



Oregon

Kate Brown, Governor

Department of Environmental Quality

Headquarters
811 SW 6th Ave
Portland, OR 97204-1390
(503) 229-5696
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TTY: 711

June 28, 2016

CERTIFIED MAIL No. 70142870000133735975

Midland Investment Company
424 NW Skyline Blvd.
Portland, OR 97229

Re: Notice of Civil Penalty Assessment and Order to Comply
No. WQ/SW-NWR-16-090

This letter is to inform you that DEQ has issued you a civil penalty of \$4,918 for failing to obtain authorization from DEQ to operate a drywell at your commercial property in Portland. You have been using the drywell to dispose of stormwater at your property since June 2010 without DEQ authorization. This is a violation of OAR 340-044-0018(1). You were also cited, without civil penalty, for failing to decommission the underground injection system serving automotive bays at the property.

DEQ issued this penalty because as the property owner, you are responsible for obtaining the proper authorization to operate the drywell. You received a Warning Letter in January 2016, notifying you of the violations and requesting that you take corrective action, but you failed to comply. DEQ regulates drywells and other underground injection systems to ensure that groundwater is protected.

Included in Section IV is an order requiring you to submit a completed Class V Underground Injection Control Authorization by Rule form with the required fee to DEQ within thirty (30) days and to properly decommission the underground injection system serving the automotive bays according to the specified schedule. \$3,118 of the civil penalty amount represents the economic benefit you gained by failing to submit the application fee and required information. 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, you have 20 calendar days from receipt of this letter to request a contested case hearing. This 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 the request, we will arrange to meet with you to discuss this matter. If DEQ does not receive a written hearing request from you within 20 days, the penalty will become due.

The attached Notice further details DEQ's reasons for issuing the penalty and provides additional instructions for appealing the penalty. Please review it and refer to it when discussing this case with DEQ.



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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 Esther Westbrook, at (503) 229-5374. You may call toll-free within Oregon at 1-800-452-4011, extension 5374.

Sincerely,



Leah K. Feldon, Manager
Office of Compliance and Enforcement

Enclosures

cc: Matt Kohlbecker, Northwest Region, DEQ

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

3 IN THE MATTER OF:) NOTICE OF CIVIL PENALTY
4 MIDLAND INVESTMENT COMPANY,) ASSESSMENT AND ORDER TO COMPLY
an Oregon corporation,)
5 Respondent.) NO. WQ/SW-NWR-16-090
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7 I. AUTHORITY

8 The Department of Environmental Quality (DEQ) issues this Notice of Civil Penalty Assessment
9 and Order (Notice) pursuant to Oregon Revised Statutes (ORS) 468.100 and 468.126 through 468.140,
10 ORS 454.605 through 454.755, ORS Chapter 468B, ORS Chapter 183 and Oregon Administrative Rules
11 (OAR) Chapter 340, Divisions 011 and 012, and 044.

12 II. FINDINGS OF FACT

13 1. Since June 2010, Respondent has owned the commercial property located at 12136 SE
14 Stark Street in Portland, Multnomah County, Oregon (the Property).

15 2. At the east side of the parking lot at the Property, there is a catch basin that collects
16 stormwater runoff and conveys it to a drywell, which is a type of underground injection system defined
17 in OAR 340-044-0005(14).

18 3. The drywell is not authorized by or registered with DEQ.

19 4. There are floor drains in two automobile repair bays at the Property, which lead to a
20 drywell. These drains have been temporarily closed with a bolted cap, and are not being used for the
21 disposal or injection of wastes or wastewater.

22 5. The Property was previously used for automobile repair and maintenance activities, and
23 waste fluids from these activities were injected into an underground injection system via the floor
24 drains.

25 6. According to OAR 340-044-0015(2)(e), injection systems that inject motor vehicle
26 waste from vehicle repair or maintenance activities are not allowed.

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- a. Within thirty (30) days of this Notice becoming final, submit a completed Class V Underground Injection Control Pre-Closure Notification form and closure work plan for to Matt Kohlbecker at DEQ Northwest Region, 700 NE Multnomah Street, Suite 600, Portland, OR 97232;
- b. Within forty five (45) days receiving closure work plan approval from DEQ, decommission the system in accordance with the approved closure work plan; and
- c. Within thirty (30) days of decommissioning the system, submit a post-closure report to Matt Kohlbecker at the address above.

V. NOTICE OF RIGHT TO REQUEST A CONTESTED CASE HEARING

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

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

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1 If you fail to file a request for hearing in writing within 20 calendar days of receipt of the
2 Notice, the Notice will become a final order by default without further action by DEQ, as per OAR
3 340-011-0535(1). If you do request a hearing but later withdraw your request, fail to attend the hearing
4 or notify DEQ that you will not be attending the hearing, DEQ will issue a final order by default
5 pursuant to OAR 340-011-0535(3). DEQ designates the relevant portions of its files, including
6 information submitted by you, as the record for purposes of proving a prima facie case.
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10 June 28, 2016
11 Date

10 Sarah Wheeler for
11 Leah K. Feldon, Manager
12 Office of Compliance and Enforcement
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EXHIBIT NO. 1

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

VIOLATION: Failing to obtain authorization from DEQ to operate a drywell, in violation of OAR 340-044-0018(1).

CLASSIFICATION: This is a Class II violation pursuant to OAR 340-012-0055(2)(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 \$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)(F)(v) because Respondent owns and should have registered a UIC system that disposes of stormwater, and Respondent is not a residential owner-occupant.

"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 has been operating the drywell without DEQ authorization since June 2010.

"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. DEQ staff conducted an inspection at Respondent's property on April 30, 2015, and informed the facility managers that it was required to obtain authorization from DEQ to operate the drywell. Respondent failed to take action at that time. On January 22, 2016, DEQ issued a Warning Letter with Opportunity to Correct, notifying Respondent of the violation and requesting that it take corrective action by obtaining authorization for the stormwater drywell and decommissioning the automotive waste disposal well. Respondent failed to take the corrective actions requested by DEQ. Respondent continued to operate the

stormwater drywell without obtaining authorization from DEQ, although it had actual knowledge that authorization was required.

"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 action, Respondent has not submitted the required form and information to DEQ to register and authorize the drywell.

"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 \$3,118. This is the amount Respondent gained by avoiding spending \$125 for the UIC authorization application fee and \$5,000 in consultant costs for completing the authorization form and preparing a stormwater management plan. This "EB" was calculated pursuant to OAR 340-012-0150(1) using the U.S. Environmental Protection Agency's BEN computer model.

PENALTY CALCULATION: $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$
 $= \$750 + [(0.1 \times \$750) \times (0 + 0 + 4 + 8 + 2)] + \$3,118$
 $= \$750 + [\$75 \times 14] + \$3,118$
 $= \$4,918$