



# Oregon

Kate Brown, 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

March 18, 2019

CERTIFIED MAIL No. 70160750000034704477

Valentine Welding Services, Inc.  
c/o URS Agents, LLC, Registered Agent  
325 13<sup>th</sup> St. NE, Suite 404  
Salem, OR 97301

Re: Notice of Civil Penalty Assessment and Order  
Case No. LQ/SP-ER-2018-280

This letter is to inform you that DEQ has issued you a civil penalty of \$18,303 for failing to immediately clean up a spill or release of oil that occurred on July 17, 2018, when a truck transporting diesel fuel and gasoline spilled those materials onto the roadway in Boardman, Oregon. Your employee was driving the truck and had control of the oil that spilled. You did not make efforts to immediately clean up the spill 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 in order to minimize these threats.

\$8,703 of the civil penalty amount represents the economic benefit you gained by failing to immediately clean up the spill. If you pay for the spill cleanup, 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.state.or.us](mailto: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 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 Esther Westbrook, at (503) 229-5374. You may call toll-free within Oregon at 1-800-452-4011, extension 5374.

Sincerely,



Kieran O'Donnell, Manager  
Office of Compliance and Enforcement

Enclosures

cc: Jamie Collins, Bend Office, DEQ  
Debra S. Valentine, Valentine Welding Services, Inc., 6170 Miami Church Road,  
Concord, NC 28025  
Brad Kincaid, Eastern Constructors Inc., 38004 Cornerview Road, Geismar, LA 70734  
Kevin Kennedy, City of Boardman Public Works Director:  
[kennedyk@cityofboardman.com](mailto:kennedyk@cityofboardman.com)

1 BEFORE THE ENVIRONMENTAL QUALITY COMMISSION  
2 OF THE STATE OF OREGON

3 IN THE MATTER OF: ) NOTICE OF CIVIL PENALTY  
4 VALENTINE WELDING SERVICES, INC., ) ASSESSMENT AND ORDER  
5 an Oregon corporation, )  
6 Respondent. ) NO. LQ/SP-ER-2018-280

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. On July 17, 2018, Respondent's employee was transporting fuel in relation to a  
14 construction project Respondent was performing in Boardman, Morrow County, Oregon.

15 2. On July 17, 2018, Respondent spilled approximately 50 gallons of diesel fuel and 35  
16 gallons of gasoline from two unsecured drums on the vehicle onto the roadway at or near 101  
17 SW Front Street in Boardman, Oregon.

18 3. The diesel fuel and gasoline entered a catch basin which discharges to a pond within  
19 the Umatilla National Wildlife Refuge.

20 4. Respondent had control over the diesel fuel and gasoline that was spilled or released.

21 5. Diesel fuel and gasoline are petroleum products that are within the definition of "oil"  
22 under ORS 466.605(8).

23 6. According to ORS 466.605(10)(b)(E), the "reportable quantity" of oil, if spilled on land,  
24 is any quantity of oil over one barrel.

25 7. One barrel of oil contains forty two gallons.

26 8. Respondent did not clean up the oil that had been spilled or released.  
27

1 9. DEQ hired NRC Environmental Services to conduct a cleanup. The cleanup was  
2 completed on October 4, 2018.

### 3 III. CONCLUSION

4 On July 17, 2018, Respondent violated ORS 466.645(1) by failing to immediately clean  
5 up a spill or release of oil, as described in Section II, Paragraphs 1-9 above. This is a Class I  
6 violation according to OAR 340-012-0081(1)(a). DEQ hereby assesses an \$18,303 civil penalty for  
7 this violation.

### 8 IV. ORDER TO PAY CIVIL PENALTY

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

11 Pay a total civil penalty of \$18,303. The determination of the civil penalty is attached as  
12 Exhibit No. 1 and incorporated as part of this Notice.

13 As provided in ORS 466.990(3) and (4), the civil penalty collected pursuant to this Notice  
14 and Order shall be deposited in the Oil and Hazardous Material Emergency Response and Remedial  
15 Action Fund established in ORS 466.670.

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

### 20 V. NOTICE OF RIGHT TO REQUEST A CONTESTED CASE HEARING

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

1 **600, Portland, Oregon 97232**, fax it to **503-229-5100** or email it to  
2 **DEQappeals@deq.state.or.us**. An administrative law judge employed by the Office of  
3 Administrative Hearings will conduct the hearing, according to ORS Chapter 183, OAR Chapter  
4 340, Division 011 and OAR 137-003-0501 to 0700. You have a right to be represented by an  
5 attorney at the hearing, however you are not required to be. If you are an individual, you may  
6 represent yourself. If you are a corporation, partnership, limited liability company,  
7 unincorporated association, trust or government body, you must be represented by an attorney or  
8 a duly authorized representative, as set forth in OAR 137-003-0555.

9 Active duty service-members have a right to stay proceedings under the federal Service  
10 Members Civil Relief Act. For more information, please call the Oregon State Bar at 1-800-  
11 452-8260 or the Oregon Military Department at 1-800-452-7500. Additional information can be  
12 found online at the United States Armed Forces Legal Assistance (AFLA) Legal Services  
13 Locator website <http://legalassistance.law.af.mil/content/locator.php>.

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

20  
21  
22 3/18/19  
23 Date


  
Kieran O'Donnell, Manager  
Office of Compliance and Enforcement

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 \$4,000 for a Class I, moderate magnitude violation in the matrix listed in OAR 340-012-0140(3)(b)(A)(ii) and applicable pursuant to OAR 340-012-0140(3)(a)(K) because Respondent violated an oil and hazardous material spill and release statute during a commercial activity and Respondent is not listed in OAR 340-012-0140(2)(a)(N).

"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 4 according to OAR 340-012-0145(4)(c), because there were more than 28 occurrences of the violation. The spill occurred on July 17, 2018, and Respondent never cleaned up the spill. Therefore, the violation was ongoing for more than 28 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 failed to act intentionally with actual knowledge of the requirement. On July 18, 2018, the day after the spill occurred, DEQ sent Respondent a letter requesting a spill report and informing it of the cleanup requirement. Respondent did not accept responsibility, refused to sign any financial documents with the cleanup contractor, and did not hire its own contractor. In follow up, DEQ sent several emails and a letter in July and August 2018, advising Respondent of its responsibility to clean up the spill. Respondent took no action, and DEQ issued a Pre-Enforcement Notice on December 11, 2018. By failing to take any steps to clean up the spill and not cooperating

or paying for the cleanup effort despite repeated notification of its responsibility, Respondent intentionally failed to comply with its legal obligation to clean up the spill despite having actual knowledge of the requirement.

"C" is Respondent's efforts to correct 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). After Respondent failed to take any action to clean up the spill, DEQ hired NRC Environmental Services, which completed the cleanup on October 4, 2018. Respondent had no involvement in the cleanup and has not reimbursed DEQ for the cost of the cleanup.

"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 \$8,703. This is the amount Respondent gained by avoiding paying a contractor approximately \$10,650 to clean up the spill and \$777 in oversight costs to the City of Boardman. This "EB" was calculated pursuant to OAR 340-012-0150(1) using the U.S. Environmental Protection Agency's BEN computer model.

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

$$\begin{aligned} &= \$4,000 + [(0.1 \times \$4,000) \times (0 + 0 + 4 + 8 + 2)] + \$8,703 \\ &= \$4,000 + [(\$400) \times (14)] + \$8,703 \\ &= \$4,000 + \$5,600 + \$8,703 \\ &= \$18,303 \end{aligned}$$