



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 3, 2021

CERTIFIED MAIL: 7018 1830 0001 5903 8907

Kenneth J. and Amie M. Barnard
94583 Quarry Road
Gold Beach OR 97444

Re: Notice of Civil Penalty Assessment and Order
Case No. LQ/SW-WR-2021-114

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 \$19,200 for operating a solid waste disposal site without a permit at your property located at 94583 Quarry Road in Gold Beach. Specifically, since you became the owner of the property in August 2020, you have been paid to accept from Curry Transfer and Recycling approximately 4,800 cubic yards of yard and garden debris and vegetative waste at the property. In addition, you have used this waste material as a feedstock for composting. However, you have not applied for a permit allowing you to operate a solid waste compost facility at the property.

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 water. For composting to occur, oxygen must move throughout a compost pile. A composting permit would require sampling for oxygen, temperature and moisture on a regular basis, to ensure that excess water does not fill the pore space, impeding the movement of oxygen and resulting in foul smells.

Included in Section IV of the attached Notice of Civil Penalty Assessment and Order is an order requiring you to submit the documentation required under OAR 340-096-0080 so that DEQ can determine which type of permit you will be required to obtain for your composting operation. DEQ appreciates your efforts to work with DEQ to submit this documentation and considered these efforts when determining the amount of civil penalty.

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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
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: David Esch, Medford office, DEQ

1 BEFORE THE ENVIRONMENTAL QUALITY COMMISSION

2 OF THE STATE OF OREGON

3 IN THE MATTER OF:) NOTICE OF CIVIL PENALTY
4 KENNETH J. AND AMIE M. BARNARD,) ASSESSMENT AND ORDER
5 Respondents.) CASE NO. LQ/SW-WR-2021-114

6 I. AUTHORITY

7 The Department of Environmental Quality (DEQ) issues this Notice of Civil Penalty Assessment
8 and Order (Notice) pursuant to Oregon Revised Statutes (ORS) 468.100, ORS 468.126 through 468.140,
9 ORS 459.995, ORS Chapter 183 and Oregon Administrative Rules (OAR) Chapter 340, Divisions 011,
10 012, 093 and 096.

11 II. FINDINGS OF FACT

12 1. Since August 2020, Respondents have owned a property located at 94583 Quarry Road
13 in Gold Beach, Oregon (the Property).

14 2. Between August and December 2020, Respondents accepted approximately 168 tons
15 (1,100 cubic yards) of yard and garden debris and other vegetative wastes onto the Property from Curry
16 Transfer and Recycling.

17 3. Between January 1, 2021 and June 18, 2021, Respondents accepted approximately 561
18 tons (3,720 cubic yards) of yard and garden debris and other vegetative wastes onto the Property from
19 Curry Transfer and Recycling.

20 4. Respondents are currently using the yard and garden debris and other vegetative waste
21 to produce compost.

22 5. Respondents have not applied for or been issued a solid waste disposal site permit for
23 the Property.

24 III. CONCLUSIONS

25 Respondents violated ORS 459.205 and OAR 340-093-0050 by operating and maintaining an
26 unpermitted disposal site. Specifically, Respondents accepted yard and garden debris and other
27 vegetative waste at the Property without a Permit. The yard and garden debris and other vegetative

1 wastes are "solid wastes," as defined in OAR 340-093-0030(91), because they were discarded
2 vegetative materials; and more specifically, "Type I feedstock," as that term is defined in OAR 340-
3 093-0030(43)(a), because the yard and garden debris and other vegetative wastes are being used in a
4 composting process to produce compost. As set forth in OAR 340-096-0060(3)(a), Respondents are
5 not exempt from the requirement to obtain a permit because Respondents are composting more than
6 100 tons of Type I feedstock. This is a Class I violation according to OAR 340-012-0065(1)(a). DEQ
7 assesses a \$19,200 civil penalty for this violation.

