



Oregon

Kate Brown, Governor

Department of Environmental Quality

Office of Compliance and Enforcement

700 NE Multnomah St Ste 600

Portland, OR 97232-4100

(503) 229-5696

FAX (503) 229-5100

TTY: 711

June 23, 2017

CERTIFIED MAIL: 7016 2140 0000 2420 4928

CSD Tigard Station, LLC
Charles E. Fowlkes, Registered Agent
2300 NE Brazee Street
Portland, OR 97212

Re: Notice of Civil Penalty Assessment and Order
Case No. AQ/AC-NWR-2017-084

This letter is to inform you that the Oregon Department of Environmental Quality (DEQ) has issued you a civil penalty of \$4,185 for failing to maintain your stage I and stage II pollution control equipment in proper working order and failing to keep monthly gasoline throughput records, in violation of the Air Contaminant Discharge Permit for your gasoline dispensing facility, doing business as Patriot Food and Fuel, located at 12825 SW Pacific Highway in Tigard, Oregon. The Notice also cites you, without penalty, for operating a gasoline dispensing facility without an Air Contaminant Discharge Permit, from December 18, 2015 to May 9, 2016.

DEQ issued this penalty because defective or worn stage I vapor balance equipment and stage II vapor recovery equipment may lead to gasoline vapor releases to the environment when gasoline is delivered to the storage tanks at your facility and when gasoline is dispensed to your customers. Gasoline vapors contain air toxics, such as benzene, a known carcinogen, and volatile organic compounds that produce smog. Maintaining stage I and stage II equipment in proper operating condition is critical to ensuring that gasoline vapors are captured and recycled and that they do not pose a significant threat of harm to the health of your employees, the public and the environment.

Included in Section IV is an order requiring you to take the following corrective actions:

- Replace the defective stage I and stage II pollution control equipment and submit documentation to DEQ within 15 days of the order becoming final.
- For months where data is available, establish a gasoline throughput records from May 9, 2016 to the present, and submit a copy of these records to DEQ within 30 days of the order becoming final.

If you have any questions about how to comply with any of the items listed above, please contact Daniel DeFehr at 503-229-6155 or Defehr.Daniel@deq.state.or.us.

\$660 of the civil penalty represents the economic benefit you gained by failing to replace worn or ineffective stage I vapor balance equipment and stage II vapor recovery equipment. If you complete these requirements, 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 – 700 NE Multnomah Street, Suite #600, Portland, Oregon 97232

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.

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. 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 Becka Puskas, at (503) 229-5058. You may call toll-free within Oregon at 1-800-452-4011, extension 5058.

Sincerely,



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

Enclosures

cc: David Fowlkes, CSD Tigard Station, LLC, 12825 SW Pacific Highway, Tigard, OR 97223
Steve Fowlkes, CSD Tigard Station, LLC, 12825 SW Pacific Highway, Tigard, OR 97223
Dan DeFehr, DEQ Portland Office
Shaumae Hall, Accounting, DEQ
Cindy Troupe, AQ, DEQ

1 7. The Permit was in effect at all material times.

2 8. DEQ inspected the Facility on February 27, 2017.

3 9. Condition 4.8 of the Permit requires Respondent to ensure the connection and proper
4 operation of the vapor balance system whenever gasoline is being transferred. Condition 4.8 further
5 requires Respondent to ensure that all equipment associated with the vapor balance system must be
6 maintained to be vapor tight and in good working order.

7 10. Condition 4.9 of the Permit requires Respondent to replace, repair or modify any worn or
8 ineffective component or design element to ensure the vapor-tight integrity and efficiency of the stage
9 II vapor collection systems.

10 11. Condition 5.4 of the Permit requires Respondent to replace, repair or modify any worn or
11 ineffective component or design element within 24 hours to ensure the vapor-tight integrity and
12 efficiency of the vapor balance system. If repair parts must be ordered, either a written or a verbal
13 order for those parts must be initiated within two working days of detecting such a leak. Such repair
14 parts must be installed within five working days after receipt.

