



Oregon

Kate Brown, Governor

Department of Environmental Quality

Headquarters
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Portland, OR 97204-1390
(503) 229-5696
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TTY: 711

September 15, 2016

CERTIFIED MAIL No. 70142870000133736392

Jason Ellsworth Shannon
Rachel Dawn Shannon
25183 E. Bolton Road
Veneta, OR 97487

Re: Notice of Civil Penalty Assessment and Order to Comply
Case No. WQ/OS-WR-2016-109

This letter is to inform you that DEQ has issued you a civil penalty of \$900 for owning or operating an onsite system that discharged untreated or partially treated sewage onto the ground surface at your property in Veneta. This is a violation of Oregon environmental law.

DEQ issued this penalty because the discharge of untreated or partially treated sewage onto the ground surface 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 connecting your property to the City of Veneta's sewer system. DEQ considered these efforts when determining the amount of civil penalty. However, since you have not properly decommissioned the onsite system at your property, included in Section IV is an order requiring you to do so within thirty (30) days of this Notice becoming final.

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.



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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,



Sarah G. Wheeler, Acting Manager
Office of Compliance and Enforcement

Enclosures

cc: Dan Wiltse, Eugene Office, DEQ
George Ehlers, Lane County Dept. of Public Works: George.Ehlers@co.lane.or.us
Kyle Schauer, City of Veneta Dept. of Public Works, kschauer@ci.veneta.or.us

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

3
4 IN THE MATTER OF:) NOTICE OF CIVIL PENALTY
5 JASON ELLSWORTH SHANNON,) ASSESSMENT AND ORDER
6 and RACHEL DAWN SHANNON,) TO COMPLY
7 individuals,)
8 Respondents.) NO. WQ/OS-WR-2016-109

9 I. AUTHORITY

10 The Department of Environmental Quality (DEQ) issues this Notice of Civil Penalty
11 Assessment and Order to Respondents, jointly and severally, pursuant to Oregon Revised Statutes
12 (ORS) 468.100 and 468.126 through 468.140, ORS Chapters 183, 454 and 468B, and Oregon
13 Administrative Rules (OAR) Chapter 340, Divisions 011, 012, and 071.

14 II. FINDINGS OF FACT

- 15 1. At all material times, Respondents owned or resided at the residential property
16 located at 25183 East Bolton Road in Veneta, Lane County, Oregon (Tax Lot No. 3600) (the
17 Property).
- 18 2. At all material times, Respondents owned or operated the onsite sewage treatment
19 and disposal system serving the Property.
- 20 3. On or about February 19, 2016 and June 22, 2016, Lane County staff inspected the
21 Property and observed untreated or partially treated sewage being discharged onto the ground
22 surface.
- 23 4. On or about August 8, 2016, Respondents connected the Property to the City of
24 Veneta's sewer system.
- 25 5. As of the date of this Notice, Respondents have not decommissioned the onsite
26 sewage treatment and disposal system at the Property.
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III. CONCLUSION

On or about February 19, 2016 and June 22, 2016, Respondents violated OAR 340-071-0130(3) by owning or operating an onsite system that was discharging untreated or partially treated sewage onto the ground surface, as described in Section II above. This is a Class I violation according to OAR 340-012-0060(1)(d). DEQ hereby assesses a \$900 civil penalty for this violation.

IV. ORDER TO PAY CIVIL PENALTY AND TO COMPLY

Based upon the foregoing FINDINGS OF FACTS AND CONCLUSIONS, Respondents are hereby ORDERED TO:

1. Pay a total civil penalty of \$900. 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.

2. Comply with the Oregon law by properly decommissioning the onsite system at the Property within thirty (30) days of this Notice becoming 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, 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

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.

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

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

20
21 September 15, 2016
22 Date

21 Sarah Wheeler
22 Sarah G. Wheeler, Acting Manager
23 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: Owning, operating or using an onsite wastewater treatment system or part thereof that is discharging sewage or effluent to the ground surface, 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 \$500 for a Class I, moderate magnitude violation in the matrix listed in OAR 340-012-0140(5)(b)(A)(ii) and applicable pursuant to OAR 340-012-0140(5)(a)(D) because Respondent violated an onsite sewage disposal statute, rule or permit and is 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 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 were more than one but less than seven occurrences of the violation. Lane County staff documented the discharge of sewage onto the ground surface on two days, on or about February 19, 2016 and June 22, 2016.

"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. Respondents owned or resided at the property while the system was failing and discharging sewage onto the ground surface. On March 8, 2016, Lane County staff sent a letter informing Respondents of the violation and the requirement to connect to city sewer. Respondents failed to take corrective action, and Lane County referred the matter to DEQ. On May 27, 2016, DEQ issued a Warning Letter informing Respondents of the violation and requesting that they take corrective action by pumping the septic tank to prevent continued sewage discharge and connect the property to city sewer. Respondents did not reply to DEQ's letter or take any corrective actions

until they connected the property to sewer on or about August 8, 2016. By continuing to operate the system in a manner which allowed untreated or partially treated sewage to be discharged onto the ground surface, Respondents consciously disregarded a substantial and unjustifiable risk that they would violate the law. Since the discharge of raw or partially treated sewage is a threat to public health and the environment, this risk was of such a nature and degree that disregarding it 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 Respondents eventually made some efforts to correct the violation. Respondents connected their property to the City of Veneta's sewer system on or about August 8, 2016, but have not decommissioned the onsite system.

"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: $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$

$$\begin{aligned} &= \$500 + [(0.1 \times \$500) \times (0 + 0 + 2 + 8 + (-2))] + \$0 \\ &= \$500 + [(\$50) \times (8)] + \$0 \\ &= \$500 + \$400 + \$0 \\ &= \$900 \end{aligned}$$