



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

June 6, 2023

CERTIFIED MAIL: 7016 2710 0000 4221 2786

136 LLC, dba Burnside Auto Wrecking
9245 E Burnside St
Portland OR 97216

Re: Notice of Civil Penalty Assessment and Order
Case No. LQ-SW-NWR-2023-043

This letter is to inform you that the Oregon Department of Environmental Quality (DEQ) has issued you a civil penalty of \$9,792 for storing waste tires without a permit at your business in Portland.

DEQ issued this penalty because improperly managed waste tires can attract vectors such as rats and mosquitos, lead to nuisance conditions, and pose a fire risk. Waste tires may also pose a risk through releasing chemicals into the environment when not properly stored.

Included in Section IV is an order requiring you to either apply for a waste tire storage permit, or properly dispose of all waste tires in excess of 100, and document compliance to DEQ.

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 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.

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

Sincerely,

A handwritten signature in black ink, appearing to read "Kieran O'Donnell". The signature is fluid and cursive, with the first name being more prominent.

Kieran O'Donnell, Manager
Office of Compliance and Enforcement

Enclosures

Cc: 136 LLC, c/o Brian Scherer, Registered Agent, 801 SW Birdsdale Dr, Gresham OR 97080

Electronic cc: Caitlyn Peake, DEQ
Audrey O'Brien, DEQ
Kevin Duff, Burnsideautowrecking@gmail.com
Andy Kapileo, DMV, Andy.p.KAPILEO@odot.oregon.gov

1 BEFORE THE ENVIRONMENTAL QUALITY COMMISSION

2 OF THE STATE OF OREGON

3	IN THE MATTER OF:)	NOTICE OF CIVIL PENALTY
4	136 LLC, doing business as)	ASSESSMENT AND ORDER
5	BURNSIDE AUTO WRECKING,)	CASE NO. LQ-SW-NWR-2023-043
	Respondent.)	

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 Chapters 183 and 459 and Oregon Administrative Rules (OAR) Chapter 340, Divisions 011, 012 and
10 064.

11 II. FINDINGS OF FACT

- 12 1. At all material times, Respondent operated and continues to operate a vehicle
- 13 dismantling business at 9254 East Burnside Street in Portland, Oregon (the Site).
- 14 2. On June 13 and October 5, 2022, DEQ staff inspected the Site.
- 15 3. On June 13, 2022, Respondent stored approximately 1,200 tires that are no longer
- 16 suitable for their original intended purpose as a tire (waste tires) at the Site.
- 17 4. On October 5, 2022, Respondent stored approximately 650 waste tires at the Site.
- 18 5. As of the date of this Notice, Respondent continues to store in excess of 100 waste tires
- 19 at the Site.
- 20 6. Respondent does not have a waste tire storage permit issued by DEQ for the Site.

21 III. CONCLUSIONS

- 22 1. Respondent violated OAR 340-064-0015(1) and ORS 459.715(1) by storing more than
- 23 100 waste tires at the Site without a permit issued under ORS 459.745. As described in Section II above,
- 24 Respondent has stored, and continues to store, in excess of 100 waste tires, as defined in ORS
- 25 459.705(11) and OAR 340-064-0010(33), at the Site. This is a Class I violation, according to OAR 340-
- 26 012-0066(1)(a). DEQ hereby assesses a \$9,792 civil penalty for this violation.

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1 IV. ORDER TO PAY CIVIL PENALTY AND TO COMPLY

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

4 1. Pay a total civil penalty of \$9,792. The determination of the civil penalty is attached as Exhibit
5 1 and is incorporated as part of this Notice.

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

9 2. Within 30 days of this order becoming final by operation of law or on appeal, either:

10 a. Apply for a waste tire storage site permit from DEQ, by submitting a complete
11 application form and attachments, found under the heading "Waste tire disposal reporting and forms" at
12 <https://www.oregon.gov/deq/mm/swpermits/Pages/SW-Permit-Applications.aspx>, or

13 b. Remove and properly dispose of all of the waste tires in excess of 100 at the Site.
14 Additionally, provide disposal receipts and photographs of the Site documenting that no more than 100
15 waste tires remain on Site, and a written description of operating procedures that will ensure that no
16 more than 100 waste tires will be stored at the Site at any one time in the future. Provide these
17 submittals to Caitlyn Peake at DEQ, by email to Caitlyn.peake@deq.oregon.gov, or by mail to 700 NE
18 Multnomah St, Ste 600, Portland OR 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 6/6 / 2023
21 Date


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21 Kieran O'Donnell, Manager
22 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: Storing more than 100 waste tires without a permit, in violation of OAR 340-064-0015(1) and ORS 459.715(1).

CLASSIFICATION: This is a Class I violation pursuant to OAR 340-012-0066(1)(a).

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 \$4,000 for a Class I, moderate magnitude violation in the matrix listed in OAR 340-012-0140(3)(b)(A)(ii) and applicable pursuant to OAR 340-012-0140(3)(a)(I)(i) because Respondent should have had a waste tire 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. Respondent has stored in excess of 100 tires at the Site without a permit since at least June 13, 2022. Each day of a violation with a duration of more than one day is a separate occurrence when determining the "O" factor, as provided by OAR 340-012-0145(4).

"M" is the mental state of the Respondent, and receives a value of 8 according to OAR 340-012-0145(5)(d) because Respondent acted or failed to act intentionally with actual knowledge of the requirement. In June 2022, DEQ inspected the Site and issued a Warning Letter to Respondent in July 2022, citing this violation and requesting Respondent dispose of the tires or apply for a permit. When Respondent did not comply with the request in the Warning Letter, DEQ inspected again in October 2022, spoke with Respondent's representative about the requirements, and followed up with an email to Respondent providing links to the permit application forms. Respondent issued a Pre-Enforcement Notice in November 2022, again

citing the violation and directing Respondent to apply for a permit or properly dispose of the tires. As of the date of this Notice, Respondent has not complied.

"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 taken any corrective action.

"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 \$192. This is the amount Respondent gained by avoiding, since June 13, 2022, spending \$250 for the permit fee and \$38 per year to secure a bond. This "EB" was calculated pursuant to OAR 340-012-0150(1) using the U.S. Environmental Protection Agency's BEN computer model.

PENALTY CALCULATION: $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$
= \$4,000 + [(0.1 x \$4,000) x (0 + 0 + 4 + 8 + 2)] + \$192
= \$4,000 + (\$400 x 14) + \$192
= \$4,000 + \$5,600 + \$192
= \$9,792