



Oregon

Kate Brown, Governor

Department of Environmental Quality

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July 12, 2016

CERTIFIED MAIL: 7014 2870 0001 3373 5302

OC Express Inc.
Amandip Chahal, Registered Agent
2830 Heddo Place
Stockton CA 95212

Re: Notice of Civil Penalty Assessment and Order
Case No. LQ/SP-ER-2016-092

This letter is to inform you that the Oregon Department of Environmental Quality (DEQ) has issued you a civil penalty of \$30,370 for failing to immediately clean up a spill of diesel fuel.

On February 4, 2016, your semi-truck jack knifed at milepost 188 of Highway 97 outside of Crescent, Oregon. Your semi-truck released approximately 75 gallons of diesel from its fuel tank onto the shoulder of the highway. You failed to respond to the release. Ultimately, on April 4, 2016, the Oregon Department of Transportation (ODOT) removed the diesel contaminated soil from the shoulder of the highway.

\$20,770 of the civil penalty represents the economic benefit you gained by failing to respond to the release. If you reimburse ODOT for its expenses, DEQ will consider recalculating the costs as delayed rather than avoided and will reduce the civil penalty accordingly.

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.



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: Mike Renz, ER, Bend office, DEQ

1 137-003-0501 to 0700. You have a right to be represented by an attorney at the hearing, or you
2 may represent yourself unless you are a corporation, agency or association.

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

10
11 July 12, 2016

12 Date

13 Leah K. Feldon for
14 Leah K. Feldon, Manager
15 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 immediately clean up a spill of oil, in violation of ORS 466.645(1).

CLASSIFICATION: This is a Class I violation pursuant to OAR 340-012-0081(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 \$4,000 for a Class I, moderate magnitude violation in the matrix listed in OAR 340-012-0140 (3)(b)(A)(ii) and applicable pursuant to OAR 340-012-0140 (3)(a)(K). Respondent violated an oil spill and release statute during a commercial activity.

"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 4 according to OAR 340-012-0145(4)(d), because there were more than 28 occurrences of the violation. The release of diesel occurred on February 4, 2016. Respondent failed to respond to the release and ultimately it was cleaned up by Oregon Department of Transportation starting on April 4, 2016. Respondent failed to clean up the release of diesel from February 4th through April 4th when ODOT completed the removal of diesel contaminated soil.

"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. Intentional means Respondent acted with a conscious objective to cause the result of its conduct. On February 4, 2016 and in subsequent phone calls, DEQ informed Respondent of its legal responsibility to respond to the release of diesel. Respondent had actual knowledge of the requirement to clean up the release of diesel, yet it consciously failed to make arrangements to respond to the release.

"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 \$20,770. Oregon Department of Transportation spent \$33,876.52 to clean up the release of diesel. Respondent has avoided this amount as it has not paid for the cleanup directly or reimbursed ODOT for these expenses. This "EB" was calculated pursuant to OAR 340-012-0150(1) using the U.S. Environmental Protection Agency's BEN computer model.

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

$$\begin{aligned} &= \$4,000 + [(0.1 \times \$4,000) \times (0 + 0 + 4 + 8 + 2)] + \$20,770 \\ &= \$4,000 + [\$400 \times 14] + \$20,770 \\ &= \$4,000 + \$5,600 + \$20,770 \\ &= \$30,370 \end{aligned}$$