



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 No. 7014 2870 0001 3378 2856

Jack Mullins
doing business as Road Maintenance
3399 Highway 281 S
Mineral Wells, TX 76067

Re: Notice of Civil Penalty Assessment and Order
Case No. LQ/SP-ER-16-011

This letter is to inform you that DEQ has issued you a civil penalty of \$26,281 for failing to immediately clean up a spill or release of oil that occurred on September 10, 2015 when you crashed your truck on Highway 26 near Mitchell, Oregon in Wheeler County. The crash resulted in a spill or release of at least 300 gallons, and as much as 1000 gallons, of asphalt oil onto the roadway and surrounding shoulder, as well as approximately 10 gallons of diesel fuel and 2 gallons of motor oil. You did not clean up the spill or immediately report it to the Oregon Emergency Response System as required by law.

DEQ issued this penalty because failing to immediately clean up a spill or release of oil is a serious violation of Oregon environmental law. Even small amounts of oil or petroleum products spilled onto the ground can pose a threat to surface water, groundwater, vegetation, land, and environmental quality in general. Oregon law requires that spilled oil be immediately cleaned up in order to minimize these threats. Similarly, timely reporting of the spill allows DEQ to ensure that cleanup was successful and that no further environmental risks are posed.

\$18,281 of the civil penalty amount represents the economic benefit you gained by failing to immediately clean up the spill. If you pay for the spill cleanup, 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. 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.



Jack Mullins dba Road Maintenance

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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.

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 Esther Westbrook, at (503) 229-5374. You may call toll-free within Oregon at 1-800-452-4011, extension 5374.

Sincerely,



Leah K. Feldon, Manager
Office of Compliance and Enforcement

Enclosures

cc: Mike Renz, Bend Office, DEQ
Stephen Case, Revenue Agent, ODOT: stephen.h.case@state.or.us

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

3 IN THE MATTER OF:) NOTICE OF CIVIL PENALTY
4 JACK MULLINS,) ASSESSMENT AND ORDER
5 an individual,)
6 dba ROAD MAINTENANCE,)
7 Respondent.) NO. LQ/SP-ER-16-011

8 I. AUTHORITY

9 The Oregon Department of Environmental Quality (DEQ) issues this Notice of Civil
10 Penalty Assessment and Order pursuant to Oregon Revised Statutes (ORS) 468.100 and 468.126
11 through 468.140, ORS Chapters 183, 466 and 468B, and Oregon Administrative Rules (OAR)
12 Chapter 340, Divisions 011 and 012, and 142.

13 II. FINDINGS OF FACT

14 1. On or about September 10, 2015, Respondent rolled over an asphalt oil application
15 truck that he owned on Highway 26 at or about mile post 91.2, which is located near Mitchell, in
16 Wheeler County, Oregon.

17 2. On or about September 10, 2015, between 300 and 1000 gallons of asphalt oil, about
18 10 gallons of diesel fuel, and about 2 gallons of motor oil were spilled or released from the
19 storage tank and fuel tanks of the truck onto the roadway and the adjacent soil shoulder north of
20 the roadway at the location described above.

21 3. Respondent had ownership or control over the asphalt oil, diesel fuel, and motor oil
22 that was spilled or released.

23 4. Asphalt oil, diesel fuel, and motor oil are petroleum products and are defined as "oil"
24 under ORS 466.605(8).

25 5. According to ORS 466.605(10)(b)(E), the "reportable quantity" of oil, if spilled on
26 land, is any quantity of oil over one barrel.

27 6. One barrel of oil as defined by ORS 466.605(1) contains forty two U.S. gallons.

7. Respondent did not clean up the oil that had been spilled or released.

1 **Business Office, 811 S.W. Sixth Avenue, Portland, Oregon 97204.** Once you pay the penalty,
2 the Findings of Fact, Conclusions and Order become final.

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

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

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

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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
3 OAR 340-011-0535(1). If you do request a hearing but later withdraw your request, fail to attend
4 the hearing or notify DEQ that you will not be attending the hearing, DEQ will issue a final order
5 by default pursuant to OAR 340-011-0535(3). DEQ designates the relevant portions of its files,
6 including information submitted by you, as the record for purposes of proving a prima facie case.
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8 April 5, 2016
9 Date

10 Sarah Wheeler for
11 Leah K. Feldon, Manager
12 Office of Compliance and Enforcement
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EXHIBIT NO. 1

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

VIOLATION 1: 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 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 \$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 and release statute during a commercial activity and Respondent is not listed in OAR 340-012-0140(2)(a)(N).

"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 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)(c), because there were more than 28 occurrences of the violation. Each day of a violation with a duration of more than one day is counted as a separate occurrence. The spill occurred on or about September 10, 2015 and Respondent never cleaned up the spill. Therefore, the violation was ongoing for more than 28 days.

"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. Subsequent to the spill, Respondent did not take any action to clean up the spill, make efforts to find out if he had any obligation to clean up, or cooperate with the Oregon Department of Transportation (ODOT) or its contractor in the cleanup activities. By failing to take immediate steps to clean up the asphalt oil he had spilled and not cooperating in the cleanup effort, Respondent failed to take reasonable care to avoid a foreseeable risk that he would not meet his legal obligation to clean up a spill that he had caused.

"C" is Respondent's efforts to correct the violation and receives a value of 2 according to OAR 340-012-0145(6)(g), because Respondent did not address the violation. ODOT hired SMAF Environmental, LLC to clean up the spill on or about September 10, 2015. Respondent had no involvement in the cleanup and has not reimbursed ODOT for the cleanup.

"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 \$18,281. This is the amount Respondent gained by avoiding spending approximately \$32,645 to clean up the spill. This "EB" was calculated pursuant to OAR 340-012-0150(1) using the U.S. Environmental Protection Agency's BEN computer model.

PENALTY CALCULATION: $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$
= \$4,000 + [(0.1 x \$4,000) x (0 + 0 + 4 + 4 + 2)] + \$18,281
= \$4,000 + [(\$400) x (10)] + \$18,281
= \$4,000 + \$4,000 + \$18,281
= \$26,281