



Oregon

Kate Brown, Governor

Department of Environmental Quality
Office of Compliance and Enforcement
700 NE Multnomah Street, Suite 600
Portland, OR 97232
(503) 229-5696
FAX (503) 229-5100
TTY 711

April 27, 2022

CERTIFIED MAIL: 7018 1830 0001 6172 5734

Arnold J. Thomas & Son, Inc.
dba Thomas & Son Distributors
c/o AGPC, LLC, Registered Agent
800 Willamette Street, Suite 800
Eugene, OR 97401

Re: Notice of Civil Penalty Assessment and Order
Case No. LQ/SP-NWR-2022-027

This letter is to inform you that the Oregon Department of Environmental Quality (DEQ) has issued you a total civil penalty of \$36,000 for violations related to a diesel fuel spill in Tualatin. On December 5, 2021, you spilled or released approximately 25 gallons of diesel fuel from your truck, causing pollution to Hedges Creek and adjacent wetlands. Also, you failed to immediately clean up the spill as required by Oregon law. You were also cited without penalty for failing to submit a complete spill report to DEQ.

DEQ issued this penalty because spilling oil into waters of the state is a serious violation of Oregon environmental law. The introduction of petroleum products into state waters has negative environmental impacts on aquatic life and ecosystems. This spill caused a heavy sheen in Hedges Creek.

DEQ appreciates your efforts to minimize the impacts of the violations by eventually hiring a contractor to conduct a cleanup. DEQ considered these efforts when determining the amount of civil penalty.

Included in Section IV of the enclosed Notice is an Order requiring you to submit a complete Spill Report to DEQ within thirty (30) days of this Notice becoming final.

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/administrative-rules.aspx> or by calling the number below.

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: Chris Rice, Arnold J. Thomas & Son, Inc.: ChrisR@thomasandsonsinc.com
Kevin Chan, Portland Office, DEQ
Accounting, DEQ

1 BEFORE THE ENVIRONMENTAL QUALITY COMMISSION

2 OF THE STATE OF OREGON

3 IN THE MATTER OF:) NOTICE OF CIVIL PENALTY
4 ARNOLD J. THOMAS & SON, INC.,) ASSESSMENT AND ORDER
5 an Oregon corporation,)
6 doing business as THOMAS & SON) CASE NO. LQ/SP-NWR-2022-027
7 DISTRIBUTORS,)
8 Respondent.)

9 I. AUTHORITY

10 The Department of Environmental Quality (DEQ) issues this Notice of Civil Penalty Assessment
11 and Order (Notice) pursuant to Oregon Revised Statutes (ORS) 468.100 and 468.126 through 468.140,
12 ORS Chapters 183, ORS 466.605 through 466.680, ORS 466.990, ORS Chapter 468B including ORS
13 468B.450 and 468B.455, and Oregon Administrative Rules (OAR) Chapter 340, Divisions 011 and 012,
14 and 142.

15 II. FINDINGS OF FACT

16 1. On or about December 5, 2021, a truck owned by Respondent and driven by
17 Respondent's employee, Steven L. Huffman, hit a curb in the parking lot of an industrial park near
18 9494 SW Tualatin-Sherwood Road in Tualatin, Washington County, Oregon. The impact damaged the
19 fuel tank on the truck.

20 2. On or about December 5, 2021, approximately 25 gallons of diesel fuel was spilled or
21 released from the truck's fuel tank onto the ground at the location described above.

22 3. On or about December 5, 2021, approximately 25 gallons of diesel fuel flowed into a
23 storm drain and discharged into Hedges Creek and wetlands adjacent to the creek.

24 4. A heavy sheen was present on Hedges Creek and the adjacent wetlands on December 6,
25 2021. A sheen was visible on the creek through December 21, 2021.

26 5. Hedges Creek and the adjacent wetlands are natural surface waters and are "waters of
27 the state" as defined in ORS 468B.005(10).

6. Diesel fuel is "oil" as defined in ORS 466.605(8).

1 7. Diesel fuel is a “waste” as defined in ORS 468B.005(9) that tends to cause “pollution”
2 as defined in ORS 468B.005(5).

3 8. On or about December 6, 2021, City of Tualatin staff investigated the diesel spill and
4 traced it to the location described in Paragraph 1 above. There was diesel fuel on the pavement.
5 Respondent’s truck was loaded onto a tow truck that was leaving the location.

6 9. On or about December 6, 2021, Mr. Huffman stated that he knew the truck was leaking
7 fuel, and that after the incident occurred, he went to sleep and did not notify anyone.

8 10. On or about December 5, 2021, neither Respondent nor its employee made any efforts to
9 clean up the oil that had been spilled or released.

