



Oregon

Kate Brown, Governor

Department of Environmental Quality

Office of Compliance and Enforcement

700 NE Multnomah Street, Suite 600

Portland, OR 97232

(503) 229-5382

FAX (503) 229-5787

TTY 711

October 30, 2019

CERTIFIED MAIL NO. 7016 0750 0000 3470 4743

Mark and Bethany Wahl
32704 Agan Rd
Lebanon, OR 97355

Re: Notice of Civil Penalty Assessment and Order
Case No. AQ/OB-WR-2019-163

This letter is to inform you that DEQ has issued you a civil penalty of \$17,869 for illegally burning prohibited materials at 32704 Agan Road in Lebanon, Oregon (the Property). DEQ has also cited you, without assessing a civil penalty, for leaving an open burn unattended.

On May 13, 2019, the Lebanon Fire District (Fire Department) responded to a large, unattended burn at the Property. The burn pile contained approximately 80 cubic yards of materials prohibited from being burned at any time or place in Oregon, because they normally emit dense smoke and noxious odors when burned. The Fire Department observed at least 35 dead cattle, approximately five dead sheep, decomposable garbage, plastics, asphaltic material, furniture and petroleum products.

DEQ issued this penalty because open burning these materials is prohibited at all times anywhere in the state. Burning these materials poses a threat to the environment and public health, especially for the young, elderly, and those with respiratory conditions. Toxic chemical exposure can result from such burning, and each illegal burn contributes to the cumulative amount of pollution in the atmosphere.

If you wish to appeal this matter, DEQ must receive a request for a contested case hearing within 20 calendar days from your receipt of this letter. The hearing request must be in writing. Send your hearing request to DEQ Office of Compliance and Enforcement – Appeals:

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

Via email – DEQappeals@deq.state.or.us

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 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 DEQ Environmental Law Specialist Jane Hickman at (503) 229-5692.

Sincerely,

A handwritten signature in blue ink, appearing to read "Kieran O'Donnell".

Kieran O'Donnell, Manager
Office of Compliance and Enforcement

Enclosures

cc: Peter Husted, DEQ Laboratory
Michael Maynard, Lieutenant, Lebanon Fire District
Don Hendrix, AQ, HQ, DEQ
Accounting, DEQ

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

3 IN THE MATTER OF:) NOTICE OF CIVIL PENALTY
4 MARK and BETHANY WAHL,) ASSESSMENT AND ORDER
5 Respondents.) NO. AQ/OB-WR-2019-163

6 I. AUTHORITY

7 This Notice of Civil Penalty Assessment and Order is issued pursuant to Oregon Revised
8 Statutes (ORS) 468.100 and 468.126 through 468.140, ORS Chapters 183 and 468A, and Oregon
9 Administrative Rules (OAR) Chapter 340, Divisions 011, 012, and 264.

10 II. FINDINGS OF FACT

11 1. On or about May 13, 2019, the Lebanon Fire District (Fire Department) responded
12 to a large open burn at 32704 Agan Road in Lebanon, Oregon (the Property).

13 2. The open burn was unattended.

14 3. As of the date of the open burn, Respondents owned the Property.

15 4. Respondent Mark Wahl initiated the open burn.

16 5. The burn pile was approximately six feet high, 30 feet long and 12 feet wide, and
17 contained approximately 80 cubic yards of materials that normally emit dense smoke and
18 noxious odors when burned, including at least 35 dead cattle, approximately five dead sheep,
19 decomposable garbage, plastics, asphaltic material, furniture and petroleum products.

20 III. CONCLUSION

21 1. Respondents violated OAR 340-264-0060(3), adopted pursuant to ORS
22 468A.025, by causing or allowing to be initiated or maintained, the open burning of materials
23 prohibited from being open burned as described in Section II above. Respondents are strictly
24 liable for the violation pursuant to OAR 340-264-0060(1)(a), (b) and (c). This is a Class I
25 violation according to OAR 340-012-0054(1)(w). DEQ hereby assesses a \$17,869 civil penalty
26 for this violation.

27 ////

1 2. Respondents violated OAR 340-264-0050(2), adopted pursuant to ORS 468A.025,
2 by failing to constantly attend all open burning. Respondents are strictly liable for the violation
3 pursuant to OAR 340-264-0060(1)(a), (b) and (c). This is a Class II violation according to OAR
4 340-012-0054(2)(k). DEQ is not assessing a civil penalty for this violation.

5 IV. ORDER TO PAY CIVIL PENALTY

6 Based upon the foregoing FINDINGS OF FACTS AND CONCLUSION, Respondents
7 are hereby ORDERED TO:

8 Pay a total civil penalty of \$17,869. The determination of the civil penalty is attached as
9 Exhibit No. 1 and is incorporated as part of this Notice.

10 If you do not file a request for hearing as set forth in Section V below, your check or
11 money order must be made payable to "**State Treasurer, State of Oregon**" and sent to the **DEQ,**
12 **Business Office, 700 NE Multnomah Street, Suite 600, Portland, Oregon 97232.** Once you
13 pay the penalty, the Findings of Fact, Conclusions and Order become final.

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

15 You have a right to a contested case hearing on this Notice, if you request one in writing.
16 DEQ must receive your request for hearing **within 20 calendar days** from the date you receive
17 this Notice. If you have any affirmative defenses or wish to dispute any allegations of fact in this
18 Notice or attached exhibit, you must do so in your request for hearing, as factual matters not
19 denied will be considered admitted, and failure to raise a defense will be a waiver of the defense.

20 (See OAR 340-011-0530 for further information about requests for hearing.) You must send
21 your request to: **DEQ, Office of Compliance and Enforcement, 700 NE Multnomah Street,**
22 **Suite 600, Portland, Oregon 97232,** fax it to **503-229-5100** or email it to
23 DEQappeals@deq.state.or.us. An administrative law judge employed by the Office of
24 Administrative Hearings will conduct the hearing, according to ORS Chapter 183, OAR Chapter
25 340, Division 011 and OAR 137-003-0501 to 0700. You have a right to be represented by an
26 attorney at the hearing, however you are not required to be. If you are an individual, you may
27 represent yourself. If you are a corporation, partnership, limited liability company,

1 unincorporated association, trust or government body, you must be represented by an attorney or
2 a duly authorized representative, as set forth in OAR 137-003-0555.

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

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

14
15 10/30/2019
16 Date


15 
16 Kieran O'Donnell, Manager
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: Causing or allowing to be initiated or maintained, the open burning of materials that are prohibited from being open burned, 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 initiated or allowed the initiation of five or more 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 \$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)(B)(ii), because 25 or more cubic yards of prohibited materials was burned.

"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 Respondent, and receives a value of 0 according to OAR 340-012-0145(2)(a)(A), because Respondents have 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 Respondents have 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 was one occurrence of the violation. Each day of violation constitutes a separate occurrence. The violation occurred on one day, on or about May 13, 2019.

"M" is the mental state of the Respondents and receives a value of 4 according to OAR 340-012-0145(5)(c), because Respondents' conduct was negligent. Respondent Mark Wahl is registered under Oregon's Confined Animal Feeding Operation (CAFO) Water Pollution Control Facilities (WPCF) General Permit. Condition S.3.C.2(c) of the permit requires that animal mortalities are disposed of legally and are not disposed of in any storage or treatment system that is not specifically designed to treat animal mortalities. By failing to ensure the animal carcasses were disposed of legally, Respondents failed to take reasonable care to avoid a foreseeable risk of committing this violation.

