



Oregon

Kate Brown, Governor

Department of Environmental Quality

Office of Compliance and Enforcement

700 NE Multnomah St Ste 600

Portland, OR 97232-4100

(503) 229-5696

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May 31, 2017

CERTIFIED MAIL: 7014 2870 0001 3378 4874

David John Davis & Susan Denise King Davis
1919 Cedar Flat Road
Williams, OR 97544-9669

Re: Notice of Civil Penalty Assessment and Order
Case No. LQ/SW-WR-2017-010

This letter is to inform you that the Oregon Department of Environmental Quality (DEQ) has issued you a civil penalty of \$3,560 for the illegal collecting and storing of solid waste at your property located at 1919 Cedar Flat Road, in Williams, Oregon.

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. Illegal dumps diminish livability, depress the value of the surrounding land and can threaten human health and the environment by creating habitat for disease carrying vectors and threatening groundwater. Additionally, the pile of accumulated waste at your property is situated adjacent to and up-gradient of Williams Creek which poses an additional threat to those waters of the state.

Included in Section IV is an Order requiring you to clean up the property within 30 days of this order becoming final. \$2,360 of the civil penalty represents the economic benefit you gained by failing to dispose of the solid waste at a permitted site. If you take corrective action, 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 – 700 NE Multnomah Street, Suite #600, Portland, Oregon 97232

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



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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 Courtney Brown, at (503) 229-6839. You may call toll-free within Oregon at 1-800-452-4011, extension 6839.

Sincerely,



Sarah G. Wheeler, Acting Manager
Office of Compliance and Enforcement

Enclosures

cc: David Esch, Medford
Shaumae Hall, Accounting, DEQ

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

3 IN THE MATTER OF:)
4 DAVID JOHN DAVIS & SUSAN DENISE) NOTICE OF CIVIL PENALTY
KING DAVIS,) ASSESSMENT AND ORDER
5 Respondents.) CASE NO. LQ/SW-WR-2017-010

6 I. AUTHORITY

7 The Department of Environmental Quality (DEQ) issues this Notice of Civil Penalty Assessment
8 and Order (Notice) pursuant to Oregon Revised Statutes (ORS) 468.100, ORS 468.126 through 468.140,
9 ORS 459.995; ORS Chapter 183 and Oregon Administrative Rules (OAR) Chapter 340, Divisions 011,
10 012, and 093.

11 II. FINDINGS OF FACT

12 1. Respondents own and are residents of property located at 1919 Cedar Flat Road in
13 Williams, Oregon (the Property).

14 2. From on or before July 22, 2016, through the present, Respondents have disposed of or
15 allowed persons to dispose of approximately 89 cubic yards of household garbage, furniture, clothing
16 and other debris at the Property.

17 3. The pile of debris referred to in paragraph 2, above, is situated adjacent to and up-gradient
18 of Williams Creek, waters of the state.

19 4. At all relevant times the Property was not authorized by DEQ as a solid waste disposal site.

20 III. CONCLUSIONS

21 I. Since on or before July 22, 2016, through the present, Respondents have violated OAR 340-
22 093-0040(1) by authorizing the disposal of solid waste in a location not authorized as a solid waste
23 disposal site, as described in Section II above. Specifically, Respondents disposed of or allowed
24 persons to dispose of debris at the Property. The debris is "solid waste," as defined by OAR 340-093-
25 0030(91), because it is made up of useless and discarded materials, including but not limited to
26 garbage. The Property was not an authorized disposal site at any relevant time. This is a Class I

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1 violation, according to OAR 340-012-0065(1)(c). DEQ hereby assesses a \$3,560 civil penalty for
2 these violations.

3 IV. ORDER TO PAY CIVIL PENALTY AND TO COMPLY

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

6 1. Pay a total civil penalty of \$3,560. The determination of the civil penalty is attached as Exhibit
7 No.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
9 order must be made payable to "**State Treasurer, State of Oregon**" and sent to the **DEQ, Business**
10 **Office, 700 NE Multnomah Street, Suite 600, Portland, Oregon 97232**. Once you pay the penalty,
11 the Findings of Fact, Conclusions and Order become final.

