



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

November 24, 2021

CERTIFIED MAIL: 7018 1830 0001 5906 3091

Petrocard Inc.
CT Corporation System, Registered Agent
780 Commercial Street SE, Suite 100
Salem OR 97301

Re: Notice of Civil Penalty Assessment and Order
Case No. LQ/UST-WR-2021-160
UST Facility #11350

DEQ is committed to balancing its vital obligation to enforce the law and protect the environment with a consideration of the dramatic disruptions to public health and the economy caused by the COVID-19 outbreak. We understand the outbreak may impact your ability to timely appeal, pay the assessed civil penalty, or comply with this order. You may submit to DEQ documentation identifying whether COVID-19-related disruption affects your ability to comply with this order. Visit our webpage <https://www.oregon.gov/deq/Pages/covid-19.aspx> for more information about documenting specific COVID-19 disruptions your facility may be encountering and how that affects your ability to comply. DEQ will exercise reasonable discretion regarding settlement of this order.

This letter is to inform you that DEQ has issued you a civil penalty of \$9,568 for violating the requirements for the safe and proper operation and maintenance of your underground storage tank (UST) facility located at 720 Long John Road in Oakland. Specifically, you failed to repair a cracked spill bucket at the facility.

DEQ issued this penalty because your failure to maintain proper spill prevention equipment poses a risk of environmental harm. Spill prevention equipment is used to contain drips and small spills that can occur when the delivery hose is disconnected from the fill pipe. Although these spills are usually small, repeated small releases can amount to significant contamination. DEQ is particularly concerned that you have yet to repair the spill bucket since the issue was identified in November 2020 during a DEQ inspection of your facility.

Included in Section IV of the enclosed Notice is an order requiring you to repair the cracked spill bucket. \$2,068 of the civil penalty represents the economic benefit you gained by failing to complete that repair. If you complete the repair, 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.state.or.us
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>.

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 Susan Elworth at 503-229-5152 or toll free in Oregon at 800-452-4011, extension 5152.

Sincerely,



Kieran O'Donnell, Manager
Office of Compliance and Enforcement

Enclosures

cc: Dylan Eckert, WR, DEQ
Ellis Emory, 89140 Bridge St, Springfield, OR 97478

1 IV. ORDER TO PAY CIVIL PENALTY AND TO COMPLY

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

4 1. Pay a total civil penalty of \$9,568. The determination of the civil penalty is attached as Exhibit
5 1 and is incorporated as part of this Notice. If you do not file a request for hearing as set forth in Section V
6 below, your check or money order must be made payable to "State Treasurer, State of Oregon" and
7 sent to the **DEQ, Business Office, 700 NE Multnomah Street, Suite 600, Portland, Oregon 97232.**

8 2. Within 30 days of this order becoming final by operation of law or on appeal, submit to
9 DEQ documentation showing that the spill bucket for the UST which is used to store premium
10 unleaded gasoline has been repaired. This written documentation must be sent to: Dylan Eckert, DEQ,
11 165 E.7th Avenue, Suite 100, Eugene, OR 97401-3049

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

13 You have a right to a contested case hearing on this Notice, if you request one in writing. DEQ
14 must receive your request for hearing **within 20 calendar days** from the date you receive this Notice. If
15 you have any affirmative defenses or wish to dispute any allegations of fact in this Notice or attached
16 exhibit, you must do so in your request for hearing, as factual matters not denied will be considered
17 admitted, and failure to raise a defense will be a waiver of the defense. (See OAR 340-011-0530 for
18 further information about requests for hearing.) You must send your request to: **DEQ, Office of**
19 **Compliance and Enforcement, 700 NE Multnomah Street, Suite 600, Portland, Oregon 97232**, fax
20 it to **503-229-6762** or email it to DEQappeals@deq.state.or.us. An administrative law judge
21 employed by the Office of Administrative Hearings will conduct the hearing, according to ORS
22 Chapter 183, OAR Chapter 340, Division 011 and OAR 137-003-0501 to 0700. You have a right to be
23 represented by an attorney at the hearing, however you are not required to be. If you are an individual,
24 you may represent yourself. If you are a corporation, partnership, limited liability company,
25 unincorporated association, trust or government body, you must be represented by an attorney or a duly
26 authorized representative, as set forth in OAR 137-003-0555.

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

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

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14
15
16 Date

11 / 24 / 2021


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 NO. 1 Failing to maintain spill prevention equipment, in violation of OAR 340-150-0310(1).

CLASSIFICATION: This is a Class II violation pursuant to OAR 340-012-0053(2).

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 \$3,000 for a Class II, moderate magnitude violation in the matrix listed in OAR 340-012-0140(2)(b)(B)(ii) and applicable pursuant to OAR 340-012-0140(2)(a)(I) because Respondent is the owner or permittee of 24 UST facilities.

"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 an initial value of 9 according to OAR 340-012-0145(2)(a), because Respondent has eight Class I equivalent violations in FC-852, FC-964, FC-965, FC-1020, FC-1129, FC-1130, FC-803, FC-1327 and FC-1204. According to OAR 340-012-0145(2)(d)(A)(ii), this amount is reduced by 4 because all the formal enforcement actions in which prior significant actions were cited were issued more than five years before the date the current violation occurred, thus the final value is 5.

"H" is Respondent's history of correcting prior significant actions, and receives a value of -2 according to OAR 340-012-0145(3)(a) because Respondent corrected all violations cited as prior significant actions.

"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. Each day of violation constitutes a separate occurrence. The damage to the spill bucket was first identified on November 17, 2020. As of the date of this Notice, Respondent has not repaired the damaged spill bucket.

"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. Reckless means Respondent consciously disregarded a substantial and unjustifiable risk that the result would occur or that the circumstance existed. Respondent knew that the spill bucket was damaged prior to

DEQ's inspection in November 2020 and had hired someone to repair the spill bucket prior to the inspection. Following the inspection, DEQ issued Respondent a field citation, citing it for violating the law by not repairing the spill bucket. When Respondent failed to ensure that the person it hired to repair the spill bucket complete the work over nearly a year, its conduct constituted a gross deviation from the standard of care a reasonable person would observe in the same situation.

"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 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 has not submitted documentation to DEQ showing that it has repaired the spill bucket.

"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 \$2,068. This is the amount Respondent gained by avoiding since November 2020, spending \$2,500 to repair its spill bucket. This "EB" was calculated pursuant to OAR 340-012-0150(1) using the U.S. Environmental Protection Agency's BEN computer model.

PENALTY CALCULATION: $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$
 $= \$3,000 + [(0.1 \times \$3,000) \times (5 - 2 + 2 + 8 + 2)] + \$2,068$
 $= \$3,000 + (\$300 \times 15) + \$2,068$
 $= \$3,000 + \$4,500 + \$2,068$
 $= \$9,568$