



# Oregon

Kate Brown, Governor

## Department of Environmental Quality

Headquarters  
811 SW 6th Ave  
Portland, OR 97204-1390  
(503) 229-5696  
FAX (503) 229-6124  
TTY: 711

August 11, 2016

CERTIFIED MAIL: 7014 2120 0001 8302 8555

Oregon Supply, Inc.  
c/o TT Administrative Services, LLC, Registered Agent  
1600 Pioneer Tower  
888 SW Fifth Avenue  
Portland, OR 97204

Re: Notice of Civil Penalty Assessment and Order  
Case No. LQ/DC-NWR-2016-103

This letter is to inform you that the Oregon Department of Environmental Quality (DEQ) has issued you a civil penalty of \$1,350 for failing to submit to DEQ three quarterly reports and fees by their deadlines.

DEQ issued this penalty because failing to accurately report and pay accurate revenue-based fees is a serious violation of Oregon law and reduces funding for inspections that result in the prevention and cleanup of releases of hazardous solvent to the environment.

Included in Section IV of the attached Notice of Civil Penalty Assessment and Order is an order requiring you to immediately submit to DEQ the late quarterly reports and fees for the 4<sup>th</sup> quarter of 2015, the 1<sup>st</sup> quarter of 2016, and the 2<sup>nd</sup> quarter of 2016.

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. 6<sup>th</sup> 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.



Oregon Supply, Inc., dba Westport Supply

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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.

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 Kieran O'Donnell, at (503) 229-5012. You may call toll-free within Oregon at 1-800-452-4011, extension 5012.

Sincerely,



Leah K. Feldon, Manager  
Office of Compliance and Enforcement

Enclosures

cc: Joe Westersund, DEQ, HQ  
Oregon Supply, Inc., dba Westport Supply, 3536 NW 35<sup>th</sup> Ave., Portland, OR 97210

1 BEFORE THE ENVIRONMENTAL QUALITY COMMISSION

2 OF THE STATE OF OREGON

3 IN THE MATTER OF: ) NOTICE OF CIVIL PENALTY  
4 OREGON SUPPLY, INC., dba ) ASSESSMENT AND ORDER  
5 WESTPORT SUPPLY )  
6 Respondent. ) CASE NO. LQ/DC-NWR-2016-103

7 I. AUTHORITY

8 The Department of Environmental Quality (DEQ) issues this Notice of Civil Penalty Assessment  
9 and Order (Notice) pursuant to Oregon Revised Statutes (ORS) 468.100 and 468.126 through 468.140,  
10 ORS 465.500 through 465.545, ORS 465.900, ORS Chapters 183 and 468A, and Oregon Administrative  
11 Rules (OAR) Chapter 340, Divisions 011, 012, and 124.

12 II. FINDINGS OF FACT

13 1. Respondent owns and/or operates a dry cleaning solvent supplier business at 3536 NW 35<sup>th</sup>  
14 Ave, in Portland, Oregon (the Facility).

15 2. On December 19, 2014, DEQ sent Respondent a Fee Information Letter and Quarterly Fee  
16 Return Forms for the 2015 calendar year. Pursuant to these forms the 2015 4<sup>th</sup> quarter fee return was  
17 due on January 20, 2016.

18 3. On December 21, 2015, DEQ sent Respondent a Fee Information Letter and Quarterly Fee  
19 Return Forms for the 2016 calendar year. Pursuant to these forms, the 2016 1<sup>st</sup> quarter fee return was  
20 due on April 20, 2016, and the 2<sup>nd</sup> quarter fee return was due on July 20, 2016.

21 4. To date, Respondent has not submitted quarterly fee return forms or payment for the 4<sup>th</sup>  
22 quarter of 2015, the 1<sup>st</sup> quarter of 2016, and the 2<sup>nd</sup> quarter of 2016.

23 III. CONCLUSION

24 Respondent has violated ORS 465.527 and ORS 465.520(1) by failing to submit quarterly fee  
25 return forms and payment according to the schedule provided by DEQ, as described in section II above.  
26 Specifically, Respondent failed to pay quarterly fee returns for the 4<sup>th</sup> quarter of 2015, the 1<sup>st</sup> quarter of  
27 2016, and the 2<sup>nd</sup> quarter of 2016. These are Class II violations, according to OAR 340-012-0053(2).

