



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

May 24, 2017

CERTIFIED MAIL: 7016 2140 0000 2420 2832

Astoria Animal Aid P.C.,
dba Astoria Animal Hospital
c/o Dannell Davis
35109 Highway 101 Business
Astoria, OR 97103

Re: Notice of Civil Penalty Assessment and Order
Case No. AQ/AC-NWR-2017-063

This letter is to inform you that the Oregon Department of Environmental Quality (DEQ) has issued you a civil penalty of \$825 for continuing to operate your incinerator after you failed to renew your Basic Air Containment Discharge Permit (ACDP) and it expired. In addition, DEQ has cited you without penalty for failing to require your incinerator to be operated at all times under the direction of individuals who have received training necessary for proper operation.

DEQ issued this penalty because particulate matter from incinerators is a pollutant that can contribute to respiratory distress in members of the public and create nuisance conditions in the surrounding area. A Basic ACDP contains important operating conditions and requirements that help ensure particulate emissions and odors during incineration do not become an environmental or public health concern.

DEQ appreciates your open communication and efforts to address the violation by applying for a new Basic ACDP and implementing training materials. 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 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 Jenny Root at 503-229-5874 or toll free in Oregon at 800-452-4011, extension 5874.

Sincerely,



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

Enclosures

cc: Dan DeFehr, Northwest Region, DEQ
Michael Orman, Northwest Region, DEQ
Shaumae Hall, Accounting, DEQ
Don Hendrix, AQ, DEQ

1 BEFORE THE ENVIRONMENTAL QUALITY COMMISSION

2 OF THE STATE OF OREGON

3	IN THE MATTER OF:)	
4	ASTORIA ANIMAL AID P.C.,)	NOTICE OF CIVIL PENALTY
5	doing business as)	ASSESSMENT AND ORDER
6	ASTORIA ANIMAL HOSPITAL,)	
	Respondent.)	CASE NO. AQ/AC-NWR-2017-063

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, ORS 468.126 through 468.140,
10 ORS Chapters 183 and 466, 468, 468A and Oregon Administrative Rules (OAR) Chapter 340, Divisions
11 011, 012, 216, and 230.

12 II. FINDINGS OF FACT

13 1. At all relevant times, Respondent operated a crematory incinerator at a business at
14 35109 Highway 101 Business in Astoria, Oregon (Facility) under Basic Air Contaminant Discharge
15 Permit (ACDP) No. 04-0013-BS-01 (Permit).

16 2. The Permit expired on May 1, 2016. DEQ mailed Respondent a permit renewal
17 reminder letter on or about January 7, 2016.

18 3. Respondent continued to operate the Facility's incinerator after May 1, 2016.

19 4. Respondent applied for a new Basic ACDP on March 27, 2017, and Basic ACDP No.
20 04-0033-BS-01 was issued to Respondent on April 10, 2017.

21 5. On March 16, 2017, DEQ conducted an inspection of the Facility and documented the
22 following:

- 23 a. The Facility operates an incinerator installed on or after March 13, 1993; and
- 24 b. Three personnel operate the incinerator, two of which had undergone a DEQ-
25 approved training program as of March 16, 2017.

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1 III. CONCLUSIONS

2 1. Respondent has violated OAR 340-216-0020(3) by continuing to operate the incinerator
3 after the expiration date of a Basic ACDP. This is a Class II violation, according to OAR 340-012-
4 0054(2)(h). DEQ hereby assesses an \$825 civil penalty for this violation.

5 2. Respondent has violated Permit Condition 2.6 and OAR 340-230-0210(2) by failing to require
6 the Facility's incinerator to be operated at all times under the direction of individuals who have received
7 training necessary for proper operation. This is a Class II violation, according to OAR 340-012-
8 0054(2)(b). DEQ has not assessed a civil penalty for this violation.

9 IV. ORDER TO PAY CIVIL PENALTY

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

12 Pay a total civil penalty of \$825. The determination of the civil penalty is attached as Exhibit 1
13 and is incorporated as part of this Notice.

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

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

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

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

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

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

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18
19
20 May 24, 2017
Date

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

EXHIBIT NO. 1

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

- VIOLATION: Continuing to operate an air contaminant source after expiration of the ACDP, in violation of OAR 340-216-0020(3).
- CLASSIFICATION: This is a Class II violation pursuant to OAR 340-012-0054(2)(h).
- MAGNITUDE: The magnitude of the violation is moderate pursuant to OAR 340-012-0130(1), as there is no selected magnitude in OAR 340-012-0135 applicable to this violation, and the evidence 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 \$750 for a Class II, moderate magnitude violation in the matrix listed in OAR 340-012-0140(4)(b)(B)(ii) and applicable pursuant to OAR 340-012-0140(4)(a)(C).
- "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 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 0 according to OAR 340-012-0145(4)(a) because there was only one occurrence of the violation.
- "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. Respondent has operated under a Basic ACDP since at least April 15, 2009, which expressly contains the deadline for permit renewal (Condition 4.3). Moreover, Respondent was mailed a renewal reminder letter dated January 7, 2016, nearly four months before the expiration of the Permit, and nearly three months before the required minimum gap of 30 days between Permit expiration and renewal application. By failing to keep track of the date by which Respondent was required to submit an application to renew the Permit and ensure the application was timely filed, Respondent failed to take reasonable care to avoid a foreseeable risk of conduct constituting or resulting in a violation.
- "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 by applying to DEQ for coverage under a Basic ACDP Permit on or about March 27, 2017.

"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 has made a reasonable determination that the EB is de minimis.

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

$$\begin{aligned} &= \$750 + [(0.1 \times \$750) \times (0 + 0 + 0 + 4 - 3)] + \$0 \\ &= \$750 + (\$75 \times 1) + \$0 \\ &= \$750 + \$75 + \$0 \\ &= \$825 \end{aligned}$$