



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 9, 2022

CERTIFIED MAIL: 7018 1830 0001 5906 3817

Patricia Davis
PO Box 414
Obrien, OR 97534-0414

Re: Notice of Civil Penalty Assessment and Order
Case No. LQ/SW-WR-2022-063

This letter is to inform you that the Oregon Department of Environmental Quality (DEQ) has issued you a civil penalty of \$5,800 for violating a requirement of a 2021 Department Order, and for allowing open burning of prohibited materials at your property in September 2021.

On July 7, 2021, DEQ issued you Notice of Civil Penalty Assessment and Order LQ/SW-WR-2021-090 (the 2021 Notice), assessing a \$10,858 civil penalty for illegally disposing of several inoperable vehicles and at least 300 cubic yards of other solid waste, including tires, batteries, appliances, and household garbage at your property. The 2021 Notice also ordered you to comply with the law by removing and legally disposing of the waste. You did not appeal the 2021 Notice and it became final.

DEQ issued this penalty because you have not taken the corrective action required by the final 2021 Notice, and additionally you have committed another violation of environmental law by causing or allowing prohibited materials to burn openly at your property in September of 2021.

Included in Section IV of the enclosed Notice is an order requiring you to remove and properly dispose of all solid waste, including remnants of burned debris, at the Property, and submit written documentation (e.g. disposal receipts, photographs) demonstrating compliance to: Jason Zanni, DEQ Solid Waste Specialist, 221 Stewart Ave, Ste. 201, Medford, OR 97501.

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 – 503-229-6762

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.

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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 971-301-0622.

Sincerely,



Kieran O'Donnell, Manager
Office of Compliance and Enforcement

Enclosures

cc: Jason Zanni, DEQ
Brian Fuller, DEQ
Jennifer Horton, DEQ
Accounting, DEQ
Thomas Peterson, Josephine County, TPeterson@josephinecounty.gov

1 BEFORE THE ENVIRONMENTAL QUALITY COMMISSION

2 OF THE STATE OF OREGON

3	IN THE MATTER OF:)	NOTICE OF CIVIL PENALTY
4	PATRICIA DAVIS,)	ASSESSMENT AND ORDER
5	an individual)	
	Respondent.)	CASE NO. LQ/SW-WR-2022-063

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, ORS 468.126 through 468.140,
10 ORS 459.995, ORS Chapters 183 and 468A, and Oregon Administrative Rules (OAR) Chapter 340,
11 Divisions 011, 012, 093, and 264.

12 II. FINDINGS OF FACT

- 13 1. Respondent owns real property located at 105 Obrien Road in Obrien, Oregon (the
14 Property).
- 15 2. Respondent does not have a solid waste disposal site permit for the Property.
- 16 3. On May 11, 2021, DEQ conducted an inspection of the Property. At the time of the
17 inspection, and ongoing as of the date of this Notice, various vehicles and vehicle parts, batteries, tires,
18 furniture, buckets with unknown contents, appliances, construction materials, miscellaneous household
19 garbage, a camp trailer full of garbage, and a large pile of garbage (collectively the Materials), totaling
20 approximately 335 cubic yards of material were discarded at the Property.
- 21 4. On July 7, 2021, DEQ issued Respondent Notice of Civil Penalty Assessment and Order
22 LQ/SW-WR-2021-090 (2021 Notice).
- 23 5. The 2021 Notice cited Respondent for violating OAR 340-093-0040(1) by disposing of
24 solid waste at the unpermitted Property and assessed a civil penalty of \$10,858 for that violation.
- 25 6. Condition IV.2 of the 2021 Notice ordered Respondent to, within 60 days of the Notice
26 becoming final, remove and properly dispose of all solid waste at the Property, and within 15 days of
27 compliance, submit written documentation to DEQ.

1 7. Respondent did not appeal the 2021 Notice, and it became final, requiring Respondent to
2 remove and properly dispose of all solid waste at the Property by September 7, 2021, and to document
3 compliance to DEQ by no later than September 22, 2021.

