Oregon
Kate Brown, Governor

Department of Environmental Quality
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August 17, 2016

CERTIFIED MAIL No. 7014 2870 0001 3373 5258

John Edward Watson
527 NW Elm Avenue, Suite 3
Box 129
Redmond OR 97756

Re: Notice of Civil Penalty Assessment and Order
Case No. AQ/OB-ER-2016-114

This letter is to inform you that DEQ has issued you a civil penalty of $2,676 for illegal open burning on April 6, 2016, at a property at 8025 N.W. Yucca Avenue in Redmond Oregon, on which you reside.

The Redmond Fire and Rescue Department discovered the burning remains of a motor home on the property. You were present on the property at that time and told the fire department that you were burning the motor home to dispose of it. The motor home contained plastic, wire, insulation, rubber and other materials that normally emit dense smoke or noxious odors when burned.

DEQ issued this penalty because open burning these materials is prohibited at all times statewide. Burning these materials poses a threat to the environment and public health, especially for the young, elderly, and those with respiratory conditions. Toxic chemical exposure can result from such burning, and each illegal burn contributes to the cumulative amount of pollution in the atmosphere.

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.

The enclosed 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 the 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 Susan Elworth, at (503) 229-5152.

Sincerely,

Leah K. Feldon, Manager
Office of Compliance and Enforcement

Enclosures

cc: Bonnie Hough, ER, Bend Office, DEQ
Captain Steve Pengra, Redmond Fire and Rescue Department, 341 NW Dogwood Avenue, Redmond OR 97756
Robert W. Thibodeau, 69460 NW 83rd Street, Redmond OR 97756

BEFORE THE ENVIRONMENTAL QUALITY COMMISSION
OF THE STATE OF OREGON

IN THE MATTER OF: JOHN EDWARD WATSON, Respondent.	)))	NOTICE OF CIVIL PENALTY ASSESSMENT AND ORDER CASE NO. AQ/OB-ER-2016-114

I. AUTHORITY

The Department of Environmental Quality (DEQ) issues this Notice of Civil Penalty Assessment and Order (Notice) pursuant to Oregon Revised Statutes (ORS) 468.100, 468.126 through 468.140, ORS Chapters 183 and 468A, and Oregon Administrative Rules (OAR) Chapter 340, Divisions 11, 12, and 264.

II. FINDINGS OF FACT

1. On April 6, 2016, Respondent resided at a property located at 8025 N.W. Yucca Avenue in Redmond, Oregon.

2. On April 6, 2016, the Redmond Fire and Rescue Department responded to a call regarding an explosion and smoke in the area of the property.

3. The fire department discovered the burning remains of a motor home on the property.

4. Respondent was present on the property at the time of the burning of the motor home.

III. CONCLUSIONS

Respondent violated OAR 340-264-0060(3) by causing or allowing the open burning of plastic, wire, insulation, rubber products and any other material which normally emits dense smoke or noxious odors. This is a Class I violation, according to OAR 340-012-0054(1)(q). DEQ hereby assesses a $2,676 civil penalty for this violation.

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 $2,676. The determination of the civil penalty is attached as Exhibit 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.

August 17, 2016
Date

Leah K. Feldon, 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: Causing or allowing the open burning of plastic, wire, insulation, rubber products and any other material which normally emits dense smoke or noxious odors, 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 Respondent caused or allowed the open burning of 5 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 $1,000 for a Class I, major magnitude violation in the matrix listed in OAR 340-012-0140(5)(b)(A)(i) and applicable pursuant to OAR 340-012-0140(5)(a)(A). Respondent violated an open burning rule at his residence.

"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. The burning occurred on one day only - April 6, 2016.

"M" is the mental state of the Respondent and receives a value of 2 according to OAR 340-012-0145(5)(b), because Respondent had constructive knowledge (reasonably should have known) of the requirement. A reasonable person should have known that it is illegal to burn a motor home.

"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 $1,476. This is the amount Respondent gained by avoiding spending $1,450 to properly dispose of the motorhome. 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
= $1,000 + [(0.1 x $1,000) x (0 + 0 + 0 + 2 + 0)] + $1,476
= $1,000 + [$100 x 2] + $1,476
= $1,000 + $200 + $1,476
= $2,676