

May 5, 2011

AAA American Eagle Services, LLC,  
dba Hank's Septic Service  
c/o Michael Cross, Registered Agent  
1118 Lancaster Dr. N.E. #338  
Salem, OR 97301

ENVIRONMENTAL  
QUALITY  
COMMISSION

Re: Final reply brief  
In the Matter of AAA American Eagle Services, LLC, dba Hank's Septic Service and  
Lebanon/Sweet Home Septic Tank Service  
OAH Case Nos. 1001544; 1001545  
DEQ Case Nos. WQ/OI-WR-09-203; WQ/OI-WR-09-144

Dear Mr. Cross:

On May 3, 2011, the commission received your reply brief in the case referenced above. That is the final filing in this contested case process.

Based on the commission's meeting schedule, this item will be scheduled for commission consideration at its June 16-17, 2011, meeting, to be held in Pendleton. I will send you a letter this month specifying the date and time of your contested case hearing. As a reminder, you can attend the meeting in person or by telephone at the DEQ office in Salem, but I must be notified of the decision no later than two weeks prior to the meeting date in order to arrange for appropriate staff coverage and support.

If you have any questions about this process please call me at 503-229-5301.

Sincerely,



Stephanie Clark  
Assistant to the Oregon Environmental Quality Commission

Cc: BY HAND DELIVERY – Bryan Smith, Oregon Department of Environmental Quality



811 SW Sixth Avenue  
Portland, OR 97204-1390  
(503) 229-5696

**HANK'S SEPTIC SERVICE**

1118 Lancaster Dr. NE #338

Salem, OR 97301

Phone 541-259-3166 or 503-485-0496

Fax 503-485-0497

To: Stephanie Clark Attention: \_\_\_\_\_  
Phone: \_\_\_\_\_ Fax: \_\_\_\_\_

From: Michael Cross No. Pages (incl. cover) 6

Regarding: Response to Answering Brief

Thank you!

**RECEIVED**

MAY 03 2011

Oregon DEQ  
Office of the Director

**Hank's Septic Service**  
**1118 Lancaster Dr. NE #338**  
**Salem, Oregon 97301**  
**503-485-0496**  
*Since 1956*

Oregon DEQ  
DEQ Commission

DEQ Case Nos. WQ/01-WR-09-203; WQ/OI-WR-09-144  
Reply to Answering Brief

As stated previously, on violation One, at 11805 State Street Salem, We responded to an emergency call on a Sunday Afternoon, wherein raw sewage was backing up into the residence, occupied by 9 people, some of whom were children.

In my limited experience, it has taken several weeks to get permits issued from another county- sometimes several months. It was based on these experiences and the application of common sense, that directed us to mitigate the damage to the occupants as well as to prevent any further damage to a very close-by stream- some 150 feet downhill from the house.

In my experience, (at the time) there were two options. One: vacate the house. Two: Effect temporary repairs on an emergency basis to mitigate the loss to the environment, property and people. The temporary set-up was constructed to prevent runoff from the shifted tank (where the tank connected to the sewer main,) to the nearby stream located downhill. This temporary solution also prevented the raw sewage from entering the residence and causing a further health hazard.

I then tried to get the paperwork to the Landowner to sign so that we could get a permit for the permanent solution to the problem. I then found out that the Land owner was out of the country and was unable to get documents signed by them.

I now know that I should not have allowed any work to be done, without the proper paperwork being signed by an authority to do so; to prevent any violations from occurring- emergency or no.

On the work done at 38355 Weirich Drive, Lebanon- this was another emergency situation done during the same time period in similar circumstances.

We cooperated fully with Jan Heron at Linn DEQ. We had exposed several times the area that she wanted to inspect, several days passed before she was able to get over to the location to inspect it. In the interim, apparently children had played in the area in the dirt, (from what I was informed), causing dirt to cover the area, she was wanting to inspect. Ultimately, with our continued assistance, she was able to inspect it and Heron ordered subsequent work be performed in a different area; which initially the homeowner wanted us to perform those changes.

On violation C-

We provided the "origin destination records" to the agency as soon as we were able to, once we knew what information was involved. Yes, it did take an excessive time period and we have made internal changes so that they are immediately available upon request by the agency; so as not to repeat that error.

On Violation D-

We mailed in the proper paperwork with the payment, prior to the deadline. I know I was out of state at the time and left the task to an Assistant. I am enclosing a copy of the check in the amount of \$960.00 that was paid to the DEQ. Submission of the form and check, by the due date provided for an automatic, and implied renewal of the license.

Upon being made aware of additional information to process the paperwork, we immediately started gathering the additional required information and to the best of my knowledge and recollection did not perform any other work until we received authorization to do so. I know many customers had to be juggled around and rescheduled to comply with DEQ requests. SEE Exhibit "A" and "B".

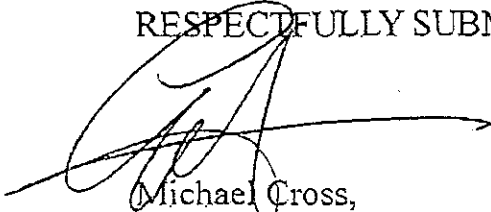
CONCLUSION:

We have changed our business practices from the past. Every day, is a learning experience. I continue to maintain, that having been the longest continuous term (over five decades) septic provider service in the Industry in Linn County, I know that many homeowners rely on our services to properly maintain their systems.

Though we have made mistakes in the past, overall there is by far a net gain, as evidenced by thousands of happy, satisfied customers; that should our license be revoked, will not benefit them, or the environment. The only parties that benefit will be our competitors, who will take advantage of the ability to increase their prices, as well as their market share- should we no longer be performing these essential services in this part of the state.

Thank you for your consideration. I reiterate that we propose to increase our bond amount and or attend additional training in lieu of the license revocation.

RESPECTFULLY SUBMITTED,



Michael Cross,  
Managing Member  
AAA American Eagle Services, LLC dba  
Hank's Septic Service

**Hank's Septic Services**  
**Vendor QuickReport**  
May 1, 2008 through May 3, 2010

*Exhibit "A"*

Type	Date	Num	Memo	Account	Clr	Split	Amount
Oregon DEQ							
Check	1/12/2009	1014		AAA American Eagl...	X	DEQ Licensing	-400.00
Check	6/23/2009	1221		AAA American Eagl...	X	DEQ Licensing	-960.00
Check	7/10/2009	1233		AAA American Eagl...	X	DEQ Licensing	-105.00

Attachment B

June 15-17, 2011, EQC meeting City of Salem Miscellaneous Receivables

Page 6 of 6

Original Invoice Date: 07-AUG-09

Exhibit B

Invoice #: 6206453

Date: 02-MAY-11

Payment Due By: 06-SEP-09

Customer # 57278

Address Code: 74741

AAA AMERICAN EAGLE SERVICES LL  
DBA HANK'S SEPTIC SERVICE  
1118 LANCASTER DR NE, STE 338  
SALEM OR 97301-2933

Current Billing For:  
SEPTIC SLUDGE DUMPING  
SEPTIC SLUDGE DUMPING FOR  
JULY 2009  
71,014 GALLONS

PAYMENTS CAN BE MADE BY PHONE 800-430-1685 OR ONLINE at WWW.CITYOFSALEM.NET  
CHOOSING E-PAYMENTS, MISCELLANEOUS.

1 SEPTIC SLUDGE DUMPING INVOICES

7,101.40

Please Pay This Amount: 7,101.40

Telephone: 503-588-6107

Please Put Invoice #6206453 On Your Check

Make Checks Payable To: City Of Salem

Retain This Portion for your Records

Please Return This Portion With Payment

Payment Due: 06-SEP-09

CITY OF *Salem*  
AT YOUR SERVICE

City Hall / 555 Liberty St SE  
Zip Code 97301-3503  
FINANCE DEPARTMENT  
Room 230

Customer # 57278

Address Code: 74741

AAA AMERICAN EAGLE SERVICES LL

Invoice #	Amount Due	Amount Paid
6206453	7,101.40	

CITY OF SALEM  
ACCOUNTS RECEIVABLE  
PO BOX 3256  
PORTLAND, OR 97208-3256

010000100062064530057278000007474100007101405

TOTAL P.03

Item E 000022

April 14, 2011

AAA American Eagle Services, LLC,  
dba Hank's Septic Service  
c/o Michael Cross, Registered Agent  
1118 Lancaster Dr. N.E. #338  
Salem, OR 97301

ENVIRONMENTAL  
QUALITY  
COMMISSION

Re: DEQ's answering brief  
In the Matter of AAA American Eagle Services, LLC, dba Hank's Septic Service and  
Lebanon/Sweet Home Septic Tank Service  
OAH Case Nos. 1001544; 1001545  
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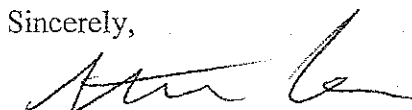
Dear Mr. Cross:

On April 13, 2011, the commission received DEQ's answering brief in the case referenced above. You now have 20 days to submit a reply brief in response to DEQ's answering brief. A reply brief is not required, and is the final brief expected for this contested case. If you choose to submit a reply brief, it must be received no later than 5 p.m. on Tuesday, May 3, 2011. Please send one copy of the reply brief to the Oregon Environmental Quality Commission, c/o Stephanie Clark at 811 SW 6<sup>th</sup> Ave., Portland, Ore. 97204, and one copy to Bryan Smith, DEQ, at 811 SW 6<sup>th</sup> Ave., Portland, Ore., 97204.

Based on the commission's meeting schedule, this item will be scheduled for commission consideration at its June 16-17, 2011, meeting. As noted in the letter I sent you dated April 8, 2011, this meeting will be in Pendleton. I will send you a letter specifying the date and time of your contested case when all materials are finalized. As a reminder, you can attend the meeting in person or by telephone, at the DEQ office in Salem, but I must be notified of the decision no later than two weeks prior to the meeting date in order to arrange for appropriate staff coverage and support.

If you have any questions about this process please call me at 503-229-5301.

Sincerely,



Stephanie Clark  
Assistant to the Oregon Environmental Quality Commission

Cc: BY HAND DELIVERY – Bryan Smith, Oregon Department of Environmental Quality



811 SW Sixth Avenue  
Portland, OR 97204-1390  
(503) 229-5696

BEFORE THE ENVIRONMENTAL QUALITY COMMISSION  
OF THE STATE OF OREGON

IN THE MATTER OF:	)	DEPARTMENT'S ANSWERING BRIEF
AAA AMERICAN EAGLE SERVICES,	)	
LLC,	)	NO. WQ/OI-WR-09-144
an Oregon limited liability company,	)	and
doing business as	)	NO. WQ/OI-WR-09-203
HANK'S SEPTIC SERVICE,	)	
an assumed business name,	)	
and	)	
LEBANON/SWEET HOME SEPTIC	)	
TANK SERVICE,	)	
an assumed business name,	)	
Respondent.	)	

The Department of Environmental Quality (DEQ) submits this Answering Brief to the Environmental Quality Commission (commission) for its consideration in the matter of AAA American Eagle Services, dba Hank's Septic Service and Lebanon/Sweet Home Septic Tank Service (Respondent), Case Nos. WQ/OI-WR-09-144 and WQ/OI-WR-09-203.

I. CASE HISTORY

1. On December 11, 2009, DEQ issued Respondent a Notice of Revocation of Onsite Sewage Disposal Service Provider's License (WQ/OI-WR-09-203).

2. On December 16, 2009, DEQ assessed Respondent a civil penalty of \$9,375 for (1) causing or allowing the construction, alteration, or repair of an onsite system or any part thereof without first obtaining the required permit; (2) causing or allowing the construction, alteration, or repair of an onsite system or any part thereof without first obtaining the required permit; (3) failing to make complete origin-destination records for sewage disposal services rendered available for review upon the request of the Department; (4) performing onsite sewage disposal services without first obtaining the required license; and (5) allowing an uncertified installer to supervise or be responsible for the construction or installation of an onsite system or part thereof (WQ/OI-WR-09-144).

3. On January 5, 2010, Respondent appealed both matters and on July 6, 2010, a consolidated contested case hearing was held.

4. On November 22, 2010, Administrative Law Judge A. Bernadette House issued a Proposed and Final Order (Proposed Order). Judge House upheld the violations enumerated in Paragraph 2 above, upheld the civil penalty of \$9,375, and upheld DEQ's proposed revocation of Respondent's license.

5. On December 21, 2010, Respondent appealed the Proposed Order.

6. On March 14, 2011, Respondent submitted its Exceptions and Brief (Brief) to the commission for review of the Proposed Order.

## II. ARGUMENTS

A. *The penalty for violation one is correct.*

Although Respondent admits that it committed violation one - causing the construction, alteration, or repair of an onsite system or any part thereof - it argues that the Judge incorrectly calculated the penalty for this violation. Violation one took place at 11805 State Street in Salem (the Salem property) when Respondent installed about 100 linear feet of new drainfield without first applying for or obtaining a permit.<sup>1</sup> On page 3 of its Brief Respondent argues that it installed the drainfield without applying for a permit because it was confused about the relevant rules concerning permit requirements under “emergency repair” situations. Thus, Respondent argues that its ignorance of the rules is a mitigating factor in the penalty that should reduce its mental state for the violation from “reckless.”

DEQ responds that Respondent is a licensed onsite sewage disposal service provider and is or should be aware that “emergency repair” is defined in the applicable rules.<sup>2</sup> This rule specifically excludes “new or additional absorption facilities,” such as drainfields, from the scope of emergency repair work. Furthermore, the record shows that while Respondent addressed the problem of sewage backing up into the dwelling on the property by May 5, 2010,

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<sup>1</sup> Proposed and Final Order, page 12, Finding of Fact (FOF) 60.

2 OAR 340-071-0100(60) defines “emergency repair” to mean “immediate action to repair a failing system when sewage is backing up into a dwelling or building or to repair a broken pressure sewer pipe. It does not include the construction of new or additional absorption facilities but does include use of the septic tank as a temporary holding tank until new or additional absorption facilities can be permitted and constructed.”

1 It did not complete the drainfield installation until May 15, 2010.<sup>3</sup> The fact that Respondent took  
2 about ten days to install the drainfield is inconsistent with the nature of "emergency repairs"  
3 (which can only be undertaken without a permit in order to prevent sewage from backing up into  
4 a dwelling or to repair a broken sewer pipe), and undermines Respondent's claim that it believed  
5 digging a drainfield was "emergency work" that did not require a permit. In fact, Respondent  
6 did not apply for a permit within 72 hours, as the rule requires, or at all.<sup>4</sup> Finally, the record  
7 shows that when the Salem property owner and tenants raised the issue – on at least three  
8 occasions - of whether a permit was required, Respondent did not investigate the issue and  
9 instead denied that a permit was required.<sup>5</sup> The Judge correctly found that Respondent had been  
10 informed of the permit requirement through multiple contacts with DEQ and therefore  
11 committed violation one recklessly.<sup>6</sup>

12 Respondent also asserts on page 3 of its Brief that it thought the best course of action was  
13 to install a temporary drainfield, and that this belief ought to reduce its mental state for violation  
14 one from "reckless." However, the drainfield that Respondent installed was unacceptable and  
15 actually caused the potential for harm to human health or the environment as it did not meet  
16 minimum setbacks from either a nearby pond or creek, and was not to the required depth.<sup>7</sup>  
17 Respondent's installation of an improper drainfield without going through the permit process  
18 illustrates why such drainfield installations are not allowed as part of emergency repair work.  
19 Respondent consciously disregarded the rules governing emergency repairs, drainfield  
20 installations and permit requirements. The penalty for violation one is correct and should be  
21 upheld.

22 ***B. The penalty for violation two is correct.***

23 Although Respondent admits that it committed violation two - causing the construction,  
24 alteration, or repair of an onsite system or any part thereof - it argues that the Judge incorrectly  
25

26 <sup>3</sup> Exhibit A6, page 6.

27 <sup>4</sup> Proposed and Final Order, page 12, FOFs 59 and 61.

<sup>5</sup> Proposed and Final Order; pages 11-12, FOFs 50, 54 and 56.

<sup>6</sup> Proposed and Final Order, page 21.

<sup>7</sup> Proposed and Final Order, page 12, FOF 60.

1 calculated the penalty for this violation. Violation two took place at 38355 Weirich Drive in  
2 Lebanon (the Lebanon property) when Respondent installed over 200 linear feet of new  
3 drainfield without the required "major" repair permit for that work.<sup>8</sup> On page 3 of its Brief  
4 Respondent argues that it performed "emergency work" for which it obtained a "minor" repair  
5 permit instead of the "major" repair permit that was required, implying that it applied for the  
6 wrong permit before starting the work.

7 DEQ responds that the record contradicts Respondent's claim that it applied for a permit  
8 before starting work at the Lebanon property. It did not. The record also shows that Respondent  
9 in fact repeatedly denied installing the drainfield,<sup>9</sup> until it was unable to maintain that position  
10 because its own invoices showed that it billed for just such an installation.<sup>10</sup>

11 The record shows that Respondent installed the drainfield on or prior to July 17, 2009,<sup>11</sup>  
12 but did not actually submit a permit application until July 30, 2009.<sup>12</sup> However, on July 23,  
13 2009, Respondent denied to Jan Heron of Linn County that it had installed a drainfield.<sup>13</sup> When  
14 Ms. Heron asked for portions of Respondent's work to be exposed for inspection, as part of the  
15 permit application process, Respondent refused to expose its drainfield work and continued to  
16 deny that it had installed a drainfield.<sup>14</sup> Yet an invoice that Respondent submitted to the owner  
17 of the Lebanon property on June 19, 2009, already included a bill for the installation of 250  
18 linear feet of drainfield.<sup>15</sup> The record is clear that Respondent installed and billed for the drainfield  
19 installation. Furthermore, Respondent's drainfield installation was unacceptable and could not be  
20 approved by Linn County. The drainfield was installed too deep, and a portion of the drainfield was  
21 located underneath a driveway, inhibiting the system's utility and causing the potential for the  
22 system to fail and discharge sewage to the ground surface.<sup>16</sup>

23  
24 <sup>8</sup> Proposed and Final Order, page 7, FOF 24 and page 9, FOFs 39 and 40.

25 <sup>9</sup> Proposed and Final Order, pages 8-9, FOFs 30 and 36.

26 <sup>10</sup> Proposed and Final Order, page 9, FOFs 39 and 40.

27 <sup>11</sup> Proposed and Final Order, page 7, FOFs 23 and 24.

<sup>12</sup> Proposed and Final Order, page 8, FOF 31.

<sup>13</sup> Proposed and Final Order, page 8, FOF 30.

<sup>14</sup> Proposed and Final Order, pages 8-9, FOFs 31, 34, 35, 36.

<sup>15</sup> Proposed and Final Order, page 9, FOFs 39 and 40.

<sup>16</sup> Proposed and Final Order, page 10, FOFs 42 and 43.

1 DEQ also notes that Respondent committed violation two at about the same time that it  
2 committed violation one, and performed the same illegal activity of unpermitted installation at each  
3 property. These were not isolated incidents but rather part of a pattern of installing inappropriate  
4 and unacceptable drainfields without going through the permit process that is designed to avoid  
5 such improper installations. In committing violation two, Respondent consciously disregarded the  
6 rules governing drainfield installations and permit requirements. The penalty for violation two is  
7 correct and should be upheld.

8 ***C. The penalty for violation three is correct.***

9 Although Respondent admits that it committed violation three - failing to make origin-  
10 destination records for sewage disposal services rendered available for review - it argues that the  
11 Judge incorrectly calculated the penalty for this violation. On page 2 of its Brief Respondent  
12 argues that it did not know what records DEQ was requesting, implying that its inability to  
13 comprehend DEQ's request ought to reduce its mental state for this violation from "reckless."

14 DEQ responds that the Judge properly found that Respondent's mental state was reckless  
15 because Respondent had actual knowledge of DEQ's specific request as DEQ sent Respondent a  
16 letter on July 2, 2009, requesting copies of its origin-destination records for March 1 through  
17 May 31, 2009, and providing the applicable rule as authority for the request (OAR 340-071-  
18 0600(13)(d)).<sup>17</sup> The Judge did not find persuasive Respondent's argument that the request was  
19 confusing.<sup>18</sup> Respondent then did not provide the required records until May, 2010, despite  
20 DEQ's repeated requests, and provided no excuse for its delay.<sup>19</sup> The record shows that  
21 Respondent had numerous opportunities to comply and consciously disregarded the risk that in  
22 failing to comply with DEQ's request it would commit violation three. The penalty for violation  
23 three is correct and should be upheld.

24 /////

25 /////

26  
27 <sup>17</sup> Proposed and Final Order, page 26.

<sup>18</sup> *Id.*

<sup>19</sup> Proposed and Final Order, page 6, FOF 19.

1           ***D.     The penalty for violation four is correct.***

2           Respondent admits it committed violation four - performing onsite sewage disposal  
3 services without a license - but argues that the Judge incorrectly calculated the penalty. On page  
4 2 of its Brief Respondent explains that it was confused by the process of purchasing a company  
5 that had the required license, then transferring the license to itself. Respondent argues that its  
6 confusion should reduce its mental state for this violation from "reckless."

7           DEQ responds that violation four concerns a period of time well past the time when  
8 Respondent handled the license transfer. Respondent completed the transfer process – and received  
9 substantial assistance from DEQ staff concerning this process - between December 2008 and  
10 January 2009.<sup>20</sup> Respondent's license then expired on June 30, 2009.<sup>21</sup> On July 2, 2009,  
11 Respondent submitted a renewal application to Lisa Fincher of DEQ, but the application was  
12 incomplete and was not paid in full.<sup>22</sup> Ms. Fincher then spoke with Respondent's employee on July  
13 6, 2009, informing the employee that Respondent was not licensed and should not be conducting  
14 business.<sup>23</sup> Respondent then went ahead and performed sewage disposal services on at least six  
15 different dates between July 6 and July 13, 2009.<sup>24</sup>

16           The Judge summarized this timeline of events by stating "(t)he record established at  
17 hearing shows that, despite many contacts with DEQ personnel informing it of the need to have a  
18 license and of the process to obtain either the transfer of the existing licenses or to obtain a new  
19 license, Respondent knowingly and repeatedly provided onsite sewage disposal services without  
20 a license."<sup>25</sup> Respondent consciously disregarded the substantial risk that it would perform sewage  
21 disposal services without a license to do so. The penalty for violation four is correct and should be  
22 upheld.

23       /////

24       /////

25           <sup>20</sup> Proposed and Final Order, pages 4-5, FOFs 4-8.

26           <sup>21</sup> Proposed and Final Order, page 6, FOF 17.

27           <sup>22</sup> *Id.*

<sup>23</sup> Proposed and Final Order, page 6, FOF 18.

<sup>24</sup> Proposed and Final Order, page 6, FOF 20.

<sup>25</sup> Proposed and Final Order, page 31.

1           ***E.     The proposed revocation of Respondent's license is proper.***

2           Respondent argues that the proposed revocation of its license should be reversed.  
3           Respondent's main arguments are that (1) it will improve its business practices in the future; (2)  
4           the proposed revocation would cause an increase in the rates for its current customers as there  
5           would be less competition for the services it offers; and (3) the Santiam River watershed and the  
6           environment will be harmed by the revocation.

7           DEQ first responds that the Judge correctly applied the following standard for revocation:  
8           "DEQ may revoke or suspend a license if it determines, as in the current matter, that a licensee  
9           has failed to comply with applicable provisions of ORS chapter 454 or has violated any rule of  
10          the Environmental Quality Commission regarding sewage disposal services. ORS 454.715(2)  
11          and (3)."<sup>26</sup> Respondent committed at least five violations of these rules, and therefore DEQ has  
12          the authority to pursue revocation. Additionally, DEQ's decision to revoke Respondent's license  
13          was an appropriate use of its discretion and was not arbitrary or capricious.

14          First, regarding Respondent's commitment to improving its business practices, the record  
15          shows that Respondent's violations were committed prior to August 2009. However, on March 22,  
16          2010, the Construction Contractor's Board for Oregon found that Respondent committed two  
17          violations of its laws by working as a contractor in Oregon without a license. The violations  
18          were for conduct which occurred in November 2009 and February 2010, well after the violations  
19          alleged by DEQ.<sup>27</sup> This conduct demonstrates that Respondent, rather than striving to comply  
20          with the law after committing these five violations, instead committed new violations of law.  
21          Respondent has not demonstrated a commitment towards improving its business practices and  
22          should not be counted upon to do so in the future. When upholding DEQ's proposed revocation  
23          the Judge reasoned that Respondent's history illustrates its inability or unwillingness to comply  
24          with DEQ's laws and regulations.<sup>28</sup>

25          //////

26          <sup>26</sup> Proposed and Final Order, page 30.

27          <sup>27</sup> Proposed and Final Order, page 14, FOF 69.

28          <sup>28</sup> Proposed and Final Order, page 31.

1 Second, regarding the potential harm to Respondent's customers if its license is revoked,  
2 DEQ responds that, to the contrary, Respondent has a pattern of harming its customers through its  
3 incompetent work. This pattern is demonstrated by Respondent's actions concerning violations one  
4 and two at the Salem and Lebanon properties, respectively. The record shows that Respondent  
5 repeatedly misrepresented to the tenants and the owner of the Salem property that a permit was  
6 not required, and the owner of the Salem property eventually had to hire another licensed  
7 installer to complete the work that Respondent failed to properly perform.<sup>29</sup>

8 At the Lebanon property, Respondent failed to require that a certified installer perform  
9 the installation of that septic system (thereby committing violation five).<sup>30</sup> DEQ requires that  
10 installers must be certified precisely to avoid the kind of improper installation that occurred here  
11 (the drainfield was installed too deeply and under a driveway.)<sup>31</sup> As with the Salem property, the  
12 owner of the Lebanon property had to hire another licensed installer to correct the mistakes made  
13 by Respondent.<sup>32</sup> If Respondent's license is revoked, other customers will not be subjected to  
14 similar service. Finally, regarding Respondent's concern that if its license is revoked there will  
15 be a scarcity of licensed providers, the record shows that both these customers were able to hire  
16 other licensed providers to correct and complete the work Respondent started illegally.

17 Third, Respondent expresses concern for the potential harm to the Santiam River  
18 watershed and the environment that might occur if its license is revoked. DEQ responds that  
19 Respondent introduced no evidence to support its theory that if its license is revoked its  
20 customers will put off servicing and maintaining their onsite systems because prices will rise.  
21 The Judge concluded her opinion by noting "Respondent's history illustrates its inability or  
22 unwillingness to comply with DEQ's laws and regulations; laws and rules which were put in  
23 place to protect the public health, safety and welfare of Oregon's citizens. DEQ has established

24 /////

25 /////

26 \_\_\_\_\_  
27 <sup>29</sup> Proposed and Final Order, page 13, FOF 61.

<sup>30</sup> Proposed and Final Order, page 28.

<sup>31</sup> Proposed and Final Order, page 10, FOFs 42 and 43.

<sup>32</sup> Proposed and Final Order, page 9, FOF 38.

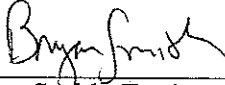
the necessary grounds to support the revocation of Respondent's license to provide onsite sewage disposal services."<sup>33</sup> The proposed revocation of Respondent's license should be upheld.

### III. CONCLUSION

Respondent did not raise any exception that would require a change to any part of the Judge's Proposed and Final Order. Therefore DEQ requests that the commission issue a Final Order upholding the Proposed and Final Order.

Date

4/13/11

  
Bryan Smith, Environmental Law Specialist

### CERTIFICATE OF SERVICE

I hereby certify that I served the Hearing Memorandum on the 13th day of April, 2011 by

PERSONAL SERVICE upon

The Oregon Environmental Quality Commission  
c/o Stephanie Clark, Assistant to the Commission  
811 SW Sixth Avenue  
Portland, OR 97204

and upon

AAA American Eagle Services, LLC,  
dba Hank's Septic Service  
and  
Lebanon/Sweet Home Septic Tank Service  
attention: Michael Cross, Registered Agent  
1118 Lancaster Dr. N.E. #338  
Salem, OR 97301

by mailing a true copy of the above by placing it in a sealed envelope, with postage prepaid at the U.S. Post Office in Portland, Oregon, on April 13, 2011.

<sup>33</sup> Proposed and Final Order, page 31.

April 8, 2011

AAA American Eagle Services, LLC,  
dba Hank's Septic Service  
c/o Michael Cross, Registered Agent  
1118 Lancaster Dr. N.E. #338  
Salem, OR 97301

Re: Notification of June 2011 commission meeting location  
In the Matter of AAA American Eagle Services, LLC, dba Hank's Septic Service and  
Lebanon/Sweet Home Septic Tank Service  
OAH Case Nos. 1001544; 1001545  
DEQ Case Nos. WQ/OI-WR-09-203; WQ/OI-WR-09-144

Dear Mr. Cross:


This letter is to notify you that the June 16-17, 2011, EQC meeting will be in Pendleton, Oregon. Based on the schedule of briefs and meeting cycle, it is expected that your contested case will be scheduled for this June meeting. Since the meeting is scheduled far from your presumed location, based on your mailing address being in Salem, I wanted to notify you of the location as soon as possible, and let you know that you have two options for attendance.

You may attend the meeting in person, in Pendleton, or we may arrange to have you attend the meeting by telephone conference call at the Salem DEQ office. Attending by phone would require you to be at the Salem DEQ office by a specific time and be prepared to present a five-minute opening argument, two-minute rebuttal, if desired, and answer any questions from the commission via telephone. DEQ will provide the staffing support and equipment to facilitate the call.

Since this item is not yet scheduled, I will send you a letter specifying the date and time of your contested case, and will again present your options, when all materials are finalized. It is your decision if you would like to attend in person or by phone, but I must be notified of the decision no later than two weeks prior to the meeting date, to be determined, in order to arrange for appropriate staff coverage and support.

If you have any questions about this process please call me at 503-229-5301.

Sincerely,



Stephanie Clark  
Assistant to the Oregon Environmental Quality Commission



Cc: BY HAND DELIVERY – Bryan Smith, Oregon Department of Environmental Quality

811 SW Sixth Avenue  
Portland, OR 97204-1390  
(503) 229-5696

BY U.S. MAIL

March 15, 2011

AAA American Eagle Services, LLC, dba Hank's Septic Service  
c/o Michael Cross, Registered Agent  
1118 Lancaster Dr. N.E. #338  
Salem, OR 97301

ENVIRONMENTAL  
QUALITY  
COMMISSION

Re: Exceptions and brief received  
OAH Case Nos. 1001544; 1001545  
DEQ Case Nos. WQ/OI-WR-09-203; WQ/OI-WR-09-144

Dear Mr. Cross:

On March 14, the Oregon Environmental Quality Commission received your exceptions and brief for the case referenced above. This letter is to inform you that Oregon DEQ now has 30 days in which to submit an answering brief, due no later than 5 p.m. on Thursday, April 14, 2011. Once DEQ has filed an answering brief, you will have 20 days in which to submit a reply brief. I will send you a letter following DEQ's filing, and that letter will state when your reply brief will be due. Neither the answering nor reply brief are required.

Once both parties have filed all briefs in this process, this case will be scheduled at a regular commission meeting. If you have questions about this process, please contact me by telephone at 503-229-5301.

Sincerely,



Stephanie Clark  
Assistant to the Oregon Environmental Quality Commission

Cc: BY HAND DELIVERY – Bryan Smith, DEQ



811 SW Sixth Avenue  
Portland, OR 97204-1390  
(503) 229-5696

Item E 000034

DEQ-46



Hank's Septic Service  
1118 Lancaster Dr. NE #338  
Salem, Oregon 97301  
503-485-0496  
*Since 1956*

**RECEIVED**

MAR 14 2011

Oregon DEQ  
Office of the Director

Oregon DEQ  
DEQ Commission

DEQ Case Nos. WQ/01-WR-09-203; WQ/OI-WR-09-144  
Exceptions & Brief

Hank's Septic Service is a company which has been in existence in Oregon since 1956. It has changed hands several times, generation to generation as well as sale to a third party. I, myself took over the business after purchasing it in late 2008. There was a transition from the previous owner to the new owner of about two months time period. This time period was devoted to familiarity with business, changing equipment over to me, licenses, etc. Currently the company employs about 6 people, in it's day to day operations.

The question before the committee is whether to uphold the findings of the ALJ, fining the company over \$9,000 and revoking it's license.

The issues circulate around not being properly licensed, not obtaining proper permits for work completed and not timely submitting "origin destination records" when requested by DEQ.

First, most of what the ALJ has found is accurate. I submit to you, that this has been a learning process, and while certain aspects may seem "obvious" or readily apparent to DEQ officials; to someone new in the field, when they are "brand new," many of this is "Greek" and there follows a huge learning curve, resulting in errors along the way.

Initially, I was going to enter into this business with a partner who currently owns a septic business. I met that individual through calling around myself for services in the septic business, that I myself needed personally.

In fact it was that individual that informed me that "Hank's Septic Service" was for sale and would I be interested in partnering up with him to go into the business, as he needed a cash partner to make the proposition work.

Trouble with that individual was nearly immediate. The partnership with him was never consummated, and his portion of the cash payment towards the purchase price was returned from the Bank as "non-sufficient funds."

In retrospect, it was good that he was not a part of this business as I later found out that he had a very bad reputation in the industry and I, myself did not want to be associated with that kind of poor reputation. The downside was that lacking his involvement, it was very much a "fly by the seat" of your pants undertaking. Meaning as well as trying to learn the business practices, I have a 30 year experience in the service industry as a background; I was unfamiliar with the applicable laws for this Industry.

I am not going to make excuses for what has happened in the past. Since these events, I have learned a vast amount of what requires permits, how to file them, the paperwork involved, record keeping, where to receive training, etc.

Since that time, I have received more training to help me better at what I do, protect the environment, and to offer the consumer the best choices possible, delivering the best service for the application, to meet state laws and the consumer's needs.

I can say, that we ALWAYS disposed of treated waste at an approved receiving station. Our efforts have ALWAYS (though misguided at times) been to protect the watershed, while meeting customer's needs- though protecting the environment has always been paramount.

I will explain what happened here: Early on I had paid for a Land application License in late 2008. I spoke with Lisa Fincher about transferring the license over to the new owner. I was under the mistaken impression that there was a "grace" period from the old owner to the new owner.

I did not want to purchase a license before the business changed hands, as I was unaware that you could put in an effective date of the license. So, yes in early 2009, there was a period of time when the business changed hands that the new license was not in effect yet, (though the old license was still valid,) as was the septic truck licenses and inspection certificates for those.

This business has a fairly large clientele and the calls immediately kept coming in and I was frankly "scrambling" to run the business, transfer it over to me, keep customers happy, and return requested DEQ records to them in a timely fashion. At times, I did not know what those records were that were being requested.

The repair job on State street, Salem: We responded to that customer initially on a Sunday afternoon. We received a call from them that their septic system was backing up and they were having raw sewage enter into the first floor of the house. There were nine occupants in the home.

I was initially unaware of what is allowed under "emergency repairs." Certainly the job was properly classified as an emergency job. Unfortunately our work there (even though temporary in nature) exceeded what was allowed under the emergency provision of the law. An employee of mine put in about 100 feet of drain field.

The system needed extensive repairs, indeed the proper remedy was to install an entire new system. I knew this and I also knew that it would have to be pumped uphill as the new drain field could only be located further up the hill.

Due to the load on the system, with all of those people in the house (plus the fact that the owners were out of the country and not available to sign contracts ( a pre-requisite to obtaining county permits,) I thought it best (now I know mistakenly so,) to install a temporary drain field to prevent runoff of sewage to a nearby stream and/or it backing up into the house. After further training, I have now been instructed that the proper solution is to pump the tank frequently pending completion of the new system.

On the job on Weirich Drive, we again performed emergency work, as it was backing up into their house. In this case though, my employee had gotten a minor repair permit and not the proper "major" repair permit.

For the origin and destination records, I did not know what those were and was in the process of getting the information together to complete those records as requested. Yes, it did take an inordinate amount of time, for which there is no excuse. To remedy that, I have been properly instructed now as to what they are and we in fact maintain them on a daily basis. Now, within 24 hours I can provide them to any agency that requests them.

We have also remedied the permit issue by making it mandatory that I, myself personally obtain the permit. It will not be delegated, that way I know definitively that it has been obtained.

We also will not start work until we have a signed contract, that way there will be no impediment to us properly receiving authorization from the county officials to start work.

Yes, it has been a learning experience, yes we have made mistakes along the way. I have done everything in my power to prevent future such occurrences.

I agree to pay the fine imposed. I also will, if requested raise the Bond requirement, doubling it to \$30,000.

I also agree to double the amount of training hours for the next two years. What I do not want to see happen, is that the people that rely on Hank's Septic Service, as a livelihood, suffer financially and be placed on Government assistance and the unemployment line.

What I am contesting is the revocation of the license. It is my belief that, in fact revoking the license of Hank's Septic Service will actually negatively impact our watershed and environment.

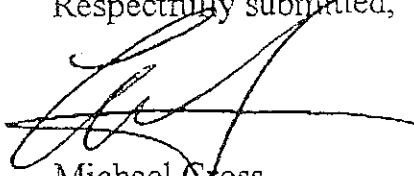
The reason for that is the following: our main customer base is Linn County. In Linn County there are only two other companies that provide similar service. In the far reaches up the canyon along Hwy 20 and the Santiam River, we are the ONLY one that maintains these septic systems.

Many of the septic systems in this area are already struggling to keep up with demand, due to their age and the capacity they are fulfilling. Many of these customers are low income and ANY increase in the cost of properly servicing and maintaining these systems, will cause them to put off scheduled and or required maintenance on these systems. Delaying this will undoubtedly cause damage to the environment and possibly cause the waste to leech into water systems such as the Santiam river, or smaller tributaries or groundwater.

Hank's Septic Service provides a competitive service in those areas. The elimination of Hank's Septic Service will undoubtedly cause prices to rise in the area, thereby putting required maintenance out of the budget of many homeowners in today's already stretched budgets.

We are always striving for more affordable ways for our customers to properly maintain their onsite systems, to prevent damage to the environment and irreparable harm to their drain field systems.

Respectfully submitted,



Michael Cross,  
Managing Member  
AAA American Eagle Services, LLC;  
Owner Hank's Septic Service

BY U.S. MAIL

March 7, 2011

AAA American Eagle Services, LLC, dba Hank's Septic Service  
c/o Michael Cross, Registered Agent  
1118 Lancaster Dr. N.E. #338  
Salem, OR 97301

ENVIRONMENTAL  
QUALITY  
COMMISSION

Re: Request for a second extension to file exceptions and brief  
OAH Case Nos. 1001544; 1001545  
DEQ Case Nos. WQ/OI-WR-09-203; WQ/OI-WR-09-144

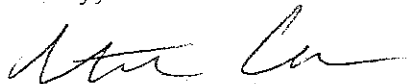
Dear Mr. Cross:

On March 7, the Oregon Environmental Quality Commission received your request for a second extension of time in which to file your exceptions and brief for the case referenced above. Your original due date was Jan. 21, 2011, and you requested a 45-day extension on Jan. 19, 2011. The commission granted that extension, and the due date was changed to March 7, 2011.

Your request for a second extension of time has been granted, and your exceptions and brief for the case referenced above are now due by 5 p.m. on Monday, March 14, 2011. No further extensions will be granted for this filing. Please send these documents to Stephanie Clark, EQC assistant, at 811 SW 6<sup>th</sup> Avenue, Portland, Oregon 97204, with a copy to Bryan Smith, also at 811 SW 6<sup>th</sup> Avenue, Portland, Oregon 97204.

Once both parties have filed all briefs in this process, this case will be scheduled at a regular commission meeting. If you have questions about this process, please contact me by telephone at 503-229-5301 or in writing at the address noted above.

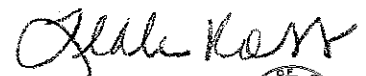
Sincerely,



Stephanie Clark

Assistant to the Oregon Environmental Quality Commission

Second extension noted



Leah Koss

Manager, DEQ Office of Compliance and Enforcement



Cc: BY HAND DELIVERY – Bryan Smith, DEQ

811 SW Sixth Avenue  
Portland, OR 97204-1390  
(503) 229-5696

**Hank's Septic Service**  
**1118 Lancaster Dr. NE #338**  
**Salem, Oregon 97301**  
**503-485-0496**  
*Since 1956*

Oregon DEQ  
Attn.: Stephanie Clark  
811 SW Sixth Ave.,  
Portland, Oregon 97204

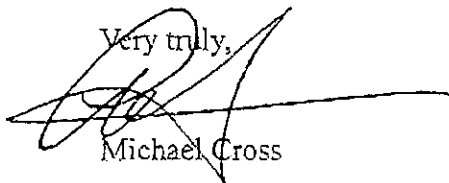
March 7<sup>th</sup>, 2010

Dear Stephanie,

Thank you for speaking with us today regarding a short extension for a response to DEQ. We only just recently discovered that our customary Legal Counsel is not experienced and unwilling to represent us on this pending matter. Consequently, we are diligently seeking effective assistance of counsel and hoping to find an attorney experienced in DEQ matters. We hereby request an extension of time to file of 7-10 days.

This request is submitted timely and in good faith.

Very truly,



Michael Cross

**RECEIVED**

MAR 07 2011

Oregon DEQ  
Office of the Director

BY U.S. MAIL

Jan. 25, 2011

AAA American Eagle Services, LLC,  
dba Hank's Septic Service  
c/o Michael Cross, Registered Agent  
1118 Lancaster Dr. N.E. #338  
Salem, OR 97301

ENVIRONMENTAL  
QUALITY  
COMMISSION

Re: Request for extension of time to file exceptions and brief  
OAH Case Nos. 1001544; 1001545  
DEQ Case Nos. WQ/OI-WR-09-203; WQ/OI-WR-09-144

Dear Mr. Cross:

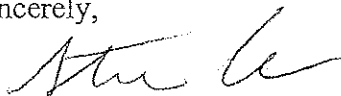
The Environmental Quality Commission received your request for an extension of time to file your exceptions and brief in the matter referenced above on Jan. 19, 2011, via fax and by U.S. mail on Jan. 21, 2011. Your request for a 45-day extension to file these documents has been approved.

Your exceptions and brief are due no later than 5 p.m. on Monday, March 7, 2011. This is a required filing in the contested case process. Please send your exceptions and brief to Stephanie Clark, EQC assistant, at 811 SW 6<sup>th</sup> Ave., Portland, OR 97204, with a copy to Bryan Smith, also at 811 SW 6<sup>th</sup> Ave., Portland, OR 97204.

Once both parties have filed all briefs in this process, this case will be scheduled at a regular commission meeting.

If you have any questions about this process please call me at 503-229-5301.

