



# 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

January 21, 2022

CERTIFIED MAIL: 7018 1830 0001 5906 2599

Fossil Fill-Up LLC  
c/o Mehrten William Homer, Registered Agent  
609 Main Street  
Fossil, OR 97830

Re: Notice of Civil Penalty Assessment and Order  
Case No. LQ/SP-ER-2021-192

***DEQ is committed to balancing its vital obligation to enforce the law and protect the environment with a consideration of the dramatic disruptions to public health and the economy caused by the COVID-19 outbreak. We understand the outbreak may impact your ability to timely appeal, pay the assessed civil penalty, or comply with this order. You may submit to DEQ documentation identifying whether COVID-19-related disruption affects your ability to comply with this order. Visit our webpage <https://www.oregon.gov/deq/Pages/covid-19.aspx> for more information about documenting specific COVID-19 disruptions your facility may be encountering and how that affects your ability to comply. DEQ will exercise reasonable discretion regarding settlement of this order.***

This letter is to inform you that the Oregon Department of Environmental Quality (DEQ) has issued you a civil penalty of \$11,400 for failing to immediately clean up a spill or release of oil that occurred on or about October 13, 2021, at your cardlock fueling facility in Fossil, Oregon. You also failed to immediately report the spill to Oregon's 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 to minimize these threats. DEQ is especially concerned because as an owner of fueling facilities, you should be aware of your responsibility to report and clean up spills of petroleum products.

DEQ appreciates your efforts to minimize the impacts of the violation by hiring an environmental contractor to eventually clean up the spill. DEQ considered these efforts when determining the amount of civil penalty.

Included in Section IV of the enclosed Notice is an order requiring you to submit a complete spill report to DEQ. This step is necessary to close out the cleanup activity.

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.oregon.gov](mailto:DEQappeals@deq.oregon.gov)  
Via fax – 503-229-6762

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 Esther Westbrook at 503-229-5374 or toll free in Oregon at 800-452-4011, extension 5374.

Sincerely,



Kieran O'Donnell, Manager  
Office of Compliance and Enforcement

Enclosures

cc: Charles Kennedy, Bend Office, DEQ  
David Anderson, Bend Office, DEQ  
Accounting, DEQ

1 BEFORE THE ENVIRONMENTAL QUALITY COMMISSION

2 OF THE STATE OF OREGON

3 IN THE MATTER OF: ) NOTICE OF CIVIL PENALTY  
FOSSIL FILL-UP LLC, ) ASSESSMENT AND ORDER  
4 an Oregon limited liability company, )  
Respondent. ) NO. LQ/SP-ER-2021-192  
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7 I. AUTHORITY

8 The Department of Environmental Quality (DEQ) issues this Notice of Civil Penalty  
9 Assessment and Order pursuant to Oregon Revised Statutes (ORS) 468.100 and 468.126 through  
10 468.140, ORS Chapters 183 and 466, and Oregon Administrative Rules (OAR) Chapter 340,  
11 Divisions 011 and 012, and 142.

12 II. FINDINGS OF FACT

- 13 1. Respondent owns and operates a cardlock fueling facility on East 6<sup>th</sup> Street in Fossil,  
14 Wheeler County, Oregon (the Facility).
- 15 2. The Facility stores diesel fuel in above ground bulk storage containers for dispensing.
- 16 3. On or about October 13, 2021, approximately 300 gallons of diesel fuel were spilled  
17 on the ground at the Facility during fuel delivery.
- 18 4. Respondent owned or had control over the diesel fuel that was spilled.
- 19 5. The spilled diesel fuel traveled down the slope at the Facility and onto the roadway  
20 on East 6<sup>th</sup> Street.
- 21 6. On or about October 13, 2021, Respondent knew that approximately 300 gallons of  
22 diesel fuel had been spilled on the ground at the Facility.
- 23 7. Diesel fuel is a petroleum product that is defined as “oil” under ORS 466.605(8).
- 24 8. According to ORS 466.605(10)(b)(E), the “reportable quantity” of oil, if spilled on land,  
25 is any quantity of oil over one barrel. One barrel of oil contains forty-two gallons.
- 26 9. Respondent did not immediately clean up the oil that had been spilled or released.

