



Oregon

Kate Brown, Governor

Department of Environmental Quality
Office of Compliance and Enforcement
700 NE Multnomah Street, Suite 600
Portland, OR 97232-4100
(503) 229-5696
FAX (503) 229-5100
TTY 711

June 5, 2020

CERTIFIED MAIL: 7017 1450 0000 8310 4999

John E. Farnes
16657 S Redland Road
Oregon City OR 97045

Re: Notice of Civil Penalty Assessment and Order
Case No. LQ/SW-NWR-2020-020

DEQ is committed to balancing its vital obligation to enforce the law and protect the environment with a consideration of the dramatic disruptions to public health and the economy caused by the COVID-19 outbreak. We understand the outbreak may impact your ability to timely appeal, pay the assessed civil penalty, or comply with this order. You may submit to DEQ documentation identifying whether COVID-19-related disruption affects your ability to comply with this order. Visit our webpage <https://www.oregon.gov/deq/Pages/covid-19.aspx> for more information about documenting specific COVID-19 disruptions your facility may be encountering and how that affects your ability to comply. DEQ will exercise reasonable discretion regarding settlement of this order.

This letter is to inform you that the Oregon Department of Environmental Quality (DEQ) has issued you a civil penalty of \$3,000 for disposing solid waste at an unpermitted location.

DEQ issued this penalty because you have not responded to the Warning Letter with Opportunity to Correct DEQ issued you in November, or the Pre-Enforcement Notice DEQ issued you in January, citing this violation and requesting your compliance. Additionally, asphalt pavement grindings, such as the large amount you have piled and spread on your property, are an environmental and public health concern due to the carcinogenic compounds contained in asphalt binder (polycyclic aromatic hydrocarbons, or PAHs) that can escape to the air and surface water when asphalt is ground into small particles.

Included in Section IV of the attached Notice is an order requiring you to submit to DEQ either: 1) Information regarding the applicability of the asphalt grindings at your property to the standing Beneficial Use Determination pursuant to OAR 340-093-0270(5) (see enclosed fact sheet); or 2) a plan for disposal of the asphalt grindings at your property at a permitted facility.

If you wish to appeal this matter, DEQ must receive a request for a hearing within 20 calendar days from your receipt of this letter. The hearing request must be in writing. Send your request to DEQ Office of Compliance and Enforcement:

Via mail – 700 NE Multnomah Street, Suite 600, Portland, Oregon 97232

Via email – DEQappeals@deq.state.or.us

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 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 instead of paying a penalty. Further information is available by calling the number below or at <http://www.oregon.gov/deq/Regulations/Pages/SEP.aspx>.

DEQ's rules are available at <http://www.oregon.gov/deq/Regulations/Pages/Statutes.aspx> or by calling the number below.

If you have any questions, please contact Sarah Wheeler at 503-229-6927 or toll free in Oregon at 800-452-4011, extension 6927.

Sincerely,



Kieran O'Donnell, Manager
Office of Compliance and Enforcement

Enclosures

cc: Chris Papinsick, DEQ
Audrey O'Brien, DEQ
Accounting, DEQ

1 use allowed in OAR 340-093-0270(5). This is Class I violation, according to OAR 340-012-0065(1)(a).
2 DEQ hereby assesses a \$3,000 civil penalty for this violation.

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 \$3,000. The determination of the civil penalty is attached as
7 Exhibit 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 **700 NE Multnomah Street, Suite 600, Portland, Oregon 97232.**

11 2. Within 10 days of this order becoming final by operation of law or on appeal, submit
12 one of the following to Chris Papinsick, DEQ, at papinsick.chris@deq.state.or.us, or at 700 NE
13 Multnomah Street, Suite 600, Portland, Oregon 97232:

- 14 a. Information regarding the applicability of the asphalt grindings at your property to the
15 standing Beneficial Use Determination pursuant to OAR 340-093-0270(5); or
16 b. A written plan, including timelines, for when and how you propose to legally dispose of
17 all of the asphalt grindings currently at the Property. Upon approval of the plan by DEQ,
18 implement the approved plan.