4 8. As of the date of this Notice, Respondent has not cleaned up the solid waste at the
5 Property or documented any efforts to do so to DEQ.

6 9. On or about September 16, 2021, Respondent ignited or allowed to ignite and burn at
7 least 100 cubic yards of the following waste at the Property: tires, mattresses, plastic bags containing
8 household garbage, plastic containers, furniture, metal and other frame material from automobiles and
9 recreational vehicles.

10 III. CONCLUSIONS

11 1. Respondent violated Condition IV.2 of the 2021 Notice by failing to clean up the solid
12 waste at the Property and document the cleanup to DEQ by no later than September 22, 2021. This is a
13 Class I violation, according to OAR 340-012-0053(1). DEQ hereby assesses a \$4,200 civil penalty for this
14 violation.

15 2. Respondent violated OAR 340-264-0060(3) by causing or allowing to be initiated or
16 maintained the open burning of prohibited materials at the Property, including but not limited to tires,
17 mattresses, plastics, household garbage, furniture, metal and automobiles and recreational vehicles. This is
18 a Class I violation, according to OAR 340-012-0054(1)(w). DEQ hereby assesses a \$1,600 civil penalty
19 for this violation.

20 IV. ORDER TO PAY CIVIL PENALTY AND TO COMPLY

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

23 1. Pay a total civil penalty of \$5,800. The determination of the civil penalty is attached as Exhibits
24 1 and 2, which are incorporated as part of this Notice.

25 If you do not file a request for hearing as set forth in Section V below, your check or money
26 order must be made payable to "**State Treasurer, State of Oregon**" and sent to the **DEQ, Business**
27 **Office, 700 NE Multnomah Street, Suite 600, Portland, Oregon 97232.**

1 2. Within 60 days of this order becoming final by operation of law or on appeal, remove and
2 properly dispose of all solid waste at the Property, including remnants of burned debris, and submit
3 written documentation (e.g. receipts, photographs) demonstrating compliance to: Jason Zanni, DEQ
4 Solid Waste Specialist, 221 Stewart Ave., Ste. 201, Medford, OR 97501.

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

6 You have a right to a contested case hearing on this Notice, if you request one in writing. DEQ
7 must receive your request for hearing **within 20 calendar days** from the date you receive this Notice. If
8 you have any affirmative defenses or wish to dispute any allegations of fact in this Notice or attached
9 exhibits, you must do so in your request for hearing, as factual matters not denied will be considered
10 admitted, and failure to raise a defense will be a waiver of the defense. (See OAR 340-011-0530 for
11 further information about requests for hearing.) You must send your request to: **DEQ, Office of**
12 **Compliance and Enforcement, 700 NE Multnomah Street, Suite 600, Portland, Oregon 97232**, fax
13 it to **503-229-6762** or email it to DEQappeals@deq.state.or.us. An administrative law judge
14 employed by the Office of Administrative Hearings will conduct the hearing, according to ORS
15 Chapter 183, OAR Chapter 340, Division 011 and OAR 137-003-0501 to 0700. You have a right to be
16 represented by an attorney at the hearing, however you are not required to be. If you are an individual,
17 you may represent yourself. If you are a corporation, partnership, limited liability company,
18 unincorporated association, trust or government body, you must be represented by an attorney or a duly
19 authorized representative, as set forth in OAR 137-003-0555.

20 Active duty Service members have a right to stay proceedings under the federal Service
21 Members Civil Relief Act. For more information contact the Oregon State Bar at 1-800-
22 452-8260, the Oregon Military Department at 503-584-3571, or the nearest United States Armed
23 Forces Legal Assistance Office through <http://legalassistance.law.af.mil>. The Oregon Military
24 Department does not have a toll free telephone number.

