



Oregon

Tina Kotek, Governor

Department of Environmental Quality
Office of Compliance and Enforcement
700 NE Multnomah Street, Suite 600
Portland, OR 97232
(503) 229-5382
FAX (503) 229-5787
TTY 711

February 14, 2023

CERTIFIED MAIL No. 7018 1830 0001 6172 7332

Herman Capital, Inc.
c/o Noelle Reese, Registered Agent
4719 NE Sandy Boulevard
Portland, OR 97213

Re: Notice of Civil Penalty Assessment and Order
Case No. AQ/ACDP-NWR-2023-009

This letter is to inform you that DEQ has issued you a civil penalty of \$1,200 for failing to submit your 2021 annual report to DEQ as required by your General Air Contaminant Discharge Permit Number 26-9758-23-01.

DEQ issued this penalty because annual reports are an important mechanism for DEQ to determine whether sources of air contaminants are operating within the conditions and limits of permits. Without the report, DEQ is unable to determine the compliance status of your facility or ensure emissions are within levels that do not pose harm to public health or the environment.

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 portion of the penalty. Further information is available by calling the number below or at <http://www.oregon.gov/deq/Regulations/Pages/SEP.aspx>.

Herman Capital, Inc.
Case No. AQ/ACDP-NWR-2023-009
Page 2

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 Steve Siegel at (503) 229-5518.

Sincerely,



Kieran O'Donnell, Manager
Office of Compliance and Enforcement

Enclosures

cc: Tula Morales, Northwest Region, DEQ
Joshua Alexander, Northwest Region, DEQ
Donald Hendrix, AQ, DEQ
Accounting, DEQ

1 BEFORE THE ENVIRONMENTAL QUALITY COMMISSION

2 OF THE STATE OF OREGON

3 IN THE MATTER OF:) NOTICE OF CIVIL PENALTY
4 HERMAN CAPITAL, INC.,) ASSESSMENT AND ORDER
)
5 Respondent.) NO. AQ/ACDP-NWR-2023-009

6 I. AUTHORITY

7 This Notice and Order is issued pursuant to Oregon Revised Statutes (ORS) 468.100 and
8 468.126 through 468.140, ORS Chapters 183 and 468A and Oregon Administrative Rules (OAR)
9 Chapter 340, Divisions 011, 012, 200, 214 and 216.

10 II. FINDINGS OF FACT

11 1. Respondent operates a gasoline dispensing facility at 4719 NE Sandy Boulevard,
12 Portland, Oregon (the Facility).

13 2. On September 2, 2020, the Department of Environmental Quality (DEQ) assigned
14 Respondent's Facility to General Air Contaminant Discharge Permit Number 023 as source
15 number 26-9758-23-01. The Permit was in effect at all material times.

16 3. The Permit authorizes Respondent to discharge air contaminants from activities
17 and processes at the Facility in accordance with the requirements, limitations, and conditions in
18 the Permit.

19 4. Condition 11.4 of the Permit requires Respondent to submit an annual report to
20 DEQ by February 15th of each year that includes specific information for the previous calendar
21 year of operation at the Facility.

22 5. In March 2022, DEQ issued Respondent a Warning Letter with Opportunity to
23 Correct for failing to timely submit its 2021 annual report to DEQ by February 15, 2022, as
24 required in Permit Condition 11.4.

25 6. On April 29, 2022, DEQ issued Respondent a Pre-Enforcement Notice requesting
26 that Respondent submit its 2021 annual report to DEQ by May 27, 2022.

27 7. To date, Respondent has not submitted its 2021 annual report to DEQ.

1 III. CONCLUSION

2 Respondent violated Condition 11.4 of the Permit and OAR 340-214-0114(1) and (2),
3 adopted pursuant to ORS 468A.050(1), by failing to submit its 2021 annual report to DEQ by
4 February 15, 2022, as further described in Section II, Paragraphs 4 - 7 above. This is a Class II
5 violation according to OAR 340-012-0054(2)(f). DEQ has assessed a \$1,200 civil penalty for this
6 violation.

