Oregon
Kate Brown, Governor

Department of Environmental Quality
Headquarters
811 SW 6th Ave
Portland, OR 97204-1390
(503) 229-5696
FAX (503) 229-6124
TTY: 711

July 19, 2016

CERTIFIED MAIL: 7014 2870 0001 3373 5227

James Robert Frackowiak
706 Main Street
Oregon City, OR 97045

Re: Notice of Civil Penalty Assessment and Order
Case No. LQ/UST-WR-2016-095

This letter is to inform you that the Oregon Department of Environmental Quality (DEQ) has issued you a civil penalty of $3,286 for violations related to an underground storage tank (UST) system located on a property you own at 173 Grant Street in Woodburn.

In August 2012, you became the owner of the property. DEQ's regulations require that new owners of a property upon which an UST system is located must submit an application to modify the tank owner to DEQ within 60 days of a change in the ownership. Additionally, the UST system is equipped with a galvanic corrosion protection system which must be inspected and tested at least every three years. The last inspection and test occurred in 2006.

Included in Section IV is an order requiring you to submit the results of a corrosion protection system inspection and test, a complete application to modify the UST general permit registration certificate, and the annual compliance fees for 2012 through 2016. If you complete these requirements, DEQ will consider recalculating the economic benefit portion of the civil penalties as appropriate.

If you wish to appeal this matter, DEQ must receive a request for a contested case hearing within 20 calendar days from your receipt of this letter. The 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 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 it 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 in lieu of paying your penalty. Enclosed is more detail on how to pursue a SEP. SEP documents are available on the internet at http://www.deq.state.or.us/programs/enforcement/SEP.htm, or by calling the number below to request a paper copy.

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 Susan Elworth, at (503) 229-5152. You may call toll-free within Oregon at 1-800-452-4011, extension 5152.

Sincerely,

Leah K. Feldon, Manager
Office of Compliance and Enforcement

Enclosures

cc: Eric Clough, WR, Coos Bay office
Stephanie Holmes, UST program

BEFORE THE ENVIRONMENTAL QUALITY COMMISSION

OF THE STATE OF OREGON

IN THE MATTER OF: JAMES ROBERT FRACKOWIAK, Respondent.	))))	NOTICE OF CIVIL PENALTY ASSESSMENT AND ORDER CASE NO. LQ/UST-WR-2016-095

I. AUTHORITY

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

II. FINDINGS OF FACT

1. On August 21, 2012, Respondent became the owner of a property located at 173 Grant Street in Woodburn, Oregon.

2. Since at least 1988, three underground storage tanks (USTs) have been located on the property.

3. The USTs and their connected underground piping are protected from corrosion by a galvanic corrosion protection system.

4. The last inspection and test of the corrosion protection system was done in September 2006.

5. As of the date of this Notice, DEQ has not received from Respondent an application to modify the UST general permit registration certificate.

III. CONCLUSIONS

1. Respondent violated OAR 340-150-0325(2)(b) by failing to have the corrosion protection system inspected and tested for proper operation at least once every three years. These are Class I violations, according to OAR 340-012-0067(1)(j). DEQ hereby assesses a $1,615 civil penalty for these violations.

2. Respondent violated OAR 340-150-0052 by failing to submit an application to modify the UST general permit registration certificate after a change in ownership of the property on which an UST

system is located, within 60 days of that change. This is a Class II violation, according to OAR 340-012-0067(2)(c). DEQ hereby assesses a $1,671 civil penalty for this violation.

IV. ORDER TO PAY CIVIL PENALTY AND TO COMPLY

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

1. Pay a total civil penalty of $3,286. The determinations of the civil penalties are attached as Exhibits 1 and 2, and are incorporated as part of this Notice. If you do not file a request for hearing as set forth in Section V below, your check or money order must be made payable to "**State Treasurer, State of Oregon**" and sent to the **DEQ, Business Office, 811 S.W. Sixth Avenue, Portland, Oregon 97204**. Once you pay the penalty, the Findings of Fact, Conclusions and Order become final.

2. Within 30 days from obtaining a final order, submit to DEQ the results of a corrosion protection system inspection and test, a complete application to modify the UST general permit registration certificate, and the annual compliance fees for 2012 through 2016 ($1,760). This documentation must be sent to: Eric Clough, DEQ, 381 N. 2nd Street, Coos Bay, OR 97420.

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(s), 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.

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

July 19, 2016
Date

Susan Mueller for
Leah K. Feldon, 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 have the corrosion protection system inspected and tested for proper operation at least once every three years, in violation of OAR 340-150-0325(2)(b).

CLASSIFICATION: These are Class I violations pursuant to OAR 340-012-0067(1)(j).

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 $500 for a Class I, moderate magnitude violation in the matrix listed in OAR 340-012-0140(5)(b)(A)(ii) and applicable pursuant to OAR 340-012-0140(5)(a)(E). Respondent is the owner of one UST facility.

"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 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 inspect and test the corrosion protection system twice, once in 2012 and again in 2015.

"M" is the mental state of the Respondent and receives a value of 4 according to OAR 340-012-0145(5)(c), because Respondent was negligent. Negligence means Respondent failed to take reasonable care to avoid a foreseeable risk of conduct resulting in a violation. As the owner of the UST facility, Respondent should have known that the corrosion protection system must be tested on a periodic basis, yet Respondent continued to allow the USTs to remain in temporary closure without conducting that testing.

"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 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 $715. This is the amount Respondent gained by avoiding spending $500 in 2012 and again in 2015 for an inspection and test of the corrosion protection system. 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 x BP) x (P + H + O + M + C)] + EB
= $500 + [(0.1 x $500) x (0 + 0 + 2 + 4 + 2)] + $715
= $500 + [$50 x 8] + $715
= $500 + $400 + $715
= $1,615

EXHIBIT 2

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

VIOLATION 2: Failing to submit an application to modify the UST general permit registration certificate after a change in ownership of the property, in violation of OAR 340-150-0052.

CLASSIFICATION: This is a Class II violation pursuant to OAR 340-012-0067(2)(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 $250 for a Class II, moderate magnitude violation in the matrix listed in OAR 340-012-0140(b)(B)(ii) and applicable pursuant to OAR 340-012-0140(5)(a)(E). Respondent is the owner of one UST facility.

"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 0 according to OAR 340-012-0145(4)(a), because there was only one occurrence of the violation. Respondent failed to submit an application within 60 days after the change in ownership.

"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. Reckless means that Respondent disregarded a substantial and unjustifiable risk that the result would occur. In December 2015, DEQ issued Respondent a field citation that informed Respondent that failing to submit a modification application was a violation. Since that time, DEQ has contacted Respondent both by telephone and letter requesting that Respondent submit the application. By disregarding DEQ's requests for the application, Respondent acted in a manner that was a gross deviation from the standard of care a reasonable person would observe 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).

"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 $1,171. This is the amount Respondent gained by avoiding spending $440 each year since 2012 for an annual operation certificate 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 x BP) x (P + H + O + M + C)] + EB
= $250 + [(0.1 x $250) x (0 + 0 + 0 + 8 + 2)] + $
= $250 + [$25 x 10] + $1,171
= $250 + $250 + $1,171
= $1,671