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

1 hearing, DEQ will issue a final order by default pursuant to OAR 340-011-0535(3). DEQ designates
2 the relevant portions of its files, including information submitted by you, as the record for purposes of
3 proving a prima facie case.

4
5 8/9/2022

6 Date

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10 Kieran O'Donnell, Manager
11 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 NO. 1 Failing to remove and properly dispose of all solid waste at the Property, and document compliance to DEQ by September 22, 2021, in violation of Condition IV.2 of Department Order LQ/SW-WR-2021-090.

CLASSIFICATION: This is a Class I violation pursuant to OAR 340-012-0053(1)(a).

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 applicable to 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 Department Order.

"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 2 according to OAR 340-012-0145(2)(a)(C), because Respondent has one Class I solid waste violation in case number LQ/SW-WR-2021-090, issued July 7, 2021.

"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 insufficient information on which to base a finding under paragraphs (3)(a) or (b).

"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 violation of the Department Order has been ongoing since September 22, 2021. As of the date of this Notice, Respondent has not complied with the Order.

"M" is the mental state of the Respondent, and receives a value of 10 according to OAR 340-012-0145(5)(e) because Respondent acted flagrantly, as defined in OAR 340-012-0030(11). In 2010, Respondent committed solid waste violations at the Property and corrected those violations, working with DEQ's technical assistance. Respondent repeated the violations again and since at least January of 2019, DEQ has urged Respondent to clean up solid waste at the Property. Respondent has received multiple warnings and citations since

2010, but conditions have worsened and Respondent has not addressed the violation. Therefore, Respondent had actual knowledge that this conduct was unlawful, and consciously set out to commit the 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 addressed 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 \$0 as the amount Respondent gained by avoiding disposal costs was captured in the 2021 Notice, as calculated pursuant to OAR 340-012-0150(1) using the U.S. Environmental Protection Agency's BEN computer model.

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

$$\begin{aligned} &= \$1,500 + [(0.1 \times \$1,500) \times (2 + 0 + 4 + 10 + 2)] + \$0 \\ &= \$1,500 + (\$150 \times 18) + \$0 \\ &= \$1,500 + \$2,700 + \$0 \\ &= \$4,200 \end{aligned}$$

EXHIBIT 2

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

- VIOLATION NO. 2 Causing or allowing open burning of prohibited materials, in violation of OAR 340-264-0060(3).
- CLASSIFICATION: This is a Class I violation pursuant to OAR 340-012-0054(1)(w).
- MAGNITUDE: The magnitude of the violation is major pursuant to OAR 340-012-0135(1)(j)(A) because Respondent caused or allowed the open burning of at least five cubic yards of prohibited materials. DEQ estimates Respondent caused or allowed the open burning of 100 cubic yards of prohibited materials.
- 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, major 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), because Respondent violated an open burning rule and Respondent is a residential owner-occupant.
- "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 in air quality.
- "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 in air quality.
- "O" is whether the violation was repeated or ongoing, and receives a value of 0 according to OAR 340-012-0145(4)(a) because DEQ does not have sufficient information on which to base a finding that there was more than one day of violation in September of 2021.
- "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, as defined in OAR 340-012-0030(15). Following a visit to the Property in March 2020, DEQ staff sent Respondent a letter regarding open burning regulations. By either igniting, or by failing to take measures to prevent the ignition, of solid waste at the Property, after having been previously informed of the regulations, Respondent failed to take reasonable care to avoid the risk of committing this foreseeable 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 address the violation. State agencies put out the fire, and Respondent has not cleaned up or properly disposed of the burned debris.

"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 DEQ has captured economic benefit associated with this violation in the 2021 Notice.

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

$$\begin{aligned} &= \$1,000 + [(0.1 \times \$1,000) \times (0 + 0 + 0 + 4 + 2)] + \$0 \\ &= \$1,000 + (\$100 \times 6) + \$0 \\ &= \$1,000 + \$600 + \$0 \\ &= \$1,600 \end{aligned}$$