



# 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

July 10, 2020

CERTIFIED MAIL: 7017 1450 0000 8310 3510

Thabet Management, Inc.  
Lutfi Thabet, Registered Agent  
1700 Valley River Drive, Suite 300  
Eugene OR 97401

Re: Notice of Civil Penalty Assessment and Order  
Case No. LQ/UST-WR-2020-071

***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 \$7,800 for failing to comply with a field citation issued by DEQ in December 2019, for violations at your underground storage tanks located at 614 John Long Road in Oakland. The field citation required you to submit a report to DEQ by January 10, 2020, that summarized an investigation into numerous alarms from your release detection system. DEQ did not receive the report regarding the cause of these alarms until April 2, 2020. Alarms from your release detection system may be indicators of a release from your UST system. Therefore, investigating the alarms in a timely manner may reduce the spread of petroleum.

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,

A handwritten signature in blue ink, appearing to read "Kieran O'Donnell", is written over a horizontal line.

Kieran O'Donnell, Manager  
Office of Compliance and Enforcement

Enclosures

cc: Andrea Garcia, Medford office, DEQ

1 BEFORE THE ENVIRONMENTAL QUALITY COMMISSION

2 OF THE STATE OF OREGON

3 IN THE MATTER OF: )  
4 THABET MANAGEMENT, INC. ) NOTICE OF CIVIL PENALTY  
5 Respondent. ) ASSESSMENT AND ORDER  
CASE NO. LQ/UST-WR-2020-071

6 I. AUTHORITY

7 DEQ issues this Notice of Civil Penalty Assessment and Order (Notice) pursuant to Oregon  
8 Revised Statutes (ORS) 468.100, ORS 468.126 through 468.140, ORS 466.706 through 466.835, ORS  
9 466.994, ORS Chapter 183 and Oregon Administrative Rules (OAR) Chapter 340, Divisions 011, 012, and  
10 150.

11 II. FINDINGS OF FACT

12 1. On June 3, 2013, DEQ received a General Permit Registration Form to Modify Tank  
13 Owner, Permittee or Property Owner regarding an underground storage tank (UST) facility located at  
14 614 John Long Road in Oakland, Oregon (the Facility). The form listed Respondent as the permittee of  
15 the Facility.

16 2. On December 10, 2019, DEQ issued to Respondent a Field Citation for UST Violations No.  
17 1748 (FC-1748). FC-1748 ordered Respondent to submit a suspected release investigation report by  
18 January 10, 2020.

19 3. On February 7, 2020, Respondent paid FC-1748. Pursuant to ORS 466.837 and OAR 340-  
20 150-0250(5), FC-1748 became a Final Order of DEQ on that date.

21 4. On April 2, 2020, Respondent submitted to DEQ a suspected release investigation report.

22 III. CONCLUSIONS

23 Respondent violated FC-1748 and ORS 466.765 by failing to comply with a final order of DEQ  
24 in a timely manner. Specifically, FC-1748 required Respondent to submit a suspected release report  
25 prior to January 10, 2020 yet Respondent did not do so until April 2, 2020. This is a Class I violation,  
26 according to OAR 340-012-0053(1)(a). DEQ assesses a \$7,800 civil penalty for this violation.

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1 V. 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 \$7,800. 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, 700 NE Multnomah Street, Suite 600,**  
7 **Portland, Oregon 97232.**

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

23 Active duty Service members have a right to stay proceedings under the federal Service  
24 Members Civil Relief Act. For more information contact the Oregon State Bar at 1-800-  
25 452-8260, the Oregon Military Department at 503-584-3571, or the nearest United States Armed  
26 Forces Legal Assistance Office through <http://legalassistance.law.af.mil>. The Oregon Military  
27 Department does not have a toll free telephone number.

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

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9 7 / 10 / 2020

10 Date

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Kieran O'Donnell

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 submit the documentation required under a final order of DEQ, in violation of that final order.
- CLASSIFICATION: This is a Class I violation pursuant to OAR 340-012-0053(1)(a).
- MAGNITUDE: The magnitude of the violation is minor pursuant to OAR 340-012-0130(4) as there is no selected magnitude specified in OAR 340-012-0135 applicable to this violation and the Department finds that the violation had no more than a de minimis adverse impact on human health or the environment, and posed no more than a de minimis threat to human health and the environment. The late submittal of the suspected release investigation report did not pose more than a de minimis threat to human health and the environment because Respondent eventually submitted to DEQ documentation of the investigation into the alarms.
- 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 \$3,000 for a Class I, minor magnitude violation in the matrix listed in OAR 340-012-0140(2)(b)(A)(iiI) and applicable pursuant to OAR 340-012-0140(2)(a)(i). Respondent is the owner or permittee of 22 UST facilities.
- "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 an initial value of 11 according to OAR 340-012-0145(2)(a), because Respondent has 10 Class I equivalent violation in the following field citations: FC-824, FC-1080, FC-450, FC-1088, FC-650, FC-3322, FC-329, FC-929, FC-1443, FC-1765 and FC-1748. According to OAR 340-012-0145(2)(b), this amount is reduced to 10 because the value of P cannot exceed 10.
- "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 are more than 28 occurrences of the violation. Each day of violation constitutes a separate occurrence. The violation of FC-1748 was on-going from January 10<sup>th</sup> until April 2<sup>nd</sup> 2020.

"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. When Respondent failed to submit the documentation required under FC-1748 by the date required, it failed to take the same measure of care that another person would take in the same situation.

"C" is Respondent's efforts to correct or mitigate the violation, and receives a value of -2 according to OAR 340-012-0145(6)(d) because Respondent eventually made some efforts to correct the violation. Respondent submitted the documentation required by FC-1748, albeit late.

"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 as an economic benefit received by Respondent as a result of this violation would be de minimus.

PENALTY CALCULATION:  $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$

$$\begin{aligned} &= \$3,000 + [(0.1 \times \$3,000) \times (10 + 0 + 4 + 4 - 2)] + \$0 \\ &= \$3,000 + (\$300 \times 16) + \$0 \\ &= \$3,000 + \$4,800 + \$0 \\ &= \$7,800 \end{aligned}$$