Sincerely,



Stephanie Clark  
Assistant to the Oregon Environmental Quality Commission

Cc: BY HAND DELIVERY – Bryan Smith, Oregon Department of Environmental Quality



811 SW Sixth Avenue  
Portland, OR 97204-1390  
(503) 229-5696



AAA American Eagle Services, LLC  
dba Hank's Septic Service  
1118 Lancaster Dr NE #338  
Salem, Oregon 97301

Oregon DEQ  
Stephanie Clark, EQC Assistant  
811 SW 6<sup>th</sup> Ave.  
Portland, Oregon 97204

cc: Bryan Smith DEQ

Sent via fax on January 19<sup>th</sup>, 2011  
& U.S. Mail  
January 19<sup>th</sup>, 2011

RE: OAH Case No. 1001544; 1001545

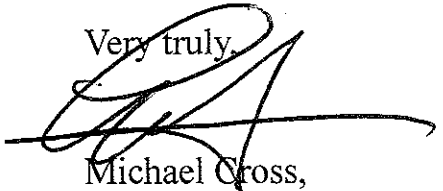
Dear Stephanie,

Enclosed is our request for an extension of time to file our response and the briefs. The reason for this request is that I need to find suitable assistance of counsel, someone that is familiar with this sort of proceeding. Our regular attorney is not familiar with Administrative law.

We respectfully request an additional 45 days; due to the fact that I will be out of the country for the second half of February and would need to get this matter resolved upon my return.

If you should have any questions I can be reached at 503-409-6312.

Very truly,



Michael Cross,  
Managing Member,  
AAA American Eagle Services

RECEIVED  
JAN 21 2011  
OFFICE OF COMPLIANCE  
AND ENFORCEMENT  
DEPARTMENT OF ENVIRONMENTAL QUALITY  
Item E 000042

BY CERTIFIED MAIL

Dec: 22, 2010

AAA American Eagle Services, LLC,  
dba Hank's Septic Service  
c/o Michael Cross, Registered Agent  
1118 Lancaster Dr. N.E. #338  
Salem, OR 97301

ENVIRONMENTAL  
QUALITY  
COMMISSION

Re: In the Matter of AAA American Eagle Services, LLC, dba Hank's Septic Service and  
Lebanon/Sweet Home Septic Tank Service

OAHC Case Nos. 1001544; 1001545

DEQ Case Nos. WQ/OI-WR-09-203; WQ/OI-WR-09-144

Dear Mr. Cross:

The Environmental Quality Commission received your petition for commission review of the proposed order in the matter referenced above on Dec. 21, 2010, via fax. Your materials were filed in a timely manner.

You have 30 days from the date of this filing, or by Jan. 21, 2011, to file your exceptions and brief. This is a required filing in the contested case process. A copy of the Oregon administrative rules guiding this contested case process is enclosed with this letter. These rules outline the specific items and components for your exceptions and brief and other documents in this contested case process. Please send your exceptions and brief to Stephanie Clark, EQC assistant, at 811 SW 6<sup>th</sup> Ave., Portland, OR 97204, with a copy to Bryan Smith, also at 811 SW 6<sup>th</sup> Ave., Portland, OR 97204.

If you need an extension of time to file your extension and briefs, please send that request in writing to Stephanie Clark, at the address noted above, by Jan. 21, 2011, with a copy to Bryan Smith. Once both parties have filed all briefs in this process, this case will be scheduled at a regular commission meeting.

If you have any questions about this process please call me at 503-229-5301.

Sincerely,



Stephanie Clark

Assistant to the Oregon Environmental Quality Commission

Enclosure: Copy of OAR 340-011-0575

Cc: BY HAND DELIVERY – Bryan Smith, Oregon Department of Environmental Quality

811 SW Sixth Avenue  
Portland, OR 97204-1390  
(503) 229-5696



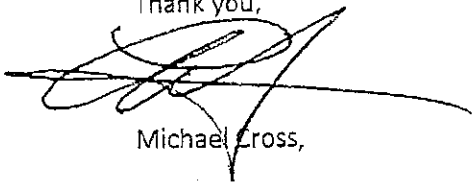
Attn.: OFFICE OF THE DIRECTOR

RE: AAA AMERICAN EAGLE SERVICES, LLC , DBA HANK'S SEPTIC SERVICE

Please find Enclosed Respondent's Petition for review.

Please call when this is received: 503-409-6312.

Thank you,

A handwritten signature in black ink, appearing to be 'Michael Cross', written over a horizontal line.

Michael Cross,

Managing Member

RECEIVED

DEC 21 2010

Oregon DEQ  
Office of the Director

BEFORE THE ENVIRONMENTAL QUALITY COMMISSION  
OF THE STATE OF OREGON

IN THE MATTER OF: ) OAH Case Nos. 1001544; 1001545  
)  
)  
AAA AMERICAN EAGLE SERVICES, LLC, ) Agency Case Nos. WQ/OI-WR-09-203  
an Oregon Limited Liability Company, ) WQ/OI-WR-09-144  
dba HANK'S SEPTIC SERVICE, an assumed )  
business name, )  
and LEBANON/SWEET HOME SEPTIC ) RESPONDENT'S PETITION FOR  
TANK SERVICE, an assumed business name ) COMMISSION REVIEW  
)  
) OAR 340-011-00575  
Respondent )

COMES NOW AAA American Eagle Services, LLC, an Oregon Limited Liability Company, dba Hank's Septic Service, an assumed business name, and Lebanon/Sweet Home Septic Tank Service, an assumed business name (hereinafter "Respondent"), and, pursuant to OAR 340-011-0575, requests that the Oregon Environmental Quality Commission ("the Commission") review the Proposed and Final Order entered in the above captioned matters.

Dated: December 20, 2010

AAA American Eagle Services, LLC

By: 

Michael Cross, Managing Member

**BEFORE THE OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF OREGON  
for the  
ENVIRONMENTAL QUALITY COMMISSION**

IN THE MATTER OF:	)	<b>PROPOSED AND FINAL ORDER</b>
	)	
<b>AAA AMERICAN EAGLE SERVICES, LLC.</b>	)	OAH Case No.: 1001544
	)	Agency Case No.: WQ/OI-WR-09203
	)	
<b>AAA AMERICAN EAGLE SERVICES, LLC.</b>	)	OAH Case No.: 1001545
	)	Agency Case No.: WQ/OI-WR-144

**HISTORY OF THE CASE**

On December 16, 2009, the Department of Environmental Quality for the State of Oregon (DEQ) issued a Notice of Civil Penalty Assessment and Order to Comply (Notice of Assessment) (Agency Case No.: WQ/OI-WR-09203) (OAH Case No. 1001545), and a Notice of Revocation of Onsite Sewage Disposal Service License (Revocation Notice) (Agency Case No.: WQ/OI-WR-144)(OAH Case No. 1001544) to AAA American Eagle Services, dba Hank's Septic Service and Lebanon/Sweet Home Septic Tank Service (Respondent). On January 5, 2010, Respondent, by and through its representative, Alec J. Laidlaw, Attorney at Law, requested a hearing in both matters.

On February 2, 2010, the DEQ referred the hearing requests to the Office of Administrative Hearings (OAH). These cases were consolidated and assigned to Senior Administrative Law Judge (ALJ) A. Bernadette House.

A prehearing conference was convened on March 31, 2010. Mr. Laidlaw appeared on behalf of Respondent and Bryan Smith, as the authorized representative for DEQ, appeared on behalf of DEQ. Relevant dates were set, including deadlines for submission of exhibits for hearing, and the hearing date for May 20, 2010. Subsequently, on May 6, 2010, counsel for Respondent requested an extension of the deadline for submitting exhibits on the basis that the matter was close to resolution. On May 7, 2010, counsel for Respondent filed a Motion and Order for Withdrawal of Respondent's Attorney, pursuant to Oregon Rules of Professional Conduct 1.16(b)(1), (4), and (7). On May 10, 2010, ALJ House granted the Motion.

On May 13, 2010, Michael Cross, managing member for Respondent, requested to continue the May 20, 2010 hearing date to allow Respondent to retain new representation. ALJ House granted the continuance. A second pre-hearing conference was set and held on May 14, 2010. Mr. Cross appeared for Respondent and Bryan Smith appeared for DEQ. Mr. Cross advised that he had been unable as yet to retain new counsel for Respondent. The hearing was

continued to allow Respondent the opportunity to retain counsel. On May 20, 2010, a status conference was convened on the record, Mr. Cross again appearing for Respondent and Mr. Smith for DEQ. The hearing was set for June 24, 2010, with an alternative date of July 6, 2010.

On June 17, 2010, R. Grant Cook, Attorney at Law, filed a letter of representation for Respondent and requested that the hearing be held on the latter date. DEQ did not object. ALJ House granted Respondent's request.

A hearing was held on July 6, 2010, at the OAH offices in Salem, Oregon. Respondent was represented by counsel Mr. Cook, accompanied by Mr. Cross. The DEQ was represented by Mr. Smith.

Testifying in-person on behalf of the DEQ were Samuel R. Partipilo, Linn County (County) supervisor and on-site wastewater specialist; Jessica Joyce, County on-site wastewater specialist, Lynn Fincher, DEQ licensing specialist; Michael Kucinski, DEQ manager for on-site systems program. Del Cline, DEQ environmental specialist, appeared by telephone.

Testifying on behalf of Respondent were Zan Ewing and Michael Cross. The record closed at the conclusion of the hearing. Subsequently, Mr. Cook notified the OAH and DEQ that he had withdrawn as counsel of record for Respondent.

### ISSUES

1. Whether Respondent's work on the septic system at the following properties, 11805 State Street, Salem, Oregon (Salem property) and 33355 Weirich Drive, Lebanon, Oregon (Lebanon property) without the required permits in violation of ORS 454.655(1) and OAR 340-071-0130(15)(a), constituted a Class I violation according to OAR 340-012-0060(1)(b) and whether DEQ's proposed civil penalty of \$2500.00 for each violation is appropriate.

2. Whether Respondent's failure to provide its origin-destination documents within 14 days following DEQ's July 2, 2009 request, for work performed March 1, through May 31, 2009 under license numbers 35378 and 33315 in violation of OAR 340-071-0600(13)(d) is a Class II violation according to OAR 340-012-0053(2) and, if so, whether DEQ's proposed civil penalty of \$1,375.00 is appropriate.

3. Whether Respondent's conduct between January 1, 2009 through January 8, 2009 in pumping and then disposing of at least 21,000 gallon of sewage at 1624 Christmas Tree Lane, Albany, Oregon without a license to perform onsite sewage disposal services in violation of ORS 494.695(1) is a Class II violation according to OAR 340-012-0060(1)(a), and, if so, whether DEQ's proposed civil penalty of \$2,125.00 is appropriate.

4. Whether Respondent's conduct in allowing an uncertified employee to perform the work at the Lebanon property, in violation of OAR 340-071-0650(1)(a), is a Class II violation according to OAR 340-012-0060(2)(g), and, if so, whether DEQ's proposed civil penalty of \$875.00 is appropriate.

5. Whether DEQ may revoke Respondent's Onsite Sewage Disposal Service Provider's license, based on Respondent's violations of ORS chapter 494 and OAR chapter 340 division 071, as proposed.

### **EVIDENTIARY RULINGS**

Exhibits A1 through A21, offered by the DEQ, were admitted into the record without objection. Exhibits A22 and A23 were admitted over Respondent's objections as to relevancy. Exhibit R1, offered by Respondent, was admitted without objection. DEQ's objection to Respondent's Exhibit R2, was sustained on the basis of relevancy.

Respondent objected to A22, a Notice of Violation, Proposed Assessment of Civil Penalty and Opportunity to Request Hearing, issued to Respondent by the Construction Contractor's Board on March 23, 2010, and to Exhibit A23, an e-mail with a copy of the Final Order of Default of the March 23, 2010 on the basis of relevancy. Proper foundation was laid for the documents during testimony by Michael Kucinski and the documents were received into the record at that time. Respondent requested the documents be reviewed for relevance again during consideration of the record.

Having reviewed the testimony regarding Exhibits A22 and A23, the documents offered in rebuttal to Respondent's argument that its recent history of no violations supported denial of DEQ's proposed license revocation, I find the exhibits are relevant for the purpose for which they were offered. Respondent's renewed objections to Exhibits A22 and A23 are overruled.

Jan Heron, senior staff member for the County's environmental health program, on-site wastewater permitting, was unable to testify due to a medical emergency. Samuel Partipilo, as Herons' supervisor, discussed Heron's investigation of the matters at issue and testified to knowledge of the events in this matter based on those discussions.

### **FINDINGS OF FACT**

1. During December 2008 through January 2009, Respondent AAA American Eagle Services, LLC., through Michael Cross, managing partner, purchased two existing wastewater disposal businesses.<sup>1</sup> The business transactions took those two months to complete. (Test. of Cross.) Under the prior ownership, each of the two businesses, Hank's Septic Service, license no. 35378, and Lebanon/Sweet Home Septic Tank Services, license no. 33315, had been licensed by DEQ's Water Quality Division, On-Site Sewage Disposal Program to provide sewage disposal services (SDS). (Test. of Cross and Fincher; Ex. A13 at 1, 2.)

2. The previous owners were licensed to pump septage (human waste) from septic tanks or other treatment facilities, holding tanks, vault toilets, privies or cesspools, and to clean effluent sewer or trench piping. Respondent submitted the completed application to transfer the

---

<sup>1</sup> Respondent, dba Hank's Septic Service, and Lebanon/Sweet Home Septic Tanks Services, is the named party in both the Civil Penalty Assessment and the Revocation Notices issued by DEQ at issue in this hearing. Michael Cross, as managing partner, acted on behalf of Respondent. For purposes of clarity in the Order, Cross is referred to as Respondent.

existing licenses on or about January 12, 2009. Respondent became licensed to provide sewage disposal services (SDS) at that time under transferred licenses set to expire as of June 30, 2009. (Exs. A13 at 1, 2; A14.)

3. Respondent applied for renewal of the existing licenses for Hank's on or about June 23, 2009. Respondent's application requested renewal of the SDS license, continuing the same services as on the January 12, 2009 application in addition to renewing licensure to construct onsite sewage disposal services or any part thereof, including grading, excavating, and earth-moving activities. The application was marked "yes" to having a current installer certification, no. I-1418. Respondent's application was not complete as it required additional information and was not paid in full. (Test. of Fincher; Ex. A16.)

*Pumping and disposal activities without a permit:*

*a) Background facts*

4. Lisa Fincher is a licensing specialist for DEQ, licensing septic pumpers and installers. On December 8, 2008, Respondent contacted Fincher regarding the process for transferring purchased held DEQ licenses for sewage disposal services (SDS). Specifically, Cross wished to transfer the existing sewage disposal license numbers 33315, for Lebanon/Sweet Home Septic Tank Service, and 35378, for Hank's Septic Service to Respondent. (Test. of Fincher; Ex. A10.)

5. On December 9, 2008, and again on December 29, 2008, Fincher sent Respondent worksheets, all of the required forms, and other information, including links, for the requirements for transferring permits or for getting new permits. (Test. of Fincher; Ex. A10.)

6. On December 24, 2008, Jan Heron, Linn County wastewater permitting specialist, contacted Fincher at DEQ. Linn County asked whether Respondent was licensed by DEQ for pumping and disposal services. DEQ confirmed that Respondent had purchased the pumper portion of the business dba Hank's, among others. (Ex. A11 at 3.) DEQ also informed Linn County that Respondent was not licensed, but that Respondent had contacted DEQ regarding the license transfers for Hank's and the Lebanon/Sweet Home businesses to Respondent. (Test. of Fincher; Ex. A11 at 2, 3.)

7. On December 29, 2008, DEQ again provided Respondent with detailed instructions on the process for licensure. DEQ emphasized to Respondent that it was not licensed and that it should not be doing any business in Oregon. Respondent confirmed, at that time, that it had not completed the purchase of the businesses at issue. DEQ also notified Respondent that the current licenses, if transferred, would expire in June, 2009, and provided cost differences for transfer of existing licenses versus higher costs of purchasing new licenses. (Test. of Fincher; Ex. A11 at 2.) DEQ then sent Respondent an e-mail, summarizing the process to transfer licenses or apply for new ones. (Test. of Fincher; Ex. A11 at 4.)

8. On December 31, 2009, Linn County contacted DEQ again, to ask whether the Hank's and Lebanon/Sweet Home businesses had valid pumper licenses. DEQ advised that, according to Respondent, the ownership transfer had not yet taken place. The pumper licenses issued to the

former owners would have been valid if ownership had not been transferred. (Test. of Fincher; Ex. A11 at 6.)

*b) Conduct violating requirement for valid permit prior to providing sewage pumping services*

9. On or about January 5, 2009, Ron Buernt, environmental compliance specialist for the City of Salem (the City) wastewater treatment plant, contacted DEQ to ask about licenses issued by DEQ. The City may issue permits to dispose of septage at a city facility if the permittee is licensed by DEQ as an SDS provider. (Test. of Fincher.)

10. The City asked if Respondent was licensed because the City did not have a record of a license issued by DEQ to Respondent on file. In mid-December 2008, the City had issued a Septic Hauler's Discharge Permit to Respondent, dba as Hank's Septic Services and Lebanon/Sweet Home Septic Services, based on Respondent's representation that it had bought out the previous permit holder, Waste Connections of Oregon, Inc. (Test. of Fincher; Ex. A11 at 8.)

11. On January 6 and 7, 2009, Respondent performed septage pumping services for addresses in Lebanon and disposal at the City of Lebanon and the North Albany Site treatment plants. (Ex. A12.) Respondent was not licensed by DEQ to perform sewage disposal services during that time. (Test. of Fincher.)

12. On January 7, 2009, DEQ responded to the City and confirmed that Respondent was not licensed to pump septage. DEQ suggested that the City may want to suspend the permit it had issued in mid-December because Respondent was not licensed by DEQ. (Test. of Fincher; Ex. A11 at 7.)

13. Later on January 7, 2009, the City wastewater treatment plant refused a load of septage from Respondent. The City informed Respondent that it could no longer do business with the plant until it obtained a license from DEQ. The City also informed DEQ of its actions. (Test. of Fincher; Ex. A11 at 10.)

14. When DEQ received notification from the City, Fincher attempted to contact Respondent by telephone, and left messages regarding the situation at the Salem plant. Fincher noted that the telephone number for Cross was now being answered as Lebanon/Sweet Home Septic Tank Services (Sweet Home business) at 503-409-6312, and as Hank's at 541-258-8322. As of January 7, 2008, DEQ had not received either a transfer application or an application for a new permit from Respondent. (Test. of Fincher; Ex. A10.)

15. Respondent contacted DEQ by phone later on January 7, 2009. Respondent said that the licensure transfer application would be submitted to DEQ the following day. On or about January 12, 2009, Respondent submitted the completed and signed applications, with appropriate payment of fees, to transfer the existing sewage disposal license numbers 33315, for Lebanon/Sweet Home Septic Tank Service, and 35378, for Hank's Septic Service to Respondent under new ownership. (Test. of Fincher; Exs. A11 at 11, A13.)

16. DEQ issued Respondent the renewed permits in person on January 12, 2009. Fincher told Cross at that time that the transferred licenses were due to expire June 30, 2009. (Test. Fincher; Ex. A14.)

17. On June 30, 2009, sewage disposal service license number 35378, issued to Respondent dba Hank's Septic Service expired. DEQ received Respondent's application for renewal on July 2, 2009. DEQ did not issue the permit on July 2, 2009 because the application was incomplete payment and not paid in full. (Test. of Fincher; Ex. A16.) DEQ issued the requested permit on July 15, 2009 once the application fee was paid and additional information was provided. (Test. of Fincher; Exs. A16, A17.)

*c) Conduct violating Respondent's duty to produce origin-destination records upon request*

18. On July 2, 2009, DEQ sent Respondent a letter requesting copies of its origin-destination records for March 1 through May 31, 2009, to be submitted to DEQ within 14 days from the date of the letter as required by OAR 340-071-0600(13)(d). On July 6, 2009, Fincher spoke to an individual named Karen at the contact number for Respondent and told her that Respondent was not licensed and should not be conducting business. (Test. of Fincher; Ex. A18, A16.)

19. Respondent's failure to provide the requested records within the deadline resulted in the assessment of a civil penalty. Despite additional requests from DEQ to Respondent, Respondent did not submit the requested records until May 2010. Respondent offered no explanation for the delay in producing the records. (Test. of Fincher; Ex. A19.)

20. During the period from July 6, 2009 through July 13, 2009, while Respondent was not licensed, it brought two trucks with septic waste for disposal at the City of Salem plant:

Truck #56

July 6th – 3108 gallons  
July 7th – 3208 gallons  
July 13th – 2366 gallons

Truck # 49

July 8th – 2177 gallons  
July 9th – 3056 gallons  
July 10th- 3068 gallons  
July 13th – 2244 gallons  
July 13th – 2674 gallons

(Test. of Fincher; Ex. A15 at 2.)

21. The City received three additional loads from Respondent before DEQ notified the City that Respondent no longer had a valid DEQ license. The City deactivated the site access numbers for Respondent and told Respondent that it could no longer use the Salem septic waste disposal station because it did not have a valid DEQ license. (Test. of Fincher; Ex. A15 at 2.)

*Septic system installation/repair without a permit, and by an unlicensed individual*

*a) Installation/repair of a septic system in Lebanon, Linn County*

22. On or about June 1, 2009, June McCready, owner of property located at 38355 Weirich Drive Lebanon, Oregon (the Lebanon property) contacted Respondent, dba Hank's Septic Service, because the prior owner had performed satisfactory work for her. Respondent visited the property that day, pumped the septic tank, and billed McCready for \$377.00 for the work. The invoice noted that a service tech from Respondent would be coming to check the outlet which was not draining and the inlet for slow flow. (Exs. A2, A5 at 1.)

23. Michael Hamer is a licensed provider of onsite SDS services in Linn County. On or about July 15 or 16, 2009, the SDS provider saw Respondent's truck being driven through Lebanon with materials for septic system installation. He called Linn County and found that Respondent had not pulled any installation permits. (Test. of Cline; Ex. A3.)

24. The next day, Hamer followed Respondent's truck to the Lebanon property but observed from a distance to avoid detection. Hamer's employee took pictures of the work and talked to the individual operating Respondent's track hoe and digging drainfield. When Hamer's employee asked, the operator said that he worked for Respondent. Hamer could see that new infiltrator units had been installed in addition to approximately 200 feet of drainfield. (Test. of Cline; Ex. A3.)

25. Hamer then contacted Delbert Cline, an environmental specialist for Linn County, and told him about Respondent's activities. Cline has approximately 35 years experience permitting on-site service systems. Hamer also sent Cline a written statement accompanied by the photographs his employee had taken at the site. (Test. of Cline; Exs. A3, A4.)

26. Cline forwarded the complaint to Jan Heron, environmental wastewater specialist for Linn County. (Test. of Cline.) Heron, a senior staff person with the permit program, began an investigation of the complaint. Heron kept a log of activities related to her investigation. Heron discussed the complaint and investigation with her supervisor, Samuel Partipilo. (Test. of Partipilo; Ex. A5.)

27. Heron recorded the following information regarding her investigation of Respondent's activity at the Lebanon property. Heron researched the Linn County database and found that no permits for the Lebanon property work had been issued. On or about June 22, 2009, Heron, for Linn County, forwarded Hamer's statement and the photographs to DEQ for consideration of enforcement action against a licensed contractor. (Test. of Partipilo; Ex. A5 at 1.)

29. On June 23, 2009, Linn County sent a Notice of Violation to the property owner. In response to receiving the Notice, David McCready, the owner's son, contacted the County on July 6, 2009. McCready said that he had asked Respondent's employee on the site if Respondent had a permit for the work. In response, Respondent's employee had told McCready that it was a repair and that no permit was needed. Linn County informed McCready that the property owner would have to apply for a permit. The County also told McCready that portions of the system would have to be exposed to inspect the work that had been completed by Respondent. The County provided McCready with contact information for Lisa Fincher at DEQ. (Ex. A5 at 1.)

30. On or about July 23, 2009, Respondent came to Linn County to pick up the application for an "emergency repair" permit. Heron, for the County, informed Respondent that work performed as an emergency repair required that the person performing the work had to submit an application within 3 days of performing the work. Heron also told Respondent that the work permitted under such a permit had to be minor repair. During the conversation, Respondent denied installing any disposal field and said that there was a problem with the "d-box" (distribution box) and the tank. (Ex. A5 at 1.)

31. On July 28, 2009, Linn County sent another Notice of Violation to the property owner because Respondent had not submitted the permit application. On July 30, 2009, Respondent submitted its application for the Lebanon property work. The County then sent a letter to Respondent, copied to the owner and to DEQ, asking that portions of the work be exposed for inspection. (Exs A5 at 1, A1.)

32. The County specifically asked for the following to be exposed: the distribution box such that it could be opened without soil falling into it; and the header pipes from the distribution box to the point of their connection with the perforated pipe or equivalent absorption portion of the system. The County also provided Respondent with the DEQ rules for a "minor repair" for permitting purposes. The County informed Respondent that its description of the work done did not match other evidence that the County had received about the extent of the work performed. (Ex. A1.)

33. Having had no further response from the owner or from Cross by August 28, 2009, Linn County sent out a Final Notice to Abate to the owner. Respondent called the County on Friday afternoon, September 4, 2009, and stated that the work had been exposed. (Ex. A5 at 2.)

34. Heron visited the site on September 8, 2009. Heron found that the plastic d-box had not been sufficiently exposed to allow inspection and that none of the headers and other features had been exposed as she had requested. Linn County sent Cross another letter, copied to the owner, restating the need to expose the designated features by September 17, 2009. (Ex. A5 at 2.)

35. After another call from Respondent stating that the site was ready for inspection, Heron re-visited the site on September 18, 2009. The top of the distribution box had been cleared but none of the other requested portions had been exposed. Heron observed signs that the three-bedroom house was being used as a multi-family dwelling. A female from Hank's called Heron to ask about the status. Heron advised the Respondent's representative that the

County was referring the matter to DEQ and that she would not return to the site with only verbal confirmation from Respondent that the site had been exposed for inspection as required. (Ex. A5 at 2.)

36. Respondent continued to deny that it had performed any work other than on the distribution box. On September 28, 2009, Respondent visited the County environmental services office and observed the photographs taken by Hamer showing the infiltrators in the ditch. Heron informed Respondent of the following: that the end of each of the infiltrators installed would have to be uncovered by hand for assessment; that a test pit would be needed to determine how much drain field would be required; and that Respondent would have to pay for re-inspection fees for each additional visit the County made to the site. (Ex. A5 at 2.)

37. Heron also spoke with a property manager who called on behalf of the owner. The manager confirmed that the house was being used by an extended family and said that Respondent had billed the owner for \$6000.00. The bill included the original pumping bill for the tank, the minor repair permit for which Respondent had eventually applied, and 250 hours of labor. Linn County received copies of the bill and forwarded them to DEQ. (Ex. A5 at 2, 3.)

38. On October 15, 2009, Heron met with Cross and others at the Lebanon site. Following assessment of the work, Heron noted corrections that were needed and told Cross where to place the test pit. The County notified the property manager of the findings. On October 22, 2009, the owner notified the County that she had hired Mike Hamer to complete the work. The County then notified DEQ that Cross was no longer working on the job. (Ex. A5 at 3.)

39. The June 1, 2009 invoice from Respondent to McCready included the initial pumping service and noted the scheduling of inspection for further work. (Ex. A2 at 2.) The June 19, 2009 invoice from Respondent to McCready included the following: invoice number 3269 for labor, excavator work, parts, jetting, a description of work "[l]ocated D-Box, check flow to leach line, check flow to tanks, totaling \$1,162.00; and invoice number 3270 for "Drainfield work, 250 @\$14.00 = 3,500.00" totaling \$3,500.00 for a total balance of \$5,162.00. (Ex. A2 at 1.)

40. Partipilo, the supervisor of Linn County's onsite permitting program, has 40 years experience in wastewater permitting. In his opinion, the June 19, 2009, invoice appears to be one for installation of a drainfield. Installation is typically billed by linear feet and 250 would indicate the work done was not a minor repair. The work detailed in the invoice falls under a major repair, requiring more than a minor repair permit and more fees for permitting. The photographs of the work performed show a drain field installation in progress. Installation work of the type of work shown in the photographs, as verified in the invoice, requires that it be completed by a licensed installer. As of June 22, 2009, no permit had been issued for the installation work. (Test. of Partipilo.)

41. Partipilo did not speak to Respondent's employee who performed the installation. Partipilo learned from Heron that Respondent's employee who had installed the drain field was not a licensed installer. (Test. of Partipilo.)

42. Partipilo also reviewed Heron's notes of her October 13, 2009, inspection visit to the Lebanon property. Heron documented that the work performed by Respondent by that date was not approvable for permitting. Among other issues, the installation was too deep. Installation of the system at too deep a level does not adequately protect the groundwater and can cause a danger to human health. (Test. of Partipilo.)

43. In addition, a portion of the drain field was located under the driveway, making it vulnerable to being crushed by vehicle traffic which in the worst case scenario could cause direct sewage discharge to the ground and/or back up into the system. Even if the infiltrator system installed under the driveway had been designed for high weight-bearing, the installation under a driveway was deficient for other reasons. Driveway usage causes soil compaction issues and creates limited ability of the system to exchange gas efficiently enough for permit approval. (Test. of Partipilo.)

44. In emergency situations where a drain field must be replaced, emergency measures may include pumping the tank and informing residents to conserve water use until the field can be repaired. It is not uncommon to pump a tank several times during drain field repair work. Installation of a drain field is not considered emergency repair. (Test. of Partipilo.)

*b) Installation of a septic system on the Salem property without a permit*

45. Jessica Joye is an onsite wastewater specialist for the City of Salem and has approximately five years experience of on-site permitting and installation inspections. On or about June 12, 2009, Joye was notified by an employee at Marion County of a complaint regarding Respondent. The complaint was from Janice Endicott, the owner of property located at 11085 State Street, Salem, Oregon (the Salem property). (Test. of Joye; Ex. A6.)

46. The property owner reported that, on May 3, 2009, Respondent had performed work for her tenants. The tenants at her Salem property had sewage backing up into the downstairs bathroom. The owner had given the tenants the name of another installer. That installer was not been available. The tenants then contacted Respondent who pumped the tank. (Ex. A6.)

47. The owner later learned from the tenants that Respondent had told them that additional work was needed. On May 5, 2009, the owner called Respondent about the extra work. Respondent said that the holding tank had dropped and that the outlet baffle was not working. The owner authorized a charge of \$675.00 to fix the grade to remedy the problem. Respondent then told the owner that additional work was needed, including two additional lines for drainage of the distribution field, to provide an alternate line if one backed up, which the owner also authorized. (Ex. A6 at 2.)

48. The owner subsequently left on a previously scheduled vacation. On May 21, 2009, the owner learned that the tenant was very upset about the work that had been done. The ground was very torn up and had protruding rocks and sticks, the worker who had done the work had spent a lot of idle time at the site, and there remained pipes exposed at the site that had never

been covered up. Respondent also billed the tenant's debit card for more money than the tenant had authorized without providing an invoice or an explanation. (Ex. A6 at 2.)

49. On May 22, 2009, the owner investigated the work done at her property herself and took picture and on May 26, 2009, left Respondent a message about her dissatisfaction with the work. A hold was placed on the release of funds from the owner's credit card to Respondent for the work. (Ex. A6 at 3.)

50. Shortly after the owner's contact the credit processor on May 26, 2009, Respondent called Endicott. The owner gave Respondent a detailed explanation of why she was not satisfied with the work. She confirmed with Respondent that no permit had been issued for the job. Respondent stated that the County allowed work to be done in an emergency situation and that this had been an emergency situation for which a permit was not required because of the sewage backup. Respondent also said that the tenants had told him not to get a permit. The owner had already talked with the tenants who had confirmed that they had asked about a permit and Respondent had told them that it was not. (Ex. A6 at 3.)

51. The owner told Respondent that the tenants were possibly buying the house and that any work had to be done legally. Respondent then said that he was a DEQ licensed inspector, that he would write her an inspection report, and that Respondent had been in the business since 1956. Endicott again stated that she needed an invoice but never received either an invoice or an inspection report. (Ex. A6 at 3.)

52. On June 1, 2009, the owner talked with her tenants about Respondent's follow up work. The tenants reported that someone had come and spread grass seed around with a rake. On another day, a worker had come with a back hoe and stacked rocks in a place other than where the tenants had originally asked for them to be stacked. After the worker left, no leveling work had been done, there was an 8-10 inch drop off left, and lots of exposed roots and rock. Dirt had been dumped on a concrete area normally used by the tenants. When asked about the dirt, Respondent said that it was needed to fill in because the area had been a difficult site. (Ex. A6 at 4.)

53. Respondent failed to cure the Salem property owner's complaints. On June 10, 2009, the owner contacted Marion County Public Works about Respondent's activities and found that Cross had not been issued a permit. (Test. of Joye; Ex. A6 at 4.)

54. Later on June 10, 2009, the owner met with Respondent at the Salem property. Respondent told the owner that all of the work done had been temporary and that the old system had never been disconnected. Respondent again stated that it would not be getting a County permit because the work was only temporary and a permit was not required. Respondent failed to provide the owner with an invoice, despite numerous requests. Respondent threatened to have the system condemned, and informed the owner that Respondent's attorney would put a lien on the house for the unpaid amount for the work and for attorney fees. (Ex. A6 at 5.)

55. On June 11, 2009, Respondent called the owner and asked what she was going to do. Endicott again asked for an invoice. Respondent refused to provide an invoice or finish the job

until he was paid. Following further discussion, Respondent hung up on the owner. The owner called Respondent's office two more times but never received the invoice. (Ex. A6 at 5.)

56. Also on June 11, 2009, the owner received from her tenants a detailed summary regarding their observations and interactions with Respondent and with the employee who performed the work on the Salem property. Respondent began work on May 6th and continued through May 15th, when Respondent declared that the work was done and left the property. The tenants confirmed again that Respondent had told them no permit was needed. (Ex. A6 at 7, 8.)

57. The owner sent copies all of the notes about, and the photographs of, the work done at the Salem property to Marion County on June 12, 2009. (Test. of Joye; Exs. A6 at 1; Ex. A9.) The County then contacted DEQ about the complaint because it involved the allegation that Respondent had installed a drain field without a permit. (Test. of Joye.) The County forwarded copies of documentation of the work performed at the Salem property to DEQ. (Test. of Joye; Ex. A7.)

58. Emergency permits may be issued but such permits do not include drain field work. In an emergency where septage backs up into a dwelling, the remedy is to utilize an emergency tank for holding waste. Residents may be required to leave a residence or curtail water use while the situation is evaluated and remedied. Emergency permits can be applied for up to 72 hours after the work is performed. Respondent did not apply for an emergency permit within 72 hours for work at the Salem property. (Test. of Joye.)

59. On July 2, 2009, Joye, for Linn County, visited the Salem property to inspect the site and the work performed by Respondent without a permit. As of that date, Respondent had not applied for a permit for work at the site. The owner's photographs correlated with Joye's observations of the property and revealed what the property looked like after Respondent had had the work covered with dirt. (Test. of Joye; Ex. A8.)

60. After Joye had the work uncovered, she was able to observe that Respondent had installed approximately 100 lineal feet of infiltrator within 16 inches from the ground. The drain field installed was not on contour, nor to code. The drain field was within 40 feet of the pond. The pond emptied into a year-round creek on the property and the drain field was also within 60 feet of the creek. The drain field did not meet the set-backs from either the pond or the creek as required under DEQ rules. The work was not to the required depth, which could impede the proper functioning of the system. In addition, the tenants had used the system prior to proper repair and permitting, which increased the potential harm from allowing sewage to reach the creek or pond. (Test. of Joye; Ex. A8.)

61. The property owner contacted a different licensed installer to install a new system. On July 6, 2009, a major repair permit was issued to the new installer for installation of a standard system at the Salem property. Joye summarized the County's findings in a letter to Del Cline at DEQ, in response to his request for a write-up of the inspection findings. (Test. of Joye; Ex. A8.)

62. There is no county or state exception to the permitting process for temporary work. There is no process for condemning a system, or for removing lines installed for a temporary repair when a permanent repair is completed, as represented by Respondent in his conversation with the owner and the tenant on June 10, 2009. (Test. of Joye.)

*Proposed Civil Penalty Assessment*

63. DEQ, in addition to statewide enforcement authority, may contract, as it has with Marion and Linn County, for the permitting portion of wastewater processing. Violations of DEQ rules are referred back by the counties to DEQ for enforcement. Following DEQ's receipt of information regarding the two separate possible violations by Respondent of DEQ's on-site wastewater permitting and compliance requirements, Cline prepared a referral for enforcement to his manager, Michael Kucinski. (Test. of Cline and Kucinski; Ex. A20.)

64. The referral is prepared as part of DEQ's process prior to taking action against a licensee regarding compliance and performance. Cline noted Respondent had committed two violations, the installation of the septic system in Linn County, and the installation of the septic system in Salem without first obtaining the required permits. (Test. of Kucinski; Ex. A20 at 1.)

65. Kucinski, manager of on-site wastewater disposal systems for approximately seven years, is responsible for preparing violation referrals for review before they are sent to DEQ for enforcement. Kucinski evaluated Cline's referral and the accompanying documentation, and approved the proposed revocation action against Respondent's DEQ license. (Test. of Kucinski; Ex. A20.)

66. DEQ then issued a Pre-Enforcement Notice to Respondent on July 31, 2009. The Notice described the nature of the violations, the first being the installation of the drain field at the Salem property with inadequate set-back and without a permit, and the second being the installation of the drain field at the Lebanon property without a permit. The Notice advised Respondent that the violations were Class I violations, the most serious classification under Oregon environmental law. (Ex. A21.)

67. The DEQ Notice also informed Respondent of the following: that it was required to obtain the appropriate permits as corrective action within two weeks of receiving the letter; that Respondent's timely and responsive action to correct the violations would be considered in any civil penalty assessment issued by DEQ; that Respondent's failure to correct the violations created a danger to the public; and that further violations of installations performed without a permit or failing to maintain a license would result in additional enforcement actions by DEQ. Respondent was also notified that Respondent could submit written information if it believed any of the allegations were incorrect. (Ex. A21.)

68. During DEQ's follow up investigation, DEQ discovered that Respondent had failed to provide origin-destination documentation, that Respondent had performed onsite sewage disposal services during a time when Respondent was unlicensed, and that Respondent had allowed an uncertified employee to perform work at the Lebanon property. DEQ alleged that

Respondent had committed five violations as set out in the Notice issued by DEQ. (Test. of Kucinski.)

69. When assessing civil penalties, DEQ may consider Respondent's conduct in compliance with rules for any on-site conduct. Kucinski was aware that the Construction Contractor's Board (CCB) for the State of Oregon had issued a Notice of Violation, Proposed Assessment of Civil Penalty and Opportunity to Request Hearing to Respondent's for conduct regulated by that Board for conduct in separate matters. On March 22, 2010, CCB issued a Final Order of Default to Respondent, finding Respondent had committed two violations of its laws by working as a contractor in Oregon without a license. One of the instances involved Respondent dba Hank's Septic Service. CCB assessed Respondent a fine of \$10,000 for conduct which occurred in November 2009 and February 2010. (Test. of Kucinski; Exs. A22, A23.)

70. Kucinski assisted in the internal process by which DEQ generated its proposed penalty assessment against Respondent. In his opinion, the deficiencies in the two systems installed by Respondent were appropriately assessed as moderate under the rule. (Test. of Kucinski.) Installation of the system under an area subject to vehicle traffic is not specifically prohibited under DEQ rules. However, the resulting soil compaction, reduces the oxygen in the soil, lessening the ability of the bacteria in the soil to process the discharge, resulting in decreased effectiveness and possible contamination of water sources. (Test. of Kucinski.)

*Proposed Revocation of Respondent's Onsite Sewage Disposal Service Provider's License*

71. DEQ proposed to revoke Respondent's Onsite Swage Disposal Service Provider's license based on the conduct set out in the December 16, 2009 Civil Penalty Notice. DEQ is not able to monitor every activity subject to its jurisdiction that is conducted within the state. DEQ relies in part upon establishing a level of trust with individuals who activities are conducted under DEQ's permitting process. In Kucinski's opinion, Respondent had not shown DEQ that he would take actions to come into compliance and Kucinski's opinion is reflected in the proposed civil penalty assessment. (Test. of Kucinski.)

72. Kucinski based his opinion on factors that included the following: after Respondent was made aware of the requirements for conducting activities under a pumping license, and that a license was required for pumping, Respondent conducted pumping activities without a permit. Despite several opportunities and reminders that he needed a license for onsite sewage disposal, Respondent continued to conduct activities without coming to DEQ for a license or to make any good faith effort to come into compliance.

72. Cross had no prior experience in the wastewater disposal industry but had worked in service industries for over 30 years. As part of learning about the wastewater disposal business, Cross took a class from Zan Ewing in pursuit of his license as an installer. Cross has called Ewing on technical questions over the past year and a half. (Test. of Cross.)

73. Zan Ewing has worked in sanitary systems for 36 years. Ewing is approved by DEQ to teach a two hour class on DEQ rules, sand filter design and costs, best practices, trouble

shooting and repair options, inspections, site plans, and as built drawings. Ewing is aware of the requirements for obtaining emergency repair permits and would not consider work on a drain field appropriate under such a permit. In addition to answering technical questions, Ewing also performed a systems design for Cross earlier in 2010. (Test. of Ewing.)

74. Following his purchase of the business, Respondent sought training in the industry, including traveling out of state, and among other things, becoming a member of, and attending the symposium of, the National Association of Waste Transporters (NAWT). NAWT sets industry wide standards. Cross also subscribes to relevant industry publications. (Test. of Cross.)

### CONCLUSIONS OF LAW

1. Respondent's work on the septic system at the Salem property and at the Lebanon property without the required permits violated ORS 454.655(1) and OAR 340-071-0130(15)(a), and constituted a Class I violation according to OAR 340-012-0060(1)(b). DEQ's proposed civil penalty of \$2500.00 for each violation is appropriate.

2 Respondent failed to provide its origin-destination documents within 14 days following DEQ's July 2, 2009 request, for work performed March 1, through May 31, 2009 under license numbers 35378 and 33315 in violation of OAR 340-071-0600(13)(d) which is a Class II violation according to OAR 340-012-0053(2). DEQ's proposed civil penalty of \$1,375.00 is appropriate.

3. Respondent's conduct between January 1, 2009 through January 8, 2009 in pumping and then disposing of at least 21,000 gallon of sewage at 1624 Christmas Tree Lane, Albany, Oregon without a license to perform onsite sewage disposal services violated ORS 494.695(1) and is a Class II violation according to OAR 340-012-0060(1)(a). DEQ's proposed civil penalty of \$2,125.00 is appropriate.

