

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 21, 2019

CERTIFIED MAIL: 7016 0750 0000 3469 5423

Michael Ray Shields 52366 Huntington Rd La Pine, Oregon 97739

Re: Notice of Civil Penalty Assessment and Order Case No. LQ/SW-ER-2019-061

This letter is to inform you that the Oregon Department of Environmental Quality (DEQ) has issued you a civil penalty of \$18,000 for establishing a solid waste disposal site without a permit at your property on Russell Road in La Pine. The enclosed Notice of Civil Penalty Assessment and Order (Notice) also cites you, without penalty, for causing an illegal burn of wood waste at your property from February through May of this year.

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. The waste you accepted and disposed of at your property (such as vehicles, appliances, and tires) poses a threat to public health and the environment because it can leach contaminants that pollute ground and surface water, and create habitat for disease-carrying insects and rodents. Additionally, large piles of wood and other waste can catch fire and be difficult to control and extinguish, as happened with the wood waste that caught fire and burned for months at your property. These fires can cause health impacts especially for the young, elderly, and those with respiratory conditions, as well as contribute to the cumulative amount of pollution in the atmosphere.

DEQ appreciates your efforts to promptly address the violation this spring by cleaning up the majority of the solid waste tires, appliances, vehicles, metals, and wood waste, putting up a gate and sign to prevent additional waste from accumulating, and reporting your progress to DEQ. DEQ considered these efforts when determining the amount of civil penalty.

Included in Section IV of the Notice is an order requiring you to submit a plan to DEQ for completing the remaining cleanup, and implement an approved plan.

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. <u>The hearing request must be in writing</u>. 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 Michael Ray Shields Case No. LQ/SW-ER-2019-061 Page 2

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. <u>Please review and refer to it when discussing this case with DEQ</u>.

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,

the a

Kieran O'Donnell, Manager Office of Compliance and Enforcement

Enclosures

cc: Eric Clanton, DEQ, The Dalles
Frank Messina, DEQ, Bend
Accounting, DEQ
Michael Ray Shields, PO Box 154, La Pine, OR 97739 and LaPineEquipment@live.com
Melissa Bethel, City Manager, City of La Pine, mbethel@lapineoregon.gov
Mike Supkis, La Pine Rural Fire Protection District, 51550 Huntington Rd, La Pine, OR 97739
Chris Tiboni, Deschutes County Code Enforcement, 117 NW Lafayette Ave, Bend, OR 97703

1	BEFORE THE ENVIRONMENTAL QUALITY COMMISSION	
2	OF THE STATE OF OREGON	
3	IN THE MATTER OF: ) NOTICE OF CIVIL PENALTY MICHAEL RAY SHIELDS, ) ASSESSMENT AND ORDER	
4 5	Respondent. ) CASE NO. LQ/SW-ER-2019-061	
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 264.	
11	II. FINDINGS OF FACT	
12	1. Respondent owns property at 51300 Russell Road in La Pine, Oregon (the Property).	
13	2. The Property is not permitted by DEQ as a solid waste disposal site.	
14	3. On February 20, 2019, DEQ staff inspected the Property in response to a complaint.	
15	4. Prior to February 20, 2019, Respondent brought to the Property, or allowed others to	
16	dispose at the Property, solid waste including but not limited to septic tanks, waste tires, mixed metals,	
17	appliances, concrete, asphalt, construction and demolition waste, abandoned vehicles, trailers, and	
18	vehicle parts, wood waste, and yard debris.	
19	5. On or about February 13, 2019, a 100 feet by 100 feet and 30 feet high pile of wood	
20	waste at the Property spontaneously combusted.	
21	6. The wood waste fire emitted black smoke and noxious odors and continued burning	
22	through approximately May 17, 2019.	
23	III. CONCLUSIONS	
24	1. Respondent violated OAR 340-093-0050(1) by establishing and maintaining a solid	
25	waste disposal site without a permit, as described in paragraphs 1-4 of Section II above. This is a Class I	
26	violation, according to OAR 340-012-0065(1)(a). DEQ hereby assesses an \$18,000 civil penalty for this	
27	violation.	

