



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 3343

Tony Schneider
9609 N Columbia Blvd
Portland OR 97203

Re: Notice of Civil Penalty Assessment and Order
Case No. LQ/SW-NWR-2020-093

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 \$5,295 for establishing or operating a waste tire storage site without a permit, operating an unpermitted solid waste disposal site, and failing to determine whether wastes you generated were hazardous.

DEQ issued this penalty because storing over 2,500 waste tires at your property on North Columbia Boulevard in Portland, along with a large amount of solid waste (including construction and demolition debris, mixed metals, and household garbage) and open containers of gasoline and unknown liquid waste, posed a risk to the environment and public health. Specifically, illegal and mismanaged piles of waste tires can accumulate rainwater which can become a breeding ground for disease-carrying vectors. In addition, mismanaged waste tires can catch fire, causing both air and water pollution.

DEQ appreciates your efforts to address the violations by cleaning up the waste tires, solid waste, and containers of liquid waste. 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 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 by phone 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 III. CONCLUSIONS

2 1. Respondent violated OAR 340-064-0015(1) by establishing or operating a waste tire
3 storage site without first obtaining a permit, as described in paragraphs 1, 3, and 6 of Section II above.
4 This is a Class I violation, according to OAR 340-012-0066(1)(a). DEQ hereby assesses a \$5,295 civil
5 penalty for this violation.

6 2. Respondent violated OAR 340-102-0011(2) by failing to accurately determine if
7 Respondent's residues (as defined in OAR 340-100-0010(2)(ee) and 40 CFR 261.2 as adopted by OAR
8 340-100-0002) were hazardous waste, as described in paragraphs 1 and 4 of Section II above. This is a
9 Class I violation, according to OAR 340-012-0068(1)(a). DEQ has not assessed a civil penalty for this
10 violation.

11 3. Respondent violated OAR 340-093-0050(1) by establishing a solid waste disposal site
12 without a permit, as described in paragraphs 1 and 4-6 of Section II above. This is a Class I violation,
13 according to OAR 340-012-0065(1)(a). DEQ has not assessed a civil penalty for this violation.

14 IV. ORDER TO PAY CIVIL PENALTY

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

17 Pay a total civil penalty of \$5,295. The determination of the civil penalty is attached as Exhibit 1
18 and is incorporated as part of this Notice.

19 If you do not file a request for hearing as set forth in Section V below, your check or money order
20 must be made payable to "**State Treasurer, State of Oregon**" and sent to the **DEQ, Business Office,**
21 **700 NE Multnomah Street, Suite 600, Portland, Oregon 97232.**

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

23 You have a right to a contested case hearing on this Notice, if you request one in writing. DEQ
24 must receive your request for hearing **within 20 calendar days** from the date you receive this Notice. If
25 you have any affirmative defenses or wish to dispute any allegations of fact in this Notice or attached
26 exhibit, you must do so in your request for hearing, as factual matters not denied will be considered
27 admitted, and failure to raise a defense will be a waiver of the defense. (See OAR 340-011-0530 for

1 further information about requests for hearing.) You must send your request to: **DEQ, Office of**
2 **Compliance and Enforcement, 700 NE Multnomah Street, Suite 600, Portland, Oregon 97232**, fax
3 it to **503-229-5100** or email it to DEQappeals@deq.state.or.us. An administrative law judge
4 employed by the Office of Administrative Hearings will conduct the hearing, according to ORS
5 Chapter 183, OAR Chapter 340, Division 011 and OAR 137-003-0501 to 0700. You have a right to be
6 represented by an attorney at the hearing, however you are not required to be. If you are an individual,
7 you may represent yourself. If you are a corporation, partnership, limited liability company,
8 unincorporated association, trust or government body, you must be represented by an attorney or a duly
9 authorized representative, as set forth in OAR 137-003-0555.

10 Active duty Service members have a right to stay proceedings under the federal Service
11 Members Civil Relief Act. For more information contact the Oregon State Bar at 1-800-
12 452-8260, the Oregon Military Department at 503-584-3571, or the nearest United States Armed
13 Forces Legal Assistance Office through <http://legalassistance.law.af.mil>. The Oregon Military
14 Department does not have a toll free telephone number.

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

21
22 6/5/2020
23 Date

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

EXHIBIT 1

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

- VIOLATION 1: Establishing or operating an unpermitted waste tire storage site without a permit, in violation of OAR 340-064-0015(1).
- CLASSIFICATION: This is a Class I violation pursuant to OAR 340-012-0066(1)(a).
- 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 \$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)(I)(i).
- "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 Respondent does not have any 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 Respondent does not have any prior significant actions.
- "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. Respondent stored waste tires without the required permit from at least March 26, 2019, through February 21, 2020. Each day of a violation with a duration of more than one day is a separate occurrence.
- "M" is the mental state of the Respondent, and receives a value of 2 according to OAR 340-012-0145(5)(b) because Respondent reasonably should have known of the requirement..
- "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 made reasonable efforts to correct the violation. Respondent promptly made efforts to remove tires after DEQ's first inspection, and continued those efforts through completion of cleanup of all the tires in February 2020.

"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 \$95. This is the amount Respondent gained by delaying spending a total of \$6,850 from March 26, 2019 to February 21, 2020 to properly dispose of waste tires. This "EB" was calculated pursuant to OAR 340-012-0150(1) using the U.S. Environmental Protection Agency's BEN computer model.

PENALTY CALCULATION: $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$
= \$4,000 + [(0.1 x \$4,000) x (0 + 0 + 4 + 2 + (-3))] + \$95
= \$4,000 + (\$400 x 3) + \$95
= \$4,000 + \$1,200 + \$95
= \$5,295