4. Respondent's conduct in allowing an uncertified employee to perform the work at the Lebanon property, violated OAR 340-071-0650(1)(a), and is a Class II violation according to OAR 340-012-0060(2)(g). DEQ's proposed civil penalty of \$875.00 is appropriate.

5. DEQ may revoke Respondent's Onsite Sewage Disposal Service Provider's license, based on Respondent's violations of ORS chapter 494 and OAR chapter 340 division 071.

### OPINION

#### **(1) Notice of Civil Penalty Assessment and Order to Comply (12/16/2009),** OAH Case No. 1001545; Agency Case No. WQ/OI-WR-09-144

DEQ proposes to assess a total of \$9,375 in civil penalties against Respondent for conduct constituting 5 separate violations of the laws and rules regulating providers of sewage disposal services in Oregon. The order of discussion of the violations follows the order of

findings and penalty determinations, Exhibits 1 through 5, attached to DEQ's Civil Penalty Assessment Notice.

*Permitting requirements for installation of onsite septic systems*

The Environment Quality Commission is authorized to undertake enforcement action when it has good cause to believe that any person is engaged or is about to engage in any acts or practices which constitute a violation of ORS \* \* \* 454.605 to 454.755 [] or any rule, standard or order adopted or entered pursuant thereto, or of any permit issued pursuant to ORS \* \* \* 454.605 to 454.755. Regarding the installation or repair on onsite septic systems, ORS 454.655(1) requires that a permit must be obtained from DEQ prior to causing or allowing the construction, alteration, or repair of an onsite system or any part thereof, with the exception of emergency repairs limited to replacing minor broken components of the system without first obtaining a permit.

Pursuant to its rulemaking authority, DEQ has promulgated rules regulating the permitting of septic system installations or repairs. OAR chapter 340 division 071. OAR 340-071-0130, entitled "General Standards, Prohibitions and Requirements," provides in relevant part:

(15) Permit requirements:

(a) A person may not cause or allow construction, alteration, or repair of a system or any part thereof without a WPCF permit issued under OAR 340-071-0162 or a construction-installation, alteration, or repair permit under OAR 340-071-0160, 340-071-0210, and 340-071-0215 except for emergency repairs authorized under OAR 340-071-0215(1) and (2);

OAR 340-071-0100(60) defines an emergency repair as:

[I]mmediate action to repair a failing system when sewage is backing up into a dwelling or building or to repair a broken pressure sewer pipe. It does not include the construction of new or additional absorption facilities but does include use of the septic tank as a temporary holding tank until new or additional absorption facilities can be permitted and constructed.

DEQ alleged that Respondent's installations at the Salem and Lebanon properties each violated ORS 454.655(1) and OAR 340-071-0130(15)(a), and that each violation is a Class I violation according to OAR 340-012-0060(1)(b).<sup>2</sup> Respondent did not contest that it performed

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<sup>2</sup>OAR 340-012-0060 providing for classification of onsite sewage disposal violations, states in relevant part:

(1) Class I:

- (a) Performing sewage disposal services without a current license;
- (b) Installing or causing to be installed an onsite wastewater treatment system or any part thereof, or repairing or causing to be repaired any part thereof, without first obtaining a permit[.]

either of the installations without a first obtaining a permit. DEQ proposes to assess a civil penalty of \$2500.00 for each violation.

DEQ has adopted rules for determination of civil penalties. OAR 340-012-0045.

OAR 340-012-0045 provides as follows:

Except as provided in OAR 340-012-0038(3), in addition to any other liability, duty, or other penalty provided by law, the department may assess a civil penalty for any violation. Except for civil penalties assessed under 340-012-0155(2), the department determines the amount of the civil penalty using the following procedures:

(1) The classification of each violation is determined by consulting OAR 340-012-0053 to 340-012-0097;

(2) The magnitude of the violation is determined as follows:

(a) The selected magnitude categories in OAR 340-012-0135 are used.

(b) If a selected magnitude is not specified in OAR 340-012-0135, or if information is not reasonably available to determine which selected magnitude applies, 340-012-0130 is used to determine the magnitude of the violation.

(c) The appropriate base penalty (BP) for each violation is determined by applying the classification and magnitude of each violation to the matrices in OAR 340-012-0140.

(d) The base penalty is adjusted by the application of aggravating or mitigating factors (P = prior significant actions, H = history in correcting prior significant actions, O = repeated or ongoing violation, M = mental state of the violator and C = efforts to correct) as set forth in OAR 340-012-0145.

(e) The appropriate economic benefit (EB) is determined as set forth in OAR 340-012-0150. (2) The results of the determinations made in section (1) are applied in the following formula to calculate the penalty:  $BP + [(0.1 \times BP) \times (P + H + O + M + C)] + EB$ .

(3) In addition to the factors listed in section (1) of this rule, the director may consider any other relevant rule of the commission in assessing a civil penalty and will state the effect that rule had on the penalty amount.

The first step in the civil penalty determination procedure is to determine the class of Respondent's violations. OAR 340-012-0045(1)(b). Respondent's conduct in both installations constituted Class I violations under OAR 340-012-0060(1)(b).

The next step is to determine the magnitude of Respondent's violations. OAR 340-012-0045(2)(a).

OAR 340-012-0130 is titled "Determination of Violation Magnitude" and provides in pertinent part:

(1) For each civil penalty assessed, the magnitude is moderate unless:

(a) A selected magnitude is specified in [OAR] 340-012-0135 and information is reasonably available to the department to determine the application of that selected magnitude;

Under OAR 340-012-0135, entitled "Selected Magnitude Categories," there is no selected magnitude specified for the permit violations. DEQ proposed assessing a moderate magnitude to Respondent's violations because the information readily available to the Department does not indicate a minor or major magnitude. Respondent offered no evidence to the contrary. DEQ's assignment of a moderate magnitude for each of the permit violations is proper under OAR 340-012-0130(1)(a).

Next, pursuant to OAR 340-012-0140(2)(c), the appropriate base penalty (BP) must be determined. In relevant parts, OAR 340-012-0140 provides:

(1) Except for Class III violations and for penalties assessed under OAR 340-012-0155, the base penalty (BP) is determined by applying the type, class and magnitude of the violation to the matrices set forth in this section. For Class III violations, no magnitude determination is required.

\* \* \* \* \*

(4) \$2,500 Penalty Matrix:

\* \* \* \* \*

(b) The base penalty values for the \$2,500 penalty matrix are as follows:

(A) Class I:

\* \* \* \* \*

(ii) Moderate -- \$1250[.]

In addition, under OAR 340-012-0140(4)(a)(E)(iv), Respondent is a "person who is licensed to perform onsite sewage disposal services or who has performed sewage disposal services." Therefore, DEQ properly assessed the BP for each permit violation as \$1,250.00 as a Class 1, moderate magnitude violation in the matrix listed above because Respondent is licensed to perform onsite sewage disposal services or had performed them. Respondent offered no evidence to the contrary. DEQ's assessment analysis for the Salem property for the Lebanon property through the determination of the magnitude of each permit violation is the same. The analysis to determine the amount of the penalty for each, adjusting the base penalty by other factors, differs for each permit violation. OAR 340-012-0045(2)(d), (e). Those portions are analyzed separately below.

The penalty for a single violation is determined by adjusting the BP by other factors, such

as prior significant actions (P), history in correcting prior significant actions (H), repeated or ongoing violation (O), mental state of the violator (M), efforts to correct (C), and the economic benefit (EB) Respondent gained from noncompliance. The formula to calculate the penalty is:  $BP + [(0.1 \times BP) \times (P + H + O + M + C)] + EB$ . OAR 340-012-0045(2)(d), (e).

In its Civil Penalty Assessment Notice, for the Salem property permit violation, DEQ assessed the following:

a value of "0" for (P) based on whether Respondent had any prior significant actions, as defined in OAR 340-012-0030(17), in the same media as the violation at issue that occurred at a facility owned or operated by the same Respondent and according to OAR 340-012-0145(2)(a)(A) as Respondent had no prior significant actions;

a value of "0" for history in correcting prior significant actions (H) pursuant to OAR 340-012-0145(3)(a)(C) because Respondent had no prior history;

a value of "2" for (O) according to OAR 340-012-0145(4)(a)(B),<sup>3</sup> whether the violation was repeated or ongoing, because the violation occurred on more than one day up to and including six days, which need not be consecutive days. The Salem violation occurred between May 5 and June 11, 2009.

a value of "6" for the mental state of the violator (M) pursuant to OAR 340-012-0145(5)(a)(C)<sup>4</sup>, because Respondent's conduct was reckless. Respondent is licensed to perform onsite sewage disposal services and is aware of the permit

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<sup>3</sup> OAR 340-012-0145, provides in relevant part:

(4) "O" is whether the violation was repeated or ongoing.

(a) The values for "O" and the finding that supports each are as follows:

\* \* \*

(B) 2 if the violation recurred on the same day, or existed for or occurred on more than one day up to and including six days, which need not be consecutive days.

<sup>4</sup> OAR 340-012-0145(5)(a)(C) provides:

(5) "M" is the mental state of the respondent. For any violation where the findings support more than one mental state, the mental state with the highest value will apply.

(a) The values for "M" and the finding that supports each are as follows:

(C) 6 if the respondent's conduct was reckless, or the respondent had actual knowledge that its conduct would be a violation and respondent's conduct was intentional. A respondent that previously received a Notice of Noncompliance, WL, PEN or any FEA for the same violation is presumed to have actual knowledge. Holding a permit that prohibits or requires conduct may be actual knowledge depending on the specific facts of the case.

requirements as it had obtained permits in the past prior to installing or repairing onsite sewage disposal systems. Respondent consciously disregarded a substantial and unjustifiable risk of committing this violation when it chose not to obtain a permit prior to causing or allowing the construction, alteration, or repair of an onsite system or any part thereof.

a value of "2" under OAR 340-012-0145(6)(a)(E) for efforts to correct (C) because Respondent did not address the violation as described in paragraphs (6)(a)(A) through (6)(a)(C) and the facts do not support a finding under paragraph (6)(a)(D).<sup>5</sup> Respondent did not obtain a permit even after DEQ informed him in writing that it must do so.

and an EB of \$0.00. EB is the approximate economic benefit that an entity gained by not complying with the law. 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 has insufficient evidence on which to base a finding that Respondent received an economic benefit from the violation.

DEQ met its burden of proof on each element of the proposed civil penalty formula. DEQ assessed M at a value of 6 based on its allegation that Respondent's conduct was reckless. Under OAR 340-012-0030(18), the definition of "reckless" or "recklessly" means that the Respondent "consciously disregarded a substantial and unjustifiable risk that the result would occur or that the circumstance existed. The risk must be of such a nature and degree that disregarding that risk constituted a gross deviation from the standard of care a reasonable person would observe in that situation." The record supports that determination.

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<sup>5</sup> OAR 340-012-0145, regarding correction efforts, provides in relevant parts:

- (6) "C" is the respondent's efforts to correct the violation.
- (a) The values for "C" and the finding that supports each are as follows:
  - (A) -3 if the respondent made extraordinary efforts to correct the violation, or took extraordinary efforts to minimize the effects of the violation.
  - (B) -2 if the respondent made reasonable efforts to correct the violation, reasonable affirmative efforts to minimize the effects of the violation, or extraordinary efforts to ensure the violation would not be repeated.
  - (C) -1 if the respondent eventually made efforts to correct the violation, or took affirmative efforts to minimize the effects of the violation.
  - (D) 0 if there is insufficient information to make a finding under paragraphs (6)(a)(A) through (6)(a)(C), or (6)(a)(E), or if the violation or the effects of the violation could not be corrected or minimized.
  - (E) 2 if the respondent did not address the violation as described in paragraphs (6)(a)(A) through (6)(a)(C) and the facts do not support a finding under paragraph (6)(a)(D).

Respondent had been made aware through multiple contacts with DEQ that the business had to be licensed to provide services, and that it had to obtain permits for installation work it performed. Respondent proceeded despite having been informed of the permitting requirements. Respondent's conduct constituted a conscious disregard for the risk that Respondent would violate the permitting requirements for each of the two installations.

Respondent's arguments that it was new to the industry, that it made reasonable mistakes, and that it had acted to remedy each of the violations were not supported by the record and were not persuasive. Respondent requested that the penalties be reduced based on several factors; that Respondent had purchased a business that provides essential service, that provides gainful employment, and that had operated for over 50 years prior to Respondent's ownership. Respondent's request is an equitable argument for penalty reduction. The penalty assessed pursuant to the civil penalty amount assessed under the formula above may not be reduced at hearing based upon considerations of fairness and equity. OAR 340-011-0570.<sup>6</sup>

Applying the values from above, the civil penalty for the Salem property permit violation in this case is as follows:

$$\begin{aligned}\text{Penalty} &= \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB} \\ &= \$1,250 + [(0.1 \times \$1,250) \times (0 + 0 + 2 + 6 + 2)] + \$0. \\ &= \$1,250 + (\$125 \times 10) + \$0 \\ &= \$1,250 + \$1,250 + \$0 \\ &= \$2,500\end{aligned}$$

DEQ's Civil Penalty Assessment Notice regarding the Lebanon property permit violation, assessed the factors following the same values and analysis as above, with the following distinction:

a value of "2" for (O) according to OAR 340-012-0145(4)(a)(B), whether the violation was repeated or ongoing, because the violation occurred on more than one day up to and including six days, which need not be consecutive days. The Lebanon violation occurred on two or more days between June 18 and July 17, 2009.

Applying the values from above, the civil penalty for the Lebanon property permit violation in this case is as follows:

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<sup>6</sup> OAR 340-011-0570, entitled "Permissible Scope of Hearing," provides:

- (1) The scope of a contested case hearing will be limited to those matters that are relevant and material to either proving or disproving the matters alleged in formal enforcement action and request for hearing. Equitable remedies will not be considered by an administrative law judge.
- (2) The administrative law judge may not reduce or mitigate a civil penalty below the amount established by the application of the civil penalty formula contained in OAR 340, Division 12.

$$\begin{aligned}\text{Penalty} &= \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB} \\ &= \$1,250 + [(0.1 \times \$1,250) \times (0 + 0 + 2 + 6 + 2)] + \$0. \\ &= \$1,250 + (\$125 \times 10) + \$0 \\ &= \$1,250 + \$1,250 + \$0 \\ &= \$2,500\end{aligned}$$

DEQ met its burden of proof on each element of the proposed civil penalty formula. As above, Respondent did not contest DEQ's allegations that it performed the installations at the Lebanon property as set out in the findings of fact.

Respondent made similar equitable arguments to reduce the penalty as in the above penalty assessment. In addition, Respondent also argued that no actual harm to the environment had been proven and that Respondent had taken, and was continuing to take, efforts to improve its knowledge of the work and to improve its reputation. Respondent's arguments are not persuasive. As stated previously, the penalty assessed pursuant to the civil penalty amount assessed under the formula above may not be reduced at hearing based upon considerations of fairness and equity. The penalty as proposed by DEQ is appropriate.

*Respondent's failure to produce origin-destination records of SDS services provided and providing SDS services without a permit*

*a) Licensing and permitting requirements*

A license issued by DEQ is required in order to perform sewage disposal services. ORS 454.695(1). The Environmental Quality Commission has, pursuant to its statutory authority, established rules regarding sewage disposal service provider licensing and registration, and, specific to this case, regarding records for septage movement and disposal which are required to be maintained and to be produced upon request. ORS 454.695(4) and (5), OAR 340-071-0600(1). The requirements for both acquiring new or renewal, or reinstatement of existing licenses, and for the keeping of septage disposal records are addressed in OAR 340-071-0600 which provides, in relevant parts:

(1) License required. A person may not perform sewage disposal services or advertise or represent himself as being in the business of performing such services without a valid license issued by the department to perform those services. A separate license is required for each business, organization, or other person conducting sewage disposal services.

(2) Types of licenses. The department may issue three types of sewage disposal service licenses.

(a) Installer license. An installer license is required for any person to construct or install onsite systems or parts of onsite systems or to perform the grading, excavating, or earth-moving work associated with the construction or installation of onsite systems.

(b) Pumper license. A pumper license is required for any person to pump out or clean onsite systems, including portable toilets or any part thereof, and to dispose of the material derived from the pumping out or cleaning of onsite systems or portable toilets.

(c) Installer/pumper license. The combined installer/pumper license authorizes a person to perform the work authorized by the installer and the pumper licenses.

\* \* \* \* \*

(5) New, renewal, and reinstatement licenses. Persons applying for new, renewal, or reinstatement of existing licenses must submit the following to the department for each license.

(a) A complete license application form.

(b) Evidence of a surety bond or equivalent security approved by the department in the penal sum of \$15,000 for each installer or installer/pumper license or \$5000 for each pumper license and evidence that the security or bond will be continued through the license cycle and satisfies all other requirements of section (7) of this rule.

(c) The applicable license fee in OAR 340-071-0140(7).

(d) Evidence of certification as required in section (4) of this rule.

(e) For pumper licenses:

(A) A completed Sewage Pumping Equipment Description/Inspection form documenting inspection by an agent of all pumping equipment to be used for work under the license; and

(B) Upon request by the department, summary origin-destination pumping information for pumping services.

\* \* \* \* \*

(13) Septage management requirements. The licensee and all persons managing septage:

(a) Must avoid spilling sewage or septage during pumping, cleaning, or transport and must immediately clean up any spill and disinfect the spill area.

(b) Must dispose of septage and sewage only in disposal facilities approved by the department.

(c) At all times during pumping, transport, or disposal of septage, must possess origin-destination records for sewage disposal services rendered.

(d) Must maintain on file for at least 3 years complete origin-destination records for sewage disposal services rendered. The records must be made available for review upon the request of the department. Origin-destination records must include the following information for each pumping, transport, and disposal occurrence:

(A) Source of septage, including name and address;

(B) Specific type of material pumped;

(C) Quantity of material pumped;

(D) Name and location of disposal site where septage was deposited;

(E) Quantity of material deposited; and

(F) The license numbers or vehicle numbers assigned by the licensee for all vehicles or trailers used for pumping, transport, and disposal[.]

*b) Failure to produce origin-destination records as required*

DEQ established that, on or about July 2, 2009, it requested origin-destination records for the period March 1, 2009 through May 31, 2009. Respondent failed to provide origin-destination records as required when originally requested. OAR 340-071-0600(15). The rule is self-explanatory; it sets out six elements (A) through (F) that must be included in those records. As a permit holder, Respondent must know and comply with the relevant rules. Respondent's statement that he did not know what records were requested is not a defense. Additionally, there was no evidence that Respondent sought clarification in order to comply after receiving the July 2, 2009 request for records. As of February 10, 2010, DEQ had informed Respondent's attorney of the outstanding records request but no records had been received as of March 1, 2010. No reason for the delay was offered at the time the records were eventually produced in May 2010. The record supports each element of DEQ's proposed penalty assessment as set out above for Respondent's failure to produce the origin-destination records as required.

The proposed civil penalty assessment for Respondent's failing to produce the required records is set out and attached to the Civil Penalty Assessment Notice as Exhibit No. 3. The steps for the determination are similar to the penalty calculations for the violations above. Beginning with classification of the violation, DEQ assessed Respondent's violation as a Class II violation pursuant to OAR 340-012-0053(2).<sup>7</sup> Respondent offered no evidence to the contrary. DEQ established that Respondent failed to produce the required records with the applicable deadline. OAR 340-071-0600(13)(d), a Class II violation as set out above.

The next step is to determine the magnitude of Respondent's violations. OAR 340-012-0045(2)(a). There is no selected magnitude specified in OAR 340-012-0135. Therefore, the magnitude of the violation was assessed as moderate pursuant to OAR 340-012-0130(1) because the information readily available to the Department did not indicate a minor or major magnitude. Respondent offered no evidence to the contrary. DEQ's assignment of a moderate magnitude violation is proper under OAR 340-012-0130(1).<sup>8</sup>

Applying the determination of the classification of the violation as Class II and the magnitude as moderate, DEQ applied those values to the formula set out in OAR 340-012-0140 and assessed the following:

<sup>7</sup> OAR 340-012-0053(2) provides as follows:

Class II: Violating any otherwise unclassified requirement.

<sup>8</sup> OAR 340-012-0140, provides, in relevant part:

(4) \$2,500 Penalty Matrix:

\* \* \* \* \*

(b) The base penalty values for the \$2,500 penalty matrix are as follows:

(B) Class II:

(i) Major -- \$1250;

(ii) Moderate -- \$625[.]

"BP" of \$625 for a Class II, moderate magnitude violation as set out above, and as applicable pursuant to OAR 340-012-0140(4)(a)(E)(iv) because Respondent is licensed to perform onsite sewage disposal services or has performed them;

"P" is whether Respondent has any prior significant actions, under OAR 340-012-0030(17), in the same media as the violation at issue that occurred at a facility owned or operated by the same Respondent and, pursuant to OAR 340-0145(2)(a)(A), receives a value of "O" because Respondent has no prior significant actions;

"H" is Respondent's history in correcting prior significant actions and receives a value of "0" OAR 340-012-0145(3)(a)(C) because there is no prior history;

"O" is whether the violation was repeated or ongoing, and was assigned a value of "4" according to OAR 340-012-0145(4)(a)(D)<sup>9</sup> because the violation existed for or occurred on more than 28 days. The origin-destination records were required to be submitted by July 16, 2009, but they were not provided as of December 16, 2009, the date the Civil Penalty Assessment Notice was issued, and thus were ongoing as of that date.

"M" is the mental state of the Respondent and received a value of 6 pursuant to OAR 340-012-0145(5)(a)(C), because Respondent's conduct was reckless. Respondent is licensed to perform onsite sewage disposal services, and is aware of the requirement that it maintain origin-destination records and submit them to the DEQ upon DEQ's request. Respondent consciously disregarded a substantial and unjustifiable risk of committing this violation by choosing not to submit the records in response to the DEQ's July 2, 2009, letter requesting those records.

"C" is Respondent's efforts to correct the violation and receives a value of 2 OAR 340-012-0145(6)(a)(E) because Respondent did not address the violation as described in paragraphs (6)(a)(A) through (6)(a)(C) and the facts do not support a finding under paragraph (6)(a)(D). Respondent did not submit the required records even after DEQ informed it in writing that he must do so.

"EB" is the approximate economic benefit that an entity gained by not complying with the law. 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

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<sup>9</sup> OAR 340-012-0145 provides in relevant part:

(4) "O" is whether the violation was repeated or ongoing.

(a) The values for "O" and the finding that supports each are as follows:

\* \* \* \* \*

(D) 4 if the violation existed for or occurred on more than 28 days, which need not be consecutive days.

compliance. In this case, "EB" receives a value of \$0 because DEQ has insufficient evidence on which to base a finding that Respondent received an economic benefit from the violation.

DEQ's assessment of M at a value of 6 based on a determination that Respondent was reckless was supported by the record. As a license holder, Respondent was aware or should have been aware of the records requirement. In addition, Respondent had actual knowledge pursuant to DEQ's July 2, 2009 letter requesting the records and providing the applicable rule as authority for the request. Respondent's argument that the request was confusing was not persuasive.

Applying the values from above, the civil penalty for failing to submit the required origin-destination records when required in this case is as follows:

$$\begin{aligned}\text{Penalty} &= \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB} \\ &= \$625 + [(0.1 \times \$625) \times (0 + 0 + 4 + 6 + 2)] + \$0. \\ &= \$625 + (\$62.50 \times 12) + \$0 \\ &= \$625 + \$750 + \$0 \\ &= \$1,375\end{aligned}$$

*c) Providing on-site sewage disposal services without a license*

Providers of on-site sewage disposal services (SDS) are required to be licensed by DEQ. ORS 454.695(1) and OAR 340-071-0600(1). DEQ established that Respondent provided services during the period beginning January 1, 2009 and January 12, 2009, and between at least July 6 and July 13, 2009, without an onsite SDS license. Respondent did not provide evidence to the contrary. DEQ proposes to assess a civil penalty for Respondent's violations as set out in Exhibit No. 4 of its Civil Penalty Assessment Notice and as detailed below.

DEQ assessed the violation of providing onsite SDS services without a permit as a Class I violation pursuant to OAR 340-071-0600(1). Respondent offered no evidence to the contrary. During the time the violations occurred in January 2009, the record showed that Respondent was in the process of but had not yet completed acquiring the business. Respondent had not completed the application for transfer of the existing licenses or applied for new ones, despite being informed multiple times by DEQ that it had not met that requirement. DEQ did not assess penalties for the January violations but they are significant in that they demonstrate Respondent's knowledge of the licensing requirements.

Respondent committed the violations in July 2009 between the time the prior licenses expired on June 30, 2009, and July 15, 2009 when Respondent completed the renewal applications, paid the licensing fees, and the licenses were issued. The violation is properly assessed as a Class I violation.

There is no selected magnitude specified for this violation under OAR 340-012-0135, thus DEQ proposed assessing a moderate magnitude to Respondent's violations. DEQ determined that the information readily available to the Department did not indicate a minor or major magnitude. Respondent offered no evidence to the contrary. DEQ's assignment of a

moderate magnitude for the permit violations is proper under OAR 340-012-0130(1)(a).

Regarding the appropriate base penalty under OAR 340-012-0140 for a Class I, moderate magnitude violation in the penalty matrix, DEQ assessed the BP at \$1,250 because Respondent is licensed to perform onsite sewage disposal services or has performed them. OAR 340-012-0140(4)(a)(E)(iv). Respondent's argument that it was confused by the date the renewal license was issued and became valid was not supported by the record. On July 9, 2009, Fincher spoke to Cross and told him the application was not complete and that Respondent was not licensed. Another message was left for Cross on July 12, 2009 that the application was still incomplete. Respondent's application was completed and approved on July 15, 2009. DEQ's assessment is appropriate.

DEQ assessed the remainder of the penalty formula as follows:

a value of "0" for (P) based on whether Respondent had any prior significant actions, as defined in OAR 340-012-0030(17), in the same media as the violation at issue that occurred at a facility owned or operated by the same Respondent and according to OAR 340-012-0145(2)(a)(A) as Respondent had no prior significant actions;

a value of "0" for history in correcting prior significant actions (H) pursuant to OAR 340-012-0145(3)(a)(C) because Respondent had no prior history;

a value of "2" for (O) according to OAR 340-012-0145(4)(a)(B), whether the violation was repeated or ongoing, because the violation occurred on more than one day, up to and including six days, which need not be consecutive days. The violation occurred on at least six dates between July 6 and July 15, 2009;

a value of "6" for the mental state of the violator (M) pursuant to OAR 340-012-0145(5)(a)(C), because Respondent's conduct was reckless. Respondent is licensed to perform onsite sewage disposal services and is aware of the license requirements as Respondent had recently applied for, and obtained this license, then failed to renew the license and allowed it to expire, yet continued to perform sewage disposal services. When Respondent performed on-site sewage disposal services after its license expired on June 30, 2009, Respondent consciously disregarded a substantial and unjustifiable risk of committing this violation.

a value of "-1" under OAR 340-012-0145(6)(a)(C) for efforts to correct (C) because Respondent eventually made efforts to correct the violation. Respondent obtained the required license on July 15, 2009.

a value for the EB of \$0.00 because the delayed cost of obtaining the required license is de minimis.

Applying the values from above, the civil penalty for providing onsite sewage disposal services without a license is as follows:

$$\begin{aligned}\text{Penalty} &= \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB} \\ &= \$1,275 + [(0.1 \times \$1,275) \times (0 + 0 + 2 + 6 - 1)] + \$0. \\ &= \$1,275 + (\$125 \times 7) + \$0 \\ &= \$1,275 + \$875 + \$0 \\ &= \$2,125\end{aligned}$$

DEQ met its burden of proof on each element of the proposed civil penalty formula. Respondent's sole argument against the assessed penalty, that the issue date of the license was confusing, was addressed above. The assessment of \$2,125 is appropriate.

*Allowing an uncertified installer to supervise or be responsible for the construction or installation of an on-site system or part thereof*

DEQ established on the record that Respondent allowed an uncertified installer to perform installations at the Lebanon property in violation of OAR 340-071-0650(1)(a). In its fifth and final penalty assessment, Exhibit No. 5 of its Civil Penalty Assessment Notice, DEQ proposed to assess a penalty amount of \$875 for that violation based on its findings and determinations. The assessment appropriately classifies the violation as a Class II violation pursuant to OAR 340-012-0060(2)(g).<sup>10</sup> The magnitude of the violation is also appropriately assessed as moderate pursuant to OAR 340-012-0130(1) as there is no selected magnitude specified in OAR 340-012-0135 for this violation, and the information reasonable available to DEQ did not indicate a minor or major magnitude.

Having established the classification and the magnitude of the violation, the civil penalty formula proposed by DEQ is based on its allegations as follows:

"BP" of \$625 for a Class II, moderate magnitude violation as set out above, and as applicable pursuant to OAR 340-012-0140(4)(b)(B)(ii)<sup>11</sup> because Respondent is licensed to perform onsite sewage disposal services or has performed them;

"P" is whether Respondent has any prior significant actions, as defined by OAR

<sup>10</sup> OAR 340-012-0060 provides in relevant part:

(2) Class II:

\* \* \* \* \*

(g) Allowing, by a licensed sewage disposal business, an uncertified installer to supervise or be responsible for the construction or installation of a system or part thereof [.]

<sup>11</sup> OAR 340-012-0140 provides in relevant part:

(4) \$2,500 Penalty Matrix:

\* \* \* \* \*

(b) The base penalty values for the \$2,500 penalty matrix are as follows:

(B) Class II:

\* \* \* \* \*

(ii) Moderate -- \$625;

340-012-0030(17) in the same media as the violation at issue that occurred at a facility owned or operated by the same Respondent and, pursuant to OAR 340-0145(2)(a)(A), receives a value of "0" because Respondent has no prior significant actions;

"H" is Respondent's history in correcting prior significant actions and receives a value of "0" according to OAR 340-012-0145(3)(a)(C) because there is no prior history;

"O" is whether the violation was repeated or ongoing, and was assigned a value of "2" according to OAR 340-012-0145(4)(a)(B) because the violation on more than one day up to and including six days, which need not be consecutive days. The violation occurred on two or more days between June 18 and July 17, 2009.

"M" is the mental state of the Respondent and received a value of "2" pursuant to OAR 340-0120145(5)(a)(B), because Respondent's conduct was negligent.<sup>12</sup> Respondent is licensed to perform onsite sewage disposal services and knew or should have known of the requirement that it must not allow an uncertified installer to supervise or be responsible for the construction or installation of an on-site system or part thereof. Respondent failed to take reasonable care to avoid the foreseeable risk of committing the violation. Respondent offered no evidence to the contrary.

"C" is Respondent's efforts to correct the violation and receives a value of "0" pursuant to OAR 340-012-0145(6)(a)(B) because the violation or effects of the violation could not be corrected.

"EB" in this case, received a value of \$0 because DEQ has insufficient evidence on which to base a finding that Respondent received an economic benefit from the violation.

DEQ established the record to support the evaluation of each of the factors as set out in the findings and determinations above. Respondent offered no evidence or argument to the contrary. Therefore, applying those values to the formula results in the following:

$$\begin{aligned}\text{Penalty} &= \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB} \\ &= \$625 + [(0.1 \times \$625) \times (0 + 0 + 2 + 2 + 0)] + \$0. \\ &= \$625 + (\$62.50 \times 4) + \$0 \\ &= \$625 + \$250 + \$0 \\ &= \$875\end{aligned}$$

<sup>12</sup> OAR 340-012-0030(13) provides that:

"Negligence" or "Negligent" means the respondent failed to take reasonable care to avoid a foreseeable risk of conduct constituting or resulting in a violation.

*Summary of Civil Penalty Assessments*

DEQ established the elements necessary to support the proposed assessments for each of the alleged violations as follows: for the permit violation assessed for the Salem property, DEQ established a civil penalty of \$2,500; for the Lebanon property permit violation, a civil penalty of \$2,500; for the failure to provide origin-destination records as required, a civil penalty of \$1,375; for providing onsite sewer disposal services without a license, a civil penalty of \$2,125; and for allowing an uncertified installer to supervise or be responsible for construction or installation of an onsite system, a civil penalty of \$875. Accordingly, a civil penalty in the total amount of \$9,375 (\$2,500 + \$2,500 + \$1,375 + \$2,125 + \$875) shall be assessed against Respondent.

**(2) Notice of Revocation of Onsite Sewage Disposal Service License**

OAH Case No. 1001544; Agency Case No. WQ/OI-WR-09-203

The Legislature, when authorizing DEQ to regulate the handling of septage, found that improper collection, storage, transportation, treatment, recycling and disposal of septage posed a danger to, among other things, the health, safety and welfare of Oregonians. ORS 454.787.<sup>13</sup> DEQ is authorized to establish terms for licensing and permitting providers of onsite sewage disposal system services, ORS 454.790, and may establish programs for county permitting pursuant to ORS 454.792. DEQ may revoke or suspend a license if it determines, as in the current matter, that a licensee has failed to comply with applicable provisions of ORS chapter 494 or has violated any rule of the Environmental Quality Commission regarding sewage disposal services. ORS 454.715(2) and (3).

In its Revocation Notice, DEQ proposes to revoke Respondent's license as an onsite sewage disposal service provider based upon Respondent's violations of its laws and rules as proved at hearing and set out in the findings of fact and conclusions of law regarding the civil penalty assessments, above. Respondent violated ORS 454.655(1) and OAR 340-071-0130(15)(a) when it caused or allowed the construction, alteration, or repair of an onsite system or any part thereof without first obtaining the required permit at the Salem property and at the Lebanon property, as shown by the record above. Respondent violated OAR 340-071-0600(13)(d) by failing to make complete origin-destination records available for review upon the request of DEQ. Respondent performed onsite sewage disposal services without first obtaining the required license from DEQ in violation of ORS 454.695(1) and OAR 340-071-0600(1). And, Respondent violated OAR 340-071-0650(1)(a) by allowing an uncertified installer to supervise or be responsible for the construction or installation of an onsite system or part thereof.

Respondent argued that its license should not be revoked for several reasons. Respondent had not committed any violations close in time to the date of hearing, Respondent had completed the licensing process and had been issued a license in July 2009, and had been providing services

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<sup>13</sup> ORS 454.787, entitled "Findings" states in relevant part:

(1) The Legislative Assembly finds that:

(a) Improper collection, storage, transportation, treatment, recycling and disposal of septage is a threat to the quality of the waters of this state, to the health, safety and welfare of Oregonians and to the fish and wildlife resources of this state[.]

in the interim. Respondent had, by the time of the hearing, provided the records that were originally requested by DEQ on July 2, 2009. Respondent also argued that it was better for DEQ to allow a licensee with a past history of violations showing improvement to retain its license than to license a new entity with no history of providing services. Finally, Respondent argued that to revoke Respondent's license would create a great hardship for Respondent and its employees.

Respondent's arguments are not persuasive. The record established at hearing shows that, despite many contacts with DEQ personnel informing it of the need to have a license and of the process to obtain either the transfer of the existing licenses or to obtain a new license, Respondent knowingly and repeatedly provided onsite sewage disposal services without a license. Respondent's first violations in January 2009 occurred when it was not licensed but provided services before obtaining the transfer of the existing licenses. Despite its knowledge of the licensing requirements, Respondent failed to complete the licensing procedure prior to expiration of its licenses, but continued to provide services, again during a time it was not licensed to do so.


In addition, when asked by DEQ to provide origin-destination records as required, Respondent failed to comply, despite on-going requests for the records. And, Respondent committed onsite sewage disposal systems installation permitting violations on the Lebanon and Salem properties, despite Respondent's knowledge of the permitting requirements. Finally, Respondent allowed an uncertified person to perform installations. Respondent's history illustrates its inability or unwillingness to comply with DEQ's laws and regulations; laws and rules which were put in place to protect the public health, safety and welfare of Oregon's citizens. DEQ has established the necessary grounds to support the revocation of Respondent's license to provide onsite sewage disposal services, ORS 454.715.

## ORDER

I propose the DEQ issue the following order:

(1) Pursuant to the Notice of Civil Penalty Assessment and Order to Comply, dated December 16, 2009, OAH Case No. 1001545, Agency Case No. WQ/OI-WR-09-144, Respondent is assessed a civil penalty in the total amount of \$9,375 for violations of ORS 454.655(1); ORS 454.695(1), and OAR 340-071-0650(1)(a).

(2) Pursuant to the Notice of Revocation of Onsite Sewage Disposal Service License, dated December 16, 2009, OAH Case No. 1001544, Agency Case No. WQ/OI-WR-09-203, Respondent's onsite sewage disposal service provider license is revoked.



A. Bernadette House  
Presiding Administrative Law Judge  
Office of Administrative Hearings

## APPEAL RIGHTS

If you are not satisfied with this decision, you have the right to have the decision reviewed by the Oregon Environmental Quality Commission (Commission). To have the decision reviewed, you must file a "Petition for Review" within 30 days of the date this order is served on you. Service, as defined in Oregon Administrative Rule (OAR) 340-011-0525, means the date that the decision is **mailed** to you, and not the date that you receive it.

The Petition for Review must comply with OAR 340-011-0575 and must be **received** by the Commission within 30 days of the date the Proposed and Final Order was mailed to you. You should mail your Petition for Review to:

Environmental Quality Commission  
c/o Dick Pedersen, Director, DEQ  
811 SW Sixth Avenue  
Portland, OR 97204.

You may also fax your Petition for Review to (503) 229-6762 (the Director's Office).

Within 30 days of filing the Petition for Review, you must also file exceptions and a brief as provided in OAR 340-011-0575. The exceptions and brief must be **received** by the Commission within 30 days from the date the Commission received your Petition for Review. If you file a Petition but not a brief with exceptions, the Environmental Quality Commission may dismiss your Petition for Review.

If the Petition, exceptions and brief are filed in a timely manner, the Commission will set the matter for oral argument and notify you of the time and place of the Commission's meeting. The requirements for filing a petition, exceptions and briefs are set out in OAR 340-011-0575.

Unless you timely file a Petition for Review as set forth above, this Proposed Order becomes the Final Order of the Commission 30 days from the date this Proposed Order is mailed to you. If you wish to appeal the Final Order, you have 60 days from the date the Proposed Order becomes the Final Order to file a petition for review with the Oregon Court of Appeals. See ORS 183.480 et. seq.

**CERTIFICATE OF MAILING**

On November 22, 2010, I mailed the foregoing Proposed and Final Order issued on this date in OAH Case No. 1001544 and 1001545.

By: First Class Mail

Michael Cross  
AAA American Eagle Services, LLC  
1118 Lancaster Dr NE #338  
Salem OR 97301

Bryan Smith  
Dept. of Environmental Quality  
811 SW 6th St  
Portland OR 97204

Lucy Garcia  
Administrative Specialist  
Hearing Coordinator

## Office of Administrative Hearings Survey

**NOTE:** This survey cannot be used to request your case be reopened, reconsidered or appealed.

The Office of Administrative Hearings is seeking feedback in an effort to improve service. Please take a moment to complete this survey and return it in the postage paid envelope provided. You can also take this survey online at <http://www.olmis.org/oahsurvey>

**Case No:** 1001544

**Survey Date:**

**Please Check One:** Agency Rep ☐ AAG ☐ Party ☐ Attorney/Lay Rep for Party ☐

**Was the decision in your case favorable to you?** Yes ☐ No ☐ N/A ☐

	Excellent	Good	Fair	Poor	Don't Know
If you called or came into an OAH office, how would you rate the courtesy of OAH staff? <b>Comments:</b>					
Was the information in the notice of hearing accurate? <b>Comments:</b>					
Was the information in the notice of hearing adequate to prepare you for your hearing? <b>Comments:</b>					
How would you rate the length of time from when you received your notice of hearing to when your hearing took place? <b>Comments:</b>					
How would you rate the Administrative Law Judge's knowledge and skill? <b>Comments:</b>					
How would you rate the impartiality of the Administrative Law Judge? <b>Comments:</b>					
Did the order clearly explain the decision? <b>Comments:</b>					
Overall, how would you rate the service you received from the OAH? <b>Comments:</b>					



# Oregon

Theodore R. Kulongoski, Governor

## Department of Environmental Quality

Headquarters  
811 SW Sixth Avenue  
Portland, OR 97204-1390  
(503) 229-5696  
FAX (503) 229-6124  
TTY (503) 229-6993

October 29, 2010

Karla Forsythe  
Chief Administrative Law Judge  
Office of Administrative Hearings  
4600 25th Ave. NE, Suite 140  
Salem, OR 97301

Re: AAA American Eagle Services LLC,  
dba Hank's Septic Service and  
Lebanon/Sweet Home Septic Tank Service  
Notice of Civil Penalty Assessment and Order  
DEQ Case No. WQ/OI-WR-09-144; OAH Case No. 1001545  
and  
Notice of Revocation of Onsite Sewage Disposal Service Provider's License  
DEQ Case No. WQ/OI-WR-09-203; OAH Case No. 1001544

Dear Chief ALJ Forsythe:

I am writing regarding the above-referenced consolidated contested cases that were held before Administrative Law Judge House on July 6, 2010. Although Administrative Law Judges typically issue hearing decisions within 30-45 days of the contested case hearing date, Administrative Law Judge House still has not issued a hearing decision in these cases.

The delay in decision on these matters is especially problematic because DEQ is requesting a proposed order which would revoke AAA American Eagle Services LLC's onsite sewage disposal service provider's license. Therefore, the future status of AAA's license and our regulatory relationship are unknown.

I'd like to request that OAH can make the Proposed Order in these cases a priority if possible so that we can come to resolution in this matter. Please let me know when you expect the Proposed Order to be issued.

Let me know if you have any questions. Thank you.

Sincerely,

Leah E. Koss, Manager  
Office of Compliance and Enforcement

cc: AAA American Eagle Services, LLC, c/o Michael Cross, Registered Agent,  
1118 Lancaster Drive NE #338, Salem, OR 97301

**BEFORE THE OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF OREGON  
for the  
DEPT. OF ENVIRONMENTAL QUALITY**

IN THE MATTER OF:	)	<b>AMENDED</b>
	)	<b>NOTICE OF IN-PERSON HEARING</b>
	)	
<b>AAA AMERICAN EAGLE</b>	)	OAH Case No.: 1001544
<b>SERVICES, LLC.</b>	)	Agency Case No.: WQ/OI-WR-09-203
	)	
	)	OAH Case No.: 1001545
<b>AAA AMERICAN EAGLE</b>	)	Agency Case No.: WQ/OI-WR-09-144
<b>SERVICES LLC</b>	)	

**PLEASE TAKE NOTICE** that a contested case hearing has been scheduled in the above matter before the Office of Administrative Hearings.

**Witness lists and exhibits due date:** Witness lists and exhibits are to be submitted, with simultaneous copies to the opposing party by close of business on or before **June 30, 2010**.

