



# Oregon

Kate Brown, Governor

Department of Environmental Quality

Headquarters  
811 SW 6th Ave  
Portland, OR 97204-1390  
(503) 229-5696  
FAX (503) 229-6124  
TTY: 711

July 20, 2016

CERTIFIED MAIL: 7014 2870 0001 3373 5982

Charlene Rae McCormick  
135 Tavis Dr.  
Merlin, OR 97532

Re: Notice of Civil Penalty Assessment and Order  
Case No. LQ/SW-WR-2016-081

This letter is to inform you that the Oregon Department of Environmental Quality (DEQ) has issued you a civil penalty of \$2,385 for disposing of solid waste at an unpermitted location. Specifically, you collected approximately fifty cubic yards of household waste, vehicle parts, waste tires, and used appliances at your residential property located at 135 Tavis Drive, in Merlin, Oregon.

DEQ issued this penalty because you have not complied in response to DEQ's Warning Letter, and it is against the law to dispose of solid waste anywhere except at a permitted disposal facility, such as a landfill or transfer station. Illegal dumps diminish livability, depress the value of the surrounding land and neighborhoods and can threaten human health and the environment by creating habitat for disease carrying insects and rodents and polluting ground and surface water.

Included in Section IV of the attached Notice of Civil Penalty Assessment and Order is an order requiring you to properly dispose of the solid waste at your property by no later than September 15, 2016. In addition, \$1,385 of the civil penalty represents the economic benefit you gained by avoiding the proper disposal of this material. If you complete the requirements, 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.



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 Kieran O'Donnell, at (503) 229-5012. You may call toll-free within Oregon at 1-800-452-4011, extension 5012.

Sincerely,



Leah K. Feldon, Manager  
Office of Compliance and Enforcement

Enclosures

cc: David Esch, DEQ, Medford Office

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

3 IN THE MATTER OF: ) NOTICE OF CIVIL PENALTY  
4 CHARLENE RAE MCCORMICK ) ASSESSMENT AND ORDER  
5 Respondent. ) CASE NO. LQ/SW-WR-2016-081  
6

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 and 468.126 through 468.140,  
10 ORS 459.995, ORS Chapter 183 and Oregon Administrative Rules (OAR) Chapter 340, Divisions 011,  
11 012, and 093.

12 II. FINDINGS OF FACT

- 13 1. Respondent owns real property located at 135 Tavis Dr., Merlin, OR 97532-9733 (the  
14 Facility).
- 15 2. On or before October 7, 2015, Respondent disposed of approximately fifty cubic yards of  
16 household waste, vehicle parts, waste tires, and used appliances at the Facility.
- 17 3. Respondent is not authorized by DEQ to dispose of solid waste at the Facility under a Solid  
18 Waste Disposal Permit.

19 III. CONCLUSIONS

20 1. Respondent has violated OAR 340-093-0040(1) by disposing of solid waste at an  
21 unpermitted location, as described in Section II above. Specifically, Respondent disposed of household  
22 waste, vehicle parts, waste tires, and used appliances. The household waste, vehicle parts, waste tires,  
23 and used appliances are “solid waste,” as defined by ORS 459.005(25), because they are useless and  
24 discarded materials. This is a Class I violation according to OAR 340-012-0065(1)(c). DEQ hereby  
25 assesses a \$2,385 civil penalty for this violation.

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1 IV. ORDER TO PAY CIVIL PENALTY AND TO COMPLY

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

4 1. Pay a total civil penalty of \$2,385. The determination of the civil penalty is attached as Exhibit  
5 No. 1 and is incorporated as part of this Notice.

6 If you do not file a request for hearing as set forth in Section V below, your check or money  
7 order must be made payable to "State Treasurer, State of Oregon" and sent to the **DEQ, Business**  
8 **Office, 811 S.W. Sixth Avenue, Portland, Oregon 97204**. Once you pay the penalty, the Findings of  
9 Fact, Conclusions and Order become final.

