



# Oregon

Kate Brown, 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

July 12, 2018

CERTIFIED MAIL: 7016 3010 0000 6028 7173

Grimm's Fuel Co.  
Jeffrey D. Grimm, Registered Agent  
18850 S.W. Cipole Road  
Tualatin OR 97062

Re: Notice of Civil Penalty Assessment and Order  
Case No. LQ/SW-NWR-2018-057

This letter is to inform you that DEQ has issued you a civil penalty of \$10,800 for failing to comply with your Solid Waste Disposal Site Permit for your composting facility located at 18850 S.W. Cipole Road in Tualatin. Your Permit requires you to sample each of your active compost cells in at least three locations each month and analyze the samples for oxygen, temperature, and moisture content. From August 2016 through February 2018, you failed to sample your active compost cells and analyze the samples for each of the parameters on multiple occasions. In addition, you are limited to turning the cells when wind conditions move odors to the west of the facility. In the first week of February 2018, you chose to turn the compost cells during a sunny, stagnant weather pattern, resulting in multiple odor complaints.

During an inspection in February 2018, DEQ observed that your leachate collection vault was designed to overflow into the stormwater collection system which discharges to the Tualatin River. All leachate must be collected such that it is not discharged into surface waters. DEQ appreciates that you have taken measures to ensure that leachate is not discharged with stormwater by capping the overflow pipe. DEQ considered these measures in the penalty assessment.

At the time of DEQ's inspection in February, your compost cells were approximately 70 feet in height. Oregon Fire Code limits the height of compost or yard debris cells to less than 25 feet. Included in Section IV of the attached Notice of Civil Penalty Assessment and Order is an order requiring you to reduce the height of your compost cells to 40 feet by December 31, 2018 and to ultimately meet the requirements in Oregon Fire Code by May 1, 2019.

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. Alternatively, you can pay the penalty by sending a check or money order to the above address.

The attached Notice 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 Susan Elworth at 503-229-5125 or toll free in Oregon at 800-452-4011, extension 5152.

Sincerely,



Kieran O'Donnell, Manager  
Office of Compliance and Enforcement

Enclosures

cc: Jeremy Fleming, NWR, DEQ

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

3 IN THE MATTER OF: ) NOTICE OF CIVIL PENALTY  
4 GRIMM'S FUEL CO. ) ASSESSMENT AND ORDER  
5 Respondent. ) CASE NO. LQ/SW-NWR-2018-057

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, 093, 096 and 264.

11 II. FINDINGS OF FACT

12 1. Respondent operates a composting facility that receives and processes yard waste and debris  
13 at 18850 S.W. Cipole Road in Tualatin (the Facility) under Solid Waste Disposal Site Permit no. 1433  
14 (the Permit), which expires on November 1, 2023.

15 2. The yard waste and debris is processed into compost in three active compost cells and one  
16 cell that acts as a staging area. These cells generate leachate as that term is defined in OAR 340-093-  
17 0030(60).

18 3. Respondent collects and treats stormwater through a series of collection basins, settling  
19 ponds and swales before the stormwater is discharged into the Tualatin River.

20 4. On February 23, 2018, DEQ conducted an inspection at the Facility.

21 5. Sometime prior to the inspection, Respondent had constructed a leachate collection basin  
22 that was designed to overflow into a stormwater collection basin.

23 6. During the inspection, the three active composting cells were approximately 70 feet in  
24 height.

25 7. From January 2016 through August 2017, Tualatin Valley Fire & Rescue responded to fires  
26 in the composting cells at the Facility on the following dates: January 1, 2016; August 7, 2016; August  
27 17, 2016; August 19, 2016; September 3, 2016; November 26, 2016; and August 25, 2017. Respondent  
did not report these fires to DEQ within 24 hours.

1 8. On August 14, 2017, DEQ approved Respondent's operations plan, which, according to  
2 Section 4.2 of Respondent's Permit, was incorporated into the Permit.

3 9. On the following dates, Respondent collected three samples of each of its active  
4 composting cells and analyzed the samples for oxygen and temperature: August 5, 2016; September 9,  
5 2016; October 7, 2016; November 11, 2016; December 2, 2016; January 13, 2017; February 3, 2017;  
6 March 4, 2017; May 6, 2017; June 9, 2017; July 7, 2017; August 11, 2017; September 8, 2017; October  
7 6, 2017; November 10, 2017; December 15, 2017; January 5, 2018; and February 6, 2018.

