



Oregon

Kate Brown, Governor

Department of Environmental Quality
Office of Compliance and Enforcement
700 NE Multnomah Street, Suite 600
Portland, OR 97232
(503) 229-5382
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CERTIFIED MAIL: 7016 3010 0000 6028 7159

June 7, 2018

Karen Frackowiak
1833 N. Teakwood Circle
Canby OR 97013-2553

Re: Notice of Civil Penalty Assessment and Order
Case No. LQ/UST-WR-2018-074
UST Facility #294

This letter is to inform you that DEQ has issued you a civil penalty of \$1,959 for violations related to an underground storage tank (UST) system located on a property you own at 173 Grant Street in Woodburn. In June 2017, you became the owner of the property. Within 60 days of a change in ownership, the owner is required to submit an application for a registration certificate. Additionally, the UST system is equipped with corrosion protection system which must be inspected and tested at least every three years. The last inspection and test occurred in 2006. Included in Section IV is an order requiring you to submit the results of a corrosion protection system inspection and test, an application for a registration certificate, along with the applicable fees.

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 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's rules are available at <http://www.oregon.gov/deq/Regulations/Pages/Statutes.aspx>. DEQ may allow you to resolve part of the penalty through the completion of an environmental improvement project. Further information is available at <http://www.oregon.gov/deq/Regulations/Pages/SEP.aspx>. If you have any questions, please contact Susan Elworth at 503-229-5152 or 800-452-4011, ex 5152.

Sincerely,

Kieran O'Donnell, Manager
Office of Compliance and Enforcement

cc: Eric Clough, WR, Coos Bay office, DEQ

1 hereby ORDERED TO:

2 1. Pay a total civil penalty of \$1,959. The determinations of the civil penalties are attached as
3 Exhibits 1 and 2, and are incorporated as part of this Notice. If you do not file a request for hearing as set
4 forth in Section V below, your check or money order must be made payable to "**State Treasurer, State of**
5 **Oregon**" and sent to the **DEQ, Business Office, 700 NE Multnomah Street, Suite 600, Portland,**
6 **Oregon 97232**. Once you pay the penalty, the Notice becomes final.

7 2. Within 30 days of this order becoming final, submit to DEQ the results of a corrosion
8 protection system inspection and test, a complete application to modify the UST general permit
9 registration certificate, along with the \$405 annual fee and \$75 modification application fee. This
10 documentation must be sent to: Eric Clough, DEQ, 381 N. 2nd Street, Coos Bay, OR 97420.

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

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

26 Active duty service-members have a right to stay proceedings under the federal Service
27 Members Civil Relief Act. For more information, please call the Oregon State Bar at 1-800-

1 452-8260 or the Oregon Military Department at 1-800-452-7500. Additional information can be found
2 online at the United States Armed Forces Legal Assistance (AFLA) Legal Services Locator website
3 <http://legalassistance.law.af.mil/content/locator.php>.

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

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13 6/7/18

14 Date

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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: Failing to have the corrosion protection system inspected and tested for proper operation, in violation of OAR 340-150-0325(2)(b).

CLASSIFICATION: This is a Class I violation pursuant to OAR 340-012-0067(1)(j).

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 \$500 for a Class I, moderate magnitude violation in the matrix listed in OAR 340-012-0140(5)(b)(A)(ii) and applicable pursuant to OAR 340-012-0140(5)(a)(E). Respondent is the owner 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 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 4 according to OAR 340-012-0145(4)(d) because there was more than 28 occurrences of the violation. Respondent has failed to inspect and test the corrosion protection system since she became the owner of the UST facility, so the violation has been on-going since June 2017.

"M" is the mental state of the Respondent and receives a value of 2 according to OAR 340-012-0145(5)(b), because Respondent had constructive knowledge of the requirement. Respondent, as the owner of the USTs, reasonably should have known that the USTs must be protected from corrosion and the protection must be tested on a periodic basis.

"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).

"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 \$285. This is the amount Respondent gained by avoiding spending \$500 since June 2017 for an inspection and test of the corrosion protection system. This "EB" was calculated pursuant to OAR 340-012-0150(1) using the U.S. Environmental Protection Agency's BEN computer model.

PENALTY CALCULATION: $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$
 $= \$500 + [(0.1 \times \$500) \times (0 + 0 + 4 + 2 + 2)] + \285
 $= \$500 + [\$50 \times 8] + \$285$
 $= \$500 + \$400 + \$285$
 $= \$1,185$

EXHIBIT 2

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

VIOLATION 2: Failing to submit an application to modify the UST general permit registration certificate after a change in ownership of the property, in violation of OAR 340-150-0052.

CLASSIFICATION: This is a Class II violation pursuant to OAR 340-012-0067(2)(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 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(b)(B)(ii) and applicable pursuant to OAR 340-012-0140(5)(a)(E). Respondent is the owner 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 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 4 according to OAR 340-012-0145(4)(d) because there was more than 28 occurrences of the violation. Respondent has failed to submit an modification application within 60 days of becoming the owner, so the violation has been on-going since August 2017.

"M" is the mental state of the Respondent and receives a value of 4 according to OAR 340-012-0145(5)(d), because Respondent's conduct was negligent. Negligence means Respondent failed to take reasonable care to avoid a foreseeable risk of conduct resulting in a violation. In February and again in May 2018, DEQ sent Respondent letters informing her of the need to submit a modification application. By failing to submit the modification application, Respondent failed to take reasonable care to avoid operating the USTs in temporary closure without a valid temporary closure certificate.

"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 a modification application.

"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 \$274. This is the amount Respondent gained by avoiding spending \$440 for an annual operation certificate permit fee and \$75 for the modification application fee. This "EB" was calculated pursuant to OAR 340-012-0150(1) using the U.S. Environmental Protection Agency's BEN computer model.

PENALTY CALCULATION: $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$
 $= \$250 + [(0.1 \times \$250) \times (0 + 0 + 4 + 4 + 2)] + \274
 $= \$250 + [\$25 \times 10] + \$274$
 $= \$250 + \$250 + \$274$
 $= \$774$