



# Oregon

Kate Brown, Governor

Department of Environmental Quality  
Office of Compliance and Enforcement  
700 NE Multnomah Street, Suite 600  
Portland, OR 97232-4100  
(503) 229-5696  
FAX (503) 229-5100  
TTY 711

September 14, 2021

CERTIFIED MAIL: 7018 1830 0001 5903 8938

Earth Peoples Park, a registered nonprofit corporation  
c/o Steven Shirley I, Registered Agent  
212 S. Old Stage Road  
Cave Junction OR, 97523

CERTIFIED MAIL: 7018 1830 0001 5903 8945

Timin Murray  
P.O. Box 94  
Cave Junction OR, 97523

Re: Notice of Civil Penalty Assessment and Order  
Case No. LQ/SW-ER-2021-130

*DEQ is committed to balancing its vital obligation to enforce the law and protect the environment with a consideration of the dramatic disruptions to public health and the economy caused by the COVID-19 outbreak. We understand the outbreak may impact your ability to timely appeal, pay the assessed civil penalty, or comply with this order. You may submit to DEQ documentation identifying whether COVID-19-related disruption affects your ability to comply with this order. Visit our webpage <https://www.oregon.gov/deq/Pages/covid-19.aspx> for more information about documenting specific COVID-19 disruptions your facility may be encountering and how that affects your ability to comply. DEQ will exercise reasonable discretion regarding settlement of this order.*

This letter is to inform you that DEQ has issued you a civil penalty of \$84,647 for operating an unpermitted solid waste disposal site at property you own near Highway 199 north of Selma and an adjacent property owned by the Bureau of Land Management. Specifically, you allowed the disposal of approximately 2,400 cubic yards of solid waste including cars, trailers, tires, household garbage, discarded furniture, marijuana waste, wood waste, plastic waste, discarded fertilizer containers, and abandoned pit toilets. In addition, DEQ has penalized you for the unlawful burning of wastes, including plastics, tires, appliances, automotive parts, and aerosol cans. Finally, DEQ cited you, without penalty, for placing wastes within the banks or immediately adjacent to Anderson Creek and its tributaries, which flow into the Illinois River and are essential salmonid habitat.

DEQ issued this penalty because it is against the law to dispose of solid waste anywhere except at a permitted disposal facility such as a landfill or transfer station. Illegal dumps diminish livability and can threaten human health and the environment by creating habitat for disease carrying insects and rodents and polluting ground and surface waters. Openly burning plastic and garbage, and many other items

which normally emit dense smoke or noxious odors, is prohibited at all times because it releases harmful chemicals into the air, which can negatively impact air quality and public health.

Included in Section IV of the attached Notice is an order requiring you to submit to DEQ documentation showing that you have removed and properly disposed of all of the solid waste on the properties within 45 days. \$56,176 of the civil penalty represents the economic benefit you gained by failing to dispose of the solid waste. If you dispose of the waste, 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 hearing within 20 calendar days from your receipt of this letter. The hearing request must be in writing. Send your request to DEQ Office of Compliance and Enforcement:

Via mail – 700 NE Multnomah Street, Suite 600, Portland, Oregon 97232

Via email – [DEQappeals@deq.state.or.us](mailto:DEQappeals@deq.state.or.us)

Via fax – 503-229-6762

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 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 instead of paying a penalty. Further information is available by calling the number below or at <http://www.oregon.gov/deq/Regulations/Pages/SEP.aspx>.

DEQ's rules are available at <http://www.oregon.gov/deq/Regulations/Pages/Statutes.aspx> or by calling the number below.

If you have any questions, please contact Susan Elworth at 503-229-5152 or toll free in Oregon at 800-452-4011, extension 5152.

Sincerely,



Kieran O'Donnell, Manager  
Office of Compliance and Enforcement

Enclosures

cc: Brian Fuller, WR, Eugene office, DEQ

BEFORE THE ENVIRONMENTAL QUALITY COMMISSION  
OF THE STATE OF OREGON

IN THE MATTER OF: )  
EARTH PEOPLES PARK, a registered ) NOTICE OF CIVIL PENALTY  
domestic nonprofit corporation, and ) ASSESSMENT AND ORDER  
TIMIN MURRAY, )  
Respondents. ) CASE NO. LQ/SW-WR-2021-130

I. AUTHORITY

DEQ issues this Notice of Civil Penalty Assessment and Order (Notice) pursuant to Oregon Revised Statutes (ORS) 468.100, ORS 468.126 through 468.140, ORS 459.995, ORS Chapters 183, 459 and 468B, and Oregon Administrative Rules (OAR) Chapter 340, Divisions 011, 012, 093, 248 and 264.

II. FINDINGS OF FACT

1. Since April 2015, Respondents have owned eight properties located near Highway 199 north of Selma, Oregon in Josephine County with Map and Tax lot numbers: 37-08-25-00-000206-00, 37-08-25-00-000205-00, 37-08-25-00-000207-00, 37-08-25-00-000204-00, 37-08-25-00-000208-00, 37-08-25-00-000200-00, and 37-08-25-00-000212, 37-08-25-00-000213-00, (the Hayes Hill Properties).

