



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

November 7, 2023

CERTIFIED MAIL: 9589 0710 5270 0110 6012 55

Orbit Enterprises, Inc.
dba Economy Auto Parts
c/o Alex Christie, Registered Agent
1130 SW Morrison Street, Suite 510
Portland, OR 97205

Re: Notice of Civil Penalty Assessment and Order
Case No. LQ/HW-NWR-2023-537

This letter is to inform you that the Oregon Department of Environmental Quality (DEQ) has issued you a civil penalty of \$6,000 for land quality violations at your facility in Portland. You failed to clean up numerous spills of used oil at the facility. You were also cited, without penalty, for failing to properly store and label used oil, and failing to properly manage waste tires in violation of your waste tire disposal site permit.

DEQ issued this penalty because improper management of wastes such as used oil and waste tires can cause environmental contamination and threaten public health and safety. In order to prevent these impacts, DEQ regulates businesses and individuals that generate and store used oil and waste tires. Your failure to comply with used oil and waste tire requirements increases the risk that human health or the environment could be harmed by mismanagement of these wastes.

DEQ appreciates your efforts to address the violations, including hiring a contractor to remove petroleum-contaminated soil at the facility and conduct soil sampling. DEQ considered these efforts when determining the amount of civil penalty.

You may pay the civil penalty as follows:

Pay online with e-check (ACH) or Credit Card. Go to Your DEQ Online here: <https://ydo.oregon.gov>. Select Register Account or Login, then select Pay Invoices/Fees on your account dashboard. Enter the Invoice number and Account ID included on the attached payment slip. Note: US Bank charges a 2.3% convenience charge for credit card transactions. ACH payments have no additional charges.

Pay by check or money order: Make checks payable to "Department of Environmental Quality" and mail to the address on the enclosed payment slip. Please make sure to include the payment slip with your check or money order and note the case number on your check.

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 – 503-229-5100

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 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: Chris Gaboury, Economy Auto Parts, 6909 NE 47th Ave., Portland, OR 97218
Andy Kapileo, DMV: Andy.p.KAPILEO@odot.oregon.gov
Michelle Olson, Northwest Region Office, DEQ
Caitlyn Peake, Northwest Region Office, DEQ
Inez Lawson, Northwest Region Office, DEQ
Audrey O'Brien, Northwest Region Office, DEQ
Accounting, DEQ

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

3 IN THE MATTER OF:)
4 ORBIT ENTERPRISES, INC.,) NOTICE OF CIVIL PENALTY
5 an Oregon corporation,) ASSESSMENT AND ORDER
6 ECONOMY AUTO PARTS,)
Respondent.) CASE NO. LQ/HW-NWR-2023-537

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 465.900, ORS 466.990, ORS Chapter 183, ORS Chapter 459, ORS Chapter 466, and Oregon
11 Administrative Rules (OAR) Chapter 340, Divisions 011, 012, 096, 100-102, and 111.

12 II. FINDINGS OF FACT

- 13 1. At all material times, Respondent operated an auto dismantling and used auto parts
14 business at 6909 NE 47th Avenue in Portland, Multnomah County, Oregon (the Facility).
- 15 2. On October 5, 2022 and December 15, 2022, DEQ inspected the Facility.
- 16 3. On December 15, 2022, there were spills of used oil present throughout the Facility
17 including:
- 18 a. The ground beneath one of the three trailers used for storage at the Facility was slick
19 with oil that had leaked from items that were stored in the trailer, which included
20 engines, transmissions, and auto parts.
 - 21 b. The paved driveway was covered with oil-stained dirt and puddles of water that had an
22 oil sheen.
 - 23 c. The concrete slab used as an area for consolidating and storing used oil drained from
24 vehicles was also covered with a buildup of oil, grease. There was no containment for
25 the slab, and oil had been released onto the ground around the slab.
 - 26 d. There were multiple areas in the yard where used oil had been released to the ground
27 and the soil or mud was saturated with oil, and puddles of water had an oil sheen.

1 e. There was a cracked bucket containing emulsified used oil that had leaked oil onto the
2 ground.

