



# 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 3800

S&H Logging Co.  
c/o Marci Stroupe, Registered Agent  
20200 SW Stafford Rd  
Tualatin OR 97062

Re: Notice of Civil Penalty Assessment and Order  
Case No. LQ/SW-WR-2021-051

This letter is to inform you that the Oregon Department of Environmental Quality (DEQ) has issued you a civil penalty of \$14,000 for operating an air curtain incinerator (ACI) at your facility in Aurora without the required air quality and solid waste permits.

DEQ issued this penalty because of the environmental risks associated with burning treated and painted wood waste, as well as the potential adverse air quality impacts associated with ACIs. The state of Oregon requires permits to ensure facilities that operate ACIs do so according to conditions that protect the environment and public health.

DEQ appreciates your efforts to address the violations by ceasing operation of the unpermitted ACI and no longer bringing wood waste from your other facilities to the Aurora site. 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.oregon.gov](mailto:DEQappeals@deq.oregon.gov)

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.

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

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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: Patty Jacobs, DEQ  
Melissa Hovey, DEQ  
Jeremy Fleming, DEQ  
Audrey O'Brien, DEQ  
Accounting, DEQ  
Donald Hendrix, AQ, DEQ  
Marci Stroupe, S&H Logging Co., [Marci@shbark.com](mailto:Marci@shbark.com)

1 BEFORE THE ENVIRONMENTAL QUALITY COMMISSION

2 OF THE STATE OF OREGON

3 IN THE MATTER OF: ) NOTICE OF CIVIL PENALTY  
4 S&H LOGGING CO. ) ASSESSMENT AND ORDER  
5 Respondent. ) CASE NO. LQ/SW-NWR-2021-051

6 I. AUTHORITY

7 The Department of Environmental Quality (DEQ) issues this Notice of Civil Penalty Assessment  
8 and Order (Notice) pursuant to Oregon Revised Statutes (ORS) 468.100, ORS 468.126 through 468.140,  
9 ORS 459.995, ORS Chapters 468A and 183 and Oregon Administrative Rules (OAR) Chapter 340,  
10 Divisions 011, 012, 093, 216, and 238.

11 II. FINDINGS OF FACT

12 1. Respondent operates a business at 24800 NE Boones Ferry Road, in Aurora, Oregon  
13 (the Facility).

14 2. On and about July 30, 2019, Respondent owned and operated facilities in Cornelius,  
15 Tualatin, and Hillsboro, Oregon, where Respondent accepted wood waste from customers for a fee.  
16 Respondent stored piles of co-mingled clean, painted, and pressure-treated wood waste at those  
17 properties, and transported the co-mingled wood waste to Respondent's Facility in Aurora.

18 3. From about March of 2019 to August 15, 2019, Respondent stockpiled, processed, and  
19 incinerated material, included but not limited to land clearing material from off-site, stumps, branches,  
20 wood chips, and structural lumber, including painted and pressure-treated wood, in an ROI Carbonator  
21 500 Air Curtain Incinerator (ACI) at the Facility.

22 4. From approximately August 15, 2019, through February 17, 2021, Respondent  
23 continued to operate the ACI to incinerate clean wood.

24 5. Respondent produced approximately 46 cubic yards of bio-char from use of ACI at the  
25 Facility since March of 2019, and disposed of bio-char on the ground at the Facility.

26 6. On and about August 9, 2019, biochar stored at the Facility contained metal hinges and  
27 nails.

1 7. At all material times, the Facility did not have an air quality permit.

2 8. At all material times, the Facility did not have a solid waste disposal permit.

3 III. CONCLUSIONS

4 1. Respondent violated OAR 340-216-0020(3) by establishing and operating an ACI at the  
5 Facility without an air quality permit. ACIs are subject to federal Standards of Performance for New  
6 Stationary Sources (NSPS), Subpart CCCC or EEEE requirements adopted and incorporated by  
7 reference under OAR Chapter 340, Division 238. Pursuant to OAR 340-216-0020(3), no person may  
8 install or operate any air contaminant source listed in OAR 340-216-8010 without first obtaining an Air  
9 Contaminant Discharge Permit (ACDP) from DEQ. Table 1 of OAR 340-216-8010, Part B, Category  
10 88, requires an ACDP for all air contaminant sources subject to NSPS requirements under OAR 340,  
11 Division 238. This is a Class II violation, according to OAR 340-012-0054(2)(a). DEQ hereby assesses a  
12 \$3,800 civil penalty for this violation.

13 2. Respondent violated OAR 340-093-0050(1) by operating a solid waste disposal site without a  
14 permit. Specifically, Respondent accepted and incinerated solid waste in the ACI at the Facility, without a  
15 solid waste permit. Additionally, Respondent disposed of an estimated 46 cubic yards of solid waste  
16 biochar at the unpermitted Facility. This is a Class I violation, according to OAR 340-012-0065(1)(a).  
17 DEQ hereby assesses a \$10,200 civil penalty for this violation.

18 IV. ORDER TO PAY CIVIL PENALTY

19 Based upon the foregoing FINDINGS OF FACTS AND CONCLUSIONS, Respondent is  
20 hereby ORDERED TO: Pay a total civil penalty of \$14,000. The determination of the civil penalties is  
21 attached as Exhibits 1 and 2, which are incorporated as part of this Notice.

