



Oregon

Kate Brown, Governor

Department of Environmental Quality
Office of Compliance and Enforcement
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Portland, OR 97232-4100
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TTY 711

November 22, 2022

CERTIFIED MAIL: Certified Mail # 7018 1830 0001 5906 3886

Union County Solid Waste Service District
1106 K Avenue
La Grande OR 97850

Re: Notice of Civil Penalty Assessment and Order
Case No. LQ-SW-ER-2021-163

This letter is to inform you that the Oregon Department of Environmental Quality (DEQ) has issued you a civil penalty of \$9,000 for failing to properly maintain the leachate and gas collection systems and groundwater monitoring wells at the closed Fox Hill Landfill near La Grande, in August of 2021. DEQ also cited you in the attached Notice, without penalty, for failing to maintain vegetative cover at the landfill.

DEQ issued this penalty because proper maintenance of closed landfills is important to protect public health and the environment. Numerous areas at this landfill had been neglected and were not operating as required, resulting in leachate releases. In addition, lack of site drainage maintenance was creating risks to the integrity of the groundwater monitoring wells.

DEQ appreciates your prompt efforts to address the violations and DEQ considered these efforts when determining the amount of civil penalty.

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.

If you have any questions, please contact Sarah Wheeler at 971-301-0622.

Sincerely,



Kieran O'Donnell, Manager
Office of Compliance and Enforcement

Enclosures

cc: Heidi Williams, DEQ
Phil Richerson, DEQ
Ron Doughten, DEQ
Accounting, DEQ
Scott Hartell, Union County Planning Director, shartell@union-county.org

BEFORE THE ENVIRONMENTAL QUALITY COMMISSION
OF THE STATE OF OREGON

IN THE MATTER OF:) NOTICE OF CIVIL PENALTY
UNION COUNTY SOLID WASTE) ASSESSMENT AND ORDER
SERVICE DISTRICT,)
Respondent.) CASE NO. LQ-SW-ER-2021-163

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, 093, and 094.

II. FINDINGS OF FACT

1. Respondent operates a closed municipal solid waste landfill (the Fox Hill Landfill) on Fox Hill Road in Union County, Oregon.

2. On May 31, 2013, DEQ issued Solid Waste Disposal Site Closure Permit Number 311 (the Permit) to Respondent for operations at the Fox Hill Landfill.

3. Condition 9.5 of the Permit states in part: “The permittee must construct, operate and maintain in good functional condition all leachate containment, collection, detection, removal, storage and treatment systems approved by DEQ.”

4. Condition 9.6 of the Permit states in part: “Leachate must be prevented from escaping to local drainage ways and to other unlined areas of the site. The leachate tank must be maintained as non-overflow facilities with minimum freeboard above the leachate surface, unless otherwise approved by DEQ.”

5. Condition 9.7 of the Permit states in part: “Landfill gas collection, containment, removal and treatment systems must be maintained in good functional condition.”

6. Condition 9.9 of the Permit states in part: “The permittee must monitor and maintain the cover system including cover thickness. The permittee must repair the cover with approved soil in all areas damaged by erosion, settlement, or cracking; and fertilize, re-seed and maintain sparsely

1 vegetated areas.”

2 7. Condition 9.10 of the Permit states: “The permittee must establish and maintain a dense,
3 healthy growth of vegetation on the landfill cover except for areas occupied by structures or pavement
4 associated with the site.”

5 8. Condition 9.11 of the Permit states in part: “Areas where vegetation has not been fully
6 established must be improved so that vegetation is established and maintained in a healthy condition to
7 protect the cover and minimize runoff or leachate creation.”

8 9. Condition 9.4 of the Permit states in part: “All stormwater drainage structures must be
9 maintained in good functional condition.”

10 10. Condition 18.2 of the Permit states: “The permittee must protect, operate, and maintain
11 gas, groundwater, leachate, and surface water monitoring devices so that samples representative of
12 actual conditions can be collected.”

13 11. On August 18, 2021, DEQ staff inspected the Fox Hill Landfill and the following
14 conditions were present:

- 15 a. Leachate was draining onto the ground in two locations: from a separation in the
16 leachate collection pipes, and a hole elsewhere in the pipe.
- 17 b. The leachate collection tank was full and overflowing or leaking into containment.
- 18 c. The hose leading into the leachate tank was under pressure, indicating head building up
19 into the landfill.
- 20 d. The cap on groundwater monitoring well 1 (MW-1) cap was not locked.
- 21 e. The concrete surrounding groundwater monitoring well 2 (MW-2) had eroded and was
22 not in contact with the ground, allowing soil gaps underneath to the well housing.
- 23 f. Groundwater monitoring well 4 (MW-4) is next to a stormwater culvert, and the soil
24 around it had eroded such that the culvert was not effectively diverting stormwater.
25 Rather, drainage was undercutting the soil near the well, potentially impacting the
26 integrity of the well.

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g. Sections of the landfill cap did not have any vegetative cover and others had sporadic vegetative cover.

h. The top of a gas monitoring pipe was broken and covered with a tin can.

