



Oregon

Kate Brown, Governor

Department of Environmental Quality
Office of Compliance and Enforcement
700 NE Multnomah Street, Suite 600
Portland, OR 97232-4100
(503) 229-5696
FAX (503) 229-5100
TTY 711

July 31, 2018

Northwest Shingle Recyclers, LLC
c/o Kirkham E. Hay
1200 SW Main St
Portland, OR 97205

CERTIFIED MAIL: 70160750000034703555

Gregory J. Bolt
333 NW 9th
Portland, OR 97209

CERTIFIED MAIL: 70160750000034703562

Re: Notice of Civil Penalty Assessment and Order
Case No. LQ/SW-NWR-2018-090

This letter is to inform you that the Oregon Department of Environmental Quality (DEQ) has issued Northwest Shingle Recyclers, LLC and Gregory Bolt, jointly and severally, a civil penalty of \$230,094 for illegally disposing of approximately 7,500 cubic yards of waste asphalt roofing shingles at Canby Sand and Gravel.

DEQ issued this penalty because it is against the law to dispose of solid waste anywhere except at a facility with a permit issued by DEQ to accept that type of solid waste, and this large quantity of waste shingles has been illegally disposed since at least April of this year. In addition, DEQ is concerned that you failed to properly manage and completely dispose of waste shingles in response to a 2015 Warning Letter with Opportunity to Correct. Disposal of waste asphalt roofing shingles outside of a permitted solid waste facility can leach contaminants such as arsenic and polycyclic aromatic hydrocarbons (PAHs) to the environment.

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. Approximately \$224,000 of the civil penalty represents the economic benefit you gained by avoiding the cost of proper disposal. If you complete this requirement, DEQ will consider recalculating the costs as delayed rather than avoided and reducing the civil penalty accordingly.

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/administrative-rules.aspx> or by calling the number below.

If you have any questions, please contact Sarah Wheeler at 503-229-6927 or toll free in Oregon at 800-452-4011, extension 6927.

Sincerely,



Kieran O'Donnell, Manager
Office of Compliance and Enforcement

Enclosures

cc: Jeremy Fleming, DEQ
Will Ennis, Metro

1 BEFORE THE ENVIRONMENTAL QUALITY COMMISSION

2 OF THE STATE OF OREGON

3 IN THE MATTER OF:) NOTICE OF CIVIL PENALTY
4 NORTHWEST SHINGLE) ASSESSMENT AND ORDER
5 RECYCLERS, LLC, and)
6 GREGORY J. BOLT,) CASE NO. LQ/SW-NWR-2018-090
7 Respondents.

8 I. AUTHORITY

9 The Department of Environmental Quality (DEQ) issues this Notice of Civil Penalty Assessment
10 and Order (Notice) to Respondents, jointly and severally, pursuant to Oregon Revised Statutes (ORS)
11 468.100, ORS 468.126 through 468.140, ORS 459.995, ORS 459.376, ORS Chapter 183 and Oregon
12 Administrative Rules (OAR) Chapter 340, Divisions 011, 012, and 093.

13 II. FINDINGS OF FACT

14 1. Respondents owned and operated a shingle recycling business at 12700 SW Hall Boulevard,
15 Building G, in Tigard, Oregon, and at 7600 NE Killingsworth Street and 2345 NW Nicolai Street in
16 Portland, Oregon.

17 2. Respondents operated transfer and material recovery operations at each of the three sites
18 identified in paragraph 1 under DEQ-issued solid waste disposal site permits and Metro solid waste
19 facility licenses. Respondent Bolt is identified on these DEQ permit applications and permits as the
20 legally authorized representative and contact person for, and President of, the permittee Respondent
21 Northwest Shingle Recyclers, LLC. Respondent Bolt is identified as the owner and President of
22 Respondent Northwest Shingle Recyclers, LLC, on Respondents' Metro Solid Waste Facility License
23 Application. Respondent Bolt is identified as the Manager of Northwest Shingle Recyclers, LLC on the
24 Business Registry with the Oregon Secretary of State. Respondent Northwest Shingle Recyclers, LLC
25 administratively dissolved on or about January 11, 2018.

26 3. Since at least 2015, Respondents have stored and disposed of asphalt roofing shingles at
27 Canby Sand and Gravel, 24420 South Highway 99E, in Canby, Oregon (the Property).

4. On July 14, 2015, DEQ sent Respondents a Warning Letter with Opportunity to Correct,
citing Respondents for illegally disposing of shingle waste at the Property.