1 DEQ hereby assesses a \$1,350 civil penalty for these violations.

2 IV. ORDER TO PAY CIVIL PENALTY AND TO COMPLY

3 Based upon the foregoing FINDINGS OF FACTS AND CONCLUSIONS, Respondent is  
4 hereby ORDERED TO:

5 1. Pay a total civil penalty of \$1,350. The determination of the civil penalty is attached as Exhibit  
6 No. 1 and is incorporated as part of this Notice.

7 If you do not file a request for hearing as set forth in Section V below, your check or money  
8 order must be made payable to "**State Treasurer, State of Oregon**" and sent to the **DEQ, Business**  
9 **Office, 811 S.W. Sixth Avenue, Portland, Oregon 97204**. Once you pay the penalty, the Findings of  
10 Fact, Conclusions and Order become final.

11 2. Immediately submit to DEQ quarterly fee return forms and payment for the 4<sup>th</sup> quarter of  
12 2015, the 1st quarter of 2016, and the 2<sup>nd</sup> quarter of 2016.

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

14 You have a right to a contested case hearing on this Notice, if you request one in writing. You  
15 must ensure that DEQ receives the request for hearing **within 20 calendar days** from the date you  
16 receive this Notice. If you have any affirmative defenses or wish to dispute any allegations of fact in  
17 this Notice or attached exhibit, you must include them in your request for hearing, as factual matters  
18 not denied will be considered admitted, and failure to raise a defense will be a waiver of the defense.  
19 (See OAR 340-011-0530 for further information about requests for hearing.) You must mail the request  
20 for hearing to: **DEQ, Office of Compliance and Enforcement - Appeals, 811 SW Sixth Avenue,**  
21 **Portland, Oregon 97204**, or fax it to **503-229-5100**. An administrative law judge employed by the  
22 Office of Administrative Hearings will conduct the hearing, according to ORS Chapter 183, OAR  
23 Chapter 340, Division 011 and OAR 137-003-0501 to 0700. You have a right to be represented by an  
24 attorney at the hearing, or you may represent yourself unless you are a corporation, agency or  
25 association.

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1 Active duty service-members have a right to stay proceedings under the federal Service  
2 members Civil Relief Act. For more information, please call the Oregon State Bar at 1-800-  
3 452-8260 or the Oregon Military Department at 1-800-452-7500. Additional information can be found  
4 online at the United States Armed Forces Legal Assistance (AFLA) Legal Services Locator website  
5 <http://legalassistance.law.af.mil/content/locator.php>.

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

12  
13  
14  
15 August 11, 2016

16 Date

15 Leah K. Feldon

16 Leah K. Feldon, Manager  
17 Office of Compliance and Enforcement

EXHIBIT NO. 1

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

VIOLATION: Failing to submit quarterly fee return forms with payment, in violation of ORS 465.527 and ORS 465.520.

CLASSIFICATION: This is a Class II violation pursuant to OAR 340-012-0053(2).

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 \$750 for a Class II, moderate magnitude violation in the matrix listed in OAR 340-012-0140(4)(b)(B)(ii) and applicable pursuant to OAR 340-012-0140(4)(a)(A).

"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 2 according to OAR 340-012-0145(4)(b), because there was more than one but less than seven occurrences of the violation. Respondent failed to submit to DEQ three separate quarterly fee reports by the required due date. Therefore, there are three separate occurrences of the violation.

"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. DEQ previously sent Respondent two Warning Letters with Opportunity to Correct (WL-HQ-DC-2014-008 and WL-HQ-DC-2014-017) for similar violations of failure to submit annual reports to DEQ. Therefore, by failing to submit quarterly fee report forms with payment for the three most recent quarters, Respondent has failed to take reasonable care to avoid a foreseeable risk that its omissions would constitute a violation.

"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 \$0. The quarterly report fees are based on the volume of material supplied. Therefore, DEQ is unable to determine an economic benefit because DEQ cannot anticipate the volume of materials supplied.

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

$$\begin{aligned} &= \$750 + [(0.1 \times \$750) \times (0 + 0 + 2 + 4 + 2)] + \$0 \\ &= \$750 + [\$75 \times 8] + \$0 \\ &= \$750 + \$600 + \$0 \\ &= \$1,350 \end{aligned}$$