



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

May 25, 2023

CERTIFIED MAIL: 7016 2710 0000 4221 2700

Frankie J. Hampton
176 Shurtz Hill Road
Riddle, OR 97469

Re: Notice of Civil Penalty Assessment and Order
Case No. LQ/SW-WR-2023-034

This letter is to inform you that the Oregon Department of Environmental Quality (DEQ) has issued you a civil penalty of \$33,984 for operating an unpermitted solid waste disposal site at the property in Riddle where you reside. You operated a business accepting abandoned vehicles, discarded appliances and other solid waste, and disposed of them at the property rather than a permitted solid waste disposal site.

DEQ issued this penalty because it is against Oregon 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.

Included in Section IV of the enclosed Notice is an order requiring you to remove and properly dispose of the solid waste at the property within sixty (60) days and submit documentation of compliance to DEQ. \$5,184 of the civil penalty amount represents the economic benefit you gained by failing to properly dispose of the solid waste on 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.

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.

Frankie J. Hampton
Case No. LQ/SW-WR-2023-034
Page 2

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 portion of the 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 Esther Westbrook at 503-229-5374 or toll free in Oregon at 800-452-4011, extension 5374.

Sincerely,



Kieran O'Donnell, Manager
Office of Compliance and Enforcement

Enclosures

cc: Susan M. Decker, 176 Shurtz Hill Road Riddle, OR 97469 AND PO Box 638, Cascade, ID 83611
Jennifer Carlock, Douglas County: jxcarloc@co.douglas.or.us
Jason Zanni, Medford Office, DEQ
Becky Williams, Eugene Office, DEQ
Accounting, DEQ

1 BEFORE THE ENVIRONMENTAL QUALITY COMMISSION

2 OF THE STATE OF OREGON

3 IN THE MATTER OF:
4 FRANKIE J. HAMPTON,
an individual,

5 Respondent.

)
) NOTICE OF CIVIL PENALTY
) ASSESSMENT AND ORDER

)
) CASE NO. LQ/SW-WR-2023-034

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7 I. AUTHORITY

8 The Department of Environmental Quality (DEQ) issues this Notice of Civil Penalty Assessment
9 and Order (Notice) pursuant to Oregon Revised Statutes (ORS) 468.100, ORS 468.126 through 468.140,
10 ORS Chapter 459, ORS Chapter 183 and Oregon Administrative Rules (OAR) Chapter 340, Divisions
11 011, 012, and 093.

12 II. FINDINGS OF FACT

13 1. At all material times, Respondent resided at or occupied real property located at 176
14 Shurtz Hill Road in Riddle, Douglas County Oregon (the Property).

15 2. On or about September 1, 2022, DEQ received a complaint about solid waste at the
16 Property.

17 3. On December 14, 2022, DEQ inspected the Property. At the time of the inspection, more
18 than 400 cubic yards of waste materials were disposed and stored at the Property, including
19 construction and demolition debris, discarded appliances, abandoned or inoperable vehicles, vehicle
20 parts, approximately eighty (80) waste tires, and garbage.

21 4. Respondent operated a business called "2 Tons Recycling and Recovery" at the
22 Property, offering services including property cleanup, removal of abandoned vehicles, and trailer
23 towing.

24 5. Respondent does not have a permit from DEQ authorizing the operation of a disposal
25 site at the Property.

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1 III. CONCLUSION

2 Since on or before December 14, 2022, Respondent violated ORS 459.205(1) and OAR 340-
3 093-0050(1) by establishing, operating, and maintaining a solid waste disposal site, as defined by ORS
4 459.005(8)(a), without a DEQ permit, as described in Section II above. The materials described in
5 Section II, Paragraph 3 above are useless and discarded putrescible and nonputrescible materials and
6 are therefore "solid waste" under ORS 459.005(25). This is a Class I violation according to OAR 340-
7 012-0065(1)(a). DEQ hereby assesses a \$33,984 civil penalty for this violation.