10 2. By no later than September 15, 2016, comply with Oregon law by properly disposing of the  
11 solid waste referenced in Paragraph 2 of Section II above.

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

13 You have a right to a contested case hearing on this Notice, if you request one in writing. You  
14 must ensure that DEQ receives the request for hearing **within 20 calendar days** from the date you  
15 receive this Notice. If you have any affirmative defenses or wish to dispute any allegations of fact in  
16 this Notice or attached exhibit, you must include them in your request for hearing, as factual matters  
17 not denied will be considered admitted, and failure to raise a defense will be a waiver of the defense.  
18 (See OAR 340-011-0530 for further information about requests for hearing.) You must mail the request  
19 for hearing to: **DEQ, Office of Compliance and Enforcement - Appeals, 811 SW Sixth Avenue,**  
20 **Portland, Oregon 97204**, or fax it to **503-229-5100**. An administrative law judge employed by the  
21 Office of Administrative Hearings will conduct the hearing, according to ORS Chapter 183, OAR  
22 Chapter 340, Division 011 and OAR 137-003-0501 to 0700. You have a right to be represented by an  
23 attorney at the hearing, or you may represent yourself unless you are a corporation, agency or  
24 association.

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1 Active duty service-members have a right to stay proceedings under the federal Service  
2 members Civil Relief Act. For more information, please call the Oregon State Bar at 1-800-  
3 452-8260 or the Oregon Military Department at 1-800-452-7500. Additional information can be found  
4 online at the United States Armed Forces Legal Assistance (AFLA) Legal Services Locator website  
5 <http://legalassistance.law.af.mil/content/locator.php>.

6 If you fail to file a request for hearing in writing within 20 calendar days of receipt of the  
7 Notice, the Notice will become a final order by default without further action by DEQ, as per OAR  
8 340-011-0535(1). If you do request a hearing but later withdraw your request, fail to attend the hearing  
9 or notify DEQ that you will not be attending the hearing, DEQ will issue a final order by default  
10 pursuant to OAR 340-011-0535(3). DEQ designates the relevant portions of its files, including  
11 information submitted by you, as the record for purposes of proving a prima facie case.  
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15  
16 Date

July 20, 2016

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16 Leah K. Feldon, Manager  
Office of Compliance and Enforcement

8/20/16  
Leah K. Feldon, 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 No. 1: Disposing of solid waste at an unpermitted location, 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 Respondent disposed of between 40 and 400 cubic yards of solid waste. Respondent disposed of approximately 50 cubic yards of solid waste.

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) because Respondent is the residential owner-occupant of the Facility.

"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. Each day of violation constitutes a separate occurrence. The violation began on at least October 7, 2015, and continued until the date of this Notice. Therefore, there are more than 28 occurrences 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. DEQ has made multiple attempts to communicate with Respondent regarding the violation. On December 7, 2015, DEQ sent Respondent a letter informing her that DEQ received a complaint regarding solid waste violations at the Facility, and notifying her of solid waste disposal requirements. After further investigation, on February 25, 2016, DEQ sent Respondent a Warning Letter, offering Respondent an opportunity to correct the illegal disposal violation. Finally, on April 29, 2016, DEQ sent Respondent a Pre-Enforcement Notice, informing Respondent that it will commence formal enforcement of the ongoing solid waste violation. Despite all of these warnings, Respondent has ignored DEQ's direction to properly dispose of the solid waste at

the Facility. Therefore, Respondent has demonstrated a failure to take reasonable care to avoid a foreseeable risk that her failure to properly dispose of solid waste at the Facility would result in an ongoing 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 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). As of the date of this Notice, Respondent has not taken any action to correct the violation.

"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 \$1,385. This is the amount Respondent gained by avoiding spending \$1,312.50 to properly dispose of approximately 50 cubic yards of miscellaneous solid waste. 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)] + \$1,385  
= \$500 + [\$50 x 10] + \$1,385  
= \$500 + \$500 + \$1,385  
= \$2,385