**Hearing Date:** July 6, 2010

**Hearing Time:** 9:00 am

**Location:** Office of Administrative Hearings  
4600 25th Ave NE Suite 140  
Salem OR 97301

Your case has been assigned to **Administrative Law Judge A House** an employee of the Office of Administrative Hearings. The Office of Administrative Hearings is an impartial tribunal, and is independent of the agency proposing the action.

Unless otherwise notified, all correspondence, inquiries, exhibits and filings should be sent to:

A House  
Office of Administrative Hearings  
7995 SW Mohawk St.  
Tualatin, OR 97062  
Fax: (503) 612-4340

OAR 137-003-0520 requires a copy of any correspondence, exhibits or other filings to be provided to all parties and the agency at the same time they are provided to the ALJ. **Please use the OAH case number above on all correspondence and filings.**

A request for reset of the hearing must be submitted in writing prior to the hearing. A postponement request will only be granted on a showing of good cause and with the approval of the administrative law judge.

**If you are hearing impaired, need a language interpreter or require another type of accommodation to participate in or attend the hearing, immediately notify the Office of Administrative Hearings at (503) 947-1637 or TDD at 1-800-735-1232 to make the appropriate arrangements. The Office of Administrative Hearings can arrange for an interpreter at the hearing. Interpreters must be certified or qualified in order to participate in a contested case hearing and may not have a conflict of interest with the hearing participants.**

You are required to notify the Office of Administrative Hearings at (503) 947-1637 immediately if you change your address or telephone number prior to a decision in this matter.

**CERTIFICATE OF MAILING**

On June 24, 2010, I mailed the foregoing NOTICE OF IN-PERSON HEARING in OAH Case Nos. 1001544 and 1001545.

By: First Class and Certified Mail

Certified Mail Receipt # 7009 2250 0001 6584 6656

R Grant Cook  
Attorney at Law  
495 State St Ste 500  
Salem OR 97301

By: First Class Mail

Bryan Smith  
Dept. of Environmental Quality  
811 SW 6th St  
Portland OR 97204

Lucy Garcia  
Administrative Specialist  
Hearing Coordinator



DEPARTMENT OF ENVIRONMENTAL QUALITY HEARINGS  
IMPORTANT INFORMATION FOR PREPARING FOR YOUR HEARING  
NOTICE OF CONTESTED CASE RIGHTS AND PROCEDURES

Under ORS 183.413(2), you must be informed of the following:

1. Law that applies. The hearing is a contested case and it will be conducted under ORS Chapter 183 and Oregon Administrative Rules of the Department of Environmental Quality, Chapters 137 and 340.
2. Rights to an attorney. You may represent yourself at the hearing, or be represented by an attorney or an authorized representative, such as a partner, officer, or an employee. If you are a company, corporation, organization or association, you must be represented by an attorney or an authorized representative. Prior to appearing on your behalf, an authorized representative must provide a written statement of authorization. If you choose to represent yourself, but decide during the hearing that an attorney is necessary, you may request a recess. About half of the parties are not represented by an attorney. DEQ will be represented by an Assistant Attorney General or an Environmental Law Specialist.
3. Administrative law judge. The person presiding at the hearing is known as the administrative law judge. The administrative law judge is an employee of the Office of Administrative Hearings under contract with the Environmental Quality Commission. The administrative law judge is not an employee, officer or representative of the agency.
4. Appearance at hearing. If you withdraw your request for a hearing, notify either DEQ or the administrative law judge that you will not appear at the hearing, or fail to appear at the hearing, a final default order will be issued. This order will be issued only upon a prima facie case based on DEQ's file. No hearing will be conducted.
5. Address change or change of representative. It is your responsibility to notify DEQ and the administrative law judge of any change in your address or a withdrawal or change of your representative.
6. Interpreters. If you have a disability or do not speak English, the administrative law judge will arrange for an interpreter. DEQ will pay for the interpreter if (1) you require the interpreter due to a disability or (2) you file with the administrative law judge a written statement under oath that you are unable to speak English and you are unable to obtain an interpreter yourself. You must provide notice of your need for an interpreter at least 14 days before the hearing.
7. Witnesses. All witnesses will be under oath or affirmation to tell the truth. All parties and the administrative law judge will have the opportunity to ask questions of all witnesses. DEQ or the administrative law judge will issue subpoenas for witnesses on your behalf if you show that their testimony is relevant to the case and is reasonably needed to establish your position. You are not required to issue subpoenas for appearance of your own witnesses. If you are represented by an attorney, your attorney may issue subpoenas. Payment of witness fees and mileage is your responsibility.

8. Order of evidence. A hearing is similar to a court trial but less formal. The purpose of the hearing is to determine the facts and whether DEQ's action is appropriate. In most cases, DEQ will offer its evidence first in support of its action. You will then have an opportunity to present evidence to oppose DEQ's evidence. Finally, DEQ and you will have an opportunity to rebut any evidence.

9. Burden of presenting evidence. The party who proposes a fact or position has the burden of proving that fact or position. You should be prepared to present evidence at the hearing which will support your position. You may present physical, oral or written evidence, as well as your own testimony.

10. Admissible evidence. Only relevant evidence of a type relied upon by reasonably prudent persons in the conduct of their serious affairs will be considered. Hearsay evidence is not automatically excluded. Rather, the fact that it is hearsay generally affects how much the Commission will rely on it in reaching a decision.

There are four kinds of evidence:

- a. Knowledge of DEQ and the administrative law judge. DEQ or the administrative law judge may take "official notice" of conclusions developed as a result of its knowledge in its specialized field. This includes notice of general, technical or scientific facts. You will be informed should DEQ or the administrative law judge take "official notice" of any fact and you will be given an opportunity to contest any such facts.
- b. Testimony of witnesses. Testimony of witnesses, including you, who have knowledge of facts may be received in evidence.
- c. Writings. Written documents including letters, maps, diagrams and other written materials may be received in evidence.
- d. Experiments, demonstrations and similar means used to prove a fact. The results of experiments and demonstrations may be received in evidence if they are reliable.

11. Objections to evidence. Objections to the consideration of evidence must be made at the time the evidence is offered. Objections are generally made on one of the following grounds:

- a. The evidence is unreliable;
- b. The evidence is irrelevant or immaterial and has no tendency to prove or disprove any issue involved in the case;
- c. The evidence is unduly repetitious and duplicates evidence already received.

12. Continuances. There are normally no continuances granted at the end of the hearing for you to present additional testimony or other evidence. Please make sure you have all your evidence ready for the hearing. However, if you can show that the record should remain open for additional evidence, the administrative law judge may grant you additional time to submit such evidence.

13. Record. A record will be made of the entire proceeding to preserve the testimony and other evidence for appeal. This will be done by tape recorder. This tape and any exhibits received in the record will be the whole record of the hearing and the only evidence considered by the administrative law judge. A copy of the tape is available upon payment of a minimal amount, as established by DEQ. A transcript of the record will not normally be prepared, unless there is an appeal to the Court of Appeals.

14. Proposed and Final Order. The administrative law judge has the authority to issue a proposed order based on the evidence at the hearing. The proposed order will become the final order of the Environmental Quality Commission if you do not petition the Commission for review within 30 days of service of the order. The date of service is the date the order is mailed to you, not the date that you receive it. The Department must receive your petition seeking review within 30 days. See OAR 340-011-0132.

15. Appeal. If you are not satisfied with the decision of the Commission, you have 60 days from the date of service of the order, to appeal this decision to the Court of Appeals. See ORS 183.480 *et seq.*

**From:** "Bernadette HOUSE" <bernadette.house@state.or.us>  
**To:** "SMITH Bryan" <bryan.smith@state.or.us>, <rgcooklaw@gmail.com>  
**CC:** "OAHREFERRAL EMP" <emp.oahreferral@state.or.us>  
**Date:** 6/23/2010 11:32 AM  
**Subject:** Re: OAH Case Nos. 1001544 and 1001545 (AAA American Eagle Services LLC)  
**Attachments:** 1001544 AAA American Eagle ltr 06-22-10.doc

Mr. Smith and Mr. Cook:

Mr. Cook's letter was placed in my in-box after I left for the day on June 17th and the office was closed due to mandatory Furlough on Friday June 18th. I sent a response to Mr. Cook's letter yesterday, granting the request to utilize the second date, and have attached a copy to this email for your convenience. You may always call OAH staff for any questions regarding scheduling as I may not be available by email at all times, due to hearings or other matters.

Sincerely,

A. Bernadette House  
Sr. Administrative Law Judge  
Office of Administrative Hearings

\*\*\*\*\*CONFIDENTIALITY NOTICE\*\*\*\*\*

This e-mail may contain information that is confidential, or otherwise exempt from disclosure under applicable law. If you are not the addressee or it appears from the context or otherwise that you have received this e-mail in error, please advise me immediately by reply e-mail, keep the contents confidential, and immediately delete the message and any attachments from your system.

\*\*\*\*\*

>>> "SMITH Bryan" <bryan.smith@state.or.us> 6/23/2010 10:49 AM >>>  
Good morning ALJ House and Mr. Cook.

On June 17, Mr. Cook requested via a letter to postpone the June 24 hearing date for this matter, and to have the hearing held on July 6 instead.

However, unless I am mistaken, ALJ House has not yet replied to this request.

I agree with Mr. Cook's request and agree that the hearing should be held on July 6.

Please confirm whether or not the June 24 hearing is postponed.

Sincerely,

Bryan Smith



# Oregon

Theodore R. Kulongoski, Governor

Office of Administrative Hearings

PO Box 14020

Salem, OR 97309-4020

(503) 947-1637

FAX (503) 947-1923

June 22, 2010

R. Grant Cook, PC  
Attorney at Law  
495 State Street, 5th Floor  
Salem OR 97301

Bryan Smith,  
Department of Environmental Quality  
811 SW 6<sup>th</sup> Ave  
Portland OR 97204

Re: *In the Matter of AAA American Eagle Services, LLC  
dba Hank's Septic Service and  
Lebanon/Sweet Home Septic Tank Service,  
and Oregon Department of Environmental Quality*  
OAH Case Nos.: 1001545/1001544

Dear Mr. Cook and Mr. Smith,

I am in receipt of Mr. Cook's letter of June 17, 2010, advising that he has been retained by Respondent in the above referenced contested case matter. Mr. Cook indicated that he had spoken with Bryan Smith, the Department's representative, regarding the alternative dates selected for the hearing in the event that Respondent did retain counsel and that he and Mr. Smith agreed to hold the hearing on July 6, 2010. Based on the parties' agreement, the alternative date set for the hearing by the May 21, 2010 Notice of Hearing (Notice) issued by the Office of Administrative Hearings (OAH), the hearing will be held on July 6, 2010, beginning at 9:00 a.m. at the OAH offices in Salem.

As stated on May 21, 2010 Notice, witness lists and exhibits are to be submitted, with simultaneous copies to the opposing party, on or before close of business June 30, 2010 to the address given on the Notice of Hearing. An Amended Notice of Hearing will be issued forthwith.

Should you need further assistance, please contact Lucy Garcia, Hearings Coordinator for the OAH at (503) 947-1637.

Sincerely,

A. Bernadette House  
Sr. Administrative Law Judge  
Office of Administrative Hearings



Attachment 5  
June 15-17, 2011, EQC meeting  
Page 1 of 1

**R. GRANT COOK, PC**  
ATTORNEY - LEGAL SERVICES  
WILLAMETTE VALLEY - OREGON - FEDERAL

June 17, 2010

A. Bernadette House  
Administrative Law Judge  
Office of Administrative Hearings  
7995 S.W. Mohawk Street  
Tualatin, OR 97062

Re: AAA American Eagle Services, LLC  
dba Hank's Septic Service and  
Lebanon/Sweet Home Septic Tank Service  
Notice of Civil Penalty Assessment and Order  
No. WQ/OI-WR-09-144  
OAH Case No. 1001545  
and  
Notice of Revocation of Onsite Sewage Disposal Service Provider's License  
No. WQ/OI-WR-09-203  
OAH Case No. 1001544

Sent Via Facsimile: (503) 612-4340

Dear Ms. House,

Please be advised I have been retained by Respondent in the above matter and will be acting as counsel of record from this time forward.

It is my understanding from your letter of May 5, 2010, "[t]he parties agreed to set two dates for the hearing, in the event that Mr. Cross is able to retain counsel but recognizing that such counsel may have a pre-existing conflict for the date of the hearing. The hearing dates agreed to are June 24, 2010, and July 6, 2004, beginning at 9:00 a.m. ..."

I have conferred with Mr. Bryan Smith who has agreed to the July 6 hearing date, and request confirmation this date remains acceptable to you.

For convenience purposes, communications may be sent to me via email at:  
rgcooklaw@gmail.com.

Thank you.

Respectfully,

R. Grant Cook, PC

Cc: Bryan Smith via facsimile: (503) 229-5696

485 STATE STREET, 5TH FLOOR / SALEM, OR 97301  
(503) 277-3685 LOCAL / (888) 316-6758 LONG DISTANCE  
(888) 397-7184 FACSIMILE / [RGCOOKLAW@GMAIL.COM](mailto:RGCOOKLAW@GMAIL.COM) EMAIL  
[WWW.RGRANTCOOK.COM](http://WWW.RGRANTCOOK.COM)

**BEFORE THE OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF OREGON  
for the  
DEPT. OF ENVIRONMENTAL QUALITY**

IN THE MATTER OF:	)	<b>NOTICE OF IN-PERSON HEARING</b>
	)	
<b>AAA AMERICAN EAGLE SERVICES, LLC</b>	)	OAH Case No.: 1001544
	)	Agency Case No.: WQ/OI-WR-09-203
	)	
<b>AAA AMERICAN EAGLE SERVICES, LLC</b>	)	OAH Case No.: 1001545
	)	Agency Case No.: WQ/OI-WR-09-144

**PLEASE TAKE NOTICE** that a contested case hearing has been scheduled in the above matter before the Office of Administrative Hearings.

**Witness lists and exhibits due dates:** Witness lists and exhibits are to be submitted, with simultaneous copies to the opposing party, for the June 24<sup>th</sup> hearing date, by close of business on or before June 17, 2010, or if it is necessary to use the second hearing date of July 6<sup>th</sup>, by close of business on or before June 30, 2010.

<b>Hearing Date:</b>	<b>June 24, 2010</b>	<b>Hearing Time:</b>	<b>9:00 am</b>
<b>Hearing Date:</b>	<b>July 6, 2010</b>	<b>Hearing Time</b>	<b>9:00 am</b>

**Location:**        **Office of Administrative Hearings  
4600 25th Ave NE Suite 140  
Salem OR 97301**

Your case has been assigned to **Administrative Law Judge A House** an employee of the Office of Administrative Hearings. The Office of Administrative Hearings is an impartial tribunal, and is independent of the agency proposing the action.

Unless otherwise notified, all correspondence, inquiries, exhibits and filings should be sent to:

A House  
Office of Administrative Hearings  
7995 SW Mohawk St.  
Tualatin, OR 97062  
Fax: (503) 612-4340

OAR 137-003-0520 requires a copy of any correspondence, exhibits or other filings to be provided to all parties and the agency at the same time they are provided to the ALJ. **Please use the OAH case number above on all correspondence and filings.**

A request for reset of the hearing must be submitted in writing prior to the hearing. A postponement request will only be granted on a showing of good cause and with the approval of the administrative law judge.

**If you are hearing impaired, need a language interpreter or require another type of accommodation to participate in or attend the hearing, immediately notify the Office of Administrative Hearings at (503) 947-1637 or TDD at 1-800-735-1232 to make the appropriate arrangements. The Office of Administrative Hearings can arrange for an interpreter at the hearing. Interpreters must be certified or qualified in order to participate in a contested case hearing and may not have a conflict of interest with the hearing participants.**

You are required to notify the Office of Administrative Hearings at (503) 947-1637 immediately if you change your address or telephone number prior to a decision in this matter.

DEPARTMENT OF ENVIRONMENTAL QUALITY HEARINGS

IMPORTANT INFORMATION FOR PREPARING FOR YOUR HEARING

NOTICE OF CONTESTED CASE RIGHTS AND PROCEDURES

Under ORS 183.413(2), you must be informed of the following:

1. Law that applies. The hearing is a contested case and it will be conducted under ORS Chapter 183 and Oregon Administrative Rules of the Department of Environmental Quality, Chapters 137 and 340.
2. Rights to an attorney. You may represent yourself at the hearing, or be represented by an attorney or an authorized representative, such as a partner, officer, or an employee. If you are a company, corporation, organization or association, you must be represented by an attorney or an authorized representative. Prior to appearing on your behalf, an authorized representative must provide a written statement of authorization. If you choose to represent yourself, but decide during the hearing that an attorney is necessary, you may request a recess. About half of the parties are not represented by an attorney. DEQ will be represented by an Assistant Attorney General or an Environmental Law Specialist.
3. Administrative law judge. The person presiding at the hearing is known as the administrative law judge. The administrative law judge is an employee of the Office of Administrative Hearings under contract with the Environmental Quality Commission. The administrative law judge is not an employee, officer or representative of the agency.
4. Appearance at hearing. If you withdraw your request for a hearing, notify either DEQ or the administrative law judge that you will not appear at the hearing, or fail to appear at the hearing, a final default order will be issued. This order will be issued only upon a prima facie case based on DEQ's file. No hearing will be conducted.
5. Address change or change of representative. It is your responsibility to notify DEQ and the administrative law judge of any change in your address or a withdrawal or change of your representative.
6. Interpreters. If you have a disability or do not speak English, the administrative law judge will arrange for an interpreter. DEQ will pay for the interpreter if (1) you require the interpreter due to a disability or (2) you file with the administrative law judge a written statement under oath that you are unable to speak English and you are unable to obtain an interpreter yourself. You must provide notice of your need for an interpreter at least 14 days before the hearing.
7. Witnesses. All witnesses will be under oath or affirmation to tell the truth. All parties and the administrative law judge will have the opportunity to ask questions of all witnesses. DEQ or the administrative law judge will issue subpoenas for witnesses on your behalf if you show that their testimony is relevant to the case and is reasonably needed to establish your position. You are not required to issue subpoenas for appearance of your own witnesses. If you are represented by an attorney, your attorney may issue subpoenas. Payment of witness fees and mileage is your responsibility.

8. Order of evidence. A hearing is similar to a court trial but less formal. The purpose of the hearing is to determine the facts and whether DEQ's action is appropriate. In most cases, DEQ will offer its evidence first in support of its action. You will then have an opportunity to present evidence to oppose DEQ's evidence. Finally, DEQ and you will have an opportunity to rebut any evidence.

9. Burden of presenting evidence. The party who proposes a fact or position has the burden of proving that fact or position. You should be prepared to present evidence at the hearing which will support your position. You may present physical, oral or written evidence, as well as your own testimony.

10. Admissible evidence. Only relevant evidence of a type relied upon by reasonably prudent persons in the conduct of their serious affairs will be considered. Hearsay evidence is not automatically excluded. Rather, the fact that it is hearsay generally affects how much the Commission will rely on it in reaching a decision.

There are four kinds of evidence:

- a. Knowledge of DEQ and the administrative law judge. DEQ or the administrative law judge may take "official notice" of conclusions developed as a result of its knowledge in its specialized field. This includes notice of general, technical or scientific facts. You will be informed should DEQ or the administrative law judge take "official notice" of any fact and you will be given an opportunity to contest any such facts.
- b. Testimony of witnesses. Testimony of witnesses, including you, who have knowledge of facts may be received in evidence.
- c. Writings. Written documents including letters, maps, diagrams and other written materials may be received in evidence.
- d. Experiments, demonstrations and similar means used to prove a fact. The results of experiments and demonstrations may be received in evidence if they are reliable.

11. Objections to evidence. Objections to the consideration of evidence must be made at the time the evidence is offered. Objections are generally made on one of the following grounds:

- a. The evidence is unreliable;
- b. The evidence is irrelevant or immaterial and has no tendency to prove or disprove any issue involved in the case;
- c. The evidence is unduly repetitious and duplicates evidence already received.

12. Continuances. There are normally no continuances granted at the end of the hearing for you to present additional testimony or other evidence. Please make sure you have all your evidence ready for the hearing. However, if you can show that the record should remain open for additional evidence, the administrative law judge may grant you additional time to submit such evidence.

13. Record. A record will be made of the entire proceeding to preserve the testimony and other evidence for appeal. This will be done by tape recorder. This tape and any exhibits received in the record will be the whole record of the hearing and the only evidence considered by the administrative law judge. A copy of the tape is available upon payment of a minimal amount, as established by DEQ. A transcript of the record will not normally be prepared, unless there is an appeal to the Court of Appeals.

14. Proposed and Final Order. The administrative law judge has the authority to issue a proposed order based on the evidence at the hearing. The proposed order will become the final order of the Environmental Quality Commission if you do not petition the Commission for review within 30 days of service of the order. The date of service is the date the order is mailed to you, not the date that you receive it. The Department must receive your petition seeking review within 30 days. See OAR 340-011-0132.

15. Appeal. If you are not satisfied with the decision of the Commission, you have 60 days from the date of service of the order, to appeal this decision to the Court of Appeals. See ORS 183.480 *et seq.*

**CERTIFICATE OF MAILING**

On May 21, 2010, I mailed the foregoing NOTICE OF IN-PERSON HEARING and NOTICE OF CONTESTED CASE RIGHTS AND PROCEDURES in OAH Case Nos. 1001544 and 1001545.

By: First Class Mail

Michael Cross  
Managing Member  
AAA American Eagle Services, LLC  
1118 Lancaster Dr NE #338  
Salem OR 97301

By: First Class Mail

Bryan Smith  
Dept. of Environmental Quality  
811 SW 6th St  
Portland OR 97204

Lucy Garcia  
Administrative Specialist  
Hearing Coordinator



# Oregon

Theodore R. Kulongoski, Governor

## Office of Administrative Hearings

PO Box 14020  
Salem, OR 97309-4020  
(503) 947-1637  
FAX (503) 947-1923

May 20, 2010

Bryan Smith  
Dept. of Environmental Quality  
811 SW 6th St.  
Portland, OR 97204

Michael Cross  
Managing Member  
AAA American Eagle Services, LLC  
1118 Lancaster Dr. NE #338  
Salem, OR 97301

RE: Matter of AAA American Eagle Services, LLC,  
and Oregon Department of Environmental Quality

OAH Case Nos.: 1001544, 1001545  
Agency Case Nos.: WQ/QI-WR-09-203, WQ//OI-WR-09-144

Dear Mr. Smith and Mr. Cross:

I am confirming the matters discussed at the status conference held this morning by telephone on the record. Bryan Smith appeared on behalf of the Department and Michael Cross appeared on behalf of the Respondent. The conference was held in part to update the status of Mr. Cross in securing legal representation for this matter following the withdrawal of Respondent's previous attorney and to establish new dates for the hearing which had been postponed from the previous date set for hearing, today, May 20, 2010. As of the status conference, Respondent remains unrepresented by counsel.

The parties agreed to set two dates for the hearing, in the event that Mr. Cross is able to retain counsel but recognizing that such counsel may have a pre-existing conflict for the date of the hearing. The hearing dates agreed to are June 24, 2010, and July 6, 2010, beginning at 9:00 a.m. at the Office of Administrative Hearings (OAH) in Salem Oregon.

Witness lists and exhibits are to be submitted, with simultaneous copies to the opposing party, for the June 24th hearing date, by close of business on or before June 17, 2010, or if it necessary to use the second hearing date of July 6th, by close of business on or before June 30, 2010, to the following address:

ALJ A. Bernadette House  
Office of Administrative Hearings  
7995 SW Mohawk St.  
Tualatin, OR 97062

Fax: (503) 612-4340

Pursuant to OAR 137-003-0555(1)(a), Mr. Cross may represent Respondent as Respondent's authorized representative in a contested case matter for the Department of Environmental Quality, subject to providing written authorization to appear on behalf of Respondent. OAR 137-003-0555(3). Authorized representatives are subject to the restrictions set out in OAR 137-003-0555(4).

The Department previously submitted its exhibits timely, with simultaneous copies to Respondent's counsel of record at that time, in two packets, mailed April 29, 2010 and May 4, 2010. Mr. Cross acknowledged having received Respondent's file documents from the prior attorney.

Please advise Lucy Garcia, Hearings Coordinator for the OAH, at 503-947-1637, if Respondent requires a second copy of the Department's exhibits or if additional assistance prior to hearing is needed. Please let me know as soon as possible if the above is not in accord with the parties' recollection of the teleconference so that I may make timely corrections. A Second Notice of Hearing will issue shortly.

Sincerely,

A. Bernadette House  
Sr. Administrative Law Judge  
Office of Administrative Hearings

**BEFORE THE OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF OREGON  
for the  
DEPT. OF ENVIRONMENTAL QUALITY**

IN THE MATTER OF:	)	<b>NOTICE OF STATUS CONFERENCE</b>
	)	
<b>AAA AMERICAN EAGLE SERVICES, LLC.</b>	)	OAH Case No.: 1001544
	)	Agency Case No.: WQ/OI-WR-09-203
	)	
<b>AAA AMERICAN EAGLE SERVICES LLC</b>	)	OAH Case No.: 1001545
	)	Agency Case No.: WQ/OI-WR-09-144
	)	

**PLEASE TAKE NOTICE** that a status conference has been scheduled in the above matter before the Office of Administrative Hearings.

**Status****Conference Date: May 20, 2010****Status****Conference Time: 9:00 am****Location:****By Telephone: Status Conference Phone Numbers and Access Code:**

- Toll Free – 1-877-622-4041
- ACCESS CODE – 7101544

**IMPORTANT STATUS CONFERENCE PHONE INSTRUCTIONS**At the date and time of your status conference you **must**:

1. Call the toll free status conference phone number listed above.
2. When asked for the Access Code, enter the code listed above followed by the “#” key.
3. If the administrative law judge is not already on the line, remain on the line for ten (10) minutes past the status conference time.
4. If you fail to call within fifteen (15) minutes after the time set for the status conference, the status conference may proceed without you.
5. If you have any trouble connecting to the hearing or are on hold more than ten (10) minutes past the hearing start time, call the Office of Administrative Hearings immediately at (503) 947-1637.
6. **ONLY** call the status conference phone number to attend your status conference.

The following issues may be addressed at the status conference: identification of issues, motions, preliminary rulings, documentary and testimonial evidence (if known), exchange of witness lists (if known), procedural conduct of the hearing, date, time and location of the hearing, and other matters relating to the hearing. Failure to participate in the status conference will not preclude the Administrative Law Judge from making decisions on issues raised during the status conference. (OAR 137-003-0575)

Your case has been assigned to **Administrative Law Judge A House** an employee of the Office of Administrative Hearings. The Office of Administrative Hearings is an impartial tribunal, and is independent of the agency proposing the action.

Unless otherwise notified, all correspondence, inquiries, exhibits and filings should be sent to:

A House  
Office of Administrative Hearings  
7995 SW Mohawk St.  
Tualatin, OR 97062  
Fax: (503) 612-4340

OAR 137-003-0520 requires a copy of any correspondence, exhibits or other filings to be provided to all parties and the agency at the same time they are provided to the ALJ. **Please use the OAH case number above on all correspondence and filings.**

A request for reset of the hearing must be submitted in writing prior to the hearing. A postponement request will only be granted on a showing of good cause and with the approval of the administrative law judge.

**If you are hearing impaired, need a language interpreter or require another type of accommodation to participate in or attend the hearing, immediately notify the Office of Administrative Hearings at (503) 947-1637 or TDD at 1-800-735-1232 to make the appropriate arrangements. The Office of Administrative Hearings can arrange for an interpreter at the hearing. Interpreters must be certified or qualified in order to participate in a contested case hearing and may not have a conflict of interest with the hearing participants.**

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3. Administrative law judge. The person presiding at the hearing is known as the administrative law judge. The administrative law judge is an employee of the Office of Administrative Hearings under contract with the Environmental Quality Commission. The administrative law judge is not an employee, officer or representative of the agency.
4. Appearance at hearing. If you withdraw your request for a hearing, notify either DEQ or the administrative law judge that you will not appear at the hearing, or fail to appear at the hearing, a final default order will be issued. This order will be issued only upon a prima facie case based on DEQ's file. No hearing will be conducted.
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will offer its evidence first in support of its action. You will then have an opportunity to present evidence to oppose DEQ's evidence. Finally, DEQ and you will have an opportunity to rebut any evidence.

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- a. Knowledge of DEQ and the administrative law judge. DEQ or the administrative law judge may take "official notice" of conclusions developed as a result of its knowledge in its specialized field. This includes notice of general, technical or scientific facts. You will be informed should DEQ or the administrative law judge take "official notice" of any fact and you will be given an opportunity to contest any such facts.
- b. Testimony of witnesses. Testimony of witnesses, including you, who have knowledge of facts may be received in evidence.
- c. Writings. Written documents including letters, maps, diagrams and other written materials may be received in evidence.
- d. Experiments, demonstrations and similar means used to prove a fact. The results of experiments and demonstrations may be received in evidence if they are reliable.

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- b. The evidence is irrelevant or immaterial and has no tendency to prove or disprove any issue involved in the case;
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established by DEQ. A transcript of the record will not normally be prepared, unless there is an appeal to the Court of Appeals.

14. Proposed and Final Order. The administrative law judge has the authority to issue a proposed order based on the evidence at the hearing. The proposed order will become the final order of the Environmental Quality Commission if you do not petition the Commission for review within 30 days of service of the order. The date of service is the date the order is mailed to you, not the date that you receive it. The Department must receive your petition seeking review within 30 days. See OAR 340-011-0132.

15. Appeal. If you are not satisfied with the decision of the Commission, you have 60 days from the date of service of the order, to appeal this decision to the Court of Appeals. See ORS 183.480 *et seq.*

**CERTIFICATE OF MAILING**

On May 14, 2010, I mailed the foregoing NOTICE OF STATUS CONFERENCE in OAH Case No. 1001544.

By: First Class Mail

Michael Cross  
Managing Member  
AAA American Eagle Services, LLC  
1118 Lancaster Dr NE #338  
Salem OR 97301

Bryan Smith  
Dept. of Environmental Quality  
811 SW 6th St  
Portland OR 97204

Lucy Garcia  
Administrative Specialist  
Hearing Coordinator



# Oregon

Theodore R. Kulongoski, Governor

## Office of Administrative Hearings

PO Box 14020

Salem, OR 97309-4020

(503) 947-1637

FAX (503) 947-1923

May 14, 2010

Alec J. Laidlaw,  
Attorney at Law  
Laidlaw & Laidlaw, PC  
21590 Willamette Drive  
West Linn, OR 97035

Re: Matter of AAA American Eagle Services, LLC,  
and Oregon Department of Environmental Quality

OAH Case Nos.: 1001544, 1001545

Agency Case Nos.: WQ/QI-WR-09-203, WQ/OI-WR-09-144

Dear Mr. Laidlaw:

Michael Cross appeared at a status conference this morning on behalf of Respondent, your former client in the above contested case matters,. Mr. Cross indicated that he was unaware until very recently that you had withdrawn from the case and that he had not, as yet, received Respondent's files from your office. This matter cannot be reset until Respondent has retained new counsel and it is problematic to proceed without Respondent having access to the file, including documents such as the Notice of Hearing, and the Notice of Contested Case Rights and Procedures, sent to you as Respondent's counsel.

I am writing to request that you facilitate providing Respondent with a copy of the files related to the above contested case matters as quickly as possible. I appreciate your attention to the matter.

Sincerely,

A. Bernadette House  
Senior Administrative Law Judge  
Office of Administrative Hearings

cc: Michael Cross, Managing Member, AAA American Eagles Services, LLC  
Bryan Smith, DEQ

**BEFORE THE OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF OREGON  
for the  
DEPT. OF ENVIRONMENTAL QUALITY**

IN THE MATTER OF:	)	<b>NOTICE OF PREHEARING CONFERENCE</b>
	)	
<b>AAA AMERICAN EAGLE SERVICES, LLC</b>	)	OAH Case No.: 1001544
	)	Agency Case No.: WQ/OI-WR-09-203
	)	
<b>AAA AMERICAN EAGLE SERVICES, LLC</b>	)	OAH Case No.: 1001545
	)	Agency Case No.: WQ/OI-WR-09-144
	)	

**PLEASE TAKE NOTICE** that a prehearing conference has been scheduled in the above matter before the Office of Administrative Hearings.

**Prehearing Date:**      **May 14, 2010**                                      **Prehearing Time:**      **9:30 am**

**Location:**                      **By Telephone: Prehearing Phone Numbers and Access Code:**

- Toll Free – 1-877-622-4041
- ACCESS CODE – 7101544

**IMPORTANT PREHEARING PHONE INSTRUCTIONS**

At the date and time of your prehearing conference you **must**:

1. Call the toll free prehearing phone number listed above.
2. When asked for the Access Code, enter the code listed above followed by the “#” key.
3. If the administrative law judge is not already on the line, remain on the line for ten (10) minutes past the prehearing time.
4. If you fail to call within fifteen (15) minutes after the time set for the prehearing conference, the prehearing conference may proceed without you.
5. If you have any trouble connecting to the prehearing or are on hold more than ten (10) minutes past the prehearing start time, call the Office of Administrative Hearings immediately at (503) 947-1637.
6. **ONLY** call the prehearing phone number to attend your prehearing.

The following may be addressed at the prehearing conference: identification of issues, motions, preliminary rulings, documentary and testimonial evidence (if known), exchange of witness lists (if known), procedural conduct of the hearing, date, time and location of the hearing, and other matters relating to the hearing. Failure to participate in the prehearing will not preclude the Administrative Law Judge from making decisions on issues raised during the prehearing. (OAR 137-003-0575)

Your case has been assigned to **Administrative Law Judge A House** an employee of the Office of Administrative Hearings. The Office of Administrative Hearings is an impartial tribunal, and is independent of the agency proposing the action.

Unless otherwise notified, all correspondence, inquiries, exhibits and filings should be sent to:

A House  
Office of Administrative Hearings  
7995 SW Mohawk St.  
Tualatin, OR 97062  
Fax: (503) 612-4340

OAR 137-003-0520 requires a copy of any correspondence, exhibits or other filings to be provided to all parties and the agency at the same time they are provided to the ALJ. **Please use the OAH case number above on all correspondence and filings.**

A request for reset of the hearing must be submitted in writing prior to the hearing. A postponement request will only be granted on a showing of good cause and with the approval of the administrative law judge.

**If you are hearing impaired, need a language interpreter or require another type of accommodation to participate in or attend the hearing, immediately notify the Office of Administrative Hearings at (503) 947-1637 or TDD at 1-800-735-1232 to make the appropriate arrangements. The Office of Administrative Hearings can arrange for an interpreter at the hearing. Interpreters must be certified or qualified in order to participate in a contested case hearing and may not have a conflict of interest with the hearing participants.**

You are required to notify the Office of Administrative Hearings at (503) 947-1637 immediately if you change your address or telephone number prior to a decision in this matter.

**CERTIFICATE OF MAILING**

On May 13, 2010, I e-mailed the foregoing NOTICE OF PREHEARING CONFERENCE in OAH Case No. 1001544.

By: E-Mail

AAA American Eagle Services, LLC  
mike@hanksseptic.com  
j.michaelcross@yahoo.com

Bryan Smith  
bryan.smith@state.or.us

Lucy Garcia  
Administrative Specialist  
Hearing Coordinator

June 15-17, 2011, EQC meeting

Page 1 of 1

**From:** michael cross <j.michaelcross@yahoo.com>  
**To:** <Bernadette.HOUSE@state.or.us>  
**Date:** 5/13/2010 12:52 PM  
**Subject:** hearing on May 20th

Dear Judge House,

I am writing you from AAA American Eagle Services, LLC DBA Hanks Septic Service and Lebanon Sweet home Septic Service.

I just today received in the mail, a request (and order signed by your Honor,) from my former attorney Alec Laidlaw, wherein he has resigned from representation.

I hereby tender a request of a continuance in our scheduled court date of May 20th, 2010 to a later date. I would ask for 30-45 days continuance in order to allow me time to secure adequate legal representation; and then for that individual to have sufficient time to review all of the case materials and then decide whether to settle the case or to continue with a hearing.

A continuance would also allow the parties more time to reach a settlement; which talks up until now have been ongoing.

Thank you for your consideration,

Michael Cross,  
Managing Member

June 15-17, 2011, EQC meeting  
Page 1 of 1

**From:** "SMITH Bryan" <bryan.smith@state.or.us>  
**To:** "SMITH Bryan" <bryan.smith@state.or.us>, <mike@hanksseptic.com>  
**CC:** "HOUSE Bernadette" <bernadette.house@state.or.us>, "OAHREFERRAL EMP" <em...>  
**Date:** 5/13/2010 12:27 PM  
**Subject:** RE: deq

Mike, you requested contact information for ALJ House.

This is ALJ House's email address and you can direct any correspondence to her via email.

Additionally, I have copied her staff on this email (OAH) and they can provide you with her address and/or fax and phone numbers.

Thank you, Bryan.

June 15-17, 2011, EQC meeting

Page 1 of 2

**From:** "SMITH Bryan" <bryan.smith@state.or.us>  
**To:** "Alec Laidlaw" <alec@laidlawandlaidlaw.com>, "HOUSE Bernadette" <bernade...  
**Date:** 5/13/2010 11:50 AM  
**Subject:** RE: In the Matter of DEQ, AAA American Eagle Services, LLC(OAHCase No.: 1001544/545)

Good morning.

Although this deadline appears to have been extended until May 10, I still have not received any exhibits in this matter, as of May 13.

Please advise as to the consequence of failure to meet this deadline, and whether those exhibits are expected to be provided to DEQ prior to the hearing.

Thank you, Bryan.

From: Alec Laidlaw [mailto:alec@laidlawandlaidlaw.com]  
Sent: Thursday, May 06, 2010 3:14 PM  
To: HOUSE Bernadette  
Cc: SMITH Bryan  
Subject: In the Matter of DEQ, AAA American Eagle Services, LLC(OAHCase No.: 1001544/545)  
Importance: High

Judge House,

My office represents Respondent AA American Eagle Services, LLC, dba Hank's Septic Service in the above referenced matter.

This afternoon I was advised that Michael Cross of Hank's Septic met with Mike Kucinski of the DEQ yesterday, and that this matter is near resolution. It is my understanding that a final decision settlement will be conveyed to Mr. Cross after 4pm today.

I would therefore request a short setover of the deadline to produce Exhibits and Witnesses. That deadline is today. I would request that the deadline be setover to Monday May 10, 2010. I apologize for such short notice on this request.

Due to the time constraints I have not had the opportunity to confer with Mr. Smith of the DEQ (copied on this email).

Thank you,

Alec J. Laidlaw, Esq.  
Laidlaw & Laidlaw, PC  
21590 Willamette Drive

West Linn, Oregon 97068

Tel: 503.305.6894  
Fax: 888.287.4840

[www.laidlawandlaidlaw.com](http://www.laidlawandlaidlaw.com)

THIS MESSAGE IS INTENDED FOR THE USE OF THE INDIVIDUAL OR ENTITY TO WHICH IT IS ADDRESSED AND MAY CONTAIN INFORMATION THAT IS PRIVILEGED, CONFIDENTIAL, AND EXEMPT FROM DISCLOSURE UNDER APPLICABLE LAW. If the reader of this message is not the intended recipient, or the employee or agent responsible for delivering the message to the intended recipient, you are hereby notified that any dissemination, distribution, forwarding, or copying of this communication is strictly prohibited. If you have received this communication in error, please notify the sender immediately by e-mail or telephone at (503) 305-6894 and delete the original message immediately. Thank you.

MAY 13 2010

Office of Administrative Hearings  
Tualatin

BEFORE THE ENVIRONMENTAL QUALITY COMMISSION  
OF THE STATE OF OREGON

IN THE MATTER OF:

Case No. WQ/QI-WR-09-144

AAA AMERICAN EAGLE SERVICES, LLC,  
an Oregon Limited Liability Company,  
dba HANK'S SEPTIC SERVICE, an assumed  
business name,  
and LEBANON/SWEET HOME SEPTIC  
TANK SERVICE, an assumed business name

**MOTION AND ORDER FOR  
WITHDRAWAL OF RESPONDENT'S  
ATTORNEY**

Respondent

I, Alec J. Laidlaw, move to withdraw from representation of Respondent AAA AMERICAN EAGLE SERVICES, LLC an Oregon Limited Liability Company; dba HANK'S SEPTIC SERVICES, in this matter pursuant to Oregon Rules of Professional Conduct 1.16(b)(1), (4), and (7).

Respondent has been notified of this motion and its contact information is as follows:

AAA American Eagle Services LLC, dba Hank's Septic Services  
1118 Lancaster Drive N.E., #338  
Salem, OR 97301

111

1 Dated: May 7, 2010

LAILLAW & LAILLAW, PC

2  
3 By:

Alec J. Laidlaw, OSB #058154

Attorney for Respondent

alec@laidlawandlaidlaw.com

**ORDER**

The Motion to Withdraw is: ☒ **GRANTED**

☐ **DENIED**

Dated: 5/10/2010



Administrative Law Judge

CERTIFICATE OF SERVICE

I hereby certify that on ~~April~~ <sup>May</sup> 7, 2010, I served the foregoing Motions and Orders For  
Withdrawal of Respondent's Attorney on the following parties:

Bryan Smith  
DEQ  
811 SW 6<sup>th</sup> Street  
Portland, OR 97204

AAA American Eagle Services, LLC  
dba Hank's Septic Service  
1118 Lancaster Drive NE #338  
Salem, OR 97301  
Respondent *Pro Se*

By the following methods:

by **mailing** true copies thereof, via first class mail, postage prepaid, to them at the address(es) set  
forth above, on the date set forth above.

LAIDLAW & LAIDLAW, PC

By: 

Alec J. Laidlaw, OSB #055154  
Attorney for Respondent  
alec@laidlawandlaidlaw.com

CERTIFICATE OF SERVICE

LAIDLAW & LAIDLAW, P.C.  
21590 Willamette Drive  
West Linn, OR 97068  
Telephone: 503.305.6894  
Facsimile: 888.287.4840

Item E 000118

June 15-17, 2011, EQC meeting  
Page 1 of 1

**From:** "Alec Laidlaw" <alec@laidlawandlaidlaw.com>  
**To:** "bernadette.house@state.or.us" <bernadette.house@state.or.us>  
**CC:** "SMITH Bryan" <SMITH.Bryan@deq.state.or.us>  
**Date:** 5/6/2010 3:15 PM  
**Subject:** In the Matter of DEQ, AAA American Eagle Services, LLC(OAHCase No.: 1001544/545)

Judge House,

My office represents Respondent AA American Eagle Services, LLC, dba Hank's Septic Service in the above referenced matter.

This afternoon I was advised that Michael Cross of Hank's Septic met with Mike Kucinski of the DEQ yesterday, and that this matter is near resolution. It is my understanding that a final decision settlement will be conveyed to Mr. Cross after 4pm today.