1 5. On April 30, 2018, DEQ staff inspected the Property. At that time, and ongoing as of the
2 date of this Notice, Respondents had disposed of approximately 7,500 cubic yards of waste asphalt
3 roofing shingles at the Property. These waste shingles have become degraded and contaminated such
4 that they can no longer be used or recycled.

5 6. DEQ has not issued a solid waste disposal site permit for the Property that permits storage,
6 recycling, or disposal of waste shingles.

7 III. CONCLUSIONS

8 Respondents have violated OAR 340-093-0040(1) by disposing of solid waste at a location
9 not permitted to receive that solid waste, as described in Section II above. The waste shingles are "solid
10 waste," as defined by ORS 459.005(24) and OAR 340-093-0030(91), because they are useless and
11 discarded materials. The Property is not permitted to receive waste shingles. This is a Class I violation
12 according to OAR 340-012-0065(1)(c). DEQ hereby assesses a \$230,094 civil penalty for this
13 violation.

14 IV. ORDER TO PAY CIVIL PENALTY AND TO COMPLY

15 Based upon the foregoing FINDINGS OF FACTS AND CONCLUSIONS, Respondents are
16 hereby ORDERED TO:

17 1. Pay a total civil penalty of \$230,094. The determination of the civil penalty is attached as
18 Exhibit No. 1 and is incorporated as part of this Notice.

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

23 2. Within 90 days after this order becomes final by operation of law or on appeal, properly
24 dispose of all of the waste shingles at the Property and provide DEQ with documentation of disposal,
25 including receipts.

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

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

16 Active duty service-members have a right to stay proceedings under the federal Service
17 Members Civil Relief Act. For more information, please call the Oregon State Bar at 1-800-
18 452-8260 or the Oregon Military Department at 1-800-452-7500. Additional information can be found
19 online at the United States Armed Forces Legal Assistance (AFLA) Legal Services Locator website
20 <http://legalassistance.law.af.mil/content/locator.php>.

21 If you fail to file a timely request for hearing, the Notice will become a final order by default
22 without further action by DEQ, as per OAR 340-011-0535(1). If you do request a hearing but later
23 withdraw your request, fail to attend the hearing or notify DEQ that you will not be attending the
24 hearing, DEQ will issue a final order by default pursuant to OAR 340-011-0535(3). DEQ designates

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1 the relevant portions of its files, including information submitted by you, as the record for purposes of
2 proving a prima facie case.
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5 7/31/18

6 Date

5 Kieran O'Donnell

6 Kieran O'Donnell, Manager
7 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 No.1: Disposing of solid waste at a site not permitted to receive that solid waste, 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 major pursuant to OAR 340-012-0135(3)(a)(A) because the volume of unpermitted disposed solid waste was more than 400 cubic yards. Respondents disposed of approximately 7,500 cubic yards of solid waste at 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 \$3,000 for a Class I, major magnitude violation in the matrix listed in OAR 340-012-0140(4)(b)(A)(i) 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 Respondents, and receives a value of 0 according to OAR 340-012-0145(2)(a)(A), because there are 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 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 at the latest on April 30, 2018, and continues as of the date of this Notice. Therefore, there are more than 28 occurrences of the violation.

"M" is the mental state of the Respondents, and receives a value of 4 according to OAR 340-012-0145(5)(c) because Respondents' conduct was negligent. Respondents operated three permitted material recovery facilities. In 2015, DEQ sent Respondents a warning letter with an opportunity to correct for the same violation. For these reasons, when Respondents disposed of waste shingles at a facility that was not permitted for solid waste disposal, Respondents failed to take reasonable care to avoid a foreseeable risk that this conduct would constitute 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). As of the date of this Notice, Respondents have not properly disposed of the solid waste at the Property.

"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 \$224,094. This is the amount Respondents gained by avoiding, since April 30, 2018, spending an estimated \$345,762 to properly dispose of the solid waste. The estimated cost of compliance is based upon the cost to dispose of 7,500 cubic yards (5,625 tons) at Wasco County Landfill, for beneficial use within the landfill. This "EB" was calculated pursuant to OAR 340-012-0150(1) using the U.S. Environmental Protection Agency's BEN computer model.

PENALTY CALCULATION: $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$
 $= \$3,000 + [(0.1 \times \$3,000) \times (0 + 0 + 4 + 4 + 2)] + \$224,094$
 $= \$3,000 + (\$300 \times \$10) + \$224,094$
 $= \$3,000 + \$3,000 + \$224,094$
 $= \$230,094$