



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

FAX (503) 229-5100

TTY: 711

June 16, 2017

CERTIFIED MAIL: 7016 2140 0000 2420 3228

D.B. Western, Inc.
c/o Dennis C. Beetham, Registered Agent
90418 Trans Pacific Lane
North Bend, OR 97459

CERTIFIED MAIL: 7016 2140 0000 2420 3235

Dennis C. Beetham
95084 Larson Lane
North Bend, OR 97459

Re: Notice of Civil Penalty Assessment and Order
Case No. LQ/HW-WR-2017-121

This letter is to inform you that the Oregon Department of Environmental Quality (DEQ) has issued you a civil penalty of \$9,000 for failing to comply with an order of the Environmental Quality Commission. Specifically, you failed to provide DEQ with an accounting of the contents and disposition of waste drums March 11, 2017 as required by Mutual Agreement and Order No. LQ/HW-WR-2011-2016. Please submit the information as soon as possible, and be advised that continued failure to comply with the terms of the order may result in additional civil penalties.

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>.



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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 Jeff Bachman 503-229-5950 or toll free in Oregon at 800-452-4011, extension 5950.

Sincerely,



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

Enclosures

cc: Susan Shewczyk, Salem Office, DEQ
Brian Fuller, Eugene Office, DEQ
Shaumae Hall, Accounting, DEQ
Zachary W L Wright, Tonkon Torp LLP, 888 SW 5th Ave, Ste 1600, Portland, OR 97204

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

3 IN THE MATTER OF:)
4 D.B. WESTERN, INC.)
5 an Oregon corporation, and) NOTICE OF CIVIL PENALTY
6 DENNIS C. BEETHAM, an individual,) ASSESSMENT AND ORDER
7 Respondents.) CASE NO. LQ/HW-WR-2017-121

8 I. AUTHORITY

9 The Department of Environmental Quality (DEQ) issues this Notice of Civil Penalty Assessment
10 and Order (Notice) pursuant to Oregon Revised Statutes (ORS) 468.100, ORS 468.126 through 468.140,
11 ORS 466.990, ORS Chapter 183 and Oregon Administrative Rules (OAR) Chapter 340, Divisions 011 and
12 012.

13 II. FINDINGS OF FACT

14 1. On or about February 9, 2017, DEQ and Respondents entered into Mutual Agreement
15 and Order (MAO) No. LQ/HW-WR-11-2016.

16 2. The MAO included a Final Order of the Environmental Quality Commission. Paragraph
17 3 of Final Order required that Respondents “comply with Oregon law by providing to DEQ, within 30
18 days of execution of this MAO, a written accounting of the 13 drums observed at the Larson Ranch
19 property by Belfor Environmental in March 2008, including:

20 a) All available information relating to the contents of the drums, including hazardous
21 waste determinations, and

22 b) All available information relating to the location, disposition and fate of the drums
23 from 2008 to the present.”

24 3. To date, Respondents have not submitted to DEQ any of the information required by
25 Paragraph 3 of the Final Order.

26 III. CONCLUSIONS

27 From March 11, 2017, and ongoing as of the date of this Notice, Respondents have violated a
commission order by failing to comply with Paragraph 3 of Final Order No. LQ/HW-WR-11-2016, as
described in Section II above.

1 These are Class I violations pursuant to OAR 340-012-0053(1)(a). DEQ assesses a \$9,000 civil penalty
2 for these violations.

3 IV. ORDER TO PAY CIVIL PENALTY

4 Based upon the foregoing FINDINGS OF FACTS AND CONCLUSIONS, Respondent is
5 hereby ORDERED TO: Pay a total civil penalty of \$9,000. The determination of the civil penalty is
6 attached as Exhibit 1 and is incorporated as part of this Notice.

7 If you do not file a request for hearing as set forth in Section V below, your check or money
8 order must be made payable to "**State Treasurer, State of Oregon**" and sent to the **DEQ, Business**
9 **Office, 700 NE Multnomah Street, Suite 600, Portland, Oregon 97232**. Once you pay the penalty,
10 the Findings of Fact, Conclusions and Order become final.

