



Oregon

Kate Brown, Governor

Department of Environmental Quality

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July 28, 2016

CERTIFIED MAIL: 7014 2870 0001 3373 5265

City of Forest Grove
Rick Vanderkin
PO Box 326
Forest Grove, OR 97116-0326

Re: Notice of Civil Penalty Assessment and Order
Case No. LQ/UST-NWR-16-076
Facility #86

This letter is to inform you that the Oregon Department of Environmental Quality (DEQ) has issued you a civil penalty of \$1,639 for failing to protect metal components of your underground storage tank (UST) system from corrosion.

In March of this year, during modifications on a portion of your UST system located at 2551 23rd Avenue, you discovered that piping from the diesel tank to the emergency generator was constructed of copper. This piping was not protected from corrosion. Since 1998, Oregon's rules have required that all existing UST systems have corrosion protection for any metal portions of the system which are underground and regularly hold a regulated substance. When corrosion occurs, releases can occur through the holes created in the UST components.

DEQ appreciates your efforts to correct the violation by decommissioning the piping, and considered these efforts when determining the amount of civil penalty.

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.



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 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: Eric Clough, WR, Coos Bay office
Stephanie Holmes, HQ, UST

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

3 IN THE MATTER OF:) NOTICE OF CIVIL PENALTY
4 CITY OF FOREST GROVE,) ASSESSMENT AND ORDER
5 Respondent.) CASE NO. LQ/UST-NWR-16-076

7 I. AUTHORITY

8 The Department of Environmental Quality (DEQ) issues this Notice of Civil Penalty Assessment and
9 Order (Notice) pursuant to Oregon Revised Statutes (ORS) 468.100 and 468.126 through 468.140,
10 466.994, ORS Chapter 183 and Oregon Administrative Rules (OAR) Chapter 340, Divisions 011, 012, and
11 150.

12 II. FINDINGS OF FACT

13 1. Since 1987, Respondent has been the owner and operator of an underground storage
14 tank (UST) facility located at 2551 23rd Avenue in Forest Grove, Oregon.

15 2. Until March 2016, underground piping which was connected from the diesel UST to an
16 emergency generator was constructed of copper and was not protected from corrosion.

17 3. The diesel UST routinely stored diesel.

18 4. On or about March 16, 2016, Respondent decommissioned the piping referenced in
19 paragraphs 2 and 3.

20 III. CONCLUSIONS

21 From December 1998 until March 2016, Respondent violated OAR 340-150-0320(1) and OAR 340-
22 150-0555 (formerly OAR 340-150-0002 and OAR 340-150-0003 which adopted, by reference, 40 CFR
23 Part 280 including 40 CFR 280.21 and 280.31) by failing to protect underground connected piping that
24 routinely contains a regulated substance from corrosion. All existing USTs were required to meet the
25 corrosion protection requirements by December 22, 1998 (see OAR 340-150-0560). Respondent failed to
26 upgrade the existing copper piping from corrosion until March 2016. This is a Class I violation,
27 according to OAR 340-012-0067(1)(f). DEQ assesses a \$1,639 civil penalty for this violation.

1 IV. ORDER TO PAY CIVIL PENALTY

2 Based upon the foregoing FINDINGS OF FACTS AND CONCLUSIONS, Respondent is
3 hereby ORDERED TO pay a total civil penalty of \$1,639. The determination of the civil penalty is
4 attached as Exhibit 1 and is incorporated as part of this Notice. If you do not file a request for hearing as
5 set forth in Section V below, your check or money order must be made payable to "State Treasurer,
6 State of Oregon" and sent to the DEQ, Business Office, 811 S.W. Sixth Avenue, Portland, Oregon
7 97204. Once you pay the penalty, the Findings of Fact, Conclusions and Order become final.

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

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

21 Active duty service-members have a right to stay proceedings under the federal Service
22 members Civil Relief Act. For more information, please call the Oregon State Bar at 1-800-
23 452-8260 or the Oregon Military Department at 1-800-452-7500. Additional information can be found
24 online at the United States Armed Forces Legal Assistance (AFLA) Legal Services Locator website
25 <http://legalassistance.law.af.mil/content/locator.php>.

26 If you fail to file a request for hearing in writing within 20 calendar days of receipt of the
27 Notice, the Notice will become a final order by default without further action by DEQ, as per OAR

1 340-011-0535(1). If you do request a hearing but later withdraw your request, fail to attend the hearing
2 or notify DEQ that you will not be attending the hearing, DEQ will issue a final order by default
3 pursuant to OAR 340-011-0535(3). DEQ designates the relevant portions of its files, including
4 information submitted by you, as the record for purposes of proving a prima facie case.
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7

8 June 28, 2016

9 Date

8 Saman Wheeler for

9 Leah K. Feldon, Manager
Office of Compliance and Enforcement
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EXHIBIT 1

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

VIOLATION 1: Failing to protect underground connected piping that routinely contains a regulated substance from corrosion, in violation of OAR 340-150-0320(1) and OAR 340-150-0555.

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

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 were more than 28 occurrences of the violation. Respondent failed to install corrosion protection on the underground piping from 1998 until 2016.

"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 (reasonably should have known) of the requirement. Respondent has been the permittee of the UST system since 1998 when the corrosion protection requirements became effective. The other components of its UST system are protected from corrosion, thus Respondent reasonably should have known of the requirement to protect copper piping from corrosion.

"C" is Respondent's efforts to correct or mitigate the violation and receives a value of -3 according to OAR 340-012-0145(6)(c), because Respondent made reasonable efforts to correct the violation. Respondent decommissioned and replaced the piping.

"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 \$989. This is the amount Respondent gained by delaying spending \$2,000 to decommission the underground piping from December 1999 until March 2016. 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 x \$500) x (0 + 0 + 4 + 2 - 3)] + \$989
= \$500 + [\$50 x 3] + \$989
= \$500 + \$150 + \$989
= \$1,639