



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 1, 2021

CERTIFIED MAIL: 7018 1830 0001 5903 8877

Samuel E. Humbert
53293 Triangle Road
Milton-Freewater OR 97862

Re: Notice of Civil Penalty Assessment and Order
Case No. LQ/SW-ER-2021-110

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 \$57,282 for operating a solid waste disposal site without a permit at your property located outside of Milton-Freewater. From July 2019 to May 2021, you disposed of approximately 2,700 cubic yards of used windmill parts at the property. In addition, DEQ cited you, without penalty, for placing wastes in a location where they may enter a water of the state, because you disposed of some of the waste windmill parts into or immediately adjacent to wetlands on 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. DEQ is particularly concerned by your conduct because you have owned and operated a permitted solid waste disposal facility at a different location for many years and had actual knowledge of the permit requirement.

Included in Section IV of the attached Notice of Civil Penalty Assessment and Order is an order requiring you to properly dispose of the solid waste located at your property within 90 days. \$30,882 of the civil penalty represents the economic benefit you gained by failing to properly dispose of the waste. If you complete this requirement, DEQ will consider recalculating the costs as delayed rather than avoided and will reduce the civil penalty accordingly. DEQ appreciates your efforts to dispose of a portion of the windmill parts and considered these efforts when determining the amount of civil penalty.

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:

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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: Eric Boone, The Dalles, DEQ
Michael Kennedy, NWR, DEQ

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

3 IN THE MATTER OF:) NOTICE OF CIVIL PENALTY
4 SAMUEL E. HUMBERT,) ASSESSMENT AND ORDER
Respondent.) CASE NO. LQ/SW-ER-2021-110

5 I. AUTHORITY

6 The Department of Environmental Quality (DEQ) issues this Notice of Civil Penalty Assessment
7 and Order (Notice) pursuant to Oregon Revised Statutes (ORS) 468.100, ORS 468.126 through 468.140,
8 ORS 459.995, ORS Chapters 183, 459 and 468B, Oregon Administrative Rules (OAR) Chapter 340,
9 Divisions 011, 012, and 093.

10 II. FINDINGS OF FACT

- 11 1. At all relevant times Respondent has been the owner of a property located at Section 36,
12 Range 35, Township 6N, Tax lot 0600 in Milton-Freewater, Oregon (the Property).
- 13 2. A spring has created several wetlands on the Property.
- 14 3. Starting in July 2019 through May 2021, Respondent placed or allowed the placement of
15 approximately 2,741 cubic yards of discarded windmill parts on the Property. A portion of the
16 discarded windmill parts were placed either in or directly adjacent to the wetlands on the Property.
17 After the placement on the Property, Respondent removed metal from the windmill parts for recycling.
- 18 4. Respondent has not been issued a solid waste disposal site permit from DEQ for the disposal
19 of the discarded windmill parts at the Property.

20 III. CONCLUSIONS

- 21 1. Respondent violated ORS 459.205(1) and OAR 340-093-0050(1) by establishing, operating
22 and maintaining a disposal site without obtaining a permit from DEQ. The windmill parts are “solid
23 waste,” as defined by ORS 459.005(24) and OAR 340-093-0030(91), because they are useless and
24 discarded materials. Respondent established, operated, and maintained a “disposal site”, as defined by
25 OAR 340-093-0030(38), by disposing and handling the waste windmill parts at the Property. This is a
26 Class I violation according to OAR 340-012-0065(1)(a). DEQ assesses a \$57,282 civil penalty for this
27 violation.

1 2. Respondent violated ORS 468B.025(1)(a) by causing to be placed any wastes in a location
2 where such wastes are likely to escape or be carried into the waters of the state by any means. Specifically,
3 Respondent placed or allowed the placement of waste windmill parts into and immediately adjacent to the
4 wetlands on the Property, which are “waters of the state,” as defined by ORS 468B.005(10) because the
5 wetlands are surface waters that combine or effect a junction with a spring. The waste windmill parts are
6 “waste,” as defined by ORS 468B.005(9), because they are solid substances that may alter the physical,
7 chemical, or biological properties of waters of the state. This is a Class II violation according to OAR 340-
8 012-0055(2)(c). DEQ did not assess a civil penalty for this violation.

9 IV. ORDER TO PAY CIVIL PENALTY AND TO COMPLY

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

12 1. Pay a total civil penalty of \$57,282. The determination of the civil penalty is attached as
13 Exhibit 1 and incorporated as part of this Notice. If you do not file a request for hearing as set forth in
14 Section V below, your check or money order must be made payable to "**State Treasurer, State of**
15 **Oregon**" and sent to the **DEQ, Business Office, 700 NE Multnomah Street, Suite 600, Portland,**
16 **Oregon 97232.**

17 2. Within 90 days of this order becoming final by operation of law or on appeal, submit written
18 documentation demonstrating that the solid waste on the Property has been disposed of at a properly
19 permitted solid waste disposal site. The documentation must include disposal receipts and photos of
20 the Property and be sent to: Eric Boone, DEQ, 400 E. Scenic Drive, Suite 307, The Dalles OR 97058-
21 3450.

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

23 You have a right to a contested case hearing on this Notice, if you request one in writing. DEQ
24 must receive your request for hearing **within 20 calendar days** from the date you receive this Notice. If
25 you have any affirmative defenses or wish to dispute any allegations of fact in this Notice or attached
26 exhibit, you must do so in your request for hearing, as factual matters not denied will be considered
27 admitted, and failure to raise a defense will be a waiver of the defense. (See OAR 340-011-0530 for

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

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

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

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24 9/1/2021
25 Date


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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 1: Establishing, operating and maintaining an unpermitted solid waste disposal site, in violation of ORS 459.205(1) and OAR 340-093-0050(1).

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. DEQ estimates that there was approximately 2,741 cubic yards of waste windmill parts on the Property in April and May 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). Respondent should have a solid waste disposal permit prior to disposing of solid waste at the Property.

"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 July 2019.

"M" is the mental state of the Respondent, and receives a value of 8 according to OAR 340-012-0145(5)(d) because Respondent acted or failed to act intentionally with actual knowledge of the requirement. Intentional means Respondent acted with a conscious objective to cause the result of its conduct. Since the mid-1990s, Respondent has been the president of a company which owned and operated a DEQ-permitted solid waste disposal site. Respondent had actual knowledge that a permit is required prior to establishing a solid waste disposal site, yet he consciously set out to dispose of the waste windmill parts at a property without a permit.

"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). Although Respondent has disposed of some of the solid waste over the last 2 years, over 2,700 cubic yards of solid waste still remain on the Property as of May 2021.

"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 \$30,882. This is the amount Respondents gained by avoiding spending \$42,920 to dispose of approximately 2,700 cubic yards of solid waste since July 2019. This "EB" was calculated pursuant to OAR 340-012-0150(1) using the U.S. Environmental Protection Agency's BEN computer model.

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

$$\begin{aligned} &= \$12,000 + [(0.1 \times \$12,000) \times (0 + 0 + 4 + 8 + 0)] + \$30,882 \\ &= \$12,000 + (\$1,200 \times 12) + \$30,882 \\ &= \$12,000 + \$14,400 + \$30,882 \\ &= \$57,282 \end{aligned}$$