



Oregon

Kate Brown, Governor

May 11, 2017

Department of Environmental Quality

Office of Compliance and Enforcement

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Environmental Works, LLC
Joel Migliaccio, Registered Agent
4606 SW View Acres Road
Milwaukie, OR 97267

Re: Notice of Civil Penalty Assessment and Order
Case No. LQ/HOT-NWR-2017-049

This letter is to inform you that DEQ has issued you a civil penalty of \$1,800 for failing to report a release from a heating oil tank located at 7710 N. Jersey Street in Portland. You discovered the release in November 2106, yet did not report the release until February 2017. Because of the potential dangers to the environment and human health, DEQ requires reporting of releases within 72 hours. As a licensed service provider, DEQ relies on you to know the rules related to reporting of releases.

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:

Via mail – 700 NE Multnomah Street, Suite 600, Portland, Oregon 97232

Via email – 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 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. More information is available at by calling the number below or at www.oregon.gov/deq/Regulations/Pages/SEP.aspx.

DEQ's rules are available at 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 at 800-452-4011 ex 5152.

Sincerely,

Sarah G. Wheeler, Acting Manager
Office of Compliance and Enforcement

cc: Ash Desmond, HOT, DEQ
Mike Korten Hof, DEQ
Shaumae Hall, Accounting, DEQ



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

3 IN THE MATTER OF:)
4 ENVIRONMENTAL WORKS, LLC.)
5 Respondent.) NOTICE OF CIVIL PENALTY
ASSESSMENT AND ORDER
CASE NO. LQ/HOT-NWR-2017-049

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, ORS 468.126 through 468.140,
9 ORS 466.994, ORS Chapter 183, and Oregon Administrative Rules (OAR) Chapter 340, Divisions 011,
10 012, 163, and 177.

11 II. FINDINGS OF FACT

- 12 1. At all relevant times, Respondent was a licensed “service provider” as defined by OAR 340-
13 163-0010(13), with license #26746.
- 14 2. On or about November 10, 2016, Respondent received notification that soil samples it
15 collected from beneath the ground and adjacent to an underground heating oil tank at 7710 N. Jersey
16 Street in Portland Oregon, were contaminated diesel.
- 17 3. On February 22, 2017, Respondent reported the contamination to DEQ.

18 III. CONCLUSIONS

19 Respondent violated OAR 340-177-0055(1) by failing to report a confirmed release of
20 petroleum from an underground heating oil tank within 72 hours. Diesel is “petroleum” as defined in
21 OAR 340-177-0005(13). The contamination is a “confirmed release” as defined by OAR 340-177-
22 0005(3). This is a Class II violation, pursuant to OAR 340-012-0079(2)(e). DEQ hereby assesses a
23 \$1,800 civil penalty for this violation.

24 IV. ORDER TO PAY CIVIL PENALTY

25 Based upon the foregoing FINDINGS OF FACTS AND CONCLUSIONS, Respondent is
26 hereby ORDERED TO pay a total civil penalty of \$1,800. The determination of the civil penalty is
27 attached as Exhibit 1 and is incorporated as part of this Notice. If you do not file a request for hearing as

1 the relevant portions of its files, including information submitted by you, as the record for purposes of
2 proving a prima facie case.

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May 11, 2017
Date

Sarah Wheeler
Sarah G. Wheeler, Acting 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: Failing to report a confirmed release of petroleum from an underground heating oil tank, in violation of OAR 340-177-0055(1).

CLASSIFICATION: This is a Class II violation pursuant to OAR 340-012-0079(2)(e).

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 did not report the release to DEQ in a timely manner, the release was addressed in a timely manner. Thus the failure to report the release did not pose more than a de minimis 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 \$1,500 for a Class II, minor magnitude violation in the matrix listed in OAR 340-012-0140(2)(b)(B)(iii) and applicable pursuant to OAR 340-012-0140(2)(J). Respondent is licensed by DEQ to perform heating oil 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 with 72 hours.

"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. Negligence means Respondent failed to take reasonable care to avoid a foreseeable risk of conduct constituting a violation. Respondent has been licensed to conduct heating oil tank services for many years. In that capacity, DEQ and homeowners rely upon Respondent to know, understand and follow the regulations. In July 2015, DEQ issued Respondent a warning letter for failing to report a

confirmed release in a timely manner. Based on Respondent's knowledge as a service provider, failing to ensure that its staff report a confirmed release in a timely manner constituted a failure to take reasonable care that another service provider with a previous warning regarding the violation, would have taken in the same situation.

"C" is Respondent's efforts to correct or mitigate the violation, and receives a value of -2 according to OAR 340-012-0145(6)(d) because Respondent eventually made some efforts to correct the violation. Respondent reported the release to DEQ.

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

PENALTY CALCULATION: $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$
 $= \$1,500 + [(0.1 \times \$1,500) \times (0 + 0 + 0 + 4 - 2)] + \0
 $= \$1,500 + (\$150 \times 2) + \$0$
 $= \$1,500 + \$300 + \$0$
 $= \$1,800$