- 2. Respondent violated OAR 340-264-0060(2) by causing or allowing to be initiated or
   maintained an open burn of material that created a nuisance, as described in paragraphs 4-6 of Section II
   above. This is a Class II violation, according to OAR 340-012-0054(2)(k). DEQ has not assessed a civil
   penalty for this violation.
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## IV. ORDER TO PAY CIVIL PENALTY AND TO COMPLY

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

Pay a total civil penalty of \$18,000. The determination of the civil penalty is attached as
 Exhibit 1 and is incorporated as part of this Notice.

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

- Within 30 days of this Notice becoming final by operation of law or on appeal, submit a
  written plan, including timelines, for proper disposal or recycling of the remaining solid waste on the
  Property to Eric Clanton, by email at <u>clanton.eric@deq.state.or.us</u> or mailed to his attention at DEQ, 400
  E. Scenic Drive, Suite 307, The Dalles, Oregon, 97058. Upon approval from DEQ, implement the
  approved plan.
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## V. NOTICE OF RIGHT TO REQUEST A CONTESTED CASE HEARING

You have a right to a contested case hearing on this Notice, if you request one in writing. DEQ 20 must receive your request for hearing within 20 calendar days from the date you receive this Notice. If 21 you have any affirmative defenses or wish to dispute any allegations of fact in this Notice or attached 22 exhibit, you must do so in your request for hearing, as factual matters not denied will be considered 23 admitted, and failure to raise a defense will be a waiver of the defense. (See OAR 340-011-0530 for 24 further information about requests for hearing.) You must send your request to: DEQ, Office of 25 26 Compliance and Enforcement, 700 NE Multnomah Street, Suite 600, Portland, Oregon 97232, fax 27 it to 503-229-5100 or email it to DEQappeals@deq.state.or.us. An administrative law judge

employed by the Office of Administrative Hearings will conduct the hearing, according to ORS
Chapter 183, OAR Chapter 340, Division 011 and OAR 137-003-0501 to 0700. You have a right to be
represented by an attorney at the hearing, however you are not required to be. If you are an individual,
you may represent yourself. If you are a corporation, partnership, limited liability company,
unincorporated association, trust or government body, you must be represented by an attorney or a duly
authorized representative, as set forth in OAR 137-003-0555.

Active duty Service members have a right to stay proceedings under the federal Service
Members Civil Relief Act. For more information contact the Oregon State Bar at 1-800452-8260, the Oregon Military Department at 503-584-3571, or the nearest United States Armed
Forces Legal Assistance Office through <u>http://legalassistance.law.af.mil</u>. The Oregon Military
Department does not have a toll free telephone number.

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

20 11/21/2019 21 Date 22 23 24 25 26 27

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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

<u>VIOLATION 1</u> :	Establishing and maintaining a solid waste disposal site without a permit, in violation of 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 Respondent allowed disposal of more than 400 cubic yards of solid waste at Respondent's unpermitted Property.

<u>CIVIL PENALTY FORMULA</u>: 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)(i), because Respondent should have had a solid waste disposal site permit.
- "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 a violation with a duration of more than one day is a separate occurrence. Respondent operated an unpermitted solid waste disposal site from at least February 2019 through the date of this Notice.
- "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, as defined in OAR 340-012-0030(15). In 1996, Deschutes County issued Respondent a Notice of Violation of County Code for accumulation of solid waste at Respondent's property at 52366 Huntington Road in La Pine. By again allowing disposal of the large amounts of solid waste at his unpermitted Property, Respondent failed to take reasonable care to avoid a foreseeable risk of committing this 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 took reasonable affirmative efforts to minimize the impacts of the violation. By March 20, 2019, Respondent had

stopped acceptance of solid waste at the Property, posted signs stating that the Property is closed to solid waste disposal, gated off the entrance to the Property from public access, and made efforts to control and extinguish the burning wood waste. Respondent made steady progress through the spring to properly clean up the solid waste and provided regular reports of his cleanup efforts to DEQ. As of the date of this Notice, Respondent has cleaned up all the solid waste except a small pile of scrap metal.

"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 \$0, as DEQ has insufficient information on which to base a finding of an economic benefit Respondent gained as a result of this violation.

<u>PENALTY CALCULATION</u>: Penalty =  $BP + [(0.1 \times BP) \times (P + H + O + M + C)] + EB$ 

= \$12,000 + [(0.1 x \$12,000) x (0 + 0 + 4 + 4 - 3)] + \$0

= \$12,000 + (\$1,200 x 5) + \$0

= \$12,000 + \$6,000 + \$0 - \$18,000

= \$18,000