



Oregon

Kate Brown, Governor

Department of Environmental Quality

Headquarters
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Portland, OR 97204-1390
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July 28, 2016

CERTIFIED MAIL: 7014 2870 0001 3373 5234

Nagat El-Shinawy and Mohammed S. Mohamed
doing business as MISR Petroleum LLC
6460 NW Sisters Place
Corvallis OR 97330

Re: Notice of Civil Penalty Assessment and Order
Case No. LQ/UST-WR-2016-097
UST Facility #405

This letter is to inform you that the Oregon Department of Environmental Quality (DEQ) has issued you a civil penalty of \$4,753 for failing to comply with an order related to your underground storage tank (UST) facility located at 2424 Highway 101 in Lincoln City Oregon. The USTs have been out of operation since you became the owners of the facility in 2007.

In 2013, DEQ issued to you a civil penalty for failing to submit documentation regarding your USTs. In a subsequent agreement, DEQ allowed you until February 22, 2016 to submit that documentation. As of this date, DEQ has not received the required documentation.

\$3,503 of the civil penalty represents the economic benefit you gained by failing to submit the results of a site assessment which is required in order to continue to have the USTs in the ground. If you complete this requirement, 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.



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

1 BEFORE THE ENVIRONMENTAL QUALITY COMMISSION
2 OF THE STATE OF OREGON

3 IN THE MATTER OF:)
4 NAGAT EL-SHINAWY and MOHAMMED) NOTICE OF CIVIL PENALTY
5 S. MOHAMED, doing business as) ASSESSMENT AND ORDER
6 MISR PETROLEUM, LLC., a dissolved)
7 limited liability corporation,) CASE NO. LQ/UST-WR-2016-097
8 Respondents.)

9 I. AUTHORITY

10 The Department of Environmental Quality (DEQ) issues this Notice of Civil Penalty Assessment
11 and Order (Notice) pursuant to Oregon Revised Statutes (ORS) 468.100 and 468.126 through 468.140,
12 ORS 466.994, ORS Chapter 183 and Oregon Administrative Rules (OAR) Chapter 340, Divisions 011,
13 012, and 150.

14 II. FINDINGS OF FACT

15 1. On or about June, 12, 2007, Respondents became the owners of a property at 2424 NE Hwy
16 101, Lincoln City, Oregon on which four underground storage tanks (USTs) are located.

17 2. On December 2, 2008, DEQ received a General Permit Registration Form to modify the tank
18 owner, permittee or property owner for the USTs. The form was signed by Respondent El-Shinawy on
19 behalf of MISR.

20 3. On January 13, 2010, DEQ issued to Respondent MISR as the permittee and Respondent El-
21 Shinawy as the owner, a General Permit Registration Temporary Closure Certificate.

22 4. On January 11, 2013, MISR was administratively dissolved.

23 5. On September 17, 2014, Respondent Mohamed executed, on behalf of MISR, a Mutual
24 Agreement and Order (MAO) with DEQ in Case no. LQ/UST-WR-13-094. Section II, paragraph 2 of
25 the MAO requires MISR to submit to DEQ one of the following:

- 26 i. An application for change-in-service or permanent closure;
- 27 ii. An application to return the USTs to operational status; or
- iii. An application to extend the expiration date of the Certificate.

6. Respondents El-Shinawy and Mohamed are listed as the managers of MISR.

1 7. As of the date of this Notice, DEQ has not received the documentation listed in paragraph 5.

2 III. CONCLUSIONS

3 By failing to submit the documentation required under Section II, paragraph 2 of the MAO,
4 Respondents violated ORS 466.765(11) and a Final Order. This is a Class I violation, according to OAR
5 340-012-0053(1)(a). DEQ hereby assesses a \$4,753 civil penalty for this violation.

6 IV. ORDER TO PAY CIVIL PENALTY

7 Based upon the foregoing FINDINGS OF FACTS AND CONCLUSIONS, Respondents are
8 hereby ORDERED TO pay a total civil penalty of \$4,753. The determination of the civil penalty is
9 attached as Exhibit1 and is incorporated as part of this Notice.

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

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

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

27 Active duty service-members have a right to stay proceedings under the federal Service
members Civil Relief Act. For more information, please call the Oregon State Bar at 1-800-

1 452-8260 or the Oregon Military Department at 1-800-452-7500. Additional information can be found
2 online at the United States Armed Forces Legal Assistance (AFLA) Legal Services Locator website
3 <http://legalassistance.law.af.mil/content/locator.php>.

4 If you fail to file a request for hearing in writing within 20 calendar days of receipt of the
5 Notice, the Notice will become a final order by default without further action by DEQ, as per OAR
6 340-011-0535(1). If you do request a hearing but later withdraw your request, fail to attend the hearing
7 or notify DEQ that you will not be attending the hearing, DEQ will issue a final order by default
8 pursuant to OAR 340-011-0535(3). DEQ designates the relevant portions of its files, including
9 information submitted by you, as the record for purposes of proving a prima facie case.
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13 July 28, 2016

14 Date

13 Shamus Wheeler for

14 Leah K. Feldon, Manager
15 Office of Compliance and Enforcement
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EXHIBIT I

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, in violation of ORS 466.765(11) and a Final Order.

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 \$500 for a Class I, moderate magnitude violation in the matrix listed in OAR 340-012-0140(5)(b)(A)(ii) and applicable pursuant to OAR 340-012-0140(5)(a)(E). Respondent MISR is the owner or permittee of one UST 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 1 according to OAR 340-012-0145(2)(a)(B), because Respondent MISR has one Class II violation in case no. LQ/UST-WR-13-094.

"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. The violation has been on-going since the agreement was executed in September 2014.

"M" is the mental state of the Respondent and receives a value of 8 according to OAR 340-012-0145(5)(d), because Respondents acted or failed to act intentionally with actual knowledge of the requirement. DEQ has communicated the requirement on multiple occasions. In September 2014, Respondent Mohamed on behalf of MISR, executed an agreement in which it was required to submit the documentation by February 22, 2016. On May 19, 2016, DEQ sent all Respondents a Pre-Enforcement Notice informing Respondents that on-going non-compliance will likely result in a civil penalty. Respondent MISR and Mohamed executed the agreement knowing that it would make the compliance requirements a final order yet failed to submit the documentation. Respondents have consciously failed to

submit documentation to DEQ that the violations have been corrected with actual knowledge of the requirement that the failure to submit the documentation is 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 Respondents 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). As of the date of the Notice, Respondents have not submitted the documentation to DEQ.

"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 \$3,503. This is the amount Respondents gained by avoiding spending \$6,500 on a site assessment required to extend the temporary closure certificate. This cost has been avoided since February 22, 2016, which is when the MAO required Respondents to submit the documentation. This "EB" was calculated pursuant to OAR 340-012-0150(1) using the U.S. Environmental Protection Agency's BEN computer model.

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

$$\begin{aligned} &= \$500 + [(0.1 \times \$500) \times (1 + 0 + 4 + 8 + 2)] + \$3,503 \\ &= \$500 + [\$50 \times 15] + \$3,503 \\ &= \$500 + \$750 + \$3,503 \\ &= \$4,753 \end{aligned}$$