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

12 You have a right to a contested case hearing on this Notice, if you request one in writing. DEQ
13 must receive your request for hearing **within 20 calendar days** from the date you receive this Notice. If
14 you have any affirmative defenses or wish to dispute any allegations of fact in this Notice or attached
15 exhibit(s), you must do so in your request for hearing, as factual matters not denied will be considered
16 admitted, and failure to raise a defense will be a waiver of the defense. (See OAR 340-011-0530 for
17 further information about requests for hearing.) You must send your request to: **DEQ, Office of**
18 **Compliance and Enforcement, 700 NE Multnomah Street, Suite 600, Portland, Oregon 97232**, fax
19 it to **503-229-5100**, or email it to **DEQappeals@deq.state.or.us**. An administrative law judge
20 employed by the Office of Administrative Hearings will conduct the hearing, according to ORS
21 Chapter 183, OAR Chapter 340, Division 011 and OAR 137-003-0501 to 0700. You have a right to be
22 represented by an attorney at the hearing, however you are not required to be. If you are an individual,
23 you may represent yourself. If you are a corporation, partnership, limited liability company,
24 unincorporated association, trust or government body, you must be represented by an attorney or a duly
25 authorized representative, as set forth in OAR 137-003-0555.

26 Active duty service-members have a right to stay proceedings under the federal Service
27 Members Civil Relief Act. For more information, please call the Oregon State Bar at 1-800-

1 452-8260 or the Oregon Military Department at 1-800-452-7500. Additional information can be found
2 online at the United States Armed Forces Legal Assistance (AFLA) Legal Services Locator website
3 <http://legalassistance.law.af.mil/content/locator.php>.

4 If you fail to file a timely request for hearing, the Notice will become a final order by default
5 without further action by DEQ, as per OAR 340-011-0535(1). If you do request a hearing but later
6 withdraw your request, fail to attend the hearing or notify DEQ that you will not be attending the
7 hearing, DEQ will issue a final order by default pursuant to OAR 340-011-0535(3). DEQ designates
8 the relevant portions of its files, including information submitted by you, as the record for purposes of
9 proving a prima facie case.
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13 June 16, 2017

14 Date

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13 Sarah G. Wheeler

14 Sarah G. Wheeler, Acting Manager
Office of Compliance and Enforcement
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EXHIBIT 1

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

VIOLATION 1: Failing to comply with Paragraph 3 of Final Order No. LQ/HW-WR-11-2016, in violation of a commission order.

CLASSIFICATION: This is a Class I violation pursuant to OAR 340-012-0053(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 \$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 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 Respondent, and receives a value of 0 according to OAR 340-012-0145(2)(a)(A), because Respondents have 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 0 according to OAR 340-012-0145(4)(e) because Respondents are being assessed separate penalties for multiple 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 acted or failed to act intentionally with actual knowledge of the requirement. The Respondents agreed to the commission order requirements before the Mutual Agreement and Order was signed by Respondents. Respondents therefore had actual knowledge of the requirement, and by failing to provide the required information despite multiple reminders by DEQ, intentionally failed to act to comply with the requirement..

"C" are Respondents' efforts to correct or mitigate the violation, and receives a value of 2 according to OAR 340-012-0145(6)(g) because Respondents 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).

"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 \$0. DEQ has insufficient information regarding any compliance costs avoided or delayed by Respondents to arrive at a reasonable estimate.

PENALTY CALCULATION: $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$
 $= \$1,500 + [(0.1 \times \$150) \times (0 + 0 + 0 + 8 + 2)] + \0
 $= \$1,500 + (\$150 \times 10) + \$0$
 $= \$1,500 + \$1,500 + \$0$
 $= \$3,000$

DEQ assesses a civil penalty for three occurrences of the violation for a total civil penalty of \$9,000.