



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 15, 2017

CERTIFIED MAIL No. 70162140000024204843

Garton & Associates; Realtors, L.L.C.
c/o Calvin B. Garton, Registered Agent
207 SW 9th
Pendleton, OR 97081

Re: Notice of Civil Penalty Assessment and Order
Case No. WQ/D-ER-2017-066

This letter is to inform you that DEQ has issued you a civil penalty of \$2,850 for a violation at a residential rental property in Pendleton that you manage. In early January 2017, a sewer pipe at the property broke, resulting in the discharge of raw sewage onto the ground surface, which ran down the street and onto neighboring property. You failed to have the broken pipe repaired for more than two weeks while the discharge of sewage continued. Failing to ensure that all plumbing fixtures are connected to a sewer system and that all waste water or sewage is discharged into a sewer system is a violation of Oregon environmental law.

DEQ issued this penalty because the discharge of untreated sewage onto the ground surface poses a public health hazard through either direct human contact or through contact with insects or other animals that have been in contact with the sewage. Sewage is also a significant pollutant that can harm aquatic life, contaminate drinking water, and impair recreational and commercial uses of water.

DEQ appreciates your efforts to correct the violation by eventually fixing the broken pipe. 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.



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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 DEQ Environmental Law Specialist Esther Westbrook, at (503) 229-5374. You may call toll-free within Oregon at 1-800-452-4011, extension 5374.

Sincerely,



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

Enclosures

cc: Heidi Williams, Pendleton Office, DEQ
Shaumae Hall, Accounting, DEQ
John Koestler, WQ, DEQ

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

3 IN THE MATTER OF:) NOTICE OF CIVIL PENALTY
4 GARTON & ASSOCIATES;) ASSESSMENT AND ORDER
5 REALTORS, L.L.C.,)
Respondent.) NO. WQ/D-ER-2017-066

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7 I. AUTHORITY

8 The Department of Environmental Quality (DEQ) issues this Notice of Civil Penalty
9 Assessment and Order pursuant to Oregon Revised Statutes (ORS) 468.100 and 468.126 through
10 468.140, ORS Chapters 183, 454 and 468B, and Oregon Administrative Rules (OAR) Chapter 340,
11 Divisions 011, 012, 041, 045, and 071.

12 II. FINDINGS OF FACT

- 13 1. Respondent manages the residential rental property located 609 SE 8th Street in
14 Pendleton, Umatilla County, Oregon (the Property).
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16 2. On or before January 4, 2017, a sewer pipe at the Property broke, resulting in the
17 discharge of raw sewage onto the ground surface.
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19 3. The sewage ran down SE 8th Street and onto a neighbor's driveway.
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21 4. Respondent's plumber capped the broken sewer pipe at the Property on or about
22 January 17, 2017.
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24 5. The sewage discharge continued intermittently until on or about January 17, 2017.
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26 6. Respondent's plumber repaired the sewer pipe at the Property on or about January 20,
27 2017.

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III. CONCLUSION

From on or about January 4, 2017, to January 20, 2017, Respondent violated ORS 468B.080(1) by failing to ensure that all plumbing fixtures at the Property were connected to and all waste water or sewage from such fixtures at the Property were discharged into a sewerage system, as described in Section II above. This is a Class II violation according to OAR 340-012-0053(2). DEQ hereby assesses a \$2,850 civil penalty for this violation.

IV. ORDER TO PAY CIVIL PENALTY

Based upon the foregoing FINDINGS OF FACTS AND CONCLUSION, Respondent is hereby ORDERED TO:

Pay a civil penalty of \$2,850. The determination of the civil penalty is attached as Exhibit No. 1 and incorporated as part of this Notice.

