



Oregon

Kate Brown, Governor

Department of Environmental Quality

Headquarters
811 SW 6th Ave
Portland, OR 97204-1390
(503) 229-5696
FAX (503) 229-6124
TTY: 711

September 27, 2016

CERTIFIED MAIL: 7014 2870 0001 3378 3549

Sun Han
1106 N. Springbrook Road
Newberg, OR 97132

Re: Notice of Civil Penalty Assessment and Order
Case No. AQ/DC-HQ-2016-104

This letter is to inform you that the Oregon Department of Environmental Quality (DEQ) has issued you a civil penalty of \$6,372 for failing to conduct required monitoring of your dry cleaning equipment and for submitting false monitoring data in your 2015 annual report for your dry cleaning facility at 7463 SW Barbur Blvd. in Portland.

Perchloroethylene is highly toxic to humans and other environmental receptors. To reduce the risk of harm posed by the use of perchloroethylene by dry cleaners, Oregon requires operators to monitor their equipment for leaks and to report those results to DEQ. Your failure to comply with these monitoring and reporting requirements increases the risk of harm posed by your use of perchloroethylene.

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.



Sun Han
Case No. AQ/DC-HQ-2016-104
Page 2

If you have any questions, please contact Jeff Bachman at (503) 229-5950. You may call toll-free within Oregon at 1-800-452-4011, extension 5950.

Sincerely,



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

Enclosures

Joe Westersund, HQ, DEQ
Cindy Troupe, AQ, HQ

1 BEFORE THE ENVIRONMENTAL QUALITY COMMISSION

2 OF THE STATE OF OREGON

3 IN THE MATTER OF:) NOTICE OF CIVIL PENALTY
4 SUN HAN, an individual) ASSESSMENT AND ORDER
(abn PRO CARE CLEANERS),)
5 Respondent.) CASE NO. AQ/DC-HQ-2016-104

6
7 I. AUTHORITY

8 The Department of Environmental Quality (DEQ) issues this Notice of Civil Penalty Assessment
9 and Order (Notice) to Respondent, Sun Han, an individual, pursuant to Oregon Revised Statutes (ORS)
10 468.100 and 468.126 through 468.140, ORS Chapters 183 and 468A, and Oregon Administrative Rules
11 (OAR) Chapter 340, Divisions 011, 012 and 216.

12 II. FINDINGS OF FACT

- 13 1. Respondent owns and operates a dry cleaning business that uses perchloroethylene at
14 7463 SW Barbur Boulevard, Portland, Oregon (the facility). Respondent operates the facility as “Pro
15 Care Cleaners at Barbur.”
- 16 2. Respondent operates the facility pursuant to General Air Contaminant Discharge Permit
17 AQGP-006 (the permit), issued to Respondent by DEQ on May 21, 2015.
- 18 3. The permit was in effect at all material times.
- 19 4. Condition 3.4 of the permit requires Respondent to inspect his dry cleaning system
20 weekly for vapor leaks.
- 21 5. From approximately May 21, 2015, through June 10, 2016, Respondent did not perform
22 vapor leak inspections of his dry cleaning system at the facility.
- 23 6. Condition 4.1 of the permit requires Respondent to monitor his refrigerated condenser
24 for temperature weekly.
- 25 7. From approximately May 21, 2015, through June 10, 2016, Respondent did not perform
26 temperature monitoring of his refrigerated condenser at the facility.
- 27 8. Condition 6.1 of the permit requires Respondent to submit an annual report that

includes, among other things, the results of one month of leak detection monitoring required by

1 Condition 3.4 and one month of refrigerated condenser temperature monitoring as required by
2 Condition 4.1 of the permit.

3 9. On February 24, 2016, Respondent submitted his annual report for 2015.

4 10. Respondent's 2015 annual report included weekly vapor leak and refrigerated condenser
5 temperature monitoring results for the five weeks occurring in the month of October 2015.

6 III. CONCLUSIONS

7 1. Respondent violated Condition 3.4 of the permit by failing to conduct weekly leak
8 inspections as described in Section II, above. These are Class I violations pursuant to OAR 340-012-
9 0054(1)(j). DEQ hereby assesses a \$3,222 civil penalty for these violations.

10 2. Respondent has violated Condition 4.1 of the permit by failing to conduct weekly refrigerated
11 condenser temperature monitoring as described in Section II, above. These are Class I violations pursuant
12 to OAR 340-012-0054(1)(j). DEQ does not assess a civil penalty for these violations.

13 3. Respondent has violated Condition 6.1 of the permit by failing to report accurate leak
14 detection and temperature monitoring data in its 2015 annual report, as described in Section II, above.
15 These are Class I violations pursuant to OAR 3430-012-0053(1)(b). DEQ assesses a \$3,150 civil
16 penalty for these violations.

17 IV. ORDER TO PAY CIVIL PENALTY

18 Based upon the foregoing FINDINGS OF FACTS AND CONCLUSIONS, Respondent is
19 hereby ORDERED TO: Pay a total civil penalty of \$6,372. The determinations of the civil penalties are
20 attached as Exhibits 1 and 2 and are incorporated as part of this Notice.

