



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 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. 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.

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


7 Active duty Service members have a right to stay proceedings under the federal Service
8 Members Civil Relief Act. For more information contact the Oregon State Bar at 1-800-
9 452-8260, the Oregon Military Department at 503-584-3571, or the nearest United States Armed
10 Forces Legal Assistance Office through <http://legalassistance.law.af.mil>. The Oregon Military
11 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.

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11 / 21 / 2019

Date



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 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.
- 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)(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.

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

$$\begin{aligned} &= \$12,000 + [(0.1 \times \$12,000) \times (0 + 0 + 4 + 4 - 3)] + \$0 \\ &= \$12,000 + (\$1,200 \times 5) + \$0 \\ &= \$12,000 + \$6,000 + \$0 \\ &= \$18,000 \end{aligned}$$