I would therefore request a short setover of the deadline to produce Exhibits and Witnesses. That deadline is today. I would request that the deadline be setover to Monday May 10, 2010. I apologize for such short notice on this request.

Due to the time constraints I have not had the opportunity to confer with Mr. Smith of the DEQ (copied on this email).

Thank you,

Alec J. Laidlaw, Esq.  
Laidlaw & Laidlaw, PC  
21590 Willamette Drive  
West Linn, Oregon 97068  
Tel: 503.305.6894  
Fax: 888.287.4840

[www.laidlawandlaidlaw.com](http://www.laidlawandlaidlaw.com)<<http://www.laidlawandlaidlaw.com>>

THIS MESSAGE IS INTENDED FOR THE USE OF THE INDIVIDUAL OR ENTITY TO WHICH IT IS ADDRESSED AND MAY CONTAIN INFORMATION THAT IS PRIVILEGED, CONFIDENTIAL, AND EXEMPT FROM DISCLOSURE UNDER APPLICABLE LAW. If the reader of this message is not the intended recipient, or the employee or agent responsible for delivering the message to the intended recipient, you are hereby notified that any dissemination, distribution, forwarding, or copying of this communication is strictly prohibited. If you have received this communication in error, please notify the sender immediately by e-mail or telephone at (503) 305-6894 and delete the original message immediately. Thank you.

**BEFORE THE OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF OREGON  
for the  
DEPT. OF ENVIRONMENTAL QUALITY**

IN THE MATTER OF:	)	<b>NOTICE OF IN-PERSON HEARING</b>
	)	
<b>AAA AMERICAN EAGLE SERVICES, LLC.</b>	)	OAH Case No.: 1001544
	)	Agency Case No.: WQ/OI-WR-09-203
	)	
<b>AAA AMERICAN EAGLE SERVICES LLC</b>	)	OAH Case No.: 1001545
	)	Agency Case No.: WQ/OI-WR-09-144
	)	

**PLEASE TAKE NOTICE** that a contested case hearing has been scheduled in the above matter before the Office of Administrative Hearings.

**Hearing Date:** May 20, 2010                      **Hearing Time:** 9:00 am

**Location:**            **Office of Administrative Hearings  
4600 25th Ave NE Suite 140  
Salem OR 97301**

Your case has been assigned to **Administrative Law Judge A House** an employee of the Office of Administrative Hearings. The Office of Administrative Hearings is an impartial tribunal, and is independent of the agency proposing the action.

Unless otherwise notified, all correspondence, inquiries, exhibits and filings should be sent to:

A House  
Office of Administrative Hearings  
7995 SW Mohawk St.  
Tualatin, OR 97062  
Fax: (503) 612-4340

OAR 137-003-0520 requires a copy of any correspondence, exhibits or other filings to be provided to all parties and the agency at the same time they are provided to the ALJ. **Please use the OAH case number above on all correspondence and filings.**

A request for reset of the hearing must be submitted in writing prior to the hearing. A postponement request will only be granted on a showing of good cause and with the approval of the administrative law judge.

**If you are hearing impaired, need a language interpreter or require another type of accommodation to participate in or attend the hearing, immediately notify the Office of Administrative Hearings at (503) 947-1637 or TDD at 1-800-735-1232 to make the appropriate arrangements. The Office of Administrative Hearings can arrange for an interpreter at the hearing. Interpreters must be certified or qualified in order to participate in a contested case hearing and may not have a conflict of interest with the hearing participants.**

You are required to notify the Office of Administrative Hearings at (503) 947-1637 immediately if you change your address or telephone number prior to a decision in this matter.

DEPARTMENT OF ENVIRONMENTAL QUALITY HEARINGS

IMPORTANT INFORMATION FOR PREPARING FOR YOUR HEARING

NOTICE OF CONTESTED CASE RIGHTS AND PROCEDURES

Under ORS 183.413(2), you must be informed of the following:

1. Law that applies. The hearing is a contested case and it will be conducted under ORS Chapter 183 and Oregon Administrative Rules of the Department of Environmental Quality, Chapters 137 and 340.
2. Rights to an attorney. You may represent yourself at the hearing, or be represented by an attorney or an authorized representative, such as a partner, officer, or an employee. If you are a company, corporation, organization or association, you must be represented by an attorney or an authorized representative. Prior to appearing on your behalf, an authorized representative must provide a written statement of authorization. If you choose to represent yourself, but decide during the hearing that an attorney is necessary, you may request a recess. About half of the parties are not represented by an attorney. DEQ will be represented by an Assistant Attorney General or an Environmental Law Specialist.
3. Administrative law judge. The person presiding at the hearing is known as the administrative law judge. The administrative law judge is an employee of the Office of Administrative Hearings under contract with the Environmental Quality Commission. The administrative law judge is not an employee, officer or representative of the agency.
4. Appearance at hearing. If you withdraw your request for a hearing, notify either DEQ or the administrative law judge that you will not appear at the hearing, or fail to appear at the hearing, a final default order will be issued. This order will be issued only upon a prima facie case based on DEQ's file. No hearing will be conducted.
5. Address change or change of representative. It is your responsibility to notify DEQ and the administrative law judge of any change in your address or a withdrawal or change of your representative.
6. Interpreters. If you have a disability or do not speak English, the administrative law judge will arrange for an interpreter. DEQ will pay for the interpreter if (1) you require the interpreter due to a disability or (2) you file with the administrative law judge a written statement under oath that you are unable to speak English and you are unable to obtain an interpreter yourself. You must provide notice of your need for an interpreter at least 14 days before the hearing.
7. Witnesses. All witnesses will be under oath or affirmation to tell the truth. All parties and the administrative law judge will have the opportunity to ask questions of all witnesses. DEQ or the administrative law judge will issue subpoenas for witnesses on your behalf if you show that their testimony is relevant to the case and is reasonably needed to establish your position. You are not required to issue subpoenas for appearance of your own witnesses. If you are represented by an attorney, your attorney may issue subpoenas. Payment of witness fees and mileage is your responsibility.

8. Order of evidence. A hearing is similar to a court trial but less formal. The purpose of the hearing is to determine the facts and whether DEQ's action is appropriate. In most cases, DEQ will offer its evidence first in support of its action. You will then have an opportunity to present evidence to oppose DEQ's evidence. Finally, DEQ and you will have an opportunity to rebut any evidence.

9. Burden of presenting evidence. The party who proposes a fact or position has the burden of proving that fact or position. You should be prepared to present evidence at the hearing which will support your position. You may present physical, oral or written evidence, as well as your own testimony.

10. Admissible evidence. Only relevant evidence of a type relied upon by reasonably prudent persons in the conduct of their serious affairs will be considered. Hearsay evidence is not automatically excluded. Rather, the fact that it is hearsay generally affects how much the Commission will rely on it in reaching a decision.

There are four kinds of evidence:

- a. Knowledge of DEQ and the administrative law judge. DEQ or the administrative law judge may take "official notice" of conclusions developed as a result of its knowledge in its specialized field. This includes notice of general, technical or scientific facts. You will be informed should DEQ or the administrative law judge take "official notice" of any fact and you will be given an opportunity to contest any such facts.
- b. Testimony of witnesses. Testimony of witnesses, including you, who have knowledge of facts may be received in evidence.
- c. Writings. Written documents including letters, maps, diagrams and other written materials may be received in evidence.
- d. Experiments, demonstrations and similar means used to prove a fact. The results of experiments and demonstrations may be received in evidence if they are reliable.

11. Objections to evidence. Objections to the consideration of evidence must be made at the time the evidence is offered. Objections are generally made on one of the following grounds:

- a. The evidence is unreliable;
- b. The evidence is irrelevant or immaterial and has no tendency to prove or disprove any issue involved in the case;
- c. The evidence is unduly repetitious and duplicates evidence already received.

12. Continuances. There are normally no continuances granted at the end of the hearing for you to present additional testimony or other evidence. Please make sure you have all your evidence ready for the hearing. However, if you can show that the record should remain open for additional evidence, the administrative law judge may grant you additional time to submit such evidence.

13. Record. A record will be made of the entire proceeding to preserve the testimony and other evidence for appeal. This will be done by tape recorder. This tape and any exhibits received in the record will be the whole record of the hearing and the only evidence considered by the administrative law judge. A copy of the tape is available upon payment of a minimal amount, as established by DEQ. A transcript of the record will not normally be prepared, unless there is an appeal to the Court of Appeals.

14. Proposed and Final Order. The administrative law judge has the authority to issue a proposed order based on the evidence at the hearing. The proposed order will become the final order of the Environmental Quality Commission if you do not petition the Commission for review within 30 days of service of the order. The date of service is the date the order is mailed to you, not the date that you receive it. The Department must receive your petition seeking review within 30 days. See OAR 340-011-0132.

15. Appeal. If you are not satisfied with the decision of the Commission, you have 60 days from the date of service of the order, to appeal this decision to the Court of Appeals. See ORS 183.480 *et seq.*

**CERTIFICATE OF MAILING**

On April 2, 2010, I mailed the foregoing NOTICE OF IN-PERSON HEARING and NOTICE OF CONTESTED CASE RIGHTS AND PROCEDURES in OAH Case Nos. 1001544 and 1001545.

By: First Class Mail

Alec Laidlaw  
Attorney at Law  
21590 Willamette Dr  
West Linn OR 97068

By: First Class Mail

Bryan Smith  
Dept. of Environmental Quality  
811 SW 6th St  
Portland OR 97204

Lucy Garcia  
Administrative Specialist  
Hearing Coordinator

June 15-17, 2011, EQC meeting  
Page 1 of 2

**From:** Bernadette HOUSE  
**To:** alec@laidlawandlaidlaw.com; bryan.smith@state.or.us  
**CC:** OAHREFERRAL, EMP  
**Date:** 3/31/2010 10:58 AM  
**Subject:** RE: In the Matter of DEQ, AAA American Eagle Services, LLC (OAH Case No.: 1001544/545)

Dear Mr. Smith and Mr. Laidlaw:

This electronic mail (email) is to confirm the matters discussed at the prehearing teleconference held on the record as scheduled this morning in the above matter. Bryan Smith, authorized representative, appeared on behalf of the Department of Environment Quality (DEQ). Alec Laidlaw, Attorney at Law, appeared on behalf of AAA American Eagle Services, LLC (Respondent).

The hearing is anticipated to require one day and is tentatively set, pending confirmation of availability of witnesses, for May 20, 2010, beginning at 9:00 a.m. to be held at the OAH offices in Salem, Oregon.

June 3, 2010 has been reserved as an alternate day and the parties have agreed to inform the OAH on or before Friday April 2, 2010, if the alternative day will be needed.

For the May 20th hearing date, the deadline for submission of witness lists and exhibits, with copies to opposing counsel, is on or before close of business May 6, 2010, to the following address:

Office of Administrative Hearings  
Attn: ALJ A. Bernadette House  
7995 SW Mohawk Street  
Tualatin, Oregon 97062

Fax (503) 612-4340.

If the alternative hearing date of June 3rd is scheduled, the corresponding deadline for submission of witness lists and exhibits, with copies to opposing counsel, is on or before close of business May 20, 2010.

If confirmation of receipt of documents at the above address is needed, please call Andrea Johanson at (503) 612-4340 or David Coulombe at (503) 612-4319. For any other assistance, please contact Lucy Garcia, Hearings Coordinator, Office of Administrative Hearings, at (503) 947-1637. If necessary to contact me prior to hearing by email, please copy any email communication to the OAHREFERRAL, EMP address, as copied above in this email, as well as opposing counsel.

Sincerely,

A. Bernadette House  
Sr. Administrative Law Judge  
Office of Administrative Hearings

\*\*\*\*\*CONFIDENTIALITY NOTICE\*\*\*\*\*

This e-mail may contain information that is confidential, or otherwise exempt from disclosure under applicable law. If you are not the addressee or it appears from the context or otherwise that you have received this e-mail in error, please advise me immediately by reply e-mail, keep the contents confidential, and immediately delete the message and any attachments from your system.

June 15-17, 2011, EQC meeting  
Page 2 of 2

\*\*\*\*\*

**BEFORE THE OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF OREGON  
for the  
DEPT. OF ENVIRONMENTAL QUALITY**

IN THE MATTER OF:	)	<b>NOTICE OF PREHEARING CONFERENCE</b>
	)	
<b>AAA AMERICAN EAGLE SERVICES, LLC.</b>	)	OAH Case No.: 1001544
	)	Agency Case No.: WQ/OI-WR-09-203
	)	
<b>AAA AMERICAN EAGLE SERVICES LLC</b>	)	OAH Case No.: 1001545
	)	Agency Case No.: WQ/OI-WR-09-144

**PLEASE TAKE NOTICE** that a prehearing conference has been scheduled in the above matter before the Office of Administrative Hearings.

**Prehearing Date:**      **March 31, 2010**                      **Prehearing Time:**      **10:00 am**

**Location:**              **By Telephone: Prehearing Phone Numbers and Access Code:**

- Toll Free – 1-877-622-4041
- ACCESS CODE – 7101544

**IMPORTANT PREHEARING PHONE INSTRUCTIONS**

At the date and time of your prehearing conference you **must**:

1. Call the toll free prehearing phone number listed above.
2. When asked for the Access Code, enter the code listed above followed by the “#” key.
3. If the administrative law judge is not already on the line, remain on the line for ten (10) minutes past the prehearing time.
4. If you fail to call within fifteen (15) minutes after the time set for the prehearing conference, the prehearing conference may proceed without you.
5. If you have any trouble connecting to the prehearing or are on hold more than ten (10) minutes past the prehearing start time, call the Office of Administrative Hearings immediately at (503) 947-1637.
6. **ONLY** call the prehearing phone number to attend your prehearing.

The following may be addressed at the prehearing conference: identification of issues, motions, preliminary rulings, documentary and testimonial evidence (if known), exchange of witness lists (if known), procedural conduct of the hearing, date, time and location of the hearing, and other matters relating to the hearing. Failure to participate in the prehearing will not preclude the Administrative Law Judge from making decisions on issues raised during the prehearing. (OAR 137-003-0575)

Your case has been assigned to **Administrative Law Judge A House** an employee of the Office of Administrative Hearings. The Office of Administrative Hearings is an impartial tribunal, and is independent of the agency proposing the action.

Unless otherwise notified, all correspondence, inquiries, exhibits and filings should be sent to:

A House  
Office of Administrative Hearings  
7995 SW Mohawk St.  
Tualatin, OR 97062  
Fax: (503) 612-4340

OAR 137-003-0520 requires a copy of any correspondence, exhibits or other filings to be provided to all parties and the agency at the same time they are provided to the ALJ. **Please use the OAH case number above on all correspondence and filings.**

A request for reset of the hearing must be submitted in writing prior to the hearing. A postponement request will only be granted on a showing of good cause and with the approval of the administrative law judge.

**If you are hearing impaired, need a language interpreter or require another type of accommodation to participate in or attend the hearing, immediately notify the Office of Administrative Hearings at (503) 947-1637 or TDD at 1-800-735-1232 to make the appropriate arrangements. The Office of Administrative Hearings can arrange for an interpreter at the hearing. Interpreters must be certified or qualified in order to participate in a contested case hearing and may not have a conflict of interest with the hearing participants.**

You are required to notify the Office of Administrative Hearings at (503) 947-1637 immediately if you change your address or telephone number prior to a decision in this matter.

**CERTIFICATE OF MAILING**

On March 8, 2010, I mailed the foregoing NOTICE OF PREHEARING CONFERENCE in OAH Case Nos. 1001544 and 1001545.

By: First Class Mail

Alec Laidlaw  
Attorney at Law  
21590 Willamette Dr  
West Linn OR 97068

Bryan Smith  
Dept. of Environmental Quality  
811 SW 6th St  
Portland OR 97204

Lucy Garcia  
Administrative Specialist  
Hearing Coordinator



January 5, 2010

DEQ Office of Compliance and Enforcement – Appeals  
811 SW 6<sup>th</sup> Avenue  
Portland, OR 97204

**Re: Request for Hearing**

Case No: WQ/OI-WR-09-203  
Our Client: AAA American Eagle Services, LLC

Dear Sir/Madam:

This firm represents AAA American Eagle Services, LLC, Respondent in the above referenced case. Enclosed herein please find my client's Answer and Request for Hearing in this matter. Please complete the enclosed postcard confirming receipt of the Answer and Request for Hearing and return it to my office.

If you have any questions please feel free to contact me at 503.305.6894.

Sincerely,

**LAIDLAW & LAIDLAW, PC**

By: 

ALEC J. LAIDLAW

Cc Client (w/o enclosures)

OF THE STATE OF OREGON

IN THE MATTER OF:

Case No. WQ/OI-WR-09-203

TANK SERVICE, an assumed business name )

## ANSWER AND REQUEST FOR HEARING

Respondent

Disposal Service License ("Notice"), as follows:

1.

Respondent generally denies each allegation set forth in the Notice.

2.


Respondent hereby requests a hearing, as set forth in Section VII of the Notice.

///

Dated: January 5, 2010

LAIDLAW & LAIDLAW, PC

By:



Alec J. Laidlaw, OSB #055154  
Of Attorneys for Respondent  
alec@laidlawandlaidlaw.com

**CERTIFICATE OF SERVICE**

I hereby certify that on January 5, 2010, I served the foregoing ANSWER AND  
REQUEST FOR HEARING on the following parties:

DEQ Office of Compliance and Enforcement – Appeals  
811 SW 6<sup>th</sup> Avenue  
Portland, OR 97204

By the following methods:

by **mailing** true copies thereof, via first class mail, postage prepaid, to them at the address(es) set  
forth above, on the date set forth above.

**LAIDLAW & LAIDLAW, PC**

By: 

Alec J. Laidlaw, OSB # 055154  
Attorney for Respondent  
alec@laidlawandlaidlaw.com

**CERTIFICATE OF SERVICE**

LAIDLAW & LAIDLAW, P.C.  
21590 Willamette Drive  
West Linn, OR 97068  
Telephone: 503.305.6894  
Facsimile: 888.287.4840

Item E 000134



Laidlaw & Laidlaw<sup>PC</sup>

TEL 503.305.6894

FAX 888.287.4840

www.laidlawandlaidlaw.com

January 5, 2010

DEQ Office of Compliance and Enforcement – Appeals  
811 SW 6<sup>th</sup> Avenue  
Portland, OR 97204

**Re: Request for Hearing**

Case No: WQ/OI-WR-09-144

Our Client: AAA American Eagle Services, LLC

Dear Sir/Madam:

This firm represents AAA American Eagle Services, LLC, Respondent in the above referenced case. Enclosed herein please find my client's Answer and Request for Hearing in this matter. Please complete the enclosed postcard confirming receipt of the Answer and Request for Hearing and return it to my office.

If you have any questions please feel free to contact me at 503.305.6894.

Sincerely,

**LIDLAW & LIDLAW, PC**

By: 

ALEC J. LIDLAW

Cc Client (w/o enclosures)

OF THE STATE OF OREGON

IN THE MATTER OF:

Case No. WQ/OI-WR-09-144

TANK SERVICE, an assumed business name )

## ANSWER AND REQUEST FOR HEARING

Respondent

Order to Comply (“Notice”), as follows:

1.

Respondent generally denies each allegation set forth in the Notice.

2.

Respondent hereby requests a hearing, as set forth in Section V of the Notice.

///

Dated: January 5, 2010

LAIDLAW & LAIDLAW, PC

By: 

Alec J. Laidlaw, OSB #055154  
Of Attorneys for Respondent  
alec@laidlawandlaidlaw.com

CERTIFICATE OF SERVICE

I hereby certify that on January 5, 2010, I served the foregoing ANSWER AND  
REQUEST FOR HEARING on the following parties:

DEQ Office of Compliance and Enforcement – Appeals  
811 SW 6<sup>th</sup> Avenue  
Portland, OR 97204

By the following methods:

by **mailing** true copies thereof, via first class mail, postage prepaid, to them at the address(es) set  
forth above, on the date set forth above.

LAIDLAW & LAIDLAW, PC

By: 

Alec J. Laidlaw, OSB # 055154  
Attorney for Respondent  
alec@laidlawandlaidlaw.com

CERTIFICATE OF SERVICE



# Oregon

Theodore R. Kulongoski, Governor

## Department of Environmental Quality

Headquarters  
811 SW Sixth Avenue  
Portland, OR 97204-1390  
(503) 229-5696  
FAX (503) 229-6124  
TTY 1-800-735-2900

December 16, 2009

CERTIFIED MAIL 7008 1300 0000 5752 4387

AAA American Eagle Services, LLC,  
dba Hank's Septic Service and  
Lebanon/Sweet Home Septic Tank Service  
c/o: Alec Laidlaw, Registered Agent  
21590 Willamette Drive  
West Linn, OR 97068

Re: Notice of Civil Penalty Assessment and Order to Comply  
No. WQ/OI-WR-09-144

This letter is to inform you that DEQ has issued you a civil penalty of \$9,375 for violations that include causing or allowing the construction, alteration, or repair of an onsite system or any part thereof without first obtaining the required permit and performing onsite sewage disposal services without the required license. You have previously been licensed to perform onsite sewage disposal services in Oregon and you are aware of the permit requirement as you have applied for a permit in other instances.

Included in Section IV is an Order requiring you to submit to the Department your Origin-Destination records for March 1 through October 1, 2009. These records must be submitted within thirty (30) days of receipt of this Notice and Order.

If you wish to appeal this matter, you have 20 calendar days from receipt of this letter to request a contested case hearing. This hearing request must be in writing. Send your hearing request to DEQ Office of Compliance and Enforcement – Appeals:

Via mail - 811 S.W. 6<sup>th</sup> Ave., Portland, OR 97204

Via fax - 503-229-5100

Once DEQ receives the request, we will arrange to meet with you to discuss this matter. If DEQ does not receive a written hearing request from you within 20 days, the penalty will become due.

The attached Notice further details DEQ's reasons for issuing the penalty and provides additional instructions for appealing the penalty. Please review it 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 in lieu of paying your penalty. Enclosed is more detail on how to pursue a SEP.

DEQ's rules are available on the internet at <http://www.deq.state.or.us/regulations/rules.htm>, or by calling the number below to request a paper copy.

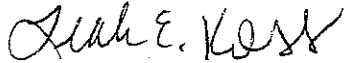
Item E 000139



Attachment II  
June 15-17, 2011, EQC meeting  
Page 2 of 17  
AAA American Eagle Services, LLC  
No. WQ/OI-WR-09-144  
Page 2

If you have any questions, please contact DEQ Environmental Law Specialist Bryan Smith, at (503) 229-5395. You may call toll-free within Oregon at 1-800-452-4011, extension 5395.

Sincerely,



Leah E. Koss, Manager  
Office of Compliance and Enforcement

Enclosures

cc: Del Cline, Western Region, Coos Bay Office, DEQ  
Paul Kennedy, Western Region, Roseburg Office, DEQ  
Larry Knudsen, Department of Justice, Portland Office  
Linn and Marion County District Attorneys

BEFORE THE ENVIRONMENTAL QUALITY COMMISSION  
OF THE STATE OF OREGON

IN THE MATTER OF:	)	NOTICE OF CIVIL PENALTY
AAA AMERICAN EAGLE SERVICES,	)	ASSESSMENT AND ORDER
LLC,	)	TO COMPLY
an Oregon limited liability company,	)	
doing business as	)	NO. WQ/OI-WR-09-144
HANK'S SEPTIC SERVICE,	)	
an assumed business name,	)	
and	)	
LEBANON/SWEET HOME SEPTIC	)	
TANK SERVICE,	)	
an assumed business name,	)	
Respondent.	)	

I. AUTHORITY

This Notice of Civil Penalty Assessment and Order to Comply is issued pursuant to Oregon Revised Statutes (ORS) 468.100 and 468.126 through 468.140, ORS Chapter 183, 454 and 468B and Oregon Administrative Rules (OAR) Chapter 340, Divisions 011, 012 and 071.

II. FACTS

1. On or about May 5 through June 11, 2009, Respondent performed repairs on a septic tank, installed two distribution boxes, and installed approximately 375 feet of drainfield and piping at property located at 11805 State Street in Salem, Oregon (the Salem Property).

2. On or about June 18 through July 17, 2009, Respondent installed two distribution boxes and approximately 375 feet of drainfield and piping at property located at 38355 Weirich Drive in Lebanon, Oregon (the Lebanon Property).

3. Respondent's employee who performed the sewage disposal services described in paragraph 2 above was not certified to install onsite sewage disposal systems.

4. Respondent did not obtain a repair or construction permit from either DEQ or its agent prior to causing or allowing the construction, alteration, or repair of the onsite systems or parts thereof described in paragraphs 1 and 2 above.

////

5. On or about July 2, 2009, the Department mailed Respondent a letter requesting that Respondent submit a copy of his origin-destination records for March 1 through May 31, 2009, for work it performed under license numbers 35378 and 33315 within 14 days of the date of the letter.

6. Respondent did not submit any origin-destination records to the Department.

7. Between at least January 1, 2009, through January 8, 2009, Respondent pumped at least 21,000 gallons of sewage and then disposed the sewage at 1624 N.W. Christmas Tree Lane in Albany, Oregon. Specifically Respondent pumped 2,572 gallons on January 2, 2009, 6,000 gallons on January 6, 2009, and 12,500 gallons on January 7, 2009.

8. On or about January 12, 2009, the Department issued Respondent onsite sewage disposal service license #33315 for the assumed business name of "Lebanon/Sweet Home Septic Tank Service."

9. On June 30, 2009, Respondent's license #33315 expired, and was not timely renewed.

10. Between at least July 6 and July 13, 2009, Respondent disposed of at least 8 deliveries of sewage at the City of Salem's septic waste station on five different dates. Specifically Respondent disposed of 3,108 gallons on July 6, 2009, 3,208 gallons on July 7, 2009, 2,177 gallons on July 8, 2009, 3,056 gallons on July 9, 2009, 3,068 gallons on July 10, 2009, and 2,366, 2,244 and 2,674 gallons on July 13, 2009.

11. Respondent was not licensed to perform onsite sewage disposal services at the time it performed the onsite sewage disposal services described in paragraphs 7 and 10 above.

### III. CONCLUSIONS

1. By causing or allowing the construction, alteration, or repair of an onsite system or any part thereof without first obtaining the required permit at the Salem Property, as described in Section II, paragraphs 1 and 4 above, Respondent violated ORS 454.655(1) and OAR 340-071-0130(15)(a). This is a Class I violation according to OAR 340-012-0060(1)(b). DEQ hereby assesses a \$2,500 civil penalty for this violation.

2. By causing or allowing the construction, alteration, or repair of an onsite system or any part thereof without first obtaining the required permit at the Lebanon Property, as described in Section II, paragraphs 2 and 4 above, Respondent violated ORS 454.655(1) and OAR 340-071-0130(15)(a). This is a Class I violation according to OAR 340-012-0060(1)(b). DEQ hereby assesses a \$2,500 civil penalty for this violation.

3. By failing to make complete origin-destination records for sewage disposal services rendered available for review upon the request of the Department, as described in Section II, paragraphs 5 and 6 above, Respondent violated OAR 340-071-0600(13)(d). This is a Class II violation according to OAR 340-012-0053(2). DEQ hereby assesses a \$1,375 civil penalty for this violation.

4. By performing onsite sewage disposal services without first obtaining the required license from the Department, as described in Section II, paragraphs 7 and 10 above, Respondent violated ORS 454.695(1) and OAR 340-071-0600(1). This is a Class I violation according to OAR 340-012-0060(1)(a). DEQ hereby assesses a \$2,125 civil penalty for this violation.

5. By allowing an uncertified installer to supervise or be responsible for the construction or installation of an onsite system or part thereof, and as described in Section II, paragraphs 2 and 3 above, Respondent violated OAR 340-071-0650(1)(a). This is a Class II violation according to OAR 340-012-0060(2)(g). DEQ hereby assesses a \$875 civil penalty for this violation.

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

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

1. Pay a total civil penalty of \$9,375. The determination of the civil penalty is attached as Exhibit Nos. 1 through 5 and is incorporated as part of this Notice.

If you do not file a request for hearing as set forth in Section V below, your check or money order must be made payable to "State Treasurer, State of Oregon" and sent to the DEQ,

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1 **Business Office, 811 S.W. Sixth Avenue, Portland, Oregon 97204.** Once you pay the penalty,  
2 the Findings of Fact, Conclusions and Order become final.

3 2. Comply with Oregon law by:

4 a. Within thirty (30) days of receipt of this Notice and Order, submitting to  
5 the Department origin-destination records for March 1 through October 1,  
6 2009.

7 b. The records must be sent to Lisa Fincher, DEQ, 165 East 7<sup>th</sup> Ave., Suite  
8 100, Eugene, OR 97401.

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.  
11 DEQ must receive the request for hearing **within 20 calendar days** from the date you receive  
12 this Notice. The request should include any affirmative defenses and either admit or deny each  
13 allegation of fact in this Notice. (See OAR 340-011-0530.) You must mail the request for  
14 hearing to: **DEQ, Office of Compliance and Enforcement - Appeals, 811 SW Sixth Avenue,**  
15 **Portland, Oregon 97204,** or fax to **(503) 229-5100.** An administrative law judge employed by  
16 the Office of Administrative Hearings will conduct the hearing, according to ORS Chapter 183,  
17 OAR Chapter 340, Division 011 and OAR 137-003-0501 to 0700. You have a right to be  
18 represented by an attorney at the hearing, or you may represent yourself unless you are a  
19 corporation, agency or association.

20 If you fail to file a request for hearing in writing within 20 calendar days of receipt of the  
21 Notice, the Notice will become a final order by default without further action by DEQ, as per  
22 OAR 340-011-0535(5). If you do request a hearing but later withdraw your request, fail to attend  
23 the hearing, or notify DEQ that you will not be attending the hearing, DEQ will issue a final

24 /////

25 /////

26 /////

27 /////

1 order by default pursuant to OAR 137-003-0670. DEQ designates the relevant portions of its  
2 files, including information submitted by you, as the record for purposes of proving a prima facie  
3 case.

4  
5  
6 Date

12/16/2009

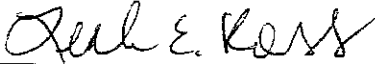
  
Leah E. Koss, Manager  
Office of Compliance and Enforcement

EXHIBIT NO. 1

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

**VIOLATION 1:** Causing or allowing the construction, alteration, or repair of an onsite system or any part thereof without first obtaining the required permit, in violation of Oregon Revised Statute (ORS) 454.655(1) and OAR 340-071-0130(15)(a).

**CLASSIFICATION:** This is a Class I violation pursuant to OAR 340-012-0060(1)(b).

**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 for this violation, and the information reasonably available to the Department 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 that is \$1,250 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)(E)(iv) because Respondent is licensed to perform onsite sewage disposal services or has performed them.

"P" is whether Respondent has any prior significant actions, as defined in OAR 340-012-0030(17), 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 the Respondent has no prior significant actions.

"H" is Respondent's history of correcting prior significant action(s) and receives a value of 0 according to OAR 340-012-0145(3)(a)(C), because there is no prior history.

"O" is whether or not the violation was repeated or ongoing and receives a value of 2 according to OAR 340-012-0145(4)(a)(B), because the violation occurred on more than one day up to and including six days, which need not be consecutive days. The violation occurred on two or more days between May 5 and June 11, 2009.

"M" is the mental state of the Respondent and receives a value of 6 pursuant to OAR 340-012-0145(5)(a)(C), because Respondent's conduct was reckless. Respondent is licensed to perform onsite sewage disposal services and is aware of the permit requirement as it has obtained permits in the past prior to installing or repairing onsite sewage disposal systems.

Respondent consciously disregarded a substantial and unjustifiable risk of committing this violation when it chose not to obtain a permit prior to causing or allowing the construction, alteration, or repair of an onsite system or any part thereof.

"C" is Respondent's efforts to correct the violation and receives a value of 2 pursuant to OAR 340-012-0145(6)(a)(E), because Respondent did not address the violation as described in paragraphs (6)(a)(A) through (6)(a)(C) and the facts do not support a finding under paragraph (6)(a)(D). Respondent did not obtain a permit even after the Department informed him in writing that it must do so.

"EB" is the approximate economic benefit that an entity gained by not complying with the law. 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 the Department has insufficient evidence on which to base a finding that Respondent received an economic benefit from the violation.

PENALTY CALCULATION:

$$\begin{aligned}\text{Penalty} &= \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB} \\ &= \$1,250 + [(0.1 \times \$1,250) \times (0 + 0 + 2 + 6 + 2)] + \$0 \\ &= \$1,250 + (\$125 \times 10) + \$0 \\ &= \$1,250 + \$1,250 + \$0 \\ &= \$2,500\end{aligned}$$

EXHIBIT NO. 2

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

VIOLATION 2: Causing or allowing the construction, alteration, or repair of an onsite system or any part thereof without first obtaining the required permit, in violation of Oregon Revised Statute (ORS) 454.655(1) and OAR 340-071-0130(15)(a).

CLASSIFICATION: This is a Class I violation pursuant to OAR 340-012-0060(1)(b).

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 for this violation, and the information reasonably available to the Department 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 that is \$1,250 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)(E)(iv) because Respondent is licensed to perform onsite sewage disposal services or has performed them.

"P" is whether Respondent has any prior significant actions, as defined in OAR 340-012-0030(17), 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 the Respondent has no prior significant actions.

"H" is Respondent's history of correcting prior significant action(s) and receives a value of 0 according to OAR 340-012-0145(3)(a)(C), because there is no prior history.

"O" is whether or not the violation was repeated or ongoing and receives a value of 2 according to OAR 340-012-0145(4)(a)(B), because the violation occurred on more than one day up to and including six days, which need not be consecutive days. The violation occurred on two or more days between June 18 and July 17, 2009.

"M" is the mental state of the Respondent and receives a value of 6 pursuant to OAR 340-012-0145(5)(a)(C), because Respondent's conduct was reckless. Respondent is licensed to perform onsite sewage disposal services and is aware of the permit requirement as it has

obtained permits in the past prior to installing or repairing onsite sewage disposal systems. Respondent consciously disregarded a substantial and unjustifiable risk of committing this violation when it chose not to obtain a permit prior to causing or allowing the construction, alteration, or repair of an onsite system or any part thereof.

"C" is Respondent's efforts to correct the violation and receives a value of 2 pursuant to OAR 340-012-0145(6)(a)(E), because Respondent did not address the violation as described in paragraphs (6)(a)(A) through (6)(a)(C) and the facts do not support a finding under paragraph (6)(a)(D). Respondent did not obtain a permit even after the Department informed him in writing that it must do so.

"EB" is the approximate economic benefit that an entity gained by not complying with the law. 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 the Department has insufficient evidence on which to base a finding that Respondent received an economic benefit from the violation.

PENALTY CALCULATION:

$$\begin{aligned}\text{Penalty} &= \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB} \\ &= \$1,250 + [(0.1 \times \$1,250) \times (0 + 0 + 2 + 6 + 2)] + \$0 \\ &= \$1,250 + (\$125 \times 10) + \$0 \\ &= \$1,250 + \$1,250 + \$0 \\ &= \$2,500\end{aligned}$$

EXHIBIT NO. 3

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

VIOLATION 3: Failing to make complete origin-destination records for sewage disposal services rendered available for review upon the request of the Department, in violation of Oregon Administrative Rule (OAR) OAR 340-071-0600(13)(d).

CLASSIFICATION: This is a Class II violation pursuant to OAR 340-012-0053(2).

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 for this violation, and the information reasonably available to the Department 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 that is \$625 for a Class II, moderate magnitude violation in the matrix listed in OAR 340-012-0140(4)(b)(B)(ii) and applicable pursuant to OAR 340-012-0140(4)(a)(E)(iv) because Respondent is licensed to perform onsite sewage disposal services or has performed them.

"P" is whether Respondent has any prior significant actions, as defined in OAR 340-012-0030(17), 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 the Respondent has no prior significant actions.

"H" is Respondent's history of correcting prior significant action(s) and receives a value of 0 according to OAR 340-012-0145(3)(a)(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)(a)(D), because the violation existed for or occurred on more than 28 days. The origin-destination records were required to be submitted by July 16, 2009, but Respondent has not submitted the records as of this date and thus the violation is ongoing.

"M" is the mental state of the Respondent and receives a value of 6 pursuant to OAR 340-012-0145(5)(a)(C), because Respondent's conduct was reckless. Respondent is licensed to perform onsite sewage disposal services and is aware of the requirement that it must

maintain origin-destination records and submit to them to the Department upon the Department's request. Respondent consciously disregarded a substantial and unjustifiable risk of committing this violation by choosing not to submit the records in response to the Department's July 2, 2009, letter that requested those records.

"C" is Respondent's efforts to correct the violation and receives a value of 2 pursuant to OAR 340-012-0145(6)(a)(E), because Respondent did not address the violation as described in paragraphs (6)(a)(A) through (6)(a)(C) and the facts do not support a finding under paragraph (6)(a)(D). Respondent did not submit the required records even after the Department informed it in writing that he must do so.

"EB" is the approximate economic benefit that an entity gained by not complying with the law. 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 the Department has insufficient evidence on which to base a finding that Respondent received an economic benefit from the violation.

PENALTY CALCULATION:

$$\begin{aligned}\text{Penalty} &= \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB} \\ &= \$625 + [(0.1 \times \$625) \times (0 + 0 + 4 + 6 + 2)] + \$0 \\ &= \$625 + (\$62.50 \times 12) + \$0 \\ &= \$625 + \$750 + \$0 \\ &= \$1,375\end{aligned}$$

EXHIBIT NO. 4

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

VIOLATION 4: Performing onsite sewage disposal services without first obtaining the required license, in violation of Oregon Revised Statute (ORS) 454.695(1) and OAR 340-071-0600(1).

CLASSIFICATION: This is a Class I violation pursuant to OAR 340-012-0060(1)(a).

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 for this violation, and the information reasonably available to the Department 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 that is \$1,250 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)(E)(iv) because Respondent is licensed to perform onsite sewage disposal services or has performed them.

"P" is whether Respondent has any prior significant actions, as defined in OAR 340-012-0030(17), 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 the Respondent has no prior significant actions.

"H" is Respondent's history of correcting prior significant action(s) and receives a value of 0 according to OAR 340-012-0145(3)(a)(C), because there is no prior history.

"O" is whether or not the violation was repeated or ongoing and receives a value of 2 according to OAR 340-012-0145(4)(a)(B), because the violation occurred on more than one day up to and including six days, which need not be consecutive days. The violation occurred on at least 5 different dates between July 6 and July 15, 2009.

"M" is the mental state of the Respondent and receives a value of 6 pursuant to OAR 340-012-0145(5)(a)(C), because Respondent's conduct was reckless. Respondent is licensed to perform onsite sewage disposal services and is aware of license requirement as Respondent had recently applied for and obtained this license, then failed to renew the license and allowed it to expire, yet continued to perform sewage disposal services. When Respondent

performed onsite sewage disposal services after its license expired on June 30, 2009, Respondent consciously disregarded a substantial and unjustifiable risk of committing this violation.

"C" is Respondent's efforts to correct the violation and receives a value of -1 pursuant to OAR 340-012-0145(6)(a)(C), because Respondent eventually made efforts to correct the violation. Respondent obtained the required license on July 15, 2009.

"EB" is the approximate economic benefit that an entity gained by not complying with the law. 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 the delayed cost of obtaining the required license is de minimis.

PENALTY CALCULATION:

$$\begin{aligned}\text{Penalty} &= \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB} \\ &= \$1,250 + [(0.1 \times \$1,250) \times (0 + 0 + 2 + 6 - 1)] + \$0 \\ &= \$1,250 + (\$125 \times 7) + \$0 \\ &= \$1,250 + \$875 + \$0 \\ &= \$2,125\end{aligned}$$

EXHIBIT NO. 5

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

VIOLATION 5: Allowing an uncertified installer to supervise or be responsible for the construction or installation of an onsite system or part thereof, in violation of Oregon Administrative Rule (OAR) OAR 340-071-0650(1)(a).

CLASSIFICATION: This is a Class II violation pursuant to OAR 340-012-0060(2)(g).

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 for this violation, and the information reasonably available to the Department 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 that is \$625 for a Class II, moderate magnitude violation in the matrix listed in OAR 340-012-0140(4)(b)(B)(ii) and applicable pursuant to OAR 340-012-0140(4)(a)(E)(iv) because Respondent is licensed to perform onsite sewage disposal services or has performed them.

"P" is whether Respondent has any prior significant actions, as defined in OAR 340-012-0030(17), 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 the Respondent has no prior significant actions.

"H" is Respondent's history of correcting prior significant action(s) and receives a value of 0 according to OAR 340-012-0145(3)(a)(C), because there is no prior history.

"O" is whether or not the violation was repeated or ongoing and receives a value of 2 according to OAR 340-012-0145(4)(a)(B), because the violation occurred on more than one day up to and including six days, which need not be consecutive days. The violation occurred on two or more days between June 18 and July 17, 2009.

"M" is the mental state of the Respondent and receives a value of 2 pursuant to OAR 340-012-0145(5)(a)(B), because Respondent's conduct was negligent. Respondent is licensed to perform onsite sewage disposal services and knew or should have known of the requirement that it must not allow an uncertified installer to supervise or be responsible for the

construction or installation of an onsite system or part thereof. Respondent failed to take reasonable care to avoid the foreseeable risk of committing this violation.

"C" is Respondent's efforts to correct the violation and receives a value of 0 pursuant to OAR 340-012-0145(6)(a)(B), because the violation or the effects of the violation could not be corrected

"EB" is the approximate economic benefit that an entity gained by not complying with the law. 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 the Department has insufficient evidence on which to base a finding that Respondent received an economic benefit from the violation.

PENALTY CALCULATION:

$$\begin{aligned}\text{Penalty} &= \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB} \\ &= \$625 + [(0.1 \times \$625) \times (0 + 0 + 2 + 2 + 0)] + \$0 \\ &= \$625 + (\$62.50 \times 4) + \$0 \\ &= \$625 + \$250 + \$0 \\ &= \$875\end{aligned}$$



# Oregon

Theodore R. Kulongoski, Governor

## Department of Environmental Quality

Headquarters

811 SW Sixth Avenue

Portland, OR 97204-1390

(503) 229-5696

FAX (503) 229-6124

TTY 1-800-735-2900

December 11, 2009

CERTIFIED MAIL 7008 1300 0000 5752 4356

AAA American Eagle Services, LLC,  
dba Hank's Septic Service and dba  
Lebanon/Sweet Home Septic Tank Service  
c/o: Sean Downey, Registered Agent  
6446 Fairway Avenue S.E., Ste. 120  
Salem, OR 97301

Re: Notice of Revocation of Onsite Sewage Disposal Service Provider's License  
No. WQ/OI-WR-09-203

The enclosed Notice of Revocation of Onsite Sewage Disposal Service Provider's License (Notice of Revocation) is being issued to AAA American Eagle Services, LLC, by the Department of Environmental Quality (Department). Pursuant to Oregon Revised Statute (ORS) 454.715, the Department may revoke an onsite sewage disposal service provider's license if the licensee fails to comply with applicable provisions of this chapter or violates any rule of the Environmental Quality Commission regarding onsite sewage disposal services.