III. CONCLUSIONS

1. Respondent violated OAR 340-094-0130(1)(b)(C), (D), and (E), and Permit Conditions 9.4, 9.5, 9.6, 9.7, and 18.2 by failing to maintain the leachate and gas collection and treatment systems and groundwater monitoring system at the Fox Hill Landfill. Specifically, Respondent failed to maintain the leachate collection system as described in Paragraphs 11.a-11.c of Section II above, in violation of OAR 340-094-0130(1)(b)(C) and (E), and Permit Conditions 9.5 and 9.6. Additionally, Respondent failed to maintain the gas collection and treatment system as described in Paragraph 11.h of Section II above, in violation of OAR 340-094-0130(1)(b)(C) and (E) and Permit Conditions 9.7 and 18.2. Finally, Respondent failed to maintain the groundwater monitoring system as described in Paragraphs 11.d-11.f of Section II above, in violation of OAR 340-094-0130(1)(b)(D) and (E) and Permit Conditions 9.4 and 18.2. These are Class I violations, according to OAR 340-012-0065(1)(f). DEQ hereby assesses a \$9,000 civil penalty for these violations.

2. Respondent violated OAR 340-094-0130(1)(b)(B) and (E), and Section 9.9, 9.10, and 9.11 of the Permit, by failing to ensure that a healthy vegetative cover is established and maintained at the Fox Hill Landfill, as specifically described in Paragraph 11.g of Section II above. This is a Class II violation, according to OAR 340-012-0053(2). DEQ has not assessed a civil penalty for this violation.

IV. ORDER TO PAY CIVIL PENALTY

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

Pay a total civil penalty of \$9,000. The determination of the civil penalty is attached as Exhibit 1, which 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 "**Department of Environmental Quality**" and sent to the **DEQ, Business Office, 700 NE Multnomah Street, Suite 600, Portland, Oregon 97232.**

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

2 You have a right to a contested case hearing on this Notice, if you request one in writing. DEQ
3 must receive your request for hearing **within 20 calendar days** from the date you receive this Notice. If
4 you have any affirmative defenses or wish to dispute any allegations of fact in this Notice or attached
5 exhibit, you must do so in your request for hearing, as factual matters not denied will be considered
6 admitted, and failure to raise a defense will be a waiver of the defense. (See OAR 340-011-0530 for
7 further information about requests for hearing.) You must send your request to: **DEQ, Office of**
8 **Compliance and Enforcement, 700 NE Multnomah Street, Suite 600, Portland, Oregon 97232**, fax
9 it to **503-229-6762** or email it to DEQappeals@deq.oregon.gov. An administrative law judge
10 employed by the Office of Administrative Hearings will conduct the hearing, according to ORS
11 Chapter 183, OAR Chapter 340, Division 011 and OAR 137-003-0501 to 0700. You have a right to be
12 represented by an attorney at the hearing, however you are not required to be. If you are an individual,
13 you may represent yourself. If you are a corporation, partnership, limited liability company,
14 unincorporated association, trust or government body, you must be represented by an attorney or a duly
15 authorized representative, as set forth in OAR 137-003-0555.

16 Active duty Service members have a right to stay proceedings under the federal Service
17 Members Civil Relief Act. For more information contact the Oregon State Bar at 1-800-
18 452-8260, the Oregon Military Department at 503-584-3571, or the nearest United States Armed
19 Forces Legal Assistance Office through <http://legalassistance.law.af.mil>. The Oregon Military
20 Department does not have a toll free telephone number.

21 If you fail to file a timely request for hearing, the Notice will become a final order by default
22 without further action by DEQ, as per OAR 340-011-0535(1). If you do request a hearing but later
23 withdraw your request, fail to attend the hearing or notify DEQ that you will not be attending the
24 hearing, DEQ will issue a final order by default pursuant to OAR 340-011-0535(3). DEQ designates

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1 the relevant portions of its files, including information submitted by you, as the record for purposes of
2 proving a prima facie case.
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6 11/22/22
7 Date

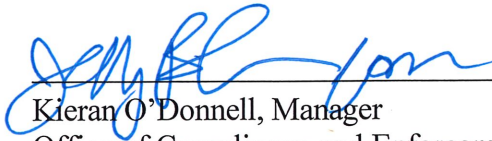
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9 Kieran O'Donnell, Manager
10 Office of Compliance and Enforcement
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EXHIBIT 1

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

VIOLATION NO. 1 Failing to maintain the leachate and gas collection and treatment systems and groundwater monitoring system at the Fox Hill Landfill, in violation of OAR 340-094-0130(1)(b)(C), (D), and (E), and Permit Conditions 9.4, 9.5, 9.6, 9.7, and 18.2.

CLASSIFICATION: These are Class I violations pursuant to OAR 340-012-0065(1)(f).

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)(Q)(i) because Respondent has a solid waste 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. These violations were ongoing from at least August 18, 2021, through approximately October 27, 2021. Each day of a violation with a duration of more than one day is a separate occurrence when determining the "O" factor, according to OAR 340-012-0145(4).

"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. According to OAR 340-012-0030(15), negligent means the respondent failed to take reasonable care to avoid a foreseeable risk of conduct constituting or resulting in a violation. As the permittee for this closed landfill, Respondent has knowledge of the requirements to properly operate and maintain these systems. By failing to take appropriate actions (e.g., conducting regular inspections and repairs) to ensure the systems were in good condition, Respondent failed to

take reasonable care to avoid this foreseeable risk of committing these violations of the permit.

"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 made reasonable efforts to correct the violations by October 27, 2021.

"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 determined that Respondent did not gain an economic benefit from the violations. 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 + (-3))] + \$0
= \$6,000 + (\$600 x 5) + \$0
= \$6,000 + \$3,000 + \$0
= \$9,000