



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 10, 2021

CERTIFIED MAIL: 7018 1830 0001 5903 8921

Rusty Stegall
360 Gordon Way North
Grants Pass, OR 97527-4508

Re: Notice of Civil Penalty Assessment and Order
Case No. LQ/SW-WR-2021-087

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 the Oregon Department of Environmental Quality (DEQ) has issued you a civil penalty of \$2,285 for disposing of solid waste at an unpermitted location. Specifically, you disposed of approximately 75 cubic yards of solid waste, including various vehicles and vehicle parts, waste tires, batteries, furniture, appliances, and miscellaneous household garbage at a Bureau of Land Management property near Eastman Gulch, Oregon.

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.

Included in Section IV of the enclosed Notice is an order requiring you to submit documentation (e.g. disposal receipts, photos) demonstrating compliance to: Sarah Wheeler, DEQ, Office of Compliance and Enforcement, 700 NE Multnomah St., Ste. 600, Portland, Oregon 97232.

DEQ appreciates your efforts to correct the violation by removing the solid waste from the Property after instruction from DEQ and BLM. DEQ considered these efforts when determining the amount of civil penalty.

Rusty Stegall
Case No. LQ/SW-WR-2021-087
Page 2

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 Sarah Wheeler at 503-229-6927 or toll free in Oregon at 800-452-4011, extension 6927.

Sincerely,



Kieran O'Donnell, Manager
Office of Compliance and Enforcement

Enclosures

cc: Brian Fuller, DEQ
Accounting, DEQ

BEFORE THE ENVIRONMENTAL QUALITY COMMISSION
OF THE STATE OF OREGON

IN THE MATTER OF:) NOTICE OF CIVIL PENALTY
Rusty Stegall,) ASSESSMENT AND ORDER
an individual,)
Respondent.) CASE NO. LQ/SW-WR-2021-087

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, ORS 468.126 through 468.140, ORS 459.995, ORS Chapter 183 and Oregon Administrative Rules (OAR) Chapter 340, Divisions 011, 012, and 093.

II. FINDINGS OF FACT

1. Respondent occupied real property located on Bureau of Land Management (BLM) property, near Eastman Gulch, Oregon, at approximately Lat 42.647983, Long - 123.258111 (the Property).

2. On April 5, 2021, DEQ conducted a joint inspection of the Property with BLM.

3. At the time of the inspection, various vehicles and vehicle parts, batteries, tires, furniture, pipes, hoses, buckets, drums, mining equipment, appliances, construction materials, miscellaneous household garbage, and a trailer of garbage (collectively the Materials), totaling approximately 75 cubic yards of material were discarded at the Property.

4. Respondent does not have a solid waste disposal site permit for the Property.

III. CONCLUSIONS

1. Respondent has violated OAR 340-093-0040(1) by disposing of solid waste at an unpermitted location. Specifically, on or before April 5, 2021, Respondent disposed of the Materials at the Property. The Materials are "solid waste" as defined by OAR 340-093-0030(91) because they are useless and discarded. This is a Class I violation, according to OAR 340-012-0065(1)(c). DEQ hereby assesses a \$2,285 civil penalty for this violation.

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1 IV. ORDER TO PAY CIVIL PENALTY AND TO COMPLY

2 Based upon the foregoing FINDINGS OF FACTS AND CONCLUSIONS, Respondent is
3 hereby ORDERED TO:

4 1. Pay a total civil penalty of \$2,285. The determination of the civil penalty is attached as Exhibit
5 1 and is incorporated as part of this Notice.

6 If you do not file a request for hearing as set forth in Section V below, your check or money
7 order must be made payable to "State Treasurer, State of Oregon" and sent to the **DEQ, Business**
8 **Office, 700 NE Multnomah Street, Suite 600, Portland, Oregon 97232.**

9 2. Within 30 days of this order becoming final by operation of law or on appeal, submit
10 documentation (e.g. receipts, photos) demonstrating Respondent's compliance and where the solid
11 waste was disposed of to: Sarah Wheeler, DEQ, Office of Compliance and Enforcement, 700 NW
12 Multnomah Street, Suite 600, Portland, OR 97232.

