



Oregon

Kate Brown, Governor

Department of Environmental Quality

Headquarters
811 SW 6th Ave
Portland, OR 97204-1390
(503) 229-5696
FAX (503) 229-6124
TTY: 711

August 29, 2016

CERTIFIED MAIL No. 70142870000133736248

Ross Roland Hedrich
Dardanelle Mobile Home & RV Park
9566 Old Stage Road
Central Point, OR 97502

CERTIFIED MAIL No. 70142870000133736255

Ross Roland Hedrich
Dardanelle Mobile Home & RV Park
PO Box 2583
Vista, CA 92085

Re: Notice of Civil Penalty Assessment and Order to Comply
Case No. WQ/OS-WR-2016-127

This letter is to inform you that DEQ has issued a total civil penalty of \$9,759 for violations at the Dardanelle Mobile Home & RV Park in Central Point, Oregon, which you own. On or about July 14, 2016, an effluent pipe in the onsite sewage disposal system broke, resulting in untreated or partially treated sewage discharging onto the ground surface and backing up into several homes. The park manager failed to take action to repair the system, and dumped the sewage into Kane Creek approximately twelve times over seven days. The discharge of sewage resulted in a violation of the bacteria standard in Kane Creek on July 21, 2016. These are serious violations of Oregon environmental law.

DEQ issued this penalty because the discharge of untreated or partially treated sewage onto the ground surface and into waters of the state poses a public health hazard through either direct human contact or through contact with insects or other animals that have been in contact with the sewage. Sewage is also a significant pollutant that can harm aquatic life, contaminate drinking water and impair recreational and commercial uses of water.

DEQ appreciates your efforts to correct the violation by fixing the broken pipe. DEQ considered these efforts when determining the amount of civil penalty.

If you wish to appeal this matter, you have 20 calendar days from receipt of this letter to request a contested case hearing. This hearing request must be in writing. Send your hearing request to DEQ Office of Compliance and Enforcement – Appeals:

Via mail - 811 S.W. 6th Ave., Portland, OR 97204

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 written hearing request from you within 20 days, 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 it 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 in lieu of paying your penalty. Enclosed is more detail on how to pursue a SEP.

DEQ's rules are available on the internet at <http://www.deq.state.or.us/regulations/rules.htm>, or by calling the number below to request a paper copy.

If you have any questions, please contact DEQ Environmental Law Specialist Esther Westbrook, at (503) 229-5374. You may call toll-free within Oregon at 1-800-452-4011, extension 5374.

Sincerely,

Leah K. Feldon, Manager
Office of Compliance and Enforcement

Enclosures

cc: Marty Easter, Medford Office, DEQ

1 according to OAR 340-012-0060(1)(c). DEQ hereby assesses a \$6,909 civil penalty for these
2 violations.

3 3. On or about July 21, 2016, Respondent violated ORS 468B.025(1)(b) by discharging
4 waste to Kane Creek, waters of the state, that reduced the quality of those waters below a water
5 quality standard established by the Environmental Quality Commission, as described in Section
6 II above. Specifically, Respondent violated the freshwater bacteria standard set forth in OAR
7 340-041-0009(a)(B). This is a Class I violation pursuant to OAR 340-012-0055(1)(b). DEQ has
8 not assessed a penalty for this violation.
9

10 IV. ORDER TO PAY CIVIL PENALTY

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

13 Pay a total civil penalty of \$9,759. The determination of the civil penalties is
14 attached as Exhibit Nos. 1 and 2 and incorporated as part of this Notice.
15

16 If you do not file a request for hearing as set forth in Section V below, your check or
17 money order must be made payable to "**State Treasurer, State of Oregon**" and sent to the **DEQ,**
18 **Business Office, 811 S.W. Sixth Avenue, Portland, Oregon 97204.** Once you pay the penalty,
19 the Findings of Fact, Conclusions and Order become final.

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

21
22 You have a right to a contested case hearing on this Notice, if you request one in writing.
23 You must ensure that DEQ receives the request for hearing **within 20 calendar days** from the
24 date you receive this Notice. If you have any affirmative defenses or wish to dispute any
25 allegations of fact in this Notice or attached exhibits, you must include them in your request for
26 hearing, as factual matters not denied will be considered admitted, and failure to raise a defense
27 will be a waiver of the defense. (See OAR 340-011-0530 for further information about requests

1 for hearing.) You must mail the request for hearing to: **DEQ, Office of Compliance and**
2 **Enforcement - Appeals, 811 SW Sixth Avenue, Portland, Oregon 97204**, or fax it to **503-229-**
3 **5100**. An administrative law judge employed by the Office of Administrative Hearings will
4 conduct the hearing, according to ORS Chapter 183, OAR Chapter 340, Division 011 and OAR
5 137-003-0501 to 0700. You have a right to be represented by an attorney at the hearing, or you
6 may represent yourself unless you are a corporation, agency or association.

