



# Oregon

Kate Brown, Governor

Department of Environmental Quality  
Office of Compliance and Enforcement  
700 NE Multnomah Street, Suite 600  
Portland, OR 97232-4100  
(503) 229-5696  
FAX (503) 229-5100  
TTY 711

June 26, 2020

CERTIFIED MAIL: 7017 1450 0000 8310 3398

Legacy Emanuel Hospital & Health Center  
Anne T. Greer, Registered Agent  
1919 NW Lovejoy Street, Legal Services Department  
Portland OR 97209

Re: Notice of Civil Penalty Assessment and Order  
Case No. LQ/UST-NWR-2020-055

*DEQ is committed to balancing its vital obligation to enforce the law and protect the environment with a consideration of the dramatic disruptions to public health and the economy caused by the COVID-19 outbreak. We understand the outbreak may impact your ability to timely appeal, pay the assessed civil penalty, or comply with this order. You may submit to DEQ documentation identifying whether COVID-19-related disruption affects your ability to comply with this order. Visit our webpage <https://www.oregon.gov/deq/Pages/covid-19.aspx> for more information about documenting specific COVID-19 disruptions your facility may be encountering and how that affects your ability to comply. DEQ will exercise reasonable discretion regarding settlement of this order.*

This letter is to inform you that the Oregon Department of Environmental Quality (DEQ) has issued you a civil penalty of \$25,582 for violations related to the management of your underground storage tank (UST), located at 1225 N.E. 2<sup>nd</sup> Avenue in Portland.

The UST was installed in 1975 and has been used to store diesel for an emergency generator. Since 1988, DEQ has required that all owners and operators register and pay fees for their USTs. In addition, by December 1998, all USTs needed to either be upgraded to meet corrosion protection and overfill and spill prevention requirements or be decommissioned. You did not register the UST until December 2019 and the UST does not meet the corrosion protection and overfill and spill prevention requirements and has not been decommissioned.

DEQ issued this penalty because properly installed and managed USTs are less likely to result in a release of diesel or other fuels. Releases can occur either at the fill pipe when the delivery truck's hose is disconnected, from loose fitting at the top of the tank when there is no overfill prevention device, or as a result of holes in the tank or piping due to corrosion. Releases from USTs can threaten human health and safety by causing fires, resulting in vapor inhalation to building residents, or contaminating groundwater. For these reasons, DEQ has required the installation of devices to prevent corrosion, overfills and spills since 1998.

Included in Section IV of the attached Notice is an order requiring you to submit to DEQ a decommissioning checklist and site assessment report within 60 days, including the payment of back fees. \$15,433 of the civil penalty represents the economic benefit you gained by failing to decommission the UST. If you complete these requirements, DEQ will consider recalculating the costs as delayed rather than avoided and will reduce the civil penalty accordingly. DEQ appreciates your efforts to attempt to correct the violation by registering the UST 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 hearing within 20 calendar days from your receipt of this letter. The hearing request must be in writing. Send your request to DEQ Office of Compliance and Enforcement:

Via mail – 700 NE Multnomah Street, Suite 600, Portland, Oregon 97232

Via email – [DEQappeals@deq.state.or.us](mailto: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 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 instead of paying a penalty. Further information is available by calling the number below or at <http://www.oregon.gov/deq/Regulations/Pages/SEP.aspx>.

DEQ's rules are available at <http://www.oregon.gov/deq/Regulations/Pages/Statutes.aspx> or by calling the number below.

If you have any questions, please contact Susan Elworth at 503-229-5152 or toll free in Oregon at 800-452-4011, extension 5152.

Sincerely,



Kieran O'Donnell, Manager  
Office of Compliance and Enforcement

Enclosures

cc: Mark Drouin, NWR, DEQ

1 BEFORE THE ENVIRONMENTAL QUALITY COMMISSION

2 OF THE STATE OF OREGON

3	IN THE MATTER OF:	)	NOTICE OF CIVIL PENALTY
4	LEGACY EMANUEL HOSPITAL &	)	ASSESSMENT AND ORDER
4	HEALTH CENTER,	)	
5	Respondent.	)	CASE NO. LQ/UST-NWR-2020-055

6 I. AUTHORITY

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

10 II. FINDINGS OF FACT

11 1. Respondent is the owner of a property located at 1225 N.E. 2<sup>nd</sup> Avenue in Portland Oregon  
12 (the Property).