In a separate action, the Department is assessing AAA American Eagle Services Notice of Civil Penalty Assessment and Order to Comply Case No. WQ/OI-WR-09-144 that includes a civil penalty of \$9,375. The alleged violations are the basis for this Notice of Revocation, and include causing or allowing the construction, alteration, or repair of an onsite system without first obtaining the required permit, performing onsite sewage disposal services without the required license, failing to make complete origin-destination records for sewage disposal services rendered available for review upon the request of the Department, and allowing an uncertified installer to supervise or be responsible for the construction or installation of an onsite system.

Performing sewage disposal services without first obtaining and maintaining a current license from the Department is a violation of Oregon's environmental laws. Oregon law requires persons performing sewage disposal services to be licensed and bonded in order to ensure the protection of the public's health and the environment. Pumper trucks must be inspected annually to ensure they are functioning properly. Unlicensed operations do not provide such assurances. In addition, unlicensed providers may gain an economic advantage over competitors by avoiding the licensing and bonding fees.

Additionally, Oregon law requires that a permit be issued before installation of an onsite sewage disposal system. The permit helps ensure that systems are sited properly and will meet engineering and construction standards. An improperly constructed onsite sewage disposal system may not function and may create a public health hazard through inadequate treatment and distribution of sewage effluent.



The Department is concerned that AAA American Eagle Services has violated this many provisions of the applicable onsite sewage disposal service provider rules and statutes in such a short period of time and therefore is issuing the attached Notice of Revocation.

If you wish to appeal this matter, you have 60 calendar days from receipt of this letter to request a contested case hearing. This hearing request must be in writing. Send your hearing request to

DEQ Office of Compliance and Enforcement – Appeals:

Via mail - 811 S.W. 6<sup>th</sup> Ave., Portland, OR 97204

Via fax - 503-229-5100

Once DEQ receives the request, we will arrange to meet with you to discuss this matter. If DEQ does not receive a written hearing request from you within 60 days, the revocation will become effective.

The attached Notice further details DEQ's reasons for issuing the Notice of Revocation and provides additional instructions for appealing the Notice. Please review it and refer to it when discussing this case with DEQ.

DEQ's rules are available on the internet at <http://www.deq.state.or.us/regulations/rules.htm>, or by calling the number below to request a paper copy.

If you have any questions, please contact DEQ Environmental Law Specialist Bryan Smith, at (503) 229-5395. You may call toll-free within Oregon at 1-800-452-4011, extension 5395.

Sincerely,



Leah E. Koss, Manager  
Office of Compliance and Enforcement

Enclosures

cc: Del Cline, Western Region, Coos Bay Office, DEQ  
Paul Kennedy, Western Region, Roseburg Office, DEQ  
Larry Knudsen, Department of Justice, Portland Office  
Linn and Marion County District Attorneys

BEFORE THE ENVIRONMENTAL QUALITY COMMISSION  
OF THE STATE OF OREGON

IN THE MATTER OF:	)	NOTICE OF REVOCATION OF
AAA AMERICAN EAGLE SERVICES,	)	ONSITE SEWAGE DISPOSAL SERVICE
LLC,	)	LICENSE
an Oregon limited liability company,	)	
doing business as	)	NO. WQ/OI-WR-09-203
HANK'S SEPTIC SERVICE,	)	
an assumed business name,	)	
and	)	
LEBANON/SWEET HOME SEPTIC	)	
TANK SERVICE,	)	
an assumed business name,	)	
Respondent.	)	

I. AUTHORITY

This Notice of Revocation of Onsite Sewage Disposal Service Provider's License is issued pursuant to Oregon Revised Statutes (ORS) 468.100 and 468.126 through 468.140, ORS Chapter 183, 454 and 468B and Oregon Administrative Rules (OAR) Chapter 340, Divisions 011, 012 and 071.

II. STATUTORY FINDINGS OF THE OREGON LEGISLATIVE ASSEMBLY

1. The Legislative Assembly finds that: (a) Improper collection, storage, transportation, treatment, recycling and disposal of septage is a threat to the quality of the waters of this state, to the health, safety and welfare of Oregonians and to the fish and wildlife resources of this state. ORS 454.787.

2. A person may not collect, store, transport, treat, recycle or dispose of septage: (1) Without first obtaining a license or permit from the Department of Environmental Quality issued under the program established under ORS 454.792; and (2) Unless the person is operating in compliance with the terms of the license or permit. ORS 454.790.

III. REVOCATION STANDARDS

1. Subject to ORS Chapter 183, the Department of Environmental Quality at any time may suspend or revoke any license issued pursuant to ORS 454.695 if it finds: (1) A material misrepresentation or false statement in the application for the license; (2) Failure to

1 comply with the applicable provisions of this chapter; or (3) Violation of any rule of the  
2 Environmental Quality Commission regarding sewage disposal services. ORS 454.715.

3 2. Pursuant to 340-071-0600(10), the Department of Environmental Quality may  
4 refuse to grant, renew, or reinstate or may suspend or revoke any sewage disposal service license  
5 in accordance with procedures in ORS 183.310 to 183.540 if it finds:

6 (A) A material misrepresentation or false statement in connection with a  
7 license application;

8 (B) Failure to comply with any provisions of ORS 454.605 through 454.785,  
9 the rules of the commission, or an order of the commission or department;

10 (C) Failure to maintain in effect at all times the required bond or other  
11 approved equivalent security in the full amount specified in these rules; or

12 (D) Nonpayment by drawee of any instrument tendered by the applicant as  
13 payment of a license fee.

#### 14 IV. FINDINGS OF FACT

15 1. On or about May 5 through June 11, 2009, Respondent performed repairs on a  
16 septic tank, installed two distribution boxes, and installed approximately 375 feet of drainfield  
17 and piping at property located at 11805 State Street in Salem, Oregon (the Salem Property).

18 2. On or about June 18 through July 17, 2009, Respondent installed two distribution  
19 boxes on an onsite sewage disposal system and also installed approximately 375 feet of  
20 drainfield and infiltrator chambers piping at property located at 38355 Weirich Drive in Lebanon,  
21 Oregon (the Lebanon Property).

22 3. The employee of Respondent's who performed the sewage disposal services  
23 described in paragraph 2 above was not certified to install onsite sewage disposal systems.

24 4. Respondent did not obtain a repair or construction permit from either DEQ or its  
25 agent prior to causing or allowing the construction, alteration, or repair of the onsite systems or  
26 parts thereof described in paragraphs 1 and 2 above.

27 /////

5. On or about July 2, 2009, the Department mailed Respondent a letter requesting that Respondent submit a copy of his origin-destination records for March 1 through May 31, 2009, for work it performed under license numbers 35378 and 33315 within 14 days of the date of the letter.

6. Respondent did not submit any origin-destination records to the Department.

7. Between at least January 1, 2009, through January 8, 2009, Respondent pumped at least 21,000 gallons of sewage and then disposed the sewage at 1624 N.W. Christmas Tree Lane in Albany, Oregon. Specifically Respondent pumped 2,572 gallons on January 2, 2009, 6,000 gallons on January 6, 2009, and 12,500 gallons on January 7, 2009.

8. On or about January 12, 2009, the Department issued Respondent onsite sewage disposal service license #33315 for the assumed business name of “Lebanon/Sweet Home Septic Tank Service.”

9. On June 30, 2009, Respondent's license #33315 expired, and was not timely renewed.

10. Between at least July 6 and July 13, 2009, Respondent disposed of at least 8 deliveries of sewage at the City of Salem's septic waste station on five different dates. Specifically Respondent disposed of 3,108 gallons on July 6, 2009, 3,208 gallons on July 7, 2009, 2,177 gallons on July 8, 2009, 3,056 gallons on July 9, 2009, 3,068 gallons on July 10, 2009, and 2,366, 2,244 and 2,674 gallons on July 13, 2009.

11. Respondent was not licensed to perform onsite sewage disposal services at the time it performed the onsite sewage disposal services described in paragraphs 2, 7 and 10 above.

## V. CONCLUSIONS

1. By causing or allowing the construction, alteration, or repair of an onsite system or any part thereof without first obtaining the required permit at the Saleim Property, as described in Section II, paragraphs 1 and 4 above, Respondent violated ORS 454.655(1) and OAR 340-071-130(15)(a).

////

2. By causing or allowing the construction, alteration, or repair of an onsite system or any part thereof without first obtaining the required permit at the Lebanon Property, as described in Section II, paragraphs 2 and 4 above, Respondent violated ORS 454.655(1) and OAR 340-071-0130(15)(a).

3. By failing to make complete origin-destination records for sewage disposal services rendered available for review upon the request of the Department, as described in Section II, paragraphs 5 and 6 above, Respondent violated OAR 340-071-0600(13)(d).

4. By performing onsite sewage disposal services without first obtaining the required license from the Department, as described in Section II, paragraphs 2, 7 and 10 above, Respondent violated ORS 454.695(1) and OAR 340-071-0600(1).

5. By allowing an uncertified installer to supervise or be responsible for the construction or installation of an onsite system or part thereof, and as described in Section II, paragraphs 2 and 3 above, Respondent violated OAR 340-071-0650(1)(a).

#### VI. NOTICE OF REVOCATION OF LICENSE

Based on the Revocation Standards in Section III, the Facts in Section IV, Paragraphs 1 through 11, and the Conclusions in Section V, Paragraphs 1 through 5, the Department proposes to revoke Respondent's onsite sewage disposal service provider's license number 35378 because Respondent repeatedly failed to comply with provisions of ORS 454.605 through 454.785, the rules of the Commission, or an order of the Commission or Department, as shown in Section V, Paragraphs 1 through 5.

#### VII. NOTICE OF RIGHT TO REQUEST A CONTESTED CASE HEARING

You have a right to a contested case hearing on this Notice, if you request one in writing. DEQ must receive the request for hearing **within 60 calendar days** from the date you receive this Notice. The request should include any affirmative defenses and either admit or deny each allegation of fact in this Notice. (See OAR 340-011-0530.) You must mail the request for hearing to: **DEQ, Office of Compliance and Enforcement - Appeals, 811 SW Sixth Avenue,**

////

1 **Portland, Oregon 97204**, or fax to **(503) 229-5100**. An administrative law judge employed by  
2 the Office of Administrative Hearings will conduct the hearing, according to ORS Chapter 183,  
3 OAR Chapter 340, Division 011 and OAR 137-003-0501 to 0700. You have a right to be  
4 represented by an attorney at the hearing, or you may represent yourself unless you are a  
5 corporation, agency or association.

6 If you fail to file a request for hearing in writing within 60 calendar days of receipt of the  
7 Notice, the Notice will become a final order by default without further action by DEQ, as per  
8 OAR 340-011-0535(5). If you do request a hearing but later withdraw your request, fail to attend  
9 the hearing, or notify DEQ that you will not be attending the hearing, DEQ will issue a final  
10 order by default pursuant to OAR 137-003-0670. DEQ designates the relevant portions of its  
11 files, including information submitted by you, as the record for purposes of proving a prima facie  
12 case.

13  
14  
15 12/11/2009  
Date

Leah E. Koss  
Leah E. Koss, Manager  
Office of Compliance and Enforcement



(A1)

## Linn County Department of Health Services

P.O. Box 100, Albany, OR 97321

Toll Free 1-800-304-7468

[www.co.linn.or.us/health/](http://www.co.linn.or.us/health/)

*"Working together to promote the health and well-being of all Linn County residents."*

Environmental Health Program

Linn County Courthouse, Room 115

(541) 967-3821

July 30, 2009

Michael Cross  
Hank's Septic Service/AAA American Eagle LLC  
1118 Lancaster, NE. # 338  
Salem, OR 97301

Re: Application for repair permit for June McCready  
38355 Weirich Drive, Lebanon  
Map Lot: 12S01W19C 01900

Dear Mr. Cross:

I have received an application for a minor repair permit to cover work that your business performed on June 18, 2009 at Mrs. McCready's property referenced above. A minor repair is defined in DEQ rule as "the replacement of a septic tank, broken pipe, distribution unit, or any part of the onsite system external to the septic tank, sand filter, recirculating gravel filter, or ATT except the soil absorption system". The permit application states that you replaced the distribution box only. However, I have been provided evidence that seems to show that disposal trenches (soil absorption trenches) were installed. I must make a determination regarding what was installed and the degree of compliance with the rules governing onsite sewage systems. Therefore I am asking that you expose the new distribution box for inspection. Please remove sufficient soil so that we can open the box without soil falling into it, and so that the header pipes from the box are exposed for inspection to the point of their connection with the perforated pipe or equivalent absorption portion of the system.

Please let us know when the system is ready so we can schedule an inspection. Call me at (541) 967-3821 if you have any questions.

Sincerely,

Jan Heron  
Linn County Environmental Health Program

CC June McCready

Hank's Septic & Lebanon- Sweet Home Septic  
 1118 Lancaster Drive N.E. Suite #338  
 Salem, Oregon 97301  
 Now Serving the Entire Willamette Valley!  
 We Install, Repair & Replace Systems!!

# Statement

A2

Date
6/19/2009

To:
Jana McCreedy 38355 Weirich Dr Lebanon, OR 97355

6/25/09 4:19 pm  
 2 letters from  
 Linn Co.!!

		Amount Due	Amount Enc.		
		\$3,162.00			
Date	Transaction	Amount	Balance		
04/26/2009	Balance forward		0.00		
06/11/2009	INV #3269. Due 06/11/2009. --- Labor \$980.00 --- Excavator work \$438.00 --- Parts \$119.00 --- Jetting \$125.00 --- Located D-Box, check flow to leach line, check flow to tank.	1,662.00	1,662.00		
06/15/2009	INV #3270. Due 06/15/2009. --- Drainfield Work, 250 @ \$14.00 = 3,500.00	3,500.00	5,162.00		
06/17/2009	PMT #189.	-2,000.00	3,162.00		
PD Thank you! W.F. 1500.00 ck W.M. 1,162.00 ck					
Department of Environmental Quality <b>RECEIVED</b> OCT 19 2009 COOS BAY OFFICE			6/22/09 Re: "garage roof" Call Mike on Monday		
CURRENT	1-30 DAYS PAST DUE	31-60 DAYS PAST DUE	61-90 DAYS PAST DUE	OVER 90 DAYS PAST DUE	Amount Due
0.00	3,162.00	0.00	0.00	0.00	\$3,162.00

RECEIVED OCT 13 2009

*1*  
*NE*  
*Launceston Dr 1 #338*  
**Hank's Septic Service**  
P.O. Box 40-1118  
Sweet Home, OR 97386  
259-3166 • 758-8213 • 367-2535  
*Salem 97301*  
*called me 6/3/09 3:10 pm*

JOB NAME <i>Tune McCready</i>		SEND BILL TO	
JOB LOCATION <i>58335 Melrich Dr</i>		ADDRESS <i>Dyle</i>	
CITY <i>LEGARDON</i>		CITY	
PHONE <i>503-12105</i>	FAX	PHONE	FAX
DATE OF JOB <i>6-1-09</i>			
TIME OF JOB <i>2:45</i>			
SEPTIC TANK SERVICE		<input checked="" type="checkbox"/> <i>1500 gal</i>	

INSPECTION ☐

OTHER ☒ *OUTLET NOT DRAINING*  
*FD Check - Inlet slow FLOW*  
*- service tech to come*  
*#177 6/2/09 - subject to change*  
*10 Yr OFF septic*

GALLONS PUMPED	<i>1500</i>	Amount	<i>449</i>	\$	<i>377.00</i>
DISPOSAL SITE		Inspection		\$	
		Travel Fee		\$	
		Other		\$	
Total for Services Performed				\$	<i>377.00</i>

A3  
Mike Hamer, Inc.  
32948 Brewster Rd  
Lebanon, OR 97355  
Phone (541) 259-4374 Fax (541) 259-4441  
LICENSED - BONDED - INSURED

## Mike Hamer, Inc.'s Affordable Septic Systems

To: Del Clive Fax: (541) 269-7884

Attn: \_\_\_\_\_

From: Mike Hamer

Date: 24 July 09

Re: AAA American Eagle

Michael Cross

Pages: 2

Including Cover

Del.

Here is my statement. If I  
could be of further help please  
call.

Mike Hamer

Honest & Professional Quality Service

Mike Hamer, Inc.  
32948 Brewster Rd  
Lebanon, OR 97355  
Phone (541) 259-4374 Fax (541) 259-4441  
LICENSED - BONDED - INSURED

## Mike Hamer, Inc.'s Affordable Septic Systems

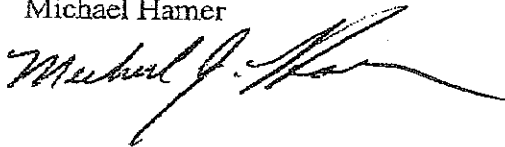
Del Cline, R.S.  
Oregon DEQ  
Coos Bay, Or.

RE: Michael Cross/AAA American Eagle LLC  
Unpermitted Septic Installation

Mr. Cline

On 15 or 16 July 2009 I spotted Michael Cross's truck with a load of infiltrator on it heading through Lebanon. I went looking and found his track hoe the next day digging drainfield at 38355 Weirich Dr. in Lebanon. I called the county to see if any installation permits had been pulled by Cross and there had been none. The next morning I sent one of my crew to the site to see if he could spot the extent of the installation. He took some pictures of the installation of the infiltrator units. I sent one of my crew because Mr. Cross knows me. Around 9:00 in the morning of the same day, I decided to go and talk to the track hoe operator at the site. I went to the site took more pictures of the work being done, then walked up to the man operating the track hoe. I ask the operator if they were hiring helpers for work and that I had experience installing. He said that he did not think they needed any help. I ask him if I could have the name of the company doing this work, so I could put it on my looking for work form, for unemployment. The operator stated, and I quote: Michael Cross Hanks Septic Service. While on site I spotted new Infiltrator units being buried and the job site be cleaned up. I also took a photo of the track hoe trailers ID tag to farther ID the people on site. Another note is that it looked to me that about 200' of drainfield was installed.

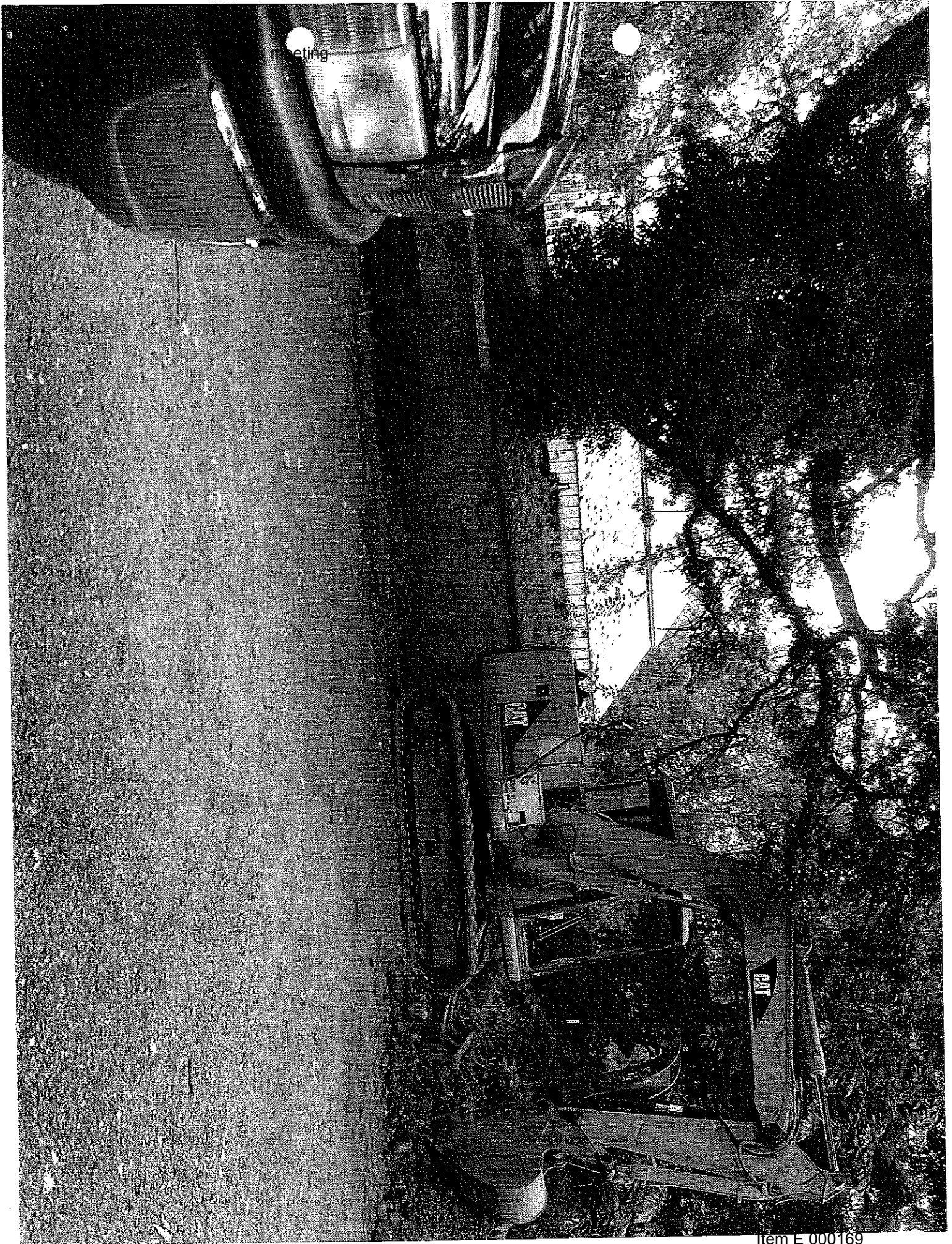
Michael Hamer



*Honest & Professional Quality Service*



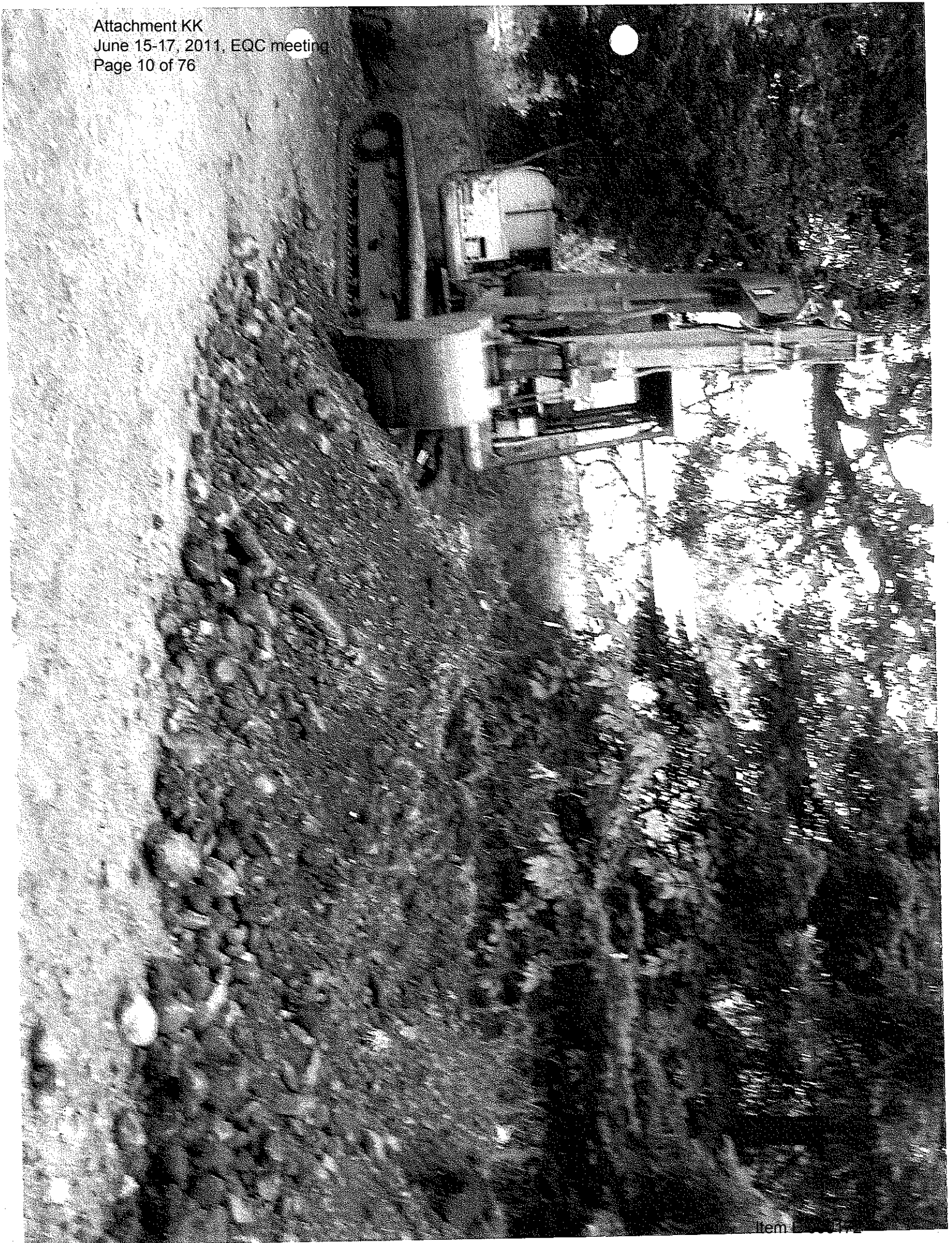
meeting



Item E 000169









A5

Complaint Summary/ June McCreedy

6/22/2009 Received documentation, including photos, with complaint. Researched permit database and found that no permit had been issued for this work. Shared info with DEQ regarding enforcement against licensed contractor.

6/23/2009 Sent NOV to property owner by both regular and certified mail.

6/26/2009 Received signed return receipt.

7/6/2009 David McCreedy came in for his mother (she is out of town). He said she had known Hank's and the owners before current owner bought it, so she called them. David M. specifically asked "Lyle" (Hank's worker on the site) if he had a permit, but was told that it was a repair, so no permit was needed. I told him that they would need to apply for a permit and expose portions of the system for us to inspect. I gave him info re the rights and responsibilities of the owner and the installer, and I gave him Lisa Fincher's contact info (DEQ licensing specialist). I suggested that his mother might want to take action on Hank's bond. No permit application yet.

7/23/2009 Michael Cross obtained application for "emergency repair" permit. I pointed out that the emergency repair rule requires application within 3 days, and is also limited to minor repair. He says the problem was in the tank and d-box(?!?) and denies installing any disposal field. We'll need to do a very thorough inspection of this "emergency repair".

7/28/2009 Application never returned. Sent a new NOV to owner by regular and certified mail.

7/30/2009 Received return receipt for NOV from owner, and (coincidentally, I'm sure) application from Hank's. They still insist it was minor repair only, despite photos showing conclusively that it just ain't so. We'll be doing a thorough inspection of this system. Sent letter by regular and certified mail to Michael Cross, with CC to owner, asking that portions of the work be exposed for inspection. Also e-mailed e-copy to Del Cline.

8/3/2009 Received signed return receipt (Carolyn Gogle).

8/4/2009 Spoke with Michael Cross on another matter, and asked if he had received my letter. He confirmed that he had received it. He said he "would be" uncovering it for inspection as requested, but did not indicate when he would do so.

8/6/2009 Received e-mailed copy of the "Pre-Enforcement Notice" from DEQ to Michael Cross dba Hank's.

8/17/2009 Drafted letter denying permit (since no info has been forthcoming regarding inspection of what was installed) and a new NOV re the ongoing violation. Will mail on the 19th and send electronic copy to DEQ.

8/28/2009 Although Michael again told me he would take care of this (shortly after Mrs. McCready received her Initial Notice to Abate), I have heard nothing further. Sent Final Notice to Abate by regular and certified mail to her, copy to Michael Cross, and electronic copy to DEQ.

9/4/2009 Received a phone message from Michael Cross this Friday PM indicating that the system is ready for inspection as requested.

9/8/2009 Site visit. Plastic d-box has been insufficiently exposed to open without soil falling in. None of headers or other features exposed. Box much less than 5' from tank (estimated from manhole access in concrete slab). Large stone (needs 2 arms and some muscle to move it) on the box. Odor evident. Dwelling appears to have been converted to duplex(?)

9/8/2009 Sent letter to Michael Cross, CC June McCready, re-stating the need to expose the designated features for inspection by 9/17/2009.

9/17/2009 Received a voice mail from Michael Cross stating that "kids must have pushed some of the soil back in" but it is now ready for inspection.

9/18/2009 Again, I went to the site. The top of the d-box had been cleared off. The headers, etc. have not been exposed. Sent message to DEQ folks. Meanwhile, the three-bedroom house has 6 pickups and one car parked at it. Again, I suspect it is being utilized as a multiple-family dwelling. The girl from Hank's called to ask what the status is, and I told her I do not believe that kids are pushing the dirt in, that Michael is not reading his letters very carefully, that I am referring this to DEQ, and that I'm not going back out there on Michael's word any more.

9/24/2009 After calling Brittany and receiving no solace, Sarah from Hank's called and left me another message, asking me to meet Michael.

9/25/2009 Spoke with Michael Cross by phone. He still insists they just replaced the box and the tank outlet. He is coming in Monday PM to see the photos. He said he was unaware that I asked him to uncover more than the d-box. I told him he will need to pay 2 reinspection fees of \$85 each for me to come back out, and that I want the system to be ready for inspection.

9/28/2009 Michael Cross came in and saw the photos showing the Infiltrators in the trench. He still claims not to know anything about it (he'll need to talk to Lyle, his uncertified employee), but he "understands now why I was concerned". Also claims initial ignorance of the rules and processes (says he's better now). I mentioned the need for Lyle to become certified, although Michael insists he checks all Lyle's work (but he admits he did not check this job). I reiterated that I require a reinspection fee of \$170.00 for the next trip out there, and that IF the drainfield was installed, the permit fee will go up. He is to expose (by hand) each end of the chambers that were installed so we can assess the work that has been done, and provide a test pit so we can determine how much drainfield should be required. He does not know what the status of the "house" is (re occupancy). He said they would start work on the 29th of

September to get this property ready for inspection. Michael Cross' office employee has since called and made an appointment to meet me at the site on Thursday the 15th. He has NOT paid the reinspection fee yet.

10/13/2009 Called and left word that I had not received the reinspection fee. Michael is to bring it along on Thursday.

10/13/2009 Conversation with Shirley at Heritage Property Management 541 451-1920 (office) 541 905-1956 (cell). So far, Michael Cross has billed Mrs. McCready for nearly \$6000.00 (250 hours of labor!). \$377 for pumping the tank, \$280 for the "minor repair permit" he was forced to apply for, and \$5162 for the 250 hours of work and materials etc to "fix" the drainfield. I ascertained that the house is a SFD with 3 bedrooms, but is evidently being used by an "extended family". Shirley is independently establishing some rules for the tenants. Shirley asked to be kept in the loop; she is trying to defend Mrs. McCready against unreasonable charges and grief. I also referred her to Lisa Fincher to discuss action on Michael's bond and/or license.

Subsequently received the bills from Hanks to McCready, and mailed copies (as requested) to Del Cline at DEQ.

10/15/2009 Brittany May and I met Michael Cross at the site. He had dug up some portions of the drainfield they installed, and it looked like a war zone. Small diameter black pipe (water pipe?), electrical lines, trash and plastic waste, broken-up infiltrators and pipes, etc. He said (but didn't demonstrate) that there is 375 feet of trench, some of it in the driveway, the rest in a swale. The depth is estimated at 4', and the lines are not all at the same elevation. Although Michael pleaded to be allowed to let it go, and he'd stand by everything and fix it at no cost if it failed, I told him to put in a test pit on the south side of the house (flat ground in lawn, higher) and put in the balance for the major repair. They will need to pump. He did not want me to "bother" the property manager, and preferred we let him speak to Mrs. McCready himself. No problem, but I'm contacting property manager anyway.

He "found" a well near the road on the south side of the property, but says there is still room for 375' if he can be 10' from the swale. I think that's OK. He gave us a check for the \$170.00, but we noticed later that he'd made it out to DEQ. So he still owes us \$\$\$.

10/22/2009 Received a message that Mrs. McCready has hired Mike Hamer to do the work. Notified DEQ that M Cross is off the job. Conversation with David McCready (son). He's anxious about his mother's fate, and is relieved to find that Shirley is working with us. Michael got Mrs. McCready to sign some papers, and she didn't realize until after signing that it was a multi-page document, so she's worried. Michael wanted \$9000 more for the "fix" and Mrs. McCready told him she couldn't afford it, so he told her "Well, I don't know what you're going to do". Mrs. McCready hired a contractor in good faith (she has a history of obtaining permits in Linn County) and should not have to pay for the work that Hank's did incorrectly.

Attachment KK

narrative to customer

FROM : JUNE 15 17 2010 EQC meeting  
Page 15 of 76

PHONE NO. : 503 829 2697

Jun. 12 2009 03:39PM P1

AG

TO: MARLENE  
MARION CO. BUILDING INSPECTION DIVISION

FROM: JANICE ENDICOTT  
PHONE & FAX 503 829-2697

RE: SEPTIC AND DRAIN LINE WORK DONE BY HANK'S SEPTIC  
SERVICE/MICHAEL COOK

RECEIVED  
JUN 11 2009  
MARION COUNTY  
BUILDING INSPECTION

Michael Cross  
AMB 338 Salem OR 97301  
503-409-6312

RE: Michael Cross  
lic # 35378 & 33315

Item E 000177

SEPTIC WORK -- 11805 STATE ST., SALEM, OREGON  
TIME FRAME OF COMMUNICATION  
HANK'S SEPTIC SERVICE -- JANICE ENDICOTT

May 3, 2009 (Sunday)

Received Phone Call from Heidi Sanchez -- There was sewage backing up into the downstairs bathroom.

I gave them the number of the previous business we had work on the system -- when they called that company was unable to take care of the problem. They contacted Hank's Septic Service and they came out that night to pump the tank.

I checked back to see if they were able to contact somebody and told Heidi that we were leaving in the morning on vacation and would be gone for two weeks. I gave her our cell phone number and the number where we could be reached.

May 4, 2009 (Monday)

I called the Sanchez family to see how things were going. I was informed that the tank had been pumped and the company had come back to do some additional work.

May 5, 2009 (Tuesday)

I talked to Mike of Hanks Septic Service. He explained that the holding tank had dropped and the outlet baffle was not working. I authorized him to fix the problem. The charge to fix the grade and the outlet was \$675.

He advised me that we should add additional lines for drainage -- he quoted \$2500 for 100 feet which I agreed to -- he then said that he would put in an additional 50 feet for only \$300 more. I agreed to have him install 150 feet of new line. He told me that they would install two separate legs to the distribution field. His explanation was that instead of one long row if one got plugged early on the second line would act as an alternate. He stated that new systems have two legs.

I told Mike we would not be back until the night of the 18<sup>th</sup> but I would give him my credit card number to pay for the work and I asked him to send us an invoice. He agreed and took my information -- our credit card was billed on May 15, 2009. I have still not received an invoice after repeatedly asking for one.

May 21 (Thursday)

Talked to Heidi Sanchez. They were very disturbed by the work that had been done -- the ground was very torn up, there was a lot of idle time by the worker who spent more time sitting and smoking than working, and who had come to the site with his two dogs. There were exposed pipes that had never been covered up. The Sanchez family was concerned about the unsafe condition of the property with many protruding rocks and roots.

They were also concerned that they were told the bill to them would be \$585 and they gave Mike their debit card information. When they checked their account they had been debited \$790 and had never been informed of what the additional cost was for, nor had they received an invoice for the additional cost.

3

May 22 (Friday)

Went to Salem to see work that was done and condition of ground. Took pictures. Talked to Heidi in detail about the previous two weeks.

May 26 (Tuesday following Memorial Day weekend)

Left message for Mike on his cell phone # @ 11:30am.

Received a call from Louie at Elliott Management Group -- the Credit Card Processor for First American Payment System which is Hank's credit card processor. Louie asked if we were satisfied with the work that was done on the job. He informed me that if I was not satisfied First American would deal with the merchant and would not release funds until we were satisfied. I informed Louie that I had left a message for Mike but had not heard back from him and that I would like to have a hold put on the payment until we were satisfied with the work.

Shortly after my conversation with Louie I received a call from Mike asking why I had put a hold on the payment. I explained to him that I didn't feel the job was complete and that things were left in a terrible mess and a hazardous condition.

His answer was, "It's a challenging site. I talked to the tenant about where they wanted the rock. It will be leveled. We will take care of it. I know you will be happy with it."

I also asked him if he had taken out a permit for the job. His answer was, "The County allows you to do work in an emergency situation and this was an emergency situation because there was a back up of sewage and it wasn't necessary to take out a permit." He then stated that the tenant said they did not want a permit. I told him that I had discussed that with the tenant and their response was that they had asked if there needed to be a permit and Mike had given them some reason why it wasn't needed but they couldn't remember specifically what his reason was.

When I told Mike that the tenants would possibly be buying the house and that I need to know for sure that things have been done legally he stated, "I am a DEQ licensed inspector. We do Realtor and Bank Inspections all of the time. I am willing to write you an inspection report and email it to you." He then went on to say if there is a delay in time when the tenants would buy that he would be willing to write another inspection report for free. He stated that they had been in business since 1956 and they have a great reputation. I stated again that I still need an invoice also. I never received the inspection report or the invoice.

I then told him that I would release \$2500 of the amount that had been charged to our credit card and I would release the balance when the job was completed. I followed through with that and talked to Shana at First American and told her to release \$2500.

May 29 (Friday)

I received a phone call from Karin (Hanks Septic) stating that the job had been completed and cleaned up and they would like me to release the balance of the funds.

June 1 (Monday)

I talked to Heidi this morning to find out if she felt the job was complete. She said that the previous worker that she felt was incompetent had returned on Thursday, May 28 with a rake and a shovel and his two dogs and spent less than two hours working on the site and then spread a small

amount of grass seed around. Somebody had come at 6:30 in the morning with a back hoe and had stacked a number of rocks up around some trees (not where the Sanchez's had originally asked them to stack them). She said they only used the equipment for about twenty minutes. There was no leveling done, there is an 8 - 10 inch drop off and there are still lots of exposed roots and rock. Also the concrete area that they use in front of one of the trees is completely covered in a very high pile of dirt. In her opinion the job was not done.

Talked to Mike at 11:35 am. He stated that it was a "challenging site and that what it needed was a couple of dump loads of top soil." He said that they do not normally do that. He also stated that they had not received any funds yet. I told him that I had been told they would be released. I also said that the property was still not anywhere close to where it had been previous to their work and that areas where they shouldn't have even been were still very torn up. I told Mike I would release the balance of the funds as soon as the site was cleaned up by their company.

I called and spoke to Tami at the card processing company and she told me the \$2500 had been released and Hank's should see it today or tomorrow.

#### June 10 (Wednesday)

Checked in with Heidi to see if there had been any more work done. She said, "It's bad. We keep waiting for them to come finish the job and they have not come back. Now the grass is growing out of control and I am worried about the kids or one of their friends getting hurt."

I told Heidi I would get in touch with Mike and try to meet him at the house. At 10:15 am I called both the office and Mike's cell each of which could not take messages because the mail box was full. About 10 minutes later Mike called back. I asked if he would be willing to meet with me - his response initially was, "If I take a couple hundred dollars off your bill will that make you happy and will you release the funds?" I stated "No, I will release the funds when the property is returned to something near what it was before you started the job." He finally agreed to meet me at 4pm.

I asked him to bring an invoice with him - his response was, "What we do is - well never mind. I am working in Lebanon now and am going through Stayton - I will meet you at 4."

At this time I became concerned about whether the work that was done was really legal so I called Marion County Public Works and talked to Marlene. She informed me that any time repair work is done it requires a permit. She stated that any contractor that is DEQ certified knows that a permit is required. We did a conference call with Jessica Joye, the Septic Sanitarian who was out in the field and Jessica told us that we needed to create an Enforcement File. Jessica said that she would do an inspection.

I was advised by Marlene to let Mike know when I met with him that he needed to get a permit filed according to Oregon Administrative Rule #340-071-0160-8 (c)

Jessica Joye wanted me to get in touch with DEQ to confirm that Hanks Septic Service was licensed. I spoke with Lisa Fincher, On Site Licensing Specialist and she confirmed that the company is licensed under AAA American Eagle. When I explained the situation to Lisa she told me she was going to contact Michael Scott.

I met with Mike at the site - he arrived about 4:20. We walked to the area of the septic tank and I asked him to explain to me everything that was done. He ignored my request and stated, "All we've gotten paid for was the initial work" Then he proceeded to tell me that all of the work that had been done was only temporary because our drain field had failed. When I asked him if the old drain

field was still being used he said, "We never disconnected the old - there was never any reason to." Then he proceeded to tell us that he was going to condemn this system. 5

I asked him if he had gone to the County yet and his response was, "This is not permitted work, this is temporary." Then he proceeded to talk about the fact that it was going to need a dosing tank and that lines would have to be run uphill and that we would need 250 to 300 maybe even 400 linear feet of drain line.

Then he looked at the tenant and us and said that tomorrow there would be a yellow tag on the house and that the system would be considered condemned and that the tenants would not be able to live in the house. He stated that he had always told us that this was temporary and that the lines that were laid would be pulled up when the final system was installed.

When I question why he had never mentioned this before, and that it seemed odd that he was suggesting we bring top soil in to cover up the mess that had been made when the lines would eventually be pulled up his response was, "We have an attorney on retainer and we have not been paid for this job and we will place a lien on your house and you will have to pay all of our legal fees."

At that point he left the site.

#### June 11 (Thursday)

At 8:15 this morning I received a call from Mike asking what we were going to do. I responded and asked him if he would please answer the same question and when was I going to receive an invoice. His answer was, "I'm not going to go down and finish the job until you release the funds or give me a check." I said, "I will not release the funds until the job is done and a permit is filed." He responded, "Okay then, I am not going to get a permit and I will tell them you have a failed system." Then he hung up.

At 10:40 I spoke to Karin in the office and asked if she would please email me an invoice and mail me a hard copy. She said she would pull up the information and follow through.

At 11:35 I called again and Karen answered - she said she was the owner and I asked her if she was related to Mike. She told me that she was his wife. I said that I had spoken to Karin earlier but had not received the invoice yet. Karen put me on hold and about 3 minutes later Mike came onto the line and said that I would not be sent an invoice until they got payment. Then he hung up.

Page 20 of 76  
JACK & JAN

From: rvhysanchez@yahoo.com  
Sent: Thursday, June 11, 2009 9:09 AM  
To: jacknjan1997@molalla.net  
Subject: septic info

Hello Jan,

Both Ray and I really would like to apologize for all of this inconvenience. Ray said he feels bad about how things have turned out and a little guilty...had we known, we would never have called out of the phone book.

