



# Oregon

Kate Brown, Governor

## Department of Environmental Quality

Office of the Director  
811 SW Sixth Avenue  
Portland, OR 97204-1390  
(503) 229-5343  
FAX (503) 229-5100  
TTY: 711

October 15, 2015

CERTIFIED MAIL No. 70112000000051229183

Joseph Michael Murdock  
25902 Tracy St.  
Middleton, ID 83644

Re: Notice of Civil Penalty Assessment and Order  
Case No. LQ/SP-ER-15-139

This letter is to inform you that DEQ has issued you a civil penalty of \$28,793 for failing to immediately clean up a spill or release of oil that occurred on June 14, 2015, when you crashed your truck on Highway 95 near Jordan Valley, Oregon. The crash resulted in a spill or release of at least 50 gallons, and as much as 200 gallons, of diesel fuel onto the roadway. You did not clean up the spill or report it to the Oregon Emergency Response System as required by law.

DEQ issued this penalty because failing to immediately clean up a spill or release of oil is a serious violation of Oregon environmental law. Even small amounts of oil or petroleum products spilled onto the ground can pose a threat to surface water, groundwater, and environmental quality in general. Oregon law requires that spilled oil be immediately cleaned up in order to minimize these threats.

\$20,793 of the civil penalty amount represents the economic benefit you gained by failing to immediately clean up the diesel fuel spill. If you pay for the spill cleanup, DEQ will consider recalculating the costs as delayed rather than avoided and will reduce the civil penalty accordingly. Please contact Eric Knapp of the Oregon Department of Transportation at 541-823-4023 regarding reimbursing that agency for the cost of the cleanup.

If you wish to appeal this matter, DEQ must receive a request for a contested case hearing within 20 calendar days from your receipt of this letter. The 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 your request, we will arrange to meet with you to discuss this matter. If DEQ does not receive a timely written hearing request, the penalty will become due. Alternatively, you can pay the penalty by sending a check or money order to the above address.

The attached Notice further details DEQ's reasons for issuing the penalty and provides further instructions for appealing the penalty. Please review 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. SEP documents are



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available on the internet at <http://www.deq.state.or.us/programs/enforcement/SEP.htm>, or by calling the number below to request a paper copy.  
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 Esther Westbrook, at (503) 229-5374. You may call toll-free within Oregon at 1-800-452-4011, extension 5374.

Sincerely,



Leah K. Feldon, Manager  
Office of Compliance and Enforcement

Enclosures

cc: Mike Renz, Bend Office, DEQ  
Eric Knapp, Oregon Department of Transportation: [eric.t.knapp@odot.state.or.us](mailto:eric.t.knapp@odot.state.or.us)



1 10. Respondent did not report the spill or release of oil to the Oregon Emergency  
2 Response System (OERS).

3 11. On or about July 22, 2015, DEQ staff reported the spill or release to OERS.

### 4 III. CONCLUSIONS

5 1. Respondent violated ORS 466.645(1) by failing to immediately clean up a spill or  
6 release of oil, as described in Section II, Paragraphs 1-8 above. This is a Class I violation according  
7 to OAR 340-012-0081(1)(a). DEQ hereby assesses a \$28,793 civil penalty for this violation.

8 2. Respondent violated ORS 466.635 by failing to immediately report a spill or release  
9 of oil to OERS that Respondent knew was over the reportable quantity, as described in Section II,  
10 Paragraphs 1-7 and 10-11 above. This is a Class I violation according to OAR 340-012-0081(1)(b).  
11 DEQ has not assessed a civil penalty for this violation.

### 12 IV. ORDER TO PAY CIVIL PENALTY

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

15 Pay a total civil penalty of \$28,793. The determination of the civil penalty is attached as  
16 Exhibit No. 1 and incorporated as part of this Notice.

17 As provided in ORS 466.990(3) and (4), the civil penalty collected pursuant to this Notice  
18 and Order shall be deposited in the Oil and Hazardous Material Emergency Response and Remedial  
19 Action Fund established in ORS 466.670.

20 If you do not file a request for hearing as set forth in Section V below, your check or money  
21 order must be made payable to "**State Treasurer, State of Oregon**" and sent to the **DEQ,**  
22 **Business Office, 811 S.W. Sixth Avenue, Portland, Oregon 97204.** Once you pay the penalty,  
23 the Findings of Fact, Conclusions and Order become final.

### 24 V. NOTICE OF RIGHT TO REQUEST A CONTESTED CASE HEARING

25 You have a right to a contested case hearing on this Notice, if you request one in writing.  
26 You must ensure that DEQ receives the request for hearing **within 20 calendar days** from the  
27 date you receive this Notice. If you have any affirmative defenses or wish to dispute any

1 allegations of fact in this Notice or attached exhibit(s), you must include them in your request for  
2 hearing, as factual matters not denied will be considered admitted, and failure to raise a defense  
3 will be a waiver of the defense. (See OAR 340-011-0530 for further information about requests  
4 for hearing.) You must mail the request for hearing to: **DEQ, Office of Compliance and**  
5 **Enforcement - Appeals, 811 SW Sixth Avenue, Portland, Oregon 97204**, or fax it to **503-229-**  
6 **5100**. An administrative law judge employed by the Office of Administrative Hearings will  
7 conduct the hearing, according to ORS Chapter 183, OAR Chapter 340, Division 011 and OAR  
8 137-003-0501 to 0700. You have a right to be represented by an attorney at the hearing, or you  
9 may represent yourself unless you are a corporation, agency or association.

