



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

July 3, 2023

CERTIFIED MAIL: 9589 0710 5270 0110 6010 88

CERTIFIED MAIL: 9589 0710 5270 0110 6010 71

Castle Arden 1 LLC
c/o Beau Blixseth, Registered Agent
4802 SW Scholls Ferry Rd., Suite C
Portland OR, 97225

Tire Disposal & Recycling, LLC, dba Castle Tire
c/o Chandos Mahon, Registered Agent
9333 N. Harborgate St.
Portland OR, 97203

Re: Notice of Civil Penalty Assessment and Order
Case No. LQ/SW-NWR-2023-095

This letter is to inform you that the Oregon Department of Environmental Quality (DEQ) has issued Castle Arden 1 LLC and Tire Disposal & Recycling, LLC, dba Castle Tire a civil penalty of \$13,600 for operating a waste tire storage site without a permit issued by DEQ at your facility located at 900 N. Thunderbird Way in Portland. Specifically, you stored and continue to store more than 200 cubic yards of chipped waste tires at the facility.

DEQ issued this penalty because your storage of large quantities of chipped waste tires without a permit issued by DEQ creates a risk of harm to human health and the environment. To reduce the inherent risks of storing waste tires, DEQ's waste tire storage permitting program imposes technical and operational standards, such as maximum pile dimensions, liquid runoff control, and minimum distances from buildings. DEQ is particularly concerned about your storage of chipped tires at the Portland facility because it has caught fire at least three times, emitting thick smoke into the atmosphere. Smoke from a tire fire contains high levels of harmful pollutants, including polycyclic aromatic hydrocarbons (PAHs), benzene, styrene, phenols, and butadiene.

DEQ recognizes that it previously communicated that a waste tire storage site permit was not required for storage of chipped tires at this facility. Those communications were in error as applicable rules do require a permit for the storage of 200 or more cubic yards of chipped waste tires. On June 3, 2023, DEQ correctly informed you in writing that the storage of chipped tires in excess of 200 cubic yards requires a permit according to OAR 340-064-0015(1) and (2)(b). In addition, DEQ requested that you correct the violation of Oregon law by submitting, by June 19, 2023, either a plan to maintain less than 200 cubic yards of tire derived product at the facility or apply for a waste tire storage site permit. To date, you have not submitted a plan to maintain less than 200 cubic yards of tire-derived product, and you have not submitted a permit application. Your response to the June 3 corrective action request asserted that your facility does not require a permit for the storage of 200 cubic yards or more of chipped tires.

Included in Section IV of the enclosed Notice is an order requiring you to either remove the chipped tires stored at the facility in excess of 200 cubic yards or apply for a waste tire storage site permit.

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 503-229-6927 or toll free in Oregon at 800-452-4011, extension 6927.

Sincerely,



Kieran O'Donnell, Manager
Office of Compliance and Enforcement

Enclosures

cc: Inez Lawson, Northwest Region, DEQ
Audrey O'Brien, Northwest Region, DEQ
Accounting, DEQ
Law office of Frank Hammond, LLC
c/o Frank Hammond, Attorney for Respondents
1050 SW 6th Avenue, Suite 1100
Portland, OR 97204

1 BEFORE THE ENVIRONMENTAL QUALITY COMMISSION

2 OF THE STATE OF OREGON

3	IN THE MATTER OF:)	
4	CASTLE ARDEN 1 LLC and)	NOTICE OF CIVIL PENALTY
4	TIRE DISPOSAL & RECYCLING, LLC,)	ASSESSMENT AND ORDER
5	dba CASTLE TIRE)	
5	Respondents.)	CASE NO. LQ/SW-NWR-2023-095

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 064.

11 II. FINDINGS OF FACT

12 1. Since February 1, 2021, Respondent Castle Arden 1 LLC (Respondent Castle) has
13 owned and continues to own the industrial property located at 900 N. Thunderbird Way, Portland, OR,
14 97227 (the Facility). The Facility is located in a highly populated area of Portland, adjacent to the
15 Willamette River, and within 500 feet of Peace Memorial Park.

16 2. Respondent Tire Disposal & Recycling, LLC, dba Castle Tire (Respondent TDR)
17 operates a waste tire collection, processing, and recycling business.

18 3. Since as early as 2021, Respondent TDR began depositing and storing chipped waste
19 tires in large piles at the Facility.

20 4. On May 25, 27, and 29, 2023, some of the chipped waste tires stored at the Facility
21 caught fire and burned, emitting thick smoke. Emissions from burning tires may contain harmful
22 pollutants, including polycyclic aromatic hydrocarbons (PAHs), benzene, styrene, phenols, and
23 butadiene. Oil that exudes onto the ground and surface water as a result of a tire fire is highly
24 flammable and a significant pollutant.