10 11. On December 6, 2021, Clean Water Services, Tualatin Valley Fire & Rescue and the
11 City of Tualatin responded to the spill and coordinated cleanup activities.

12 12. On or about January 3, 2022, Respondent submitted a Spill Report to DEQ. The Spill
13 Report did not include any details about how the cleanup was conducted, how much material was
14 recovered, and where the cleanup waste was disposed.

15 13. As of the date of this Notice, Respondent has not submitted a complete Spill Report to
16 DEQ.

17 III. CONCLUSIONS

18 1. On or about December 5, 2021, Respondent caused pollution of waters of the state by
19 discharging oil, in violation of ORS 468B.025(1)(a), as described in Section II above. Respondent
20 spilled approximately 25 gallons of diesel fuel which entered Hedges Creek and adjacent wetlands.
21 This is a Class I violation according to OAR 340-012-0081(1)(c). DEQ hereby assesses an \$18,000
22 civil penalty for this violation.

23 2. On or about December 5, 2021, Respondent violated ORS 466.645(1) by failing to
24 immediately clean up a spill or release of oil, as described in Section II above. This is a Class I violation
25 according to OAR 340-012-0081(1)(a). DEQ hereby assesses a \$18,000 civil penalty for this violation.

26 ///

27 ///

1 3. On or about January 3, 2022, Respondent violated OAR 340-142-0090 by failing to submit
2 a written report describing all aspects of the spill and cleanup to DEQ, as described in Section II,
3 Paragraphs 12-13 above. This is a Class II violation according to OAR 340-012-0081(2)(a). DEQ has
4 not assessed a civil penalty for this violation.

5 IV. ORDER TO PAY CIVIL PENALTY AND TO COMPLY

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

8 1. Pay a total civil penalty of \$36,000. The determination of the civil penalty is attached as
9 Exhibit Nos. 1 and 2, which are incorporated as part of this Notice.

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

13 2. Comply with Oregon law by submitting a complete Spill Report to State On-Scene
14 Coordinator Kevin Chan via email at: Kevin.Chan@deq.oregon.gov within thirty (30) days of this
15 Notice becoming final. The report must include information from both cleanup contractors.

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

17 You have a right to a contested case hearing on this Notice if you request one in writing. DEQ
18 must receive your request for hearing **within 20 calendar days** from the date you receive this Notice. If
19 you have any affirmative defenses or wish to dispute any allegations of fact in this Notice or attached
20 exhibits, you must do so in your request for hearing, as factual matters not denied will be considered
21 admitted, and failure to raise a defense will be a waiver of the defense. (See OAR 340-011-0530 for
22 further information about requests for hearing.) You must send your request to: **DEQ - Office of**
23 **Compliance and Enforcement, 700 NE Multnomah Street, Suite 600, Portland, Oregon 97232**, fax
24 it to **503-229-5100** or email it to DEQappeals@deq.oregon.gov. An administrative law judge
25 employed by the Office of Administrative Hearings will conduct the hearing, according to ORS
26 Chapter 183, OAR Chapter 340, Division 011 and OAR 137-003-0501 to 0700. You have a right to be
27 represented by an attorney at the hearing, however you are not required to be. If you are an individual,

1 you may represent yourself. If you are a corporation, partnership, limited liability company,
2 unincorporated association, trust or government body, you must be represented by an attorney or a duly
3 authorized representative, as set forth in OAR 137-003-0555.

4 Active-duty Service members have a right to stay proceedings under the federal Service
5 Members Civil Relief Act. For more information contact the Oregon State Bar at 1-800-
6 452-8260, the Oregon Military Department at 503-584-3571, or the nearest United States Armed
7 Forces Legal Assistance Office through <http://legalassistance.law.af.mil>. The Oregon Military
8 Department does not have a toll-free telephone number.

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

15
16
17
18 Date

4/27/2022



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: Causing pollution of waters of the state, by discharging oil into waters of the state, in violation of ORS 468B.025(1)(a).

CLASSIFICATION: This is a Class I violation pursuant to OAR 340-012-0055(1)(c).

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. Respondent spilled approximately 25 gallons of diesel fuel to Hedges Creek and adjacent wetlands.

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 statute during a commercial activity. Pursuant to OAR 340-012-0155(1)(b), because Respondent intentionally or negligently caused or permitted the discharge of oil into waters of the state, DEQ will add the values set forth in 340-012-0155(1)(b)(B) to determine the multiplier for the base penalty. Reckless is a lesser included mental state of intentional. The violation was caused recklessly, therefore a value of 3 is assigned according to 340-012-0155(1)(b)(B)(i). This results in a base penalty of \$12,000.

"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 spilled or released oil into Hedges Creek on or about December 6, 2021.