10 Active duty service-members have a right to stay proceedings under the federal Service  
11 members Civil Relief Act. For more information, please call the Oregon State Bar at 1-800-  
12 452-8260 or the Oregon Military Department at 1-800-452-7500. Additional information can be  
13 found online at the United States Armed Forces Legal Assistance (AFLA) Legal Services  
14 Locator website <http://legalassistance.law.af.mil/content/locator.php>.

15 If you fail to file a request for hearing in writing within 20 calendar days of receipt of the  
16 Notice, the Notice will become a final order by default without further action by DEQ, as per  
17 OAR 340-011-0535(1). If you do request a hearing but later withdraw your request, fail to attend  
18 the hearing or notify DEQ that you will not be attending the hearing, DEQ will issue a final order  
19 by default pursuant to OAR 340-011-0535(3). DEQ designates the relevant portions of its files,  
20 including information submitted by you, as the record for purposes of proving a prima facie case.

21  
22  
23 Date

10/15/15

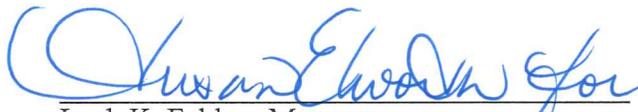
  
Leah K. Feldon, Manager  
Office of Compliance and Enforcement

EXHIBIT NO. 1

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

VIOLATION 1: Failing to immediately clean up a spill or release of oil, in violation of ORS 466.645(1).

CLASSIFICATION: This is a Class I violation pursuant to OAR 340-012-0081(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 applicable to this violation, and the information reasonably available to DEQ does not indicate a minor or major magnitude.

CIVIL PENALTY FORMULA: The formula for determining the amount of penalty of each violation is:  $BP + [(0.1 \times BP) \times (P + H + O + M + C)] + EB$

"BP" is the base penalty, which is \$4,000 for a Class I, moderate magnitude violation in the matrix listed in OAR 340-012-0140(3)(b)(A)(ii) and applicable pursuant to OAR 340-012-0140(3)(a)(K) because Respondent violated an oil and hazardous material spill and release statute during a commercial activity and Respondent is not listed in OAR 340-012-0140(2)(a)(N).

"P" is whether Respondent has any prior significant actions, as defined in OAR 340-012-0030(19), in the same media as the violation at issue that occurred at a facility owned or operated by the same Respondent, and receives a value of 0 according to OAR 340-012-0145(2)(a)(A), because there are no prior significant actions.

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

"O" is whether the violation was repeated or ongoing and receives a value of 4 according to OAR 340-012-0145(4)(c), because there were more than 28 occurrences of the violation. The spill occurred on or about June 14, 2015 and Respondent never cleaned up the spill. Therefore, the violation was ongoing for more than 28 days.

"M" is the mental state of the Respondent and receives a value of 4 according to OAR 340-012-0145(5)(c), because Respondent's conduct was negligent. Respondent was injured in the accident and was transported to the hospital by ambulance. On or about the day that the spill occurred, Respondent's acquaintance Anthony Traxler removed a minimal amount of contaminated soil (approximately 7.3 cubic feet) by hand shoveling, which was ineffective as a cleanup response. Subsequent to the spill, Respondent did not take any action to clean up the spill, make efforts to find out if he had any obligation to clean up, or cooperate with the Oregon Department of Transportation (ODOT) or its contractor in the cleanup activities. By failing to take immediate steps to clean up the oil he had

spilled and not cooperating in the cleanup effort, Respondent failed to take reasonable care to avoid a foreseeable risk that he would fail to meet his legal obligation to clean up a spill that he had caused.

"C" is Respondent's efforts to correct the violation and receives a value of 2 according to OAR 340-012-0145(6)(g), because Respondent did not address the violation as described in paragraphs (6)(a) through (6)(e) and the facts do not support a finding under paragraph (6)(f). ODOT hired Steve Ritch Environmental & Construction Inc. to clean up the spill on or about July 22, 2015. Respondent had no involvement in the cleanup and has not reimbursed ODOT.

"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 \$20,793. This is the amount Respondent gained by avoiding paying a contractor approximately \$37,388 to clean up the spill. This "EB" was calculated pursuant to OAR 340-012-0150(1) using the U.S. Environmental Protection Agency's BEN computer model.

PENALTY CALCULATION:  $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$   
= \$4,000 + [(0.1 x \$4,000) x (0 + 0 + 4 + 4 + 2)] + \$20,793  
= \$4,000 + [(\$400) x (10)] + \$20,793  
= \$4,000 + \$4,000 + \$20,793  
= \$28,793