



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 19, 2024

CERTIFIED MAIL: 9589 0710 5270 0688 6536 94

PNW Metal Recycling, Inc.
dba Rivergate Scrap Metals
c/o Larry J Brant, Registered Agent
121 SW Morrison St 11th Floor
Portland OR 97204

Re: Notice of Civil Penalty Assessment and Order
Case No. LQ-SW-NWR-2024-073

This letter is to inform you that the Oregon Department of Environmental Quality (DEQ) has issued you a civil penalty of \$29,447 for operating an unpermitted solid waste disposal site at your metals recycling facility at 9645 North Columbia Boulevard in Portland, Oregon.

DEQ issued this penalty because it is against the law to operate an unpermitted solid waste disposal facility, and because your operations pose a potential threat of adverse impact on the environment and public health. Specifically, your Portland facility receives and processes a large volume of materials including end-of-life automobiles and appliances, and other scrap metals. Included with these materials are fluids, including refrigerants, oils, fuels, and antifreeze, as well as batteries, tires, and hazardous and toxic substances including lead and mercury. Before and after processing, the materials are stored in large piles outdoors at the facility. Many of these concerns can be mitigated through compliance with a solid waste disposal site permit.

Included in the enclosed Notice is an Order to submit a complete solid waste permit application by December 12, 2024. \$5,447 of the penalty is based on the economic benefit you gained by avoiding solid waste permit fees. If you comply with the Order, DEQ will consider recalculating some of these 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.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. 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/administrative-rules.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,



Becca Puskas, Interim Manager
Office of Compliance and Enforcement

Enclosures

cc: Brien Flanagan, Attorney for PNW Metal Recycling, Inc., bflanagan@schwabe.com
Joey Callow, PNW Metal Recycling, Inc., jcallow@rivergatescrap.com
Hank Doane, PNW Metal Recycling, Inc., hank@pnwmetal.com
Ryan Lewis, DEQ
Audrey O'Brien, DEQ
Gary Vrooman, Oregon Department of Justice, gary.l.vrooman@state.or.us

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

4 IN THE MATTER OF:) NOTICE OF CIVIL PENALTY
5 PNW METAL RECYCLING, INC.,) ASSESSMENT AND ORDER
6 doing business as)
7 RIVERGATE SCRAP METALS,)
8 Respondent.) CASE NO. LQ-SW-NWR-2024-073

9 I. AUTHORITY

10 The Department of Environmental Quality (DEQ) issues this Notice of Civil Penalty Assessment
11 and Order (Notice) pursuant to Oregon Revised Statutes (ORS) 468.100, ORS 468.126 through 468.140,
12 ORS 459.995, ORS 459.376, ORS Chapters 183, and Oregon Administrative Rules (OAR) Chapter 340,
13 Divisions 011, 012, and 093.

14 II. FINDINGS OF FACT

15 1. Respondent operates a business accepting, processing, recycling and disposing materials
16 discarded at the Facility by businesses and the public including vehicles, appliances, other materials
17 that contain metal, and tires (the materials), at 9645 North Columbia Boulevard in Portland, Oregon
18 (the Facility).

19 2. The Facility is located adjacent to the Columbia Slough.

20 3. The Facility receives a large volume of discarded materials. According to information
21 Respondent provided in 2018, the Facility received at that time approximately 700 tons per day of
22 discarded materials. More than half of the discarded materials the Facility receives is non-vehicles.

23 4. Respondent accepts vehicles and appliances at the Facility that contain fluids, including
24 refrigerants, oils, fuels, and antifreeze.

25 5. Respondent accepts materials at the Facility that contain hazardous and toxic substances
26 such as metals, oils, lead, mercury, and other hazardous metals.

27 6. Respondent processes metal at the Facility in shredders, by cutting with a torch, and
with a wire granulator.

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1 7. Respondent stores piles of tires, unprocessed metal, shredded metal, processed non-
2 metallic automotive shredder residue (ASR), outdoors at the Facility. Respondent also stores used oil
3 and automobile fluids at the Facility, under cover.

4 8. Respondent disposes of ASR at landfills for use as alternative daily cover. Respondent's
5 ASR may contain tires, which have been mixed in with the pre-shredding pile.

6 9. Respondent processes refrigerants at the Facility.

7 10. In 2011, there was a fire at the Facility, and in 2019, DEQ received two complaints
8 about the Facility relating to environmental concerns including smoke and airborne waste.

9 11. On November 1, 2018, and August 15, 2024, DEQ inspected the Facility.

10 12. As of the date of this Notice, Respondent does not have a solid waste disposal site
11 permit from DEQ for the Facility, and Respondent has not applied for that permit.