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

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

26 You have a right to a contested case hearing on this Notice, if you request one in writing. You
27 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
NOTICE OF CIVIL PENALTY ASSESSMENT AND ORDER

1 this Notice or attached exhibit(s), you must include them in your request for hearing, as factual matters
2 not denied will be considered admitted, and failure to raise a defense will be a waiver of the defense.
3 (See OAR 340-011-0530 for further information about requests for hearing.) You must mail the request
4 for hearing to: **DEQ, Office of Compliance and Enforcement - Appeals, 811 SW Sixth Avenue,**
5 **Portland, Oregon 97204**, or fax it to **503-229-5100**. An administrative law judge employed by the
6 Office of Administrative Hearings will conduct the hearing, according to ORS Chapter 183, OAR
7 Chapter 340, Division 011 and OAR 137-003-0501 to 0700. You have a right to be represented by an
8 attorney at the hearing, or you may represent yourself unless you are a corporation, agency or
9 association.

10 Active duty service-members have a right to stay proceedings under the federal Service
11 members Civil Relief Act. For more information, please call the Oregon State Bar at 1-800-
12 452-8260 or the Oregon Military Department at 1-800-452-7500. Additional information can be found
13 online at the United States Armed Forces Legal Assistance (AFLA) Legal Services Locator website
14 <http://legalassistance.law.af.mil/content/locator.php>.

15 If you fail to file a request for hearing in writing within 20 calendar days of receipt of the
16 Notice, the Notice will become a final order by default without further action by DEQ, as per OAR
17 340-011-0535(1). If you do request a hearing but later withdraw your request, fail to attend the hearing
18 or notify DEQ that you will not be attending the hearing, DEQ will issue a final order by default
19 pursuant to OAR 340-011-0535(3). DEQ designates the relevant portions of its files, including
20 information submitted by you, as the record for purposes of proving a prima facie case.
21
22
23

24 September 27, 2016

25 Date

24 Sarah Wheeler

25 Sarah G. Wheeler, Acting Manager
26 Office of Compliance and Enforcement
27

EXHIBIT 1

FINDINGS AND DETERMINATION OF RESPONDENT'S CIVIL PENALTY PURSUANT TO OREGON ADMINISTRATIVE RULE (OAR) 340-012-0045

VIOLATION 1: Failure to perform vapor leak monitoring in violation of Condition 3.4 of the permit.

CLASSIFICATION: These are Class I violations pursuant to OAR 340-012-0054(1)(j).

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 \$1,500 for a Class I, moderate magnitude violation in the matrix listed in OAR 340-012-0140(4)(b)(A)(ii) and applicable pursuant to OAR 340-012-0140(4)(a)(C).

"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 4 according to OAR 340-012-0145(4)(d), because there were more than 28 occurrences of the violation. Respondent violated the requirement weekly beginning on May 21, 2015, through June 10, 2016.

"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. The monitoring requirement is express in Respondent's permit and DEQ notifies dry cleaners each year of the requirement to report on monitoring results. By failing to take action to conduct the monitoring, Respondent failed to exercise reasonable care to avoid the foreseeable risk of committing the violation.

"C" is Respondent's efforts to correct or mitigate the violation and receives a value of 0 according to OAR 340-012-0145(6)(f), because the violation or the effects of the violation could not be corrected or minimized.

"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 \$522. This is the amount Respondent gained by avoiding the \$936 in labor costs associated with conducting the required monitoring. This "EB" was calculated pursuant to OAR 340-012-0150(1) using the U.S. Environmental Protection Agency's BEN computer model.

PENALTY CALCULATION: $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$
= \$1,500 + [(0.1 x \$1,500) x (0 + 0 + 4 + 4 + 0)] + \$522
= \$1,500 + [\$150 x 8] + \$522
= \$1,500 + \$1,200 + \$522
= \$3,222

EXHIBIT 2

FINDINGS AND DETERMINATION OF RESPONDENT'S CIVIL PENALTY
PURSUANT TO OREGON ADMINISTRATIVE RULE (OAR) 340-012-0045

VIOLATION 2: Submitting false monitoring information on Respondent's Annual Report in violation of Condition 6.1 of the permit.

CLASSIFICATION: These are Class I violations pursuant to OAR 340-012- 0053(1)(b).

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 \$1,500 for a Class I, moderate magnitude violation in the matrix listed in OAR 340-012-0140(4)(b)(A)(ii) and applicable pursuant to OAR 340-012-0140(4)(a)(C).

"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 3 according to OAR 340-012-0145(4)(c), because there were 10 occurrences of the violation. Respondent submitted 5 weeks of records documenting two sets of false monitoring results each week.

"M" is the mental state of the Respondent and receives a value of 8 according to OAR 340-012-0145(5)(d), because Respondent's conduct was reckless. Respondent inclusion of false data in its annual report demonstrated a conscious disregard for the substantial and unjustifiable risk that the violation would occur.

"C" is Respondent's efforts to correct or mitigate the violation and receives a value of 0 according to OAR 340-012-0145(6)(f), because the violation or the effects of the violation could not be corrected or minimized.

"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 any economic benefit Respondent received is reflected in the EB assessed for Violation 1.

PENALTY CALCULATION: $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$
 $= \$1,500 + [(0.1 \times \$1,500) \times (0 + 0 + 3 + 8 + 0)] + \0
 $= \$1,500 + [\$150 \times 11] + \$0$
 $= \$1,500 + \$1,650 + \$0$
 $= \$3,150$