



Oregon

Kate Brown, Governor

Department of Environmental Quality

Headquarters
811 SW Sixth Avenue
Portland, OR 97204-1390
(503) 229-5696
FAX (503) 229-6124
TTY: 711

March 10, 2016

CERTIFIED MAIL: 7014 2870 0001 3373 5500

Hank Elliott Investment Company, L.L.C.
c/o Hank Elliott, Registered Agent
2433 SW Canal Blvd.
Redmond, OR 97756

Re: Notice of Civil Penalty Assessment and Order
Case No. WQ/UIC-ER-15-219

This letter is to inform you that the Oregon Department of Environmental Quality (DEQ) has issued you a civil penalty of \$20,147 for operating a sewage drain hole without a Water Pollution Control Facilities (WPCF) permit at the Mt. Vista Mobile Home Park in Bend, Oregon.

DEQ issued this penalty because Oregon law requires persons operating a sewage drain hole to obtain a WPCF permit for that activity. The permit ensures that sewage will be disposed of effectively so as to not harm public health or the environment. Human sewage is contaminated with disease-causing bacteria and viruses and therefore poses a public health hazard through either direct human contact or through exposure to animals or insects that can transmit disease. In addition, sewage is a significant pollutant that can harm aquatic life, contaminate drinking water and impair recreational and commercial uses of water.

Included in Section IV of the attached Notice is an order requiring you to submit an application for a WPCF permit for the sewage drain hole at the Mt. Vista Mobile Home Park. \$5,747 of the civil penalty represents the economic benefit you gained by failing to apply for the permit. If you apply for the permit, 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 contested case hearing within 20 calendar days from your receipt of this letter. The 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 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 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. SEP documents are available on the internet at <http://www.deq.state.or.us/programs/enforcement/SEP.htm>, or by calling the number below to request a paper copy.

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 Kieran O'Donnell, at (503) 229-5012. You may call toll-free within Oregon at 1-800-452-4011, extension 5012.

Sincerely,



Leah K. Feldon, Manager
Office of Compliance and Enforcement

Enclosures

cc: Robert Baggett, Bend Office, DEQ
Matt Kohlbecker, NWR, DEQ
John Koestler, WQ, DEQ

1 BEFORE THE ENVIRONMENTAL QUALITY COMMISSION
2 OF THE STATE OF OREGON

3 IN THE MATTER OF:) NOTICE OF CIVIL PENALTY
4 HANK ELLIOTT INVESTMENT) ASSESSMENT AND ORDER
COMPANY, L.L.C.)
5 Respondent.) CASE NO. WQ/UIC-ER-15-219

6
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 and 468.126 through 468.140,
10 ORS 454.605 through 454.755, ORS Chapter 468B, ORS Chapter 183 and Oregon Administrative Rules
11 (OAR) Chapter 340, Divisions 011, 012, and 044.

12 II. FINDINGS OF FACT

- 13 1. Respondent owns and operates the Mt. Vista Mobile Home Park at 64900 Hunnell Road in
14 Bend, Oregon (the Facility).
- 15 2. The Facility disposes sewage and sanitary waste through a subsurface drain hole at the
16 Facility.
- 17 3. Respondent does not have a Water Pollution Control Facilities (WPCF) permit for its
18 operation and disposal of sewage through a subsurface drain hole at the Facility.

19 III. CONCLUSIONS

20 Respondent has violated OAR 340-044-0015(3)(b) by operating a Class V injection system
21 through a sewage drain hole without a permit, as described in Section II above. Respondent's disposal
22 of sewage through a subsurface drain hole constitutes a Class V injection system pursuant to OAR 340-
23 044-0011(5)(a). These are Class I violations, according to OAR 340-012-055(1)(p). DEQ hereby assesses
24 a \$20,147 civil penalty for these violations.

25 IV. ORDER TO PAY CIVIL PENALTY AND TO COMPLY

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

1 1. Pay a total civil penalty of \$20,147. The determination of the civil penalty is attached as
2 Exhibit No. 1 and is incorporated as part of this Notice.

