



# 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

May 29, 2020

CERTIFIED MAIL: 7017 1450 0000 8310 0687

BDZ Developers, Inc. doing business as  
BDZ Construction  
14125 S.W. Farmington Road  
Beaverton OR 97005

Re: Notice of Civil Penalty Assessment and Order  
Case No. LQ/HOT-NWR-2020-052

*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 \$3,000 for failing to obtain a heating oil tank service provider license prior to conducting heating oil tanks services. In September 2016, you removed an underground tank that had been used to heat a residence located at 15420 N.W. Marianna Street in Portland. At that time, you did not have a license to conduct such services.

DEQ issued this penalty because Oregon law requires a person who removes a heating oil tank to hold a license for the decommissioning in order to ensure the protection of the public's health and the environment through the use of correct methods and practices.

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 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 Susan Elworth at 503-229-5152 or toll free in Oregon at 800-452-4011, extension 5152.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Kieran O'Donnell', with a long horizontal flourish extending to the right.

Kieran O'Donnell, Manager  
Office of Compliance and Enforcement

Enclosures

cc: Ash Desmond, NWR, DEQ

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

3 IN THE MATTER OF:                               )  
4 BDZ DEVELOPERS, INC., an inactive                               )  
5 Washington corporation, doing business as                               )  
6 BDZ CONSTRUCTION,                               )  
7                               Respondent.                               )  
8   NOTICE OF CIVIL PENALTY  
9   ASSESSMENT AND ORDER  
10   CASE NO. LQ/HOT-NWR-2020-052

11   I. AUTHORITY

12               DEQ issues this Notice of Civil Penalty Assessment and Order (Notice) pursuant to Oregon  
13 Revised Statutes (ORS) 468.100 and 468.126 through 468.140, 466.858 through 466.882, ORS 466.990,  
14 ORS Chapter 183 and Oregon Administrative Rules (OAR) Chapter 340, Divisions 011, 012, and 163.

15   II. FINDINGS OF FACT

- 16               1.       In September 2016, Respondent removed an underground tank from beneath the ground  
17 on a residential property located at 15420 N.W. Marianna Street in Portland.
- 18               2.       At the time of removal, the tank contained approximately 20 gallons of diesel.
- 19               3.       The tank had previously been used to heat the residence on the property.
- 20               4.       In September 2016, Respondent was not licensed by DEQ to perform heating oil tank  
21 (HOT) services.

22   III. CONCLUSIONS

23               Respondent violated OAR 340-163-0020(1) by performing HOT services without first  
24 having obtained a HOT service provider license from DEQ. As defined by ORS 466.706(10), HOT  
25 services includes decommissioning of a HOT. As defined by OAR 340-150-0010(39), a HOT means a  
26 tank used for storing heating oil for consumptive use on the premises where stored. As described in  
27 Section II above, the underground tank was a HOT and the actions taken by Respondent constituted  
HOT services. This is a Class I violation, according to OAR 340-012-0079(1)(f). DEQ hereby assesses  
a \$3,000 civil penalty for this violation.

IV. ORDER TO PAY CIVIL PENALTY

Based upon the foregoing FINDINGS OF FACTS AND CONCLUSIONS, Respondent is  
hereby ORDERED TO pay a total civil penalty of \$3,000. 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, 700 NE Multnomah Street, Suite 600,**  
4 **Portland, Oregon 97232.**

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. DEQ  
7 must receive your request for hearing **within 20 calendar days** from the date you receive this Notice. If  
8 you have any affirmative defenses or wish to dispute any allegations of fact in this Notice or attached  
9 exhibit, you must do so in your request for hearing, as factual matters not denied will be considered  
10 admitted, and failure to raise a defense will be a waiver of the defense. (See OAR 340-011-0530 for  
11 further information about requests for hearing.) You must send your request to: **DEQ, Office of**  
12 **Compliance and Enforcement, 700 NE Multnomah Street, Suite 600, Portland, Oregon 97232,** fax  
13 it to **503-229-5100** or email it to [DEQappeals@deq.state.or.us](mailto:DEQappeals@deq.state.or.us). An administrative law judge  
14 employed by the Office of Administrative Hearings will conduct the hearing, according to ORS  
15 Chapter 183, OAR Chapter 340, Division 011 and OAR 137-003-0501 to 0700. You have a right to be  
16 represented by an attorney at the hearing, however you are not required to be. If you are an individual,  
17 you may represent yourself. If you are a corporation, partnership, limited liability company,  
18 unincorporated association, trust or government body, you must be represented by an attorney or a duly  
19 authorized representative, as set forth in OAR 137-003-0555.

20 Active duty Service members have a right to stay proceedings under the federal Service  
21 Members Civil Relief Act. For more information contact the Oregon State Bar at 1-800-  
22 452-8260, the Oregon Military Department at 503-584-3571, or the nearest United States Armed  
23 Forces Legal Assistance Office through <http://legalassistance.law.af.mil>. The Oregon Military  
24 Department does not have a toll free telephone number.

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

1 hearing, DEQ will issue a final order by default pursuant to OAR 340-011-0535(3). DEQ designates  
2 the relevant portions of its files, including information submitted by you, as the record for purposes of  
3 proving a prima facie case.

4  
5 5/29/2020  
6 Date

7   
8 Kieran O'Donnell, Manager  
9 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: Performing heating oil tank services without first having obtained a heating oil tank service provider license from DEQ, in violation of OAR 340-163-0020(1).
- CLASSIFICATION: This is a Class I violation pursuant to OAR 340-012-0079(1)(f).
- 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 Respondent was not licensed by DEQ at the time it removed the HOT, there was no sign of contamination present at the time of removal and the HOT and the diesel contained in the HOT were properly disposed of. Thus the failure to have a license, in and of itself, posed no more than a de minimis adverse impact on 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 340-012-0140(2)(a)(J). Respondent should have had a heating oil tank service provider license.
- "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 is insufficient information on which to base a finding under paragraphs (4)(b) through (4)(d). It is unknown on how many days that Respondent performed HOT services when decommissioning the HOT.

"M" is the mental state of the Respondent and receives a value of 0 according to OAR 340-012-0145(5)(a) because there is insufficient information on which to base a finding under paragraphs (5)(b) through (5)(d).

"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 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 x \$3,000) x (0 + 0 + 0 + 0 + 0)] + \$0  
= \$3,000 + [\$300 x 0] + \$0  
= \$3,000 + \$0 + \$0  
= \$3,000