

# Oregon

Tina Kotek, Governor

Department of Environmental Quality  
Office of Compliance and Enforcement  
700 NE Multnomah Street, Suite 600  
Portland, OR 97232  
(503) 229-5696  
FAX (503) 229-5100  
TTY 711

January 4, 2024

CERTIFIED MAIL No. 9589 0710 5270 0688 6540 42

Knutson Towboat Company  
c/o John L. Knutson, Registered Agent  
PO Box 908  
Coos Bay, OR 97420

Re: Notice of Civil Penalty Assessment and Order  
Case No. AQ/OB-WR-2023-081

This letter is to inform you that DEQ has issued you a civil penalty of \$33,554 for illegal open burning at your log storage yard at 93761 Hackett Lane, Coos Bay, Oregon. On January 27, 2023, you burned approximately 175 cubic yards of creosote-treated timbers at this location.

DEQ issued this penalty because open burning creosote wood is prohibited at all times statewide. Burning creosote-treated wood poses a threat to the environment and public health, especially for the young, elderly, and those with respiratory conditions. Toxic chemical exposure can result from such burning, and each illegal burn contributes to the cumulative amount of pollution in the atmosphere. Creosote (also known as coal tar) contains hundreds of polycyclic aromatic hydrocarbons (PAHs) which are known carcinogens. Open burning creosote-treated wood releases PAHs in the air, where they can be inhaled into human respiratory systems. Ash resulting from burning of creosote-treated wood can leach out harmful chemical compounds into land and water.

You may pay the penalty by mailing a check or money order to the address below. 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.state.or.us](mailto:DEQappeals@deq.state.or.us)

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.

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 your 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 Jenny Root at 503-229-5874 or toll free in Oregon at 800-452-4011, extension 5874.

Sincerely,



Kieran O'Donnell, Manager  
Office of Compliance and Enforcement

Enclosures

cc: Martin Abts, Western Region, Coos Bay Office, DEQ  
Don Hendrix, AQ, HQ, DEQ  
Accounting, DEQ  
Central Coos Fire & Rescue, 62866 Millington Frontage Road, Coos Bay OR 97420

1 BEFORE THE ENVIRONMENTAL QUALITY COMMISSION  
2 OF THE STATE OF OREGON  
3

4 IN THE MATTER OF: ) NOTICE OF CIVIL PENALTY  
5 KNUTSON TOWBOAT COMPANY, ) ASSESSMENT AND ORDER  
6 an Oregon corporation, )  
7 Respondent. ) CASE NO. AQ/OB-WR-2023-081

8 I. AUTHORITY

9 The Department of Environmental Quality (DEQ) issues this Notice of Civil Penalty Assessment  
10 and Order (Notice) pursuant to Oregon Revised Statutes (ORS) 468.100, ORS 468.126 through 468.140,  
11 ORS Chapters 183 and 468A and Oregon Administrative Rules (OAR) Chapter 340, Divisions 011, 012  
12 and 264.

13 II. FINDINGS OF FACT

14 1. At all material times, Respondent owned real property at 93761 Hackett Lane, Coos  
15 Bay, Oregon, part of which is informally known as the “Knutson Log Yard” (the Property).

16 2. On or about January 27, 2023, the Millington Fire Department (now called “Central  
17 Coos Fire & Rescue” or “Fire Department”) and DEQ responded to a large open burn at the Property  
18 that was actively burning and emitting dense smoke and noxious odors.

19 3. The open burn pile at the Property measured approximately 30 feet long, 20 feet wide  
20 and 15 feet high and contained numerous 12-inch by 12-inch creosote-treated timbers.

21 4. Creosote emits dense smoke and/or noxious odors when burned.

22 III. CONCLUSION

23 Respondent violated OAR 340-264-0060(3), adopted pursuant to ORS 468A.025, by causing or  
24 allowing to be initiated or maintained, the open burning of materials that are prohibited from being open  
25 burned (creosote-treated timbers) as described in Section II, Paragraphs 2 through 4 above. Specifically,  
26 Respondent is strictly liable for the open burning violation pursuant to OAR 340-264-0060(1)(a), (b) and  
27 (c). This is a Class I violation according to OAR 340-012-0054(1)(w). DEQ hereby assesses a \$33,554  
civil penalty for this violation.