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

14 You have a right to a contested case hearing on this Notice, if you request one in writing. DEQ
15 must receive your request for hearing **within 20 calendar days** from the date you receive this Notice. If
16 you have any affirmative defenses or wish to dispute any allegations of fact in this Notice or attached
17 exhibit, you must do so in your request for hearing, as factual matters not denied will be considered
18 admitted, and failure to raise a defense will be a waiver of the defense. (See OAR 340-011-0530 for
19 further information about requests for hearing.) You must send your request to: **DEQ, Office of**
20 **Compliance and Enforcement, 700 NE Multnomah Street, Suite 600, Portland, Oregon 97232**, fax
21 it to **503-229-6762** or email it to DEQappeals@deq.state.or.us. An administrative law judge
22 employed by the Office of Administrative Hearings will conduct the hearing, according to ORS
23 Chapter 183, OAR Chapter 340, Division 011 and OAR 137-003-0501 to 0700. You have a right to be
24 represented by an attorney at the hearing, however you are not required to be. If you are an individual,
25 you may represent yourself. If you are a corporation, partnership, limited liability company,
26 unincorporated association, trust or government body, you must be represented by an attorney or a duly
27 authorized representative, as set forth in OAR 137-003-0555.

1 Active duty Service members have a right to stay proceedings under the federal Service
2 Members Civil Relief Act. For more information contact the Oregon State Bar at 1-800-
3 452-8260, the Oregon Military Department at 503-584-3571, or the nearest United States Armed
4 Forces Legal Assistance Office through <http://legalassistance.law.af.mil>. The Oregon Military
5 Department does not have a toll free telephone number.

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

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14 9/10/2021

15 Date

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17 Kieran O'Donnell, Manager
18 Office of Compliance and Enforcement
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EXHIBIT 1

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

- VIOLATION NO. 1 Disposing of solid waste at an unpermitted site in violation of OAR 340-093-0040(1).
- CLASSIFICATION: This is a Class I violation pursuant to OAR 340-012-0065(1)(c).
- MAGNITUDE: The magnitude of the violation is moderate pursuant to OAR 340-012-0135(3)(a)(B) because Respondent disposed of approximately 75 cubic yards of solid waste at an unpermitted location.
- 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 \$1,500 for a Class I, moderate 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)(A).
- "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 occurrence. The violation began at the latest on April 5, 2021 when DEQ conducted a site visit and continued until at least May 21, 2021. Therefore, there are more than 28 occurrences of the violation.
- "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. Negligent means the respondent failed to take reasonable care to avoid a foreseeable risk of conduct constituting or resulting in a violation, as defined in OAR 340-012-0030(15). Respondent received a Warning Letter with an Opportunity to Correct the violation in April 2021, so he was aware of the requirement, but did not respond to DEQ. By disposing of the solid waste on BLM land rather than a permitted site, Respondent failed to exercise reasonable care to avoid the foreseeable risk of committing the violation.
- "C" is Respondent's efforts to correct or mitigate the violation, and receives a value of -3 according to OAR 340-012-0145(6)(c) because Respondent made reasonable efforts to

minimize the effects of the violation. Respondent removed the solid waste from the Property within four months after the initial inspection and prompting by DEQ and BLM.

"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 \$35. This is the amount Respondent gained by delaying spending \$3,806.25 to properly dispose of the solid waste materials from April 5 to August 5, 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: $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$
 $= \$1,500 + [(0.1 \times \$1,500) \times (0 + 0 + 4 + 4 + (-3))] + \35
 $= \$1,500 + (\$150 \times 5) + \$35$
 $= \$1,500 + \$750 + \$35$
 $= \$2,285$