



Oregon

Kate Brown, Governor

Department of Environmental Quality

Headquarters
811 SW Sixth Avenue
Portland, OR 97204-1390
(503) 229-5696
FAX (503) 229-6124
TTY: 711

December 11, 2015

CERTIFIED MAIL: 7011 2000 0000 5122 9282

Lombard 2001, LLC
Naveed Tanveer, Registered Agent
3904 Wellington Place
West Linn, OR 97068

Re: Notice of Civil Penalty Assessment and Order
Case No. LQ/UST-NWR-15-188
UST facility #924

This letter is to inform you that the Oregon Department of Environmental Quality (DEQ) has issued you a civil penalty of \$3,431 for violations of DEQ's underground storage tank (UST) regulations at your facility located at 2001 N. Lombard in Portland.

DEQ's regulations require that prior to depositing fuel into or dispensing fuel from an UST, an operation certificate must be issued. In June 2015, DEQ issued to you a temporary closure certificate. In October 2015, DEQ witnessed fuel being dispensed at the facility even though the temporary closure certificate is still valid. As of the date of this letter, you have not applied for an operation certificate for the facility.

DEQ attempted to inspect the UST facility in July 2015, but no one was present to allow DEQ access. When DEQ was able to get access to the facility in August 2015, there was no power to the automatic tank gauge used to monitor the USTs for releases and you did not have any records of monitoring available for review.

Included in Section IV is an order requiring you to submit the last three consecutive months of release detection records for the two USTs, a list of all distributors who have deposited fuel into the USTs since June 2015, and a complete application to return the USTs to operation. This documentation must be sent to Bob McCoy at 700 NE Multnomah Street, Suite 600, Portland OR 97232 within 30 days from the date of a final order.

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. 6th 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 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 Susan Elworth, at (503) 229-5152. You may call toll-free within Oregon at 1-800-452-4011, extension 5152.

Sincerely,



Leah K. Feldon, Manager
Office of Compliance and Enforcement

Enclosures

cc: Bob McCoy, NWR
Stephanie Holmes, UST HQ

1 BEFORE THE ENVIRONMENTAL QUALITY COMMISSION

2 OF THE STATE OF OREGON

3 IN THE MATTER OF:) NOTICE OF CIVIL PENALTY
4 LOMBARD 2001, LLC,) ASSESSMENT AND ORDER
5 Respondent.) CASE NO. LQ/UST-NWR-15-188

6
7 I. AUTHORITY

8 The Department of Environmental Quality (DEQ) issues this Notice of Civil Penalty Assessment
9 and Order (Notice) pursuant to Oregon Revised Statutes (ORS) 468.100, ORS 468.126 through 468.140,
10 ORS 466.994, ORS Chapter 183 and Oregon Administrative Rules (OAR) Chapter 340, Divisions 011,
11 012, and 150.

12 II. FINDINGS OF FACT

- 13 1. On October 2, 2012, DEQ received a general permit registration form to modify tank
14 owner, permittee or property owner from Respondent for an underground storage tank (UST) facility
15 located at 2001 N. Lombard Street in Portland Oregon. On that form, Respondent is listed as the
16 permittee, tank owner and property owner.
- 17 2. Since October 2012, Respondent has been the permittee of the USTs.
- 18 3. On November 19, 2013, DEQ received a financial responsibility mechanism for the UST
19 facility with an expiration date of November 15, 2014.
- 20 4. On May 21, 2015, DEQ received a financial responsibility mechanism for the UST
21 facility with a beginning coverage date of May 1, 2015.
- 22 5. As of the date of this Notice, DEQ has not received a financial responsibility mechanism
23 for the UST facility that provided coverage for the period between November 2014 and May 2015.
- 24 6. On June 30, 2015, DEQ issued to Respondent a General Permit Registration Temporary
25 Closure Certificate for the UST facility. The temporary closure certificate is valid through June 30,
26 2016.
- 27 7. On July 16, 2015, DEQ attempted to conduct an inspection at the UST facility. No one

1 was present to allow DEQ access to the UST facility.

2 8. On August 24, 2015, DEQ conducted an inspection at the UST facility.

3 9. The USTs at the facility are equipped with an automatic tank gauge in order to conduct
4 monthly release detection monitoring as required by OAR 340-150-0400(2).