3 4. On December 15, 2022, Respondent stored used oil in the following manner:

4 a. A 275-gallon tote containing used oil that was labeled “honey” that did not have a lid
5 and was not covered;

6 b. A 275-gallon tote containing used oil that was labeled “used oil” that did not have a lid
7 and was not covered;

8 c. Several uncovered and unlabeled buckets up to five gallons in size containing used oil
9 and gasoline; and

10 d. Numerous gas cans and small containers used for storing or transporting gasoline or
11 used oil that were open and not labeled.

12 5. At all material times, Respondent held a Waste Tire Storage Site/Carrier Combination
13 Permit No. 1664 (Permit) from DEQ. The Permit allows Respondent to establish, operate, and maintain
14 a waste tire storage site and to haul waste tires in conformance with the requirements, limitations, and
15 conditions set forth in the Permit.

16 6. Condition 7.1 of the Permit requires Respondent to operate the facility in accordance
17 with a DEQ approved facility management plan. The facility management plan states that upon arrival,
18 tires deemed to be “waste tires” will be immediately removed and place in a storage container.

19 7. Condition 7.4 of the Permit requires Respondent to ensure that whole tires received for
20 storage for one month or longer be stacked or ricked.

21 8. Condition 7.6 of the Permit requires Respondent to maintain and operate the site in a
22 manner which avoids the attraction of insects, rodents, and other vectors to the maximum extent
23 practical.

24 9. On October 5, 2022, and December 15, 2022, there were many piles of waste tires and
25 individual waste tires scattered throughout the Facility, rather than stored in a dropbox or other
26 container. The tires were placed haphazardly and not stacked or ricked. Some of the tires had
27 vegetation growing through and over them.

1 III. CONCLUSIONS

2 Based upon the foregoing Findings of Fact, DEQ has determined that Respondent violated the
3 following provisions of Oregon law, including the hazardous waste and used oil laws in the Code of
4 Federal Regulations (CFRs) as adopted by OAR 340-100-0002.

5 1. Respondent failed to immediately clean up releases of used oil at the Facility, as described in
6 Section II, Paragraph 3 above, in violation of ORS 466.645(1). This is a Class I violation according to
7 OAR 340-012-0072(1)(k). DEQ hereby assesses a \$6,000 civil penalty for this violation.

8 2. Respondent failed to label containers storing used oil with the words "used oil," as described in
9 Section II, Paragraph 4 above, in violation of 40 CFR 279.22(c)(1). This is a Class II violation according to
10 OAR 340-012-0072(2)(e). DEQ has not assessed a civil penalty for this violation.

11 3. Respondent failed to close or cover used oil containers, in violation of 340-111-0032(2), as
12 described in Section II, Paragraph 4 above. This is a class II violation according to OAR 340-012-
13 0072(2)(c). DEQ has not assessed a civil penalty for this violation.

14 4. Respondent has violated Conditions 7.1, 7.4, and 7.6 of the Permit and OAR 340-096-0230 by
15 failing to manage waste tires in conformance with these requirements and the facility management plan.
16 This is a Class II violation according to OAR 340-012-0053(2). DEQ has not assessed a civil penalty for
17 this violation.

18 IV. ORDER TO PAY CIVIL PENALTY

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

21 Pay a civil penalty of \$6,000. The determination of the civil penalty is attached as Exhibit No.
22 1, which is incorporated as part of this Notice.

23 If you do not file a request for hearing as set forth in Section V below, please pay the penalty as
24 follows:

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1 Pay online with e-check (ACH) or Credit Card. Go to Your DEQ Online here:
2 <https://ydo.oregon.gov>. Select Register Account or Login, then select Pay Invoices/Fees on your account
3 dashboard. Enter the Invoice number and Account ID included on the attached payment slip. Note: US
4 Bank charges a 2.3% convenience charge for credit card transactions. ACH payments have no additional
5 charges.

6 Pay by check or money order: Make checks payable to "Department of Environmental
7 Quality" and mail to the address on the enclosed payment slip. Please make sure to include the payment
8 slip with your check or money order.

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

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

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

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

11/7/2023

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 1: Failing to immediately clean up releases of used oil at the Facility, in violation of ORS 466.645(1).

