



# Oregon

Kate Brown, Governor

Department of Environmental Quality

Headquarters  
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TTY: 711

July 11, 2016

CERTIFIED MAIL: 7014 2870 0001 3373 5210

Wallace Raymond Tice  
Mark Robert Tice  
175 Norman Road  
Selma, OR 97538

Re: Notice of Civil Penalty Assessment and Order  
Case No. LQ/SW-WR-2016-074

This letter is to inform you that the Oregon Department of Environmental Quality (DEQ) has issued you a civil penalty of \$4,058 for disposing of or authorizing the disposal of solid waste at a property located at 175 Norman Road in Selma, Oregon, along with the illegal burning of a portion of the solid waste.

In October 2015, the local fire department was called to your property to extinguish a fire. DEQ also visited the property and observed that a portion of the approximately 60 cubic yards of solid waste was charred or smoldering. These types of materials (plastics, rubber, household garbage, and paint cans) are prohibited from being burned at any time in the state of Oregon, as they normally emit dense smoke or noxious odors. Since October, DEQ has requested that you properly dispose of the remaining solid waste but you have not done so.

Included in Section IV is an order requiring you to properly dispose of the solid waste and to submit that documentation to DEQ. \$1,658 of the civil penalty represents the economic benefit you gained by failing to properly dispose of the waste. If you properly dispose of the waste, DEQ will consider recalculating the costs as delayed rather than avoided and will reduce the civil penalty accordingly.

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

Via mail - 811 S.W. 6<sup>th</sup> Ave., Portland, OR 97204

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 it and refer to it when discussing this case with DEQ.



Wallace Raymond Tice  
Mark Robert Tice  
Case No. LQ/SW-WR-2016-074  
Page 2

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 in lieu of paying your penalty. Enclosed is more detail on how to pursue a SEP. SEP documents are available on the internet at <http://www.deq.state.or.us/programs/enforcement/SEP.htm>, or by calling the number below to request a paper copy.

DEQ's rules are available on the internet at <http://www.deq.state.or.us/regulations/rules.htm>, or by calling the number below to request a paper copy.

If you have any questions, please contact DEQ Environmental Law Specialist Susan Elworth, at (503) 229-5152. You may call toll-free within Oregon at 1-800-452-4011, extension 5152.

Sincerely,



Leah K. Feldon, Manager  
Office of Compliance and Enforcement

Enclosures

cc: David Esch, WR, Medford office

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

3 IN THE MATTER OF: ) NOTICE OF CIVIL PENALTY  
4 WALLACE RAYMOND TICE and ) ASSESSMENT AND ORDER  
5 MARK TICE, )  
6 Respondents. ) CASE NO. LQ/SW-WR-2016-074

7 I. AUTHORITY

8 The Department of Environmental Quality (DEQ) issues this Notice of Civil Penalty Assessment  
9 and Order (Notice) to Respondents, jointly and severally, pursuant to Oregon Revised Statutes (ORS)  
10 468.100 and 468.126 through 468.140, ORS 459.995, ORS Chapters 183 and 468B, and Oregon  
11 Administrative Rules (OAR) Chapter 340, Divisions 011, 012, 093 and 264.

12 II. FINDINGS OF FACT

- 13 1. Since 1998, Respondent Wallace Tice has been the owner of a property located at 175  
14 Norman Road in Selma, Oregon.
- 15 2. In October 2015 and at all relevant times since then, Respondent Mark Tice has resided  
16 on the property.
- 17 3. On October 19, 2015, a DEQ employee observed materials, including plastics, rubber,  
18 wire insulation, paint canisters, automobile parts and other household waste which had been disposed  
19 of at the property. The pile of waste measured approximately 60 cubic yards.
- 20 4. On October 19, 2015, a portion of the materials referenced in paragraph 3 were  
21 smoldering or charred.
- 22 5. Neither Respondent has applied for or been issued a solid waste disposal site permit for  
23 the property.

24 III. CONCLUSIONS

- 25 1. By disposing of or authorizing the disposal of solid waste at a site without a permit,  
26 Respondents violated OAR 340-093-0040(1). This is a Class I violation, pursuant to OAR 340-012-  
27 0065(1)(c). DEQ hereby assesses a \$2,658 civil penalty for this violation.