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

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

1 employed by the Office of Administrative Hearings will conduct the hearing, according to ORS
2 Chapter 183, OAR Chapter 340, Division 011 and OAR 137-003-0501 to 0700. You have a right to be
3 represented by an attorney at the hearing, however you are not required to be. If you are an individual,
4 you may represent yourself. If you are a corporation, partnership, limited liability company,
5 unincorporated association, trust or government body, you must be represented by an attorney or a duly
6 authorized representative, as set forth in OAR 137-003-0555.

7 Active duty Service members have a right to stay proceedings under the federal Service
8 Members Civil Relief Act. For more information contact the Oregon State Bar at 1-800-
9 452-8260, the Oregon Military Department at 503-584-3571, or the nearest United States Armed
10 Forces Legal Assistance Office through <http://legalassistance.law.af.mil>. The Oregon Military
11 Department does not have a toll free telephone number.

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

18
19
20
21 6/5/2020

22 Date

21 

22 Kieran O'Donnell, Manager
23 Office of Compliance and Enforcement
24
25
26
27

EXHIBIT 1

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

VIOLATION NO. 1 Disposing of solid waste at an unpermitted site, in violation of OAR 340-093-0040(1).

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

MAGNITUDE: The magnitude of the violation is moderate pursuant to OAR 340-012-0135(3)(a)(B) because Respondent disposed of between 40 and 400 cubic yards of solid waste at an unpermitted site.

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)(A).

"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. The violation has been ongoing since at least September 24, 2019.

"M" is the mental state of the Respondent, and receives a value of 4 according to OAR 340-012-0145(5)(c) because Respondent's conduct was negligent. DEQ informed Respondent of the violation and requested Respondent take corrective action in a November 20, 2019 Warning Letter with Opportunity to Correct (WLOC), and again in a January 21, 202 Pre-Enforcement Notice (PEN). By failing to take corrective action as of the date of this Notice, Respondent failed to take reasonable care to avoid the foreseeable risk of committing this violation.

"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). As of the date of this Notice, Respondent has not taken the corrective action requested in the WLOC and PEN.

"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, as DEQ does not have sufficient information to make a finding.

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

$$\begin{aligned} &= \$1,500 + [(0.1 \times \$1,500) \times (0 + 0 + 4 + 4 + 2)] + \$0 \\ &= \$1,500 + (\$150 \times 10) + \$0 \\ &= \$1,500 + \$1,500 + \$0 \\ &= \$3,000 \end{aligned}$$

Beneficial Use of Reclaimed Asphalt Grindings



State of Oregon
Department of
Environmental
Quality

**Environmental Solutions Division
Materials Management Program**

811 SW 6th Avenue
Portland, OR 97204
Phone: (503) 229-5696
(800) 452-4011
Fax: (503) 229-5850
Contact:
Bob Barrows, Eugene
barrows.bob@deq.state.or.us
(541) 687-7354
www.oregon.gov/DEQ

Background

Reclaimed asphalt pavement (RAP) is a common term used for removed and/or reprocessed pavement materials containing a mixture of petroleum-derived asphalt and mineral aggregates (gravel and sand). It is generated when pavement from old roads, parking lots and driveways is removed for reconstruction or resurfacing. RAP can be broken up asphalt chunks or asphalt grindings. Grindings are typically less than 1 inch in size and produced by the mechanical grinding of asphaltic pavement surfaces. This factsheet is intended to address best management practices for the beneficial use of reclaimed asphalt grindings.

Environmental and Public Health Concerns

While broken up large chunks of old, weathered and consolidated asphalt pavement pose minimal risk of harm to the environment or public health, asphalt grindings may pose a risk because of potential exposure to newly exposed asphalt binder. If not managed appropriately, carcinogenic compounds contained in the asphalt binder (polycyclic aromatic hydrocarbons – PAHs) may pose human health and environmental concerns particularly when asphalt material is ground into small particles.



Asphalt Grindings Pile

Some tests have shown that these compounds do not leach from asphalt grindings, however, asphalt grindings contain small amounts of fine particulates that may include asphalt binder. Although there are no available extensive studies demonstrating whether or not asphalt grindings particulates cause harm to human health or the environmental, DEQ recommends that asphalt grindings be managed to minimize the potential release of fine particles.

