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

September 6, 2019

CERTIFIED MAIL: 7016 0750 0000 3469 6901

Ronald C. La Franchi doing business as
Ron's Oil Company
580 N. Central Street
Coquille OR 97423

Re: Notice of Civil Penalty Assessment and Order
Case No. LQ/UST-WR-2019-152
UST Facility #8565

This letter is to inform you that DEQ has issued you a civil penalty of $6,937 for failing to comply with a field citation regarding the underground storage tanks located at 1070 Highway 101 in Reedsport.

In September 2018, DEQ issued to you a field citation which required you to submit a modification checklist regarding underground piping connected to the diesel tank, along with tightness testing results for the sumps associated with that piping, prior to October 20, 2018. DEQ did not receive the modification checklist until November 2018 and complete tightness testing results until July 2019. DEQ appreciates your efforts to correct the violation and DEQ considered these efforts when determining the amount of civil penalty.

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.

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 at 800-452-4011, ex 5152.

Sincerely,

Kieran O'Donnell, Manager
Office of Compliance and Enforcement

Enclosures

cc: Eric Clough, WR, Coos Bay office, DEQ

BEFORE THE ENVIRONMENTAL QUALITY COMMISSION

OF THE STATE OF OREGON

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|---|---|
| IN THE MATTER OF:<br>RONALD C. LA FRANCHI doing business as<br>RON'S OIL COMPANY,<br>Respondent. | NOTICE OF CIVIL PENALTY ASSESSMENT AND ORDER<br>CASE NO. LQ/UST-WR-2019-152 |

## I. AUTHORITY

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

## II. FINDINGS OF FACT

1. Since 1987, Respondent has been the owner and permittee of an underground storage tank (UST) facility located at 1070 Highway 101 in Reedsport, Oregon.

2. On September 19, 2018, DEQ conducted an inspection at the UST facility.

3. Following that inspection, on September 20, 2018, DEQ issued to Respondent a field citation (FC-1579) which cited Respondent for four violations. FC-1579 also required Respondent to submit to DEQ, prior to October 20, 2018, a modification report which included the results of sump tightness testing for the sump on the tank top of the diesel UST and a transition sump between two sections of underground piping connected to the diesel UST.

4. On October 22, 2018, Respondent paid FC-1579. Pursuant to ORS 466.837 and OAR 340-150-0250(5), FC-1579 became a Final Order of DEQ on that date.

5. On November 30, 2018, Respondent submitted to DEQ a modification report and documentation of tightness testing of the tank top sump which did not fully explain the procedures used to conduct that test.

6. On January 29, 2019, Respondent submitted to DEQ adequate sump tightness testing results for the tank top sump.

7. On July 31, 2019, Respondent submitted to DEQ adequate sump tightness testing results for the transition sump.

## III. CONCLUSIONS

By failing to complete the corrective actions and submit the documentation required under FC-1579 in a timely manner, Respondent violated a final order of DEQ. This is a Class I violation according to OAR 340-012-0053(1)(a). DEQ assesses a $6,937 civil penalty for this violation.

## IV. ORDER TO PAY CIVIL PENALTY

Based upon the foregoing FINDINGS OF FACTS AND CONCLUSIONS, Respondent is hereby ORDERED TO pay a total civil penalty of $6,937. The determination of the civil penalty is attached as Exhibit 1 and is incorporated as part of this Notice. If you do not file a request for hearing as set forth in Section V below, your check or money order must be made payable to "**State Treasurer, State of Oregon**" and sent to the **DEQ, Business Office, 700 NE Multnomah Street, Suite 600, Portland, Oregon 97232**. Once you pay the penalty, the Notice becomes final.

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

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

Active duty Service members have a right to stay proceedings under the federal Service Members Civil Relief Act. For more information contact the Oregon State Bar at 1-800-

452-8260, the Oregon Military Department at 503-584-3571, or the nearest United States Armed Forces Legal Assistance Office through http://legalassistance.law.af.mil. The Oregon Military Department does not have a toll free telephone number.

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

9/6/2019
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: Failing to submit the documentation required under a final order of DEQ, in violation of that final order.

CLASSIFICATION: This is a Class I violation pursuant to OAR 340-012-0053(1)(a).

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 failed to submit the documentation required by FC-1579, when it did conduct the sump tightness testing, the sumps were determined to be operating properly.

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 is the owner or permittee of more than 10 UST facilities.

"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 19 according to OAR 340-012-0145(2)(a), because Respondent has 18 Class I equivalent violations in formal enforcement actions issued in the last 10 years. According to OAR 340-012-0145(2)(b), this amount is reduced to 10 because the value of P cannot exceed 10.

"H" is Respondent's history of correcting prior significant actions, and receives a value of -2 according to OAR 340-012-0145(3)(a) because Respondent corrected all violations cited as prior significant actions.

"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 violation was on-going from October 2018 until Respondent submitted the documentation in July 2019.

"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 resulting in a violation.

Respondent knew that it needed to modify the transition sump in order for Respondent to be able to tightness test the sump. Although Respondent knew this, it failed to modify the sump for over 6 months, resulting in the late submittal of the tightness test results.

"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 submitted the modification checklist and tightness test results, correcting the violation.

"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 $87. This is the amount Respondent gained by delaying spending $3,629 to modify the transition sump so that it could be tightness tested. This "EB" was calculated pursuant to OAR 340-012-0150(1) using the U.S. Environmental Protection Agency's BEN computer model.

PENALTY CALCULATION: Penalty = BP + [(0.1 x BP) x (P + H + O + M + C)] + EB
= $3,000 + [(0.1 x $3,000) x (10 – 2 + 4 + 4 - 3)] + $87
= $3,000 + ($300 x 13) + $87
= $3,000 + $3,900 + $87
= $6,987