



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
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December 3, 2018

CERTIFIED MAIL: 7016 0750 0000 3470 3234

FHA Holdings, LLC
c/o Myatt & Bell, P.C., Registered Agent
Portland, OR 97223

Re: Amended Notice of Civil Penalty Assessment and Order
Case No. WQ/SW-NWR-2018-059

This letter is to inform you that the Oregon Department of Environmental Quality (DEQ) has issued the attached Amended Notice of Civil Penalty Assessment and Order (Amended Notice), in case No. WQ/SW-NWR-2018-059, pursuant to OAR 137-003-0530(4)(a). The Amended Notice cites FHA Holdings, LLC for violations of the Removal Action Order (RAO) issued to FHA Holdings, LLC and NW Metals Inc. on March 28, 2018. Specifically, FHA Holdings, LLC has failed to implement the work plan, approved by DEQ on July 3, 2018, requiring removal of fire debris and surface soil sampling at the NW Metals facility located on property owned by FHA Holdings LLC at 7600 NE Killingsworth in Portland, Oregon.

The Amended Notice assesses FHA Holdings an increased total civil penalty of \$43,954. The additional civil penalty for violating the RAO is calculated in Exhibit No. 2 which is attached to the Amended Notice.

Included in Section IV of the Amended Notice is an order requiring immediate action to implement the work plan approved by DEQ on July 3, 2018. The other corrective action orders in Section IV remain in effect.

DEQ accepts FHA Holdings, LLC's appeal of Case No. WQ/SW-NWR-2018-059, received by DEQ on September 19, 2018, as applied to this Amended Notice. FHA Holdings, LLC may amend its appeal pursuant to OAR 340-011-0530(3).

If you have any questions, please contact Courtney Brown at 503-229-6839 or toll free in Oregon at 800-452-4011, extension 6839.

Sincerely,

Kieran O'Donnell, Manager
Office of Compliance and Enforcement

Enclosures

cc: Michael Greenburg, Northwest Region
Chris Rich, Perkins Coie, 1120 NW Couch Street, 10th fl., Portland, OR 97209-4128

1 BEFORE THE ENVIRONMENTAL QUALITY COMMISSION

2 OF THE STATE OF OREGON

3	IN THE MATTER OF:)	AMENDED NOTICE OF CIVIL PENALTY
4	FHA HOLDINGS, LLC)	ASSESSMENT AND ORDER
5	an Oregon corporation,)	
	Respondent.)	CASE NO. WQ/SW-NWR-2018-059

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 Chapter 183, ORS Chapter 468B, ORS Chapter 465, and Oregon Administrative Rules (OAR)
10 Chapter 340, Divisions 011, 012, an 044.

11 II. FINDINGS OF FACT

12 1. Since on or about May 14, 2014, Respondent has been the owner of property located at
13 7530-7626 NE Killingsworth Street, in Portland, Oregon (the "Property").

14 2. The Property has five Underground Injection Control (UICs) Systems that inject fluids,
15 including stormwater, into the subsurface at the Property.

16 3. The UICs were first authorized by rule on August 24, 2011, prior to Respondent owning
17 the Property.

18 4. Respondent has not submitted a renewal of the certification showing that the UICs do
19 not receive stormwater mixed with fluids from areas where hazardous substances and toxic materials
20 are used, handled, or stored.

21 5. Respondent has not performed any monitoring or stormwater sampling of the UICs.

22 6. Two of the five UICs (Drywell #1 and Drywell #2) are located in the southwest corner
23 of the Property in an area where Respondent's lessee (NW Metals Inc.) engages in an industrial
24 operation that includes the storage, handling, dismantling and processing of vehicles and the storage,
25 handling, and processing of liquids commonly found in vehicles, including used oil and gasoline,
26 antifreeze, power steering and other toxic or hazardous substances or petroleum based products.

27 ///

1 7. There are two catch basins on the Property (the Catch Basins) that are connected to and
2 drain to Drywell # 1 and Drywell # 2.

3 8. Stormwater runoff from the area of the Property where the industrial operation occurs,
4 described in Section I, paragraph 6 above, drains to the Catch Basins and to Drywell # 1 and Drywell #
5 2.

6 9. Water at the bottom of Drywell #1 was sampled on July 19, 2018. Sample results
7 detected eleven Volatile Organic Compounds (VOCs) were detected in the water.

8 10. Samples of sludge were taken from the bottom of the inside of Drywell #1 on July 19,
9 2018. Sample results detected petroleum hydrocarbons and ten metals, four of which exceeded
10 background metals concentrations for the Portland Basin. In addition, sample results detected eleven
11 semi-volatile organic compounds (SVOCs), five of which exceeded the EPA Regional Screening Level
12 for Resident Soil Leaching to Groundwater.

13 11. Soil samples were taken adjacent to and 5' to 10' below the bottom of Drywell #1 on
14 July 30, 2018. Sample results detected petroleum hydrocarbons and ten metals, two of which exceeded
15 background metals concentrations for the Portland Basin. In addition, sample results detected eleven
16 SVOCs. Two of those SVOCs exceeded the EPA Regional Screening Level for Residential Soil
17 Leaching to Groundwater.

