



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

March 25, 2022

CERTIFIED MAIL: 7018 1830 0001 5906 3558

CSD Tigard Station, LLC
c/o Charles E. Fowlkes, Registered Agent
2300 NE Brazee St.
Portland, OR 97212

Re: Notice of Civil Penalty Assessment and Order
Case No. LQ/UST-NWR-2022-003

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 DEQ has issued you a civil penalty of \$987.50 for underground storage tank (UST) violations at your facility in Tigard. DEQ documented several violations during its inspection on July 6, 2021. Specifically, the sensor on the regular unleaded sump was not placed at the lowest point in the sump and would not have been able to detect a release from the UST system. In addition, you failed to conduct monthly walkthrough inspections of the spill prevention equipment and release detection equipment and you failed to retain at least twelve (12) consecutive months of release detection records.

DEQ issued this penalty because release detection equipment must be properly operated to allow immediate response to any sign of release and ensure that releases are discovered quickly before contamination spreads beyond the immediate area of the USTs. 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. Also, conducting monthly inspections and keeping required records is necessary to ensure that the spill prevention and release detection equipment for the UST system is working properly.

DEQ appreciates your efforts to correct the release detection violation by placing the sensor in the correct position. DEQ considered these efforts when determining the amount of civil penalty.

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,

A handwritten signature in blue ink, appearing to read 'Kieran O'Donnell', is written over a horizontal line.

Kieran O'Donnell, Manager
Office of Compliance and Enforcement

Enclosures

cc: Bill Brady, Eugene Office, DEQ

BEFORE THE ENVIRONMENTAL QUALITY COMMISSION
OF THE STATE OF OREGON

IN THE MATTER OF:	)	
CSD Tigard Station, LLC,	)	NOTICE OF CIVIL PENALTY
an Oregon limited liability company,	)	ASSESSMENT AND ORDER
	)	
Respondent.	)	CASE NO. LQ/UST-NWR-2022-003

I. AUTHORITY

The Department of Environmental Quality (DEQ) issues this Notice of Civil Penalty Assessment and Order (Notice) pursuant to Oregon Revised Statutes (ORS) 468.100, ORS 468.126 through 468.140, ORS 466.706 through 466.882, ORS 466.994, ORS Chapter 183 and Oregon Administrative Rules (OAR) Chapter 340, Divisions 011, 012, and 150.

II. FINDINGS OF FACT

1. At all materials times, Respondent has owned and been the permittee of an underground storage tank (UST) system located at 12825 SW Pacific Highway in Tigard, Washington County, Oregon (the Facility).

2. Respondent operates the UST system under Certificate to Operate #743.

3. The UST system consists of three USTs and connected piping. The UST system has a total capacity of approximately 36,000 gallons of gasoline and diesel fuel, which are regulated substances.

4. On July 6, 2021, DEQ conducted an inspection of the UST system and reviewed Respondent's records for the UST system.

5. On July 6, 2021, the regular unleaded sump sensor was not installed properly. The sensor was not placed at the lowest part of the sump, and would not have detected a leak from any part of the UST system.

6. On or before January 31, 2022, Respondent placed the sump sensor in the proper location.

7. As of July 6, 2021, Respondent had not performed monthly walkthrough inspections of the spill prevention equipment and release detection equipment, and Respondent did not have records of such inspections for at least one year.

1 8. As of July 6, 2021, Respondent did not have records of automatic tank gauge (ATG)
2 monitoring and testing results for the following months: September through November 2020 and March
3 2021.

4 III. CONCLUSIONS

5 1. Respondent has violated OAR 340-150-0400(1)(a) by failing to provide a method of release
6 detection that can detect a release from any portion of the UST and the underground piping that routinely
7 contains a regulated substance, as alleged in Section II, Paragraphs 5-6 above. The sensor on the regular
8 unleaded sump would not have been able to detect a release from the UST system because it was not
9 placed at the lowest point in the sump. This is a Class I violation according to OAR 340-012-0067(1)(e).
10 DEQ hereby assesses a \$375 civil penalty for this violation.

