



Oregon

Tina Kotek, 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

February 9, 2023

CERTIFIED MAIL:7018 1830 0001 6172 7288

Willamette View, Inc.
c/o Encompass Legal Administrative Services, LLC, Registered Agent
15133 SW 81st Ave.
Tigard, OR 97224

Re: Notice of Civil Penalty Assessment and Order
Case No. LQ/UST-NWR-2022-095

This letter is to inform you that DEQ has issued you a total civil penalty of \$32,219 for underground storage tank (UST) violations at your facility in Portland. DEQ documented several violations during its inspection on June 29, 2022. DEQ has cited you for failing to initially test the spill prevention and overfill prevention equipment prior to October 1, 2020, and failing to have adequate release detection on the UST for your emergency generator.

DEQ issued this penalty because having proper release detection equipment installed and performing testing of spill prevention and overfill prevention equipment is important to ensure that releases are discovered quickly before contamination spreads beyond the immediate area of the USTs and allows immediate response to any sign of a release. If a leak goes unnoticed due to unmaintained release detection equipment, the leaking fuel can have lasting harmful effects on the environment or human health.

Included in Section IV of the Notice is an order requiring you to perform the required testing and install release detection equipment. You are required to submit documentation demonstrating your compliance to DEQ within thirty (30) days of this Notice becoming final.

\$30,619 of the civil penalty represents the economic benefit you gained by failing to perform testing of the spill prevention and overfill equipment and install release detection equipment. If you complete these requirements, DEQ will consider recalculating the 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.oregon.gov

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 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: Glenn Whalen, Willamette View, Inc. 12705 SE River Road, Portland, OR 97222
Mark Drouin, Portland Office, DEQ

1 BEFORE THE ENVIRONMENTAL QUALITY COMMISSION

2 OF THE STATE OF OREGON

3 IN THE MATTER OF:)
4 WILLAMETTE VIEW, INC.,) NOTICE OF CIVIL PENALTY
an Oregon nonprofit corporation,) ASSESSMENT AND ORDER
5 Respondent.) CASE NO. LQ/UST-NWR-2022-095

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 466.706 through 466.882, ORS 466.994, ORS Chapter 183 and Oregon Administrative Rules (OAR)
11 Chapter 340, Divisions 011, 012, and 150.

12 II. FINDINGS OF FACT

13 1. Respondent owns and is the permittee of an underground storage tank (UST) system located
14 at 13021 SE River Road in Portland, Clackamas County, Oregon (the Facility).

15 2. Respondent operates the UST system under Certificate to Operate #11983.

16 3. The UST system consists of one UST and connected piping. The UST system has a capacity
17 of approximately 1,000 of diesel fuel, which is a regulated substance. The UST system stores diesel
18 fuel to power an emergency generator.

19 4. On June 29, 2022, DEQ conducted an inspection of the UST system and reviewed
20 Respondent's records for the UST system.

21 5. As of June 29, 2022, Respondent had not tested the overfill prevention equipment and
22 containment sumps used for interstitial monitoring.

23 6. On June 29, 2022, the UST had a sensor installed on the tank top, which was used for
24 release detection along with monthly readings from the tank monitor.

25 7. The method of release detection described in Paragraph 6 above would not detect a release
26 from any portion of the UST and the underground piping that routinely contains a regulated substance.
27 It is not an approved release detection method as listed by a national organization.

1 III. CONCLUSIONS

2 1. Respondent has violated OAR 340-150-0310(10) by failing to initially test its spill
3 prevention and overfill prevention equipment prior to October 1, 2020, as alleged in Section II,
4 Paragraph 5 above. This is a Class I violation according to OAR 340-012-0067(1)(j). DEQ hereby
5 assesses a \$2,258 civil penalty for this violation.

6 2. Respondent has violated OAR 340-150-0400(1)(a) by failing to provide a method of release
7 detection that can detect a release from any portion of the UST and the underground piping that routinely
8 contains a regulated substance, as alleged in Section II, Paragraphs 6-7 above. This is a Class I violation
9 according to OAR 340-012-0067(1)(e). DEQ hereby assesses a \$29,961 civil penalty for this violation.