1 IV. ORDER TO PAY CIVIL PENALTY

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

4 Pay a total civil penalty of \$33,554. The determination of the civil penalty is attached as Exhibit 1  
5 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 order  
7 must be made payable to "**State Treasurer, State of Oregon**" and sent to the **DEQ, Business Office,**  
8 **700 NE Multnomah Street, Suite 600, Portland, Oregon 97232.**

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.state.or.us**. 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 duly  
23 authorized representative, as set forth in OAR 137-003-0555.

24 Active-duty service members have a right to stay proceedings under the federal Service  
25 Members Civil Relief Act. For more information contact the Oregon State Bar at 1-800-  
26 452-8260, the Oregon Military Department at 503-584-3571, or the nearest United States Armed  
27 Forces Legal Assistance Office through <http://legalassistance.law.af.mil>. The Oregon Military

1 Department does not have a toll-free telephone number.

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

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1/4/2024

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: Causing or allowing to be initiated or maintained, the open burning of material prohibited from being open burned (creosote-treated timbers), in violation of OAR 340-264-0060(3), adopted pursuant to ORS 468A.025.

CLASSIFICATION: This is a Class I violation pursuant to OAR 340-012-0054(1)(w).

MAGNITUDE: The magnitude of the violation is major pursuant to OAR 340-012-0135(1)(j)(A), because Respondent initiated or allowed the initiation of approximately 175 cubic yards of prohibited materials.

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 \$12,000 for a Class I, major magnitude violation in the matrix listed in OAR 340-012-0140(2)(b)(A)(i) and applicable pursuant to OAR 340-012-0140(2)(a)(B)(ii) because Respondent is not a residential owner-occupant of the Property and Respondent burned 25 or more cubic yards of prohibited materials.

"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 0 according to OAR 340-012-0145(4)(a) because there was only one occurrence of the violation. The violation occurred on one day, on or about January 27, 2023.

"M" is the mental state of the Respondent and receives a value of 8 according to OAR 340-012-0145(5)(d) because Respondent acted or failed to act intentionally with actual knowledge of the requirement. In 2006, Respondent received a civil penalty from DEQ for open burning creosote-treated wood. Since then, Respondent has, on several occasions, obtained an open burn letter permit from DEQ to burn other materials that are legal to burn, and is familiar with DEQ's open burning rules. The open burn letter permits expressly prohibit open burning certain materials including any material such as creosote, that emits dense smoke or noxious odors when burned. In addition, when DEQ visited the site to investigate the fire, it requested that Respondent extinguish the fire by pulling out timbers using a track hoe excavator onsite to break up the fire. Respondent ignored the request and continued to allow

the pile to burn. Therefore, by igniting or allowing the ignition of creosote-treated timbers on its property and allowing them to continue burning after DEQ requested that Respondent take action to extinguish it, Respondent acted or failed to act intentionally with actual knowledge that burning this material is illegal in Oregon.

"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). DEQ asked Respondent to extinguish the fire by pulling out burning timbers using a track-hoe excavator available on site to break up the large pile, which Respondent did not do. Instead, the fire department observed that the burning pile grew in size and/or intensity a few hours after DEQ and the fire department initially visited the site.

"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 \$9,554. This is the amount Respondent gained by avoiding spending approximately \$12,522 to transport and dispose of approximately 175 cubic yards of creosote-treated timbers to the Dry Creek Landfill in Medford, Oregon. This "EB" was calculated pursuant to OAR 340-012-0150(1) using the U.S. Environmental Protection Agency's BEN computer model.

PENALTY CALCULATION:  $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$   
= \$12,000 + [(0.1 x \$1,500) x (0 + 0 + 0 + 8 + 2)] + \$9,554  
= \$12,000 + (\$1,200 x 10) + \$9,554  
= \$12,000 + \$12,000 + \$9,554  
= \$33,554