



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 20, 2023

CERTIFIED MAIL: 7016 2710 0000 4221 2908

Warren Scott Hunter and Judith DeBrey
22250 E Beaver Creek Road
Cloverdale OR 97112

Re: Notice of Civil Penalty Assessment and Order
Case No. LQ-SW-NWR-2022-126

This letter is to inform you that the Oregon Department of Environmental Quality (DEQ) has issued you a civil penalty of \$10,509 for storing waste tires and solid waste without a permit at your property in Cloverdale.

DEQ issued this penalty because despite a Warning Letter with Opportunity to Correct in 2019, and a Pre-Enforcement Notice in 2022, you did not clean up and properly dispose of the waste tires and solid waste as required. Because of the environmental risks posed from waste tires, Oregon law strictly regulates their disposal. Waste tires may release chemicals into the environment, threatening water quality and public health, among other risks.

\$3,309 of the civil penalty represents the economic benefit you gained by failing to pay for the costs of proper disposal of the waste tires and solid waste. If you reimburse Tillamook County for the cleanup costs the county incurred, 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.

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 Sarah Wheeler at 971-301-0622.

Sincerely,



Kieran O'Donnell, Manager
Office of Compliance and Enforcement

Enclosures

cc: Caitlyn Peake, DEQ
Audrey O'Brien, DEQ
David McCall, Solid Waste Program Manager, Tillamook County, dmccall@co.tillamook.or.us

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

3 IN THE MATTER OF:)
4 WARREN SCOTT HUNTER and) NOTICE OF CIVIL PENALTY
5 JUDITH DEBREY,) ASSESSMENT AND ORDER
6 Respondents.) CASE NO. LQ-SW-NWR-2022-126

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 Chapters 183 and 459 and Oregon Administrative Rules (OAR) Chapter 340, Divisions 011, 012,
11 064 and 093.

12 II. FINDINGS OF FACT

13 1. At all material times, Respondent Judith DeBrey owns and occupies the property at
14 22250 East Beaver Creek Road in Cloverdale, Oregon (the Site).

15 2. At all material times, Respondent Warren Scott Hunter has access to, and exercises
16 control over, the Site.

17 3. On March 4, 2019, and May 12, 2022, DEQ staff inspected the Site.

18 4. From on or about March 4, 2019, until on or about March 2, 2023, Respondents
19 disposed of approximately three tons of garbage outside on the ground and buried in the ground at the
20 Site.

21 5. From on or about March 4, 2019; until on or about March 2, 2023, Respondents stored
22 approximately 125 truck tires that were no longer suitable for their original intended purpose as a tire
23 (waste tires) outside on the ground and buried in the ground at the Site.

24 6. Respondents do not have a solid waste disposal site permit or a waste tire storage permit
25 issued by DEQ for the Site.

26 7. On or about March 2, 2023, Tillamook County removed approximately three tons of
27 garbage and approximately 125 truck tires from the Site.

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1 III. CONCLUSIONS

2 1. Respondents violated OAR 340-064-0015(1) and ORS 459.715(1) by storing more than
3 100 waste tires at the Site without a permit issued under ORS 459.745. Storage, as defined in ORS
4 459.705(6), includes the use of waste tires as fences and other uses with similar potential for causing
5 environmental risks. As described in Section II above, Respondents stored in excess of 100 waste tires,
6 as defined in ORS 459.705(11) and OAR 340-064-0010(33), at the unpermitted Site from at least
7 March 4, 2019, until March 2, 2023. This is a Class I violation, according to OAR 340-012-0066(1)(a).
8 DEQ hereby assesses a \$10,231 civil penalty for this violation.

9 2. Respondents violated OAR 340-093-0040(1) by disposing of solid waste at an unpermitted
10 location, as described in Section II above. Respondents disposed of solid waste, as defined in ORS
11 459.005(25), at the unpermitted Site, from at least March 4, 2019, until March 2, 2023. This is a Class I
12 violation, according to OAR 340-012-0065(1)(c). DEQ hereby assesses a \$278 civil penalty for this
13 violation.

14 IV. ORDER TO PAY CIVIL PENALTY

15 Based upon the foregoing FINDINGS OF FACTS AND CONCLUSIONS, Respondents are
16 hereby ORDERED TO:

17 Pay a total civil penalty of \$10,509. The determination of the civil penalty is attached as
18 Exhibits 1 and 2, which are incorporated as part of this Notice.

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

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

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

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

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

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

21
22
23 6/20/2023
24 Date


23 
24 Kieran O'Donnell, Manager
25 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 stored in excess of 100 tires at the Site without a permit from at least March 4, 2019, through March 3, 2023. 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 4 according to OAR 340-012-0145(5)(c) because Respondent's conduct was negligent, as defined in OAR 340-012-0030(15). In 2019, DEQ inspected the Site and issued a Warning Letter with Opportunity to Correct, citing this violation and requesting Respondent dispose of the tires. When Respondent did not comply with the request in the Warning Letter, DEQ inspected again in 2022, and followed up with a Pre-Enforcement Notice in July 2022, again citing the violation and directing Respondent to properly dispose of the waste tires. Respondent did not do so, and Tillamook County removed and properly disposed of the waste tires in 2023.

"C" is Respondent's efforts to correct or mitigate the violation, and receives a value of 0 according to OAR 340-012-0145(6)(f) because there is insufficient information to make a finding under paragraphs (6)(a) through (6)(e), or (6)(g). Respondent made some effort to comply by obtaining a disposal trailer to be brought to the Site for the waste tires in January 2023. However, Respondent did not comply with the County's or DEQ's direction to properly dispose of the waste tires, and as of the date of this Notice, has not paid the County for the disposal costs.

"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 \$3,031. This is the amount Respondent gained by avoiding, since March 4, 2019, spending \$3,427 to properly dispose of the waste tires. 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 + 4 + 0)] + \$3,031
= \$4,000 + (\$400 x 8) + \$3,031
= \$4,000 + \$3,200 + \$3,031
= \$10,231

EXHIBIT 2

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

VIOLATION NO. 2: Storing more than 100 waste tires without a permit, in violation of OAR 340-064-0015(1) and ORS 459.715(1).

"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 \$278. This is the amount Respondent gained by avoiding, since March 4, 2019, spending \$315 to properly dispose of approximately three tons of solid waste. This "EB" was calculated pursuant to OAR 340-012-0150(1) using the U.S. Environmental Protection Agency's BEN computer model.

Pursuant to OAR 340-012-0150(5), DEQ may assess EB whether or not it assesses any other portion of the civil penalty using the formula in OAR 340-012-0045. For Violation 2, DEQ assesses EB of \$278.