



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 14, 2021

CERTIFIED MAIL No.: 7018 1830 0001 5903 9430

DAR USA, Inc.
c/o Rajiv Kumar, Registered Agent
2902 Mount Vernon Street, SE
Albany, OR 97322

Re: Notice of Civil Penalty Assessment and Order
Case No. AQ/ACDP-WR-2021-046

DEQ is committed to balancing its vital obligation to enforce the law and protect the environment with a consideration of the dramatic disruptions to public health and the economy caused by the COVID-19 outbreak. We understand the outbreak may impact your ability to timely appeal, pay the assessed civil penalty, or comply with this order. You may submit to DEQ documentation identifying whether COVID-19-related disruption affects your ability to comply with this order. Visit our webpage <https://www.oregon.gov/deq/Pages/covid-19.aspx> for more information about documenting specific COVID-19 disruptions your facility may be encountering and how that affects your ability to comply. DEQ will exercise reasonable discretion regarding settlement of this order.

This letter is to inform you that the Department of Environmental Quality (DEQ) has issued you a civil penalty of \$1,776 for operating your gasoline dispensing facility (GDF) at 520 Bear Creek Road, Curtin, Oregon, without an Air Contaminant Discharge Permit (ACDP) from DEQ.

Gasoline dispensing facilities are subject to permitting because gasoline vapors contain benzene, a known cancer-causing chemical. Permitting ensures gasoline vapors are properly captured and controlled to reduce benzene exposure at and near gasoline dispensing facilities. In addition, permitting contributes to continuing compliance with federal ozone standards to protect the public's health and the environment. When a company subject to permitting requirements operates without a permit, the company has avoided regulation and gained an economic advantage over other similar facilities that did timely obtain their permit by avoiding or delaying the costs of complying with the law.

DEQ appreciates your effort to correct the violation by submitting a complete ACDP application to DEQ on March 17, 2021. DEQ considered this effort 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 portion of your 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 Jenny Root at 503-229-5874 or toll free in Oregon at 800-452-4011, extension 5874.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Kieran O'Donnell', is written over a horizontal line.

Kieran O'Donnell, Manager
Office of Compliance and Enforcement

cc: Jennifer Horton, Western Region, Medford Office, DEQ
Claudia Davis, Western Region, Salem Office, DEQ
Don Hendrix, AQ, HQ, DEQ
Accounting, DEQ

BEFORE THE ENVIRONMENTAL QUALITY COMMISSION
OF THE STATE OF OREGON

IN THE MATTER OF:)	NOTICE OF CIVIL PENALTY
DAR USA, INC.,)	ASSESSMENT AND ORDER
an Oregon corporation,)	
)	NO. AQ/ACDP-WR-2021-046
Respondent.)	

I. AUTHORITY

This Notice and Order is issued pursuant to Oregon Revised Statutes (ORS) 468.100 and 468.126 through 468.140, ORS Chapters 183 and 468A and Oregon Administrative Rules (OAR) Chapter 340, Divisions 011, 012, 200, 216 and 244.

II. FINDINGS OF FACT

1. Since September 11, 2020, Respondent has owned and operated a gasoline dispensing facility (GDF) at 520 Bear Creek Road, Curtin, Oregon (the GDF).

2. The GDF has a monthly throughput¹ of 10,000 gallons or more of gasoline.

3. Pursuant to OAR 340-216-0020(3), no person may construct, install, establish, develop or operate any air contaminant source listed in OAR 340-216-8010 without first obtaining an Air Contaminant Discharge Permit (ACDP) from the Oregon Department of Environmental Quality (DEQ) (except for operations in Lane County) or Lane Regional Air Protection Agency (LRAPA) (operations in Lane County).

4. Table 1 of OAR 340-216-8010, Part B, Category 35 requires an ACDP to operate GDFs in Oregon that have a monthly throughput of 10,000 gallons or more of gasoline.

5. At the time Respondent began operating the GDF, Respondent did not have an ACDP from DEQ.

6. On March 17, 2021, Respondent submitted a complete application to DEQ for assignment to General ACDP AQGP-022 for GDFs.

¹According to OAR 340-244-0030(17), "Monthly throughput" means the total volume of gasoline that is loaded into, or dispensed from, all gasoline storage tanks at each GDF during a month. Monthly throughput is calculated by summing the volume of gasoline loaded into, or dispensed from, all gasoline storage tanks at each GDF during the current day, plus the total volume of gasoline loaded into, or dispensed from, all gasoline storage tanks at each GDF during the previous 364 days, and then dividing that sum by 12.

7. On March 26, 2021, DEQ assigned Respondent to General ACDP AQGP-022 to operate the GDF.

III. CONCLUSION

From on or about September 11, 2020, until March 26, 2021, Respondent violated ORS 468A.045(1)(b) and OAR 340-216-0020(3), adopted pursuant to ORS 468A.040, by operating an air contaminant source listed in OAR 340-216-8010, Part B, Category 35 (GDF with a monthly throughput of 10,000 gallons or more of gasoline), without first obtaining an ACDP from DEQ. This is a Class II violation according to OAR 340-012-054(2)(a). DEQ hereby assesses a \$1,776 civil penalty for this violation.

IV. ORDER TO PAY CIVIL PENALTY

Based upon the foregoing FINDINGS OF FACTS AND CONCLUSION, Respondent is hereby ORDERED TO:

Pay a total civil penalty of \$1,776. 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**.

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 exhibit, 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@deg.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.

9/14/2021

Date



Kieran O'Donnell, Manager
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: Operating an air contaminant source listed in OAR 340-216-8010 (GDF with a monthly throughput of 10,000 gallons or more of gasoline) without first obtaining an ACDP from DEQ, in violation of ORS 468A.045(1)(b) and OAR 340-216-0020(3).

CLASSIFICATION: This is a Class II violation pursuant to OAR 340-012-0054(2)(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 \$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)(C) because Respondent must operate the GDF under a General Air Contaminant Discharge Permit only because the GDF is subject to Area Source NESHAP regulations.

"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 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. In accordance with OAR 340-012-0145(4), each day of violation with a duration of more than one day is a separate occurrence. Respondent has operated the GDF without an ACDP from approximately September 11, 2020, to March 26, 2021.

"M" is the mental state of the Respondent and receives a value of 4 pursuant to OAR 340-012-0145(5)(c) because Respondent's conduct was negligent. Respondent owns another GDF in Oregon that has been assigned to General ACDP AQGP-022. Therefore, Respondent has general knowledge of DEQ air quality permitting requirements for GDFs. By failing to ensure that the GDF in Curtin had been assigned to the General ACDP before starting up operation or to inquire with DEQ whether an ACDP was needed, Respondent failed to take

reasonable care to avoid a foreseeable risk that Respondent would operate the GDF without an ACDP from DEQ, in violation of Oregon law.

"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. DEQ notified Respondent on February 16, 2021, of the requirement to submit an ACDP application. Respondent submitted a complete ACDP application to DEQ on March 17, 2021.

"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 \$651. This is the amount Respondent gained by avoiding spending \$864 for the annual permit fees for operating year 2020. This "EB" was calculated pursuant to OAR 340-012-0150(1) using the U.S. Environmental Protection Agency's BEN computer

PENALTY CALCULATION: $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$
= $\$750 + [(0.1 \times \$750) \times (0 + 0 + 4 + 4 + -3)] + \651
= $\$750 + (75 \times 5) + \651
= $\$750 + \$375 + \$651$
= $\$1,776$