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

August 17, 2016

CERTIFIED MAIL: 7014 2870 0001 3373 6040

Mary Ann Norris, Homer G. Coulter & Patricia M. Dewarns
3547 Crest Street
Klamath Falls, OR 97603

Re: Notice of Civil Penalty Assessment and Order
Case No.: AQ/OB-ER-2016-116

This letter is to inform you that the Oregon Department of Environmental Quality (DEQ) has issued you a civil penalty of $5,610 for allowing the opening burning of prohibited materials at the property you own at 3547 Crest Street in Klamath Falls, Oregon.

DEQ issued this penalty because residents at the property have repeatedly engaged in unlawful burning. No person may cause or allow the open burning of materials that create dense smoke and noxious odors. The open burning of prohibited materials creates a nuisance and poses a threat to the environment and public health. Burning these materials can result in toxic levels of chemical exposure to residents and others nearby. The property where the open burning occurred is located next to an elementary school putting the health of children at risk.

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 Courtney Brown, at (503) 229-6839. You may call toll-free within Oregon at 1-800-452-4011, extension 6839.

Sincerely,

Leah K. Feldon, Manager
Office of Compliance and Enforcement

Enclosures

cc: Bonnie Hough, DEQ, Bend Office
Cindy Troupe, AQ, HQ
Homer G. Coulter, 204 SW 8th Ave., Apt #417, Portland, OR 97205-3754

BEFORE THE ENVIRONMENTAL QUALITY COMMISSION

OF THE STATE OF OREGON

IN THE MATTER OF: MARY ANN NORIS, HOMER G. COULTER & PATRICIA M. DEWARNS, Respondents.	)))))	NOTICE OF CIVIL PENALTY ASSESSMENT AND ORDER CASE NO.AQ/OB-ER-2016-116

I. AUTHORITY

The Department of Environmental Quality (DEQ) issues this Notice of Civil Penalty Assessment and Order (Notice) to Respondents, jointly and severally liable, pursuant to Oregon Revised Statutes (ORS) 468.100 and 468.126 through 468.140, ORS Chapters 183 and 468A, and Oregon Administrative Rules (OAR) Chapter 340, Divisions 011, 012, and 264.

II. FINDINGS OF FACT

1. Respondents own the property located at 3547 Crest Street in Klamath Falls, Oregon 97603 (the "property").

2. On or about April 11, 2016, open burning of plastic, household appliances, painted and treated wood, metal and garbage occurred at the property.

3. Plastic, household appliances, painted and treated wood, and garbage normally emit dense smoke or noxious odors when burned and are considered prohibited materials.

4. The open burn pile at the property contained over 25 cubic yards of prohibited material.

5. On or about November 18, 2015, and on or about November 19, 2015, more than 25 cubic yards of prohibited materials including plastic and other material which normally emits dense smoke or noxious odors were burned at the property.

III. CONCLUSIONS

1. Respondents have violated OAR 340-264-0060(3), adopted pursuant to ORS 468A.025 by causing or allowing to be initiated or maintained the open burning of prohibited materials as described in Section II, above. Respondents are strictly liable pursuant to OAR 340-264-

///

0060(1)(a), (b) and (c). This is a Class I violation, according to OAR 340-012-0054(1)(q). DEQ hereby assesses a $5,610 civil penalty for these violations.

IV. ORDER TO PAY CIVIL PENALTY

Based upon the foregoing FINDINGS OF FACTS AND CONCLUSIONS, Respondent is hereby ORDERED TO: Pay a total civil penalty of $5,610. The determination of the civil penalty is attached as Exhibit No. 1 and is incorporated as part of this Notice.

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

V. NOTICE OF RIGHT TO REQUEST A CONTESTED CASE HEARING

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

Active duty service-members have a right to stay proceedings under the federal Service members Civil Relief Act. For more information, please call the Oregon State Bar at 1-800-

///

///

452-8260 or the Oregon Military Department at 1-800-452-7500. Additional information can be found online at the United States Armed Forces Legal Assistance (AFLA) Legal Services Locator website http://legalassistance.law.af.mil/content/locator.php.

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

8/17/16
Date

Susan Ellsworth for
Leah K. Feldon, Manager
Office of Compliance and Enforcement

EXHIBIT No.1

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

VIOLATION : Causing or allowing to be initiated or maintained, the open burning of materials that are prohibited from being open burned, in violation of OAR 340-264-0060(3).

CLASSIFICATION: This is a Class I violation pursuant to OAR 340-012-0054(1)(q).

MAGNITUDE: The magnitude of the violation is major pursuant to OAR 340-012-0135(1)(i)(A) because Respondents initiated or allowed the initiation of open burning of five or more cubic yards of prohibited materials.

CIVIL PENALTY FORMULA: The formula for determining the amount of penalty of each violation is: BP + [(0.1 x BP) x (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)(ii) and applicable pursuant to OAR 340-012-0140(4)(a)(B).

"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 2 according to OAR 340-012-0145(4)(b), because there was more than one but less than seven occurrences of the violation. There were three occurrences of open burning on April 11, 2016, November 18, 2015, and November 19, 2015.

"M" is the mental state of the Respondent and receives a value of 8 according to OAR 340-012-0145(5)(d), because Respondents' conduct was reckless. There have been at least four instances of open burning at the property since September 2014. At each of these documented instances the Fire Department and/or Klamath County has informed persons present at the property that open burning is prohibited. On December 9, 2015, DEQ issued an "Expedited Enforcement Offer" to Respondents for violating open burning rules, including copies of opening burning rules and fact sheets. By allowing persons at the property to repeatedly conduct open burnings of debris, Respondents consciously disregarded a substantial and unjustifiable risk that the open burns of prohibited materials would occur at the property.

"C" is Respondent's efforts to correct or mitigate the violation and receives a value of -2 according to OAR 340-012-0145(6)(d), because Respondents eventually made some efforts to minimize the effects of the violation by cleaning up the burn pile.

"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 $219. This is the amount Respondent gained by avoiding spending $210 on landfill fees and gas to properly dispose of the debris that was burned at the property. This "EB" was calculated pursuant to OAR 340-012-0150(1) using the U.S. Environmental Protection Agency's BEN computer model.

PENALTY CALCULATION: Penalty = BP + [(0.1 x BP) x (P + H + O + M + C)] + EB
= $3,000 + [(0.1 x $3,000) x (0 + 0 + 2 + 8 + -2)] + $210
= $3,000 + [$300 x 8] + $210
= $3,000 + $2,400 + $210
= $5,610