5 10. During the August 2015 inspection, the automatic tank gauge was not operating, as it
6 was not connected to electrical power.

7 11. During the August 2015 inspection, there was approximately 12.5 inches of fuel in one
8 UST and 7.5 inches of fuel in the other UST.

9 12. On October 16, 2015, DEQ discovered that Respondent was dispensing fuel at the UST
10 facility.

11 13. As of the date of this Notice, DEQ has not received an application for an operation
12 general permit certificate from Respondent for the UST facility.

13 III. CONCLUSIONS

14 1. Since at least October 2015, Respondent has violated OAR 340-150-0020(1) by
15 operating an UST without applying for and being issued a general permit registration certificate, as
16 alleged in Section II, paragraphs 6, 12, and 13. This is a Class I violation, according to OAR 340-012-
17 0067(1)(c). DEQ hereby assesses a \$1,200 civil penalty for this violation.

18 2. Respondent violated OAR 340-150-0167(6) by failing to perform release detection for the
19 USTs when the USTs are not empty of a regulated substance, as alleged in Section II, paragraphs 9, 10,
20 and 11. This is a Class I violation, according to OAR 340-012-0067(1)(e). DEQ hereby assesses a \$800
21 civil penalty for this violation.

22 3. Respondent violated OAR 340-150-0163(1)(i) by failing to continuously maintain a
23 financial responsibility mechanism, as alleged in Section II, paragraphs 3, 4 and 5. This is a Class I
24 violation, according to OAR 340-012-0067(1)(b). DEQ hereby assesses a \$1,131 civil penalty for this
25 violation.

26 4. Respondent violated OAR 340-150-0135(2) by failing to allow DEQ access to the UST
27 facility, as alleged in Section II, paragraph 7. This is a Class II violation, according to OAR 340-012-

1 0053(2). DEQ hereby assesses a \$300 civil penalty for this violation.

2 IV. ORDER TO PAY CIVIL PENALTY AND TO COMPLY

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

5 1. Pay a total civil penalty of \$3,431. The determinations of civil penalties are attached as
6 Exhibits 1 through 4 and are incorporated as part of this Notice. If you do not file a request for hearing as
7 set forth in Section V below, your check or money order must be made payable to "**State Treasurer,**
8 **State of Oregon**" and sent to the **DEQ, Business Office, 811 S.W. Sixth Avenue, Portland, Oregon**
9 **97204**. Once you pay the penalty, the Findings of Fact, Conclusions and Order become final.

10 2. Submit the last three consecutive months of release detection records for the two USTs, a
11 list of all distributors who have deposited fuel into the USTs since June 2015, and a complete
12 application to return the USTs to operation. The documentation must be sent to: Bob McCoy, 700 NE
13 Multnomah Street, Suite 600, Portland OR 97232 within 30 days from the date of a final order.

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

15 You have a right to a contested case hearing on this Notice, if you request one in writing. You
16 must ensure that DEQ receives the request for hearing **within 20 calendar days** from the date you
17 receive this Notice. If you have any affirmative defenses or wish to dispute any allegations of fact in
18 this Notice or attached exhibit(s), you must include them in your request for hearing, as factual matters
19 not denied will be considered admitted, and failure to raise a defense will be a waiver of the defense.
20 (See OAR 340-011-0530 for further information about requests for hearing.) You must mail the request
21 for hearing to: **DEQ, Office of Compliance and Enforcement - Appeals, 811 SW Sixth Avenue,**
22 **Portland, Oregon 97204**, or fax it to **503-229-5100**. An administrative law judge employed by the
23 Office of Administrative Hearings will conduct the hearing, according to ORS Chapter 183, OAR
24 Chapter 340, Division 011 and OAR 137-003-0501 to 0700. You have a right to be represented by an
25 attorney at the hearing, or you may represent yourself unless you are a corporation, agency or
26 association.

1 Active duty service-members have a right to stay proceedings under the federal Service
2 members Civil Relief Act. For more information, please call the Oregon State Bar at 1-800-
3 452-8260 or the Oregon Military Department at 1-800-452-7500. Additional information can be found
4 online at the United States Armed Forces Legal Assistance (AFLA) Legal Services Locator website
5 <http://legalassistance.law.af.mil/content/locator.php>.

