



Oregon

Kate Brown, Governor

Department of Environmental Quality
Office of Compliance and Enforcement
700 NE Multnomah Street, Suite 600
Portland, OR 97232
(503) 229-5382
FAX (503) 229-5100
TTY 711

July 10, 2020

CERTIFIED MAIL No. 7017 1450 0000 8310 3480

Space Age Fuel, Inc.
c/o Scott L. Jensen, Registered Agent
1200 SW Main Street
Portland, OR 97205

Re: Notice of Civil Penalty Assessment and Order
Case No. AQ/ACDP-NWR-2019-261

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 DEQ has issued you a civil penalty of \$1,898 for failing to conduct leak rate, cracking pressure, and static pressure testing of your gasoline storage tanks at your gasoline dispensing facility at 12920 SE Stark Street, Portland, Oregon. You are required to conduct these tests triennially and your first round of tests was due January 2018. To date, you have not performed leak rate, cracking pressure, and static pressure tests on your gasoline storage tanks.

DEQ issued this penalty because testing the efficiency of your vapor balance system is an important requirement to ensure that gasoline vapors from your facility are being adequately controlled. Gas vapors contain benzene which is a hazardous air pollutant that can cause cancer, and other chemicals that contribute to smog and degradation of the airshed.

Included in Section IV of the enclosed Notice is an order requiring you to perform leak rate, cracking pressure, and static pressure performance testing on all of your gasoline storage tanks at this facility within 30 days of the order becoming final by operation of law or on appeal, and to submit the test results to DEQ within 30 days of testing.

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

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 portion of your 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 DEQ Environmental Law Specialist Jenny Root at 503-229-5874.

Sincerely,



Kieran O'Donnell, Manager
Office of Compliance and Enforcement

Enclosures

cc: Boris Barrera, Northwest Region, DEQ
Steve Dietrich, Air Quality Northwest Region, DEQ
Accounting, DEQ
Donald Hendrix, AQ

BEFORE THE ENVIRONMENTAL QUALITY COMMISSION
OF THE STATE OF OREGON

IN THE MATTER OF:) NOTICE OF CIVIL PENALTY
SPACE AGE FUEL, INC.) ASSESSMENT AND ORDER
an Oregon corporation,)
Respondent.) CASE NO. AQ/ACDP-NWR- 2019-261

I. AUTHORITY

This Notice and Order is issued pursuant to Oregon Revised Statutes (ORS) 468.100 and 468.126 through 468.140, ORS Chapters 183 and 468A and Oregon Administrative Rules (OAR) Chapter 340, Divisions 011, 012, 200, 216 and 244.

II. FINDINGS OF FACT

1. Respondent operates a gasoline dispensing facility (GDF) at 12920 SE Stark Street, Portland, Oregon (the Facility).

2. On September 23, 2010, the Department of Environmental Quality (DEQ) assigned the Facility to General Air Contaminant Discharge Permit AQGP-023 (Permit) as source number: 26-9676. The Permit was in effect at all material times.

3. The Permit authorizes Respondents to discharge air contaminants from the Facility in conformance with the requirements, limitations, and conditions set forth in the Permit.

4. The Facility has three underground gasoline storage tanks that are equipped with a stage I vapor balance system intended to capture vapors while transferring gasoline from tanker trucks into storage tanks in accordance with Condition 4.4 or 4.5 of the Permit.

5. Conditions 5.1.a. and b. of the Permit require that, if the Facility has a monthly throughput¹ of 100,000 gallons of gasoline or more, once every three years, Respondent must:

a. Demonstrate compliance with the leak rate and cracking pressure requirements for pressure-vacuum vent valves installed on the gasoline storage tanks by

¹According to OAR 340-244-0030(17), "Monthly throughput" means the total volume of gasoline that is loaded into, or dispensed from, all gasoline storage tanks at each GDF during a month. Monthly throughput is calculated by summing the volume of gasoline loaded into, or dispensed from, all gasoline storage tanks at each GDF during the current day, plus the total volume of gasoline loaded into, or dispensed from, all gasoline storage tanks at each GDF during the previous 364 days, and then dividing that sum by 12.

conducting a test using California Air Resources Board (CARB) Vapor Recovery Test Procedure TP-201.1E, or other DEQ-approved method; and

b. Demonstrate compliance with the static pressure performance of the vapor balance system by conducting a static pressure test on the gasoline storage tanks using CARB Vapor Recovery Test Procedure TP-201.3, or other DEQ-approved method.

6. During the months of January 2014 to December 2014, the Facility dispensed 1,308,908 gallons of gasoline, at a monthly average throughput of 109,076 gallons.

7. According to OAR 340-244-0234(10), if a GDF's throughput ever exceeds an applicable throughput threshold, the GDF will remain subject to the requirements for GDF's above the threshold, even if the GDF's throughput later falls below the applicable throughput threshold.

8. By letter dated July 10, 2017, DEQ notified Respondent that because the Facility had reached a monthly throughput of 100,000 gallons or more of gasoline as of December 2014, the Permit required Respondent to conduct leak rate, cracking pressure and static pressure testing of the gasoline storage tanks at the Facility every three years. According to the letter, Respondent's first round of testing was due no later than January 2018.

9. To date, Respondent has not conducted leak rate, cracking pressure and static pressure performance testing of the gasoline storage tanks at the Facility.