22 If you do not file a request for hearing as set forth in Section V below, your check or money order  
23 must be made payable to "**State Treasurer, State of Oregon**" and sent to the **DEQ, Business Office,**  
24 **700 NE Multnomah Street, Suite 600, Portland, Oregon 97232.**

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

26 You have a right to a contested case hearing on this Notice, if you request one in writing. DEQ  
27 must receive your request for hearing **within 20 calendar days** from the date you receive this Notice. If

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

13 Active duty Service members have a right to stay proceedings under the federal Service  
14 Members Civil Relief Act. For more information contact the Oregon State Bar at 1-800-  
15 452-8260, the Oregon Military Department at 503-584-3571, or the nearest United States Armed  
16 Forces Legal Assistance Office through <http://legalassistance.law.af.mil>. The Oregon Military  
17 Department does not have a toll free telephone number.

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

24  
25  
26  
27  
Date

8/9/2022

  
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

VIOLATION NO. 1                      Establishing and operating an air curtain incinerator (ACI) at the Facility without an Air Contaminant Discharge Permit (ACDP), in violation of OAR 340-216-0020(3).

CLASSIFICATION:                      This is a Class II violation pursuant to OAR 340-012-0054(2)(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 \$2,000 for a Class II, moderate magnitude violation in the matrix listed in OAR 340-012-0140(3)(b)(B)(ii) and applicable pursuant to OAR 340-012-0140(3)(a)(A), because Respondent violated an air quality rule and should have had a Simple ACDP.

"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 (air quality) that occurred at a facility owned or operated by the same Respondent, and receives a value of 7 according to OAR 340-012-0145(2)(a)(C) and (D), because Respondent has five Class II air quality violations from case number LQ/SW-NWR-2017-130, issued August 16, 2017, and one Class II and three Class I air quality violations from case number AQ/AB-NWR-2017-027, issued October 27, 2017.

"H" is Respondent's history of correcting prior significant actions, and receives a value of -1 according to OAR 340-012-0145(3)(b) because the violations were uncorrectable and Respondent took reasonable efforts to minimize the effects of the violations cited as prior significant actions.

"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 operated the ACI without an ACDP from approximately March 31, 2019, to February 17, 2021.

"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. Respondent operates multiple businesses in Oregon and has

experience with DEQ permits for solid waste and stormwater, as well as prior enforcement for violations of air quality regulations, including asbestos and open burning. Therefore, Respondent reasonably should have known that operating the ACI to burn wood waste required an air quality permit.

"C" is Respondent's efforts to correct or mitigate the violation, and receives a value of -3 according to OAR 340-012-0145(6)(c) because Respondent made reasonable efforts to correct the violation by only receiving clean wood as of August 15, 2019, submitting required permitting information to DEQ, and ceasing operation of the ACI on or about February 17, 2021.

"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 does not have sufficient information on which to base an estimate of more than a de minimis economic benefit.

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

$$\begin{aligned} &= \$2,000 + [(0.1 \times \$2,000) \times (7 + (-1) + 4 + 2 + (-3))] + \$0 \\ &= \$2,000 + (\$200 \times 9) + \$0 \\ &= \$2,000 + \$1,800 + \$0 \\ &= \$3,800 \end{aligned}$$

EXHIBIT 2

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

VIOLATION NO. 2 Operating a solid waste disposal site without a permit, in violation of OAR 340-093-0050(1).

CLASSIFICATION: This is a Class I violation pursuant to OAR 340-012-0065(1)(a).

MAGNITUDE: The magnitude of the violation is moderate pursuant to OAR 340-012-0135(3)(a)(B) because DEQ estimates Respondent accepted, processed, and disposed of between 40 and 400 cubic yards of solid waste at the Facility.

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 \$6,000 for a Class I, moderate magnitude violation in the matrix listed in OAR 340-012-0140(2)(b)(A)(ii) and applicable pursuant to OAR 340-012-0140(2)(a)(Q)(i), because Respondent should have had a solid waste disposal permit.

"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 (land quality) that occurred at a facility owned or operated by the same Respondent, and receives a value of 3 according to OAR 340-012-0145(2)(a)(C) and (D), because Respondent has three Class II and one Class I solid waste violations from case number LQ/SW-NWR-2017-130, issued August 16, 2017.

"H" is Respondent's history of correcting prior significant actions, and receives a value of -1 according to OAR 340-012-0145(3)(b) because the violations were uncorrectable and Respondent took reasonable efforts to minimize the effects of the violations cited as prior significant actions.

"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 operated an unpermitted solid waste facility from approximately March 31, 2019, to August 15, 2019.

"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). Respondent operates a permitted solid waste facility in Cornelius and has previously operated a permitted solid waste facility in Hillsboro. Given Respondent's history with solid waste permits and DEQ enforcement for solid waste violations, by transporting wood waste to the Facility and incinerating it without a solid waste permit, Respondent failed to take reasonable care to avoid this foreseeable risk of violation.



"C" is Respondent's efforts to correct or mitigate the violation, and receives a value of -3 according to OAR 340-012-0145(6)(c) because Respondent made reasonable efforts to correct the violation. Respondent stopped receiving and processing treated and painted wood from off-site on or about August 15, 2019. In March 2021, Respondent sampled the biochar and soil where biochar was disposed at the Facility. In April 2021, Respondent provided sample results that demonstrated the biochar and soil were not contaminated with metals above background levels.

"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, because DEQ does not have sufficient information on which to make an estimate.

PENALTY CALCULATION:  $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$   
 $= \$6,000 + [(0.1 \times \$6,000) \times (3 + (-1) + 4 + 4 + (-3))] + \$0$   
 $= \$6,000 + (\$600 \times 7) + \$0$   
 $= \$6,000 + \$4,200 + \$0$   
 $= \$10,200$