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

7 2. By no later than 20 days after this Notice becomes a Final Order, Respondent must comply
8 with Oregon law by submitting to DEQ an application for a Water Pollution Control Facility permit for
9 the Facility.

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

11 You have a right to a contested case hearing on this Notice, if you request one in writing. You
12 must ensure that DEQ receives the request for hearing **within 20 calendar days** from the date you
13 receive this Notice. If you have any affirmative defenses or wish to dispute any allegations of fact in
14 this Notice or attached exhibit, you must include them in your request for hearing, as factual matters
15 not denied will be considered admitted, and failure to raise a defense will be a waiver of the defense.
16 (See OAR 340-011-0530 for further information about requests for hearing.) You must mail the request
17 for hearing to: **DEQ, Office of Compliance and Enforcement - Appeals, 811 SW Sixth Avenue,**
18 **Portland, Oregon 97204**, or fax it to **503-229-5100**. An administrative law judge employed by the
19 Office of Administrative Hearings will conduct the hearing, according to ORS Chapter 183, OAR
20 Chapter 340, Division 011 and OAR 137-003-0501 to 0700. You have a right to be represented by an
21 attorney at the hearing, or you may represent yourself unless you are a corporation, agency or
22 association.

23 Active duty service-members have a right to stay proceedings under the federal Service
24 members Civil Relief Act. For more information, please call the Oregon State Bar at 1-800-
25 452-8260 or the Oregon Military Department at 1-800-452-7500. Additional information can be found
26 online at the United States Armed Forces Legal Assistance (AFLA) Legal Services Locator website
27 <http://legalassistance.law.af.mil/content/locator.php>.

1 If you fail to file a request for hearing in writing within 20 calendar days of receipt of the
2 Notice, the Notice will become a final order by default without further action by DEQ, as per OAR
3 340-011-0535(1). If you do request a hearing but later withdraw your request, fail to attend the hearing
4 or notify DEQ that you will not be attending the hearing, DEQ will issue a final order by default
5 pursuant to OAR 340-011-0535(3). DEQ designates the relevant portions of its files, including
6 information submitted by you, as the record for purposes of proving a prima facie case.
7
8
9

10 March 10, 2016
11 Date

10 Sarah Wheeler for
11 Leah K. Feldon, Manager
Office of Compliance and Enforcement

EXHIBIT No. 1

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

VIOLATION No. 1: Operating a sewage drain hole without a permit, in violation of OAR 340-044-0015(3).

CLASSIFICATION: This is a Class I violation pursuant to OAR 340-012-0055(1)(p).

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)(iv) because Respondent operates a prohibited Class V Underground Injection Control system.

"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 the same media as the violations alleged in this Notice.

"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 first occurred in 1994, the year that Respondent first acquired the property and was required to obtain a WPCF permit for the sewage drain hole. As of the date of this Notice, Respondent still does not have a permit for the sewage drain hole. Therefore, there are more than 28 occurrences of the violation.

"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. On October 22, 2015, DEQ sent Respondent a Warning Letter with an Opportunity to Correct (WLOC), informing it of the permit requirement and giving it time to submit an application. In addition, DEQ sent Respondent an email on November 4, 2015, reiterating the rule violation and the permit

application requirement. Despite the WLOC and follow-up communication, Respondent consciously disregarded a substantial and unjustifiable risk that its failure to apply for a permit would result in a violation. This failure to apply for a permit constituted a gross deviation from the standard of care a reasonable person would observe in these circumstances.

"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).

"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 \$5,747. This is the amount Respondent gained by avoiding spending approximately \$3,913 to apply for the appropriate WPCF permit. 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 + 4 + 8 + 2)] + \$5,747
= \$6,000 + [\$600 x 14] + \$5,747
= \$6,000 + \$8,400 + \$5,747
= \$20,147