Recycling Asphalt Grindings

DEQ does not regulate asphalt grindings as solid waste when it is recycled back into new asphalt pavement and roads under specific conditions. (If these conditions are not met, asphalt grindings are solid waste and subject to DEQ solid waste regulations.) Both the aggregate and the asphalt in grindings are valuable, recyclable materials that can be recycled into new asphalt pavement surfaces, saving materials, greenhouse gas emissions, energy and money.



Asphalt Grinding Equipment

Permitting Exemptions

Oregon Administrative Rules (OAR) provide an exemption from solid waste permitting requirements for some uses of solid waste that are considered beneficial. The solid waste material must be used for a productive purpose and be managed safely under specified conditions of use. When asphalt grindings meet the criteria in the table below, it is exempt from solid waste permit requirements.

Solid Waste	Beneficial Use	Conditions on Use
(a) Asphalt pavement or asphalt grindings from road projects	As asphalt and aggregate in new asphalt pavement or as fill within road prisms	Asphalt grindings must be compacted when used within road prisms

OAR 340-093-0270(5)

Incorporating asphalt grindings into the production of new asphalt pavement is a very common practice. The Oregon Department of Transportation and many city and county road departments write specifications allowing and/or requiring new projects to incorporate asphalt grindings.

The use of asphalt grindings as fill or top dressing within road prisms is also common. For purposes of this factsheet, the road prism includes areas used for driving or storing vehicles, and associated embankments and

structural support, e.g. parking lots, driveways, turn outs, shoulders, as well as roadways. Asphalt grindings used within a road prism are typically used under or within the roadbed surface, it is unusual for grindings to be placed out into the ditches. DEQ does not recommend using grindings as fill in ditches, if used in ditches the grindings need to be compacted as described in this factsheet.

Conditions on use

Asphalt grindings must be covered or compacted when used within road prisms.

Protections can be accomplished in two ways:

- 1) capping, covering or encapsulating the grindings or
- 2) compacting the grindings.

Placing asphalt grindings within the road, capped or covered by new asphalt paving or new gravel, is recommended by DEQ as the most protective practice.

However, compaction of asphalt grindings can reduce risks by using the adhesive properties of the asphalt to bind up the aggregate and harmful constituents.

Compaction must be accomplished by using standard compaction techniques, such as weighted rolling equipment, vibratory plate compactors or using the same equipment that would be used to compact aggregate for the specific application, at the time of lay down. Compaction by vehicle traffic is not an acceptable or sufficient method of compaction.

Generators of asphalt grindings must provide the following information (through written documentation, labeling, or other means) to users who intend to use the grindings in a manner other than making new asphalt pavement that identifies:

- The material as asphalt grindings;
- That asphalt grindings contains carcinogenic compounds - polycyclic aromatic hydrocarbons (PAHs) which may pose human health and environmental concerns, if not handled appropriately;
- That it is approved for use as fill in roads, parking lots and driveways under certain conditions; and
- Conditions of use - if the grindings are used as underlayment/fill, or exposed surface material in roads, parking/storage lots or driveways, then the asphalt grindings must be compacted with standard compaction equipment.



Compacted Grindings on Road Shoulder

For more information please contact a Regional Solid Waste Permit Coordinator:

Eastern Region: 541-298-7255 x221

Eastern Region counties include:

Baker, Crook, Deschutes, Gilliam, Grant, Harney, Hood River, Jefferson, Klamath, Lake, Malheur, Morrow, Sherman, Umatilla (including Milton-Freewater), Union, Wallowa, Wasco, and Wheeler.

Northwest Region: 503-229-5263

Northwest Region counties include:

Clackamas, Clatsop, Columbia, Multnomah, Tillamook, and Washington.

Western Region: 541-687-7465

Western Region counties include:

Benton, Coos, Curry, Douglas, Jackson, Josephine, Lane, Lincoln, Linn, Marion, Polk, and Yamhill.

Alternative Formats

Alternative formats of this document can be made available. Contact DEQ's Office of Communications & Outreach for more information at (503) 229-5696.