



# Oregon

Kate Brown, Governor

Department of Environmental Quality

Headquarters

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Portland, OR 97204-1390

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April 19, 2016

CERTIFIED MAIL: 7014 2870 0001 3378 3013

Adventist Medical Center-Portland  
c/o Meredith Jobe, Authorized Representative  
2100 Douglas Blvd  
Roseville, CA 95661

Re: Notice of Civil Penalty Assessment and Order  
Case No. LQ/UST-NWR-16-048  
UST Facility #3471

This letter is to inform you that DEQ has issued you a civil penalty of \$1,808 for multiple violations of Oregon rules regulating Underground Storage Tanks (USTs) including (1) failing to maintain records of the most current 12 consecutive months of Automatic Tank Gauge (ATG) monitoring and testing results, (2) failing to employ trained personnel capable of properly operating and maintaining a UST system, and (3) closing a UST without applying for and being issued a general permit registration certificate from DEQ. These violations occurred at your facility at 10123 Market St. in Portland, Oregon.

Properly operating, maintaining, and monitoring your UST system is important for environmental safety and quality. DEQ was particularly concerned because you received a field citation for failing to maintain records of the most current 12 consecutive months of ATG monitoring and testing results before, in March of 2013, and the violation went uncorrected for over two years. If a UST suffers a leak due to neglect, or if a leak goes unnoticed due to poor monitoring practices, the leaking fuel can have lasting harmful effects on land quality, water quality, or human health. The regulations you have violated are designed to make sure such an accident does not occur.

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. 6<sup>th</sup> 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.



Adventist Medical Center-Portland  
Case No. LQ/UST-NWR-16-048  
Page 2

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.

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.

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 Susan Elworth, at (503) 229-5152. You may call toll-free within Oregon at 1-800-452-4011, extension 5152.

Sincerely,



Leah K. Feldon, Manager  
Office of Compliance and Enforcement

Enclosures

cc: Mark Drouin, Inspector, ER  
Stephanie Holmes, HQ, DEQ

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

3 ) NOTICE OF CIVIL PENALTY  
4 ) ASSESSMENT AND ORDER  
5 ) NO. LQ/UST-NWR-16-048  
ADVENTIST MEDICAL  
CENTER – PORTLAND,  
Respondent.

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 and 468.126 through 468.140,  
9 466.994, ORS Chapter 183, and Oregon Administrative Rules (OAR) Chapter 340, Divisions 011, 012,  
10 and 150.

11 II. FINDINGS OF FACT

12 1. Respondent is the owner and permittee under OAR 340-150-0020 of an underground  
13 storage tank (UST) system located at 10123 Market Street in Portland, Oregon.

14 2. The UST system is equipped with an automatic tank gauge (ATG) to conduct release  
15 detection monitoring.

16 3. On July 29, 2015, DEQ conducted an inspection of the USTs.

17 4. During the inspection, Respondent was unable to produce the most current 12 consecutive  
18 months of their ATG release detection records.

19 5. During the inspection, Respondent informed DEQ that it had not had an employee on staff  
20 trained to operate and maintain the UST system since May 2013.

21 6. During the inspection, Respondent informed DEQ that it had stopped dispensing regulated  
22 substances from the UST system in approximately February 2013, but regulated substances were still  
23 being stored in the USTs after that time.

24 7. DEQ has never received an application from Respondent for a temporary closure general  
25 permit.

26 III. CONCLUSIONS

27 1. Respondent violated OAR 340-150-0450(5) by failing to retain the most current 12

1 consecutive months of release detection records. This is a Class I violation, according to OAR 340-012-  
2 0067(1)(j). DEQ hereby assesses a \$775 civil penalty for these violations. This penalty is determined in  
3 Exhibit 1 which is included as part of this Notice.

4 2. Respondent violated OAR 340-150-0200(2) by failing to employ trained personnel who can  
5 properly operate and maintain the UST system. This is a Class II violation, according to OAR 340-012-  
6 0067(2)(b). DEQ hereby assesses a \$683 civil penalty for these violations. This penalty is determined in  
7 Exhibit 2 which is included as part of this Notice.