6 If you fail to file a request for hearing in writing within 20 calendar days of receipt of the
7 Notice, the Notice will become a final order by default without further action by DEQ, as per OAR
8 340-011-0535(1). If you do request a hearing but later withdraw your request, fail to attend the hearing
9 or notify DEQ that you will not be attending the hearing, DEQ will issue a final order by default
10 pursuant to OAR 340-011-0535(3). DEQ designates the relevant portions of its files, including
11 information submitted by you, as the record for purposes of proving a prima facie case.
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13
14

15 _____
16 Date

12/11/15

15 _____
16 Leah K. Feldon, Manager
17 Office of Compliance and Enforcement
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Leah K. Feldon

EXHIBIT 1

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

VIOLATION 1: Operating an UST without applying for and being issued a general permit registration certificate, in violation of OAR 340-150-0020(1).

CLASSIFICATION: This is a Class I violation pursuant to OAR 340-012-0067(1)(c).

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 \$500 for a Class I, moderate magnitude violation in the matrix listed in OAR 340-012-0140(5)(b)(A)(ii) and applicable pursuant to OAR 340-012-0140(5)(a)(E). Respondent is the owner, operator and permittee of one UST facility.

"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. DEQ documented that Respondent was operating the USTs in October. Respondent has not applied for an operating certificate since that time.

"M" is the mental state of the Respondent and receives a value of 8 according to OAR 340-012-0145(5)(d), because Respondent acted in a reckless manner. Reckless means Respondent consciously disregarded a substantial and unjustifiable risk that the result would occur. The temporary closure certificate issued in June 2015 states that the delivery of regulated substances is not allowed under the certificate. During the inspection in August 2015, DEQ reminded Respondent that he needed to apply for an operation certificate prior to dispensing fuel from the USTs. On October 27, 2015, DEQ sent Respondent a letter requesting that Respondent immediately apply for an operation certificate. Respondent disregarded a

substantial and unjustifiable risk when it dispensed fuel without applying for and being issued an operation certificate prior to doing so.

"C" is Respondent's efforts to correct or mitigate 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).

"EB" is the approximate dollar value of the benefit gained and the costs avoided or delayed as a result of the Respondent's noncompliance. It is designed to "level the playing field" by taking away any economic advantage the entity gained and to deter potential violators from deciding it is cheaper to violate and pay the penalty than to pay the costs of compliance. In this case, "EB" receives a value of \$0 as there is insufficient information to make an estimate of any costs delayed or avoided.

PENALTY CALCULATION: $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$
= $\$500 + [(0.1 \times \$500) \times (0 + 0 + 4 + 8 + 2)] + \0
= $\$500 + [\$50 \times 14] + \$0$
= $\$500 + \$700 + \$0$
= $\$1,200$

EXHIBIT 2

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

VIOLATION 2: Failing to perform release detection for the USTs when the USTs are not empty of a regulated substance, in violation of OAR 340-150-0167(6).

CLASSIFICATION: This is a Class I violation pursuant to OAR 340-012-0067(1)(e).

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 \$500 for a Class I, moderate magnitude violation in the matrix listed in OAR 340-012-0140(5)(b)(A)(ii) and applicable pursuant to OAR 340-012-0140(5)(a)(E). Respondent is the owner, operator and permittee of one UST facility.

"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 2 according to OAR 340-012-0145(4)(b), because there was more than one but less than seven occurrences of the violation. The rule requires that release detection monitoring be conducted as long as there is a regulated substance in the USTs. At the time of the inspection in August 2015, Respondent had failed to conduct release detection monitoring once per month since placing the USTs into temporary closure in May 2015 thus there were four months of missing release detection records.

"M" is the mental state of the Respondent and receives a value of 2 according to OAR 340-012-0145(5)(b), because Respondent had constructive knowledge (reasonably should have known) of the requirement. Respondent has been the permittee of the UST system since 2012 and reasonably should have known that it was required to conduct release detection monitoring as long as the USTs held a regulated substance.

"C" is Respondent's efforts to correct or mitigate 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). Respondent has not provided DEQ with any release detection records showing that release detection monitoring was completed after the August 2015 inspection.

"EB" is the approximate dollar value of the benefit gained and the costs avoided or delayed as a result of the Respondent's noncompliance. It is designed to "level the playing field" by taking away any economic advantage the entity gained and to deter potential violators from deciding it is cheaper to violate and pay the penalty than to pay the costs of compliance. In this case, "EB" receives a value of \$0 as there is insufficient information to make an estimate of any costs delayed or avoided.