15 12. On the date of DEQ's inspection, February 27, 2017, the Facility had equipment that was
16 worn or ineffective with regards to stage I vapor balance equipment as well as stage II vapor recovery
17 equipment. Specifically, the following components of Respondent's stage I vapor balance equipment
18 and stage II vapor recovery equipment were worn or ineffective:

- 19 a. Two portions of the main dispenser hose for Dispenser 3, 87 grade, were flattened,
- 20 b. The nozzle bellows was torn open on Dispenser 6, 92 grade,
- 21 c. The nozzle bellows was torn open on Dispenser 7, 87 grade,
- 22 d. The nozzle bellows was torn open on Dispenser 9, 92 grade,
- 23 e. The whip hose / breakaway hose was torn open on Dispenser 10, 87 grade, and
- 24 f. The North-most pressure vacuum vent valve was missing a top or cap.

25 \\\

26 \\\

27 \\\

1 13. In Warning Letter with Opportunity to Correct No. WLOC-2017-2277, dated March 10,
2 2017, DEQ requested that Respondent replace the worn or ineffective stage I vapor balance equipment
3 and stage II vapor recovery equipment described in Paragraph 12, above, and demonstrate compliance
4 to DEQ by March 24, 2017.

5 14. In Pre-Enforcement Notice No. PEN-2017-2361, dated April 4, 2017, DEQ again requested
6 that Respondent replace the worn or ineffective stage I vapor balance equipment and stage II vapor
7 recovery equipment described in Paragraph 12, above.

8 15. As of the date of this Notice, Respondent has not provided documentation to DEQ
9 demonstrating the worn or ineffective stage I vapor balance equipment and stage II vapor recovery
10 equipment described in Paragraph 12, above, has been replaced.

11 16. Condition 6.1(c) of the Permit requires Respondent to maintain records of the total
12 throughput volume of gasoline, in gallons, for each calendar month.

13 17. Condition 6.3 of the Permit requires that the monthly gasoline throughput records described
14 in Paragraph 16, above, be maintained on site for a period of five years and made available to DEQ
15 upon request.

16 18. During DEQ's inspection on February 27, 2017, there were no monthly gasoline throughput
17 records at the Facility for DEQ to review.

18 19. In Warning Letter with Opportunity to Correct No. WLOC-2017-2277, dated March 10,
19 2017, DEQ requested that Respondent submit monthly gasoline throughput records from the date of the
20 Permit transfer on December 18, 2015 through March 10, 2017.

21 20. In Pre-Enforcement Notice No. PEN-2017-2361, dated April 4, 2017, DEQ again requested
22 that Respondent submit monthly gasoline throughput records from December 18, 2015 through April 4,
23 2017.

24 21. As of the date of this Notice, Respondent has not provided DEQ with any monthly gasoline
25 throughput records for the Facility.

26 \\\

27 \\\

1 III. CONCLUSIONS

2 1. Respondent has violated Conditions 4.8, 4.9 and 5.4 of the Permit by failing to replace worn or
3 ineffective stage I vapor balance equipment and stage II vapor recovery equipment as described in Section
4 II, Paragraphs 8-15, above. This is a Class II violation, according to OAR 340-012-0054(2)(k). DEQ
5 hereby assesses a \$2,460 civil penalty for this violation.

6 2. Respondent has violated Conditions 6.1(c) and 6.3 of its Permit by failing to maintain monthly
7 gasoline throughput records from at least December 18, 2015 through the date of this Notice, as described
8 in Section II, Paragraphs 16-21, above. These are Class II violations, according to OAR 340-012-
9 0054(2)(b). DEQ hereby assesses a \$1,725 civil penalty for these violations.

10 3. From at least December 18, 2015 to May 9, 2016, Respondent violated ORS 468A.045 and
11 OAR 340-216-0020(3) by operating an air contaminant source listed in OAR 340-216-8010 without
12 first obtaining an Air Contaminant Discharge Permit (ACDP) from DEQ, as described in Section II,
13 Paragraphs 4-6, above. According to OAR 340-216-8010, Table 1, Part B(35), gasoline dispensing
14 facilities are listed as an air source required to obtain an ACDP pursuant to OAR 340-216-0020. This
15 is a Class II violation, according to OAR 340-012-0054(2)(a). DEQ has not assessed a civil penalty for
16 this violation.

