



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 11, 2021

CERTIFIED MAIL: 7018 1830 0001 5903 8808

Jason Richard Bicknell and Nicole Rae Bullock
General Delivery
Trail OR 97541

Re: Notice of Civil Penalty Assessment and Order
Case No. LQ/SW-WR-2021-083

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 DEQ has issued you a civil penalty of \$1,871 for establishing and operating an unpermitted solid waste disposal site on U.S. Forest Service land located outside of Trail, Oregon. Specifically, you disposed of approximately 70 cubic yards of solid waste including cars, car parts, tires, household goods, furniture, and lumber, adjacent to the location where you were residing. Although you removed a portion of the solid waste since it was first discovered in January 2021, at least 15 cubic yards of the solid waste remain at the site.

DEQ issued this penalty because 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 and can threaten human health and the environment by creating habitat for disease carrying insects and rodents and polluting ground and surface waters.

Included in Section IV of the attached Notice is an order requiring you to submit documentation showing that you have removed and properly disposed of all of the solid waste. \$771 of the civil penalty represents the economic benefit you gained by failing to dispose of the solid waste. If you dispose of the waste, 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 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 Susan Elworth at 503-229-5152 or toll free in Oregon at 800-452-4011, extension 5152.

Sincerely,



Kieran O'Donnell, Manager
Office of Compliance and Enforcement

Enclosures

cc: David Esch, Medford office, DEQ

BEFORE THE ENVIRONMENTAL QUALITY COMMISSION
OF THE STATE OF OREGON

IN THE MATTER OF:)
JASON RICHARD BICKNELL AND) NOTICE OF CIVIL PENALTY
NICOLE RAE BULLOCK,) ASSESSMENT AND ORDER
Respondents.) CASE NO. LQ/SW-WR-2021-083

I. AUTHORITY

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 459.995, ORS Chapters 183 and 468B, and Oregon Administrative Rules (OAR) Chapter 340, Divisions 011, 012, and 093.

II. FINDINGS OF FACT

1. In January 2021, Respondents were residing on U.S. Forest Service property located at approximately latitude 42.800828 and longitude -122.857116, outside of Trail, Oregon (the Property).

2. Respondents have never been issued a solid waste disposal site permit.

3. In January 2021, Respondents placed approximately 70 cubic yards of solid waste including useless and discarded vehicles, vehicle parts, appliances, tires, tools, furniture, construction debris and household goods along a road which provides access to the Property.

4. From May 2021 to the date of this Notice, approximately 15 cubic yards of solid waste are still present along the access road to the Property.

III. CONCLUSIONS

Respondents violated ORS 459.205 and OAR 340-093-0050 by establishing, operating and maintaining an unpermitted solid waste disposal site (as defined in ORS 459.005(8)(a) and (24)) as alleged in Section II above. This is a Class I violation according to OAR 340-012-0065(1)(a). DEQ assesses a \$1,871 civil penalty for this violation.

IV. ORDER TO PAY CIVIL PENALTY AND TO COMPLY

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

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1 1. Pay a total civil penalty of \$1,871. The determination of the civil penalty is attached as Exhibit
2 1 and is incorporated as part of this Notice. If you do not file a request for hearing as set forth in Section V
3 below, your check or money order must be made payable to "**State Treasurer, State of Oregon**" and
4 sent to the **DEQ, 700 NE Multnomah Street, Suite 600, Portland, Oregon 97232**.

5 2. Within 30 days of this order becoming final by operation of law or on appeal, submit
6 documentation of the proper disposal of the solid waste located on the Property to: David Esch, DEQ,
7 221 Stewart Avenue, Suite 201, Medford OR 97501.

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

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

23 Active duty Service members have a right to stay proceedings under the federal Service
24 Members Civil Relief Act. For more information contact the Oregon State Bar at 1-800-
25 452-8260, the Oregon Military Department at 503-584-3571, or the nearest United States Armed
26 Forces Legal Assistance Office through <http://legalassistance.law.af.mil>. The Oregon Military
27 Department does not have a toll free telephone number.

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

7
8 8/11/2021
9 Date

Kieran O'Donnell
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 1: Establishing, operating and maintaining an unpermitted solid waste disposal site, in violation of ORS 459.205 and OAR 340-093-0050.

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 Respondents established an unpermitted solid waste disposal site with more than 40 but less than 400 cubic yards of solid waste. The Property contained approximately 70 cubic yards of solid waste in January 2021.

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). Respondents violated a solid waste statute as a residential owner-occupant, as defined by OAR 340-012-0030(21). Respondents were in possession of a single-family dwelling unit on the Property at the time of the violation.

"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 has been on-going since at least January 2021, when the U.S. Forest Service first documented the disposal of the solid waste. Since that time, Respondents have continued to maintain the disposal site.

"M" is the mental state of the Respondent, and receives a value of 8 according to OAR 340-012-0145(5)(d) because Respondents acted or failed to act intentionally with actual knowledge of the requirement. Both DEQ and the U.S. Forest Service have informed Respondents, on multiple occasions that they could not continue to store the solid waste on the Property. Respondents had actual knowledge of fact that they could not operate or maintain a solid waste disposal site, yet they intentionally continued to do so.

"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). Although Respondents removed a portion of the solid waste sometime between January and May 2021, approximately 15 cubic yards of solid waste still remain.

"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 \$771. This is the amount Respondents gained by avoiding spending \$716.25 to dispose of approximately 15 cubic yards of solid waste since January 2021. This "EB" was calculated using the U.S. Environmental Protection Agency's BEN computer model, pursuant to OAR 340-012-0150(1).

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 + 8 + 0)] + \$771
= \$500 + (\$50 x 12) + \$771
= \$500 + \$600 + \$771
= \$1,871