



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

August 3, 2022

CERTIFIED MAIL: 7018 1830 0001 5906 3763

Marko Transport LLC
c/o Awet Etbarek, Registered Agent
9655 Chimney Hill Lane # 1095
Dallas, TX 75243

Re: Notice of Civil Penalty Assessment and Order
Case No. LQ/SP-ER-2022-036

This letter is to inform you that the Oregon Department of Environmental Quality (DEQ) has issued you a civil penalty of \$44,191 for failing to immediately clean up a spill or release of oil that occurred on or about November 26, 2021, on Highway I-84 near Pendleton, Oregon.

DEQ issued this penalty because failing to immediately clean up a spill or release of oil is a serious violation of Oregon environmental law. Even small amounts of oil or petroleum products spilled onto the ground can pose a threat to surface water, groundwater, and the health of the environment. Oregon law requires that spilled oil be immediately cleaned up to minimize these threats.

\$34,591 of the civil penalty represents the economic benefit you gained by failing to clean up the spill. If you reimburse the Oregon Department of Transportation for its costs to hire a contractor to clean up the spill, 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 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.oregon.gov
Via fax – 503-229-6762

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 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 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 available at <http://www.oregon.gov/deq/Regulations/Pages/Statutes.aspx> or by calling the number below.

If you have any questions, please contact Esther Westbrook at 503-229-5374 or toll free in Oregon at 800-452-4011, extension 5374.

Sincerely,

A handwritten signature in blue ink, appearing to read "Kieran O'Donnell".

Kieran O'Donnell, Manager
Office of Compliance and Enforcement

Enclosures

cc: Trisura Specialty Insurance Company, 210 Park Avenue, Suite 1300, Oklahoma City, OK
73102-5636
Charles Kennedy, Bend Office, DEQ
David Anderson, Bend Office, DEQ
Accounting, DEQ

BEFORE THE ENVIRONMENTAL QUALITY COMMISSION
OF THE STATE OF OREGON

IN THE MATTER OF:)	NOTICE OF CIVIL PENALTY
MARKO TRANSPORT LLC,)	ASSESSMENT AND ORDER
a Texas limited liability company,)	
)	NO. LQ/SP-ER-2022-036
Respondent.)	

I. AUTHORITY

The Department of Environmental Quality (DEQ) issues this Notice of Civil Penalty Assessment and Order pursuant to Oregon Revised Statutes (ORS) 468.100 and 468.126 through 468.140, ORS Chapters 183 and 466, and Oregon Administrative Rules (OAR) Chapter 340, Divisions 011 and 012, and 142.

II. FINDINGS OF FACT

1. On November 26, 2021, a truck owned by Respondent crashed on Highway I-84 near mile post 221, which is located near Pendleton in Umatilla County, Oregon.

2. On November 26, 2021, approximately 100 gallons of diesel fuel was spilled or released from the truck's fuel tank onto the roadway at the location described above.

3. Diesel fuel is a petroleum product that is defined as "oil" under ORS 466.605(8).

4. According to ORS 466.605(10)(b)(E), the "reportable quantity" of oil, if spilled on land, is any quantity of oil over one barrel. One barrel of oil contains forty-two gallons.

5. Respondent did not immediately clean up the oil that had been spilled or released.

6. On March 28, 2022, the Oregon Department of Transportation hired an environmental contractor to conduct a cleanup. The cleanup was completed on April 6, 2022.

III. CONCLUSIONS

On or about November 26, 2021, Respondent violated ORS 466.645(1) by failing to immediately clean up a spill or release of approximately 100 gallons of oil, as described in Section II above. This is a Class I violation according to OAR 340-012-0081(1)(a). DEQ hereby assesses a \$44,191 civil penalty for this violation.

1 IV. ORDER TO PAY CIVIL PENALTY AND TO COMPLY

2 Based upon the foregoing FINDINGS OF FACTS AND CONCLUSION, Respondent is
3 hereby ORDERED TO:

4 Pay a civil penalty of \$44,191. The determination of the civil penalty is attached as Exhibit
5 No. 1 and incorporated as part of this Notice.

6 As provided in ORS 466.990(3) and (4), the civil penalty collected pursuant to this Notice
7 and Order shall be deposited in the Oil and Hazardous Material Emergency Response and Remedial
8 Action Fund established in ORS 466.670.