"M" is the mental state of the Respondent and receives a value of 8 because according to OAR 340-012-0145(5)(d) because Respondent's conduct was reckless. The driver, Respondent's employee, drove the truck over a curb in a parking lot and damaged the truck's fuel tank, resulting in a spill of approximately 25 gallons of diesel fuel. Although the driver knew that the vehicle was leaking diesel fuel, he did not make any efforts to contain or clean up the spill or to determine the proper steps to take, but instead went to sleep. The following morning, Respondent attempted to leave the location of the spill without cleaning it up or reporting it. Additionally, Respondent had Fuel Spill Standard

Operating Procedures (SOP) in place, but Respondent's employee did not follow the SOP. If Respondent had taken immediate actions such as spreading absorbents, blocking the storm drain, and promptly cleaning out the storm drain and piping, it likely would have been able to prevent or minimize the amount of diesel fuel that reached Hedges Creek, thereby minimizing the potential impact to aquatic species and water quality. By causing a spill due to careless driving and then failing to take any actions to prevent the spilled diesel fuel from reaching waters of the state, Respondent consciously disregarded a substantial and unjustifiable risk that it would cause pollution. Because diesel fuel is harmful to water quality and aquatic life, disregarding the risk constituted a gross deviation from the standard of care a reasonable person would observe in that situation. Pursuant to OAR 340-011-0520, the mental state of an employee can be imputed to the employer.

"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 minimize the effects of the violation. Although Respondent did not immediately initiate the spill response and cleanup, once DEQ informed Respondent of its responsibilities Respondent hired a cleanup contractor and fully cooperated with the cleanup efforts.

"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 \$0 because DEQ has insufficient evidence on which to base a finding that Respondent received an economic benefit from the violation.

PENALTY CALCULATION: $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$
 $= \$12,000 + [(0.1 \times \$12,000) \times (0 + 0 + 0 + 8 - 3)] + \0
 $= \$12,000 + [\$1,200 \times 5] + \$0$
 $= \$12,000 + \$6,000 + \$0$
 $= \$18,000$

EXHIBIT NO. 2

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

VIOLATION 2: 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 for this violation, and the information reasonably available to DEQ does not indicate a minor or major magnitude. Respondent failed to immediately clean up a spill of approximately 25 gallons of diesel fuel.

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 during a commercial activity. Pursuant to OAR 340-012-0155(1)(b), because Respondent intentionally or negligently failed to clean up a spill or release of oil into waters of the state, DEQ will add the values set forth in 340-012-0155(1)(b)(B) to determine the multiplier for the base penalty. Reckless is a lesser included mental state of intentional. The violation was caused recklessly therefore a value of 3 is assigned according to 340-012-0155(1)(b)(B)(i). This results in a base penalty of \$12,000.

"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 immediately clean up a diesel fuel spill that occurred on December 5, 2021.

"M" is the mental state of the Respondent and receives a value of 8 according to OAR 340-012-0145(5)(d), because Respondent's conduct was reckless. After driving over a curb and damaging the truck's fuel tank, the driver, Respondent's employee, knew that the vehicle was leaking diesel fuel. The driver did not make any efforts to clean up the spill or to

determine the proper steps to take, but instead went to sleep. The following morning, Respondent attempted to leave the location of the spill without cleaning it up or reporting it. Additionally, Respondent had Fuel Spill Standard Operating Procedures (SOP) in place, but Respondent's employee did not follow the SOP. If Respondent had taken immediate actions such as spreading absorbents, blocking the storm drain, and promptly cleaning out the storm drain and piping, it likely would have been able to prevent or minimize the amount of diesel fuel that reached Hedges Creek, thereby minimizing the potential impact to aquatic species and water quality. By failing to take any actions to clean up the spill or prevent the spilled diesel fuel from reaching waters of the state, Respondent consciously disregarded a substantial and unjustifiable risk that it would violate Oregon law. Because diesel fuel is harmful to water quality and aquatic life, disregarding the risk constituted a gross deviation from the standard of care a reasonable person would observe in that situation. Pursuant to OAR 340-011-0520, the mental state of an employee can be imputed to the employer.

"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 minimize the effects of the violation. Although Respondent did not immediately initiate the spill response and cleanup, once DEQ informed Respondent of its responsibilities Respondent hired a cleanup contractor and fully cooperated with the cleanup efforts.

"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 \$0 because DEQ has insufficient evidence on which to base a finding that Respondent received an economic benefit from the violation.

PENALTY CALCULATION: $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$
= \$12,000 + [(0.1 x \$12,000) x (0 + 0 + 0 + 8 - 3)] + \$0
= \$12,000 + [\$1,200 x 5] + \$0
= \$12,000 + \$6,000 + \$0
= \$18,000