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

V. NOTICE OF RIGHT TO REQUEST A CONTESTED CASE HEARING

You have a right to a contested case hearing on this Notice, if you request one in writing. You must ensure that DEQ receives the request for hearing **within 20 calendar days** from the date you receive this Notice. If you have any affirmative defenses or wish to dispute any allegations of fact in this Notice or attached exhibit, you must include them in your request for hearing, as factual matters not denied will be considered admitted, and failure to raise a defense will be a waiver of the defense. (See OAR 340-011-0530 for further information about requests for hearing.) You must send the request for hearing to: **DEQ, Office of Compliance and Enforcement - Appeals, either via mail to 700 NE Multnomah Street, Suite #600, Portland,**

1 **Oregon 97232**, or via e-mail to **DEQappeals@deq.state.or.us**, or via fax to **503-229-5100**. An
2 administrative law judge employed by the Office of Administrative Hearings will conduct the
3 hearing, according to ORS Chapter 183, OAR Chapter 340, Division 011 and OAR 137-003-
4 0501 to 0700. You have a right to be represented by an attorney at the hearing, or you may
5 represent yourself unless you are a corporation, agency or association.

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
9 found online at the United States Armed Forces Legal Assistance (AFLA) Legal Services
10 Locator website <http://legalassistance.law.af.mil/content/locator.php>.

12 If you fail to file a request for hearing in writing within 20 calendar days of receipt of the
13 Notice, the Notice will become a final order by default without further action by DEQ, as per
14 OAR 340-011-0535(1). If you do request a hearing but later withdraw your request, fail to attend
15 the hearing or notify DEQ that you will not be attending the hearing, DEQ will issue a final order
16 by default pursuant to OAR 340-011-0535(3). DEQ designates the relevant portions of its files,
17 including information submitted by you, as the record for purposes of proving a prima facie case.
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21 June 15, 2017

22 Date

21 Sarah Wheeler

22 Sarah G. Wheeler, Acting Manager
23 Office of Compliance and Enforcement
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EXHIBIT NO. 1

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

VIOLATION: Failing to ensure that all plumbing fixtures were connected to and all waste water or sewage from such fixtures were discharged into a sewerage system, in violation of ORS 468B.080(1).

CLASSIFICATION: This is a Class II violation pursuant to OAR 340-012-0053(2).

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 for 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) because Respondent violated a water quality statute and is not listed under another penalty matrix.

"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 3 according to OAR 340-012-0145(4)(c), because there were from seven to 28 occurrences of the violation. Each day of violation constitutes a separate occurrence. The sewer pipe was broken for at least sixteen days, from January 4, 2017 to January 20, 2017.

"M" is the mental state of the Respondent and receives a value of 8 according to OAR 340-012-0145(5)(c), because Respondent's conduct was reckless. As the property manager, Respondent is responsible for plumbing repairs at the property. On or before January 4, 2017, City of Pendleton staff notified Respondent that the sewer pipe at the property was broken and discharging sewage onto the street, but Respondent failed to take corrective action until January 17, 2016. By failing to timely repair the broken pipe, Respondent consciously disregarded a substantial and unjustifiable risk that it would discharge raw sewage onto the ground surface in a residential neighborhood, thereby posing a threat to public health. Also, Respondent's failure to clean up the raw sewage from the street or the neighbor's property showed similar disregard for the public health risk. Disregarding this

risk constituted a gross deviation from the standard of care a reasonable person would observe in that situation.

"C" is Respondent's efforts to correct the violation and receives a value of -2 according to OAR 340-012-0145(6)(d), because Respondent eventually made some efforts to correct the violation. Respondent eventually hired a plumber who capped the pipe on January 17, 2017, and repaired the pipe on January 20, 2017, more than two weeks after it broke. However, Respondent failed to take prompt action to mitigate the public health threat from sewage discharges onto the ground surface, and did not make efforts to clean the street or the neighbor's property.

"EB" is the approximate economic benefit that an entity gained by not complying with the law. 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 insufficient evidence on which to base a finding that Respondent received an economic benefit from the violation.

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 x \$1,500) x (0 + 0 + 3 + 8 - 2)] + \$0
= \$1,500 + [(\$150) x (9)] + \$0
= \$1,500 + \$1,350 + \$0
= \$2,850