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1 If you do not file a request for hearing as set forth in Section V below, your check or money  
2 order must be made payable to "State Treasurer, State of Oregon" and sent to: **DEQ, Business**  
3 **Office, 700 NE Multnomah Street, Suite 600, Portland, Oregon 97232**. Once you pay the  
4 penalty, the Findings of Fact, Conclusions and Order become final.

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

6 You have a right to a contested case hearing on this Notice, if you request one in writing.  
7 DEQ must receive your request for hearing **within 20 calendar days** from the date you receive  
8 this Notice. If you have any affirmative defenses or wish to dispute any allegations of fact in this  
9 Notice or attached exhibit, you must do so in your request for hearing, as factual matters not  
10 denied will be considered admitted, and failure to raise a defense will be a waiver of the defense.  
11 (See OAR 340-011-0530 for further information about requests for hearing.) You must send your  
12 request to: **DEQ, Office of Compliance and Enforcement, 700 NE Multnomah Street, Suite**  
13 **600, Portland, Oregon 97232**, fax it to **503-229-6762** or email it to  
14 [DEQappeals@deq.oregon.gov](mailto:DEQappeals@deq.oregon.gov). An administrative law judge employed by the Office of  
15 Administrative Hearings will conduct the hearing, according to ORS Chapter 183, OAR Chapter  
16 340, Division 011 and OAR 137-003-0501 to 0700. You have a right to be represented by an  
17 attorney at the hearing, however you are not required to be. If you are an individual, you may  
18 represent yourself. If you are a corporation, partnership, limited liability company,  
19 unincorporated association, trust or government body, you must be represented by an attorney or  
20 a duly authorized representative, as set forth in OAR 137-003-0555.

21 Active-duty Service members have a right to stay proceedings under the federal Service  
22 Members Civil Relief Act. For more information contact the Oregon State Bar at 1-800-  
23 452-8260, the Oregon Military Department at 503-584-3571, or the nearest United States Armed  
24 Forces Legal Assistance Office through <http://legalassistance.law.af.mil>. The Oregon Military  
25 Department does not have a toll-free telephone number.

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

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9 11/21/2022  
10 Date


  
11 Kieran O'Donnell, Manager  
12 Office of Compliance and Enforcement  
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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 \$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)(N) because Respondent violated an oil and hazardous material spill and release statute and is engaged in the business of manufacturing, storing or transporting oil or hazardous materials.

"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 3 according to OAR 340-012-0145(4)(c), because there were from seven to 28 occurrences of the violation. Each day of violation is a separate occurrence. The spill occurred on or about October 13, 2021, and Respondent did not initiate cleanup until October 22, 2021, which is a duration of nine days.

"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 operates a fueling facility and should know that it is legally required to report and immediately clean up oil spills. Although Respondent knew about the spill on or about the day it occurred, it did not take action to initiate cleanup until after DEQ contacted Respondent's representatives. By failing to clean up a spill of approximately 300 gallons of diesel fuel, Respondent consciously disregarded a substantial and unjustifiable risk that it would violate the law. Because diesel fuel spills can cause surface water and groundwater contamination,



disregarding this risk constituted a gross deviation from the standard of care a reasonable person would observe in this situation.

"C" is Respondent's efforts to correct the violation and receives a value of -2 according to OAR 340-012-0145(6)(d), because Respondent eventually made efforts to minimize the effects of the violation. Respondent hired a contractor to clean up the spill on October 22, 2021, after DEQ informed Respondent that it was legally required to clean up the spill, and that DEQ would initiate cleanup if Respondent failed to do so. The cleanup was completed on November 5, 2021.

"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.

PENALTY CALCULATION:  $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$

$$\begin{aligned} &= \$6,000 + [(0.1 \times \$6,000) \times (0 + 0 + 3 + 8 - 2)] + \$0 \\ &= \$6,000 + [(\$600) \times (9)] + \$0 \\ &= \$6,000 + \$5,400 + \$0 \\ &= \$11,400 \end{aligned}$$