17 IV. ORDER TO PAY CIVIL PENALTY AND TO COMPLY

18 Based upon the foregoing FINDINGS OF FACTS AND CONCLUSIONS, Respondent is
19 hereby ORDERED TO:

20 1. Pay a total civil penalty of \$4,185. The determination of the civil penalties are attached as
21 Exhibits 1 and 2 and are incorporated as part of this Notice.

22 If you do not file a request for hearing as set forth in Section V below, your check or money
23 order must be made payable to "State Treasurer, State of Oregon" and sent to the **DEQ, Business**
24 **Office, 700 NE Multnomah Street, Suite #600, Portland, Oregon 97232**. Once you pay the penalty,
25 the Findings of Fact, Conclusions and Order become final.

26 \\\

27 \\\

1 2. Within 15 days of this order becoming final, by operation of law or on appeal, replace the
2 defective pollution control equipment as follows:

- 3 a. Dispenser 3, 87 grade, main dispenser hose,
- 4 b. Dispenser 6, 92 grade, nozzle bellows,
- 5 c. Dispenser 7, 87 grade, nozzle bellows,
- 6 d. Dispenser 9, 92 grade, nozzle bellows,
- 7 e. Dispenser 10, 87 grade, whip hose / breakaway hose, and
- 8 f. North-most pressure vacuum vent valve.

9 3. Within 30 days of this order becoming final, by operation of law or on appeal, either: a)
10 establish monthly gasoline throughput records from May 9, 2016 to the present, where data is available
11 to accurately establish such records, and submit a copy of such records to DEQ, or b) for any months
12 where data is not available to establish monthly throughput records, submit a statement to DEQ that the
13 data required to establish throughput records is not available.

14 Written documentation demonstrating Respondent's compliance with the above
15 requirements, Section IV, Paragraphs 2 and 3, must be sent to Daniel DeFehr, Oregon Department of
16 Environmental Quality, Northwest Region Office, 700 NE Multnomah Street, Suite 600, Portland, OR
17 97232 or Defehr.Daniel@deq.state.or.us.

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

19 You have a right to a contested case hearing on this Notice, if you request one in writing. You
20 must ensure that DEQ receives the request for hearing **within 20 calendar days** from the date you
21 receive this Notice. If you have any affirmative defenses or wish to dispute any allegations of fact in
22 this Notice or attached exhibit(s), you must include them in your request for hearing, as factual matters
23 not denied will be considered admitted, and failure to raise a defense will be a waiver of the defense.
24 (See OAR 340-011-0530 for further information about requests for hearing.) You must mail the request
25 for hearing to: **DEQ, Office of Compliance and Enforcement - Appeals, 700 NE Multnomah**
26 **Street, Suite #600, Portland, Oregon 97232**, or fax it to **503-229-5100**. An administrative law judge
27 employed by the Office of Administrative Hearings will conduct the hearing, according to ORS

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

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

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

15
16
17
18 June 23, 2017
19 Date

20
21
22
23
24
25
26
27
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 No. 1: Failing to replace worn or ineffective stage I vapor balance equipment and stage II vapor recovery equipment, in violation of Conditions 4.8, 4.9 and 5.4 of Respondent's AQGP-23 Permit.

CLASSIFICATION: This is a Class II violation pursuant to OAR 340-012-0054(2)(k).

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 \$750 for a Class II, moderate magnitude violation in the matrix listed in OAR 340-012-0140(4)(b)(B)(ii) and applicable pursuant to OAR 340-012-0140(4)(a)(C) because Respondent has a General Air Contaminant Discharge Permit because Respondent is subject to the federal Area-Source NESHAP requirements.

"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 were more than 28 occurrences of the violation. Each day of a violation is a separate occurrence. The violation began on or before February 27, 2017 and is ongoing as of the date of this Notice.