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

$$\begin{aligned} &= \$500 + [(0.1 \times \$500) \times (0 + 0 + 2 + 2 + 2)] + \$0 \\ &= \$500 + [\$50 \times 6] + \$0 \\ &= \$500 + \$300 + \$0 \\ &= \$800 \end{aligned}$$

EXHIBIT 3

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

- VIOLATION 3: Failing to continuously maintain a financial responsibility mechanism, in violation of OAR 340-150-0163(1)(i).
- CLASSIFICATION: This is a Class I violation pursuant to OAR 340-012-0067(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 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 \$500 for a Class I, moderate magnitude violation in the matrix listed in OAR 340-012-0140(5)(b)(A)(ii) and applicable pursuant to OAR 340-012-0140(5)(a)(E). Respondent is the owner, operator and permittee of one UST facility.
- "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. Respondent did not have a valid financial responsibility mechanism from November 15, 2014 until May 1, 2015.
- "M" is the mental state of the Respondent and receives a value of 8 according to OAR 340-012-0145(5)(d), because Respondent acted in a reckless manner. Reckless means Respondent consciously disregarded a substantial and unjustifiable risk that the result would occur. Respondent has been the permittee for the UST system since 2012. Each year, DEQ requires all permittees to submit a valid financial responsibility mechanism in order to obtain an operation certificate. Respondent disregarded a substantial and unjustifiable risk when it failed to renew its financial responsibility mechanism prior to the expiration date. Allowing the facility to be operated for 6 months without a valid financial responsibility mechanism constituted a gross deviation from the standard of care a reasonable person would observe in the same situation.

"C" is Respondent's efforts to correct or mitigate the violation and receives a value of -2 according to OAR 340-012-0145(6)(d) because Respondent eventually made some efforts to minimize the effects of the violation by obtaining a valid financial responsibility mechanism.

"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 \$131. This is the amount Respondent gained by delaying spending \$500 from November 2014 to May 2015 for a financial responsibility mechanism. This "EB" was calculated pursuant to OAR 340-012-0150(1) using the U.S. Environmental Protection Agency's BEN computer model.

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

$$\begin{aligned} &= \$500 + [(0.1 \times \$500) \times (0 + 0 + 4 + 8 - 2)] + \$131 \\ &= \$500 + [\$50 \times 10] + \$131 \\ &= \$500 + \$500 + \$131 \\ &= \$1,131 \end{aligned}$$

EXHIBIT 4

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

VIOLATION 4: Failing to allow DEQ access to the UST facility, in violation of OAR 340-150-0135(2).

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 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 \$250 for a Class II, moderate magnitude violation in the matrix listed in OAR 340-012-0140(5)(b)(A)(ii) and applicable pursuant to OAR 340-012-0140(5)(a)(E). Respondent is the owner, operator and permittee of one UST facility.

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

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

"O" is whether the violation was repeated or ongoing and receives a value of 0 according to OAR 340-012-0145(4)(a), because there was only one occurrence of the violation.

"M" is the mental state of the Respondent and receives a value of 4 according to OAR 340-012-0145(5)(c), because Respondent was negligent. Negligence means Respondent failed to take reasonable care to avoid a conduct resulting in a violation. Prior to the July 2015 inspection date, DEQ informed Respondent of the inspection and that access to the site and equipment was required. Respondent failed to take reasonable care when it did not have someone at the site who could provide DEQ access.

"C" is Respondent's efforts to correct or mitigate the violation and receives a value of -2 according to OAR 340-012-0145(6)(d) because Respondent eventually made some efforts to minimize the effects of the violation by allowing DEQ access on a later date.

"EB" is the approximate dollar value of the benefit gained and the costs avoided or delayed as a result of the Respondent's noncompliance. It is designed to "level the playing field" by taking away any economic advantage the entity gained and to deter potential violators from deciding it is cheaper to violate and pay the penalty than to pay the costs of compliance. In this case, "EB" receives a value of \$0 as there is insufficient information to make an estimate of any costs delayed or avoided.

PENALTY CALCULATION: $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$
= $\$250 + [(0.1 \times \$250) \times (0 + 0 + 0 + 4 - 2)] + \0
= $\$250 + [\$25 \times 2] + \$0$
= $\$250 + \$50 + \$0$
= $\$300$