$6,400 for failing to properly cover disposed asbestos-containing waste material (ACWM) at your landfill located in Hillsboro, Oregon.

DEQ issued this penalty because asbestos fibers are a respiratory hazard proven to cause lung cancer, mesothelioma, and asbestosis. Asbestos is a danger to public health and a hazardous air contaminant for which there is no known safe level of exposure. The improper disposal of ACWM poses a significant risk of emitting asbestos fibers and is therefore a risk to public health and the environment.

DEQ appreciates your efforts to minimize the impacts of the violation by applying sufficient cover to the ACWM during DEQ's inspection. DEQ considered these efforts when determining the civil penalty amount.

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: Zeb Bates, NWR, DEQ
Killian Condon, NWR, DEQ
Cindy Troupe, AQ, HQ
Hillsboro Landfill Inc. c/o Michele Wittenbrink, 3205 SE Minter Bridge Road, Hillsboro, OR
97123

1 BEFORE THE ENVIRONMENTAL QUALITY COMMISSION

2 OF THE STATE OF OREGON

3 IN THE MATTER OF:) NOTICE OF CIVIL PENALTY
4 HILLSBORO LANDFILL, INC.,) ASSESSMENT AND ORDER
5 *an Oregon corporation,*)
6 Respondent.) CASE NO. AQ/AB-NWR-16-045

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 and 468A, and Oregon Administrative Rules (OAR) Chapter 340, Divisions 011, 012,
11 and 248.

12 II. FINDINGS OF FACT

13 1. Respondent owns and operates a landfill located at 3205 SE Minter Bridge Road in
14 Hillsboro (the Facility) that is authorized by DEQ to dispose of asbestos containing material (ACM)
15 and asbestos-containing waste material (ACWM).

16 2. On January 14, 2016, DEQ performed an inspection of the Facility.

17 3. During the January 14, 2016 inspection, the Facility's asbestos burial area exhibited exposed
18 materials, including partially exposed plastic containers that contained poly bags with asbestos labeling
19 and 55 gallon blue-colored plastic drums of ACWM.

20 III. CONCLUSIONS

21 Respondent has violated OAR 340-248-0280(10)(a)(H) by failing to cover all asbestos-
22 containing waste material (ACWM) with at least 12 inches of soil, as described in Section II above.
23 Specifically, Respondent failed to cover the plastic containers that had poly bags with asbestos labeling
24 and the 55 gallon drums of ACWM with 12 inches of soil. The plastic containers that had poly bags
25 with asbestos labeling are ACWM, as defined by OAR 340-248-0010(12) because they either hold
26 waste containing asbestos or bags that previously contained asbestos. In addition, the exposed 55
27 gallon drums are ACWM, as defined by OAR 340-248-0010(12), because they are waste that contains

1 asbestos. This is a Class I violation pursuant to OAR 340-012-0054(1)(o). DEQ hereby assesses a
2 \$6,400 civil penalty for this violation.

3 IV. ORDER TO PAY CIVIL PENALTY

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

6 Pay a total civil penalty of \$6,400. The determination of the civil penalty is attached as Exhibit No.
7 1 and is incorporated as part of this Notice.

8 If you do not file a request for hearing as set forth in Section V below, your check or money order
9 must be made payable to "State Treasurer, State of Oregon" and sent to the **DEQ, Business Office,**
10 **811 S.W. Sixth Avenue, Portland, Oregon 97204.** Once you pay the penalty, the Findings of Fact,
11 Conclusions and Order become final.

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

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

25 Active duty service-members have a right to stay proceedings under the federal Service
26 members Civil Relief Act. For more information, please call the Oregon State Bar at 1-800-452-8260
27 or the Oregon Military Department at 1-800-452-7500. Additional information can be found online at

1 the United States Armed Forces Legal Assistance (AFLA) Legal Services Locator website
2 <http://legalassistance.law.af.mil/content/locator.php>.

3 If you fail to file a request for hearing in writing within 20 calendar days of receipt of the
4 Notice, the Notice will become a final order by default without further action by DEQ, as per OAR
5 340-011-0535(1). If you do request a hearing but later withdraw your request, fail to attend the hearing
6 or notify DEQ that you will not be attending the hearing, DEQ will issue a final order by default
7 pursuant to OAR 340-011-0535(3). DEQ designates the relevant portions of its files, including
8 information submitted by you, as the record for purposes of proving a prima facie case.
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12 May 6, 2016
13 Date

12 Sarah Wheeler for
13 Leah K. Feldon, Manager
14 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: Failing to cover all asbestos-containing waste material (ACWM) with at least 12 inches of soil, in violation of OAR 340-248-0280(10)(a)(H).

CLASSIFICATION: This is a Class I violation pursuant to OAR 340-012-0054(1)(o).

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. During the inspection DEQ was unable to determine the amount of ACWM improperly covered by the Respondent.

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 \$4,000 for a Class I, moderate magnitude violation in the matrix listed in OAR 340-012-0140(3)(b)(A)(ii) and applicable pursuant to OAR 340-012-0140(3)(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. Respondent has a Class I prior significant action, in Case Number AQ/AB-NWR-15-063, issued June 22, 2015, for a value of 2 pursuant to OAR 340-012-0145(2)(a)(C).

"H" is Respondent's history of correcting prior significant actions and receives a value of -1 according to OAR 340-012-0145(3)(b), because the violations were uncorrectable and Respondent took reasonable efforts to minimize the effects of the violations cited as prior significant actions.

"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 at least one occurrence of the violation. Each day of violation constitutes a separate occurrence. The violation occurred on at least one day, January 7, 2016, the day of the DEQ inspection of the Facility.

"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. Respondent owns and operates a highly regulated landfill facility that is allowed to accept and manage ACWM in accordance with Oregon law and its DEQ-approved special waste management plan. Landfill operators routinely attend safety meetings regarding the proper handling and management of ACWM.

Despite this expertise in the management and disposal of ACWM, Respondent allowed containers with asbestos bags and drums containing asbestos to remain exposed in the asbestos disposal area. Respondent committed the same violation on December 14, 2014 when DEQ inspected and discovered partially buried packages of ACWM at the disposal site. This conscious disregard for the covering requirements constitutes a gross deviation of the standard of care for a landfill operator with commensurate experience.

"C" is Respondent's efforts to correct or mitigate the violation and receives a value of -3 according to OAR 340-012-0145(6)(c), because Respondent took reasonable affirmative efforts to minimize the effects of the violation. On the same day as the DEQ inspection, Respondent covered the exposed ACWM with an appropriate amount of landfill cover.

"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 cannot make an approximation under OAR 340-012-0150(1).

PENALTY CALCULATION: $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$
= \$4,000 + [(0.1 x \$4,000) x (2 + -1 + 0 + 8 + -3)] + \$0
= \$4,000 + [\$400 x 6] + \$0
= \$4,000 + \$2,400 + \$0
= \$6,400