2. The Bureau of Land Management owns a property with Map and Tax lot number 37-08-35-00-000100-11, (BLM Property), located adjacent to the Hayes Hill Properties.

3. Anderson Creek and its tributaries flow through and are immediately adjacent to both the Hayes Hill and BLM Properties. Anderson Creek is a tributary of the Illinois River.

4. On June 14, 2021, DEQ conducted an inspection of the Hayes Hill Properties and the BLM Property (collectively The Properties). At the time of the inspection Respondents had disposed of approximately 2,400 cubic yards of the following waste (collectively the Wastes) at the Properties:

a. Approximately 9,800 potting bags containing growth medium and root balls (totaling approximately 1,710 cubic yards);

b. Approximately 310 cubic yards of dead marijuana stalks and leaves;

c. Approximately 17 cubic yards of plastic debris including netting, buckets, pipes and tanks;

- 1 d. 7 motorhomes, 17 cars/trucks, and 4 camper shells (totaling approximately 185 cubic  
2 yards);
- 3 e. Approximately 190 tires (totaling approximately 19 cubic yards);
- 4 f. Approximately 130 cubic yards of household garbage and furniture;
- 5 g. Approximately 40 cubic yards of wood debris, including pallets, stakes, poles and  
6 dimensional lumber;
- 7 h. Multiple discarded containers of fertilizer, several of which were leaking onto the  
8 ground; and
- 9 i. Four pit toilets.

10 5. Some of the wastes referenced in Section II, paragraph 4 above was either immediately  
11 adjacent to or within the banks of Anderson Creek or its tributaries.

12 6. On June 14, 2021, there were multiple areas on the Properties where wastes had been  
13 burned, including two burn barrels containing charred plastics and food, and thirteen separate piles  
14 containing charred plastics, furniture, tires, mattresses, electrical wires, appliances, aerosol cans,  
15 automobile parts, and PVC pipe. Additionally, there were the charred remains of three recreational  
16 vehicles, which included metal, plastic, and fiberglass.

17 7. Respondents do not have a solid waste disposal site permit issued by DEQ for the  
18 Properties.

### 19 III. CONCLUSIONS

20 1. Respondents violated ORS 459.205 and OAR 340-093-0050 by establishing, operating and  
21 maintaining an unpermitted disposal site as described in Section II, paragraphs 1, 4, and 7 above.  
22 Specifically, Respondents disposed of the Wastes at the Properties without a permit issued by DEQ.  
23 The Wastes are "solid waste," as defined by ORS 459.005(24) because they are useless and discarded  
24 materials. The Properties make up a "disposal site," as defined by ORS 459.005(8)(a), because they are  
25 land used for the disposal of solid waste. This is a Class I violation according to OAR 340-012-  
26 0065(1)(a). DEQ assesses an \$80,176 civil penalty for this violation.

27 ////

1 2. Respondents violated OAR 340-264-0060(3) by causing or allowing the open burning of  
2 plastic, garbage, fiberglass, tires and other materials that normally emit dense smoke or noxious odors, as  
3 described in Section II, paragraph 6. Per OAR 340-264-0060(1)(a), as the owners of the Hayes Hill  
4 Properties, Respondents are strictly liable for the burning which occurred on those properties. This is a  
5 Class I violation, according to OAR 340-012-0054(1)(w). DEQ assesses a \$4,471 civil penalty for this  
6 violation.

7 3. Respondents violated ORS 468B.025(1)(a) by placing wastes where they are likely to escape or  
8 be carried into waters of the state, as described in Section II, paragraphs 4 and 5. Specifically,  
9 Respondents placed the Wastes near Anderson Creek and its tributaries which are "waters of the state," as  
10 defined by ORS 468B.005(10). The Wastes are "waste" as defined by ORS 468B.005(9), because they  
11 will or may alter the physical, chemical or biological properties of waters of the state, which will or tend  
12 to render such waters harmful to beneficial uses of the waters including aquatic life. This is a Class II  
13 violation, according to OAR 340-012-0055(2)(c). DEQ did not assess a civil penalty for this violation.

14 IV. ORDER TO PAY CIVIL PENALTY AND TO COMPLY

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

17 1. Pay a total civil penalty of \$84,647. The determination of the civil penalties are attached as  
18 Exhibits 1 and 2 and are incorporated as part of this Notice. If you do not file a request for hearing as set  
19 forth in Section V below, your check or money order must be made payable to "**State Treasurer, State of**  
20 **Oregon**" and sent to the **DEQ, 700 NE Multnomah Street, Suite 600, Portland, Oregon 97232.**

21 2. Within 60 days of this order becoming final by operation of law or on appeal, submit  
22 documentation of the proper disposal of the Wastes located on the Properties to: Susan Elworth, DEQ,  
23 Office of Compliance and Enforcement, 700 NE Multnomah Street, Suite 600, Portland Oregon, 97232.

