



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 4418

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-2020-072
UST Facility #11756

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 \$18,839 for failing to comply with a field citation issued by DEQ in October 2019, for violations at your underground storage tanks (USTs) located at 1025 Green Acres Road in Eugene. The field citation required you to conduct line tightness and line leak detector operational testing and to repair a spill bucket within 30 days of issuance. You paid the civil penalty associated with the field citation but failed to submit testing results until January, 2020. In addition, as of the date of this Notice, you have not submitted documentation showing that the spill bucket has been repaired.

DEQ is concerned about these violations as most releases from UST systems occurs either from piping or as a result of a spill or overflow. Spills often occur at the fill pipe when the delivery truck's hose is disconnected. Although these spills are usually small, repeated small releases can cause extensive environmental contamination.

\$839 of the civil penalty represents the economic benefit you gained by failing to repair the spill bucket. If you complete this requirement, DEQ will consider recalculating the cost as delayed rather than avoided and will reduce the civil penalty accordingly.

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 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: Dylan Eckert, 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
6 CASE NO. LQ/UST-WR-2020-072

7 I. AUTHORITY

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

11 II. FINDINGS OF FACT

12 1. On June 19, 2019, 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 1025 Green Acres Road in Eugene, Oregon (the Facility). The form listed Respondent as the permittee
15 of the Facility.

16 2. On October 10, 2019, DEQ issued Respondent a Field Citation for UST Violations No.
17 1765 (FC-1765). FC-1765 ordered Respondent to conduct line tightness and line leak detector
18 operational testing within 30 days. FC-1765 also ordered Respondent to repair a spill bucket and to
19 submit a receipt for the spill bucket repair within 30 days.

20 3. On October 28, 2019, Respondent paid FC-1765. Pursuant to ORS 466.837 and OAR 340-
21 150-0250(5), FC-1765 became a Final Order of DEQ on that date.

22 4. On January 17, 2020, Respondent completed line tightness and line leak detector operational
23 testing and submitted those results to DEQ.

24 5. As of the date of this Notice, Respondent has not submitted to DEQ documentation showing
25 that the spill bucket has been repaired.

26 III. CONCLUSIONS

27 Respondent violated FC-1765 and ORS 466.765 by failing to comply with a final order of DEQ.
Specifically, Respondent was required by FC-1765 to conduct the testing prior to November 27, 2019

1 (30 days after FC-1765 became final) but did not do so until January 17, 2020. Additionally,
2 Respondent was required to repair the spill bucket and to submit documentation of that repair to DEQ
3 prior to November 27, 2019 but has not done so as of the date of this Notice. This is a Class I violation,
4 according to OAR 340-012-0053(1)(a). DEQ assesses an \$18,839 civil penalty for this violation.

5 V. ORDER TO PAY CIVIL PENALTY

6 Based upon the foregoing FINDINGS OF FACTS AND CONCLUSIONS, Respondent is
7 hereby ORDERED TO pay a total civil penalty of \$18,839. The determination of the civil penalty is
8 attached as Exhibit 1 and is incorporated as part of this Notice. If you do not file a request for hearing as
9 set forth in Section V below, your check or money order must be made payable to "**State Treasurer,**
10 **State of Oregon**" and sent to the **DEQ, Business Office, 700 NE Multnomah Street, Suite 600,**
11 **Portland, Oregon 97232.**

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

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

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1 Active duty Service members have a right to stay proceedings under the federal Service
2 Members Civil Relief Act. For more information contact the Oregon State Bar at 1-800-
3 452-8260, the Oregon Military Department at 503-584-3571, or the nearest United States Armed
4 Forces Legal Assistance Office through <http://legalassistance.law.af.mil>. The Oregon Military
5 Department does not have a toll free telephone number.

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

12
13
14 7/10/2020

15 Date

14 

15 Kieran O'Donnell, Manager
16 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 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 \$6,000 for a Class I, moderate magnitude violation in the matrix listed in OAR 340-012-0140(2)(b)(A)(ii) 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-1765 has been ongoing since November 2019, 30 days after when the field citation became final.

"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-1765 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)(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). Although Respondent completed the required testing, Respondent has not submitted the documentation showing that it has repaired the spill bucket.

"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 \$839. This is the amount Respondent gained by avoiding spending \$1,100 to repair a spill bucket since November 2019. This "EB" was calculated pursuant to OAR 340-012-0150(1) using the U.S. Environmental Protection Agency's BEN computer model.

PENALTY CALCULATION: $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$
= \$6,000 + [(0.1 x \$6,000) x (10 + 0 + 4 + 4 + 2)] + \$839
= \$6,000 + (\$600 x 20) + \$839
= \$6,000 + \$12,000 + \$839
= \$18,839