7 Active duty service-members have a right to stay proceedings under the federal Service
8 members Civil Relief Act. For more information, please call the Oregon State Bar at 1-800-
9 452-8260 or the Oregon Military Department at 1-800-452-7500. Additional information can be
10 found online at the United States Armed Forces Legal Assistance (AFLA) Legal Services
11 Locator website <http://legalassistance.law.af.mil/content/locator.php>.

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

18
19 August 29, 2016
20 Date

20 Leah K. Feldon
21 Leah K. Feldon, Manager
22 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 1: Owning, operating or using an onsite wastewater treatment system or part thereof that is discharging sewage or effluent to the ground surface or waters of the state, in violation of OAR 340-071-0130(3).

CLASSIFICATION: This is a Class I violation pursuant to OAR 340-012-0060(1)(d).

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 for 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)(G) because Respondent violated an onsite sewage disposal statute, rule or permit and is not 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.

"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 3 according to OAR 340-012-0145(4)(c), because there were from seven to 28 occurrences of the violation. The discharge occurred on at least seven days, July 14-20, 2016.

"M" is the mental state of the Respondent and receives a value of 8 according to OAR 340-012-0145(5)(d), because Respondent's conduct was reckless. The onsite system at the Facility is old and in need of repairs and upgrades. Several months before the effluent line broke, an onsite installer inspected the system and told Respondent's employee or agent that the effluent lines were almost completely blocked and Respondent needed to replace the line between the two tanks. The system began discharging sewage onto the ground surface and backing up into residents' homes, but Respondent failed to take any corrective action until after DEQ staff visited the Facility. By continuing to operate a failing onsite system and failing to repair it, Respondent consciously disregarded a substantial and unjustifiable risk that it would discharge sewage onto the ground surface or waters of the state, thereby posing

a threat to public health and the environment. Disregarding this risk constituted a gross deviation from the standard of care a reasonable person would observe in that situation.

"C" is Respondent's efforts to correct the violation and receives a value of -2 according to OAR 340-012-0145(6)(d), because Respondent eventually made some efforts to correct the violation, or to minimize the effects of the violation. Respondent repaired the pipe on August 10, 2016, almost a month after it broke. However, Respondent failed to take prompt action to mitigate the public health threat from sewage discharges onto the ground surface.

"EB" is the approximate economic benefit that an entity gained by not complying with the law. 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 determined that any economic benefit gained as a result of this violation is de minimis.

PENALTY CALCULATION: $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$
= $\$1,500 + [(0.1 \times \$1,500) \times (0 + 0 + 3 + 8 + (-2))] + \0
= $\$1,500 + [(\$150) \times (9)] + \$0$
= $\$1,500 + \$1,350 + \$0$
= $\$2,850$

EXHIBIT NO. 2

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

VIOLATION 2: Disposing of sewage, septage or sewage-contaminated material in a manner or location not authorized by DEQ, in violation of OAR 340-071-0130(22).

CLASSIFICATION: This is a Class I violation pursuant to OAR 340-012-0060(1)(c).

MAGNITUDE: The magnitude of the violation is major pursuant to OAR 340-012-0130(3), as the violation had a significant adverse impact on human health or the environment. In making this finding, DEQ considered the following factors: the violation resulted in a violation of the water quality standard for bacteria in Kane Creek, the high degree of deviation from applicable statutes and rules, the large volume of materials involved (approximately 4,800 gallons of sewage, septage or sewage-contaminated material), and the duration of the violation (twelve occurrences over approximately seven days).

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)(G) because Respondent violated an onsite sewage disposal statute or rule and is not 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.

"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 3 according to OAR 340-012-0145(4)(c), because there were from seven to 28 occurrences of the violation. Respondent dumped sewage into the stormwater system, which discharges to Kane Creek, approximately twelve times between July 14-20, 2016.

"M" is the mental state of the Respondent and receives a value of 8 according to OAR 340-012-0145(5)(d), because Respondent's conduct was reckless. When the system began discharging sewage onto the ground surface (and backing up into several homes), Respondent's employee or agent excavated and found that the source of discharge was a

broken pipe. A reasonable course of action would have been calling a plumber or onsite installer to replace the pipe and perform other necessary repairs, and having the septic tank pumped regularly to prevent any additional discharge of sewage. In contrast, Respondent's employee or agent failed to call a plumber or onsite professional and instead pumped untreated or partially treated sewage into a container and then dumped it into the stormwater system leading to Kane Creek, waters of the state, multiple times over a period of seven days. By disposing of sewage in this manner and continuing to operate a failing system, Respondent consciously disregarded a substantial and unjustifiable risk that it would violate the law. Because sewage poses a threat to public health and the environment, disregarding this risk constituted a gross deviation from the standard of care a reasonable person would observe in that situation.

"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 the violation or the effects of the violation could not be corrected or minimized.

"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 \$609. This is the amount Respondent gained by avoiding spending approximately \$1,104 to have the septic tank pumped. 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 + 3 + 8 + 0)] + \609
= $\$3,000 + [\$300 \times 11] + \$609$
= $\$3,000 + \$3,300 + \$609$
= $\$6,909$