10 IV. ORDER TO PAY CIVIL PENALTY AND TO COMPLY

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

13 1. Pay a total civil penalty of \$32,219. The determination of the civil penalties is attached as
14 Exhibits 1 and 2, which are incorporated as part of this Notice.

15 If you do not file a request for hearing as set forth in Section V below, your check or money
16 order must be made payable to "**Department of Environmental Quality**" and sent to: **DEQ - Business**
17 **Office, 700 NE Multnomah Street, Suite 600, Portland, Oregon 97232.**

18 2. Comply with Oregon law by taking the following actions within thirty (30) days of this
19 Notice becoming final by operation of law or on appeal:

20 a. Complete testing of the spill and overfill prevention equipment and submit the
21 results to DEQ; and

22 b. Install release detection equipment for the UST and submit a completed
23 Modification Checklist to DEQ.

24 Documents should be sent to Inspector Mark Drouin via email at Mark.Drouin@deq.oregon.gov.

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

26 You have a right to a contested case hearing on this Notice, if you request one in writing. DEQ
27 must receive your request for hearing **within 20 calendar days** from the date you receive this Notice. If

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

13 Active-duty Service members have a right to stay proceedings under the federal Service
14 Members Civil Relief Act. For more information contact the Oregon State Bar at 1-800-
15 452-8260, the Oregon Military Department at 503-584-3571, or the nearest United States Armed
16 Forces Legal Assistance Office through <http://legalassistance.law.af.mil>. The Oregon Military
17 Department does not have a toll-free telephone number.

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

24
25
26
27
Date

2 / 9 / 2023



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 NO. 1 Failing to initially test spill prevention and overfill prevention equipment by October 1, 2020, in violation of OAR 340-150-0310(10).
- CLASSIFICATION: This is a Class I violation pursuant to OAR 340-012-0067(1)(j).
- 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 for 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 or 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 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.
- "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. Respondent failed to conduct testing by a specific date, October 1, 2020.
- "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. In 2018, DEQ adopted the regulation requiring that the testing be completed prior to October 1, 2020, and provided extensive outreach to the regulated community on the requirement to conduct the testing prior to that date. Respondent reasonably should have known of the requirement to conduct the testing prior to October 1, 2020.

"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). As of the date of this Notice, Respondent has not completed the testing.

"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 \$1,558. This is the amount Respondent gained by avoiding spending \$2,000 to conduct spill bucket and flapper valve testing. This "EB" was calculated pursuant to OAR 340-012-0150(1) using the U.S. Environmental Protection Agency's BEN computer model.

PENALTY CALCULATION: $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$
= \$500 + [(0.1 x \$500) x (0 + 0 + 0 + 2 + 2)] + \$1,558
= \$500 + (\$50 x 4) + \$1,558
= \$500 + \$200 + \$1,558
= \$2,258

EXHIBIT 2

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

VIOLATION NO. 2 Failing to provide a method of release detection that can detect a release from any portion of the UST and the underground piping that routinely contains a regulated substance, in violation of OAR 340-150-0400(1)(a).

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

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 for 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 or 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 the violation has been ongoing for more than 28 days. Respondent was required to install release detection for the USTs serving its emergency generator by October 1, 2020. As of the date of this Notice, Respondent has not completed installation of this equipment, which is a duration of more than two years.

"M" is the mental state of 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. In 2018, DEQ adopted the regulation requiring release detection for emergency generator tanks by October 1, 2020, and provided extensive outreach to the regulated community. Respondent reasonably should have known of the requirement to install release detection for its emergency generator tank prior to October 1, 2020.

"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). As of the date of this Notice, Respondent has not completed installation of release detection equipment.

"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 \$29,061. This is the amount Respondent gained by avoiding spending \$30,000 to install release detection equipment. This "EB" was calculated pursuant to OAR 340-012-0150(1) using the U.S. Environmental Protection Agency's BEN computer model.

PENALTY CALCULATION: $Penalty = BP + [(0.1 \times BP) \times (P + H + O + M + C)] + EB$
 $= \$500 + [(0.1 \times \$500) \times (0 + 0 + 4 + 2 + 2)] + \$29,061$
 $= \$500 + (\$50 \times 8) + \$29,061$
 $= \$500 + \$400 + \$29,061$
 $= \$29,961$