



Oregon

Kate Brown, Governor

Department of Environmental Quality

Office of the Director
811 SW Sixth Avenue
Portland, OR 97204-1390
(503) 229-5343
FAX (503) 229-5100
TTY: 711

September 12, 2016

Michael P. DeMuniz
De Muniz Law, LLC
121 SW Morrison Street, Suite 1100
Portland, OR 97204

Re: Mutual Agreement and Order
In the Matter of: Donald Salvey, Case No.: WQ/I-NWR-16-030

Dear Mr. DeMuniz:

The Mutual Agreement and Order (MAO) mitigating the civil penalty in the above case has been approved by the Manager of the Office of Compliance and Enforcement on behalf of the Environmental Quality Commission. A copy of the signed order is enclosed.

The mitigated penalty has been paid in full and the case is now closed.

Thank you for your cooperation.

Sincerely,

Courtney
Environmental Law Specialist
Office of Compliance and Enforcement

Enclosure

cc: Business Office, DEQ
Michael Kennedy, NW Region, DEQ



1 BEFORE THE ENVIRONMENTAL QUALITY COMMISSION

2 OF THE STATE OF OREGON

3)	
4)	MUTUAL AGREEMENT
4)	AND FINAL ORDER
5)	CASE NO. WQ/I-NWR-16-030
6)	

IN THE MATTER OF
DONALD SALVEY,
Respondent.

7 WHEREAS:

8 1. On March 22, 2016, the Department of Environmental Quality (DEQ) issued Notice
9 of Civil Penalty Assessment and Order No. Case No. WQ/I-NWR-16-030 (Notice) to Respondent.
10 DEQ assessed a \$19,243 civil penalty against Respondent for violations alleged in the Notice.

11 2. On April 5, 2016, Respondent filed a timely request for hearing.

12 I. AGREEMENT

13 Respondent and DEQ hereby agree that:

14 1. Based upon new information submitted by Respondent, DEQ agrees to amend
15 Exhibit 1 of the Notice by reducing the M factor in the Exhibit from 8 down to 4.

16 2. Based upon new information submitted by Respondent, DEQ agrees to amend
17 Exhibit 1 of the Notice by reducing the EB in the Exhibit from \$8,443 down to \$418 (representing
18 the avoided costs of \$719.40).

19 3. Making these two changes results in a change in the civil penalty for Violation No. 1
20 from \$19,243 down to \$8,818. The amended findings and determination of the civil penalty is
21 attached and incorporated as Amended Exhibit No.1.

22 4. DEQ and Respondent agree that the total civil penalty is reduced from \$19,243 to
23 \$8,818.

24 5. Pursuant to OAR 340-012-0030(19) and OAR 340-012-0145(2), the violations
25 alleged in the Notice and as amended by this Mutual Agreement and Final Order (MAO), will be
26 treated as a prior significant action in the event a future violation occurs.

27 6. Respondent agrees to waive any and all rights and objections Respondent may have

1 to the form, content, manner of service and timeliness of the Notice; to a contested case hearing and
2 judicial review of the Notice; and to service of a copy of this MAO, which shall be effective when
3 signed by DEQ.

4 7. This MAO is not intended to limit, in any way, DEQ's right to proceed against
5 Respondent in any forum for any past or future violations not expressly settled herein.

6 8. Respondent agrees that this MAO shall be binding on Respondent and its respective
7 successors, agents, and assigns. The undersigned representative of Respondent certifies that he or
8 she is fully authorized to execute and bind Respondent to this MAO.

9 II. FINAL ORDER

10 The Environmental Quality Commission hereby enters a final order: Imposing upon
11 Respondent a total civil penalty of \$8,818 for the violations alleged in the Notice and as amended
12 by this MAO.

13 DONALD SALVEY

14
15 9-2-16
16 Date

15 Donald Salvey
16 Signature
17 Donald Salvey
18 Name (print)
19
20 Title (print)

21 DEPARTMENT OF ENVIRONMENTAL QUALITY and
22 ENVIRONMENTAL QUALITY COMMISSION

23 9-12-16
24 Date

23 Leah K. Feldon
24 Leah K. Feldon, Manager
25 Office of Compliance and Enforcement
26 on behalf of DEQ pursuant to OAR 340-012-0170
27 on behalf of the EQC pursuant to OAR 340-011-0505

AMENDED EXHIBIT No.1

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

VIOLATION: Discharging paint and paint chips which caused pollution to waters of the state in violation of ORS 468B.025(1)(a).

CLASSIFICATION: This is a Class I violation pursuant to OAR 340-012-0055(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 \$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)(E).

"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 0 according to OAR 340-012-0145(4)(a), because there was only one occurrence of the violation.

"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. Respondent failed to take reasonable care to avoid a foreseeable risk of conduct constituting or resulting in a violation. Specifically, it was highly foreseeable that painting a vessel while it was still moored in waters of the state, without instituting any protective measures, would result in discharges of paint that would cause pollution.

"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 \$418. This is the amount Respondent gained by avoiding spending \$719 to dry dock the boat to have it painted. This "EB" was calculated pursuant to OAR 340-012-0150(1) using the U.S. Environmental Protection Agency's BEN computer model.

PENALTY CALCULATION: $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$
= \$6,000 + [(0.1 x \$6,000) x (0+ 0 + 0 + 4 + 0)] + \$418
= \$6,000 + [\$600 x 4] + \$418
= \$6,000 + \$2,400 + \$418
= \$8,818