25 5. On May 31, 2023, DEQ performed an inspection of the Facility. At the time of the
26 inspection, there were approximately 3,000 cubic yards of chipped waste tires stored in two large piles
27 at the Facility. One of the piles was overflowing onto an adjacent property, levy code 883, Portland

1 OR, 97227, owned by Union Pacific Railroad Company.

2 6. Respondents do not have a waste tire storage permit issued by DEQ for the chipped
3 waste tires stored at the Facility.

4 III. CONCLUSIONS

5 1. Respondents have violated OAR 340-064-0015(1) by establishing, operating, maintaining,
6 or expanding a waste tire storage site without a permit issued by DEQ, as described in Section II above.
7 Specifically, Respondents have stored approximately 3,000 cubic yards of chipped waste tires at the
8 Facility since May 31, 2023, the date of DEQ's site visit. The chipped waste tires are "tire-derived
9 products," as defined by OAR 340-064-0010(31) because they are tire chips or other materials
10 produced from the physical processing of a waste tire. OAR 340-064-0015(1) and (2)(b) require any
11 person who stores more than 200 cubic yards of tire-derived products to obtain a waste tire storage
12 permit from DEQ. This is a Class I violation, according to OAR 340-012-0066(1)(a). DEQ hereby
13 assesses a \$13,600 civil penalty for this violation.

14 IV. ORDER TO PAY CIVIL PENALTY AND TO COMPLY

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

17 1. Pay a total civil penalty of \$13,600. The determination of the civil penalty is attached as
18 Exhibit No. 1 and is 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 2. Within 30 days of this order becoming final by operation of law or on appeal, Respondents
23 must:

24 a. Remove all tire-derived products in excess of 200 cubic yards from the Facility, or

25 b. Submit to DEQ a complete application for a Waste Tire Storage permit.

26 3. Documentation demonstrating Respondent's compliance must be sent to DEQ's Solid Waste
27 Compliance Specialist, Inez Lawson at inez.lawson@deq.oregon.gov.

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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7/3/2023
Date



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 Establishing, operating, maintaining, or expanding a waste tire storage site without a permit issued by DEQ, in violation of OAR 340-064-0015(1).

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

MAGNITUDE: The magnitude of the violation is major pursuant to OAR 340-012-0130(3) as there is no selected magnitude specified in OAR 340-012-0135 applicable to this violation and DEQ finds that the violation had a significant adverse impact on human health or the environment. In making this finding, DEQ considered the following reasonably available information: Respondents' unpermitted activity resulted in the conflagration of the piles of tire chips on at least three days, emitting dense smoke containing harmful pollutants in a heavily populated area directly adjacent to the Willamette River.

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 \$8,000 for a Class I, major magnitude violation in the matrix listed in OAR 340-012-0140 (3)(b)(A)(i) and applicable pursuant to OAR 340-012-0140 (3)(a)(I)(i) because Respondents should have a waste tire permit.

"P" is whether Respondents have 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 Respondents' 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 3 according to OAR 340-012-0145(4)(c) because there were from seven to 28 occurrences of the violation. Each day of violation constitutes a separate offense. The Respondents have unlawfully stored tire-derived product at the Facility since 2021. However, in 2022 and 2023, DEQ erroneously applied the law to Respondents' conduct, stating that a permit was not required. Respondents reasonably relied on DEQ's inaccurate statements. On June 3, 2023, in Pre-Enforcement Notice Letter, No. 8469, DEQ correctly informed Respondents that their storage of over 200 cubic yards of tire-derived product requires a waste tire storage permit

and requested Respondents take actions to correct the violation by no later than June 19, 2023. Therefore, DEQ is electing to exercise its enforcement discretion to assess only one base penalty, and aggravate the O factor for each day of non-compliance on and after June 20, 2023, the day after DEQ requested Respondents take specific actions to correct the violation.

"M" is the mental state of the Respondents, and receives a value of 2 according to OAR 340-012-0145(5)(b) because Respondents had constructive knowledge (reasonably should have known) of the requirement. DEQ informed Respondents of the requirement to apply for a waste tire storage permit for the storage of 200 cubic yards or more of tire-derived product on June 3, 2023.

"C" is Respondents' 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 Respondents have not submitted a waste tire storage site application or removed from the Facility all tire-derived product in excess of 200 cubic yards.

"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 because there is insufficient information on which to make an estimate.

PENALTY CALCULATION: $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$
 $= \$8,000 + [(0.1 \times \$8,000) \times (0 + 0 + 3 + 2 + 2)] + \0
 $= \$8,000 + (\$800 \times 7) + \$0$
 $= \$8,000 + \$5,600 + \$0$
 $= \$13,600$