III. CONCLUSION

Respondent violated Conditions 5.1. a and b. of the Permit and OARs 340-244-0242(5)(a) and 340-244-0244(1)(a) and (b), by failing to conduct within three years of reaching a 100,000 gallons of gasoline monthly throughput, testing for leak rate and cracking pressure of the vent valves installed on the gasoline storage tanks; and static pressure performance of the gasoline storage tanks, at the facility as further described in Section II, Paragraphs 5, 6 and 9 above. These are Class II violations according to OAR 340-012-0054(2)(b). DEQ hereby assesses a \$1,898 civil penalty for these violations.

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1 IV. ORDER TO PAY CIVIL PENALTY AND COMPLY

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

4 1. Pay a total civil penalty of \$1,898. The determination of the civil penalty is attached
5 as Exhibit No. 1 and is incorporated as part of this Notice.

6 2. Within 30 days of this order becoming final by operation of law or on appeal:

7 a. Demonstrate compliance with the leak rate and cracking pressure
8 requirements for pressure-vacuum vent valves installed on all gasoline storage tanks at the
9 Facility by conducting a test using California Air Resources Board (CARB) Vapor Recovery
10 Test Procedure TP-201.1E, or other DEQ-approved method;

11 b. Demonstrate compliance with the static pressure performance of the vapor
12 balance system by conducting a static pressure test on all gasoline storage tanks at the Facility
13 using CARB Vapor Recovery Test Procedure TP-201.3, or other DEQ-approved method;

14 3. Within 30 days of completing the required tests, submit all test results to: Boris
15 Barrera, DEQ Northwest Region Office, 700 NE Multnomah Street, Portland, OR 97232.

16 If you do not file a request for hearing as set forth in Section V below, your check or
17 money order must be made payable to "**State Treasurer, State of Oregon**" and sent to the **DEQ,**
18 **Business Office, 700 NE Multnomah Street, Suite 600, Portland, Oregon 97232.**

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.
21 DEQ must receive your request for hearing **within 20 calendar days** from the date you receive
22 this Notice. If you have any affirmative defenses or wish to dispute any allegations of fact in this
23 Notice or attached exhibit, you must do so in your request for hearing, as factual matters not
24 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 send your
26 request to: **DEQ, Office of Compliance and Enforcement, 700 NE Multnomah Street, Suite**
27 **600, Portland, Oregon 97232**, fax it to **503-229-5100** or email it to

1 DEQappeals@deq.state.or.us. An administrative law judge employed by the Office of
2 Administrative Hearings will conduct the hearing, according to ORS Chapter 183, OAR Chapter
3 340, Division 011 and OAR 137-003-0501 to 0700. You have a right to be represented by an
4 attorney at the hearing, however you are not required to be. If you are an individual, you may
5 represent yourself. If you are a corporation, partnership, limited liability company,
6 unincorporated association, trust or government body, you must be represented by an attorney or
7 a duly authorized representative, as set forth in OAR 137-003-0555.

8 Active-duty service members have a right to stay proceedings under the federal Service
9 Members Civil Relief Act. For more information contact the Oregon State Bar at 1-800-
10 452-8260, the Oregon Military Department at 503-584-3571, or the nearest United States Armed
11 Forces Legal Assistance Office through <http://legalassistance.law.af.mil>. The Oregon Military
12 Department does not have a toll free telephone number.

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

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21 7 / 10 / 2020

22 Date

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Kieran O'Donnell, Manager
Office of Compliance and Enforcement

EXHIBIT NO. 1

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

- VIOLATION: Failing to conduct testing for leak rate, cracking pressure, and static pressure performance of the gasoline storage tanks at the Facility, in violation of Conditions 5.1.a. and b. of the Permit and OARs 340-244-0242(5)(a) and 340-244-0244(1)(a) and (b).
- CLASSIFICATION: These are Class II violations 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 operates the Facility under a General Air Contaminant Discharge Permit only because the Facility 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 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 2 according to OAR 340-012-0145(4)(b) because there was more than one but less than seven occurrences of the violation. Respondent failed to conduct two tests of its gasoline storage tanks in 2018; one leak rate and cracking pressure test and one static pressure test.
- "M" is the mental state of the Respondent and receives a value of 8 according to OAR 340-012-0145(5)(d), because Respondent's conduct was reckless. Respondent owns or operates several other GDFs in Oregon that have been assigned to the General ACDP, and therefore, Respondent has general knowledge of DEQ air quality permitting requirements for GDFs. Conditions 5.1. a. and b. of the Permit expressly require Respondent to conduct leak rate, cracking pressure and static pressure testing of its gasoline storage tanks once every three

years. In addition, DEQ issued Respondent a letter on July 7, 2017, to notify Respondent that the testing was due by January 2018. DEQ again notified Respondent in a Warning Letter with Opportunity to Correct on September 11, 2019, and in a Pre-Enforcement Notice on October 24, 2019, that Respondent's testing was overdue and still needed to be performed. By continuing to fail to conduct the testing after numerous reminders by DEQ, Respondent consciously disregarded a substantial and unjustifiable risk that Respondent would violate its Permit and Oregon law.

"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).

"EB" is the approximate dollar value of the benefit gained and the costs avoided or delayed as a result of 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 \$398. This is the amount Respondent gained by avoiding spending approximately \$475 for a leak rate and cracking pressure test (\$175) and a static pressure performance test (\$300) in 2018. 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 x \$750) x (0 + 0 + 0 + 8 + 2)] + \$398
= \$750 + (75 x 10) + \$398
= \$750 + \$750 + \$398
= \$1,898