8 3. Respondent violated OAR 340-150-0167(1) by failing to submit, at least 30 days before  
9 beginning temporary closure, an application for a temporary closure general permit to DEQ. The actions  
10 described in Section II, paragraph 6 constitute temporary closure, as that term is defined in OAR 340-150-  
11 0010(80). This is a Class II violation, according to OAR 340-012-0053(2). DEQ hereby assesses a \$350  
12 penalty for this violation. This penalty is determined in Exhibit 3 which is included as part of this Notice.

#### 13 IV. ORDER TO PAY CIVIL PENALTY

14 Based upon the foregoing FINDINGS OF FACTS AND CONCLUSIONS, Respondent is  
15 hereby ORDERED TO pay a total civil penalty of \$1,808. If you do not file a request for hearing as set  
16 forth in Section V below, your check or money order must be made payable to "**State Treasurer, State of**  
17 **Oregon**" and sent to the **DEQ, Business Office, 811 S.W. Sixth Avenue, Portland, Oregon 97204**.  
18 Once you pay the penalty, the Findings of Fact, Conclusions and Order become final.

#### 19 V. NOTICE OF RIGHT TO REQUEST A CONTESTED CASE HEARING

20 You have a right to a contested case hearing on this Notice, if you request one in writing. You  
21 must ensure that DEQ receives the request for hearing **within 20 calendar days** from the date you  
22 receive this Notice. If you have any affirmative defenses or wish to dispute any allegations of fact in  
23 this Notice or attached exhibit(s), you must include them in your request for hearing, as factual matters  
24 not denied will be considered admitted, and failure to raise a defense will be a waiver of the defense.  
25 (See OAR 340-011-0530 for further information about requests for hearing.) You must mail the request  
26 for hearing to: **DEQ, Office of Compliance and Enforcement - Appeals, 811 SW Sixth Avenue,**  
27 **Portland, Oregon 97204**, or fax it to **503-229-5100**. An administrative law judge employed by the

1 Office of Administrative Hearings will conduct the hearing, according to ORS Chapter 183, OAR  
2 Chapter 340, Division 011 and OAR 137-003-0501 to 0700. You have a right to be represented by an  
3 attorney at the hearing, or you may represent yourself unless you are a corporation, agency or  
4 association.

5 Active duty service-members have a right to stay proceedings under the federal Service  
6 members Civil Relief Act. For more information, please call the Oregon State Bar at 1-800-  
7 452-8260 or the Oregon Military Department at 1-800-452-7500. Additional information can be found  
8 online at the United States Armed Forces Legal Assistance (AFLA) Legal Services Locator website  
9 <http://legalassistance.law.af.mil/content/locator.php>.

10 If you fail to file a request for hearing in writing within 20 calendar days of receipt of the  
11 Notice, the Notice will become a final order by default without further action by DEQ, as per OAR  
12 340-011-0535(1). If you do request a hearing but later withdraw your request, fail to attend the hearing  
13 or notify DEQ that you will not be attending the hearing, DEQ will issue a final order by default  
14 pursuant to OAR 340-011-0535(3). DEQ designates the relevant portions of its files, including  
15 information submitted by you, as the record for purposes of proving a prima facie case.

16  
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19 Date

april 19, 2016

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Leah K. Feldon, 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 monitor and test the USTs for a release at least once every 30 days, to record the results for each month, and to retain at a minimum the most current 12 consecutive months of release detection records in violation of OAR 340-150-0450(2) and (5).

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 or permittee 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 2 according to OAR 340-012-0145(2)(a)(A), because Respondent has one Class I violation in Field Citation Number 1016, failure to keep the most recent 12 consecutive months of ATG release detection reports.

"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 insufficient information on which to base a finding under paragraphs (3)(a) or (b).

"O" is whether the violation was repeated or ongoing and receives a value of 3 according to OAR 340-012-0145(4)(c) because there were more than seven but less than 28 occurrences of the violation. Following the inspection, Respondent provided DEQ with release detection records from July 2015. Regulations require that Respondent maintain the most current 12 consecutive months of release detection records, thus Respondent failed to maintain 11 months of release detection records prior to the inspection. Respondent began retaining release detection records again in July 2015.

"M" is the mental state of the Respondent and receives a value of 8 according to OAR 340-012-0145(5)(b), because Respondent's conduct was reckless. Respondent received a Field

Citation for the same type of violation prior to this action and knew of their responsibility to maintain records but failed to do so. Respondent consciously disregarded a substantial and unjustifiable risk that the violation would occur.