12 2. Within 30 days after the order becomes final by operation of law or on appeal, remove and
13 properly dispose or recycle the solid waste accumulated at the Property. Written documentation
14 demonstrating Respondent's compliance, including disposal and/or recycling receipts must be sent to:
15 DEQ, Attn: David Esch, 221 W. Stewart, Suite 201, Medford, OR 97501.

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

17 You have a right to a contested case hearing on this Notice, if you request one in writing. DEQ
18 must receive your request for hearing **within 20 calendar days** from the date you receive this Notice. If
19 you have any affirmative defenses or wish to dispute any allegations of fact in this Notice or attached
20 exhibit(s), you must do so in your request for hearing, as factual matters not denied will be considered
21 admitted, and failure to raise a defense will be a waiver of the defense. (See OAR 340-011-0530 for
22 further information about requests for hearing.) You must send your request to: **DEQ, Office of**
23 **Compliance and Enforcement, 700 NE Multnomah Street, Suite 600, Portland, Oregon 97232**, fax
24 it to **503-229-5100**, or email it to **DEQappeals@deq.state.or.us**. An administrative law judge
25 employed by the Office of Administrative Hearings will conduct the hearing, according to ORS
26 Chapter 183, OAR Chapter 340, Division 011 and OAR 137-003-0501 to 0700. You have a right to be
27 represented by an attorney at the hearing, however you are not required to be. If you are an individual,

1 | you may represent yourself. If you are a corporation, partnership, limited liability company,
2 | unincorporated association, trust or government body, you must be represented by an attorney or a duly
3 | authorized representative, as set forth in OAR 137-003-0555.

4 | Active duty service-members have a right to stay proceedings under the federal Service
5 | Members Civil Relief Act. For more information, please call the Oregon State Bar at 1-800-
6 | 452-8260 or the Oregon Military Department at 1-800-452-7500. Additional information can be found
7 | online at the United States Armed Forces Legal Assistance (AFLA) Legal Services Locator website
8 | <http://legalassistance.law.af.mil/content/locator.php>.

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

15 |
16 |
17 |
18 | May 31, 2017

19 | Date

18 | Sarah Wheeler

19 | Sarah G. Wheeler, Acting Manager
20 | Office of Compliance and Enforcement

EXHIBIT NO. 1

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

- VIOLATION No. 1: Disposing of or authorizing the disposal of solid waste in a location not authorized as a solid waste disposal site, in violation of 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 moderate pursuant to OAR 340-012-0135(3)(a)(B) because the volume of material disposed of by the Respondents is greater than or equal to 40 cubic yards and less than 400 cubic yards. Respondent has disposed of approximately 89 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 \$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)(H).
- "P" is whether Respondents have 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 Respondents, and receives a value of 0 according to OAR 340-012-0145(2)(a)(A), because there are no prior significant actions.
- "H" is Respondents' 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 illegal disposal has occurred from on or before July 22, 2016, through the present. Therefore, there were more than 28 occurrences of the violation.
- "M" is the mental state of the Respondents and receives a value of 8 according to OAR 340-012-0145(5)(d), because Respondents' conduct was reckless. DEQ informed Respondents on three separate occasions that the large pile of debris at the property was not permitted and that it must be removed and properly disposed. By disposing of solid waste in this unauthorized location and failing to clean it up, Respondents have consciously disregarded a substantial and unjustifiable risk that it would violate the law. Given DEQ's repeated requests to correct the violation disregarding that risk constituted a gross deviation from the standard of care a reasonable person would observe in this situation.

"C" is Respondents' efforts to correct or mitigate the violation and receives a value of 2 according to OAR 340-012-0145(6)(g), because Respondents have not addressed the violation as described in paragraphs (6)(a) through (6)(e) and the facts do not support a finding under paragraph (6)(f).

"EB" is the approximate dollar value of the benefit gained and the costs avoided or delayed as a result of the Respondents' 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 \$2,360 because Respondents avoided the costs of disposing of 89 cubic yards of solid waste (20 cubic yard drop boxes cost \$457 each x 5 drop boxes equals \$2,285). This "EB" was calculated pursuant to OAR 340-012-0150(1) using the U.S. Environmental Protection Agency's BEN computer model.

PENALTY CALCULATION: $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$
= \$500 + [(0.1 x \$500) x (0 + 0 + 4 + 8 + 2)] + \$2,360
= \$500 + [\$50 x 14] + \$2,360
= \$500 + \$700 + \$2,360
= \$3,560