7 IV. ORDER TO PAY CIVIL PENALTY AND COMPLY

8 Based upon the foregoing FINDINGS OF FACTS AND CONCLUSION, Respondent is
9 hereby ORDERED TO:

10 1. Pay a total civil penalty of \$1,200. The determination of the civil penalty is attached
11 as an Exhibit and is incorporated as part of this Notice.

12 2. Within 30 days of this order becoming final by operation of law or on appeal,
13 submit a complete 2021 annual report to DEQ to: **Tula Morales, DEQ Northwest Region, 700**
14 **NE Multnomah Street, Suite 600, Portland, OR 97232.**

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

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

20 You have a right to a contested case hearing on this Notice if you request one in writing.
21 DEQ must receive your request for hearing **within 20 calendar days** from the date you receive
22 this Notice. If you have any affirmative defenses or wish to dispute any allegations of fact in this
23 Notice or attached exhibits, you must do so in your request for hearing, as factual matters not
24 denied will be considered admitted, and failure to raise a defense will be a waiver of the defense.
25 (See OAR 340-011-0530 for further information about requests for hearing.) You must send your
26 request to: **DEQ, Office of Compliance and Enforcement, 700 NE Multnomah Street, Suite**
27 **600, Portland, Oregon 97232,** fax it to **503-229-5100** or email it to

1 DEQappeals@deq.state.or.us. An administrative law judge employed by the Office of
2 Administrative Hearings will conduct the hearing, according to ORS Chapter 183, OAR Chapter
3 340, Division 011 and OAR 137-003-0501 to 0700. You have a right to be represented by an
4 attorney at the hearing, however you are not required to be. If you are an individual, you may
5 represent yourself. If you are a corporation, partnership, limited liability company,
6 unincorporated association, trust or government body, you must be represented by an attorney or
7 a duly authorized representative, as set forth in OAR 137-003-0555.

8 Active-duty service members have a right to stay proceedings under the federal Service
9 Members Civil Relief Act. For more information contact the Oregon State Bar at 1-800-
10 452-8260, the Oregon Military Department at 503-584-3571, or the nearest United States Armed
11 Forces Legal Assistance Office through <http://legalassistance.law.af.mil>. The Oregon Military
12 Department does not have a toll-free telephone number.

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

19
20 2/14/2023

21 Date

20 

21 Kieran O'Donnell, Manager
22 Office of Compliance and Enforcement
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EXHIBIT

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

VIOLATION: Failing to timely submit a 2021 annual report to DEQ in violation of Condition 11.4 of Respondent's Air Contaminant Discharge Permit and OAR 340-214-0114(1) and (2).

CLASSIFICATION: This is a Class II violation pursuant to OAR 340-012-0054(2)(f).

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 \$750 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)(C) because Respondent is subject to a General Air Contaminant Discharge Permit only because it is subject to Area Source NESHAP regulations.

"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 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 0 according to OAR 340-012-0145(4)(a), because there was one occurrence of the violation. Respondent was late submitting one (2021) annual report.

"M" is the mental state of the Respondent and receives a value of 4 pursuant to OAR 340-012-0145(5)(c) because Respondent's conduct was negligent. Respondent's Permit expressly requires Respondent to submit an annual report by February 15th of each year. DEQ issued Respondent a warning letter in March 2022, providing Respondent with an opportunity to correct for its failure to submit its 2021 annual report by February 15. On April 29, 2022, DEQ issued Respondent a Pre-Enforcement Notice and requested that Respondent submit the 2021 annual report to DEQ by May 27, 2022. By failing to submit the 2021 report to

DEQ, Respondent failed to take reasonable care to avoid a foreseeable risk of conduct constituting or resulting in a violation.

"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 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 on which to base a finding.

PENALTY CALCULATION: $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$
 $= \$750 + [(0.1 \times \$750) \times (0 + 0 + 0 + 4 + 2)] + \0
 $= \$750 + (75 \times 6) + \0
 $= \$750 + \$450 + \$0$
 $= \$1,200$