12 III. CONCLUSIONS

13 1. Respondent violated ORS 459.205(1) and OAR 340-093-0050(1) by establishing,
14 operating, and maintaining an unpermitted material recovery solid waste disposal site. The materials
15 received and processed at the Facility are solid wastes, as defined by ORS 459.005(25), because the
16 materials are useless to, and discarded by, the prior owner, they are not fit for their intended purpose
17 anymore, and are fit only for disposal or for remanufacture into something else. The Facility is a solid
18 waste disposal site, pursuant to ORS 459.005(8)(a), because it is used for handling, transfer, material
19 recovery and recycling (as defined in ORS 459.005(16) and (21)). Pursuant to OAR 340-093-
20 0050(5)(d), the nature, amount, or location of the materials or operations at the Facility may constitute
21 a potential threat of adverse impact on the environment or public health, as described in Section II
22 above. This is a Class I violation according to OAR 340-012-0065(1)(a). DEQ hereby assesses a
23 \$29,447 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 CONCLUSIONS, Respondent is
3 hereby ORDERED TO:

4 1. Pay a total civil penalty of \$29,447. The determination of the civil penalty is attached as
5 Exhibit No. 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 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.** Once you pay the penalty, the
9 Findings of Fact, Conclusions and Order become final.

10 2. By December 12, 2024, submit to DEQ a complete application for a solid waste disposal
11 site permit for the Facility.

12 All submittals should be directed to Ryan Lewis, DEQ, 700 NE Multnomah Street, Portland,
13 Oregon, 97232, or ryan.lewis@deq.oregon.gov.

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

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

1 authorized representative, as set forth in OAR 137-003-0555.

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

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

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11/19/2024
Date

Rebecca L Puskas
Becka Puskas, Interim 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: Establishing, operating, and maintaining an unpermitted solid waste disposal site, in violation of ORS 459.205(1) and OAR 340-093-0050(1).
- CLASSIFICATION: This is a Class I violation pursuant to OAR 340-012-0065(1)(a).
- MAGNITUDE: The magnitude of the violation is major pursuant to OAR 340-012-0135(3)(a)(A) because the volume of unpermitted solid waste at Respondent's Facility exceeded 400 cubic yards.
- 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)(Q)(i) because Respondent should have had a solid waste disposal permit.
- "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 first notified Respondent in writing that a solid waste permit was required on November 27, 2018, and as of the date of this Notice, Respondent has not applied for a permit.
- "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. After inspecting Respondent's facility in November of 2018, DEQ issued Respondent a letter on November 27, 2018, notifying Respondent that Respondent was required to apply for a solid waste permit. On May 28, 2019, DEQ issued Respondent a Warning Letter with Opportunity to Correct, citing Respondent for violating the permit requirement, and again requesting that Respondent apply for a permit. DEQ issued a Pre-Enforcement Notice reiterating the violation and requirement on June 27, 2019, and an Amended Pre-Enforcement Notice on September 13, 2024. As of the date of this Notice, Respondent has not applied for a permit. By operating a business accepting solid waste without applying for a permit, despite the

multiple notices and requests from DEQ, Respondent failed to take reasonable care to avoid a foreseeable risk of conduct constituting or resulting in a 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).

"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 \$5,447. This is the amount Respondent gained by avoiding spending an estimated \$500 on a solid waste permit application fee and \$1,000 on annual compliance fees since November 27, 2018, the date the DEQ first notified Respondent in writing that the Facility needed a permit. This "EB" was calculated pursuant to OAR 340-012-0150(1) using the U.S. Environmental Protection Agency's BEN computer model.

PENALTY CALCULATION: $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$
 $= \$12,000 + [(0.1 \times \$12,000) \times (0 + 0 + 4 + 4 + 2)] + \$5,447$
 $= \$12,000 + (\$1,200 \times 10) + \$5,447$
 $= \$12,000 + \$12,000 + \$5,447$
 $= \$29,447$

CERTIFICATE OF MAILING

I hereby certify that I served DEQ Case No. LQ-SW-NWR-2024-073 upon:

9589 0710 5270 0688 6536 94

U.S. Postal Service
CERTIFIED MAIL
Domestic Mail Only

For delivery information: **OFF**

Certified Mail Fee \$

Extra Services & Fees
 Return Receipt (hard copy)
 Return Receipt (electronic)
 Certified Mail Plus
 Adult Signature Required
 Adult Signature

Postage \$

Total \$

PNW Metal Recycling, Inc.
dba Rivergate Scrap Metals
c/o Larry J Brant, Registered Agent
121 SW Morrison St 11th Floor
Portland, OR 97204

sps.com®

Postmark Here

City, State, ZIP+4®

PS Form 3800, July 2023 Presort Bulk Rate. See Reverse for Instructions.

by mailing a true copy of the above by placing it in a sealed envelope, with postage prepaid, at the DEQ/DAS mail services in Portland, Oregon, on 11/19/2024

Trace Griffith

Office of Compliance and Enforcement
Department of Environmental Quality