



# 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

October 12, 2018

CERTIFIED MAIL: 7016 0750 0000 3470 2855

Pacific Northern Environmental LLC  
Corporation Service Company, Registered Agent  
1127 Broadway Street NE, Suite 310  
Salem OR 97301

Re: Notice of Civil Penalty Assessment and Order  
Case No. LQ/UST-NWR-2018-135

This letter is to inform you that DEQ has issued you a civil penalty of \$6,600 for failing to decommission an underground storage tank and submitting an inaccurate decommissioning report to DEQ. In 2008, you were hired to decommission five tanks located at 280 E. Columbia Highway in Clatskanie. In June 2008, you submitted a report to DEQ stating that four of the tanks were removed and the other tank was filled in place. In March 2018, DEQ discovered that the tank had not been filled and instead contained petroleum-contaminated water. DEQ appreciates that you emptied and filled the tank in September 2018 and considered that when determining the amount of the civil penalty.

As a licensed service provider with substantial experience, you should be aware of the requirements for decommissioning and the importance of providing accurate information to DEQ. DEQ relies upon service providers to have the expertise to conduct the tank services properly.

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](mailto: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 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 which are environmental improvement projects that you sponsor instead of paying a penalty. Further information is available by calling the number below or at <http://www.oregon.gov/deq/Regulations/Pages/SEP.aspx>.

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DEQ's rules are also available at <http://www.oregon.gov/deq/Regulations/Pages/Statutes.aspx> or by calling the number below.

If you have any questions, please contact Susan Elworth at 503-229-5152 or 800-452-4011, ex 5152.

Sincerely,



Kieran O'Donnell, Manager  
Office of Compliance and Enforcement

Enclosures  
cc: Mark Drouin, UST Section, NWR

1 BEFORE THE ENVIRONMENTAL QUALITY COMMISSION

2 OF THE STATE OF OREGON

3	IN THE MATTER OF:	)	
4	PACIFIC NORTHERN ENVIRONMENTAL	)	NOTICE OF CIVIL PENALTY
4	LLC,	)	ASSESSMENT AND ORDER
5	Respondent.	)	CASE NO. LQ/UST-NWR-2018-135

6 I. AUTHORITY

7 DEQ issues this Notice of Civil Penalty Assessment and Order (Notice) pursuant to Oregon  
8 Revised Statutes (ORS) 468.100, ORS 468.126 through 468.140, ORS 466.994, ORS Chapter 183 and  
9 Oregon Administrative Rules (OAR) Chapter 340, Divisions 011, 012, 150 and 160.

10 II. FINDINGS OF FACT

11 1. Since 2006, Respondent has been a licensed service provider for underground storage tank  
12 (UST) services (as defined in OAR 340-160-0010(2) and (4)).

13 2. On June 20, 2008, DEQ received a UST Decommissioning and Site Assessment Report for  
14 an UST facility located at 280 East Columbia Highway in Clatskanie. Respondent submitted the report  
15 as the service provider who performed the UST services.

16 3. The report states that Respondent decommissioned (as defined in OAR 340-150-0010(17))  
17 by removal four USTs and by closure in place one UST in June 2008.

18 4. In March 2018, the UST that Respondent reported as decommissioned by closure in place  
19 contained petroleum contaminated water and had not been filled with an inert material.

20 5. On September 25, 2018, Respondent completed the closure in place of the UST.

21 III. CONCLUSIONS

22 1. Respondent violated OAR 340-150-0168(6) by submitting an inaccurate decommissioning  
23 report. This is a Class I violation, according to OAR 340-012-0053(1)(a). DEQ hereby assesses a \$6,600  
24 civil penalty for this violation.

25 2. Respondent violated OAR 340-150-0168(4) by failing to properly decommission an UST by  
26 closure in place. Specifically, in 2008, Respondent did not fill the UST with an inert material as set  
27 forth in the American Petroleum Institute RP 1604 (which is incorporated into OAR 340-

1 150-0168(4)). Under OAR 340-160-0020(3)(d), as a licensed service provider, Respondent must  
2 perform all UST services in a manner that conforms with state regulations. This is a Class II violation,  
3 according to OAR 340-012-0067(2)(f). DEQ did not assess a civil penalty for this violation.