18 12. Soil samples were taken adjacent to and 5' to 10' below the bottom of Drywell #2 on
19 July 30, 2018. Sample results detected petroleum hydrocarbons, nine metals, six VOCs, and ten
20 SVOCs, one of which exceeded the EPA Regional Screening Level for Residential Soil Leaching to
21 Groundwater.

22 13. On March 14, 2018, DEQ performed an inspection of the Property and observed:

- 23 a. Vehicles stacked in disorganized piles;
- 24 b. Waste tires accumulated in disorganized, unstacked piles in many locations,
25 outside, on the ground, throughout the Property;
- 26 c. Damaged and open containers labelled "used oil";
- 27 d. Car batteries outside on the ground and in vehicles exposed to the elements;

- e. Vehicle dismantling areas located over bare ground, uncovered, and exposed to stormwater;
- f. The ground around Drywell #1 and Drywell # 2 was stained with black dirt and had an oily sheen;
- g. The grounds underneath the vehicle dismantling areas were stained with black dirt and had an oily sheen; and
- h. Dark and stained soil in the area in and around the Catch Basins;

14. Antifreeze is known to contain benzene and lead in high concentrations which can make it a hazardous waste.

15. Antifreeze typically contains ethylene glycol or propylene glycol which is a known threat to human health and the environment.

16. On March 28, 2018, DEQ issued Respondent a Removal Action Order (RAO).

17. Section V, paragraph 3.A of the RAO requires that Respondent implement a work plan to remove fire debris within five (5) days of DEQ approval of the work plan.

18. Section V, paragraph 3.B of the RAO requires that Respondent implement a work plan for surficial soil characterization to, in relevant part, “assess the extent of hazardous substances released to soil on unpaved areas of the property affected by fire suppression fire runoff or soot deposition” within ten (10) working days of DEQ approval of the work plan.

19. DEQ approved the work plan required by Section V, paragraphs 3.A and 3.B of the RAO, with some addendums, on July 3, 2018.

20. As of the date of this Amended Notice and Order Respondent has not removed fire debris or completed the assessment of surficial soils as required by the RAO.

III. CONCLUSIONS

1. Since on or about May 2014, through the present, Respondent has violated OAR 340-044-0015 and 0018 by allowing and maintaining prohibited or unauthorized UICs at the Property, as described in Section II above. Specifically, Respondent has allowed the operation of two prohibited Class V injection systems at the Property, in violation of OAR 340-044-0015(2)(c) by allowing NW

1 Metals Inc. to engage in industrial operations where used oil, used tires, antifreeze and other toxic
2 materials commonly found in vehicles are discharged to the ground surface, exposed to stormwater, and
3 drain to the Catch Basins and Drywell # 1 and Drywell # 2. Drywell # 1 and Drywell # 2 are
4 "Underground Injection Systems" and "Class V injection Systems," as defined by OAR 340-044-
5 0005(24) and OAR 340-044-0011(5)(d) respectively, because they emplace or discharge stormwater
6 runoff from industrial facilities to the subsurface. Used oil, gasoline, and antifreeze are considered
7 "toxic materials," as defined by OAR 340-044-0005(45) because they will cause or can reasonably be
8 expected to cause a hazard to aquatic, human or animal life. In addition, Respondent has failed to
9 submit to DEQ a renewal certification for the five UICs at the Property within five years of their initial
10 authorization, in violation of OAR 340-044-0018(3)(d)(A) and Respondent has failed to perform at
11 least annual monitoring of all five UICs in violation of OAR 340-044-0018(3)(d)(B)(iii). These are
12 Class I violations, according to OAR 340-012-0055(1)(p). DEQ hereby assesses a \$29,554 civil penalty for
13 these violations.

14 2. Since on or about July 8, 2018, and since on or about July 13, 2018, Respondent has
15 violated the RAO issued on March 28, 2018. Specifically, Respondent failed to remove fire debris within
16 five days of DEQ approval of the work plan and failed to complete soil sampling and assessment within
17 ten days of approval of the work plan as required by the RAO. This is a Class I violation pursuant to OAR
18 340-012-0053(1)(a). Pursuant to ORS 465.900, DEQ hereby assesses a civil penalty of \$14,400 for this
19 violation.

20 IV. ORDER TO PAY CIVIL PENALTY AND TO COMPLY

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

23 1. Pay a total civil penalty of \$43,954. The determinations of the civil penalties are attached as
24 Exhibit No.1 and Exhibit No. 2 and are incorporated as part of this Notice.

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

1 the Findings of Fact, Conclusions and Order become final.

2 2. By no later than October 1, 2018, comply with Oregon law and the following conditions:

3 a. Close the prohibited Class V injection systems (Drywell # 1 and Drywell # 2);

4 and

5 b. Submit an updated rule authorization application for the remaining UICs at the
6 Property, including a Name Change and Transfer of Registration and
7 Authorization form.

8 3. Submit documentation demonstrating compliance with Section IV, paragraph 2 above
9 to: DEQ, attn: Derek Sandoz, 700 NE Multnomah Street, Suite 600, Portland, OR 97232.

