



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

December 2, 2021

CERTIFIED MAIL No.: 7018 1830 0001 5906 3138

DAR USA, Inc.
c/o Rajiv Kumar, Registered Agent
2902 Mount Vernon Street, SE
Albany, OR 97322

Re: Notice of Civil Penalty Assessment and Order
Case No. AQ/ACDP-WR-2021-162

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 the Department of Environmental Quality (DEQ) has issued you a civil penalty of \$1,154 for operating your gasoline dispensing facility (GDF) in Medford without an Air Contaminant Discharge Permit (ACDP) from DEQ.

Gasoline dispensing facilities are subject to permitting because gasoline vapors contain benzene, a known cancer-causing chemical. Permitting ensures gasoline vapors are properly captured and controlled to reduce benzene exposure at and near gasoline dispensing facilities. In addition, permitting contributes to continuing compliance with federal ozone standards to protect the public's health and the environment. When a company subject to permitting requirements operates without a permit, the company has avoided regulation and gained an economic advantage over other similar facilities that did obtain their permit by avoiding or delaying the costs of complying with the law.

DEQ appreciates your effort to correct the violation by submitting a complete ACDP application to DEQ on October 14, 2021. DEQ considered this effort when determining the amount of civil penalty.

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 – 503-229-5100

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 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 portion of your 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 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', is written over a horizontal line.

Kieran O'Donnell, Manager
Office of Compliance and Enforcement

cc: Jennifer Horton, Medford Office, DEQ
Claudia Davis, Salem Office, DEQ
Don Hendrix, AQ, HQ, DEQ
Accounting, DEQ

1 BEFORE THE ENVIRONMENTAL QUALITY COMMISSION

2 OF THE STATE OF OREGON

3 IN THE MATTER OF:) NOTICE OF CIVIL PENALTY
4 DAR USA, INC.,) ASSESSMENT AND ORDER
5 an Oregon corporation,)
6 Respondent.) NO. AQ/ACDP-WR-2021-162

7 I. AUTHORITY

8 This Notice and Order is issued pursuant to Oregon Revised Statutes (ORS) 468.100 and
9 468.126 through 468.140, ORS Chapters 183 and 468A and Oregon Administrative Rules (OAR)
10 Chapter 340, Divisions 011, 012, 200, 216 and 244.

11 II. FINDINGS OF FACT

12 1. Since on or about May 14, 2021, Respondent has owned and operated a gasoline
13 dispensing facility (GDF) called "Family Mart 2" located at 70 Rossanley Drive in Medford,
14 Jackson County, Oregon (the GDF).

15 2. The GDF has a monthly throughput¹ of 10,000 gallons or more of gasoline.

16 3. Pursuant to OAR 340-216-0020(3), no person may construct, install, establish,
17 develop or operate any air contaminant source listed in OAR 340-216-8010 without first
18 obtaining an Air Contaminant Discharge Permit (ACDP) from the Oregon Department of
19 Environmental Quality (DEQ) (except for operations in Lane County) or Lane Regional Air
20 Protection Agency (LRAPA) (operations in Lane County).

21 4. Table 1 of OAR 340-216-8010, Part B, Category 35 requires an ACDP to operate
22 GDFs in Oregon that have a monthly throughput of 10,000 gallons or more of gasoline.

23 5. At the time Respondent began operating the GDF, Respondent did not have an
24 ACDP from DEQ.

25 ¹According to OAR 340-244-0030(17), "Monthly throughput" means the total volume of gasoline that is loaded into,
26 or dispensed from, all gasoline storage tanks at each GDF during a month. Monthly throughput is calculated by
27 summing the volume of gasoline loaded into, or dispensed from, all gasoline storage tanks at each GDF during the
current day, plus the total volume of gasoline loaded into, or dispensed from, all gasoline storage tanks at each GDF
during the previous 364 days, and then dividing that sum by 12.

6. On October 14, 2021, Respondent submitted a complete application to DEQ for assignment to General ACDP AQGP-022 for GDFs.

