



Oregon

Kate Brown, Governor

Department of Environmental Quality

Headquarters
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Portland, OR 97204-1390
(503) 229-5696
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TTY: 711

August 9, 2016

CERTIFIED MAIL No. 70142870000133736132

Trieu Ngoc Nguyen
doing business as Gateway Cleaners
1244 NE 102nd Ave.
Portland, OR 97220

Re: Notice of Civil Penalty Assessment and Order
Case No. LQ/DC-NWR-2016-122

This letter is to inform you that DEQ has issued you a \$500 civil penalty for failing to submit the 2015 annual report required for your dry store, Gateway Cleaners, located at 1244 NE 102nd Avenue in Portland, Oregon.

DEQ issued this penalty because annual reports are an important mechanism for DEQ to ensure that dry cleaning businesses are complying with Oregon's waste minimization regulations. Solvents used for dry cleaning can be toxic and therefore, harmful to the public and the environment. They must be managed safely. For this reason, all dry cleaners and dry stores in Oregon are required to submit annual reports and fee payments to DEQ each year to help prevent spills of dry cleaning solvent and to fund cleanups of legacy dry cleaning contamination.

Included in Section IV is an order requiring you to submit your 2015 annual report, including the 2016 fee return form (using the records you have and can legitimately create) to DEQ within 30 days of this Notice and Order becoming final. Please be advised that failing to comply with a DEQ Order is a serious violation and may result in additional civil penalties.

If you wish to appeal this matter, you have 20 calendar days from receipt of this letter to request a contested case hearing. This 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 written hearing request from you within 20 days, the penalty will become due.

The enclosed 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.



Trieu Ngoc Nguyen
dba Gateway Cleaners
LQ/DC-NWR-2016-122
Page 2

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 Esther Westbrook, at (503) 229-5374. You may call toll-free within Oregon at 1-800-452-4011, extension 5374.

Sincerely,



Leah K. Feldon, Manager
Office of Compliance and Enforcement

Enclosures

cc: Joe Westersund, Dry Cleaner Program Coordinator, DEQ Headquarters

1 BEFORE THE ENVIRONMENTAL QUALITY COMMISSION

2 OF THE STATE OF OREGON

3 IN THE MATTER OF:) NOTICE OF CIVIL PENALTY
4 TRIEU NGOC NGUYEN,) ASSESSMENT AND ORDER
5 doing business as)
6 GATEWAY CLEANERS,) NO. LQ/DC-NWR-2016-122
7 Respondent.)

7 I. AUTHORITY

8 This Notice and Order is issued to Respondent, Trieu Ngoc Nguyen, doing business as
9 Gateway Cleaners, pursuant to Oregon Revised Statutes (ORS) 468.100 and 468.126 through
10 468.140, ORS 465.500 through 465.545, ORS 465.900, ORS Chapters 183 and 468A and Oregon
11 Administrative Rules (OAR) Chapter 340, Divisions 011, 012, and 124.

12 II. FINDINGS OF FACT

13 1. At all material times, Respondent owned and operated a dry store at 1244 NE
14 102nd Avenue in Portland, Oregon (the Facility).

15 2. Dry store operators are required by ORS 465.505(3) and OAR 340-124-0040(4)(b)
16 to submit to DEQ, in March of each year, a completed annual report that includes an annual report
17 form covering operations at the Facility for the previous calendar year, and an annual dry cleaner
18 fee return for the current calendar year (“the Annual Report”).

19 3. In December 2015, DEQ sent Respondent an Annual Report form to complete and
20 return to DEQ. The reports are due on March 1 of each year and cover the preceding calendar year
21 of operation at the Facility.

22 4. On June 17, 2016, DEQ issued Respondent a Warning Letter with Opportunity to
23 Correct (WLOC) to notify Respondent that he was in violation of the requirement to submit the
24 2015 Annual Report. The WLOC requested that Respondent submit to DEQ a completed 2015
25 Annual Report, including the 2016 fee return, within two weeks.

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1 will be a waiver of the defense. (See OAR 340-011-0530 for further information about requests
2 for hearing.) You must mail the request for hearing to: **DEQ, Office of Compliance and**
3 **Enforcement - Appeals, 811 SW Sixth Avenue, Portland, Oregon 97204**, or fax it to **503-229-**
4 **5100**. An administrative law judge employed by the Office of Administrative Hearings will
5 conduct the hearing, according to ORS Chapter 183, OAR Chapter 340, Division 011 and OAR
6 137-003-0501 to 0700. You have a right to be represented by an attorney at the hearing, or you
7 may represent yourself unless you are a corporation, agency or association.

8 Active duty service-members have a right to stay proceedings under the federal Service
9 members Civil Relief Act. For more information, please call the Oregon State Bar at 1-800-
10 452-8260 or the Oregon Military Department at 1-800-452-7500. Additional information can be
11 found online at the United States Armed Forces Legal Assistance (AFLA) Legal Services
12 Locator website <http://legalassistance.law.af.mil/content/locator.php>.

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

19
20 August 9, 2016
21 Date

20 Leah K. Feldon
21 Leah K. Feldon, Manager
22 Office of Compliance and Enforcement
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EXHIBIT NO. 1

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

- VIOLATION: Failure to submit an annual report to DEQ, in violation of ORS 464.505(3) and OAR 340-124-0040(4)(b).
- CLASSIFICATION: This is a Class II violation pursuant to OAR 340-012-0097(2)(f).
- 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 for 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(5)(b)(B)(ii) and applicable pursuant to OAR 340-012-0140(5)(a)(G), because this is a violation of the dry cleaning rules.

"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 Respondent has 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 Respondent has 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 the 2015 Annual Report by its due date of March 1, 2016.

"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. Every year, DEQ has provided Respondent with the reporting requirements, along with blank annual reporting forms for Respondent to fill out. When DEQ did not receive the annual report by the March 1 deadline, DEQ mailed late notices to Respondent in March, April, May and June of 2016. On June 17, 2016, DEQ sent Respondent a Warning Letter with Opportunity to Correct, to notify Respondent that he had failed to submit the 2015 annual report and that failure to submit the report may result in DEQ assessing civil penalties. Respondent failed to submit the annual report and fee return to DEQ as requested. Respondent consciously disregarded the substantial and unjustifiable risk of failing to submit the annual report, and given the information and resources available to Respondent, disregarding this risk constituted a gross deviation from the standard of care a reasonable person would observe in this situation.

"C" is Respondent's efforts to correct 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 2015 annual report or 2016 fee return form to DEQ.

"EB" is the approximate economic benefit that an entity gained by not complying with the law. 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 DEQ has determined that any economic benefit gained as a result of this violation is de minimis.

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

$$\begin{aligned} &= \$250 + [(0.1 \times \$250) \times (0 + 0 + 0 + 8 + 2)] + \$0 \\ &= \$250 + [(\$25) \times (10)] + \$0 \\ &= \$250 + \$250 + \$0 \\ &= \$500 \end{aligned}$$