Oregon

Kate Brown, Governor

Department of Environmental Quality
Office of Compliance and Enforcement
700 NE Multnomah Street, Suite 600
Portland, OR 97232-4100
(503) 229-5696
FAX (503) 229-5100
TTY 711

August 30, 2018

CERTIFIED MAIL: 7016 0750 0000 3470 3616

FHA Holdings, LLC.
c/o Myatt & Bell, P.C., Registered Agent
10300 SW Greenburg Road Suite 500
Portland, OR 97223

Re: Notice of Civil Penalty Assessment and Order
Case No. WQ/SW-NWR-2018-059

This letter is to inform you that the Oregon Department of Environmental Quality (DEQ) has issued you a civil penalty of $29,554 for allowing prohibited underground injection control (UIC) systems at the property you own and lease to NW Metals, Inc., located at 7600 N.E. Killingsworth Street, in Portland, Oregon.

UICs inject fluids directly into the subsurface and therefore often provide a direct conduit to groundwater. DEQ regulates UICs to ensure that they do not pose a risk of harm to human health or the environment. Specifically, DEQ rules prohibit the operation of UICs that inject fluids that have come in contact with industrial operations where hazardous substances or toxic materials including petroleum products are stored, used, or handled. DEQ issued this penalty because the UICs at your property are prohibited and as the owner of the property you are responsible for maintaining the UICs in compliance with Oregon law.

The UICs at your property were previously authorized pursuant to OAR 340-044-0018(3). However, since you failed to comply with the requirements to maintain that authorization, including failing to submit the No-Exposure Certification (NEC) as required every 5 years, and failing to sample stormwater entering the UICs as required annually, the UICs are no longer authorized. In addition, DEQ discovered during a site inspection on July 30, 2018, that a broken water line is causing water to run across the property and into catch basins that are connected to the UICs. DEQ is concerned that this runoff may result in the discharge of harmful pollutants from the property into the UICs.

Included in Section IV of the attached Notice is an order requiring you to close the prohibited UICs or prevent the UICs from injecting fluids that may come in contact with hazardous substances or toxic materials including petroleum products through an industrial operation. $16,354 of the civil penalty represents the economic benefit you have gained by failing to close the UICs since your tenant began the industrial operation. If you complete the requirements in the Notice, DEQ will consider recalculating the economic benefit costs as delayed rather than avoided and will reduce the civil penalty accordingly.

If you wish to appeal this matter, DEQ must receive a request for a hearing within 20 calendar days from your receipt of this letter. The hearing request must be in writing. Send your request to DEQ Office of Compliance and Enforcement:

Via mail – 700 NE Multnomah Street, Suite 600, Portland, Oregon 97232
Via email – DEQappeals@deq.state.or.us
Via fax – 503-229-5100

Once DEQ receives your request, we will arrange to meet with you to discuss this matter. If DEQ does not receive a timely written hearing request, the penalty will become due. Alternatively, you can pay the penalty by sending a check or money order to the above address.

The attached Notice further details DEQ's reasons for issuing the penalty and provides further instructions for appealing the penalty. Please review and refer to it when discussing this case with DEQ.

DEQ may allow you to resolve part of your penalty through the completion of a Supplemental Environmental Project (SEP). SEPs are environmental improvement projects that you sponsor instead of paying a penalty. Further information is available by calling the number below or at http://www.oregon.gov/deq/Regulations/Pages/SEP.aspx.

DEQ's rules are available at http://www.oregon.gov/deq/Regulations/Pages/Statutes.aspx or by calling the number below.

If you have any questions, please contact Courtney Brown at 503-229-6839 or toll free in Oregon at 800-452-4011, extension 6839.

Sincerely,

Kieran O'Donnell, Manager
Office of Compliance and Enforcement

Enclosures

cc: Derek Sandoz, Northwest Region
Chris Rich, Perkins Coie, 1120 NW Couch Street, 10th fl., Portland, OR 97209-4128

BEFORE THE ENVIRONMENTAL QUALITY COMMISSION

OF THE STATE OF OREGON

IN THE MATTER OF: FHA HOLDINGS, LLC an Oregon corporation, Respondent.	))))	NOTICE OF CIVIL PENALTY ASSESSMENT AND ORDER CASE NO. WQ/SW-NWR-2018-059

I. AUTHORITY

The Department of Environmental Quality (DEQ) issues this Notice of Civil Penalty Assessment and Order (Notice) pursuant to Oregon Revised Statutes (ORS) 468.100, ORS 468.126 through 468.140, ORS Chapter 183, ORS Chapter 468B, and Oregon Administrative Rules (OAR) Chapter 340, Divisions 011, 012, an 044.

