



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

August 6, 2018

CERTIFIED MAIL: 7016 3010 0000 6028 7197

Graham Virginia, Inc.
Howard D. Graham, Registered Agent
2232 Wall Street
North Bend, OR 97459

Re: Notice of Civil Penalty Assessment and Order
Case No. LQ/UST-WR-2018-043
UST Facility #5540

This letter is to inform you that DEQ has issued you a Notice of Civil Penalty Assessment and Order of \$1,300 for failing to comply with a final order of DEQ. In December 2017, DEQ issued an order which required you to submit to DEQ corrosion protection inspection and test results for the underground storage tank system located at 1805 Virginia Avenue in North Bend. The order became final because you did not file an appeal. As of this date, DEQ has not received the corrosion protection inspection and test results.

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>.

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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 800-452-4011, ex 5152.

Sincerely,

A handwritten signature in blue ink, appearing to read "Kieran O'Donnell".

Kieran O'Donnell, Manager
Office of Compliance and Enforcement

cc: Eric Clough, WR, DEQ

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

3 IN THE MATTER OF:) NOTICE OF CIVIL PENALTY
4 GRAHAM VIRGINIA, INC.,) ASSESSMENT AND ORDER
Respondent.) CASE NO. LQ/UST-WR-2018-043

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. On December 28, 2017, Respondent was served with a Notice of Civil Penalty Assessment
11 and Order No. LQ/UST-WR-2017-195 (the 2017 Notice). The 2017 Notice ordered Respondent to
12 submit to DEQ, within 30 days of the Notice becoming final, the results of a corrosion protection
13 system inspection and test for the underground storage tank (UST) system located at 1805 Virginia
14 Avenue in North Bend (the Facility).

15 2. Respondent failed to request a contested case hearing of the 2017 Notice and it became final
16 on December 28, 2017.

17 3. As of the date of this Notice, DEQ has not received the results of a corrosion protection
18 system inspection and test from Respondent.

19 III. CONCLUSIONS

20 Respondent violated the 2017 Notice and ORS 466.810 by failing to submit the documentation
21 required by a final order of DEQ. Specifically, Respondent failed to submit to DEQ the results of a
22 corrosion protection system inspection and test for the UST system at the Facility. This is a Class I
23 violation, according to OAR 340-012-0053(1)(a). DEQ assesses a \$1,300 civil penalty for this violation.

24 IV. ORDER TO PAY CIVIL PENALTY

25 Based upon the foregoing FINDINGS OF FACTS AND CONCLUSIONS, Respondent is
26 hereby ORDERED TO pay a total civil penalty of \$1,300. The determination of the civil penalty is
27 attached as Exhibit 1 and is incorporated as part of this Notice. If you do not file a request for hearing as

1 set forth in Section V below, your check or money order must be made payable to "State Treasurer,
2 State of Oregon" and sent to the DEQ, Business Office, 700 NE Multnomah Street, Suite 600,
3 Portland, Oregon 97232. Once you pay the penalty, this Notice becomes final.

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

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

19 Active duty service-members have a right to stay proceedings under the federal Service
20 Members Civil Relief Act. For more information, please call the Oregon State Bar at 1-800-
21 452-8260 or the Oregon Military Department at 1-800-452-7500. Additional information can be found
22 online at the United States Armed Forces Legal Assistance (AFLA) Legal Services Locator website
23 <http://legalassistance.law.af.mil/content/locator.php>.

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

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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6 8/6/18

7 Date



8 Kieran O'Donnell, Manager
9 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 1: Failing to submit the documentation required by a final order of DEQ, in violation of the 2017 Notice and ORS 466.810.
- 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 \$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 2 according to OAR 340-012-0145(2)(a)(C), because Respondent has one Class I violation in case no. LQ/UST-WR-2017-195.
- "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. The violation has been ongoing since January 2018, 30 days after the order became final.
- "M" is the mental state of the Respondent, and receives a value of 8 according to OAR 340-012-0145(5)(d) because Respondent acted or failed to act intentionally with actual knowledge of the requirement. DEQ has communicated the requirement to conduct a corrosion protection inspection and test to Respondent on multiple occasions including in the final order. Respondent has consciously failed to address the ongoing violation with actual knowledge of the requirement to do so.
- "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). Respondent has not submitted the results of a corrosion protection inspection and test.

"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 amount gained by Respondent by continuing to avoid paying the \$500 cost to have an inspection and test conducted on the corrosion protection system since the order became final would be de minimus.

PENALTY CALCULATION: $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$
 $= \$500 + [(0.1 \times \$500) \times (2 + 0 + 4 + 8 + 2)] + \0
 $= \$500 + (\$50 \times 16) + \$0$
 $= \$500 + \$800 + \$0$
 $= \$1,300$