8 IV. ORDER TO PAY CIVIL PENALTY AND TO COMPLY

9 Based upon the foregoing FINDINGS OF FACTS AND CONCLUSION, Respondent is hereby
10 ORDERED TO:

11 1. Pay a civil penalty of \$33,984. The determination of the civil penalty is attached as Exhibit
12 No. 1, which is incorporated as part of this Notice.

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

16 2. Comply with Oregon law by taking the following actions:

17 Within sixty (60) days after this Notice becomes final by operation of law or on appeal,
18 remove and properly dispose of all solid waste at the Property. Submit documentation of compliance,
19 including disposal receipts and photographs, to Jason Zanni – DEQ by mail at 221 Stewart Avenue, Suite
20 201, Medford, Oregon 97501, or by email at jason.zanni@deq.oregon.gov.

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

22 You have a right to a contested case hearing on this Notice, if you request one in writing. DEQ
23 must receive your request for hearing **within 20 calendar days** from the date you receive this Notice. If
24 you have any affirmative defenses or wish to dispute any allegations of fact in this Notice or attached
25 exhibit, you must do so in your request for hearing, as factual matters not denied will be considered
26 admitted, and failure to raise a defense will be a waiver of the defense. (See OAR 340-011-0530 for
27 further information about requests for hearing.) You must send your request to: **DEQ, Office of**

1 **Compliance and Enforcement, 700 NE Multnomah Street, Suite 600, Portland, Oregon 97232**, fax
2 it to **503-229-6762** or email it to DEQappeals@deq.oregon.gov. An administrative law judge
3 employed by the Office of Administrative Hearings will conduct the hearing, according to ORS
4 Chapter 183, OAR Chapter 340, Division 011, and OAR 137-003-0501 to 0700. You have a right to be
5 represented by an attorney at the hearing, however you are not required to be. If you are an individual,
6 you may represent yourself. If you are a corporation, partnership, limited liability company,
7 unincorporated association, trust, or government body, you must be represented by an attorney or a
8 duly authorized representative, as set forth in OAR 137-003-0555.

9 Active-duty Service members have a right to stay proceedings under the federal Service
10 Members Civil Relief Act. For more information contact the Oregon State Bar at 1-800-
11 452-8260, the Oregon Military Department at 503-584-3571, or the nearest United States Armed
12 Forces Legal Assistance Office through <http://legalassistance.law.af.mil>. The Oregon Military
13 Department does not have a toll-free telephone number.

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

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21
22
23 Date

5/25/2023


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: Establishing, operating, and maintaining an unpermitted solid waste disposal site, in violation of ORS 459.205(1) 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 the volume of solid waste disposed by Respondent exceeded 400 cubic yards.
- 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)(i) because Respondent violated a solid waste statute or rule, and Respondent should have had a solid waste disposal 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. Each day of violation constitutes a separate occurrence. DEQ documented the violation on December 14, 2022, and the violation has not been corrected as of the date of this Notice, which is longer than 28 days.
- "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 operated a business accepting solid waste and accumulated the waste at a residential property rather than properly disposing of it, which created nuisance conditions in the neighborhood. After being contacted by Douglas County Code Enforcement and receiving a Warning Letter from DEQ in September 2022, Respondent did not make any efforts to remove solid waste from the property. By operating a solid waste disposal site without a DEQ permit, Respondent consciously disregarded a substantial and unjustifiable risk that he would violate the law. Considering the potential impacts to human health and the environment of operating an

unpermitted solid waste disposal site in a residential area, disregarding this risk constituted a gross deviation from the standard of care a reasonable person 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 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 Notice, Respondent has not removed the solid waste from the property.

"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 \$5,184. This is the amount Respondent gained by avoiding spending an estimated \$7,900 to properly dispose of the solid waste at the property. This "EB" was calculated pursuant to OAR 340-012-0150(1) using the U.S. Environmental Protection Agency's BEN computer model.

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

$$\begin{aligned} &= \$12,000 + [(0.1 \times \$12,000) \times (0 + 0 + 4 + 8 + 2)] + \$5,184 \\ &= \$12,000 + (\$1,200 \times 14) + \$5,184 \\ &= \$12,000 + \$16,800 + \$5,184 \\ &= \$33,984 \end{aligned}$$