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

25 You have a right to a contested case hearing on this Notice, if you request one in writing. DEQ  
26 must receive your request for hearing **within 20 calendar days** from the date you receive this Notice. If  
27 you have any affirmative defenses or wish to dispute any allegations of fact in this Notice or attached

1 exhibits, you must do so in your request for hearing, as factual matters not denied will be considered  
2 admitted, and failure to raise a defense will be a waiver of the defense. (See OAR 340-011-0530 for  
3 further information about requests for hearing.) You must send your request to: **DEQ, Office of**  
4 **Compliance and Enforcement, 700 NE Multnomah Street, Suite 600, Portland, Oregon 97232**, fax  
5 it to **503-229-5100** or email it to **DEQappeals@deq.state.or.us**. An administrative law judge  
6 employed by the Office of Administrative Hearings will conduct the hearing, according to ORS  
7 Chapter 183, OAR Chapter 340, Division 011 and OAR 137-003-0501 to 0700. You have a right to be  
8 represented by an attorney at the hearing, however you are not required to be. If you are an individual,  
9 you may represent yourself. If you are a corporation, partnership, limited liability company,  
10 unincorporated association, trust or government body, you must be represented by an attorney or a duly  
11 authorized representative, as set forth in OAR 137-003-0555.

12 Active duty Service members have a right to stay proceedings under the federal Service  
13 Members Civil Relief Act. For more information contact the Oregon State Bar at 1-800-  
14 452-8260, the Oregon Military Department at 503-584-3571, or the nearest United States Armed  
15 Forces Legal Assistance Office through <http://legalassistance.law.af.mil>. The Oregon Military  
16 Department does not have a toll free telephone number.

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

23  
24  
25 9/14/2021  
26 Date

25   
26 Kieran O'Donnell, Manager  
27 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: Establishing, operating and maintaining an unpermitted disposal site, in violation of ORS 459.205 and OAR 340-093-0050.

CLASSIFICATION: This is a Class I violation pursuant to OAR 340-012-0065(1)(a).

MAGNITUDE: The magnitude of the violation is major pursuant to OAR 340-012-0135(3)(a)(A) because Respondents established an unpermitted solid waste disposal site with more than 400 cubic yards of solid waste. The Properties contain approximately 2,400 cubic yards of solid waste.

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 \$12,000 for a Class I, major magnitude violation in the matrix listed in OAR 340-012-0140(2)(b)(A)(i) and applicable pursuant to OAR 340-012-0140(2)(a)(Q)(i). Respondents should have had a solid waste disposal permit.

"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 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 offense. The violation has been on-going since at least June 14, 2021.

"M" is the mental state of the Respondent, and receives a value of 4 according to OAR 340-012-0145(5)(c) because Respondents' conduct was negligent. Negligence means Respondents failed to take reasonable care to avoid a foreseeable risk of conduct constituting or resulting in a violation. When Respondents allowed the disposal of solid waste onto the Properties, they failed to take reasonable care to avoid the foreseeable risk that doing so would violate the law.

"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 Respondents 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). Respondents have not disposed of the solid waste.

"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 \$56,176. This is the amount Respondents gained by avoiding spending \$55,693 to dispose of approximately 2,400 cubic yards of solid waste since June 2021. This "EB" was calculated pursuant to OAR 340-012-0150(1) using the U.S. Environmental Protection Agency's BEN computer model.

PENALTY CALCULATION:  $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$   
 $= \$12,000 + [(0.1 \times \$12,000) \times (0 + 0 + 4 + 4 + 2)] + \$56,176$   
 $= \$12,000 + (\$1,200 \times 10) + \$56,176$   
 $= \$12,000 + \$12,000 + \$56,176$   
 $= \$80,176$



EXHIBIT 2

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

VIOLATION 2: Openly burning plastic, garbage, fiberglass, tires and other materials that normally emit 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)(w).

MAGNITUDE: The magnitude of the violation is major pursuant to OAR 340-012-0135(1)(j)(A) because Respondents burned more than 5 cubic yards of prohibited materials. DEQ estimates that Respondents burned approximately 12 to 15 cubic yards of prohibited materials.

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 \$3,000 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(4)(a)(A). Respondents are not listed under another penalty matrix.

"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 is insufficient information on which to base a finding under paragraphs (4)(b) through (4)(d). DEQ is unable to determine on how many occasions Respondents burned prohibited materials.

"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. When Respondents allowed the disposal of solid waste onto the Properties, they failed to take reasonable care to avoid the foreseeable risk that a portion of that solid waste would be disposed of by open burning, including the burning of prohibited materials.

"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 the violation or the effects of the violation could not be corrected.

"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 \$271. This is the amount Respondents gained by avoiding, since June 2021, spending \$268 to dispose of approximately 12 cubic yards of prohibited materials that were burned. This "EB" was calculated pursuant to OAR 340-012-0150(1) using the U.S. Environmental Protection Agency's BEN computer model.

PENALTY CALCULATION:  $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$   
= \$3,000 + [(0.1 x \$3,000) x (0 + 0 + 0 + 4 + 0)] + \$271  
= \$3,000 + (\$300 x 4) + \$271  
= \$3,000 + \$1,200 + \$271  
= \$4,471