



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

March 7, 2016

CERTIFIED MAIL: 7014 2870 0001 3373 5081

Alpha Environmental Services, Inc.
Law Offices of Aaron M. Hessel, Registered Agent
Three Centerpointe Drive Suite 100
Lake Oswego OR 97035

Re: Notice of Civil Penalty Assessment and Order
Case No. LQ/UST-NWR-16-026

This letter is to inform you that DEQ has issued you a civil penalty of \$3,600 for failing to timely report a confirmed release from an underground storage tank. In June 2015, you confirmed a release from a tank located at 1900 N. Interstate Avenue in Portland, yet the release was not reported to DEQ until October when you submitted a report to DEQ summarizing the cleanup associated with that release.

As a licensed service provider, DEQ and property owners that hire you rely on you to know the rules relating to reporting of confirmed releases. Immediate reporting of confirmed releases to DEQ ensures that contaminated sites are dealt with in a timely manner.

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.



Alpha Environmental Services, Inc.

Case No. LQ/UST-NWR-16-026

Page 2

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: Jeff Schatz, NWR, DEQ

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

3 IN THE MATTER OF:)
4 ALPHA ENVIRONMENTAL SERVICES,) NOTICE OF CIVIL PENALTY
INC.,) ASSESSMENT AND ORDER
5 Respondent.) CASE NO. LQ/UST-NWR-16-026

6 I. AUTHORITY

7 The Department of Environmental Quality (DEQ) issues this Notice of Civil Penalty Assessment
8 and Order (Notice) pursuant to Oregon Revised Statutes (ORS) 468.100 and 468.126 through 468.140,
9 468.100 and 468.126 through 468.140, 466.994, ORS Chapter 183 and Oregon Administrative Rules
10 (OAR) Chapter 340, Divisions 011, 012, 150 and 160.

11 II. FINDINGS OF FACT

12 1. At all relevant times, Respondent is a licensed service provider as that term is defined in
13 OAR 340-160-0010(2).

14 2. On May 29, 2015, Respondent collected a soil sample from the west end of an underground
15 storage tank located on a property at 1900 N. Interstate Avenue in Portland Oregon.

16 3. On or about June 5, 2015, Respondent received the analytical results of that soil sample
17 which showed the soil was contaminated with gasoline and diesel.

18 4. On October 23, 2015, Respondent submitted to DEQ a report entitled "Risk Assessment and
19 Cleanup of an Underground Gasoline Tank" which reported the confirmed release.

20 5. Prior to October 23, 2015, DEQ had not received notification of the confirmed release.

21 III. CONCLUSIONS

22 Respondent violated OAR 340-160-0020(9) by failing to report a release to the environment
23 within 72 hours of discovery of the release. This is a Class I violation, pursuant to OAR 340-012-
24 0074(1)(a). DEQ hereby assesses a \$3,600 civil penalty for this violation.

25 IV. ORDER TO PAY CIVIL PENALTY

26 Based upon the foregoing FINDINGS OF FACTS AND CONCLUSIONS, Respondent is
27 hereby ORDERED TO pay a total civil penalty of \$3,600. The determination of the civil penalty is

1 attached as Exhibit 1 and is incorporated as part of this Notice. If you do not file a request for hearing as
2 set forth in Section V below, your check or money order must be made payable to "State Treasurer,
3 State of Oregon" and sent to the DEQ, Business Office, 811 S.W. Sixth Avenue, Portland, Oregon
4 97204. Once you pay the penalty, the Findings of Fact, Conclusions and Order become final.

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

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

18 Active duty service-members have a right to stay proceedings under the federal Service
19 members Civil Relief Act. For more information, please call the Oregon State Bar at 1-800-
20 452-8260 or the Oregon Military Department at 1-800-452-7500. Additional information can be found
21 online at the United States Armed Forces Legal Assistance (AFLA) Legal Services Locator website
22 <http://legalassistance.law.af.mil/content/locator.php>.

23 If you fail to file a request for hearing in writing within 20 calendar days of receipt of the
24 Notice, the Notice will become a final order by default without further action by DEQ, as per OAR
25 340-011-0535(1). If you do request a hearing but later withdraw your request, fail to attend the hearing
26 or notify DEQ that you will not be attending the hearing, DEQ will issue a final order by default
27

1 pursuant to OAR 340-011-0535(3). DEQ designates the relevant portions of its files, including
2 information submitted by you, as the record for purposes of proving a prima facie case.
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5
6 March 7, 2016

6 Sarah Wheeler for

7 Date

7 Leah K. Feldon, Manager
8 Office of Compliance and Enforcement
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EXHIBIT 1

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

VIOLATION 1: Failing to report a release to the environment within 72 hours of discovery of the release, in violation of OAR 340-160-0020(9).

CLASSIFICATION: This is a Class I violation pursuant to OAR 340-012-0074(1)(a).

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 the Department 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. Although the release was not reported in a timely manner, the release was addressed in a timely manner, reducing the likelihood of a 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 \$3,000 for a Class I, minor magnitude violation in the matrix listed in OAR 340-012-0140(2)(b)(A)(iii) and applicable pursuant to OAR 340-012-140(2)(a)(I). Respondent is licensed to perform tank services.
- "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. Respondent failed to report one confirmed release.
- "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 is a licensed service provider. In that capacity, DEQ and those who hire Respondent rely upon Respondent to know, understand and follow the regulations. Although Respondent believed that the confirmed release would be covered under a prior confirmed release reporting, review of DEQ's database would have shown that

the prior confirmed release was closed. Thus Respondent should have reasonably known that it needed to report the confirmed release to DEQ.

"C" is Respondent's efforts to correct or mitigate the violation and receives a value of 0 according to OAR 340-012-0145(6)(a)(D), because there is insufficient information to make a finding under paragraphs (6)(a) through (6)(e), or (6)(g).

"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 is unable to make an estimate of any costs delayed or avoided.

PENALTY CALCULATION: $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$
 $= \$3,000 + [(0.1 \times \$3,000) \times (0 + 0 + 0 + 2 + 0)] + \0
 $= \$3,000 + [\$300 \times 2] + \$0$
 $= \$3,000 + \$600 + \$0$
 $= \$3,600$