Anyway, I called my parents to get some clarity on things and dates and also with Ray when he got home. We all agree, we NEVER heard this was a temporary thing. My father remembered asking about an inspector and a permit. He too couldn't remember the reason Mike gave him for not needing one, but thinks it was because of the length of line they put in. Ray said Mike had told him that his work was guaranteed and when we financed the house the work would still be under warranty. This would lead anyone to believe that this was a long-term situation...I can't imagine anyone having a warranty on something that was going to be "ripped up" right after it was put in. I hope this info helps get an idea of what went on. I know you asked Mike several times yesterday why you never received an invoice. This has really been bugging me and I'm concerned why he could never answer you.

The dates for the times they were here: (2009)

**Sunday, May 3:** Pumped out tank-said they'd be out next day to assess what needed to be fixed. Charged \$565 to my bank account (have receipt with amount)

**Monday, May 4:** Returned to see what needed to be done. Said big equipment couldn't come out until Wednesday. Started fixing intake and outtake.

**Tuesday, May 5:** My bank account was charged \$772.50...did NOT authorize the difference between \$772.50 and \$565 (\$207.50 difference).

**Wednesday, May 6:** Backhoe dropped off. Employee was her around 1200 to work on tank. Dug around with shovel, borrowed on of ours along with own. We asked when repair on tank would be done and we could use the washing machine and other things. They said by end of week and could flush if need be (solid waste) and they would pump again for free if it filled up in the meantime. We had to go to laundromat by Thursday. Employee left by 3pm

**Thursday, May 7:** Employee came out and starts digging. Was here by 9 and left around 4...almost finished the repair on tank. He returned in personal car with 2 dogs (had most days)

**Friday, May 8:** Employee finished repair on tank (we were cleared to use water). Started work around 8 30. He started digging...dug length of back of house...hit a water line and asked where pump was to shut it off. He left (didn't know where to @1100), then returned around 1pm and repaired broken line and turned water back on. He was gone by 330 and didn't return until next week.

**Monday, May 11:** Same employee returns by 730 and continues digging down the east side of house towards river, near fire pit. The path is filled with water. He leaves around 330.

**Tuesday, May 12:** Digging continues from west side down toward river. Employee here for 8 hours. Dug approximately 50 feet.

**Wednesday, May 13:** We notice there is trickling water still filling up path on east side. We mention it and they say it's high water table and it's from the rains. Digging starts up again toward river on west side. Worked almost 8 hours.

**Thursday, May 14:** Another 7 hour day. Employee fills in trench dug on east side and makes a turn on west side, going under berry lines and out to 20 from pond. He's done and sits in care for several hours. Both my mother and I have asked him for a few days what he's waiting for and says "for Mike to bring out pipes". My whole family witnessed an average of 10 smoke breaks during a work day for this employee. Some of which happened at the work site itself, just feet from the house. This upset me since we have kids and we are not smokers. There was more

6/11/2009

Page 21 of 76

time spent smoking and waiting in car than actually working. We see Mike and a young man come out in a truck. They look at work for a while and leave. Never got updates throughout week...we had to ask. Employee leaves everyday without notice or update.

Friday, May 15: Employee finishes digging...pipes are placed and he covers with dirt. Mike comes out at end of day and uses backhoe to finish covering and attempts to smooth out area. We bring to Mike's attention the still trickling water from up top of dig. They dig it up and find the broken pipe wasn't fixed properly and they fix that. They say they're done. Ray asks about fixing the mess they made...they torn up lawn and rocks. Ray asks for them to place the rocks down by pond. Mike says he'll be back to pick up backhoe and someone will return yard to a "good enough" order.

We didn't see anyone for a couple more weeks. During this last week of work and after, I received several phone calls, both from Mike and a Corine (sp), asking if we had spoke with you and wanted payment for the job. I explained to them both you had already given them your credit card info and that you were on vacation and possibly couldn't get the phone calls. They asked if we could pay them and have you reimburse us. Obviously, we didn't and I stated to both of them that the job wasn't even done yet because no one had come out to pick up the rocks and smooth out the dirt. To me this would have completed the job. They said someone would be out to reseed soon, that they were waiting for it to "dry out". Ray also had a conversation with Mike about this. Ray also asked Mike at this time if the man who did the work was a contracted or paid employee. He said he was an employee and we told Mike that we thought he should know the employee spent more time not working and smoking. This was something we thought Mike would want to know, especially if he is charging by the hour and not the job.

There was an adult from our family always present during this entire process. We needed to have someone here, so there was no workers left alone in an empty house. This gave us a day to day, bird's eye view of everything they did. Although they didn't communicate what they were doing, we knew because we watched everything they did.

6/11/2009

Item E 000183

**SMITH Bryan**

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**From:** FINCHER Lisa  
**Sent:** Thursday, April 29, 2010 10:49 AM  
**To:** SMITH Bryan  
**Subject:** FW: Janice Endicott

A7

4 of 4 concerning Janice Endicott

Lisa Fincher | Onsite Licensing Specialist Oregon Department of Environmental Quality Eugene  
Office | 165 E. 7th Ave., Eugene, OR 97401  
EE541.686.7905 [fincher.lisa@deq.state.or.us](mailto:fincher.lisa@deq.state.or.us)  
<http://www.deq.state.or.us/wq/onsite/onsite.htm>

-----Original Message-----

**From:** JOYE Jessica  
**Sent:** Friday, June 12, 2009 8:16 AM  
**To:** FINCHER Lisa  
**Subject:** Janice Endicott

Lisa,

I've received a complaint that AAA American Eagle/Hank's Septic Service/Michael Cook has installed drainfield without a permit under the assumption that emergency repairs don't require a permit. According to the database AAA American Eagle operator type is Pumper, not pumper/installer. Is this correct? I will forward the timeline communication between Mrs. Endicott and Michael Cook.

--

Jessica Lynn Joye, REHS  
Onsite Wastewater Specialist  
Marion County  
Public Works-Building Inspection  
555 Court ST NE Salem, OR 97301  
email: [jjoye@co.marion.or.us](mailto:jjoye@co.marion.or.us)  
503-566-3990

Public Health Goes Beyond Our Daily Duties, It Takes Action On Our Part!

A8



# ***Marion County***

## **OREGON**

### **PUBLIC WORKS**

**BOARD OF  
COMMISSIONERS**  
Janet Carlson  
Patti Milne  
Sam Brentano

July 6, 2009

**DIRECTOR**  
Bill Worcester

RE: Enforcement at 11805 State ST S, Salem, 97317.

**ADMINISTRATION**

**BUILDING  
INSPECTION**

I visited the above property on July 2, 2009 in response to a Major Repair permit to fix an un-permitted septic system installation performed by Mr. Cross.

**DOG CONTROL**

**EMERGENCY  
MANAGEMENT**

**ENGINEERING**

Upon that site inspection, it was found that Mr. Cross had installed approximately 100 lineal feet of infiltrator within 16" from the ground surface. The drainfield installed was not on contour and comes within 60' from the year round creek and within 40 feet from the pond on the property that outlet's to creek.

**ENVIRONMENTAL  
SERVICES**

**PARKS**

**PLANNING**

**OPERATIONS**

**SURVEYOR**

The property owners have contacted a new licensed installer to install a new system. The Major Repair permit was issued on July 6, 2009 for a standard system. The cost of a Major Repair permit is \$370.

Please contact me if you have any questions or concerns regarding this matter. I can be reached at 503-566-3990.

Sincerely,

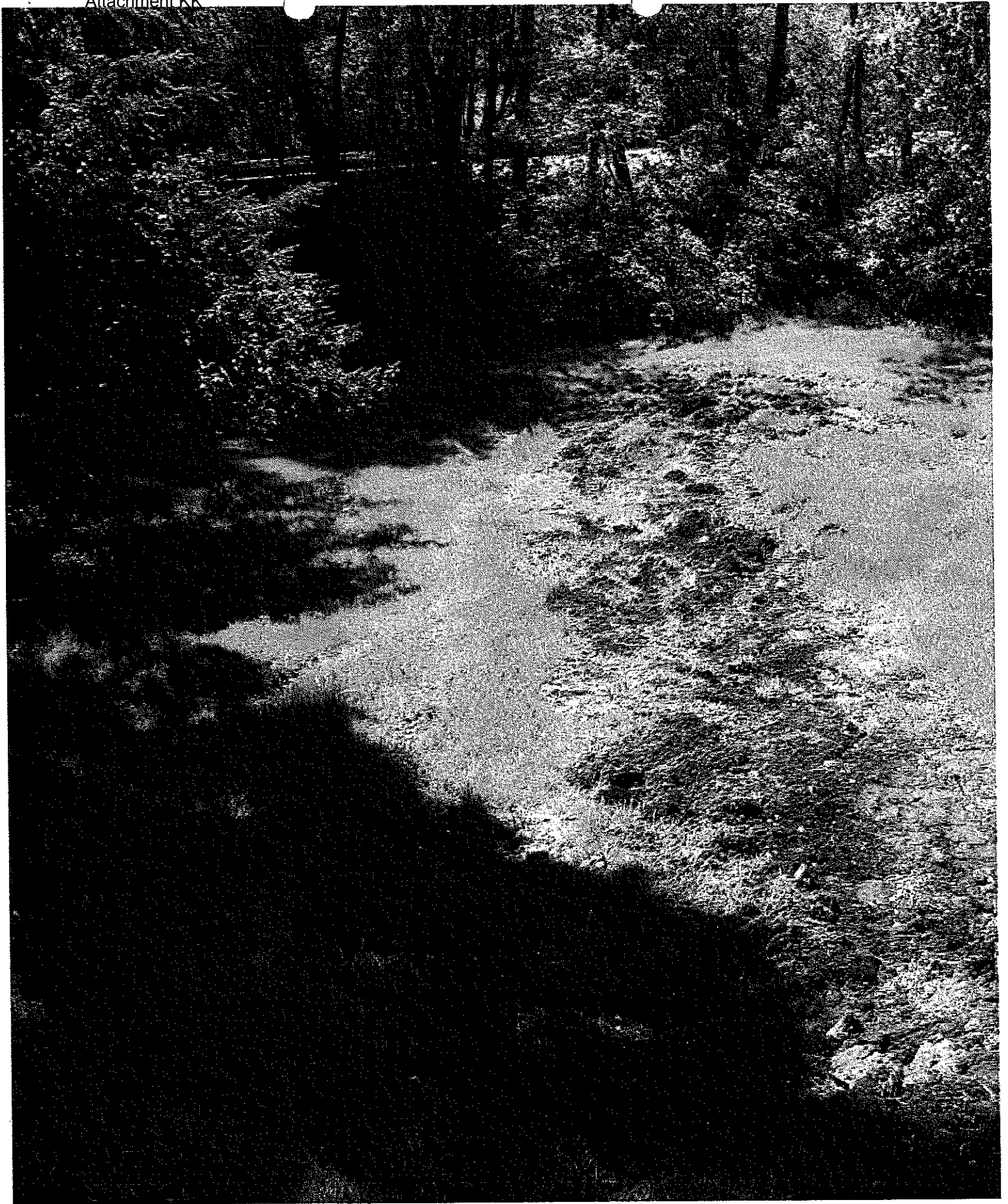
Jessica Lynn Joye, REHS  
Onsite Wastewater Specialist













License Number None Phone Number 503-409-6312

Licensee's Name Michael Cross Business Name AAA American Eagle  
j. michaelcross@yahoo.com - email form ✓

<b>Date</b> 12/8/08	<b>Contact Person</b> Michael Cross
<b>Notes</b> called wanting to know process for transferring the licenses of # 35378 + 33315 to a new business. Also asked about lic # 38590 - owner is partner + has security bond w/us - wants to know process for liquidating bond.	
<b>Date</b> 12/19	<b>Contact Person</b>
<b>Notes</b> Called M. Cross back + explained that it is 2 yrs from end of license for release of security. ↓ OR new bond in place emailed list for pumpers + forms links	
<b>Date</b> 12/29/08	<b>Contact Person</b> Michael
<b>Notes</b> re-emailed bond form license form SMP worksheet. veh. inspection form link to rules pumper ltr.	
<b>Date</b> 1/7/09	<b>Contact Person</b> msg for M. Cross
<b>Notes</b> Phone is now being answered as Leb-Sweet Home - 503-409-6312 + Hank's 541-258-8322. Load rejected from Salem under the business name AAA American Eagle. Left msg for him regarding origin of load - requesting orig records	
<b>Date</b> 1/7/09	<b>Contact Person</b> Wendy - Supervisor @ Leb Sweet Home
<b>Notes</b> left msg for her regarding denied load	

This is the email history of when I first found out All (1)

**FINCHER Lisa**

**Subject:** FW: AAA American Eagle/ Sean Downey

Mike Cross was operating the 2 businesses.

**From:** FINCHER Lisa

**Sent:** Monday, December 29, 2008 2:55 PM

**To:** HERON Jan; TROX Randall

**Cc:** TROX Randall

**Subject:** RE: AAA American Eagle/ Sean Downey

He was turned away from Salem trying to dispose after I told Salem he wasn't licensed.

Hello Jan

Answer to Q#1~ no AAA American Eagle Services LLC does not have an SDS license. I spoke to a man named Michael Cross at 503-409-6312 the beginning of the month and gave him the information on how to transfer the licenses for Hank's Septic Tank Service and Lebanon, Sweet Home Septic Service. I haven't heard anything from him since. But he had several questions about a security deposit that his "partner Jim Lyons" had with the state for another business~ Stayton Septic. He was wanting to know how fast Jim could liquidate that deposit. The next day I had a call from a customer of Jim Lyons wanting to file a claim against the security.

Lisa Fincher  
541-686-7905

[fincher.lisa@DEQ.state.or.us](mailto:fincher.lisa@DEQ.state.or.us)

**From:** HERON Jan

**Sent:** Wednesday, December 24, 2008 12:52 PM

**To:** FINCHER Lisa

**Cc:** TROX Randall

**Subject:** AAA American Eagle/ Sean Downey

We have just been informed that the pumper portion of Sweet Home Sanitation (Buck's toilets, Hank's, et al) has been purchased by an entity known as AAA American Eagle Services LLC. On the Oregon Corporations website, the agent comes up as Sean Downey. Address is in Salem, but the mailing address is Wilamina. We are hearing rumblings reflecting a very adversarial attitude toward others operating in the area. I can't see much in the background, but am worried, based on rumors previously circulated, that this may be another disguise for our old friend Jimmie Lyon.

Question #1 Have these folks obtained a license from you?

2

**FINCHER Lisa**

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**Subject:** FW: AAA American Eagle/ Sean Downey

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**From:** FINCHER Lisa  
**Sent:** Monday, December 29, 2008 3:22 PM  
**To:** HERON Jan; TROX Randall  
**Subject:** RE: AAA American Eagle/ Sean Downey

I was just on the phone with Cross. I am having to explain and re-explain the licensure process to him. He has now been told several times that AAA American Eagle is not licensed and should not be doing any business in the state of Oregon.

He has been given all the instructions (three times now) on how to get licensed.

He says the sale has not been completed yet.

Let me know if I can do anything to help.

Lisa Fincher  
541-686-7905

[fincher.lisa@DEQ.state.or.us](mailto:fincher.lisa@DEQ.state.or.us)

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**From:** FINCHER Lisa [mailto:Fincher.Lisa@deq.state.or.us]  
**Sent:** Monday, December 29, 2008 2:55 PM  
**To:** Heron, Janet; TROX Randall  
**Cc:** TROX Randall  
**Subject:** RE: AAA American Eagle/ Sean Downey

Hello Jan

Answer to Q#1~ no AAA American Eagle Services LLC does not have an SDS license. I spoke to a man named Michael Cross at 503-409-6312 the beginning of the month and gave him the information on how to transfer the licenses for Hank's Septic Tank Service and Lebanon, Sweet Home Septic Service. I haven't heard anything from him since. But he had several questions about a security deposit that his "partner Jim Lyons" had with the state for another business~ Stayton Septic. He was wanting to know how fast Jim could liquidate that deposit. The next day I had a call from a customer of Jim Lyons wanting to file a claim against the security.

Lisa Fincher  
541-686-7905

[fincher.lisa@DEQ.state.or.us](mailto:fincher.lisa@DEQ.state.or.us)

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**From:** HERON Jan  
**Sent:** Wednesday, December 24, 2008 12:52 PM  
**To:** FINCHER Lisa  
**Cc:** TROX Randall  
**Subject:** AAA American Eagle/ Sean Downey

We have just been informed that the pumper portion of Sweet Home Sanitation (Buck's toilets, Hank's, et al) has been purchased by an entity known as AAA American Eagle Services LLC. On the Oregon Corporations website, the agent comes up as Sean Downey. Address is in Salem, but the mailing address is Wilamina. We are hearing rumblings reflecting a very adversarial attitude toward others operating in the area. I can't see much in the background, but am worried, based on rumors previously circulated, that this may be another disguise for our old friend Jimmie Lyon.

Question #1 Have these folks obtained a license from you?

FINCHER Lisa

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**From:** FINCHER Lisa  
**Sent:** Monday, December 29, 2008 4:00 PM  
**To:** 'j.michaelcross@yahoo.com'  
**Subject:** Instructions for obtaining an SDS license

Michael

I thought I would review in writing what we have talked about to help you get an idea of what needs to be done:

If you buy the businesses and will just simply be the new owner, you can change the name or keep it the same. If you keep it the same you will submit a license application with the new owners name and a rider for the existing bond with the new owner listed and signing as principal. The license will be good for the balance of the license period and the number will stay the same. This will cost \$200.00 per license transferred. If you change the name you will need a rider changing the bond or a new bond and the pumper trucks will need to be labeled in the new business name and have new inspections on the DEQ form. This costs aprox \$100.00 per truck. If you make no changes to the way the business disposes of waste you will not need a new septage management plan, but will be responsible for following the approved plan currently in place for both companies. You should ask the current owner for this.

At the end of the license period (June of 2009 for the two companies we have talked about) you will need to go thru the complete renewal process.

If you buy the businesses and want to incorporate them into another existing business it will be much the same as above. You won't need a rider on the existing businesses bond, but you will need to label the trucks under the new business name and have them inspected. You will need to follow the septage management plan from the existing business (ie: unless the existing business disposes where Hank's and Lebanon Sweet Home do, you will need to dispose ONLY where the existing business is authorized to dispose.) The fee is still \$200.00 per transfer, you would have the truck inspection costs this way and the license will expire on schedule as it read now for the existing business~ by that I mean there will not be an extension of time granted to the license.

The bottom line is this:

The business must be licensed to do any pumping work

The Business name on the license, the name on the receipts, the name on the trucks, the name on the bond, and the name registered with the state business registry all have to match and all have to be associated with the same owner to do any business.

Here is a link to the rules explaining the license process:

<http://www.deq.state.or.us/wq/onsite/rules.htm>

Here is a link to our website for the forms you will need:

<http://www.deq.state.or.us/wq/onsite/licensing.htm>

Let me know if I can do anything else to help

Thank you

Lisa Fincher  
Onsite Program Licensing Specialist  
541-686-7905  
800-844-8467 x 7905  
Fax 541-686-7551  
[fincher.lisa@DEQ.state.or.us](mailto:fincher.lisa@DEQ.state.or.us)

**FINCHER Lisa**

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**Subject:** FW: AAA American Eagle/ Sean Downey

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**From:** FINCHER Lisa  
**Sent:** Wednesday, December 31, 2008 10:07 AM  
**To:** HERON Jan; TROX Randall  
**Subject:** RE: AAA American Eagle/ Sean Downey

Hi Jan

Both Hank's and Leb/Sweet Home have valid pumper licenses. So if they are doing business under those names, they are still good. When the ownership changes the new owner should do a transfer for a small fee, but license wise they are OK~ Cross is telling me the ownership hasn't changed. They are both due to renew this June.

Now as for where they are disposing. I would have to dig for their Septage Management plans and one thing we could do is request origin/destination records and see where they are disposing. If it doesn't match their SMP then they would need a new one and new authorization letters from their disposal sites. We can monitor who they are disposing with this way.

What do you think Randy, should we put the time into this?

Lisa Fincher  
541-686-7905

[fincher.lisa@DEQ.state.or.us](mailto:fincher.lisa@DEQ.state.or.us)

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**From:** HERON Jan  
**Sent:** Wednesday, December 31, 2008 8:54 AM  
**To:** FINCHER Lisa; TROX Randall  
**Subject:** AAA American Eagle/ Sean Downey

FYI, I just had a conversation with one of my "sources" in the business, and you all should know that Hank's and Sweet Home Sanitation are/ have been operating the pumping business. They have already hired/fired several workers (one old guy who has been pumping for 20 years quit when these "businessmen" told him he needed to buy his own fuel...), and they have been rejected in an attempt to dump at the North Albany disposal site (land application site) due to being unable to pay. This tells me (among other messages) that "we" need to keep a real careful eye on these boys, neither of whom is a reputable individual, because they operate without sufficient funds and they'll likely end up doing illicit dumping. Jim Lyon is never financially fluid, and we have him on a "cash only" basis for his permit applications due to a history of bounced checks.

7

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**FINCHER Lisa**

**Subject:** FW: Septic Hauler's City of Salem

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**From:** FINCHER Lisa  
**Sent:** Wednesday, January 07, 2009 10:11 AM  
**To:** 'Ron Bernt'  
**Subject:** RE: Septic Hauler's City of Salem

Hello Ron

Thank you very much for the information. You are correct Mr. Lyons was only authorized to dump with you. I will contact him.

Also please note that AAA American Eagle DOES NOT have a license to pump. You may want to suspend that permit you issued. During my conversations with Mr. Cross he has repeatedly told me that he has not yet purchased Hank's or Lebanon Sweet Home. He has been given explicit instructions on what he needs to do to operate a Sewage Disposal Service and so far has not applied for a license. He did tell me that his partner is Jimmie Lyons.

Thank you again for the information and yes I took over for Sandy McClure as the Septic Licensing Specialist.

Have a good day.

Lisa Fincher  
541-686-7905

[fincher.lisa@DEQ.state.or.us](mailto:fincher.lisa@DEQ.state.or.us)

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**From:** Ron Bernt [mailto:RBERNT@cityofsalem.net]  
**Sent:** Monday, January 05, 2009 10:41 AM  
**To:** FINCHER Lisa  
**Cc:** Jeanne Miller  
**Subject:** Septic Hauler's City of Salem

Hello Lisa,

I am making the assumption you are now the contact I need to notify regarding Septic Haulers permits and that you have replaced Sandra McClure, is this correct?

Item E 000199

If so, I am sending this e-mail to let you know the City of Salem did NOT renew the Septic Haulers Discharge Permit we had issued to American Onsite Services LLC dba Stayton, Mill City, Silverton Septic Services. The permit expired on 12-31-2008 and we did not renew it due to failure to pay their bill to the City of Salem. According to My Lyon's permit application we were the only site he was authorized to discharge at.

Also, in mid December, we issued a Septic Haulers Discharge Permit to AAA American Eagle Services LLC dba Hank's Septic Services and Lebanon/Sweet Home Septic Services. The contact is Michael Cross phone 503-409-6312. It is my understanding he bought out "Waste Connections of Oregon, Inc" who was dba the 2 named companies above.

In addition we also have permits issued to the following companies:

Ace Chemical Toilets  
Best Pots Inc  
Honey Bucket  
United Site Services  
Roto Rooter

Please let me know if you have any additional questions or concerns. Thank you!

*Ron*

Ronald E. Bernt  
Environmental Compliance Specialist  
Salem Environmental Services  
1758 22nd St SE  
Salem OR 97302-1255  
503-588-6063 ext 7855  
[rbernt@cityofsalem.net](mailto:rbernt@cityofsalem.net)  
<http://www.cityofsalem.net/Departments/PublicWorks/Operations/EnvironmentalServices/>

**Subject:** FW: Septic Hauler's City of Salem

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**From:** FINCHER Lisa  
**Sent:** Wednesday, January 07, 2009 1:57 PM  
**To:** 'Ron Bernt'  
**Subject:** RE: Septic Hauler's City of Salem

Ron can you tell me if it was a Lebanon-Sweet Home truck today or a Hank's Truck?

Thanks

Lisa Fincher  
541-686-7905

[fincher.lisa@DEQ.state.or.us](mailto:fincher.lisa@DEQ.state.or.us)

---

**From:** Ron Bernt [mailto:RBERNT@cityofsalem.net]  
**Sent:** Wednesday, January 07, 2009 1:45 PM  
**To:** FINCHER Lisa  
**Subject:** RE: Septic Hauler's City of Salem

Thank you for easing my conscience, at no time in my conversation with him did he indicate he had talked with you yet. Kind of concerns me about continuing the relationship with the company but if they get the proper licensing completed and pay their bill, I assume we will work with them. He should be contacting you today or so I assume! Thanks

**Ron**

Ronald E. Bernt  
Environmental Compliance Specialist  
Salem Environmental Services  
1758 22nd St SE  
Salem OR 97302-1255  
503-588-6063 ext 7855  
[rbernt@cityofsalem.net](mailto:rbernt@cityofsalem.net)  
<http://www.cityofsalem.net/Departments/PublicWorks/Operations/EnvironmentalServices/>

>>> On Wednesday, January 07, 2009 at 13:37, "FINCHER Lisa" <Fincher.Lisa@deq.state.or.us> wrote:

No problem Ron. And just to ease your conscious (if it needs it), you have not left him in lurch. On December 29<sup>th</sup> he and I had an extensive conversation about me not receiving his license application

Lisa Fincher  
541-686-7905

[fincher.lisa@DEQ.state.or.us](mailto:fincher.lisa@DEQ.state.or.us)

**From:** Ron Bernt [mailto:[RBERNT@cityofsalem.net](mailto:RBERNT@cityofsalem.net)]  
**Sent:** Wednesday, January 07, 2009 1:31 PM  
**To:** FINCHER Lisa  
**Subject:** RE: Septic Hauler's City of Salem

Lisa,

I just talked with Michael Cross of AAA American Eagle LLC and he has been told he can NO LONGER use our facility until he contacts you and gets the license issue corrected. He said he would contact you, today, to see what he needs to do. He asked if he could discharge at our facility today since this has "left him in a lurch". I told him he had to get the license issue corrected first. I am including my supervisor, Jeanne Miller, in this reply to you and she may want to followup with you also. Thank you for the information you sent and please let us know when Mr Cross satisfies the State requirements and we can or cannot resume letting him use Salem's facility.

**Ron**

Ronald E. Bernt  
Environmental Compliance Specialist  
Salem Environmental Services  
1758 22nd St SE  
Salem OR 97302-1255  
503-588-6063 ext 7855  
[rbernt@cityofsalem.net](mailto:rbernt@cityofsalem.net)  
<http://www.cityofsalem.net/Departments/PublicWorks/Operations/EnvironmentalServices/>

>>> On Wednesday, January 07, 2009 at 10:10, "FINCHER Lisa" <[Fincher.Lisa@deq.state.or.us](mailto:Fincher.Lisa@deq.state.or.us)> wrote:

Hello Ron

Thank you very much for the information. You are correct Mr. Lyons was only authorized to dump with you. I will contact him.

Also please note that AAA American Eagle DOES NOT have a license to pump. You may want to suspend that permit you issued. During my conversations with Mr. Cross he has repeatedly told me that he has not yet purchased Hank's or Lebanon Sweet Home. He has been given explicit

**From:** FINCHER Lisa  
**Sent:** Wednesday, January 07, 2009 2:56 PM  
**To:** 'Scott Johnson'  
**Subject:** RE: Hanks & Lebanon Sweet Home Septic

I have spoken with Mike today and he says he will be getting me the license transfer application tomorrow.

Thank you for following up on this

Lisa Fincher  
541-686-7905

[fincher.lisa@DEQ.state.or.us](mailto:fincher.lisa@DEQ.state.or.us)

---

**From:** Scott Johnson [mailto:ScottJ@WasteConnections.com]  
**Sent:** Wednesday, January 07, 2009 2:44 PM  
**To:** FINCHER Lisa  
**Subject:** Hanks & Lebanon Sweet Home Septic

Hello Lisa,

Just wanted to follow up on a message that you left at our Sweet Home office. You may have already spoken with Mike Cross the individual that purchased our Septic business as of 12/1. Back at the first part of Dec I had emailed you and you sent me the transfer forms along with answering questions. Mike has had these forms and should have submitted them to you along with the payment. Please feel free to give me a call on my cell if you have any questions or need more info from me.

Thanks,  
Scott Johnson  
541-501-0453

# Hank's Septic Service

P.O. Box 40  
Sweet Home, OR 97386  
259-3166 • 758-8213 • 367-2535

Orig - Destinations  
provided 1/14/09

A-12  
(9 pages)

JOB NAME <i>10000 10000 10000</i>		SEND BILL TO	
JOB LOCATION <i>10000 10000 10000</i>		ADDRESS	
CITY <i>10000 10000 10000</i>		CITY	
PHONE	FAX	PHONE	FAX
DATE OF JOB <i>1-7-08</i>			
TIME OF JOB <i>11:30 AM</i>			
SEPTIC TANK SERVICE <input type="checkbox"/>			
INSPECTION <input type="checkbox"/>			
OTHER <input type="checkbox"/> <i>10000 10000 10000</i>			
GALLONS PUMPED <i>5000</i>		Amount	\$ <i>450.00</i>
DISPOSAL SITE <i>10000</i>		Inspection	\$
		Travel Fee	\$
		Other	\$
Total for Services Performed			\$ <i>450.00</i>

# Hank's Septic Service

P.O. Box 40  
Sweet Home, OR 97386  
259-3166 • 758-8213 • 367-2535

JOB NAME Furniture Factory		SEND BILL TO	
JOB LOCATION 33431 BREWSTER RD		ADDRESS	
CITY IPSWICH, OR 97355		CITY	
PHONE	FAX	PHONE	FAX
DATE OF JOB 1-6-09			
TIME OF JOB 5 PM			
SEPTIC TANK SERVICE <input type="checkbox"/>			
INSPECTION <input type="checkbox"/>			
OTHER <input checked="" type="checkbox"/> HOLDING			
3000 gal			
GALLONS PUMPED 3000		Amount	\$ 450.00
DISPOSAL SITE		Inspection	\$
		Travel Fee	\$
		Other	\$
Total for Services Performed		\$ 450.00	

# Hank's Septic Service

P.O. Box 40  
Sweet Home, OR 97386  
259-3166 • 758-8213 • 367-2535

JOB NAME <i>Fred Crowley</i>		SEND BILL TO	
JOB LOCATION <i>11225 N. 30th Ave</i>		ADDRESS	
CITY <i>Garfieldville</i>		CITY	
PHONE <i>361-5277</i>	FAX	PHONE	FAX
DATE OF JOB <i>1-7-08</i>			
TIME OF JOB			
SEPTIC TANK SERVICE <input checked="" type="checkbox"/>			
INSPECTION <input type="checkbox"/>			
OTHER <input type="checkbox"/>		<i>PO Box 1698</i>	
		<i>Hank's Septic</i>	
GALLONS PUMPED <i>1500</i>	Amount	\$ <i>419.33</i>	
DISPOSAL SITE	Inspection	\$	
	Travel Fee	\$	
	Other	\$	
Total for Services Performed		\$ <i>419.33</i>	

# Hank's Septic Service

P.O. Box 40  
Sweet Home, OR 97386  
259-3166 • 758-8213 • 367-2535

JOB NAME <i>Daniel Dale</i>		SEND BILL TO	
JOB LOCATION <i>2350 Cascade Dr</i>		ADDRESS	
CITY <i>Clatskanie</i>		CITY	
PHONE <i>570-5504</i>	FAX	PHONE	FAX
DATE OF JOB <i>6-7-07</i>			
TIME OF JOB <i>12:00</i>			
SEPTIC TANK SERVICE <input checked="" type="checkbox"/> <i>Pumping</i>			
INSPECTION <input type="checkbox"/> <i>OK # 5871</i>			
OTHER <input type="checkbox"/> <i>Wipe out</i>			
GALLONS PUMPED <i>1000</i>		Amount	<i>\$17.50</i>
DISPOSAL SITE		Inspection	\$
		Travel Fee	\$
<i>Solids</i>		Other	<i>\$75.00</i>
Total for Services Performed			<i>\$92.50</i>

ATTN: Lisa Fincher Fax # 541-686-7551  
From: Michael Cross - 503-409-6312  
7 pages

NAME: James Septic Service

851231

Date: 1-7-09

Time: 7:45 PM

4

CLIENT NAME	ADDRESS	PHONE NO.	TYPE OF WASTE	EST. GAL.
225 8258174	CONVALLIS	/	HIGHLY TOXIC	300

PostNet Fax Note	7671	Date	2	Printed Date
To	Mike Cross	From	Self	
Cu/Dex		Co.		
Phone #		Phone #		
Fax #		Fax #	431-1129	

There is no doubt that the current is the most accurate to the best of my knowledge.

46  
NAME: Dustin Combs

Dischärger's Signallure

*[Handwritten signature]*

# Hank's Septic Service

P.O. Box 40  
Sweet Home, OR 97386  
259-3166 • 758-8213 • 367-2535

JOB NAME <i>Drain Date</i>		SEND BILL TO	
JOB LOCATION <i>2570 Cornell Dr</i>		ADDRESS	
CITY <i>Clatskanie</i>		CITY	
PHONE <i>503-5574</i>	FAX	PHONE	FAX
DATE OF JOB <i>6-7-07</i>			
TIME OF JOB <i>12:00</i>			
SEPTIC TANK SERVICE <input checked="" type="checkbox"/>			
INSPECTION <input type="checkbox"/>			
OTHER <input type="checkbox"/>			
GALLONS PUMPED <i>1000</i>		Amount	\$ <i>32.00</i>
DISPOSAL SITE		Inspection	\$
		Travel Fee	\$
<i>50/60</i>		Other	\$ <i>75.00</i>
Total for Services Performed			\$ <i>107.00</i>

ATTN: Lisa Fincher Fax # 541-686-7551  
From: Michael Cross - 503-409-6312  
7 pages

# CITY OF LEBANON

## LOAD CHECK INFORMATION FORM

Name: HAAS Septic Service

# : YCS1231

Date: 1-7-09

Time: 2:45 PM

# 2

*AA Cole*

CITY OF LEBANON  
In service from here

CUSTOMER NAME  
201 PPSB/C4

ADDRESS  
Corvallis

PHONE NO.

TYPE OF WASTE  
Household waste

EST. AMT. GALLONS  
30000

DATE PUMPED  
1-7-09

REMARKS  
Accepted

PH-737

Post-It Fax Note	7671	Date	1-7-09
To: Mike Cross	From: JEFF		
On Recd.	Co.		
Phone #	Private #		
Fax #	457-1129		

Name: Dustin Conly

Discharger's Signature: *[Signature]*

I hereby certify that the information provided on this form is true and accurate to the best of my knowledge





CITY OF LEBANON

1. *Chlorophyll a* (Chl a) is the primary photosynthetic pigment in most plants and algae. It is a green pigment that absorbs light energy in the blue-violet and red-orange regions of the visible spectrum. Chl a is essential for the light-dependent reactions of photosynthesis, where it converts light energy into chemical energy.

CITY OF LEBANON


Date: 1-7-08

# LOAD CHECK INFORMATION FORM

Time: 1:55 AM

Full service

id: YCS-231



CUSTOMER NAME	ADDRESS	PHONE NO.	TYPE OF WASTE	EST. AMT. GALLONS	DATE PUMPED	REMARKS
Factory	Lebanon	—	HOLY 119-4000	3000	1-6-08	Accepted
						8A-7.49

QC meeting

Item E-000

Item E-000

It is important that the information presented in this form is true and accurate to the best of my knowledge.

Charge's Name

Dustin Conly

Discharger's Signature

*[Signature]*

A-13

6737

SUBMIT APPLICATION TO:  
DEPARTMENT  
OF ENVIRONMENTAL QUALITY  
WATER QUALITY DIVISION  
ON-SITE SEWAGE  
DISPOSAL PROGRAM  
811 S.W. Sixth Avenue  
Portland, OR 97204  
(503) 229-6402 • 1-800-452-4011

APPLICATION  
For  
SEWAGE DISPOSAL SERVICE  
BUSINESS LICENSE

STATE OF OREGON  
DEQ

Receipt # 137736

OFFICIAL DEQ USE ONLY  
☒ VEHICLE INSPECTION FORM  
☐ SEPTAGE MGMT. PLAN  
DATE PAID: 1-12-09  
AMT: \$200.00 CK NO: 1014  
1-2-09  
DATE ISSUED CONTROL NUMBER  
LICENSE NO: 33315 38

Use the attached instruction sheet as a guide in completing this form. Please print, or type.

PLEASE READ CAREFULLY:

I HEREBY APPLY FOR A SEWAGE DISPOSAL SERVICE LICENSE. The license period is based upon the State's fiscal year, July 1 through June 30. Authority: Oregon Revised Statutes 454.695. PLEASE NOTE! Your license may be valid for a shorter period of time, if you license just prior to June 30th. Licenses issued July 1st or after will be valid for three years up to the 3rd June 30th unless suspended or revoked.

☐ NEW LICENSE FEE: \$1065.00 ☐ REINSTATEMENT OF SUSPENDED/REVOKED LICENSE FEE: \$250.00 ☒ TRANSFER OR AMENDMENT OF EXISTING LICENSE FEE: \$200.00 (Former Business name was: 33315)

Classification of Business: ☐ Individual ☐ Partnership ☐ Corporation ☐ L.L.C.

1. Exact Business or Corporate Name: AAA American Eagle Services, LLC 2. Corp. No.: 1 truck  
3. Assumed Business Name: Lebanon/Sweet Home Septic Tank Service  
4. Mailing Address: 1118 Lancaster St NE # 338 Salem, OR 97301  
5. Business Location: 1118 Lancaster St NE # 338 Salem, OR 97301  
6. Telephone Number where you can be reached between 9:00 a.m. and 5:00 p.m.: Area Code: (503) 409-6312

7. First Name: Michael Middle Initial: J. Last Name: Cross  
Address: 460 Riggs St NW City: Salem State/Zip: OR 97304 Title: Managing Member

8. Name of Authorized Representative for Partnership, Corporation, or LLC: MICHAEL J. CROSS Managing Member 409-6312  
First Name: MICHAEL Middle Initial: J. Last Name: CROSS Title: Managing Member Phone Number: 409-6312

9. Please answer ALL of the following questions:

- Yes No
- A. ☐ ☒ Do you **Construct On-Site Sewage Disposal Systems** or any part thereof (including **Grading, Excavating and Earth Moving** activities associated with the **Construction of On-Site Sewage Disposal Systems**)? Did you attach the **INSTALLER CERTIFICATION FORM: DEQ-WQ-CERTIFICATION 3/1/2006**?
- B. ☐ ☒ Do you **Pump Out or Clean Portable Toilets**? If yes, attach to this application a completed Sewage Pumping Equipment Description/Vehicle Inspection form for each vehicle.
- C. ☒ ☐ Do you **Pump Septage** (human waste) from **Septic Tanks**, or other **Treatment Facilities, Holding Tanks, Vault Toilets, Privies or Cesspools**? If yes, attach to this application a completed Sewage Pumping Equipment Description/Vehicle Inspection form for each vehicle.
- D. ☐ ☒ Do you **Clean Septic Tanks** or other **Treatment Facilities, Holding Tanks, Vault Privies or Cesspools** by means other than **Pumping**? If yes, describe in detail: \_\_\_\_\_
- E. ☐ ☒ Do you use **Sewage Pumping Equipment to Pump Liquid and Solid Waste other than Septage from Industrial or Commercial Tanks, Vaults, Sumps or Other Facilities**? If yes, attach a copy of the letter from the **DEQ Regional Office** that authorizes use of your pumping equipment for this activity.
- F. ☐ ☒ Do you use **Biological Additives or Chemicals to Clean Septic Tanks**? If yes, describe in detail: \_\_\_\_\_
- G. ☒ ☐ Do you **Clean Effluent Sewer or Trench Piping**? If yes, describe method: High pressure water
- H. ☒ ☐ Do you **Advertise or Purport** to be in the Business of providing any of the services described in A,B,C,D,F, or G? If yes, What method of advertising? News paper / yellow pages Do you subcontract any of these services? yes
- I. ☐ ☒ Have you **Previously engaged in Sewage Disposal Service Business in Oregon**? If yes, describe in detail: \_\_\_\_\_
- J. ☒ ☐ Is either your **\$15,000 or \$5,000 Sewage Disposal Service Bond** or approved **Equivalent Security** valid through June 30th of the current license year?

10. BY MY SIGNATURE, I CERTIFY THAT ALL INFORMATION PROVIDED WITH THIS APPLICATION IS TRUE AND ACCURATE TO THE BEST OF MY KNOWLEDGE.

Signature: [Signature] Title: Managing Member Date: 1-12-09

Please be sure you have completed this application and enclosed all required attachments before mailing it to the Department of Environmental Quality at the address found in the upper left corner of this form. The non-refundable/non-proratable application fee must accompany this application. In addition, if you answered yes to questions B or C, you must also enclose a Sewage Pumping Equipment Description/Vehicle Inspection form (DEQ-WQ-WH823) for each of your pumping vehicles and a completed Septage Management Plan Worksheet form (DEQ-WQ-WH819).

## SUBMIT APPLICATION TO:

DEPARTMENT  
OF ENVIRONMENTAL QUALITY  
WATER QUALITY DIVISION  
ON-SITE SEWAGE  
DISPOSAL PROGRAM  
811 S.W. Sixth Avenue  
Portland, OR 97204  
(503) 229-6402 • 1-800-452-4011

APPLICATION  
For  
SEWAGE DISPOSAL SERVICE  
BUSINESS LICENSE

STATE OF OREGON  
DEQ

## OFFICIAL DEQ USE ONLY

☐ VEHICLE INSPECTION FORM *N/A*  
☐ SEPTAGE MGMT. PLAN  
DATE PAID: *1-12-09*  
AMT.: *200* CK NO.: *1014*  
*1-12-09*  
DATE ISSUED CONTROL NUMBER  
LICENSE NO.: *35378* *2A*

Use the attached instruction sheet as a guide in completing this form. Please print, or type.

## PLEASE READ CAREFULLY:

I HEREBY APPLY FOR A SEWAGE DISPOSAL SERVICE LICENSE. The license period is based upon the State's fiscal year, July 1 through June 30. Authority: Oregon Revised Statutes 454.695. PLEASE NOTE! Your license may be valid for a shorter period of time, if you license just prior to June 30th. Licenses issued July 1st or after will be valid for three years up to the 3rd June 30th unless suspended or revoked.