"C" is Respondent's efforts to correct or mitigate the violation and receives a value of -2 according to OAR 340-012-0145(6)(c), because Respondent eventually made some efforts to minimize the effects of the violation by retaining monitoring data starting in July 2015.

"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 de minimis value of \$0 because Respondent has the necessary ATG in place and retaining records does not constitute an expenditure for which an economic benefit can be assessed.

PENALTY CALCULATION:  $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$   
 $= \$500 + [(0.1 \times \$250) \times (2 + 0 + 3 + 8 + -2)] + \$0$   
 $= \$500 + [\$25 \times 11] + \$0$   
 $= \$500 + \$275 + \$0$   
 $= \$775$

EXHIBIT 2

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

VIOLATION 2: Failing to employ trained personnel who can properly operate and maintain the Underground Storage Tank (UST) system in violation of OAR 340-150-0200(2).

CLASSIFICATION: This is a Class II violation pursuant to OAR 340-012-0067(2)(b).

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(5)(b)(B)(ii) and applicable pursuant to OAR 340-012-0140(5)(a)(E). Respondent is the owner or permittee 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 2 according to OAR 340-012-0145(2)(a)(A), because Respondent has one Class I violation in Field Citation Number 1016, failure to keep the most recent 12 consecutive months of Automatic Tank Gauging release detection reports.

"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 insufficient information on which to base a finding under paragraphs (3)(a) or (b).

"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 were more than 28 occurrences of the violation. Each day of violation for a violation with a duration lasting more than one day constitutes a separate occurrence. In this case, Respondent failed to employ trained personnel who can properly operate and maintain the UST system from May 2013 until July 2015.

"M" is the mental state of the Respondent and receives a value of 4 according to OAR 340-012-0145(5)(b), because Respondent's conduct was negligent. By failing to employ trained personnel who can properly operate and maintain the UST system, Respondent failed to take reasonable care to avoid a foreseeable risk that it would engage in conduct that would constitute a violation of UST regulations.

"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 an effort to correct the violation. Respondent paid to have three employees trained in proper UST system operation and maintenance.

"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 \$33 because Respondent delayed the \$375 cost of training employees from May 2013 until July 2015. 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 x \$250) x (2 + 0 + 4 + 4 + -2)] + \$33  
= \$250 + [\$25 x 8] + \$33  
= \$250 + \$400 + \$33  
= \$683

EXHIBIT 3

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

VIOLATION 3: Failing to submit, at least 30 days before beginning temporary closure, an application for a temporary closure general permit to DEQ in violation of OAR 340-150-0167(1).

CLASSIFICATION: This is a Class II violation pursuant to OAR 340-012-0053(2).

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(5)(b)(B)(ii) and applicable pursuant to OAR 340-012-0140(5)(a)(I). Respondent is the owner or permittee 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 2 according to OAR 340-012-0145(2)(a)(A), because Respondent has one Class I violation in Field Citation Number 1016, failure to keep the most recent 12 consecutive months of Automatic Tank Gauging release detection reports.

"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 insufficient information on which to base a finding under paragraphs (3)(a) or (b).

"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 only one occurrence of the violation. Respondent was required to submit to DEQ an application for a temporary closure general permit on one day only, 30 days before placing the UST system into temporary closure.

"M" is the mental state of the Respondent and receives a value of 4 according to OAR 340-012-0145(5)(b), because Respondent's conduct was negligent. By ceasing operation of the UST system without applying for and being issued a permit for temporary closure, Respondent failed to take reasonable care to avoid a foreseeable risk that it would engage in conduct that would constitute a violation of UST regulations.

"C" is Respondent's efforts to correct or mitigate the violation and receives a value of -2 according to OAR 340-012-0145(6)(c), because Respondent eventually made some effort to correct the violation. In this case, Respondent returned the tanks to operation once appropriate repairs were made.

"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 de minimis value of \$0 because DEQ has insufficient information on which to make an estimate.

PENALTY CALCULATION:  $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$

$$\begin{aligned} &= \$250 + [(0.1 \times \$250) \times (2 + 0 + 0 + 4 + -2)] + \$0 \\ &= \$250 + [\$25 \times 4] + \$0 \\ &= \$250 + \$100 + \$0 \\ &= \$350 \end{aligned}$$