



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 28, 2021

CERTIFIED MAIL: 7018 1830 0001 5903 8426

Advanced Chemical Transport, Inc.
dba, ACTenviro
Krista Harsona, Registered Agent
967 Mabury Road
San Jose CA 95133

Re: Notice of Civil Penalty Assessment and Order
Case No. LQ/UST-NWR-2021-085
UST facility #4392

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 \$3,600 for failing to obtain a service provider license prior to conducting underground storage tank services. On January 18, 2021, you collected soil samples in the excavation of a removed underground storage tank at a property at 20001 S.W. Teton Avenue in Tualatin. A license is required prior to conducting services on underground storage tanks in order to ensure the protection of public health and the environment through the use of correct methods and practices.

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.

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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: Lauren Dimock, NWR, DEQ

1 BEFORE THE ENVIRONMENTAL QUALITY COMMISSION

2 OF THE STATE OF OREGON

3 IN THE MATTER OF:) NOTICE OF CIVIL PENALTY
4 ADVANCED CHEMICAL TRANSPORT,) ASSESSMENT AND ORDER
5 INC., dba ACTenviro,)
6 Respondent.) CASE NO. LQ/UST-NWR-2021-085

7 I. AUTHORITY

8 DEQ issues this Notice of Civil Penalty Assessment and Order (Notice) pursuant to Oregon
9 Revised Statutes (ORS) 468.100, ORS 468.126 through 468.140, ORS 466.994, ORS Chapter 183 and
10 Oregon Administrative Rules (OAR) Chapter 340, Divisions 011, 012, 150 and 160.

11 II. FINDINGS OF FACT

12 1. On January 18, 2021, Respondent collected soil samples in an excavation on a property
13 located at 20001 S.W. Teton Avenue in Tualatin where an underground storage tank (UST) had been
14 located.

15 2. On January 18, 2021, Respondent was not licensed by DEQ to perform UST services.

16 III. CONCLUSIONS

17 Respondent violated OAR 340-160-0020(1) by performing UST services without obtaining a
18 license from DEQ. The collection of soil samples was UST services (as defined in OAR 340-160-
19 0010(4)) because it was performed during the decommissioning (as defined in OAR 340-150-0010(22))
20 of the UST. Respondent was not licensed by DEQ to conduct UST services. This is a Class I
21 violation, according to OAR 340-012-0067(1)(k). DEQ assesses a \$3,600 civil penalty for this violation.

22 IV. ORDER TO PAY CIVIL PENALTY

23 Based upon the foregoing FINDINGS OF FACTS AND CONCLUSIONS, Respondent is
24 ORDERED TO pay a total civil penalty of \$3,600. The determination of the civil penalty is attached as
25 Exhibit 1 and incorporated as part of this Notice. If you do not file a request for hearing as set forth in
26 Section V below, your check or money order must be made payable to "**State Treasurer, State of
27 Oregon**" and sent to the **DEQ Business Office, 700 NE Multnomah St, Ste 600, Portland, Or 97232.**

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

2 You have a right to a contested case hearing on this Notice, if you request one in writing. DEQ
3 must receive your request for hearing **within 20 calendar days** from the date you receive this Notice. If
4 you have any affirmative defenses or wish to dispute any allegations of fact in this Notice or attached
5 exhibit, you must do so in your request for hearing, as factual matters not denied will be considered
6 admitted, and failure to raise a defense will be a waiver of the defense. (See OAR 340-011-0530 for
7 further information about requests for hearing.) You must send your request to: **DEQ, Office of**
8 **Compliance and Enforcement, 700 NE Multnomah Street, Suite 600, Portland, Oregon 97232**, fax
9 it to **503-229-6762** or email it to **DEQappeals@deq.state.or.us**. An administrative law judge
10 employed by the Office of Administrative Hearings will conduct the hearing, according to ORS
11 Chapter 183, OAR Chapter 340, Division 011 and OAR 137-003-0501 to 0700. You have a right to be
12 represented by an attorney at the hearing, however you are not required to be. If you are an individual,
13 you may represent yourself. If you are a corporation, partnership, limited liability company,
14 unincorporated association, trust or government body, you must be represented by an attorney or a duly
15 authorized representative, as set forth in OAR 137-003-0555.

16 Active duty Service members have a right to stay proceedings under the federal Service
17 Members Civil Relief Act. For more information contact the Oregon State Bar at 1-800-
18 452-8260, the Oregon Military Department at 503-584-3571, or the nearest United States Armed
19 Forces Legal Assistance Office through <http://legalassistance.law.af.mil>. The Oregon Military
20 Department does not have a toll free telephone number.

21 If you fail to file a timely request for hearing, the Notice will become a final order by default
22 without further action by DEQ, as per OAR 340-011-0535(1). If you do request a hearing but later
23 withdraw your request, fail to attend the hearing or notify DEQ that you will not be attending the
24 hearing, DEQ will issue a final order by default pursuant to OAR 340-011-0535(3). DEQ designates

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1 the relevant portions of its files, including information submitted by you, as the record for purposes of
2 proving a prima facie case.

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7/28/2021
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: Performing UST services without first having obtained a license from DEQ, in violation of OAR 340-160-0020(1).
- CLASSIFICATION: This is a Class I violation pursuant to OAR 340-012-0067(1)(k).
- 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 DEQ 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. Although Respondent was not licensed to perform UST services, the work Respondent performed did not pose more than a de minimis threat to human health or the environment. Although Respondent was not licensed by DEQ at the time it collected the soil samples, it had the samples analyzed in compliance with the regulations. Additionally, a licensed service provider collected additional samples which confirmed that the UST had not had a release. Thus the failure to have a license, in and of itself, posed no more than a de minimis adverse impact on human health or the environment.
- 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 should have had an UST service provider license.
- "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. Each day of violation constitutes a separate occurrence. The Respondent performed UST services without a license by collecting samples on only one day, January 18, 2021.

- "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. Respondent is an experienced environmental consultant and reasonably should have known that a license was required prior to collecting samples related to the decommissioning of an UST.
- "C" is Respondent's efforts to correct or mitigate the violation and receives a value of 0 according to OAR 340-012-0145(6)(f) because there is insufficient information to make a finding under paragraphs (6)(a) through (6)(e), or (6)(g).
- "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 because DEQ is unable to make an estimate of any costs delayed or avoided.

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

$$= \$3,000 + [(0.1 \times \$3,000) \times (0 + 0 + 0 + 2 + 0)] + \$0$$

$$= \$3,000 + [\$300 \times 2] + \$0$$

$$= \$3,000 + \$600 + \$0$$

$$= \$3,600$$