



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

December 22, 2022

CERTIFIED MAIL: 7020 2450 0000 3349 5642

North West Septic LLC
c/o Robert West, Registered Agent
632 NE Emerson
Portland, OR 97211

Re: Notice of Civil Penalty Assessment and Order
Case No. WQ/OS-WR-2022-115

This letter is to inform you that the Oregon Department of Environmental Quality (DEQ) has issued you a civil penalty of \$7,063 for disposing of septage in a location or manner not authorized by DEQ. In August 2022, you pumped septage back into a septic tank and released septage onto the ground at a residential property in Astoria. You were also cited, without penalty, for failing to provide the name and address of the surety company that executed your bond or written notice of the rights of the recipient before completing sewage disposal services at the property.

DEQ issued this penalty because this was a serious violation of Oregon environmental law. Septage is contaminated with disease-causing bacteria and viruses and must be properly pumped, transported and disposed of to prevent these organisms from exposing the public or wildlife to public health hazards or polluting public water. As a licensed pumper, you are responsible to perform sewage disposal services in compliance with requirements that ensure protection of public health and the environment.

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.oregon.gov

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.

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If you have any questions, please contact Esther Westbrook at 503-229-5374 or toll free in Oregon at 800-452-4011, extension 5374.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Kieran O'Donnell', with a stylized, cursive script.

Kieran O'Donnell, Manager
Office of Compliance and Enforcement

Enclosures

cc: Ryan Lyles, North West Septic LLC, 92961 Maritime Road, Astoria, OR 97103
Randy Trox, Eugene Office, DEQ
Deb Mailander, Eugene Office, DEQ
Accounting, DEQ

BEFORE THE ENVIRONMENTAL QUALITY COMMISSION
OF THE STATE OF OREGON

IN THE MATTER OF:)
NORTH WEST SEPTIC LLC,) NOTICE OF CIVIL PENALTY
an Oregon limited liability company,) ASSESSMENT AND ORDER
Respondent.) CASE NO. WQ/OS-WR-2022-115

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 Chapter 454, ORS Chapter 183 and Oregon Administrative Rules (OAR) Chapter 340, Divisions 011, 012, and 071.

II. FINDINGS OF FACT

1. At all material times, Respondent held a sewage disposal services pumper license from DEQ (License No. 39373).

2. On or about August 12, 2022, Respondent pumped the septic tank at a residential property located at 92347 Svensen Market Road in Astoria, Clatsop County, Oregon (the Property).

3. The material pumped from septic tanks is "septage" as defined in OAR 340-071-0100(136).

4. Following a dispute about payment between the residents at the Property and Respondent, Respondent's representative, Ryan Lyles, pumped the septage back into the septic tank and proceeded to leave the Property.

5. Respondent left the cap off the pump tank on the truck, causing septage to be released onto the ground at the Property as the truck drove away. Respondent released a trail of septage approximately 180 feet in length.

6. On or about August 12, 2022, Respondent did not provide the name and address of the surety company that executed its bond or written notice of the rights of the recipient to the residents at the Property.

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1 III. CONCLUSIONS

2 1. On or about August 12, 2022, Respondent violated OAR 340-071-0130(22) by
3 disposing of septage in a location or manner not authorized by DEQ, as described in Section II,
4 Paragraphs 1-5 above. This is a Class I violation according to OAR 340-012-0060(1)(c). DEQ hereby
5 assesses a \$7,063 civil penalty for this violation.

6 2. On or about August 12, 2022, Respondent violated ORS 454.705(3) and OAR 340-071-
7 0600(8) by failing to provide the name and address of the surety company that executed its bond or
8 written notice of the rights of the recipient before completing sewage disposal services, as described in
9 Section II, Paragraph 6 above. This is a Class II violation according to OAR 340-012-0053(2). DEQ
10 has not assessed a civil penalty for this violation.

11 IV. ORDER TO PAY CIVIL PENALTY

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

14 Pay a civil penalty of \$7,063. The determination of the civil penalty is attached as Exhibit No.
15 1 and is incorporated as part of this Notice.

16 If you do not file a request for hearing as set forth in Section V below, your check or money
17 order must be made payable to "**Department of Environmental Quality**" and sent to: **DEQ - Business**
18 **Office, 700 NE Multnomah Street, Suite 600, Portland, Oregon 97232.**

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.oregon.gov. 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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19
20
21 12 / 22 / 2022
22 Date


23 
24 Kieran O'Donnell, Manager
25 Office of Compliance and Enforcement
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EXHIBIT NO. 1

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

VIOLATION: Disposing of septage in a location or manner not authorized by DEQ, in violation of OAR 340-071-0130(22).

CLASSIFICATION: This is a Class I violation pursuant to OAR 340-012-0060(1)(c).

MAGNITUDE: The magnitude of the violation is major pursuant to OAR 340-012-0130(3), as DEQ finds that the violation had a significant adverse impact on human health or the environment. In making this finding, DEQ considered the following information: Respondent's act of pumping the septage back into the septic tank and releasing it on residential property was a gross deviation from DEQ onsite requirements; Respondent's release of septage at a residence with children and animals presented a public health threat; and pumping septage back into a septic tank can adversely affect the septic system.

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 \$3,000 for a Class I, major magnitude violation in the matrix listed in OAR 340-012-0140(4)(b)(A)(i) and applicable pursuant to OAR 340-012-0140(4)(a)(G) because Respondent violated an onsite sewage disposal statute, rule or order and is not a residential-owner occupant.

"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 3 according to OAR 340-012-0145(2)(a)(B) and (D), because Respondent had one Class II violation in EEO WQ/OS-WR-6178 and two Class I violations in Case No. WQ/OS-WR-2021-082.

"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 insufficient information on which to base a finding under paragraphs (3)(a) or (b).

"O" is whether the violation was repeated or ongoing, and receives a value of 0 according to OAR 340-012-0145(4)(a) because there was only one occurrence of the violation on or about August 12, 2022.

"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 holds a sewage disposal services license and has knowledge of septage disposal requirements, including the requirement to dispose of septage at an authorized facility. When Respondent discharged

septage back into the septic tank and onto the ground at a residence, it consciously disregarded a substantial and unjustifiable risk that it would violate onsite requirements. Discharging septage onto the ground poses threats to public health and the environment. Discharging septage back into a septic tank poses a risk of damage to the septic system. Disregarding these risks constituted a gross deviation from the standard of care a reasonable licensed pumper would observe in that situation.

"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 the 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). Respondent did not make any effort to clean up the septage.

"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 \$163. This is the amount Respondent gained by avoiding an estimated \$250 to properly dispose of the septage at a disposal facility.

PENALTY CALCULATION: $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$
 $= \$3,000 + [(0.1 \times \$3,000) \times (3 + 0 + 0 + 8 + 2)] + \163
 $= \$3,000 + [\$300 \times 13] + \$163$
 $= \$3,000 + \$3,900 + \$163$
 $= \$7,063$