Oregon
Kate Brown, Governor

Department of Environmental Quality
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September 14, 2016

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Bergeson-Boese & Associates, Inc.
Daniel F. Mumford, Registered Agent
32986 Roberts Court
Coburg OR 97408

Re: Notice of Civil Penalty Assessment and Order
Case No. LQ/LUST-NWR-2016-130

This letter is to inform you that DEQ has issued you a civil penalty of $3,600 for failing to report a confirmed release from an underground storage tank. In January 2016, you confirmed a release from a tank located at 2505 N.E. Pacific Street in Portland, yet the release was not reported until February when you submitted a report to DEQ summarizing the decommissioning of the tank. As a licensed service provider, DEQ relies on you to know the rules relating to reporting of confirmed releases. Immediate reporting to DEQ ensures that contaminated sites are dealt with in a timely manner.

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 by completing 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.

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,

Jenny Root for

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

cc: Jeff Schatz, NWR, DEQ

BEFORE THE ENVIRONMENTAL QUALITY COMMISSION

OF THE STATE OF OREGON

IN THE MATTER OF: BERGESON-BOESE & ASSOCIATES, INC. Respondent.	))))	NOTICE OF CIVIL PENALTY ASSESSMENT AND ORDER CASE NO. LQ/LUST-NWR-2016-130

I. AUTHORITY

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

II. FINDINGS OF FACT

1. At all relevant times, Respondent was a licensed service provider as that term is defined in OAR 340-160-0010(2), specifically as license #10974.

2. On February 12, 2016, DEQ received an Underground Storage Tank Decommissioning Checklist and Site Assessment Report summarizing the decommissioning of a 12,000 gallon underground storage tank located at 2505 N.E. Pacific Street in Portland, Oregon.

3. The checklist states that on January 21, 2016, soil samples were taken and analyzed showing that soil was contaminated with diesel.

4. Respondent is listed on the checklist as the service provider who performed the decommissioning.

5. Prior to receiving the checklist on February 12, 2016, DEQ had not received notice of the results of the January 2016 soil samples.

III. CONCLUSIONS

Respondent violated OAR 340-160-0020(9) by failing to report a release to the environment within 72 hours of discovery of the release. This is a Class I violation, pursuant to OAR 340-012-0074(1)(a). DEQ hereby assesses a $3,600 civil penalty for this violation.

IV. ORDER TO PAY CIVIL PENALTY

Based upon the foregoing FINDINGS OF FACTS AND CONCLUSIONS, Respondent is hereby ORDERED TO pay a total civil penalty of $3,600. 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, 811 S.W. Sixth Avenue, Portland, Oregon 97204**. Once you pay the penalty, the Findings of Fact, Conclusions and Order become final.

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. You must ensure that DEQ receives the 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(s), you must include them 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 mail the request for hearing to: **DEQ, Office of Compliance and Enforcement - Appeals, 811 SW Sixth Avenue, Portland, Oregon 97204**, or fax it to **503-229-5100**. 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, or you may represent yourself unless you are a corporation, agency or association.

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

If you fail to file a request for hearing in writing within 20 calendar days of receipt of the Notice, 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.

9-14-16
Date

Jenny Root for
Sarah G. Wheeler, Acting 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 report a release to the environment within 72 hours of discovery of the release, in violation of OAR 340-160-0020(9).

CLASSIFICATION: This is a Class I violation pursuant to OAR 340-012-0074(1)(a).

MAGNITUDE: The magnitude of the violation is minor pursuant to OAR 340-012-0130(4) as there is no selected magnitude specified in OAR 340-012-0135 applicable to this violation and the Department finds that the violation had no more than a de minimis adverse impact on human health or the environment, and posed no more than a de minimis threat to human health and the environment. Although the release was not reported in a timely manner, the release was addressed in a timely manner, reducing the likelihood of a threat to human health or the environment.

CIVIL PENALTY FORMULA: The formula for determining the amount of penalty of each violation is: BP + [(0.1 x BP) x (P + H + O + M + C)] + EB

"BP" is the base penalty, which is $3,000 for a Class I, minor magnitude violation in the matrix listed in OAR 340-012-0140(2)(b)(A)(iii) and applicable pursuant to OAR 340-012-0140 (2)(a)(I). Respondent is licensed to perform tank services.

"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 failed to report one confirmed release.

"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. Respondent is a licensed service provider. In that capacity, the Department and those who hire Respondent rely upon Respondent to know, understand and follow the regulations. Although Respondent believed that the confirmed release would be covered under a prior reported release, a review of the Department's database would have shown that the prior release was in a different area of the facility and had been closed. By failing to review information on the prior report,

Respondent failed to take reasonable care to avoid a foreseeable risk that its conduct would result in 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)(d), because Respondent eventually made some efforts to minimize the effects of the violation. Respondent reported the release to the Department in February 2016.

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

<u>PENALTY CALCULATION</u>: Penalty = BP + [(0.1 x BP) x (P + H + O + M + C)] + EB
= $3,000 + [(0.1 x $3,000) x (0 + 0 + 0 + 4 - 2)] + $0
= $3,000 + [$300 x 2] + $0
= $3,000 + $600 + $0
= $3,600