



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

August 11, 2021

CERTIFIED MAIL: 7018 1830 0001 5903 8785

Higgins Petroleum, Inc.
Kelly C. Higgins, Registered Agent
1796 Willamette Street
Eugene OR 97401

Re: Notice of Civil Penalty Assessment and Order
Case No. LQ/UST-WR-2021-065
UST Facility #6455

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 \$775 for violating the requirements for the safe and proper operation and maintenance of your underground storage tank (UST) facility located at 1796 Willamette Street in Eugene. Specifically, DEQ has cited you for failing to test your release detection equipment on an annual basis and your overfill and spill prevention equipment prior to October 1, 2020. DEQ appreciates your efforts to correct the violations by completing the required testing of your UST components and considered these efforts when determining the amount of civil penalty.

DEQ issued this penalty because the failure to timely complete release detection testing and monitoring presents a risk to human health and the environment. Testing and monitoring ensures that releases are discovered quickly before contamination spreads beyond the immediate area of the USTs and allows immediate response to any sign of a release. If a leak goes unnoticed due to unmaintained release detection equipment, the leaking fuel can have lasting harmful effects on the. Overfills usually release much larger volumes than spills. When a tank is overfilled, large volumes can be released at the fill pipe and at other tank top openings. Testing your overfill equipment to ensure that it is functioning properly prevents these releases from occurring.

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:

Higgins Petroleum Inc.
Case no. LQ/UST-WR-2021-065
Page 2

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,

A handwritten signature in blue ink, appearing to read 'Kieran O'Donnell', is written above the typed name.

Kieran O'Donnell, Manager
Office of Compliance and Enforcement

Enclosures

cc: Dylan Eckert, WR, DEQ

1 BEFORE THE ENVIRONMENTAL QUALITY COMMISSION
2 OF THE STATE OF OREGON

3 IN THE MATTER OF:) NOTICE OF CIVIL PENALTY
4 HIGGINS PETROLEUM INC.) ASSESSMENT AND ORDER
Respondent.) CASE NO. LQ/UST-WR-2021-065

5 I. AUTHORITY

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

9 II. FINDINGS OF FACT

10 1. Respondent is the owner and permittee of an underground storage tank (UST) system
11 located at 1796 Willamette Street in Eugene, OR that consists of three USTs and associated
12 underground piping that conveys regulated substance under pressure.

13 2. The UST system is equipped with a Veeder automatic tank gauge (ATG) to conduct release
14 detection monitoring of the USTs pursuant to OAR 340-150-0465 and line leak detectors to conduct
15 release detection monitoring of the piping pursuant to OAR 340-150-0410.

16 3. On October 19, 2020, DEQ conducted an inspection of the UST system.

17 4. At the time of the inspection, Respondent provided DEQ with the results of a tightness test of
18 its spill prevention equipment and the results of an overfill prevention equipment operational test (as
19 required by OAR 340-150-0300(10)), dated October 12, 2020.

20 5. At the time of the inspection, Respondent provided DEQ with documentation showing that it
21 had completed line leak detector operational testing (as required by OAR 340-150-0410(2)(c)) and line
22 tightness testing (as required by OAR 340-150-0410(3)) on February 6, 2019 and again on October 12,
23 2020.

24 III. CONCLUSIONS

25 1. Respondent violated OAR 340-150-0310(10) by failing to initially test its spill prevention
26 and overfill prevention equipment prior to October 1, 2020, as alleged in Section II, paragraph 4.
27 Specifically, Respondent conducted the initial test of its spill and overfill prevention equipment on

1 October 12, 2020. This is a Class I violation according to OAR 340-012-0067(1)(j). DEQ hereby
2 assesses a \$225 civil penalty for this violation.

3 2. Respondent violated OAR 340-150-0410(2)(c) by failing to conduct operational line leak
4 detector testing annually, as alleged in Section II, paragraph 5. Specifically, Respondent conducted
5 annual testing on February 6, 2019 and again on October 12, 2020, more than one year apart. This is a
6 Class I violation according to OAR 340-150-0067(1)(j). DEQ assesses a \$275 civil penalty for this
7 violation.

8 3. Respondent violated OAR 340-150-0410(3) by failing to conduct line tightness testing
9 annually, as alleged in Section II, paragraph 5. Specifically, Respondent conducted annual testing on
10 February 6, 2019 and again on October 12, 2020, more than one year apart. This is a Class I violation
11 according to OAR 340-150-0067(1)(j). DEQ assesses a \$275 civil penalty for this violation.

12 IV. ORDER TO PAY CIVIL PENALTY

13 Based upon the foregoing FINDINGS OF FACTS AND CONCLUSIONS, Respondent is
14 hereby ORDERED TO: pay a total civil penalty of \$775. The determination of the civil penalties are
15 attached as Exhibits 1 through 4 and are incorporated as part of this Notice. If you do not file a request for
16 hearing as set forth in Section V below, your check or money order must be made payable to "**State**
17 **Treasurer, State of Oregon**" and sent to the **DEQ, Business Office, 700 NE Multnomah Street,**
18 **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. DEQ
21 must receive your request for hearing **within 20 calendar days** from the date you receive this Notice. If
22 you have any affirmative defenses or wish to dispute any allegations of fact in this Notice or attached
23 exhibits, you must do so in your request for hearing, as factual matters not denied will be considered
24 admitted, and failure to raise a defense will be a waiver of the defense. (See OAR 340-011-0530 for
25 further information about requests for hearing.) You must send your request to: **DEQ, Office of**
26 **Compliance and Enforcement, 700 NE Multnomah Street, Suite 600, Portland, Oregon 97232**, fax
27 it to **503-229-6762** or email it to DEQappeals@deq.state.or.us. An administrative law judge