10 4. Immediately implement the work plan approved by DEQ on July 3, 2018, and submit
11 documentation to DEQ, attn.: Michael Greenburg, 700 NE Multnomah St., Suite 600, Portland, OR
12 97232-4100.

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

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

1 Active duty service-members have a right to stay proceedings under the federal Service
2 Members Civil Relief Act. For more information, please call the Oregon State Bar at 1-800-
3 452-8260 or the Oregon Military Department at 1-800-452-7500. Additional information can be found
4 online at the United States Armed Forces Legal Assistance (AFLA) Legal Services Locator website
5 <http://legalassistance.law.af.mil/content/locator.php>.

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

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16 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: Allowing the operation of prohibited Class V underground injection systems in violation of OAR 340-044-0015(2)(c).

CLASSIFICATION: This is a Class I violation pursuant to OAR 340-012-0055(1)(p).

MAGNITUDE: The magnitude of the violation is moderate pursuant to OAR 340-012-0130(1), as there is no selected magnitude specified in OAR 340-012-0135 applicable to this violation, and the information reasonably available to DEQ does not indicate a minor or major magnitude.

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 \$6,000 for a Class I, moderate magnitude violation in the matrix listed in OAR 340-012-0140 (2)(b)(A)(ii) and applicable pursuant to OAR 340-012-0140 (2)(a)(E)(iv).

"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 violations began on approximately May, 2014, when Respondent's lessee began industrial operations at the Property that exposed stormwater to hazardous substances, toxic materials and petroleum products.

"M" is the mental state of the Respondent, and receives a value of 8 according to OAR 340-012-0145(5)(d) because Respondent's conduct was reckless. Respondent knew there were UICs at the Property it leased to NW Metals Inc. because it was invoiced by DEQ for the annual UIC registration for five UICs at the Property in 2017, and paid the invoice on March 8, 2018. In addition, at least one UIC, Drywell #1, has an above-ground riser and lid which makes it easily observable. By failing to ensure that its lessee conduct its industrial operations in a manner that prevents the discharge of industrial wastes and toxic materials to

the ground surface or exposure of those operations to stormwater, Respondent consciously disregarded a substantial and unjustifiable risk that it was allowing the operation of a prohibited Class V injection systems at the Property.

"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).

"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 \$16,354. This is the amount Respondent has gained by avoiding spending \$20,000, to close the two Class V prohibited UICs at the Property, Drywell # 1 and Drywell # 2. This "EB" was calculated pursuant to OAR 340-012-0150(1) using the U.S. Environmental Protection Agency's BEN computer model.

PENALTY CALCULATION: $Penalty = BP + [(0.1 \times BP) \times (P + H + O + M + C)] + EB$
= \$6,000 + [(0.1 x \$6,000) x (0 + 0 + 4 + 8 + 0)] + \$16,354
= \$6,000 + (\$600 x 12) + \$16,354
= \$6,000 + \$7,200 + \$16,354
= \$29,554

EXHIBIT 2

FINDINGS AND DETERMINATION OF RESPONDENT'S CIVIL PENALTY
PURSUANT TO OREGON ADMINISTRATIVE RULE (OAR) 340-012-0045

VIOLATION 2: Violating conditions of the RAO issued by DEQ on March 28, 2018.

CLASSIFICATION: Violating a requirement of a department order is a Class I violation pursuant to OAR 340-012-0053(1)(a).

MAGNITUDE: The magnitude of the violation is moderate pursuant to OAR 340-012-0130(1), as there is no selected magnitude specified in OAR 340-012-0135 applicable to this violation, and the information reasonably available to DEQ does not indicate a minor or major magnitude.

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 \$6,000 for a Class I, moderate magnitude violation in the matrix listed in OAR 340-012-0140(2)(b)(A)(ii) and applicable pursuant to OAR 340-012-0140(2)(a)(P).

"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. Respondent was required to implement elements of the work plan by July 8, 2018, and July 13, 2018. As of the date of this Amended Notice Respondent has not implemented certain elements of the work plan. Each day of violation is a separate occurrence according to OAR 340-012-0145(4).

"M" is the mental state of the Respondent, and receives a value of 8 according to OAR 340-012-0145(5)(d) because Respondent's conduct was reckless. On August 21, 2018, DEQ sent Respondent a Warning Letter with Opportunity to Correct informing Respondent that it was in violation of the RAO and extending the deadlines for removal of debris to September 7, 2018, and completion of soil sampling to September 14, 2018. By failing to comply with the Warning Letter with Opportunity to Correct, Respondent has consciously disregarded a substantial and unjustifiable risk that it would violate the RAO.

"C" 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 Amended Notice and Order, Respondent has not implemented the work plan approved by DEQ on July 3, 2018.

"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. There is insufficient information available upon which to estimate Respondent's economic benefit.

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

$$\begin{aligned} &= \$6,000 + [(0.1 \times \$6,000) \times (0 + 0 + 4 + 8 + 2)] + \$0 \\ &= \$6,000 + (\$600 \times 14) + \$0 \\ &= \$6,000 + \$8,400 + \$0 \\ &= \$14,400 \end{aligned}$$