II. FINDINGS OF FACT

1. Since on or about May 14, 2014, Respondent has been the owner of property located at 7530-7626 NE Killingsworth Street, in Portland, Oregon (the "Property").

2. The Property has five Underground Injection Control (UICs) Systems that inject fluids, including stormwater, into the subsurface at the Property.

3. The UICs were first authorized by rule on August 24, 2011, prior to Respondent owning the Property.

4. Respondent has not submitted a renewal of the certification showing that the UICs do not receive stormwater mixed with fluids from areas where hazardous substances and toxic materials are used, handled, or stored.

5. Respondent has not performed any monitoring or stormwater sampling of the UICs.

6. Two of the five UICs (Drywell #1 and Drywell #2) are located in the southwest corner of the Property in an area where Respondent's lessee (NW Metals Inc.) engages in an industrial operation that includes the storage, handling, dismantling and processing of vehicles and the storage, handling, and processing of liquids commonly found in vehicles, including used oil and gasoline, antifreeze, power steering and other toxic or hazardous substances or petroleum based products.

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7. There are two catch basins on the Property (the Catch Basins) that are connected to and drain to Drywell # 1 and Drywell # 2.

8. Stormwater runoff from the area of the Property where the industrial operation occurs, described in Section I, paragraph 6 above, drains to the Catch Basins and to Drywell # 1 and Drywell # 2.

9. Water at the bottom of Drywell #1 was sampled on July 19, 2018. Sample results detected eleven Volatile Organic Compounds (VOCs) were detected in the water.

10. Samples of sludge were taken from the bottom of the inside of Drywell #1 on July 19, 2018. Sample results detected petroleum hydrocarbons and ten metals, four of which exceeded background metals concentrations for the Portland Basin. In addition, sample results detected eleven semi-volatile organic compounds (SVOCs), five of which exceeded the EPA Regional Screening Level for Resident Soil to Groundwater.

11. Soil samples were taken adjacent to and 5' to 10' below the bottom of Drywell #1 on July 30. 2018. Sample results detected petroleum hydrocarbons and ten metals, two of which exceeded background metals concentrations for the Portland Basin. In addition, sample results detected eleven SVOCs. Two of those SVOCs exceeded the EPA Regional Screening Level for Residential Soil to Groundwater.

12. Soil samples were taken adjacent to and 5' to 10' below the bottom of Drywell #2 on July 30, 2018. Sample results detected petroleum hydrocarbons, nine metals, six VOCs, and ten SVOCs, one of which exceeded the EPA Regional Screening Level for Residential Soil to Groundwater.

13. On March 14, 2018, DEQ performed an inspection of the Property and observed:

a. Vehicles stacked in disorganized piles;

b. Waste tires accumulated in disorganized, unstacked piles in many locations, outside, on the ground, throughout the Property;

c. Damaged and open containers labelled "used oil";

d. Car batteries outside on the ground and in vehicles exposed to the elements;

e. Vehicle dismantling areas located over bare ground, uncovered, and exposed to stormwater;

f. The ground around Drywell #1 and Drywell # 2 was stained with black dirt and had an oily sheen;

g. The grounds underneath the vehicle dismantling areas were stained with black dirt and had an oily sheen; and

h. Dark and stained soil in the area in and around the Catch Basins;

14. Antifreeze is known to contain benzene and lead in high concentrations which can make it a hazardous waste.

15. Antifreeze typically contains ethylene glycol or propylene glycol which is a known threat to human health and the environment.

III. CONCLUSIONS

Since on or about May 2014, through the present, Respondent has violated OAR 340-044-0015 and 0018 by allowing and maintaining prohibited or unauthorized UICs at the Property, as described in Section II above. Specifically, Respondent has allowed the operation of two prohibited Class V injection systems at the Property, in violation of OAR 340-044-0015(2)(c) by allowing NW Metals Inc. to engage in industrial operations where used oil, used tires, antifreeze and other toxic materials commonly found in vehicles are discharged to the ground surface, exposed to stormwater, and drain to the Catch Basins and Drywell # 1 and Drywell # 2. Drywell # 1 and Drywell # 2 are "Underground Injection Systems" and "Class V injection Systems," as defined by OAR 340-044-0005(24) and OAR 340-044-0011(5)(d) respectively, because they emplace or discharge stormwater runoff from industrial facilities to the subsurface. Used oil, gasoline, and antifreeze are considered "toxic materials," as defined by OAR 340-044-0005(45) because they will cause or can reasonably be expected to cause a hazard to aquatic, human or animal life. In addition, Respondent has failed to submit to DEQ a renewal certification for the five UICs at the Property within five years of their initial authorization, in violation of OAR 340-044-0018(3)(d)(A) and Respondent has failed to perform at least annual monitoring of all five UICs in violation of OAR 340-044-0018(3)(d)(B)(iii). These are Class I violations, according to

OAR 340-012-0055(1)(p). DEQ hereby assesses a $29,554 civil penalty for these violations.