13 2. In 1975, an underground storage tank (UST) was installed at the Property and has been used  
14 to store diesel to power an emergency generator since that time.

15 3. On December 6, 2019, DEQ received a General Permit Registration Form to Install and  
16 Operate Regulated Tanks (the Form) from Respondent for the UST. Prior to that date, DEQ had not  
17 received  
18 any other request to register the UST or to obtain a general permit registration certificate for the UST.  
19 On December 6, 2019, DEQ also received from Respondent an annual compliance fee for the UST for  
20 2019.

21 4. The Form states that the tank and connected underground piping are constructed of bare  
22 steel. The Form did not provide any information on spill or overfill prevention devices.

23 5. On December 17, 2019, DEQ conducted an inspection of the UST. At the time of the  
24 inspection, and since the installation of the UST, the UST did not have corrosion protection and spill  
25 and overfill prevention equipment.

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1 III. CONCLUSIONS

2 1. From February 1, 1988 until December 6, 2019, Respondent violated OAR 340-150-0020(1)  
3 and former OAR 340-150-0030 by failing to apply for and be issued a general permit registration  
4 certificate or permit by DEQ prior to operating the UST. This is a Class I violation, according to OAR  
5 340-012-0067(1)(c). DEQ assesses a \$6,849 civil penalty for this violation.

6 2. Since December 22, 1998, Respondent has violated OAR 340-150-0555(4) and former 40 CFR  
7 280.21(a)(3) adopted by former OAR 340-150-0002, by failing to decommission the UST when it did not  
8 meet the requirements in OAR 340-150-0555(3) and former 40 CFR 280.21(b) adopted by former OAR  
9 340-150-0002. DEQ regulations require all existing USTs (as defined by 40 CFR 280.12 adopted by  
10 former OAR 340-150-0002 and by OAR 340-150-0550(1)) to meet the standards set forth in 40 CFR  
11 280.21 adopted by former OAR 340-150-0002 (now OAR 340-150-0560) prior to December 22, 1998.  
12 Because the UST did not have corrosion protection and spill and overflow prevention equipment prior to  
13 December 22, 1998 as required by 40 CFR 280.21 adopted by former OAR 340-150-0002 (now OAR  
14 340-150-0560(1), (2), and (3)), Respondent was required to decommission (as defined in 40 CFR  
15 280.70 through 40 CFR 280.74, adopted and revised by former OAR 340-150-0003) the UST by that  
16 date. This is a Class I violation, according to OAR 340-012-0067(1)(g). DEQ assesses an \$18,733 civil  
17 penalty for this violation.

18 IV. ORDER TO PAY CIVIL PENALTY AND TO COMPLY

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

21 1. Pay a total civil penalty of \$25,582. The determination of the civil penalties are attached as  
22 Exhibits 1 and 2, and are incorporated as part of this Notice. If you do not file a request for hearing as set  
23 forth in Section V below, your check or money order must be made payable to "**State Treasurer, State of**  
24 **Oregon**" and sent to the **DEQ, Business Office, 700 NE Multnomah Street, Suite 600, Portland,**  
25 **Oregon 97232.**

26 2. Within 60 days of this order becoming final by operation of law or on appeal, submit to  
27 Mark Drouin, DEQ, 700 NE Multnomah Street, Suite 600, Portland Oregon 97232, a 30-day notice of

1 decommissioning along with the attachments set forth in OAR 340-150-0168(1) and (3), along with  
2 the annual compliance fees as required by OAR 340-150-0168(10). Within 60 day of DEQ's approval,  
3 Respondent must submit a decommissioning checklist and site assessment report demonstrating that  
4 Respondent has permanently decommissioned the UST in compliance with OAR 340-150-0168.

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

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

20 Active duty Service members have a right to stay proceedings under the federal Service  
21 Members Civil Relief Act. For more information contact the Oregon State Bar at 1-800-  
22 452-8260, the Oregon Military Department at 503-584-3571, or the nearest United States Armed  
23 Forces Legal Assistance Office through <http://legalassistance.law.af.mil>. The Oregon Military  
24 Department does not have a toll free telephone number.

