



Oregon

Kate Brown, Governor

August 22, 2016

Department of Environmental Quality

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

CERTIFIED MAIL No. 7014 2870 0001 3373 5296

Canby Cleaners, LLC
Jeff Kersey, Registered Agent
6840 Anderson Road
Aurora OR 97002

Re: Notice of Civil Penalty Assessment and Order
Case No. LQ/DC-NWR-2016-121

This letter is to inform you that DEQ has issued you a \$500 civil penalty for failing to submit your 2015 annual report required for your dry cleaning business at 329 S.E. 1st Avenue in Canby, Oregon.

DEQ issued this penalty because annual reports are an important mechanism for DEQ to ensure that dry cleaners 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 in Oregon are required to submit information to DEQ each year regarding the use and disposal of hazardous and potentially-hazardous waste.

Included in Section IV is an order requiring you to immediately submit your 2015 annual report, including the 2016 fee return form to DEQ (using the records you have and can legitimately create).

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 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.



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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: Joe Westersund, Dry Cleaner Program Coordinator, DEQ Headquarters

1 III. CONCLUSIONS

2 Since March 1, 2016, Respondent has violated ORS 465.505(3) and OAR 340-124-
3 0040(4)(a) by failing to submit the 2015 Annual Report to DEQ. According to OAR 340-012-
4 0097(2)(f), this is a Class II violation. DEQ hereby assesses a \$500 civil penalty for this violation.

5 IV. ORDER TO PAY CIVIL PENALTY AND COMPLY

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

8 1. Pay a total civil penalty of \$500. The determination of the civil penalty is attached as
9 Exhibit No. 1 and is incorporated as part of this Notice.

10 2. Immediately submit a complete 2015 Annual Report to DEQ. A complete Annual
11 Report must include a completed 2016 Dry Cleaner Fee Return form. The report and form must
12 be sent to: Joe Westersund, DEQ Dry Cleaner Program Coordinator, 811 SW 6th Avenue, Portland,
13 OR 97204.

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

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

19 You have a right to a contested case hearing on this Notice, if you request one in
20 writing. You must ensure that DEQ receives the request for hearing **within 20 calendar days**
21 from the date you receive this Notice. If you have any affirmative defenses or wish to dispute
22 any allegations of fact in this Notice or attached exhibit(s), you must include them in your
23 request for hearing, as factual matters not denied will be considered admitted, and failure to raise
24 a defense will be a waiver of the defense. (See OAR 340-011-0530 for further information about
25 requests for hearing.) You must mail the request for hearing to: **DEQ, Office of Compliance**
26 **and Enforcement - Appeals, 811 SW Sixth Avenue, Portland, Oregon 97204,** or fax it to **503-**
27 **229-5100.** An administrative law judge employed by the Office of Administrative Hearings will

1 conduct the hearing, according to ORS Chapter 183, OAR Chapter 340, Division 011 and OAR
2 137-003-0501 to 0700. You have a right to be represented by an attorney at the hearing, or you
3 may represent yourself unless you are a corporation, agency or association.

4 Active duty service-members have a right to stay proceedings under the federal Service
5 members Civil Relief Act. For more information, please call the Oregon State Bar at 1-800-
6 452-8260 or the Oregon Military Department at 1-800-452-7500. Additional information can be
7 found online at the United States Armed Forces Legal Assistance (AFLA) Legal Services
8 Locator website <http://legalassistance.law.af.mil/content/locator.php>.

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

15
16
17
18 August 22, 2016
Date

18 Leah K. Feldon
Leah K. Feldon, 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 2015 Annual Report to DEQ, in violation of ORS 465.505(3) and OAR 340-124-0040(4)(a).

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 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 \$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 the violation 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 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 0 according to OAR 340-012-0145(4)(a), because there was one occurrence of the violation. The annual report was due on or before 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. DEQ issued Respondent a Warning Letter with Opportunity to Correct on June 17, 2016, and a Pre-Enforcement Notice on July 14, 2016, to notify Respondent that DEQ had not received its Annual Report and that the failure to submit the report may result in DEQ assessing civil penalties. Respondent had previously submitted Annual Reports. Respondent consciously disregarded the substantial and unjustifiable risk of failing to submit its 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). To date, Respondent has not submitted the report.

"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 these violations is de minimis.

PENALTY CALCULATION: $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$
= $\$250 + [(0.1 \times \$250) \times (0 + 0 + 0 + 8 + 2)] + \0
= $\$250 + [\$25 \times 10] + \$0$
= $\$250 + \$250 + \$0$
= $\$500$