7. On October 27, 2021, DEQ assigned Respondent to General ACDP AQGP-022 to operate the GDF.

III. CONCLUSION

From May 14, 2021 until October 27, 2021, Respondent violated ORS 468A.045(1)(b) and OAR 340-216-0020(3), adopted pursuant to ORS 468A.040, by operating an air contaminant source listed in OAR 340-216-8010, Part B, Category 35 (GDF with a monthly throughput of 10,000 gallons or more of gasoline), without first obtaining an ACDP from DEQ. This is a Class II violation according to OAR 340-012-054(2)(a). DEQ hereby assesses a \$1,154 civil penalty for this violation.

IV. ORDER TO PAY CIVIL PENALTY

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

Pay a total civil penalty of \$1,154. 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: **DEQ, Business Office, 700 NE Multnomah Street, Suite 600, Portland, Oregon 97232.**

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. DEQ must receive your 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, you must do so 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 send your request to: **DEQ, Office of Compliance and Enforcement, 700 NE Multnomah Street, Suite**

1 **600, Portland, Oregon 97232**, fax it to **503-229-5100** or email it to

2 DEQappeals@deq.state.or.us. An administrative law judge employed by the Office of
3 Administrative Hearings will conduct the hearing, according to ORS Chapter 183, OAR Chapter
4 340, Division 011 and OAR 137-003-0501 to 0700. You have a right to be represented by an
5 attorney at the hearing, however you are not required to be. If you are an individual, you may
6 represent yourself. If you are a corporation, partnership, limited liability company,
7 unincorporated association, trust or government body, you must be represented by an attorney or
8 a duly authorized representative, as set forth in OAR 137-003-0555.

9 Active duty service members have a right to stay proceedings under the federal Service
10 Members Civil Relief Act. For more information contact the Oregon State Bar at 1-800-
11 452-8260, the Oregon Military Department at 503-584-3571, or the nearest United States Armed
12 Forces Legal Assistance Office through <http://legalassistance.law.af.mil>. The Oregon Military
13 Department does not have a toll-free telephone number.

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

20
21
22 12/2/2021
23 Date

24 
25 Kieran O'Donnell, Manager
26 Office of Compliance and Enforcement
27

EXHIBIT NO. 1

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

VIOLATION: Operating an air contaminant source listed in OAR 340-216-8010 (GDF with a monthly throughput of 10,000 gallons or more of gasoline) without first obtaining an ACDP from DEQ, in violation of ORS 468A.045(1)(b) and OAR 340-216-0020(3).

CLASSIFICATION: This is a Class II violation pursuant to OAR 340-012-0054(2)(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 \$750 for a Class II, moderate magnitude violation in the matrix listed in OAR 340-012-0140(4)(b)(B)(ii) and applicable pursuant to OAR 340-012-0140(4)(a)(C) because Respondent must operate the GDF under a General Air Contaminant Discharge Permit only because the GDF is subject to Area Source NESHAP regulations.

"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 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. In accordance with OAR 340-012-0145(4), each day of violation with a duration of more than one day is a separate occurrence. Respondent operated the GDF without an ACDP from about May 14, 2021 until October 27, 2021, which is approximately five months.

"M" is the mental state of the Respondent and receives a value of 4 pursuant to OAR 340-012-0145(5)(c) because Respondent's conduct was negligent. Respondent owns two other GDFs in Oregon: one that has been assigned to the General ACDP, and one that was the subject of enforcement for failing to apply for the Permit prior to startup. Therefore, Respondent has knowledge of DEQ air quality permitting requirements for GDFs. By failing to ensure that the GDF in Medford had been assigned to the General ACDP before starting up operation or inquiring with DEQ whether an ACDP was needed, Respondent failed to take reasonable

care to avoid a foreseeable risk that it would operate the GDF without an ACDP from DEQ, in violation of Oregon law.

"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. On September 21, 2021, DEQ notified Respondent of the requirement to submit an ACDP application. Respondent submitted a complete ACDP application to DEQ on October 14, 2021.

"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 \$29. This is the amount Respondent gained by delaying spending \$2,066 in permitting fees until October 14, 2021. This "EB" was calculated pursuant to OAR 340-012-0150(1) using the U.S. Environmental Protection Agency's BEN computer

PENALTY CALCULATION: $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$
 $= \$750 + [(0.1 \times \$750) \times (0 + 0 + 4 + 4 - 3)] + \29
 $= \$750 + (75 \times 5) + \29
 $= \$750 + \$375 + \$29$
 $= \$1,154$