



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

January 23, 2024

CERTIFIED MAIL: 9589 0710 5270 0688 6539 91

Justin Gauvain
1710 N Lake Rd
Lakeside OR 97449

Re: Notice of Civil Penalty Assessment and Order
Case No. LQ-SW-WR-2023-128

This letter is to inform you that the Oregon Department of Environmental Quality (DEQ) has issued you a civil penalty of \$5,367 for disposing or allowing the disposal of solid waste at your property in Lakeside, Oregon. Specifically, you disposed of approximately 100 cubic yards of useless and discarded vehicles, vehicle parts, tires, furniture, appliances, and household garbage at the property.

DEQ issued this penalty because the illegal disposal of wastes poses a threat to the environment and public health. In addition, you have not responded to DEQ's previous warnings regarding the disposal of wastes at the property, including the Warning Letter with Opportunity to Correct that DEQ sent you in March of 2023.

Included in Section IV of the enclosed Notice is an order requiring you to submit a plan to DEQ for cleaning up the property. \$2,367 of the civil penalty represents the economic benefit you gained by failing to legally dispose of the estimated 100 cubic yards of solid waste. If you complete these requirements, 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.

Justin Gauvain
Case No. LQ-SW-WR-2023-128
Page 2

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,

A handwritten signature in black ink, appearing to read "Kieran O'Donnell", written in a cursive style.

Kieran O'Donnell, Manager
Office of Compliance and Enforcement

Enclosures

cc: Jason Zanni, DEQ

1 and is incorporated as part of this Notice.

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

5 2. Within 30 days of this order becoming final by operation of law or on appeal, submit a plan
6 for properly disposing or recycling all of the solid waste at the Property, including timelines and
7 progress reporting, to Jason Zanni, DEQ, at jason.zanni@deq.oregon.gov or at DEQ, 221 Stewart
8 Avenue, Suite 201, Medford OR 97501. Upon DEQ approval of the plan, implement the plan as
9 approved.

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

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

25 Active duty Service members have a right to stay proceedings under the federal Service
26 Members Civil Relief Act. For more information contact the Oregon State Bar at 1-800-
27 452-8260, the Oregon Military Department at 503-584-3571, or the nearest United States Armed

1 Forces Legal Assistance Office through <http://legalassistance.law.af.mil>. The Oregon Military
2 Department does not have a toll free telephone number.

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

9
10 1/23/2024
11 Date


12 
13 _____
14 Kieran O'Donnell, Manager
15 Office of Compliance and Enforcement
16
17
18
19
20
21
22
23
24
25
26
27

EXHIBIT 1

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

- VIOLATION NO. 1: Disposing of or authorizing the disposal of solid waste at an unpermitted location, 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)(B) because Respondent illegally disposed or allowed the disposal of an estimated 100 cubic yards of solid waste.
- 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 \$1,500 for a Class I, moderate magnitude violation in the matrix listed in OAR 340-012-0140(4)(b)(A)(ii) and applicable pursuant to OAR 340-012-0140(4)(a)(A).
- "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 a violation with a duration of more than one day is a separate occurrence when determining the "O" factor, according to OAR 340-012-0145(4). The violation has been ongoing since at least December 31, 2021.
- "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. According to OAR 340-012-0030(15), negligent means the respondent failed to take reasonable care to avoid a foreseeable risk of conduct constituting or resulting in a violation. DEQ sent Respondent a Warning Letter with Opportunity to Correct on March 31, 2023, and when Respondent did not address the violation, DEQ sent Respondent a Pre-Enforcement Notice on July 6, 2023. As of the date of this Notice, Respondent has not addressed the violation.
- "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 solid waste.

"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 \$2,367. This is the amount Respondent gained by avoiding spending \$2,343 to properly dispose of solid waste, since at least December 31, 2021. This "EB" was calculated pursuant to OAR 340-012-0150(1) using the U.S. Environmental Protection Agency's BEN computer model.

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

$$\begin{aligned} &= \$1,500 + [(0.1 \times \$1,500) \times (0 + 0 + 4 + 4 + 2)] + \$2,367 \\ &= \$1,500 + (\$150 \times 10) + \$2,367 \\ &= \$1,500 + \$1,500 + \$2,367 \\ &= \$5,367 \end{aligned}$$