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 $29,554. The determination of the civil penalty is attached as Exhibit No.1 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, Business Office, 700 NE Multnomah Street, Suite 600, Portland, Oregon 97232**. Once you pay the penalty, the Findings of Fact, Conclusions and Order become final.

2. By no later than October 1, 2018, comply with Oregon law and the following conditions:
   a. Close the prohibited Class V injection systems (Drywell # 1 and Drywell # 2); and
   b. Submit an updated rule authorization application for the remaining UICs at the Property, including a Name Change and Transfer of Registration and Authorization form.

3. Submit documentation demonstrating compliance with Section IV, paragraph 2 above to: DEQ, attn: Derek Sandoz, 700 NE Multnomah Street, Suite 600, Portland, OR 97232.

V. 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 your request for hearing **within 20 calendar days** from the date you receive this Notice. If you have any affirmative defenses or wish to dispute any allegations of fact in this Notice or attached exhibit, you must do so in your request for hearing, as factual matters not denied will be considered admitted, and failure to raise a defense will be a waiver of the defense. (See OAR 340-011-0530 for further information about requests for hearing.) You must send your request to: **DEQ, Office of Compliance and Enforcement, 700 NE Multnomah Street, Suite 600, Portland, Oregon 97232**, fax it to **503-229-5100** or email it to **DEQappeals@deq.state.or.us**. An administrative law judge

employed by the Office of Administrative Hearings will conduct the hearing, according to ORS Chapter 183, OAR Chapter 340, Division 011 and OAR 137-003-0501 to 0700. You have a right to be represented by an attorney at the hearing, however you are not required to be. If you are an individual, you may represent yourself. If you are a corporation, partnership, limited liability company, unincorporated association, trust or government body, you must be represented by an attorney or a duly authorized representative, as set forth in OAR 137-003-0555.

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

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

8/30/18
Date

Kieran O'Donnell, Manager
Office of Compliance and Enforcement

EXHIBIT 1

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

VIOLATION 1: Allowing the operation of prohibited Class V underground injection systems in violation of OAR 340-044-0015(2)(c).

CLASSIFICATION: This is a Class I violation pursuant to OAR 340-012-0055(1)(p).

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 x BP) x (P + H + O + M + C)] + EB

"BP" is the base penalty, which is $6,000 for a Class I, moderate magnitude violation in the matrix listed in OAR 340-012-0140 (2)(b)(A)(ii) and applicable pursuant to OAR 340-012-0140 (2)(a)(E)(iv).

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

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

"O" is whether the violation was repeated or ongoing, and receives a value of 4 according to OAR 340-012-0145(4)(d) because there were more than 28 occurrences of the violation. Each day of violation constitutes a separate occurrence. The violations began on approximately May, 2014, when Respondent's lessee began industrial operations at the Property that exposed stormwater to hazardous substances, toxic materials and petroleum products.

"M" is the mental state of the Respondent, and receives a value of 8 according to OAR 340-012-0145(5)(d) because Respondent's conduct was reckless. Respondent knew there were UICs at the Property it leased to NW Metals Inc. because it was invoiced by DEQ for the annual UIC registration for five UICs at the Property in 2017, and paid the invoice on March 8, 2018. In addition, at least one UIC, Drywell #1, has an above-ground riser and lid which makes it easily observable. By failing to ensure that its lessee conduct its industrial operations in a manner that prevents the discharge of industrial wastes and toxic materials to

the ground surface or exposure of those operations to stormwater, Respondent consciously disregarded a substantial and unjustifiable risk that it was allowing the operation of a prohibited Class V injection systems at the Property.

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

"EB" is the approximate dollar value of the benefit gained and the costs avoided or delayed as a result of the Respondent's noncompliance. It is designed to "level the playing field" by taking away any economic advantage the entity gained and to deter potential violators from deciding it is cheaper to violate and pay the penalty than to pay the costs of compliance. In this case, "EB" receives a value of $16,354. This is the amount Respondent has gained by avoiding spending $20,000, to close the two Class V prohibited UICs at the Property, Drywell # 1 and Drywell # 2. This "EB" was calculated pursuant to OAR 340-012-0150(1) using the U.S. Environmental Protection Agency's BEN computer model.

PENALTY CALCULATION: Penalty = BP + [(0.1 x BP) x (P + H + O + M + C)] + EB
= $6,000 + [(0.1 x $6,000) x (0 + 0 + 4 + 8 + 0)] + $16,354
= $6,000 + ($600 x 12) + $16,354
= $6,000 + $7,200 + $16,354
= $29,554