8 10. On April 13, 2017, Respondent collected only two samples from active composting cell 1  
9 and three samples from active composting cells 2 and 3 and analyzed the samples for oxygen and  
10 temperature.

11 11. Respondent collected samples and analyzed for moisture content in only one composting  
12 cell on the following dates: May 6, 2017; June 9, 2017; July 7, 2017; August 11, 2017; September 8,  
13 2017; October 6, 2017; November 10, 2017; and December 15, 2017.

14 12. Beginning on February 5, 2018, and continuing for several days, Respondent turned the  
15 active compost cells.

16 13. From February 5 through 11, 2018, the weather was sunny with little or no wind.

### 17 III. CONCLUSIONS

18 1. Respondent violated OAR 340-096-0130(9)(a) by failing to collect leachate from the  
19 compost cells in a containment structure that has adequate capacity to collect and contain the leachate.  
20 Specifically, Respondent's leachate collection system was designed such that it could overflow into the  
21 stormwater system, as alleged in Section II, paragraphs 2 through 6. This is a Class I violation  
22 according to OAR 340-012-0065(1)(f). DEQ assessed a \$5,400 civil penalty for this violation.

23 2. Respondent violated Section 4.2 and 4.4 of the Permit by failing to conduct monitoring of its  
24 three active composting cells in compliance with the schedule in Section 6.1 of its operations plan.  
25 Section 6.1 of Respondent's operation plan requires Respondent to take three samples from each active  
26 composting cell at least once per month and analyze each sample for oxygen, temperature, and moisture  
27 content. As more specifically alleged in Section II, paragraphs 9 through 11, Respondent failed to

1 collect three samples for oxygen, temperature and moisture content from each active composting cell  
2 each month. These are Class II violations according to OAR 340-012-0065(2)(f). DEQ assessed a  
3 \$5,400 civil penalty for these violations.

4 3. Respondent violated Section 2.4 and Section 5.2 of the Permit by allowing open burning at its  
5 facility and failing to report that burning to DEQ within 24 hours. Section 2.4 of the Permit prohibits  
6 open burning at the Facility. Section 5.2 of the Permit requires Respondent to notify DEQ of any  
7 violation of the Permit within 24 hours. The fires in the compost cells were open burning, as that term is  
8 defined in OAR 340-264-0030(25), as the burning occurred outdoors and the combustion produced by the  
9 fires was not effectively vented or otherwise controlled. These are Class II violations according to OAR  
10 340-012-0065(2)(f). DEQ did not assess a civil penalty for these violations.

11 4. Respondent violated OAR 340-096-0070(9) by allowing cells of compost and yard debris to  
12 exceed the limits in Oregon Fire Code Section 2808.3. According to OAR 340-096-0070(9), all  
13 composting facilities must comply with all other applicable laws. Oregon Fire Code Section 2808.3  
14 states that cells used to store and process compost and raw product produced from yard waste and  
15 debris cannot exceed 25 feet in height. In February 2018, Respondent's cells measured approximately  
16 70 feet in height. This is a Class II violation according to OAR 340-012-0065(2)(f). DEQ did not assess a  
17 civil penalty for this violation.

18 5. Respondent violated Section 4.2 of the Permit by failing to implement the control measures  
19 and practices described in Respondent's operations plan. Section 5.3(f) of its operations plan states that  
20 Respondent will avoid aeration or movement of the compost cells when wind conditions are  
21 unfavorable. Section 5.4(c) states that Respondent will conduct turning of the compost cells when the  
22 wind is blowing away from residential areas. Respondent turned its compost cells when the wind  
23 conditions were unfavorable, as alleged in Section II, paragraphs 12 and 13. This is a Class II violation  
24 according to OAR 340-012-0065(2)(f). DEQ did not assess a civil penalty for this violation.

#### 25 IV. ORDER TO PAY CIVIL PENALTY AND TO COMPLY

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

1           1. Pay a total civil penalty of \$10,800. The determination of the civil penalties are attached as  
2 Exhibits 1 and 2 and are incorporated as part of this Notice. If you do not file a request for hearing as set  
3 forth in Section V below, your check or money order must be made payable to "**State Treasurer, State of**  
4 **Oregon**" and sent to the **DEQ, Business Office, 700 NE Multnomah Street, Suite 600, Portland,**  
5 **Oregon 97232**. Once you pay the penalty, this Notice becomes final.