1 Chapter 340, Division 011 and OAR 137-003-0501 to 0700. You have a right to be represented by an  
2 attorney at the hearing, or you may represent yourself unless you are a corporation, agency or  
3 association.

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

9 If you fail to file a request for hearing in writing within 20 calendar days of receipt of the  
10 Notice, the Notice will become a final order by default without further action by DEQ, as per OAR  
11 340-011-0535(1). If you do request a hearing but later withdraw your request, fail to attend the hearing  
12 or notify DEQ that you will not be attending the hearing, DEQ will issue a final order by default  
13 pursuant to OAR 340-011-0535(3). DEQ designates the relevant portions of its files, including  
14 information submitted by you, as the record for purposes of proving a prima facie case.

15  
16  
17  
18 July 11, 2016  
19 Date

20 Leah K. Feldon for  
21 Leah K. Feldon, Manager  
22 Office of Compliance and Enforcement  
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## EXHIBIT 1

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

- VIOLATION 1: Disposing of or authorizing the disposal of solid waste at a site without a permit, in violation of OAR 340-093-0040(1).
- CLASSIFICATION: This is a Class I violation pursuant to OAR 340-012-0065(1)(c).
- MAGNITUDE: The magnitude of the violation is moderate pursuant to OAR 340-012-0135(3)(a)(B) because the volume of materials disposed of is greater than 40 cubic yards but less than 400 cubic yards. Respondents disposed of or allowed the disposal of approximately 60 cubic yards of solid waste on the property.
- 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 \$500 for a Class I, moderate magnitude violation in the matrix listed in OAR 340-012-0140(5)(b)(A)(ii) and applicable pursuant to OAR 340-012-0140(5)(a)(H).
- "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 solid waste has been on the property since at least October 2015.
- "M" is the mental state of the Respondent and receives a value of 4 pursuant to OAR 340-012-0145(5)(C) because Respondent's conduct was negligent. Since October 2015, DEQ has communicated to Respondents that the solid waste on the property needs to be disposed of at a permitted disposal site. Based on these communications, Respondents knew that the waste must be disposed of. Although Respondents have communicated to DEQ that they have had challenges disposing of the waste, by allowing the solid waste to continue to be on the property, Respondents failed to take reasonable care to avoid conduct constituting a 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 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 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 \$1,658. This is the amount Respondents gained by avoiding spending \$1,575 to properly dispose of the solid waste at the property. This "EB" was calculated pursuant to OAR 340-012-0150(1) using the U.S. Environmental Protection Agency's BEN computer model.

PENALTY CALCULATION:  $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$   
= \$500 + [(0.1 x \$500) x (0 + 0 + 4 + 4 + 2)] + \$1,658  
= \$500 + [\$50 x 10] + \$1,658  
= \$500 + \$500 + \$1,658  
= \$2,658

## EXHIBIT 2

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

- VIOLATION 2: Causing or allowing to be initiated or maintained the open burning of any materials which normally emit dense smoke or noxious odors, in violation of OAR 340-264-0060(3).
- CLASSIFICATION: This is a Class I violation pursuant to OAR 340-012-0054(1)(q).
- MAGNITUDE: The magnitude of the violation is major pursuant to OAR 340-012-0135(1)(i)(A) because the volume of prohibited materials burned was more than 5 cubic yards.
- 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 \$1,000 for a Class I, moderate magnitude violation in the matrix listed in OAR 340-012-0140(5)(b)(A)(i) and applicable pursuant to OAR 340-012-0140(5)(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 0 according to OAR 340-012-0145(4)(a), because there was only one occurrence of the violation. The Department was only able to document the burning on one day.
- "M" is the mental state of the Respondent and receives a value of 2 according to OAR 340-012-0145(5)(b), because Respondent had constructive knowledge (reasonably should have known) of the requirement. A reasonable person should have known that it is illegal to burn household garbage.
- "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). Respondent has not removed the charred remains from the burning.
- "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 any benefit gained by Respondent was captured in Exhibit 1.

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

$$\begin{aligned} &= \$1,000 + [(0.1 \times \$1,000) \times (0 + 0 + 0 + 2 + 2)] + \$0 \\ &= \$1,000 + [\$100 \times 4] + \$0 \\ &= \$1,000 + \$400 + \$0 \\ &= \$1,400 \end{aligned}$$