25 If you fail to file a timely request for hearing, the Notice will become a final order by default  
26 without further action by DEQ, as per OAR 340-011-0535(1). If you do request a hearing but later  
27 withdraw your request, fail to attend the hearing or notify DEQ that you will not be attending the

1 hearing, DEQ will issue a final order by default pursuant to OAR 340-011-0535(3). DEQ designates  
2 the relevant portions of its files, including information submitted by you, as the record for purposes of  
3 proving a prima facie case.

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6/26/2020



Date

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 apply for and be issued a general permit registration certificate by DEQ prior to operating the UST, in violation of OAR 340-150-0020(1) and former OAR 340-150-0030.

CLASSIFICATION: This is a Class I violation pursuant to OAR 340-012-0067(1)(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 \$1,500 for a Class I, moderate magnitude violation in the matrix listed in OAR 340-012-0140(4)(b)(A)(ii) and applicable pursuant to OAR 340-012-0140(4)(a)(I). Respondent is the owner and permittee of two UST facilities – specifically facility nos. 8827 and 12626.

"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 4 according to OAR 340-012-0145(2)(a), because Respondent has 3 Class I equivalent violations in FC-556 and FC-1364.

"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 constitutes a separate occurrence. The violation was on-going from 1988 until 2019.

"M" is the mental state of the Respondent and receives a value of 4 according to OAR 340-012-0145(5)(c) because Respondent's conduct was negligent. Negligence means Respondent failed to take reasonable care to avoid a foreseeable risk of conduct constituting or resulting in a violation. Respondent is the owner and permittee of another UST facility which has been issued an operating certificate. When Respondent failed to apply for an operating certificate at this facility, it failed to take the same care that another similarly situated person would take in the same situation, resulting in the violation.

"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 submitted a request for a registration certificate in December 2019.

"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 \$3,999. This is the amount Respondent gained by avoiding spending the following amounts for annual permit fees:

- \$25 for 1988 through 1993;
- \$35 for 1994 through 1997;
- \$60 for 1998 through 2001;
- \$105 for 2002;
- \$85 for 2003 through 2007;
- \$135 for 2008 through 2017; and
- \$195 for 2018.

Additionally, Respondent delayed spending \$245 until December 2019 for the 2019 annual permit 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:  $Penalty = BP + [(0.1 \times BP) \times (P + H + O + M + C)] + EB$   
 $= \$1,500 + [(0.1 \times \$1,500) \times (4 + 0 + 4 + 4 - 3)] + \$3,999$   
 $= \$1,500 + [\$150 \times 9] + \$3,999$   
 $= \$1,500 + \$1,350 + \$3,999$   
 $= \$6,849$

EXHIBIT 2

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

- VIOLATION 2: Failing to decommission the UST, in violation of OAR 340-150-0555(4) and former 40 CFR 280.21(a)(3) adopted by former OAR 340-150-0002.
- CLASSIFICATION: This is a Class I violation pursuant to OAR 340-012-0067(1)(g).
- 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 \$1,500 for a Class I, moderate magnitude violation in the matrix listed in OAR 340-012-0140(4)(b)(A)(ii) and applicable pursuant to OAR 340-012-0140(4)(a)(I). Respondent is the owner and permittee of two UST facilities – specifically facility nos. 8827 and 12626.
- "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 4 according to OAR 340-012-0145(2)(a), because Respondent has 3 Class I equivalent violations in FC-556 and FC-1364. According to
- "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 constitutes a separate occurrence. Respondent was required to decommission the existing UST prior to December 22, 1998 thus the violation has been ongoing since 1998.
- "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. During the 1990s, both DEQ and EPA did outreach to the regulated community, informing them that all USTs needed to be either meet the technical requirements or be decommissioned. Additionally, Respondent is the permittee for another

UST facility which does meet the technical standards, thus Respondent reasonably should have known that it needed to decommission the UST when it did not meet those standards.

"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 decommissioned the UST.

"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 \$15,433. This is the amount Respondent gained by avoiding spending \$10,000 since December 1999 to have the UST decommissioned. This "EB" was calculated pursuant to OAR 340-012-0150(1) using the U.S. Environmental Protection Agency's BEN computer model.

PENALTY CALCULATION:  $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$   
= \$1,500 + [(0.1 x \$1,500) x (4 + 0 + 4 + 2 + 2)] + \$15,433  
= \$1,500 + [\$150 x 12] + \$15,433  
= \$1,500 + \$1,800 + \$15,433  
= \$18,733