☐ NEW LICENSE  
FEE: \$1065.00

☐ REINSTATEMENT OF SUSPENDED/REVOKED LICENSE  
FEE: \$250.00

☒ TRANSFER OR AMENDMENT OF EXISTING LICENSE  
FEE: \$200.00 (Former Business name was: *35378* *35375*)

Classification of Business: ☐ Individual ☐ Partnership ☐ Corporation ☐ LLC

1. Exact Business or Corporate Name: *AAA American Eagle Services, LLC* 2. Corp. No.: *2 trucks*  
3. Assumed Business Name: *Hanks Septic Service*  
4. Mailing Address: *1118 Lancaster St NE # 338 Salem, OR 97301*  
5. Business Location: *1118 Lancaster St NE # 338 Salem, OR 97301*  
6. Telephone Number where you can be reached between 9:00 a.m. and 5:00 p.m.: Area Code: *(503) 409-6312*  
7. *MICHAEL* *J.* *CROSS*  
*460 Riggs St NW* *Salem* *OR 97304* *Managing Member*  
First Name Middle Initial Last Name  
Address City State/Zip Title

8. Name of Authorized Representative for Partnership, Corporation, or LLC:  
*MICHAEL* *J.* *CROSS* *Managing Member* *409-6312*  
First Name Middle Initial Last Name Title Phone Number

9. Please answer ALL of the following questions::

- Yes No
- A. ☐ ☒ Do you Construct On-Site Sewage Disposal Systems or any part thereof (including Grading, Excavating and Earth Moving activities associated with the Construction of On-Site Sewage Disposal Systems)? Did you attach the INSTALLER CERTIFICATION FORM: DEQ-WQ-CERTIFICATION 3/1/2006?
- B. ☐ ☒ Do you Pump Out or Clean Portable Toilets? If yes, attach to this application a completed Sewage Pumping Equipment Description/Vehicle Inspection form for each vehicle.
- C. ☒ ☐ Do you Pump Septage (human waste) from Septic Tanks, or other Treatment Facilities, Holding Tanks, Vault Toilets, Privies or Cesspools? If yes, attach to this application a completed Sewage Pumping Equipment Description/Vehicle Inspection form for each vehicle.
- D. ☐ ☒ Do you Clean Septic Tanks or other Treatment Facilities, Holding Tanks, Vault Privies or Cesspools by means other than Pumping? If yes, describe in detail: \_\_\_\_\_
- E. ☐ ☒ Do you use Sewage Pumping Equipment to Pump Liquid and Solid Waste other than Septage from Industrial or Commercial Tanks, Vaults, Sumps or Other Facilities? If yes, attach a copy of the letter from the DEQ Regional Office that authorizes use of your pumping equipment for this activity.
- F. ☐ ☒ Do you use Biological Additives or Chemicals to Clean Septic Tanks? If yes, describe in detail: \_\_\_\_\_
- G. ☒ ☐ Do you Clean Effluent Sewer or Trench Piping? If yes, describe method: *High pressure water*
- H. ☐ ☒ Do you Advertise or Purport to be in the Business of providing any of the services described in A,B,C,D,E, or G? If yes, What method of advertising? *News paper - yellow paper* Do you subcontract any of these services? *Yes*
- I. ☐ ☒ Have you Previously engaged in Sewage Disposal Service Business in Oregon? If yes, describe in detail: *No*
- J. ☒ ☐ Is either your \$15,000 or \$5,000 Sewage Disposal Service Bond or approved Equivalent Security valid through June 30th of the current license year?

10. BY MY SIGNATURE, I CERTIFY THAT ALL INFORMATION PROVIDED WITH THIS APPLICATION IS TRUE AND ACCURATE TO THE BEST OF MY KNOWLEDGE.

*[Signature]* *Managing Member* *1-12-09*  
Signature Title Date

Please be sure you have completed this application and enclosed all required attachments before mailing it to the Department of Environmental Quality at the address found in the upper left corner of this form. The non-refundable/non-proratable application fee must accompany this application. In addition, if you answered yes to questions B or C, you must also enclose a Sewage Pumping Equipment Description/Vehicle Inspection form (DEQ-WQ-WH823) for each of your pumping vehicles and a completed Septage Management Plan Worksheet form (DEQ-WQ-WH819).



52000

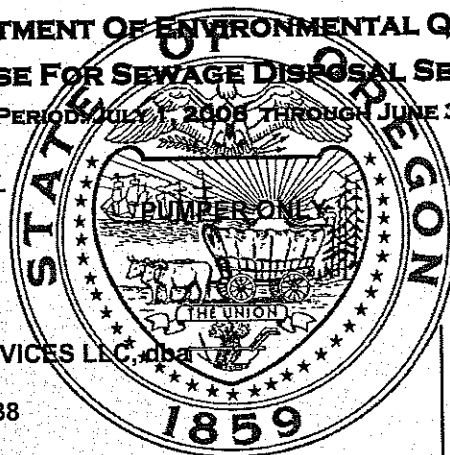
**DEPARTMENT OF ENVIRONMENTAL QUALITY**  
**LICENSE FOR SEWAGE DISPOSAL SERVICE**  
LICENSE PERIOD: JULY 1, 2006 THROUGH JUNE 30, 2009

License Number

L.L.C.

35378

AAA AMERICAN EAGLE SERVICES LLC, dba  
HANK'S SEPTIC SERVICE  
1118 LANCASTER ST NE #338  
SALEM OR 97301



*Neil Mullane*  
Neil Mullane, Administrator, Water Quality Division

Payment Received:

12-JAN-2009

License Issued:

01-JUL-2006

License Expires:

JUNE 30, 2009

DIVISION COPY - 3

Control Number



51999

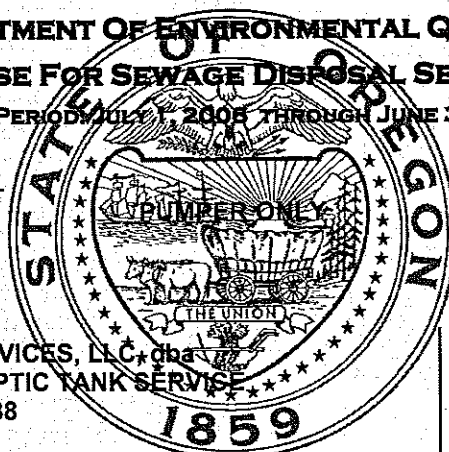
**DEPARTMENT OF ENVIRONMENTAL QUALITY**  
**LICENSE FOR SEWAGE DISPOSAL SERVICE**  
LICENSE PERIOD: JULY 1, 2006 THROUGH JUNE 30, 2009

License Number

CORPORATION

33315

AAA AMERICAN EAGLE SERVICES, LLC, dba  
LEBANON/SWEET HOME SEPTIC TANK SERVICE  
1118 LANCASTER ST NE #338  
SALEM OR 97301



*Neil Mullane*  
Neil Mullane, Administrator, Water Quality Division

Payment Received:

12-JAN-2009

License Issued:

01-JUL-2006

License Expires:

JUNE 30, 2009

DIVISION COPY - 3

**From:** FINCHER Lisa  
**Sent:** Tuesday, September 29, 2009 9:29 AM  
**To:** SMITH Bryan  
**Subject:** FW: AAA American Eagle Services LLC

A-15

Bryan

Here is the accounting of disposal at Salem Waste Water Treatment Plant. Jeanne may have receipts if we need them.

Lisa Fincher  
541-686-7905

[fincher.lisa@DEQ.state.or.us](mailto:fincher.lisa@DEQ.state.or.us)

---

**From:** Jeanne Miller [mailto:[JEMILLER@cityofsalem.net](mailto:JEMILLER@cityofsalem.net)]  
**Sent:** Monday, July 13, 2009 4:26 PM  
**To:** FINCHER Lisa  
**Subject:** RE: AAA American Eagle Services LLC

Thanks Lisa, look forward to hearing more as this is resolved.

Jeanne Miller  
Environmental Compliance Manager  
503-588-6228  
[jemiller@cityofsalem.net](mailto:jemiller@cityofsalem.net)

>>> "FINCHER Lisa" <[Fincher.Lisa@deg.state.or.us](mailto:Fincher.Lisa@deg.state.or.us)> 7/13/2009 04:19 PM >>>

As soon as this is resolved I will let you know. I want them able to dispose properly as soon as I can get them up again. Thank you for the information.

Lisa Fincher  
541-686-7905

[fincher.lisa@DEQ.state.or.us](mailto:fincher.lisa@DEQ.state.or.us)

June 15-17, 2011 EOC meeting  
From: Jeanne Miller [mailto:JEMILLER@cityofsalem.net]  
Page 55 of 76  
Sent: Monday, July 13, 2009 4:06 PM  
To: FINCHER Lisa  
Cc: James Gengler; Ron Bernt  
Subject: AAA American Eagle Services LLC

A 15

Hi Lisa,

Regarding our telephone conversation at 3:35 this afternoon, AAA American Eagle Services LLC brought in the following septic waste loads for disposal at the City of Salem septic waste station July 6 through 13, 2009:

Truck #56

July 6th - 3108 gallons  
July 7th - 3208 gallons  
July 13th - 2366 gallons

Truck #49

July 8th - 2177 gallons  
July 9th - 3056 gallons  
July 10th - 3068 gallons  
July 13th - 2244 gallons  
July 13th - 2674 gallons

Three additional loads were received today, prior to your call informing us this company no longer had a valid State license. The access numbers for AAA American Eagle are now deactivated so the company can not bring in any more loads for disposal in Salem. We also called the company and informed them they can not use the Salem septic waste disposal station because they do not have a State license.

Jeanne Miller  
Environmental Compliance Manager  
503-588-6228  
[jemiller@cityofsalem.net](mailto:jemiller@cityofsalem.net)

June 15-17, 2011, EQC meeting

Page 56 of 76

11/9/01 waiting for complete information 503-485-0497

7/12/09 Inventory not complete left msg A-16

<b>Submit Application to:</b>	<b>Renewal Application</b>	<b>Official Use Only</b>
Department of Environmental Quality Water Quality/ Onsite Attn: Business Office 811 SW 6 <sup>th</sup> Ave Portland OR 97204	Sewage Disposal Service Business License State of Oregon Department of Environmental Quality	License Type: <input type="checkbox"/> Installer <input type="checkbox"/> Pumper <input type="checkbox"/> Pumper/Installer
541-686-7905 Toll free in Oregon 800-844-8467	Three year fee:  <b>\$960.00 by June 30, 2009 \$1065 July 1, 2009 or after</b>	<input type="checkbox"/> SMP <input type="checkbox"/> Veh Insp Cert # Date Paid <b>JUL 02 2009</b> Amt: <b>960.00</b> CK #: <b>1001</b> Date Issued <b>06/11/2009</b> License #: <b>7-15-01 renewal</b>
Please print or type in dark ink		

Your current **SEWAGE DISPOSAL SERVICE LICENSE** will **EXPIRE** on **JULY 1, 2009** unless you complete and file this renewal application with the Department of Environmental Quality before June 30, 2009

L.L.C.	35378 P-2	Your license reads as shown on the label at left. <b>If there are any changes</b> in the business name, ownership, address, or if you are no longer in business, please indicate changes below: _____ _____ _____ _____ _____ _____
AAA American Eagle Services LLC, dba Hank's Septic Service 1118 Lancaster St NE #338 Salem OR 97301		

Phone Number: (503) 485-0496 Email address: hankssepticsevice@yahoo.com

Please answer all of the following questions:

- Yes ☒ No ☐
- ☒ Do you **Construct Onsite Sewage Disposal** systems or any part thereof, including Grading, Excavating and Earth Moving activities? If yes, attach a copy of your Installer Certification card to this application.
- ☐ Do you **Pump Out or Clean Portable Toilets**? If yes, complete and attach a **Sewage Pumping Equipment Description/Vehicle Inspection** form and a **Septage Management Inventory** to this application.
- ☒ Do you **Pump Septage from Septic Tanks**, other Treatment Facilities, Holding Tanks, Vault Toilets, Privies or Cesspools? If yes, complete and attach a **Sewage Pumping Equipment Description/Vehicle Inspection** form and a **Septage Management Inventory** to this application.
- ☐ Do you **Clean Septic Tanks** or other Treatment Facilities, Holding Tanks, Vaults, Privies or Cesspools by means other than Pumping? If yes, describe in detail \_\_\_\_\_
- ☐ Do you use **Septage Pumping Equipment** to Pump Liquid and Solid Waste other than Septage from Industrial or Commercial Tanks, Vaults, Sumps, or Other Facilities? If yes, attach a copy of the letter from the DEQ that authorizes use of your equipment in this manner.
- ☐ Do you use **Biological Additives or Chemicals to Clean Septic Tanks**? If yes, describe in detail \_\_\_\_\_
- ☒ Do you **Clean Effluent Sewer or Trench Piping**? If yes, describe in detail \_\_\_\_\_
- ☒ Do you **Advertise** or purport to be in the business of providing any of the services listed in the questions above? If yes, describe method of advertising \_\_\_\_\_
- ☐ Have you **previously engaged** in Sewage Disposal Service business in Oregon? If yes, under what license number \_\_\_\_\_
- ☒ Is your **Sewage Disposal Service Bond** or approved **Equivalent Security** in force?
- ☒ If you are an installer, is your **Installer Certification current**? What is your Certification Number **I-1418**? Attach a copy of your Certification Card to this application. **Your renewal will not be processed without a current certification.**

By my signature below, I certify that all the information provided with this application is true and accurate to the best of my knowledge.

Signature

Title

Date

Please be sure you have completed this application and enclosed all required attachments before mailing it to the Department of Environmental Quality at the address found in the upper left corner of this form. The non-refundable/non-proratable application fee must accompany this application.

Item E 000218

**SMITH Bryan**

**From:** FINCHER Lisa  
**Sent:** Tuesday, October 13, 2009 7:57 AM  
**To:** SMITH Bryan  
**Subject:** FW: Screen Shot

A-17

The screen shot from the license database showing the actual renewal date of 7-15-09

Lisa Fincher  
541-686-7905

[fincher.lisa@DEQ.state.or.us](mailto:fincher.lisa@DEQ.state.or.us)

**From:** KNIGHT Art  
**Sent:** Tuesday, October 13, 2009 7:56 AM  
**To:** FINCHER Lisa  
**Subject:** RE: Screen Shot

License 2000 - Prod - Oregon Department of Environmental Quality

File Person/Facility License Activities Window Help

Licensee: AAA American Eagle Services LLC ( Sewage Disposal Service )

General Licenses Employees Public Info Corporation Supp. Info

License #	Type	Status	Probation?	Limited?
35378	Installer/Pumper License	Active	<input type="checkbox"/>	<input type="checkbox"/>

Address

Detail

Bond

Supp. Info.

Additional

Issue Date: 07/01/2005

Obtained By: Application

From State/Prov.:

Expiration Date: 06/30/2012

Date This Status: 07/01/2009

Reason Changed: License Renewal

Date Archived:

Effective Date: 07/01/2009

Last Reprint Date:

Reprint Count: 0

Applicant Number: 135378

From Country:

Last Renewal Date: 07/15/2009

Renewal ID:

Remarks

## Arthur R. Knight

Systems Analyst

DEQ: MSD/BSD

503-229-5795

[Knight.Art@deq.state.or.us](mailto:Knight.Art@deq.state.or.us)

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**From:** FINCHER Lisa  
**Sent:** Tuesday, October 13, 2009 7:44 AM  
**To:** KNIGHT Art  
**Subject:** Screen Shot

Hi Art

I was wondering if there is a way to get a screen shot of the license detail page in L2K. A licensee did not renew his license until July 15 and we are doing an enforcement action on him. The legal department wants proof that the license didn't renew until the 15<sup>th</sup>.

Thanks

Lisa Fincher  
Licensing Specialist  
DEQ Water Quality/Onsite  
165 East 7th Ave Suite 100  
Eugene OR 97401-3437  
541-686-7905  
800-844-8467 x 7905  
Fax 541-686-7551  
[fincher.lisa@DEQ.state.or.us](mailto:fincher.lisa@DEQ.state.or.us)



Oregon

Theodore Kulongoski, Governor

Department of Environmental Quality

Western Region Eugene Office  
165 East 7<sup>th</sup> Ave, Suite 100  
Eugene, OR 97401  
(541) 686-7905  
FAX (541) 686-7551

7/16/09  
Talked to Karen  
tried to reach  
Lyle - told by Karen that  
he was out working  
Instructed Karen that  
the business is not licensed  
& no one should be  
out working

July 2, 2009

Michael Cross  
AAA American Eagle, LLC  
1118 Lancaster St. NE #338  
Salem Or 97301

RE: DEQ License #'s 35378 & 33315  
Origin-destination records

In accordance with Oregon Administrative Rule (OAR) 340-071-0600(13)(d), the Department is requesting you submit a copy of your Origin-Destination records for March 1 through May 31, 2009 within 14 days from the date of this letter. OAR 340-071-0600(13)(d) states that Origin-Destination records shall include the name and address of each pumping occurrence, specific type of material for each occurrence, quantity pumped each occurrence, Name and location of each authorized disposal site each occurrence, and quantity dumped each occurrence.

Please submit the records for both companies to:

Lisa Fincher  
DEQ-Eugene  
165 East 7<sup>th</sup> Ave, Suite 100  
Eugene, OR 97401-3049

If you have any questions regarding this letter, please contact me at (541) 686-7905.

Sincerely,

Lisa Fincher  
Onsite Licensing Specialist

ec: Randy Trox, DEQ-Eugene

mailed  
7/2/09

Item E 000221



A-~~20~~19

**From:** FINCHER Lisa  
**Sent:** Monday, March 01, 2010 4:39 PM  
**To:** SMITH Bryan; 'Alec Laidlaw'  
**Subject:** RE: Cross informal: origin-destination records

Hello Mr. Smith & Mr. Laidlaw

I have not received the Origin and Destination records.

Thank you

Lisa Fincher

**Lisa Fincher | Onsite Licensing Specialist**  
**Oregon Department of Environmental Quality**  
Eugene Office | 165 E. 7th Ave., Eugene, OR 97401  
☎ 541.686.7905 [fincher.lisa@deq.state.or.us](mailto:fincher.lisa@deq.state.or.us)  
<http://www.deq.state.or.us/wq/onsite/onsite.htm>

---

**From:** SMITH Bryan  
**Sent:** Monday, March 01, 2010 4:36 PM  
**To:** 'Alec Laidlaw'  
**Cc:** FINCHER Lisa; SMITH Bryan  
**Subject:** RE: Cross informal: origin-destination records

Good afternoon Alec.

I have your memo now. However, you did not include the **required origin destination records** (from 3/1/09 through 10/1/09) that are the subject of Violation 3.

At our February 10 meeting I thought DEQ was clear that we expected your client to immediately submit those records and comply with the law, which I why I am surprised those records have not yet been submitted three weeks later. Submitting them ASAP would demonstrate a willingness to prioritize and comply with the law.

If I am mistaken, and you have submitted them to DEQ already, then please accept my apology.  
(I am cc'ing Lisa Fincher of DEQ on this email so that she can confirm whether or not your client has submitted those records)

Finally, you referred to "new training protocols" several times in your memo. Please provide me with a written copy of this protocol so that DEQ can evaluate whether those protocols are "likely to prevent future violation from recurring". (This is the rule language that would allow DEQ to reduce the C Factor of the violations; without a written protocol to evaluate, and to add to the enforcement file as evidence of corrective actions, DEQ can't adjust the C Factor).

Thank you, Bryan.

---

**From:** Alec Laidlaw [<mailto:alec@laidlawandlaidlaw.com>]  
**Sent:** Monday, January 18, 2010 2:47 PM

Attachment KK

To: SMITH, Bryan  
June 15, 2011, EQC meeting  
Subject: RE: Cross Informal

Bryan,

I am still working to get some from my client. Since you and I spoke there has been some flux in schedules. Can you please re-confirm the dates that all of the key players are available.

I will work diligently to nail my client down on two dates and will forward a proposed agenda for the meeting we discussed last week.

Thanks,

Alec

**Alec J. Laidlaw, Esq.**  
Laidlaw & Laidlaw, PC  
21590 Willamette Drive  
West Linn, Oregon 97068

Tel: 503.305.6894  
Fax: 888.287.4840  
[www.laidlawandlaidlaw.com](http://www.laidlawandlaidlaw.com)

THIS MESSAGE IS INTENDED FOR THE USE OF THE INDIVIDUAL OR ENTITY TO WHICH IT IS ADDRESSED AND MAY CONTAIN INFORMATION THAT IS PRIVILEGED, CONFIDENTIAL, AND EXEMPT FROM DISCLOSURE UNDER APPLICABLE LAW. If the reader of this message is not the intended recipient, or the employee or agent responsible for delivering the message to the intended recipient, you are hereby notified that any dissemination, distribution, forwarding, or copying of this communication is strictly prohibited. If you have received this communication in error, please notify the sender immediately by e-mail or telephone at (503) 305-6894 and delete the original message immediately. Thank you.

A-20

ENFORCEMENT REFERRAL – Onsite Violations

SEP 17 2009

Inspector: Del Cline, R.S.	Manager: Mike Kucinski
What Q-Time number do you want the ELS to use? 27105	
Referring Region & Office: Western Region - Coos Bay Office, via Marion County Building Inspection Division and Linn County Environmental Health Program	
Respondent's Name: Michael Cross	
Permit Type: Onsite Wastewater Treatment System Permit 71-160 (septic system) <u>Example: NPDES 120120, WPCF 120120, etc.</u>	

1. Please provide a brief explanation, in simple and non-technical terms, of why this party is being referred, with emphasis on Respondent's connection to the violation(s) (property owner, property manager, tenant, general contractor, subcontractor, permittee, pumper, installer etc.).  
Licensed septic system installer (License #35378) started tank repair then expanded to adding approximately 100 linear feet of drainfield without obtaining the required permits at two (2) separate locations, one in Linn County and the other in Marion County.
2. Does Respondent have – or should Respondent have – either a WPCF or NPDES permit?  
☐ Yes or ☒ No If Respondent has a permit, please attach to referral.
3. What are the violations? (If violation is of a permit, specify the permit condition(s) that were violated. Do not provide citations to Division 12, which only classifies violations of other Divisions. Instead, refer to violations of Division 44, 45, 71, or 73, etc.)  
Installation of two septic systems, one in Linn County and the other in Marion County, without first obtaining the required permits. OAR 340-071-0130 (15) (a), and OAR 340-071-0215 (2). See Exhibit A.
4. Are any violations ongoing? If so, please describe them.  
The Marion County violation has been corrected by another licensed installer applying for and obtaining a permit from the County. The Linn County violation has not been corrected and is ongoing.
5. What are the potential or actual effects of the violation(s) upon human health or the environment? (i.e. any actual or potential impact upon waters of the state, public health, wildlife habitat, etc. Please attach documentation if appropriate.  
Human sewage contains viruses and bacteria that can cause disease and/or contaminate surface waters and ground water aquifers that supply water to public and private wells. The organisms in partially treated sewage are known to cause disease and other physical harm to persons who may come into contact with it. Contaminated aquifers can cause wide spread contamination of wells and drinking water supplies. Permits ensure that septic systems are properly installed and located and thus greatly diminish the potential harm to people and the environment.
6. Where did the violation(s) occur? (When possible, list the address, county, mile post, Township/Range, etc., as well as specific location(s) within a facility or a property, if applicable) Attach documentation.  
1) Linn County: 38355 Weirich Dr., Lebanon, OR 97355; 2) Marion County: 11805 State St., Salem, OR 97313
7. What was the duration of the violation(s)? (starting and ending dates – if exact dates are unknown, please provide an estimate and explain the basis for this estimate.)  
1) Linn County: on or about July 17, 2009; 2) Marion County: on or about May 21, 2009
8. How did the Department or County Agent discover the violation(s)? (e.g. complaint, required reporting, inspection, self-reported, etc.) Attach documentation.  
Witness statement and photos from Janice Endicott, owner of property at 11805 State St., Salem - See Exhibit B; and witness statement and photos from Mike Hamer, owner of Mike Hamer, Inc.'s Affordable Septic Systems, regarding the property at 38355 Weirich Dr., Lebanon - See Exhibit C. Letters to property owner and

Respondent from Jan Heron, Linn County Agent - See Exhibit D. Inspection report from Jessica Joye, Marion County Agent - See Exhibit E.

9. Has the Department or County Agent had any prior communication with this Respondent about compliance issues? (if so, please attach copies of WLs, PENs, and/or any other documented correspondence (written or verbal) to or with Respondent.

Yes. Onsite Program Licensing Specialist, Lisa Fincher has had several communications with Mr. Cross - See Exhibit F.

10. Was Respondent formerly licensed to perform sewage disposal services, or does Respondent have experience, work history, or a level of expertise regarding sewage disposal services?

☒ Yes or ☐ No

(Please perform minimal research of Respondent to learn these facts unless you are already familiar with Respondent. Contact BRD, CCB and/or DEQ's licensing section, perform an internet search of Respondent, etc.) Attach documentation.

Respondent is currently licensed (#35378) - See Exhibit G.

11. Did you have conversations or correspondence with anyone other than the Respondent about the violation(s)? If so, provide documentation of such conversations and/or correspondence, and provide name and contact information (especially telephone numbers).

☒ Yes or ☐ No

Jan Heron, Linn County Agent (541) 967-3821, ext. 2371; Jessica Joye, Marion County Agent, (503) 566-3990; Mike Hamer of Mike Hamer, Inc.'s Affordable Septic Systems, (541) 259-4374.

12. Was there economic benefit (EB) as a result of Respondent's violation(s)?

☒ Yes or ☐ No

If so, summarize here, and attach documentation. (Common EB includes the estimated cost of obtaining a required permit or license, the cost of installing or repairing a failing system, or avoided disposal costs. When documenting EB, please detail who provided the estimate, when the estimate was obtained, and the date(s) when the cost(s) should have been incurred. Also document any "offsetting" costs of correcting violations, such as the cost of properly disposing of septage after a spill.

Linn County Major Repair Permit fee is \$545; Marion County Major Repair Permit fee is \$370

13. Has the violation or the effects of the violation been corrected? (if possible)

☐ Yes or ☒ No

If the PEN requested corrective action or response, please attach any response received and discuss whether response is adequate, and attach documentation. (i.e. proof that failing system has been repaired, photos showing cleanup of spill, proof that required license was obtained, etc.)

The Linn County violation has not been corrected. The Marion County violation has been corrected - Marion County issued Permit #09-03533 on July 6, 2009 - contractor is Lone Pine Corner Septics.

14. If an Order is necessary, please specify the actions Respondent must take, as well as appropriate deadlines for performing each action (i.e. submit plans, gain plan approval, perform construction in accordance with plans, request an inspection, etc.).

#### ADDITIONAL INFORMATION:

Use separate "Confidential Intra-Office Advisory" form (the last page of this document) for confidential information.

#### Economic Benefit additional information:

##### Not obtaining a repair permit:

The following items are suggested as possible EB

1) Time saved by not submitting a completed application package, estimate 3 hours at \$50 per hour = \$150

2) Waiting for inspection after submitting completed application, Minimum 1 day, 8 Hr x \$50/Hr = \$400

3) Waiting for installation permit to be issued, Minimum 1 day, 8 Hr x \$50/Hr = \$400

4) Waiting for final inspection of installation, Minimum 1 day, 8 Hr x \$50/Hr = \$400

Item E 000225

Attachment KK

June 15-17, 2011, EQC meeting

Page 64 of 76

Above figures are for "stand-by" time and are based on information from a licensed installer (Roto-Rooter).

Item E 000226

**CONFIDENTIAL Intra-Agency Advisory Communication**  
**Exempt from public disclosure**

Please make sure this information is on a separate page.

Please provide any recommendations and observations about the violations, strengths and weaknesses of the case, case strategy, mental state, or other information that would be useful in drafting the case.

For example, is there any evidence that the Respondent was dishonest or deceitful in committing the violation? (e.g. they tried to cover up the violation, reported false information, lied to DEQ staff, discarded records they are required to keep, etc.)

**Be aware that these statements may become public record after the case is closed.**

There have also been other potential violations with regards to Mr. Crosses pumping services. He has not produced the origin-destination records as requested by Ms. Fincher on June 19, 2009 - see Exhibit H. We are unable to document any pumper violations without these origin-destination records; however, there are several complaints about Mr. Crosses pumper activities in the correspondence found in Exhibit F.



Attachment K  
Page 1 of 17, of 17  
Page 66 of 76  
**Oregon**

Theodore R. Kulongoski, Governor

**Department of Environmental Quality**

Western Region Coos Bay Office

381 N Second Street

Coos Bay, OR 97420

(541) 269-2721

FAX (541) 269-7984

OTRS 1-800-735-2900

Michael Cross/AAA American Eagle LLC  
1118 Lancaster St. NE #338  
Salem, OR 97301

July 31, 2009

A-21

CERTIFIED MAIL NUMBER: 7007 0710 0003 2512 0485

RE: Pre-Enforcement Notice  
AAA American Eagle/Michael Cross  
PEN - OSS-WR-CB-2009-023  
**On-Site Installer License #35378 and 33315**  
Marion County & Linn County

Dear Mr. Cross:

In June 2009 the Department of Environmental Quality (DEQ) received information from Marion and Linn County concerning violations of Oregon Law and Rules regarding installation of septic systems without permits.

The first violation alleges that on June 22, 2009, you installed a drainfield at 11805 State St., Salem, OR 97313. The drainfield was installed less than 100 ft. from the river bank and pond.

The second violation alleges that on June 30, 2009, Hank's Septic Service installed a drainfield at 38355 Weirich Dr., Lebanon, OR, 97355. The client was told that permits were not required.

Based upon the investigation, the Department has concluded that AAA American Eagle/Michael Cross is responsible for the following violations of Oregon environmental law:

**VIOLATIONS:**

1. You installed 2 onsite sewage treatment (septic) systems without obtaining a permit as is required by Oregon Revised Statute (ORS) 454.655(1) and OAR (OAR) 340-071-0215(2). Repairing or causing to be repaired a septic system or any part thereof, without first obtaining a permit is a Class I violation as per OAR 340-012-0060 (1)

"Emergency Repair", as defined in OAR 340-071-0100 (60), means immediate action to repair a failing system when sewage is backing up into a dwelling or building or to repair a broken pressure sewer pipe. It does not include the construction of new or additional absorption facilities.

The above violations are Class I violations of Oregon Environmental Law. Class I violations are the most serious violations, Class III violations are the least serious.

### **Corrective Actions Requested**

You must obtain permits from the appropriate Counties to repair both systems within 2 weeks of the date of this letter. Within 30 days of the date of this letter uncover the work you completed for inspection by County officials.

Another licensed installer may obtain the permit(s).

Your timely and responsive action on these items will be taken into consideration in any civil penalty assessment issued by the Department.

Human sewage is contaminated with disease causing bacteria and viruses and must be properly treated to prevent these organisms from surfacing or entering a ground water aquifer or nearby watercourse. Surfacing sewage is an immediate health hazard when exposed to animals and insects that can transmit disease to people who live nearby. Sewage also contains chemicals and compounds that can cause environmental harm when not properly treated or drainfields not properly located. For these reasons, permits are required to insure proper location and construction of septic systems.

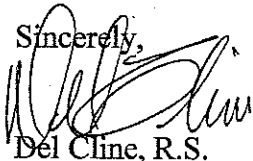
The Department is concerned that additional violations may have occurred or will occur, including continuing to install systems without permits and pumping septic tanks without the appropriate license. Please be informed that further violations involving installing systems without permits or maintaining your license will result in additional enforcement actions by this department.

The violations cited above caused significant environmental harm or posed the risk of significant environmental harm and the matter is being referred to the Department's Office of Compliance and Enforcement for formal enforcement action. Formal enforcement action may result in assessment of civil penalties and/or a Department order. A formal enforcement action may include a civil penalty assessment for each day of violation.

If you believe any of the facts in this Pre-Enforcement Notice are in error, you may provide written information to me at the address shown at the top of the letter. The Department will consider new information you submit and take appropriate action.

The Department endeavors to assist you in your compliance efforts. Should you have any questions about the content of this letter, feel free contact me in writing at 381 N. 2<sup>nd</sup>. St. in Coos Bay, Oregon 97420, or by phone at (541) 269-2721, ext. 225. In addition, if you desire any follow-up technical assistance, please contact Chuck Costanzo at our Grants Pass office at (541) 471-2850, ext. 224.

Sincerely,



Del Cline, R.S.

Onsite Wastewater Specialist

Cc: e-copy Office of Compliance and Enforcement, DEQ Headquarters  
e-copy Mike Kucinski, DEQ Eugene

A-22

**SMITH Bryan**

---

**From:** FINCHER Lisa  
**Sent:** Thursday, April 15, 2010 9:05 AM  
**To:** SMITH Bryan  
**Subject:** FW: AAA Final Default Order  
**Attachments:** 85357 AAA American Eagle 10K.doc

Here ya are. ☺

**Lisa Fincher | Onsite Licensing Specialist**  
**Oregon Department of Environmental Quality**  
Eugene Office | 165 E. 7th Ave., Eugene, OR 97401  
☎ 541.686.7905 [fincher.lisa@deq.state.or.us](mailto:fincher.lisa@deq.state.or.us)  
<http://www.deq.state.or.us/wq/onsite/onsite.htm>

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**From:** MIZE Weisha  
**Sent:** Thursday, April 15, 2010 9:00 AM  
**To:** FINCHER Lisa  
**Subject:** RE: AAA Final Default Order

Here you go. I thought I had sent this previously, my apologies.

I can tell you that Cross submitted a request for hearing, and that it was a day past the deadline to request a hearing.

---

**From:** FINCHER Lisa [<mailto:lisa.fincher@state.or.us>]  
**Sent:** Thursday, April 15, 2010 8:31 AM  
**To:** MIZE Weisha  
**Subject:** RE: AAA Final Default Order

Hi Weisha,

Thank you for forwarding this to me. I have given a copy to my enforcement person. Can you forward me a copy of the Notice of Violation? Thanks

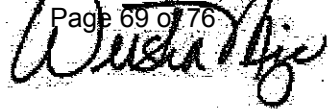
Have a great day. ☺

**Lisa Fincher | Onsite Licensing Specialist**  
**Oregon Department of Environmental Quality**  
Eugene Office | 165 E. 7th Ave., Eugene, OR 97401  
☎ 541.686.7905 [fincher.lisa@deq.state.or.us](mailto:fincher.lisa@deq.state.or.us)  
<http://www.deq.state.or.us/wq/onsite/onsite.htm>

---

**From:** MIZE Weisha  
**Sent:** Wednesday, April 14, 2010 10:43 AM  
**To:** FINCHER Lisa  
**Subject:** AAA Final Default Order

This is going out in the mail today.



***Weisha Mize, Enforcement Compliance Officer  
Construction Contractor's Board***

***PO Box 14140***

***Salem OR 97309***

***Ph: 503.378.4621 ext. 4073***

***Fx: 503.373.2007***

**BEFORE THE CONSTRUCTION CONTRACTORS BOARD  
STATE OF OREGON**

In the Matter of:  AAA American Eagle Services LLC, dba Hank's Septic Service, an unlicensed entity Respondent.	<b>File No. 85357</b>  <b>Notice of Violation, Proposed Assessment of Civil Penalty and Opportunity to Request Hearing</b>
---	--

AAA American Eagle Services LLC  
1118 Lancaster Dr. NE #338  
Salem OR 97301

**PROPOSED ACTION**

The Oregon Construction Contractors Board (Board) proposes to take disciplinary action against Respondent AAA American Eagle Services LLC in the form of assessment of a civil penalty of \$10,000 for two counts of violation of ORS 701.026(1) by working as a contractor in Oregon while unlicensed with the Construction Contractors Board, as further described below.

**FACTS**

Respondent performed work as a contractor.

Count 1

1(a). On or about November 5, 2009, Respondent AAA American Eagle Services LLC offered to work as a contractor by submitting a proposal to Janet Binning to demolish and remove a manufactured home and cabin at the property located at 27116 High Deck Road in Foster, Oregon, for a total amount of \$7,909.

1(b). On or about November 13, 2009, AAA American Eagle Services LLC, dba Hank's Septic Service, submitted invoice 3921 to Janet Binning for the work done under the November 5, 2009 offer. The work included demolition and excavation unrelated to septic tank installation.

Count 2

2(a). On or about February 16, 2010, Respondent AAA American Eagle Services LLC offered to work as a contractor by submitting a construction agreement contract proposal to Garry Binning to prepare the site for and install a new foundation, including associated excavation, concrete, plumbing and electrical work as described in Addendum A to the contract, at the property located at 27116 High Deck Road in Foster, Oregon, for a total amount of \$15,144.70. Binning did not accept the offer.

2(b). On or about March 3, 2010, AAA American Eagle Services LLC, DBA MGA Const., submitted invoice #4015 dated February 18, 2010, to Binning's insurer, Farmers Insurance Co., attention Suzanne Sleater, for work purported to have been performed under the February 16, 2010 offer. The invoice was for compaction of rock for foundation and driveway, removal of a gravel slab, installation and placement of rock for a foundation base, placement of concrete slab and gravel, installation of a water line, rain drain line and electrical conduit, and installation of drainage and pipe.

Respondent was compensated for the construction contracting work performed.

3. Respondent received compensation from Farmers Insurance Co. for the work described above totaling \$18,000.

At all relevant times, Respondent was not licensed as a contractor in Oregon.

4. Respondent AAA American Eagle Services LLC is registered with the Secretary of State Corporations Division as a limited liability company. Hank's Septic Service is registered with the Secretary of State Corporations Division as an assumed business name for Respondent AAA American Eagle Services LLC. **AAA American Eagle Services LLC, dba Hank's Septic Service, is not now, nor has it ever been, licensed as an Oregon construction contractor by the Oregon Construction Contractors Board.**

Respondent used a misleading CCB license number.

5a. Respondent's November 5, 2009 offer was made as MGA Construction dba AAA American Eagle Services LLC and contained CCB license #135081.

5b. Respondent's February 16, 2010 offer to Binning was made as MGA Construction dba AAA American Eagle Services LLC and contained CCB license #135081.

5c. Respondent's March 3, 2010 invoice displayed MGA Construction's CCB license #135081.

5d. AAA American Eagle Services LLC is not associated in any way with Miguel Solorio, dba MGA Construction, CCB #135081, and did not have authorization from the CCB licensee to use this CCB license number in any capacity.

#### APPLICABLE LAWS

ORS 701.026(1) provides in pertinent part that a person shall not undertake or offer to undertake to do work as a contractor unless that person has a current, valid license issued under this chapter by the Construction Contractors Board.

ORS 701.005(5)(a) defines "Contractor" as a person who, for compensation or with the intent to sell, arranges or undertakes or offers to undertake or submits a bid to construct, alter, repair, add to, subtract from, improve, inspect, move, wreck or demolish, for another, any building, highway, road, railroad, excavation or other structure, project, development or improvement attached to real estate, or to clean or service chimneys, or to do any part thereof.

ORS 701.992(1) authorizes the Construction Contractors Board to establish and assess a civil penalty not more than \$5,000 for each offense against any person who violates any provision of ORS Chapter 701 or any rule adopted by the Construction Contractors Board thereunder, in an amount determined by the board.

OAR 812-005-0800(5) establishes a civil penalty of \$5,000 per offense for working as a contractor in violation of ORS 701.026, when one or more violations have occurred, or when an inactive, lapsed, invalid, or misleading license number has been used.

### **OPPORTUNITY FOR A HEARING**

You are entitled to a hearing as provided by the Administrative Procedures Act (ORS chapter 183). If you want a hearing, you must file a written request for hearing with the Board within 21 days from the date this notice was mailed by certified or registered mail. If a request for hearing is not received within this 21-day period, your right to a hearing shall be considered waived.

If you request a hearing, you will be notified of the time and place of the hearing. Before the commencement of the hearing, you will be given information on the procedures, rights of representation and other rights of parties relating to the conduct of the hearing, as required by ORS 183.413.

If you do not request a hearing within 21 days, or if you withdraw a hearing request, or notify the Board or Administrative Law Judge that you will not appear, or if you fail to appear at the scheduled hearing, the Board may issue a final order by default imposing the proposed disciplinary sanction. If the Board issues a final order by default, it designates its file on this matter as the record.

Initial notice of a contested case or arbitration directed by the Board to the last-known address of record shall be considered delivered when deposited in the United States mail and sent registered or certified or post office receipt secured.

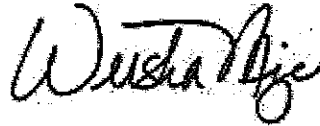
**ANSWER REQUIRED**

Pursuant to OAR 812-005-0100 and 812-005-0110, an Answer must be filed together with a Request for a Hearing. The Answer shall include:

1. An admission or denial of each factual matter alleged in the notice; and
2. A short and plain statement of each relevant defense the respondent may have.

Issued and served this 23rd day of March, 2010.

OREGON CONSTRUCTION CONTRACTORS BOARD



Weisha Mize  
Enforcement Compliance Officer



Department of Environmental Quality  
License For Sewage Disposal Service  
License Period: July 1, 2009 through June 30, 2012

License Number

L.L.C.

35378

AAA AMERICAN EAGLE SERVICES LLC dba  
HANK'S SEPTIC SERVICE  
1118 LANCASTER ST NE #338  
SALEM OR 97301



*Neil Mullane*  
Neil Mullane, Administrator, Water Quality Division

Payment Received:

02-JUL-2009

License Issued:

01-JUL-2009

License Expires:

JUNE 30, 2012

LICENSEE COPY - 2

Attachment KK

June 15-17, 2011, EQC meeting

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## Oregon DEQ fines the town of Sumpter

By Associated Press

### Summary

The state levied a \$1,902 fine against the Eastern Oregon city of Sumpter, alleging it failed to submit reports showing that treated wastewater was tested for pollutants.

### STORY

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Story Published: Apr 28, 2009 at 9:05 PM PDT Story Updated: Apr 28, 2009 at 9:05 PM PDT

Comments (7)

SUMPTER, Ore. (AP) - The state levied a \$1,902 fine against the Eastern Oregon city of Sumpter, alleging it failed to submit reports showing that treated wastewater was tested for pollutants.

Sumpter has a Department of Environmental Quality permit allowing it to use treated wastewater to irrigate land. The permit mandates the city test the wastewater twice per week, and do other testing on an annual basis.

According to DEQ records, Sumpter failed to turn in weekly results more than 20 times during the past three years. It also didn't provide results from some 2006 and 2007 annual tests.

City Recorder Pat Aikins told the Baker City Herald that Sumpter is appealing the fine.

The city uses wastewater for irrigation during the summer because its sewage lagoon isn't large enough to store all its wastewater year-round.

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Comments (7)

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More Fourth of July news.

- ☐ Freedom
- ☐ Patriot
- ☐ Liberty
- ☐ Eagle
- ☐ Independence
- ☐ America

Item E 000237

Attachment KK

June 15-17, 2011, EQC meeting  
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