



Oregon

Tina Kotek, 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

March 30, 2023

CERTIFIED MAIL: 7018 1830 0001 5906 2735

Allen Hambleton
c/o Nathan J. Ratliff
Parks & Ratliff PC
620 Main St
Klamath Falls OR 97601

Re: Notice of Civil Penalty Assessment and Order
Case No. LQ/SW-ER-2022-102

This letter is to inform you that DEQ has issued you a civil penalty of \$57,867 for operating an unpermitted solid waste disposal site at your property in Lakeview. Specifically, you have disposed of over 400 cubic yards of waste at your property including several hundred inoperable vehicles, over 500 inoperable appliances, trailers, waste tires, and 60 55-gallon drums of suspected fuel/water mixtures.

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. Furthermore, DEQ issued you a Warning Letter in May of 2022 and a Pre-Enforcement Notice in August of 2022, but you have not yet fully come into compliance.

DEQ appreciates your efforts to remove some of the waste to date and considered these efforts when determining the amount of civil penalty.

Included in Section IV of the attached Notice of Civil Penalty Assessment and Order is an order requiring you to take the following actions:

- 1) Prepare and submit to DEQ an updated and complete inventory of all the remaining solid waste at the property, including drums of waste fuel/water,
- 2) Prepare and submit to DEQ an updated plan, with timelines, for proposed clean up and legal disposal of the remaining solid waste, including the drums of waste fuel/water, at the property, and
- 3) Submit to DEQ documentation of the disposition of all of the solid waste you and your contractors have removed from the property since May 31, 2022.

\$38,667 of the civil penalty represents the economic benefit you gained by failing to legally dispose of the remaining solid waste at the Property. If you complete these requirements, DEQ will consider recalculating the costs as delayed rather than avoided and will reduce the civil penalty accordingly.

Allen Hambleton
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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 Sarah Wheeler at 971-301-0622.

Sincerely,



Kieran O'Donnell, Manager
Office of Compliance and Enforcement

Enclosures

cc: Eric Boone, DEQ
Todd Smith, Lake County Code Enforcement, tsmith@co.lake.or.us
Nathan Ratliff, nathan@parksandratliff.com

1 BEFORE THE ENVIRONMENTAL QUALITY COMMISSION
2 OF THE STATE OF OREGON

3 IN THE MATTER OF:) NOTICE OF CIVIL PENALTY
4 ALLEN HAMBLETON,) ASSESSMENT AND ORDER
5 Respondent.) CASE NO. LQ/SW-ER-2022-102

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 459.995, ORS Chapter 183 and Oregon Administrative Rules (OAR) Chapter 340, Divisions 011,
10 012, and 093.

11 II. FINDINGS OF FACT

12 1. At all material times, Respondent has owned a property located at 90400 Highway 140
13 West in Lakeview, Oregon (the Property).

14 2. Beginning on or about July 16, 2018, and ongoing as of the date of this Notice,
15 Respondent has stored, managed, and disposed of at the Property, at least several hundred inoperable
16 vehicles, at least 500 inoperable appliances (including but not limited to refrigerators, washers and
17 dryers, hot water heaters), at least 18 trailers, 12 farm implements, fencing materials, at least 2,000
18 waste tires, miscellaneous scrap metal and waste, and 60 55-gallon drums of suspected fuel/water
19 mixtures. Respondent accepted some of this waste at the Property from off-site.

20 3. Respondent has not applied for or been issued a solid waste disposal permit for the
21 Property.

22 III. CONCLUSIONS

23 Respondent violated ORS 459.205(1) and OAR 340-093-0050(1) by operating and maintaining
24 an unpermitted disposal site, as that term is defined in OAR 340-093-0030(38). Specifically, the waste
25 at the Property is solid waste, as defined in OAR 340-093-0030(91), because it consists of useless or
26 discarded garbage, appliances, commercial and industrial waste, and discarded or abandoned vehicles
27 and vehicle parts. This is a Class I violation according to OAR 340-012-0065(1)(a). DEQ assesses a

1 | \$57,867 civil penalty for this violation.

