



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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TTY 711

December 9, 2021

CERTIFIED MAIL: 7018 1830 0001 5906 3145

United States Army Corps of Engineers – Portland District
c/o Col. Michael D. Helton, Commander and District Engineer
P.O. Box 2946
Portland, OR 97208-2946

Re: Notice of Civil Penalty Assessment and Order
Case No. LQ/SW-WR-2021-124

DEQ is committed to balancing its vital obligation to enforce the law and protect the environment with a consideration of the dramatic disruptions to public health and the economy caused by the COVID-19 outbreak. We understand the outbreak may impact your ability to timely appeal, pay the assessed civil penalty, or comply with this order. You may submit to DEQ documentation identifying whether COVID-19-related disruption affects your ability to comply with this order. Visit our webpage <https://www.oregon.gov/deq/Pages/covid-19.aspx> for more information about documenting specific COVID-19 disruptions your facility may be encountering and how that affects your ability to comply. DEQ will exercise reasonable discretion regarding settlement of this order.

This letter is to inform you that the Oregon Department of Environmental Quality (DEQ) has issued you a civil penalty of \$30,814 for establishing and operating an unpermitted solid waste disposal site at the Elk Creek Dam project site located in Trial, Jackson County, Oregon. DEQ discovered in 2019 that various solid wastes had been buried on the site at the time work on the dam ceased in 1988. Despite DEQ efforts since March 2019 to work with you on removal and proper disposal of wastes at the site, no substantial progress has been made to date.

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. Among the wastes buried at the Elk Creek Dam project site are 55-gallon drums and other containers with unknown contents.

Included in Section IV of the enclosed Notice is an order requiring you to develop and implement a plan to characterize, remove and properly dispose of the wastes and to assess whether the wastes have caused soil and/or groundwater contamination.

\$18,814 of the civil penalty represents the economic benefit you gained by failing to properly dispose of the wastes. If you complete these requirements, 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 – 503-229-6762

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 Jeff Bachman at 503-229-5950 or toll free in Oregon at 800-452-4011, extension 5950.

Sincerely,



Kieran O'Donnell, Manager
Office of Compliance and Enforcement

Enclosures

cc: Brian Fuller, DEQ
Craig Filip, DEQ
Accounting, DEQ

BEFORE THE ENVIRONMENTAL QUALITY COMMISSION
OF THE STATE OF OREGON

IN THE MATTER OF:)
UNITED STATES ARMY CORPS) NOTICE OF CIVIL PENALTY
OF ENGINEERS,) ASSESSMENT AND ORDER
Respondent.) CASE NO. LQ/SW-WR-2021-124

I. AUTHORITY

The Department of Environmental Quality (DEQ) issues this Notice of Civil Penalty Assessment and Order (Notice) pursuant to Oregon Revised Statutes (ORS) 468.100, ORS 468.126 through 468.140, ORS 459.995, ORS Chapter 183 and Oregon Administrative Rules (OAR) Chapter 340, Divisions 011, 012, and 093.

II. FINDINGS OF FACT

1. Respondent owns the Elk Creek Dam Project Site (the Site) in Trail, Jackson County, Oregon.

2. Construction of the dam ceased in 1988.

3. On June 18 and 19, 2019, an investigation determined that approximately 95 cubic yards of discarded materials, including 55-gallon drums with unknown contents, construction and demolition materials, plastic, tires, metal, wood, wire, plastic sheathing from wire, vehicle/equipment parts, various buckets and containers with unknown contents, piping, insulation, fencing and industrial rubber items had been buried on site in approximately December 1988 (the Materials). The Materials remain buried on site as of the date of this notice.

4. OAR 340-093-0030(91) states that "Solid Waste" means "means all useless or discarded putrescible and non-putrescible materials, including but not limited to garbage, rubbish, refuse, ashes, paper and cardboard, sewage sludge, septic tank and cesspool pumpings or other sludge, useless or discarded commercial, industrial, demolition and construction materials, discarded or abandoned vehicles or parts thereof, discarded home and industrial appliances, manure, vegetable or animal solid and semi-solid materials, dead animals and infectious waste."

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1 a permitted solid waste disposal facility (the Plan). The Plan must also include:

2 a. a groundwater and soil sampling plan to assess possible contamination from the
3 unpermitted disposal of solid wastes;

4 b. provisions for an asbestos survey of all suspect asbestos containing materials by an
5 accredited asbestos inspector, and if asbestos-containing materials are found, provisions for the disposal
6 of those materials in accordance with all applicable laws; and

7 c. provisions for conducting hazardous waste determinations on all solid wastes, and if
8 hazardous wastes are found, provisions for the management and disposal of hazardous wastes in
9 accordance with all applicable laws.

10 3. Within 30 days of receiving DEQ comments on the Plan, revise the Plan consistent with
11 DEQ comments and resubmit to DEQ.

12 4. Within 60 days of receiving written notice from DEQ that it has no more comments on the
13 Plan, implement the Plan in accordance with the schedule contained in the Plan.

14 5. Within 45 days of completion of the Plan, submit to DEQ a report documenting removal and
15 recycling and/or disposal of all solid wastes, the results of the soil and groundwater sampling plan, and
16 removal and disposal of any asbestos-containing materials and hazardous wastes.

17 6. Plans and reports required by this Order should be submitted to: Craig Filip at
18 craig.filip@deq.state.or.us or 165 East 7th Avenue, Suite 100 Eugene, OR 97401.

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


20 You have a right to a contested case hearing on this Notice, if you request one in writing. DEQ
21 must receive your request for hearing **within 20 calendar days** from the date you receive this Notice. If
22 you have any affirmative defenses or wish to dispute any allegations of fact in this Notice or attached
23 exhibit, you must do so in your request for hearing, as factual matters not denied will be considered
24 admitted, and failure to raise a defense will be a waiver of the defense. (See OAR 340-011-0530 for
25 further information about requests for hearing.) You must send your request to: **DEQ, Office of**
26 **Compliance and Enforcement, 700 NE Multnomah Street, Suite 600, Portland, Oregon 97232**, fax
27 it to **503-229-6762** or email it to DEQappeals@deq.state.or.us. An administrative law judge

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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21 12 / 9 / 2021
22 Date

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22 Kieran O'Donnell, Manager
23 Office of Compliance and Enforcement
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paragraph (6)(f). Beginning on March 26, 2019, DEQ has had multiple communications with Respondent regarding its violation of solid waste disposal requirements and the need to take corrective action to come into compliance. However, as of the date of this Notice, the Respondent has not made reasonable progress to remove and properly dispose of the solid waste.

"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 \$18,814. This is the amount Respondent gained by avoiding an estimated \$14,077 in costs to properly dispose of the 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: $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$
= \$6,000 + [(0.1 x \$6,000) x (0 + 0 + 4 + 4 + 2)] + \$18,814
= \$6,000 + (\$600 x 10) + \$18,814
= \$6,000 + \$6,000 + \$18,814
= \$30,814