



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

August 28, 2020

CERTIFIED MAIL: 7017 1450 0000 8310 4579

OWL, Inc.
Registered Agents, Inc.
25 1st Ave SW Ste A
Watertown SD 57201-3507

Re: Notice of Civil Penalty Assessment and Order
Case No. LQ/HW-ER-2020-143

DEQ is committed to balancing its vital obligation to enforce the law and protect the environment with a consideration of the dramatic disruptions to public health and the economy caused by the COVID-19 outbreak. We understand the outbreak may impact your ability to timely appeal, pay the assessed civil penalty, or comply with this order. You may submit to DEQ documentation identifying whether COVID-19-related disruption affects your ability to comply with this order. Visit our webpage <https://www.oregon.gov/deq/Pages/covid-19.aspx> for more information about documenting specific COVID-19 disruptions your facility may be encountering and how that affects your ability to comply. DEQ will exercise reasonable discretion regarding settlement of this order.

This letter is to inform you that the Oregon Department of Environmental Quality (DEQ) has issued you a civil penalty of \$308,656 for illegally disposing of radioactive solid waste at the Chemical Waste Management hazardous waste landfill in Arlington. \$303,856 of the penalty represents the estimated economic benefit you gained by avoiding the additional disposal costs of legally disposing of the radioactive waste at a facility permitted to accept it.

DEQ issued this penalty because this radioactive waste is prohibited from disposal at the hazardous waste landfill, and you disposed of multiple shipments of radioactive waste in 2016-2019. As a company in the business of transporting and disposing of radioactive waste, DEQ is concerned that you did not exercise the appropriate level of diligence to ensure the applicable regulations allowed disposal of the waste in Oregon, especially given the data in your possession on the levels and types of radioactivity in the waste.

DEQ appreciates your efforts to address the violations by providing DEQ with information about the waste. 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 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: Dan Duso, DEQ
David Anderson, DEQ
Accounting, DEQ
Jason LaQua, President and Montana Registered Agent, OWL, Inc., 1705 Road 2054,
Culbertson, Montana 59218, by Certified Mail # 7017 1450 8310 4654, and at
Jason@owlmt.com

BEFORE THE ENVIRONMENTAL QUALITY COMMISSION
OF THE STATE OF OREGON

IN THE MATTER OF:) NOTICE OF CIVIL PENALTY
OWL, INC.,) ASSESSMENT AND ORDER
Respondent.) CASE NO. LQ/HW-ER-2020-143

I. AUTHORITY

The Department of Environmental Quality (DEQ) issues this Notice of Civil Penalty Assessment and Order (Notice) pursuant to Oregon Revised Statutes (ORS) 468.100, ORS 468.126 through 468.140, ORS 459.055 and 459.995, ORS 466.990, ORS Chapter 183 and Oregon Administrative Rules (OAR) Chapter 340, Divisions 011, 012, 093, and 100.

II. FINDINGS OF FACT

1. Respondent operates a business managing waste generated from North Dakota's Bakken Oilfields.

2. In 2016, 2017, and 2019, Respondent submitted waste profile number OR326111, as the broker and transporter of the waste, to Chemical Waste Management of the Northwest, Inc. (CWM). CWM operates a hazardous waste landfill in Arlington, Oregon (the Facility).

3. These profiles described the waste as consisting of filter socks, pipe scale, spilled unused frac sand, and debris. Various wastes from fracking operations commonly contain Technologically Enhanced Naturally Occurring Radioactive Materials (TENORM). Respondent provided analytical data to CWM along with the profiles for all three years. That data indicated in each year that the filter sock waste contained concentrations of combined radium (Ra) 226/228 (radium-226 plus radium-228) in excess of 5 picocuries per gram (pCi/g). Approximately 80% of the total waste Respondent delivered to and disposed of at the Facility was filter socks.

4. Between 2016 and 2019, Respondent transported and disposed of approximately 1,284.66 tons of waste generated from fracking operations under profile OR326111, to the Facility where it was disposed of in the hazardous waste landfill at the Facility.

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5. The majority of the fracking waste described above, an estimated 996 tons, was generated in North Dakota. North Dakota state regulations prohibit disposal of waste containing a concentration of 5 or more pCi/g of combined Ra-226/228, except at a site issued a permit by North Dakota to accept waste with up to 50 pCi/g of combined Ra-226/228 (North Dakota Administrative Code 33-20-11-01, 33-20-11-02).

