



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

November 9, 2018

Sent via first class mail and certified mail #7016 0750 0000 3470 3135

Lester Gregory Monk
640 Lakeshore Dr
Selma, OR 97538

Re: Notice of Civil Penalty Assessment and Order
Case No. LQ/SW-WR-2018-150

This letter is to inform you that the Oregon Department of Environmental Quality (DEQ) has issued you a civil penalty of \$6,219 for disposing of solid waste at an unpermitted location. Specifically, you have disposed of and/or authorized the disposal of approximately 100 cubic yards of household trash at your residential property in Selma, 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. In addition, DEQ is concerned that you failed to respond to an April 2017 Warning Letter with Opportunity to Correct that gave you the opportunity to come into compliance without paying a civil penalty.

Included in Section IV of the attached Notice of Civil Penalty Assessment and Order (the Notice) is an order requiring you to properly dispose of the solid waste located at your property. \$5,219 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.

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 – 503-229-5100

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.

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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/administrative-rules.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: 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	LESTER GREGORY MONK,)	ASSESSMENT AND ORDER
)	
5	Respondent.)	CASE NO. LQ/SW-WR-2018-150

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 459.376, ORS Chapter 183 and Oregon Administrative Rules (OAR) Chapter 340,
10 Divisions 011, 012, and 093.

11 II. FINDINGS OF FACT

- 12 1. Respondent owns real property located at 640 Lakeshore Drive, in Selma, Oregon (the
13 Property).
- 14 2. On March 20, 2017, DEQ inspected the Property. At the time of the inspections Respondent
15 had disposed of and/or authorized the disposal of approximately 100 cubic yards of household garbage
16 at the Property.
- 17 3. Respondent is not authorized by DEQ to dispose of solid waste at the Property.

18 III. CONCLUSIONS

- 19 1. Respondent has violated OAR 340-093-0040(1) by disposing of and/or authorizing the
20 disposal of solid waste, as defined by ORS 459.005(25), at an unpermitted location, as described in
21 Section II above. This is a Class I violation according to OAR 340-012-0065(1)(c). DEQ hereby
22 assesses a \$6,219 civil penalty for this violation.

23 IV. ORDER TO PAY CIVIL PENALTY AND TO COMPLY

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

- 26 1. Pay a total civil penalty of \$6,219. The determination of the civil penalty is attached as Exhibit
27 No. 1 and is incorporated as part of this Notice.

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

5 2. Within 90 days after the order becomes final by operation of law or on appeal, properly
6 dispose of the solid waste referenced in Paragraph 2 of Section II and provide DEQ with the disposal
7 receipts for proper disposal of the solid waste.

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

9 You have a right to a contested case hearing on this Notice, if you request one in writing. DEQ
10 must receive your request for hearing **within 20 calendar days** from the date you receive this Notice. If
11 you have any affirmative defenses or wish to dispute any allegations of fact in this Notice or attached
12 exhibit, you must do so in your request for hearing, as factual matters not denied will be considered
13 admitted, and failure to raise a defense will be a waiver of the defense. (See OAR 340-011-0530 for
14 further information about requests for hearing.) You must send your request to: **DEQ, Office of**
15 **Compliance and Enforcement, 700 NE Multnomah Street, Suite 600, Portland, Oregon 97232**, fax
16 it to **503-229-5100**, or email it to **DEQappeals@deq.state.or.us**. An administrative law judge
17 employed by the Office of Administrative Hearings will conduct the hearing, according to ORS
18 Chapter 183, OAR Chapter 340, Division 011 and OAR 137-003-0501 to 0700. You have a right to be
19 represented by an attorney at the hearing, however you are not required to be. If you are an individual,
20 you may represent yourself. If you are a corporation, partnership, limited liability company,
21 unincorporated association, trust or government body, you must be represented by an attorney or a duly
22 authorized representative, as set forth in OAR 137-003-0555.

23 Active duty service-members have a right to stay proceedings under the federal Service
24 Members Civil Relief Act. For more information, please call the Oregon State Bar at 1-800-
25 452-8260 or the Oregon Military Department at 1-800-452-7500. Additional information can be found
26 online at the United States Armed Forces Legal Assistance (AFLA) Legal Services Locator website
27 <http://legalassistance.law.af.mil/content/locator.php>.

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

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9 11 / 9 / 18

10 Date



11 Kieran O'Donnell, Manager
12 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 1: Disposing of solid waste at an unpermitted location, 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 the volume of unpermitted disposed solid waste was more than 40 cubic yards, but less than 400 cubic yards. Respondent disposed of approximately 100 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 \$500 for a Class I, moderate magnitude violation in the matrix listed in OAR 340-012-0140(5)(b)(A)(ii) and applicable pursuant to OAR 340-012-0140(5)(a)(H) because Respondent is the residential owner-occupant of the Property, as defined by OAR 340-012-0030(21).

"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 March 20, 2017, the day of DEQ's inspection and continues as of the date of this Notice. 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. On April 13, 2017, DEQ sent Respondent a Warning Letter with an Opportunity to Correct the ongoing violation, and on September 14, 2018, delivered a Pre-Enforcement Notice. However, Respondent has failed to address the violation in response to DEQ's notifications. Therefore, Respondent has failed to take reasonable care to avoid a foreseeable risk that his continued disposal of solid waste at an unauthorized location would result in a violation.

"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 Respondent 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). As of the date of this Notice, Respondent has not properly disposed of the solid waste at the Property.

"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 \$5,219. This is the amount Respondent gained by avoiding spending approximately \$5,075 to properly dispose of the solid waste. This "EB" was calculated pursuant to OAR 340-012-0150(1) using the U.S. Environmental Protection Agency's BEN computer model.

PENALTY CALCULATION: $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$
 $= \$500 + [(0.1 \times \$500) \times (0 + 0 + 4 + 4 + 2)] + \$5,219$
 $= \$500 + (\$50 \times 10) + \$5,219$
 $= \$500 + \$500 + \$5,219$
 $= \$6,219$