"M" is the mental state of the Respondent and receives a value of 8 according to OAR 340-012-0145(5)(d), because Respondent failed to act intentionally with actual knowledge of the requirement. On the date of DEQ's inspection, February 27, 2017, the Facility had equipment that was worn or ineffective with regards to stage I vapor balance equipment as well as stage II vapor recovery equipment. Respondent was notified in person by DEQ during the inspection regarding the violation and need to replace the equipment. At Respondent's request, on March 9, 2017, DEQ forwarded Respondent a copy of the inspection report documenting the deficiencies found at the facility. DEQ again notified

Respondent of the violation and reiterated its request that Respondent replace the worn or ineffective equipment in Warning Letter with Opportunity to Correct No. WLOC-2017-2277, dated March 10, 2017, and again in Pre-Enforcement Notice No. PEN-2017-2361, dated April 4, 2017. Despite these repeated notifications regarding the violation and requests for corrective action from DEQ, as of the date of this Notice, Respondent has not provided documentation to DEQ demonstrating that the worn or ineffective stage I and stage II equipment has been replaced. By failing to replace the worn or ineffective equipment despite DEQ's repeated requests, Respondent failed to act intentionally with actual knowledge of the Permit's requirements to maintain pollution control equipment in vapor tight condition and in good working order, and to replace such equipment within 24 hours or order new parts within two working days when such equipment is found to be worn or ineffective.

"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). As of the date of this Notice, Respondent has not provided documentation to DEQ demonstrating that the worn or ineffective stage I and stage II equipment has been replaced.

"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 \$660. This is the amount Respondent gained by avoiding spending \$1,183 to replace worn or ineffective stage I and stage II equipment including one main hose (\$220), one whip hose (\$63), three replacement nozzles (\$250 each), and one replacement pressure vacuum vent valve (\$150). This "EB" was calculated pursuant to OAR 340-012-0150(1) using the U.S. Environmental Protection Agency's BEN computer model.

PENALTY CALCULATION: $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$
= $\$750 + [(0.1 \times \$750) \times (0 + 0 + 4 + 8 + 2)] + \660
= $\$750 + (\$75 \times 14) + \$660$
= $\$750 + \$1,050 + \$660$
= $\$2,460$

EXHIBIT 2

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

VIOLATION No. 2: Failing to maintain monthly gasoline throughput records, in violation of Conditions 6.1(c) and 6.3 of Respondent's AQGP-23 Permit.

CLASSIFICATION: This is a Class II violation pursuant to OAR 340-012-0054(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 \$750 for a Class II, moderate magnitude violation in the matrix listed in OAR 340-012-0140(4)(b)(B)(ii) and applicable pursuant to OAR 340-012-0140(4)(a)(C) because Respondent has a General Air Contaminant Discharge Permit because Respondent is subject to the federal Area-Source NESHAP requirements.

"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 3 according to OAR 340-012-0145(4)(c), because there were between seven and 28 occurrences of the violation. Each record is a separate occurrence. Respondent has not established monthly gasoline throughput records from May 9, 2016 through the date of this Notice, for a total of 12 occurrences.

"M" is the mental state of the Respondent and receives a value of 8 according to OAR 340-012-0145(5)(d), because Respondent failed to act intentionally with actual knowledge of the requirement. On the date of DEQ's inspection, February 27, 2017, Respondent had not established monthly gasoline throughput records on-site since it obtained coverage under the permit on December 18, 2015. Respondent was notified by DEQ during the inspection regarding the violation and the need to establish monthly throughput records. At Respondent's request, on March 9, 2017, DEQ forwarded Respondent a copy of the inspection report documenting the deficiencies found at the facility, including the absence

of throughput records. DEQ again notified Respondent of the violation and reiterated its request that Respondent submit monthly gasoline throughput records since December 18, 2015 to DEQ in Warning Letter with Opportunity to Correct No. WLOC-2017-2277, dated March 10, 2017, and again in Pre-Enforcement Notice No. PEN-2017-2361, dated April 4, 2017. Despite these repeated notifications regarding the violation and requests for corrective action from DEQ, as of the date of this Notice, Respondent has not submitted any monthly gasoline throughput records to DEQ. By failing to establish and submit these records despite DEQ's repeated requests, Respondent failed to act intentionally with actual knowledge of the requirement.

"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). As of the date of this Notice, Respondent has not provided DEQ with any monthly gasoline throughput records.

"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 has insufficient information to make a finding regarding economic benefit.

PENALTY CALCULATION: $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$
= \$750 + [(0.1 x \$750) x (0 + 0 + 3 + 8 + 2)] + \$0
= \$750 + (\$75 x 13) + \$0
= \$750 + \$975 + \$0
= \$1,725