9 If you do not file a request for hearing as set forth in Section V below, your check or money
10 order must be made payable to "**Oregon Department of Environmental Quality**" and sent to:

11 **DEQ - Business Office, 700 NE Multnomah Street, Suite 600, Portland, Oregon 97232.**

12 Once you pay the penalty, the Findings of Fact, Conclusions and Order become final.

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

14 You have a right to a contested case hearing on this Notice, if you request one in writing.

15 DEQ must receive your request for hearing **within 20 calendar days** from the date you receive

16 this Notice. If you have any affirmative defenses or wish to dispute any allegations of fact in this

17 Notice or attached exhibit, you must do so in your request for hearing, as factual matters not

18 denied will be considered admitted, and failure to raise a defense will be a waiver of the defense.

19 (See OAR 340-011-0530 for further information about requests for hearing.) You must send your

20 request to: **DEQ, Office of Compliance and Enforcement, 700 NE Multnomah Street, Suite**

21 **600, Portland, Oregon 97232**, fax it to **503-229-6762** or email it to

22 DEQappeals@deq.oregon.gov. An administrative law judge employed by the Office of

23 Administrative Hearings will conduct the hearing, according to ORS Chapter 183, OAR Chapter

24 340, Division 011 and OAR 137-003-0501 to 0700. You have a right to be represented by an

25 attorney at the hearing, however you are not required to be. If you are an individual, you may

26 represent yourself. If you are a corporation, partnership, limited liability company,

1 unincorporated association, trust or government body, you must be represented by an attorney or
2 a duly authorized representative, as set forth in OAR 137-003-0555.

3 Active-duty Service members have a right to stay proceedings under the federal Service
4 Members Civil Relief Act. For more information contact the Oregon State Bar at 1-800-
5 452-8260, the Oregon Military Department at 503-584-3571, or the nearest United States Armed
6 Forces Legal Assistance Office through <http://legalassistance.law.af.mil>. The Oregon Military
7 Department does not have a toll-free telephone number.

8 If you fail to file a timely request for hearing, the Notice will become a final order by
9 default without further action by DEQ, as per OAR 340-011-0535(1). If you do request a hearing
10 but later withdraw your request, fail to attend the hearing or notify DEQ that you will not be
11 attending the hearing, DEQ will issue a final order by default pursuant to OAR 340-011-0535(3).
12 DEQ designates the relevant portions of its files, including information submitted by you, as the
13 record for purposes of proving a prima facie case.

14
15
16 8/3/2022

17 Date

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17 Kieran O'Donnell, Manager
18 Office of Compliance and Enforcement
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EXHIBIT NO. 1

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

VIOLATION 1: Failing to immediately clean up a spill or release of oil, in violation of ORS 466.645(1).

CLASSIFICATION: This is a Class I violation pursuant to OAR 340-012-0081(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 \$4,000 for a Class I, moderate magnitude violation in the matrix listed in OAR 340-012-0140(3)(b)(A)(ii) and applicable pursuant to OAR 340-012-0140(3)(a)(K) because Respondent violated an oil and hazardous material spill statute during a commercial activity.

"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 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 the violation existed for more than 28 days. The spill occurred on or about November 16, 2021, and Respondent did not initiate or cooperate with cleanup efforts. As of the date of this Notice, Respondent has not reimbursed ODOT for the cost of the cleanup.

"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 operates a trucking company and should know that it is legally required to immediately clean up oil spills. Although Respondent knew about the spill on or about the day it occurred, it did not take any action to initiate cleanup or reimburse ODOT after it arranged and paid for the cleanup. By failing to clean up a spill of approximately 100 gallons of diesel fuel, Respondent consciously disregarded a substantial and unjustifiable risk that it would violate the law. Because diesel fuel spills can cause surface water and groundwater contamination,

disregarding this risk constituted a gross deviation from the standard of care a reasonable person would observe in this situation.

"C" is Respondent's efforts to correct 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). Respondent did not initiate or cooperate in the cleanup effort and has not reimbursed ODOT for the cost of the cleanup.

"EB" is the approximate economic benefit that an entity gained by not complying with the law. 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 \$34,591. This is the amount Respondent gained by avoiding spending \$47,520 to hire a contractor to clean up the spill. This "EB" was calculated pursuant to OAR 340-012-0150(1) using the U.S. Environmental Protection Agency's BEN computer model.

PENALTY CALCULATION: $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$
= \$4,000 + [(0.1 x \$4,000) x (0 + 0 + 4 + 8 + 2)] + \$34,591
= \$4,000 + [(\$400) x (14)] + \$34,591
= \$4,000 + \$5,600 + \$34,591
= \$44,191