2 | IV. ORDER TO PAY CIVIL PENALTY AND TO COMPLY

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

5 | 1. Pay a total civil penalty of \$57,867. The determination of the civil penalty is attached as
6 | Exhibit 1 and is incorporated as part of this Notice. If you do not file a request for hearing as set forth in
7 | Section V below, your check or money order must be made payable to "**State Treasurer, State of**
8 | **Oregon**" and sent to the **DEQ, Business Office, 700 NE Multnomah Street, Suite 600, Portland,**
9 | **Oregon 97232.**

10 | 2. Within 30 days of this order becoming final by operation of law or on appeal, submit to
11 | Eric Boone, DEQ, 400 East Scenic Drive, Suite 307, The Dalles, OR 97058, all of the following:

12 | a. Documentation of the disposition of all of the solid waste you have removed from the
13 | Property since May 31, 2022, including records provided to you by your cleanup contractor(s);

14 | b. An updated and complete inventory of all the remaining solid waste at the Property,
15 | including all barrels of suspected fuel/water mixtures; and

16 | c. A updated proposed plan, with timelines, for cleaning up and legally disposing of the
17 | remaining solid waste, including all barrels of suspected fuel/water mixtures at the Property.

18 | V. NOTICE OF RIGHT TO REQUEST A CONTESTED CASE HEARING

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

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

6 Active duty Service members have a right to stay proceedings under the federal Service
7 Members Civil Relief Act. For more information contact the Oregon State Bar at 1-800-
8 452-8260, the Oregon Military Department at 503-584-3571, or the nearest United States Armed
9 Forces Legal Assistance Office through <http://legalassistance.law.af.mil>. The Oregon Military
10 Department does not have a toll free telephone number.

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

17
18 3/30/2023
19 Date

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Kieran O'Donnell
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 NO. 1 Operating and maintaining an unpermitted disposal site, in violation of ORS 459.205 and 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 established an unpermitted disposal site with more than 400 cubic yards of solid waste. Respondent accepted for storage and disposal at least the following solid waste at the Property: several hundred vehicles and trailers, over 500 appliances, over 2,000 tires, and unknown amounts of other solid waste.

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). Respondent should have had a solid waste disposal permit prior to allowing the disposal of solid waste at the Property.

"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. The violation has been on-going for at least 28 days.

"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) to mean Respondent failed to take reasonable care to avoid a foreseeable risk of conduct constituting or resulting in a violation. DEQ formally notified Respondent of the violation and requested corrective action in a Warning Letter with Opportunity to Correct sent to Respondent in May of 2022, and again in a Pre-Enforcement Notice in August 2022. As of the date of this Notice, Respondent has not fully complied. By accepting hundreds of disposed vehicles, appliances, and large amounts of other solid waste, at a property

Respondent knew was not permitted, Respondent failed to take reasonable care to avoid committing the violation.

"C" is Respondent's efforts to correct or mitigate the violation, and receives a value of -2 according to OAR 340-012-0145(6)(d) because Respondents eventually made some efforts to correct the violation. On August 31, 2022, Respondent submitted an initial plan to DEQ for removal and proper disposal of the solid waste at the Property. Respondent removed approximately 500 cars from the Property in or about September of 2022.

"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 \$38,667. This is the amount Respondent gained by avoiding spending an estimated total of \$67,421 to legally dispose of waste tires, solid waste, and drums of waste fuel/water. This "EB" was calculated pursuant to OAR 340-012-0150(1) using the U.S. Environmental Protection Agency's BEN computer model.

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

$$\begin{aligned} &= \$12,000 + [(0.1 \times \$12,000) \times (0 + 0 + 4 + 4 - 2)] + \$38,667 \\ &= \$12,000 + (\$1,200 \times 6) + \$38,667 \\ &= \$12,000 + \$7,200 + \$38,667 \\ &= \$19,200 + \$38,667 \\ &= \$57,867 \end{aligned}$$