6. OAR 340-093-0040(4) provides: “Notwithstanding any other provision of law relating to solid waste disposal, if the state of origin prohibits or restricts the disposal of any kind of solid waste within the state of origin, such prohibition or restriction also shall apply to the disposal of the out-of-state solid waste in Oregon.”

III. CONCLUSIONS

Respondent violated OAR 340-093-0040(1) and (4) by disposing of radioactive solid waste at a site not permitted to receive that waste. These are Class I violations, according to OAR 340-012-0065(1)(c). DEQ hereby assesses a \$308,656 civil penalty for these violations.

IV. ORDER TO PAY CIVIL PENALTY

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

Pay a total civil penalty of \$308,656. The determination of the civil penalty is attached as Exhibit 1 and is 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**.

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. DEQ must receive your 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 do so 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

1 further information about requests for hearing.) You must send your request to: **DEQ, Office of**
2 **Compliance and Enforcement, 700 NE Multnomah Street, Suite 600, Portland, Oregon 97232**, fax
3 it to **503-229-5100** or email it to DEQappeals@deq.state.or.us. An administrative law judge
4 employed by the Office of Administrative Hearings will conduct the hearing, according to ORS
5 Chapter 183, OAR Chapter 340, Division 011 and OAR 137-003-0501 to 0700. You have a right to be
6 represented by an attorney at the hearing, however you are not required to be. If you are an individual,
7 you may represent yourself. If you are a corporation, partnership, limited liability company,
8 unincorporated association, trust or government body, you must be represented by an attorney or a duly
9 authorized representative, as set forth in OAR 137-003-0555.

10 Active duty Service members have a right to stay proceedings under the federal Service
11 Members Civil Relief Act. For more information contact the Oregon State Bar at 1-800-
12 452-8260, the Oregon Military Department at 503-584-3571, or the nearest United States Armed
13 Forces Legal Assistance Office through <http://legalassistance.law.af.mil>. The Oregon Military
14 Department does not have a toll free telephone number.

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

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22
23
24 8/28/2020

25 Date

26 Kieran O'Donnell

27 Kieran O'Donnell, Manager
Office of Compliance and Enforcement

EXHIBIT 1

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

<u>VIOLATION NO. 1</u>	Disposing of or authorizing disposal of radioactive solid waste at a site not permitted to receive that waste, in violation of OAR 340-093-0040(1) and (4).
<u>CLASSIFICATION:</u>	This is a Class I violation pursuant to OAR 340-012-0065(1)(c), because Respondent disposed of or authorized the disposal of solid waste at a location not permitted by DEQ to receive that solid waste.
<u>MAGNITUDE:</u>	The magnitude of the violation is major pursuant to OAR 340-012-0135(3)(a)(A) because Respondent illegally disposed of or authorized the disposal of an estimated 996 tons of radioactive waste, in excess of 400 cubic yards.
<u>CIVIL PENALTY FORMULA:</u>	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), because Respondent 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 4 according to OAR 340-012-0145(4)(d) because there were more than 28 occurrences of the violation. Respondent disposed or authorized disposal of at least 64 shipments of prohibited waste from 2016-2019.
"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 at least constructive knowledge (reasonably should have known) of the requirement. Respondent is in the business of radioactive waste disposal.

"C" is Respondent's efforts to correct or mitigate the violation, and receives a value of 0 according to OAR 340-012-0145(6)(f), because there is insufficient information to make a finding under paragraphs (6)(a) through (6)(e), or (6)(g).

"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 \$303,856. This is the amount Respondent gained by avoiding spending an additional \$357,620 over three years to dispose of 996 tons of radioactive waste at a disposal facility permitted to accept it. This "EB" was calculated pursuant to OAR 340-012-0150(1) using the U.S. Environmental Protection Agency's BEN computer model.

PENALTY CALCULATION: $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$
 $= \$3,000 + [(0.1 \times \$3,000) \times (0 + 0 + 4 + 2 + 0)] + \$303,856$
 $= \$3,000 + (\$300 \times 6) + \$303,856$
 $= \$3,000 + \$1,800 + \$303,856$
 $= \$308,656$