6           2. Prior to December 31, 2018, Respondent must reduce the size of its three active compost  
7 cells and one cell that acts as a staging area to less than 40 feet. Prior to May 1, 2019, Respondent must  
8 reduce the size of its three active compost cells and one cell that acts as a staging area to meet the size  
9 restrictions set forth in Oregon Fire Code Section 2808.3.

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 exhibits, 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 **503-229-5100** or email it to **DEQappeals@deq.state.or.us**. 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, please call the Oregon State Bar at 1-800-452-8260  
27 or the Oregon Military Department at 1-800-452-7500. Additional information can be found online at

1 the United States Armed Forces Legal Assistance (AFLA) Legal Services Locator website  
2 <http://legalassistance.law.af.mil/content/locator.php>.

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.  
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11

12 7/12/18

13 Date

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13 Kieran O'Donnell, Manager  
14 Office of Compliance and Enforcement  
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EXHIBIT 1

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

VIOLATION 1: Failing to collect leachate from the compost cells in a containment structure that has adequate capacity to collect and contain the leachate, in violation of OAR 340-096-0130(a).

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

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 \$6,000 for a Class I, moderate magnitude violation in the matrix listed in OAR 340-012-0140(2)(b)(A)(ii) and applicable pursuant to OAR 340-012-0140(2)(a)(Q)(i). Respondent violated a solid waste rule and has a solid waste disposal site 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 0 according to OAR 340-012-0145(4)(a) because there is insufficient information on which to make a finding under paragraphs (4)(b) through (4)(d). It is unknown for how long or when the leachate system overflowed into the stormwater collection system.

"M" is the mental state of the Respondent, and receives a value of 2 according to OAR 340-012-0145(5)(b) because Respondent had constructive knowledge (reasonably should have known) of the requirement. Section 3.2 of Respondent's Solid Waste Disposal Site Permit states that all leachate collection and disposal systems must meet the requirements of OAR 340-096-0130. Therefore, Respondent reasonably should have known that it could not connect its leachate collection system such that it could discharge leachate into the stormwater disposal system.



"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. Respondent has taken measures to ensure that leachate is not discharged with stormwater by capping the overflow pipe, spraying leachate onto the active compost piles and as necessary, disposing of leachate via tanker truck.

"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 is unable to make an estimate of any costs delayed or avoided as a result of this violation.

PENALTY CALCULATION:  $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$   
 $= \$6,000 + [(0.1 \times \$600) \times (0 + 0 + 0 + 2 - 3)] + \$0$   
 $= \$6,000 + (\$600 \times -1) + \$0$   
 $= \$6,000 - \$600 + \$0$   
 $= \$5,400$

EXHIBIT 2

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

VIOLATION 2: Failing to conduct monitoring of its three active composting cells, in violation of Section 4.2 and 4.4 of Respondent's Solid Waste Disposal Site Permit.

CLASSIFICATION: These are Class II violations pursuant to OAR 340-012-0065(2)(f).

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 \$3,000 for a Class II, moderate magnitude violation in the matrix listed in OAR 340-012-0140(2)(b)(B)(ii) and applicable pursuant to OAR 340-012-0140(2)(a)(Q)(i). Respondent violated its Solid Waste Disposal Site 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 missed sample constitutes a separate offense. Specifically, Respondent failed to collect three samples for moisture content from the each active composting cell for 11 months; two samples for moisture content from each active composting cell during eight months; and one sample for oxygen and temperature each during one month.

"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. Negligence means Respondent failed to take reasonable care to avoid a foreseeable risk of conduct constituting a violation. Respondent's operation plan states that it will collect three samples each month from each active composting cell and analyze the samples for moisture content, oxygen, and temperature. When Respondent failed to ensure the samples were collected and analyzed for all of the parameters set forth in its operations plan each month, it failed to take

reasonable care to avoid the foreseeable risk that it would violate its Solid Waste Disposal Site Permit.

"C" is Respondent's efforts to correct or mitigate the violation, and receives a value of 0 according to OAR 340-012-0145(6)(f) because there is insufficient information to make a finding under paragraphs (6)(a) through (6)(e), or (6)(g).

"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 is unable to make an estimate of any costs delayed or avoided as a result of these violations.

PENALTY CALCULATION:  $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$   
 $= \$3,000 + [(0.1 \times \$3,000) \times (0 + 0 + 4 + 4 + 0)] + \$0$   
 $= \$3,000 + (\$300 \times 8) + \$0$   
 $= \$3,000 + \$2,400 + \$0$   
 $= \$5,400$