8 IV. ORDER TO PAY CIVIL PENALTY AND TO COMPLY

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

11 1. Pay a total civil penalty of \$19,200. The determination of the civil penalty is attached as
12 Exhibit 1 and is incorporated as part of this Notice. If you do not file a request for hearing as set forth in
13 Section V below, your check or money order must be made payable to "**State Treasurer, State of**
14 **Oregon**" and sent to the **DEQ, Business Office, 700 NE Multnomah Street, Suite 600, Portland,**
15 **Oregon 97232.**

16 2. Within 30 days of this order becoming final by operation of law or on appeal, submit the
17 documentation required under OAR 340-096-0080; or dispose of the waste exceeding 100 tons at a
18 disposal facility permitted to accept the waste and submit documentation of that disposal to: David
19 Esch, DEQ, 221 Stewart Avenue, Suite 201, Medford OR 97501.

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

21 You have a right to a contested case hearing on this Notice, if you request one in writing. DEQ
22 must receive your request for hearing **within 20 calendar days** from the date you receive this Notice. If
23 you have any affirmative defenses or wish to dispute any allegations of fact in this Notice or attached
24 exhibit, you must do so in your request for hearing, as factual matters not denied will be considered
25 admitted, and failure to raise a defense will be a waiver of the defense. (See OAR 340-011-0530 for
26 further information about requests for hearing.) You must send your request to: **DEQ, Office of**
27 **Compliance and Enforcement, 700 NE Multnomah Street, Suite 600, Portland, Oregon 97232,** fax

1 it to **503-229-6762** or email it to **DEQappeals@deq.state.or.us**. An administrative law judge
2 employed by the Office of Administrative Hearings will conduct the hearing, according to ORS
3 Chapter 183, OAR Chapter 340, Division 011 and OAR 137-003-0501 to 0700. You have a right to be
4 represented by an attorney at the hearing, however you are not required to be. If you are an individual,
5 you may represent yourself. If you are a corporation, partnership, limited liability company,
6 unincorporated association, trust or government body, you must be represented by an attorney or a duly
7 authorized representative, as set forth in OAR 137-003-0555.

8 Active duty Service members have a right to stay proceedings under the federal Service
9 Members Civil Relief Act. For more information contact the Oregon State Bar at 1-800-
10 452-8260, the Oregon Military Department at 503-584-3571, or the nearest United States Armed
11 Forces Legal Assistance Office through <http://legalassistance.law.af.mil>. The Oregon Military
12 Department does not have a toll free telephone number.

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

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22 9/3/2021
23 Date



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26
27 Kieran O'Donnell, 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 NO. 1 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 disposal site with more than 400 cubic yards of solid waste. DEQ estimates that Respondents accepted approximately 4,800 cubic yards of vegetative waste at the Property in 2020 and 2021.
- 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). Respondents should have had a solid waste disposal site permit prior to allowing the disposal of solid waste at the Property.
- "P" is whether Respondents have 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 Respondents, and receives a value of 0 according to OAR 340-012-0145(2)(a)(A), because there are no prior significant actions.
- "H" is Respondents' 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 2020.
- "M" is the mental state of the Respondents, and receives a value of 4 according to OAR 340-012-0145(5)(c) because Respondent's conduct was negligent. Negligence means Respondents failed to take reasonable care to avoid a foreseeable risk of conduct constituting or resulting in a violation. Respondents have had discussions with DEQ and ODA regarding using the Property as a composting facility. When they began accepting feedstock prior to submitting the required documentation, they failed to take reasonable care to avoid the risk of operating an unpermitted disposal site.

"C" is Respondents' 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 correct the violation. Respondents are working with DEQ and the county to obtain and submit the required information.

"EB" is the approximate dollar value of the benefit gained and the costs avoided or delayed as a result of the Respondents' 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 \$0 as DEQ is unable to make an estimate of any costs delayed or avoided as a result of this violation.

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)] + \0
 $= \$12,000 + (\$1,200 \times 6) + \$0$
 $= \$12,000 + \$7,200 + \$0$
 $= \$19,200$