CLASSIFICATION: This is a Class I violation pursuant to OAR 340-012-0072(1)(k).

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)(K) because Respondent violated an oil and hazardous material spill and release statute during a commercial activity.

"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. The violation was first documented by DEQ on October 5, 2023. Based on the number of releases and the condition of the site, the violation has been ongoing for several years.

"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. Respondent is a licensed auto dismantler and handles used oil and petroleum products as part of its business. Respondent should have had procedures in place to properly manage used oil and to prevent and respond to releases. By failing to clean up multiple releases over the years, Respondent failed to take reasonable care to avoid a foreseeable risk that it would violate used oil or emergency response requirements.

"C" is Respondent's efforts to correct or mitigate the violation, and receives a value of -3 according to OAR 340-012-0145(6)(c) because Respondent made reasonable efforts to correct the violation, or took reasonable efforts to minimize the effects of the violation. Respondent hired an environmental contractor to remove petroleum-contaminated soil at the facility and conduct soil sampling.

"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 DEQ finds that Respondent's economic benefit from the violation was de minimis. Respondent likely incurred a greater cost to hire a contractor to clean up the site than it would have if it cleaned up oil spills immediately after they occurred.

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

$$\begin{aligned} &= \$4,000 + [(0.1 \times \$4,000) \times (0 + 0 + 4 + 4 - 3)] + \$0 \\ &= \$4,000 + (\$400 \times 5) + \$0 \\ &= \$4,000 + \$2,000 + \$0 \\ &= \$6,000 \end{aligned}$$

Oregon Department of Environmental Quality
 700 NE Multnomah Street, Suite 600
 Portland, OR 97232-4100



State of Oregon
Department of Environmental Quality

Phone: 503-229-5437
 Fax: 503-229-5850

CIVIL PENALTY - ORS 468.135(2)

DATE:	November 7, 2023
RESPONSE DATE :	January 16, 2024
TOTAL PENALTY:	\$6,000.00

Account Name:	ECONOMY AUTO PARTS		
Account Type:	Vendor/Organization/Company	Reference Number:	CPGFD2400018
SubSystem ID:	212261	FIMS Acct. ID:	9808

Penalty Summary

Penalty Amount	Interest	Adjustment	Amount Paid	Total Penalty
\$ 6,000.00	\$ 0.00	\$ 0.00	\$ 0.00	\$ 6,000.00

Payment of this penalty is subject to the exercise of your options or right to appeal as described in the enclosed enforcement documents.

To Pay Online with ACH or Credit Card Visit <https://ydo.oregon.gov> and select 'Register Account'



 PLEASE RETURN THIS PORTION WITH YOUR PAYMENT



REFERENCE NO.:	CPGFD2400018		
PAYCODE:	00401 7400 10040 74001 0500 000000 00		
FEE PROGRAM ID:	950	RESPONSE DATE:	January 16, 2024
FIMS ACCT. ID:	9808	TOTAL PENALTY DUE:	\$6000.00

AMOUNT ENCLOSED:

MAKE CHECK PAYABLE TO: Department of Environmental Quality

DEQ FINANCIAL SERVICES - LBX4244
 PO BOX 4244
 PORTLAND OR 97208-4244

Check this box if updated address information has been provided on the back of the form.

00401 7400 10040 74001 0500 000000 0095000098084CPGFD2400018000006000008



State of Oregon
Department of
Environmental
Quality

State of Oregon Department of Environmental Quality

CIVIL PENALTY - ORS 468.135(2)

700 NE Multnomah Street, Suite 600
Portland, OR 97232-4100
Phone: 503-229-5437
Fax: 503-229-5850

Penalty Detail

Transaction Date	Description	Amount
11/6/2023	2023-537 LQ-HW-NWR-2023-537	\$6,000.00

SFMS Agencies Use:

Trans Code	Treasury Fund	SFMS	Index	PCA (5)	Agency Object	Project #	Phase
723	00401	7400	10040	74001	0500	00000	00

Address Changes

Please visit <https://ydo.oregon.gov> to update your mailing address online or provide the following information:

Name _____
Address _____
City, State, Zip _____