11 2. Respondent has violated OAR 340-150-0315(1)(a) by failing to conduct walkthrough
12 inspections of the spill prevention equipment and release detection equipment every thirty (30) days, as
13 alleged in Section II, Paragraph 7 above. This is a Class II violation according to OAR 340-012-0053(2).
14 DEQ hereby assesses a \$212.50 civil penalty for this violation.

15 3. Respondent has violated OAR 340-150-0450(5) by failing to retain at least twelve (12)
16 consecutive months of release detection records as alleged in Section II, Paragraph 8 above. Respondent
17 did not have records of ATG monitoring and testing results from four out of the past twelve months.
18 This is a Class I violation according to OAR 340-012-0067(1)(j). DEQ hereby assesses a \$400 civil
19 penalty for this violation.

20 IV. ORDER TO PAY CIVIL PENALTY

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

23 Pay a total civil penalty of \$987.50. The determination of the civil penalties is attached as
24 Exhibits 1-3, which are incorporated as part of this Notice.

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

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

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

16 Active-duty Service members have a right to stay proceedings under the federal Service
17 Members Civil Relief Act. For more information contact the Oregon State Bar at 1-800-
18 452-8260, the Oregon Military Department at 503-584-3571, or the nearest United States Armed
19 Forces Legal Assistance Office through <http://legalassistance.law.af.mil>. The Oregon Military
20 Department does not have a toll-free telephone number.

21 If you fail to file a timely request for hearing, the Notice will become a final order by default
22 without further action by DEQ, as per OAR 340-011-0535(1). If you do request a hearing but later
23 withdraw your request, fail to attend the hearing or notify DEQ that you will not be attending the
24 hearing, DEQ will issue a final order by default pursuant to OAR 340-011-0535(3). DEQ designates

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1 the relevant portions of its files, including information submitted by you, as the record for purposes of
2 proving a prima facie case.

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6 3/25/2022

7 Date

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Kieran O'Donnell

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 1: 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 340-150-0040(1)(a).

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

MAGNITUDE: The magnitude of the violation is minor pursuant to OAR 340-012-0130(4) as there is no selected magnitude specified in OAR 340-012-0135 applicable to this violation and DEQ finds that the violation had no more than a de minimis adverse impact on human health or the environment, and posed no more than a de minimis threat to human health and the environment. In making this finding, DEQ considered that there was no evidence of a release and Respondent corrected the issue by placing the sensor in the correct position, so there was not an actual impact or threat to human health or the environment.

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 I, minor magnitude violation in the matrix listed in OAR 340-012-0140(5)(b)(A)(iii) 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)(a)(D), because there were more than 28 occurrences of the violation. Each day of violation is a separate occurrence. DEQ documented the violation on July 6, 2021, and it was ongoing until January 31, 2022, when Respondent submitted documentation showing the sensor had been put in the proper position.

"M" is the mental state of Respondent and receives a value of 4 according to OAR 340-012-0145(5)(c) because Respondent's conduct was negligent. By failing to ensure that the sump sensor was installed properly so that it would have readily detected a leak, Respondent failed to take reasonable care to avoid a foreseeable risk that it would violate UST requirements.

"C" is Respondent's efforts to correct the violation and receives a value of -3 according to OAR 340-012-0145(6)(c) because Respondent made reasonable efforts to correct the violation. On January 31, 2022, Respondent submitted documentation to DEQ showing that the sensor had been placed in the proper position.

"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 because Respondent's economic benefit from delaying moving the sensor was de minimis.

