



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

August 3, 2023

CERTIFIED MAIL: 9589 0710 5270 0110 6007 39

Todd Wayne McCloskey
17790 Old County Rd
Brookings, OR 97415-7244

Re: Notice of Civil Penalty Assessment and Order
Case No. LQ/SW-WR-2023-036

This letter is to inform you that the Oregon Department of Environmental Quality (DEQ) has issued you a civil penalty of \$10,441 for disposing of solid waste at an unpermitted location. Specifically, you disposed of more than 400 cubic yards of solid waste, including vehicles and vehicle parts, waste tires, furniture, appliances, construction and demolition waste, and miscellaneous household garbage at your residential property in Brookings.

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 disposal sites 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 and submit documentation (e.g. receipts and photos) demonstrating compliance to Jason Zanni in DEQ's solid waste program. \$8,441 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 this requirement, 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

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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: Jason Zanni, Medford Office, DEQ
Becky Williams, Eugene Office, DEQ

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

3 IN THE MATTER OF:) NOTICE OF CIVIL PENALTY
4 TODD WAYNE MCCLOSKEY,) ASSESSMENT AND ORDER
5 an individual,)
Respondent.) CASE NO. LQ/SW-WR-2023-036

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 owned real property located at 17784 Old County
13 Road in Brookings, Curry County, Oregon (the Property).
- 14 2. On March 17, 2022, DEQ conducted an inspection of the Property.
- 15 3. At the time of the inspection, the following materials were discarded at the Property: at
16 least twenty abandoned or inoperable vehicles, vehicle parts, approximately 100 waste tires, furniture,
17 discarded appliances, scrap metal, demolition and construction waste, and miscellaneous household
18 garbage. The total volume of these materials was over 400 cubic yards.
- 19 4. Respondent does not have a solid waste disposal site permit for the Property.

20 III. CONCLUSION

21 Respondent has violated OAR 340-093-0040(1) by disposing of solid waste at an unpermitted
22 location. Specifically, prior to March 17, 2022, Respondent disposed of the materials described in
23 Section II, Paragraph 3 at the Property. These materials are "solid waste" as defined by OAR 340-093-
24 0030(91) because they are useless and discarded. This is a Class I violation, according to 340-012-
25 0065(1)(c). DEQ hereby assesses a \$10,441 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 CONCLUSION, Respondent is hereby
3 ORDERED TO:

4 1. Pay a total civil penalty of \$10,441. The determination of the civil penalty is attached as
5 Exhibit 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: **DEQ - Business**
8 **Office, 700 NE Multnomah Street, Suite 600, Portland, Oregon 97232.**

9 2. Within sixty (60) days of this Order becoming final by operation of law or on appeal, clean
10 up and properly dispose of all solid waste at the Property. Submit documentation of your compliance,
11 including photos and receipts, to Jason Zanni, DEQ Solid Waste Program, by mail to 221 Stewart
12 Avenue, Suite 201, Medford, OR 97501 or by email to Jason.Zanni@deq.oregon.gov.

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

14 You have a right to a contested case hearing on this Notice, if you request one in writing. DEQ
15 must receive your request for hearing **within 20 calendar days** from the date you receive this Notice. If
16 you have any affirmative defenses or wish to dispute any allegations of fact in this Notice or attached
17 exhibit, you must do so in your request for hearing, as factual matters not denied will be considered
18 admitted, and failure to raise a defense will be a waiver of the defense. (See OAR 340-011-0530 for
19 further information about requests for hearing.) You must send your request to: **DEQ, Office of**
20 **Compliance and Enforcement, 700 NE Multnomah Street, Suite 600, Portland, Oregon 97232**, fax
21 it to **503-229-6762** or email it to **DEQappeals@deq.oregon.gov**. An administrative law judge
22 employed by the Office of Administrative Hearings will conduct the hearing, according to ORS
23 Chapter 183, OAR Chapter 340, Division 011, and OAR 137-003-0501 to 0700. You have a right to be
24 represented by an attorney at the hearing, however you are not required to be. If you are an individual,
25 you may represent yourself. If you are a corporation, partnership, limited liability company,
26 unincorporated association, trust, or government body, you must be represented by an attorney or a
27 duly authorized representative, as set forth in OAR 137-003-0555.

1 Active-duty Service members have a right to stay proceedings under the federal Service
2 Members Civil Relief Act. For more information contact the Oregon State Bar at 1-800-
3 452-8260, the Oregon Military Department at 503-584-3571, or the nearest United States Armed
4 Forces Legal Assistance Office through <http://legalassistance.law.af.mil>. The Oregon Military
5 Department does not have a toll-free telephone number.

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

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8 / 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: Disposing of solid waste at an unpermitted site in violation of OAR 340-093-0040(1).

CLASSIFICATION: This is a Class I violation pursuant to OAR 340-012-0065(1)(c).

MAGNITUDE: The magnitude of the violation is moderate pursuant to OAR 340-012-0135(3)(a)(A) because Respondent disposed of more than 400 cubic yards of solid waste at an unpermitted site.

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 \$1,000 for a Class I, major magnitude violation in the matrix listed in OAR 340-012-0140(5)(b)(A)(i) and applicable pursuant to OAR 340-012-0140(5)(a)(H) because Respondent violated a solid waste rule and is a residential owner-occupant.

"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 March 17, 2022, and the violation is ongoing as of the date of this Notice, which is a duration of over sixteen months.

"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. Prior to DEQ's inspection on March 17, 2022, Curry County staff had notified Respondent of the solid waste violation and requested cleanup of the property. By continuing to accumulate and dispose of solid waste on the property rather than at a permitted disposal site, Respondent failed to exercise reasonable care to avoid the foreseeable risk that he would violate the law.

"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 cleaned up 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 \$8,441. This is the amount Respondent gained by avoiding spending a total of 8,000 to properly dispose of the solid waste. This "EB" was calculated pursuant to OAR 340-012-0150(1) using the U.S. Environmental Protection Agency's BEN computer model.

PENALTY CALCULATION: $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$
 $= \$1,000 + [(0.1 \times \$1,000) \times (0 + 0 + 4 + 4 + 2)] + \$8,441$
 $= \$1,000 + (\$100 \times 10) + \$8,441$
 $= \$1,000 + \$1,000 + \$8,441$
 $= \$10,441$