



Oregon

Kate Brown, Governor

Department of Environmental Quality

Headquarters
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Portland, OR 97204-1390
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TTY: 711

September 14, 2016

CERTIFIED MAIL: 7014 2870 0001 3373 5159

Scott Walter and Dianna Lee Lamb
doing business as Lemolo Lake Resort II
2610 Bird Point Road
Idleyld Park, OR 97447

Re: Notice of Civil Penalty Assessment and Order
Case No. LQ/UST-WR-2016-132
UST Facility #293

This letter is to inform you that the Oregon Department of Environmental Quality (DEQ) has issued you a civil penalty of \$1,382 for failing to submit documentation required under a Final Order related to an underground storage tank facility located at 2610 Birds Point Road in Idleyld Park, Oregon. You are the owner of the property and the UST system.

In April 2016, you were issued a field citation for failing to submit a return to service application, decommissioning notice or a work plan to conduct sampling to extend a temporary closure certificate. In May 2016, you paid the field citation, making the field citation a final order. The field citation required you to submit the documentation by a date certain. Although DEQ has contacted you numerous times since May, including allowing you an extension until July 15, 2016, you have not submitted the documentation.

\$832 of the civil penalty represents the economic benefit you gained by failing to conduct a site assessment to extend the temporary closure certificate. If you complete these requirements, 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. 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 Susan Elworth, at (503) 229-5152. You may call toll-free within Oregon at 1-800-452-4011, extension 5152.

Sincerely,



Sarah G. Wheeler, Acting Manager
Office of Compliance and Enforcement

Enclosures

cc: Eric Clough, WR, Coos Bay office
Stephanie Holmes, HQ, USTs

1 IV. ORDER TO PAY CIVIL PENALTY

2 Based upon the foregoing FINDINGS OF FACTS AND CONCLUSIONS, Respondent is
3 hereby ORDERED TO pay a total civil penalty of \$1,382. The determination of the civil penalty is
4 attached as Exhibit 1 and is incorporated as part of this Notice. If you do not file a request for hearing as
5 set forth in Section V below, your check or money order must be made payable to "**State Treasurer,**
6 **State of Oregon**" and sent to the **DEQ, Business Office, 811 S.W. Sixth Avenue, Portland, Oregon**
7 **97204**. Once you pay the penalty, the Findings of Fact, Conclusions and Order become final.

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

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

21 Active duty service-members have a right to stay proceedings under the federal Service
22 members Civil Relief Act. For more information, please call the Oregon State Bar at 1-800-
23 452-8260 or the Oregon Military Department at 1-800-452-7500. Additional information can be found
24 online at the United States Armed Forces Legal Assistance (AFLA) Legal Services Locator website
25 <http://legalassistance.law.af.mil/content/locator.php>.

26 If you fail to file a request for hearing in writing within 20 calendar days of receipt of the
27 Notice, the Notice will become a final order by default without further action by DEQ, as per OAR

1 340-011-0535(1). If you do request a hearing but later withdraw your request, fail to attend the hearing
2 or notify DEQ that you will not be attending the hearing, DEQ will issue a final order by default
3 pursuant to OAR 340-011-0535(3). DEQ designates the relevant portions of its files, including
4 information submitted by you, as the record for purposes of proving a prima facie case.
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7

8 9-14-16

9 Date

10 Jenny Root for

11 Sarah G. Wheeler, Acting Manager
12 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: Violating a Final Order and ORS 466.810 by failing to comply with the Field Citation.

CLASSIFICATION: This is a Class I violation pursuant to OAR 340-012-0053(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 \$250 for a Class I, 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)(E) as Respondents are the owners of one underground storage tank facility.

"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 6 according to OAR 340-012-0145(2)(a), because Respondent has four Class I equivalent violations in case no. LQ/T-WR-08-107 (issued July 28, 2008), FC-0326 (issued August 29, 2006) and FC-1432 (issued April 27, 2016).

"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 insufficient information on which to base a finding under paragraphs (3)(a) or (b).

"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. Respondents have been in on-going violation of the Final Order since July 15, 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 acted or failed to act intentionally with actual knowledge of the requirement. In February 2014, DEQ sent Respondents a letter informing them of the need to submit the documentation. In April 2016, Respondents paid a Field Citation which cited them for the violation and required them to submit the documentation. Since that time, DEQ has contacted Respondents to remind them of the need to submit the documentation. Respondent has actual knowledge of the requirement but has consciously failed to act to correct the continuing 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 \$832. This is the amount Respondent gained by avoiding spending \$1,500 to conduct a site assessment in order to extend the temporary closure certificate. This "EB" was calculated pursuant to OAR 340-012-0150(1) using the U.S. Environmental Protection Agency's BEN computer model.

PENALTY CALCULATION: $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$
= \$250 + [(0.1 x \$250) x (6 + 0 + 4 + 0 + 2)] + \$832
= \$250 + [\$25 x 12] + \$832
= \$250 + \$300 + \$832
= \$1,382