PENALTY CALCULATION: $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$
= $\$250 + [(0.1 \times \$250) \times (0 + 0 + 4 + 4 - 3)] + \$0$
= $\$250 + (\$25 \times 5) + \$0$
= $\$250 + \$125 + \$0$
= $\$375$

EXHIBIT 2

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

- VIOLATION NO. 2 Failing to perform monthly walkthrough inspections of the spill prevention equipment and release detection equipment, in violation of OAR 340-150-0315(1)(a).
- CLASSIFICATION: This is a Class II violation pursuant to OAR 340-012-0053(2).
- MAGNITUDE: The magnitude of the violation is minor pursuant to OAR 340-012-0130(4) as there is no selected magnitude specified in OAR 340-012-0135 applicable to this violation and DEQ finds that the violation had no more than a de minimis adverse impact on human health or the environment, and posed no more than a de minimis threat to human health and the environment. In making this finding, DEQ considered that there was no evidence of any spills or releases, so Respondent's failure to conduct walkthrough inspections did not result in actual impact or threat to human health or the environment.
- 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 \$125 for a Class II, minor magnitude violation in the matrix listed in OAR 340-012-0140(5)(b)(B)(iii) 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 3 according to OAR 340-012-0145(4)(c) because there were from seven to 28 occurrences of the violation. Respondent is required to conduct walkthrough inspections on a monthly basis. Respondent did not conduct walkthrough inspections for at least twelve months.
- "M" is the mental state of the Respondent, and receives a value of 4 according to OAR 340-012-0145(5)(c) because Respondent's conduct was negligent. By failing to conduct walkthrough inspections for at least twelve months, Respondent failed to take reasonable care to avoid a foreseeable risk that it would violate UST requirements.

"C" is Respondent's efforts to correct or mitigate the violation, and receives a value of 0 according to OAR 340-012-0145(6)(f) because the violation or the effects of the violation could not be corrected or minimized.

"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 because DEQ has insufficient information on which to make an estimate of Respondent's economic benefit, if any.

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

$$\begin{aligned} &= \$125 + [(0.1 \times \$125) \times (0 + 0 + 3 + 4 + 0)] + \$0 \\ &= \$125 + (\$12.50 \times 7) + \$0 \\ &= \$125 + \$87.50 + \$0 \\ &= \$212.50 \end{aligned}$$

EXHIBIT 3

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

<u>VIOLATION NO. 3</u>	Failing to retain at least twelve consecutive months of release detection records, in violation of OAR 340-150-0450(5).
<u>CLASSIFICATION:</u>	This is a Class I violation pursuant to OAR 340-012-0067(1)(j).
<u>MAGNITUDE:</u>	The magnitude of the violation is minor pursuant to OAR 340-012-0130(4) as there is no selected magnitude specified in OAR 340-012-0135 applicable to this violation and DEQ finds that the violation had no more than a de minimis adverse impact on human health or the environment, and posed no more than a de minimis threat to human health and the environment. In making this finding, DEQ considered that Respondent had automatic tank gauge (ATG) records for most of the year, so the failure to retain these records did not result in an actual impact or threat to human health or the environment.
<u>CIVIL PENALTY FORMULA:</u>	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 I, minor magnitude violation in the matrix listed in OAR 340-012-0140(5)(b)(A)(iii) 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 2 according to OAR 340-012-0145(4)(b) because there were more than one but less than seven occurrences of the violation. Respondent was missing four months of ATG records, which is four occurrences of the violation.
"M"	is the mental state of Respondent, and receives a value of 4 according to OAR 340-012-0145(5)(c) because Respondent's conduct was negligent. By failing to keep release detection records, Respondent failed to take reasonable care to avoid a foreseeable risk that it would violate UST requirements.

"C" is Respondent's efforts to correct or mitigate the violation, and receives a value of 0 according to OAR 340-012-0145(6)(f) because the violation or the effects of the violation could not be corrected or minimized.

"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 because DEQ has insufficient information on which to make an estimate of Respondent's economic benefit, if any.

PENALTY CALCULATION: $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$
= $\$250 + [(0.1 \times \$250) \times (0 + 0 + 2 + 4 + 0)] + \$0$
= $\$250 + (\$25 \times 6) + \$0$
= $\$250 + \$150 + \$0$
= $\$400$