#### 4 IV. ORDER TO PAY CIVIL PENALTY

5 Based upon the foregoing FINDINGS OF FACTS AND CONCLUSIONS, Respondent is  
6 hereby ORDERED TO pay a total civil penalty of \$6,600. The determination of the civil penalty is  
7 attached as Exhibit 1 and incorporated as part of this Notice. If you do not file a request for hearing as set  
8 forth in Section V below, your check or money order must be made payable to "**State Treasurer, State of**  
9 **Oregon**" and sent to the **DEQ, Business Office, 700 NE Multnomah Street, Suite 600, Portland,**  
10 **Oregon 97232**. Once you pay the penalty, this Notice becomes final.

#### 11 V. NOTICE OF RIGHT TO REQUEST A CONTESTED CASE HEARING

12 You have a right to a contested case hearing on this Notice, if you request one in writing. DEQ  
13 must receive your request for hearing **within 20 calendar days** from the date you receive this Notice. If  
14 you have any affirmative defenses or wish to dispute any allegations of fact in this Notice or attached  
15 exhibit, you must do so in your request for hearing, as factual matters not denied will be considered  
16 admitted, and failure to raise a defense will be a waiver of the defense. (See OAR 340-011-0530 for  
17 further information about requests for hearing.) You must send your request to: **DEQ, Office of**  
18 **Compliance and Enforcement, 700 NE Multnomah Street, Suite 600, Portland, Oregon 97232**, fax  
19 it to **503-229-5100** or email it to [DEQappeals@deq.state.or.us](mailto:DEQappeals@deq.state.or.us). An administrative law judge  
20 employed by the Office of Administrative Hearings will conduct the hearing, according to ORS  
21 Chapter 183, OAR Chapter 340, Division 011 and OAR 137-003-0501 to 0700. You have a right to be  
22 represented by an attorney at the hearing, however you are not required to be. If you are an individual,  
23 you may represent yourself. If you are a corporation, partnership, limited liability company,  
24 unincorporated association, trust or government body, you must be represented by an attorney or a duly  
25 authorized representative, as set forth in OAR 137-003-0555.

26 Active duty service-members have a right to stay proceedings under the federal Service  
27 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 timely request for hearing, the Notice will become a final order by default  
5 without further action by DEQ, as per OAR 340-011-0535(1). If you do request a hearing but later  
6 withdraw your request, fail to attend the hearing or notify DEQ that you will not be attending the  
7 hearing, DEQ will issue a final order by default pursuant to OAR 340-011-0535(3). DEQ designates  
8 the relevant portions of its files, including information submitted by you, as the record for purposes of  
9 proving a prima facie case.

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13 10/12/18

14 Date

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Kieran O'Donnell, 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: Submitting an inaccurate decommissioning report, in violation of OAR 340-150-0168(6).

CLASSIFICATION: This is a Class I violation pursuant to OAR 340-012-0053(1)(b) because the inaccurate decommissioning report masked Violation #2 and caused DEQ to misinterpret whether the UST had been properly decommissioned.

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 \$6,000 for a Class I, moderate magnitude violation in the matrix listed in OAR 340-012-0140(2)(b)(A)(ii) and applicable pursuant to OAR 340-012-0140(2)(a)(I). Respondent is a licensed service provider.

"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 only one occurrence of the violation. Respondent submitted one inaccurate report on one day only.

"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. Negligence means Respondent failed to take reasonable care to avoid a foreseeable risk of conduct constituting a violation. In 2008, during the decommissioning process Respondent learned that it could not remove the fifth UST as it was located immediately adjacent to the building. Respondent requested authorization to fill the UST in place. However, Respondent did not receive authorization

and failed to verify that the report it submitted was consistent with the actual work performed at the site.

"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 and took affirmative efforts to minimize the effects of the violation. Respondent filled the UST in September 2018.

"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 as DEQ is unable to make an estimate of any costs delayed or avoided as a result of this violation.

PENALTY CALCULATION:  $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$   
 $= \$6,000 + [(0.1 \times \$6,000) \times (0 + 0 + 0 + 4 - 3)] + \$0$   
 $= \$6,000 + (\$600 \times 1) + \$0$   
 $= \$6,000 + \$600 + \$0$   
 $= \$6,600$