



# Oregon

Kate Brown, Governor

Department of Environmental Quality

Headquarters

811 SW 6th Ave

Portland, OR 97204-1390

(503) 229-5696

FAX (503) 229-6124

TTY: 711

April 5, 2016

CERTIFIED MAIL: 7014 2870 0001 3378 3068

Greenberry Store & Tavern, LLC  
c/o Bryce R. Jessen, Registered Agent  
760 14<sup>th</sup>  
Springfield OR 97477

Re: Notice of Civil Penalty Assessment and Order  
Case No. LQ/T-WR-16-034  
UST Facility #11776

This letter is to inform you that DEQ has issued you a civil penalty of \$1,941 for failing to apply for an extension of a temporary closure certificate for your underground storage tank (UST) system located at 29974 Highway 99W in Corvallis, Oregon. You are the owner of the UST system.

On October 3, 2013, DEQ issued you a temporary closure certificate since you were no longer operating the UST. The certificate expired on October 2, 2014. Oregon law requires that at least 30 days prior to the expiration of a temporary closure certificate, the owner must submit an application for change in service or permanent closure, a written request to return the USTs to operation, or a written request to extend the temporary closure certificate. As of this date, DEQ has not received any of the above applications or requests. Included in Section IV of the Notice is an order requiring you to submit an application for change in service or permanent closure, a written request to return the USTs to operation, or a written request to extend the temporary closure certificate.

\$1,541 of the civil penalty represents the economic benefit you gained by failing to conduct a site assessment, which is required to extend the temporary closure certificate. If you complete the requirements in the order, 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 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. 6<sup>th</sup> 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.



Greenberry Store & Tavern, LLC

Case No. LQ/UST-WR-16-034

Page 2

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.

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: Herrington Rose, UST Compliance and Cleanup Specialist, WR  
Vivian J. Ayers, 29974 Highway 99W, Corvallis, OR 97333

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

3 IN THE MATTER OF: )  
4 GREENBERRY STORE & ) NOTICE OF CIVIL PENALTY  
5 TAVERN, LLC ) ASSESSMENT AND ORDER  
6 ) NO. LQ/UST-WR-16-034  
7 Respondent. )

8 I. AUTHORITY

9 The Department of Environmental Quality (DEQ) issues this Notice of Civil Penalty Assessment  
10 and Order (Notice) pursuant to Oregon Revised Statutes (ORS) 468.100 and 468.126 through 468.140,  
11 466.994, ORS Chapter 183, and Oregon Administrative Rules (OAR) Chapter 340, Divisions 011, 012,  
12 and 150.

13 II. FINDINGS OF FACT

- 14 1. Since 2008, Respondent has been the tank owner and permittee under OAR 340-150-0020  
15 for an underground storage tank (UST) located at 29974 Highway 99W, in Corvallis, Oregon.
- 16 2. On October 3, 2013, DEQ issued to Respondent a General Permit Registration Temporary  
17 Closure Certificate (Certificate) for the UST. The Certificate expired on October 2, 2014.
- 18 3. As of the date of this Notice, DEQ has not received an application for change in service or  
19 permanent closure, a written request to return the USTs to operation, or a written request to extend the  
20 Certificate.

21 III. CONCLUSIONS

22 Respondent has violated OAR 340-150-0167(2) by failing to submit to DEQ an application  
23 for change in service or permanent closure, a written request to return the USTs to operation, or a  
24 written request to extend the Certificate, at least thirty days before the expiration date of the Certificate.  
25 This is a Class II violation, according to OAR 340-012-0053(2). DEQ hereby assesses a \$1,941 civil  
26 penalty for this violation.

27 IV. ORDER TO PAY CIVIL PENALTY AND TO COMPLY

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

1           1. Pay a total civil penalty of \$1,941. The determination of the civil penalty is attached as Exhibit  
2 1, and is incorporated as part of this Notice. If you do not file a request for hearing as set forth in Section  
3 V below, your check or money order must be made payable to "State Treasurer, State of Oregon" and sent  
4 to the DEQ, Business Office, 811 S.W. Sixth Avenue, Portland, Oregon 97204. Once you pay the penalty,  
5 the Findings of Fact, Conclusions and Order become final.

6           2. Submit to DEQ an application for change in service or permanent closure, a written request  
7 to return the USTs to operation, or a written request to extend the Certificate, within 30 days of the date  
8 of a final order. The documentation should be sent to: Herrington Rose, DEQ, 165 E 7th Avenue, Suite  
9 100, Eugene, OR 97401.

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

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

23           Active duty service-members have a right to stay proceedings under the federal Service  
24 members Civil Relief Act. For more information, please call the Oregon State Bar at 1-800-  
25 452-8260 or the Oregon Military Department at 1-800-452-7500. Additional information can be found  
26 online at the United States Armed Forces Legal Assistance (AFLA) Legal Services Locator website  
27 <http://legalassistance.law.af.mil/content/locator.php>.

1 If you fail to file a request for hearing in writing within 20 calendar days of receipt of the  
2 Notice, the Notice will become a final order by default without further action by DEQ, as per OAR  
3 340-011-0535(1). If you do request a hearing but later withdraw your request, fail to attend the hearing  
4 or notify DEQ that you will not be attending the hearing, DEQ will issue a final order by default  
5 pursuant to OAR 340-011-0535(3). DEQ designates the relevant portions of its files, including  
6 information submitted by you, as the record for purposes of proving a prima facie case.  
7  
8

9 April 5, 2016

10 Date

11 Sarah Wheeler for

12 Leah K. Feldon, Manager  
13 Office of Compliance and Enforcement  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27

EXHIBIT 1

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

VIOLATION 1: Failing to submit to DEQ an application for change in service or permanent closure, a written request to return the USTs to operation, or a written request to extend a temporary closure certificate, at least thirty days before the expiration date of the certificate, in violation of OAR 340-150-0167(2).

CLASSIFICATION: This is a Class II violation pursuant to OAR 340-012-0053(2).

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 \$250 for a Class II, moderate magnitude violation in the matrix listed in OAR 340-012-0140(5)(b)(B)(ii) and applicable pursuant to OAR 340-012-0140(5)(a)(I). 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 Respondent has 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 were 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 submit the application for extension of the temporary closure certificate 30 days prior to the expiration of the temporary closure certificate.

"M" is the mental state of the Respondent and receives a value of 4 according to OAR 340-012-0145(5)(b), because Respondent's conduct was negligent. Respondent was issued a Field Citation for this violation on September 15, 2015 requesting that she submit an application for extension of the temporary closure certificate. By failing to submit the application, Respondent failed to take reasonable care to avoid a foreseeable risk of conduct constituting 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). Respondent has not submitted the required documentation.

"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 \$1,541. This is the amount Respondent gained by avoiding spending \$2,500 to complete a site assessment, which is required to extend the temporary closure certificate. This "EB" was calculated pursuant to OAR 340-012-0150(1) using the U.S. Environmental Protection Agency's BEN computer model.

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

$$\begin{aligned} &= \$250 + [(0.1 \times \$250) \times (0 + 0 + 0 + 4 + 2)] + \$1,541 \\ &= \$250 + [\$25 \times 6] + \$1,541 \\ &= \$250 + \$150 + \$1,541 \\ &= \$1,941 \end{aligned}$$