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

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

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

18
19
20
21 8/11/2021
22 Date


21 
22 Kieran O'Donnell, Manager
23 Office of Compliance and Enforcement
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EXHIBIT 1

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

- VIOLATION NO. 1 Failing to initially test its spill prevention and overfill prevention equipment, in violation of OAR 340-150-0310(10).
- CLASSIFICATION: This is a Class I violation pursuant to OAR 340-012-0067(1)(j).
- 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. In making this finding, DEQ considered that completion of the testing was delayed for less than two weeks and that the equipment passed the testing, thus the failure to meet the timeframe in the regulation posed no more than a de minimis threat to 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 \$250 for a Class I, minor magnitude violation in the matrix listed in OAR 340-012-0140(5)(b)(A)(iii) and applicable pursuant to OAR 340-012-0140(5)(a)(E). Respondent is the owner or permittee 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 an initial 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 an initial 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. Because Respondent was required to conduct the testing prior to a specific date, the violation occurred on one day only – specifically, October 1, 2020.
- "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. DEQ adopted the regulation requiring that the testing be completed prior to October 1, 2020, in 2018 and had provided extensive outreach to the regulated community on the requirement to conduct the testing prior to that date.

Respondent reasonably should have known of the requirement to conduct the testing prior to October 1, 2020.

"C" is Respondent's efforts to correct or mitigate the violation, and receives a value of -3 according to OAR 340-012-0145(6)(c) because Respondent took reasonable affirmative efforts to minimize the effects of the violation. Respondent completed the testing in October 2020.

"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. Although Respondent delayed spending \$680 to test its spill and overfill prevention equipment from October 1, 2020 to October 12, 2020, the amount of the "EB" when calculated using the U.S. Environmental Protection Agency's BEN computer model is de minimis.

PENALTY CALCULATION: $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$
 $= \$250 + [(0.1 \times \$250) \times (0 + 0 + 0 + 2 - 3)] + \0
 $= \$250 + (\$25 \times -1) + \$0$
 $= \$250 - \$25 + \$0$
 $= \$225$

EXHIBIT 2

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

- VIOLATION NO. 2 Failing to conduct annual operational line leak detector testing, in violation of OAR 340-150-0410(2)(c).
- CLASSIFICATION: This is a Class I violation pursuant to OAR 340-012-0067(1)(j).
- 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. In making this finding, DEQ considered that completion of the testing was delayed for several months only, and the line leak detectors were operational both at the time of testing in 2020 and during prior testing in 2019, thus the delay in completing the testing posed no more than de minimis threat to 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 \$250 for a Class I, minor magnitude violation in the matrix listed in OAR 340-012-0140(5)(b)(A)(iii) and applicable pursuant to OAR 340-012-0140(5)(a)(E). Respondent is the owner or permittee 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 an initial 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 an initial 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 is required to conduct line leak detector operational testing within one year of completing previous testing. The test was due prior to February 6, 2020. Because Respondent was required to conduct the test by a specific date, there was one violation on one day only.
- "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. Respondent has been the permittee of an UST facility where it has conducted previous annual line leak detector operational testing. When it failed to schedule the annual testing, it failed to take reasonable care to avoid the violation.

"C" is Respondent's efforts to correct or mitigate the violation, and receives a value of -3 according to OAR 340-012-0145(6)(c) because Respondent made reasonable efforts to correct the violation. Respondent conducted the line leak detector operational testing in October 2020.

"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. Although Respondent delayed spending \$450 to conduct line tightness and line leak detector operational testing from February 6, 2020, to October 12, 2020, the amount of the "EB" when calculated using the U.S. Environmental Protection Agency's BEN computer model is de minimis.

PENALTY CALCULATION: $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$
 $= \$250 + [(0.1 \times \$250) \times (0 + 0 + 0 + 4 - 3)] + \0
 $= \$250 + (\$25 \times 1) + \$0$
 $= \$250 + \$25 + \$0$
 $= \$275$

EXHIBIT 3

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

VIOLATION NO. 3 Failing to conduct annual line tightness testing, in violation of OAR 340-150-0410(3).

CLASSIFICATION: This is a Class I violation pursuant to OAR 340-012-0067(1)(j).

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. In making this finding, DEQ considered that completion of the testing was delayed for several months only, and the line leak detectors were operational both at the time of testing in 2020 and prior testing in 2019, thus the delay in completing the testing posed no more than de minimis threat to 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 \$250 for a Class I, minor magnitude violation in the matrix listed in OAR 340-012-0140(5)(b)(A)(iii) and applicable pursuant to OAR 340-012-0140(5)(a)(E). Respondent is the owner or permittee 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 an initial 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 an initial 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 is required to conduct line tightness testing within one year of completing previous testing. The test was due prior to February 6, 2020. Because Respondent was required to conduct the test by a specific date, there was one violation on one day only.

"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. Respondent has been the permittee of an UST facility where it has conducted previous annual line tightness testing. When it failed to schedule the annual testing, it failed to take reasonable care to avoid the violation.

"C" is Respondent's efforts to correct or mitigate the violation, and receives a value of -3 according to OAR 340-012-0145(6)(c) because Respondent made reasonable efforts to correct the violation. Respondent conducted the line tightness testing in October 2020.

"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 the costs delayed as a result of this violation are included in Exhibit no. 2 as de minimis.

PENALTY CALCULATION: $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$
 $= \$250 + [(0.1 \times \$250) \times (0 + 0 + 0 + 4 - 3)] + \0
 $= \$250 + (\$25 \times 1) + \$0$
 $= \$250 + \$25 + \$0$
 $= \$275$