



# 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 16, 2022

CERTIFIED MAIL: 7020 2450 0000 3349 5611

Herman Capital, Inc.  
c/o Noelle Reese, Registered Agent  
4719 NE Sandy Boulevard  
Portland, OR 97213

Re: Notice of Civil Penalty Assessment and Order  
Case No. LQ/UST-NWR-2022-119

This letter is to inform you that DEQ has issued you a total civil penalty of \$3,126 for underground storage tank (UST) violations at your facility in Portland. DEQ documented several violations during its inspection on March 25, 2022. DEQ has cited you for the following monitoring and testing violations: failing to initially test the spill prevention and overfill prevention equipment prior to October 1, 2020, failing to conduct annual line tightness testing, and failing to conduct annual testing of the electronic and mechanical components of the release detection system.

DEQ issued this penalty because proper monitoring and testing of the UST system and its release prevention and detection equipment is important to ensure that releases are discovered quickly before contamination spreads beyond the immediate area of the USTs and allows immediate response to any sign of a release. If a leak goes unnoticed due to unmaintained release detection equipment, the leaking fuel can have lasting harmful effects on the environment or human health.

Included in Section IV of the Notice is an order requiring you to perform the required testing and submit the results to DEQ. You are required to submit documentation demonstrating your compliance to DEQ within thirty (30) days of this Notice becoming final.

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](mailto:DEQappeals@deq.oregon.gov)

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 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', with a long horizontal flourish extending to the right.

Kieran O'Donnell, Manager  
Office of Compliance and Enforcement

Enclosures

cc: Lauren Dimock, Portland Office, DEQ  
Mike Korten Hof, Portland Office, DEQ

BEFORE THE ENVIRONMENTAL QUALITY COMMISSION  
OF THE STATE OF OREGON

IN THE MATTER OF:  
HERMAN CAPITAL, INC.,  
an Oregon corporation,

Respondent.

)  
) NOTICE OF CIVIL PENALTY  
) ASSESSMENT AND ORDER

)  
) CASE NO. LQ/UST-NWR-2022-119

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 466.706 through 466.882, ORS 466.994, ORS Chapter 183 and Oregon Administrative Rules (OAR) Chapter 340, Divisions 011, 012, and 150.

II. FINDINGS OF FACT

1. At all materials times, Respondent was the owner and permittee of an underground storage tank (UST) system located at Hollywood Chevron at 4719 NE Sandy Boulevard in Portland, Multnomah County, Oregon (the Facility). Respondent operates the UST system under Certificate to Operate #1040.

2. The UST system consists of three USTs and connected piping. The UST system has a total capacity of approximately 30,000 gallons of gasoline and diesel fuel, which are regulated substances.

3. On March 25, 2022, DEQ conducted an inspection of the UST system and reviewed Respondent's records for the UST system.

4. As of March 25, 2022, Respondent had not tested the overfill and spill prevention equipment.

5. As of March 25, 2022, Respondent had not performed testing of the line leak detectors within one (1) year of the previous test, which was performed on June 4, 2020.

6. The Facility uses automatic tank gauging (ATG) as its primary release detection method.

7. As of March 25, 2022, Respondent had not tested the electronic and mechanical components of the ATG system within the previous year, or since October 1, 2020.

1 III. CONCLUSIONS

2 1. Respondent has violated OAR 340-150-0310(10) by failing to initially test its spill  
3 prevention and overfill prevention equipment prior to October 1, 2020, as alleged in Section II,  
4 Paragraph 4 above. This is a Class I violation according to OAR 340-012-0067(1)(j). DEQ hereby  
5 assesses a civil penalty of \$1,123 for this violation.

6 2. Respondent has violated OAR 340-150-0410(2)(c) by failing to conduct operational line leak  
7 detector testing annually, as alleged in Section II, Paragraph 5 above. Since Respondent did not conduct  
8 testing between June 4, 2020, and March 25, 2022, it missed one annual test. This is a Class I violation  
9 according to OAR 340-012-0067(1)(j). DEQ hereby assesses a civil penalty of \$957 for this violation.

10 3. Respondent has violated OAR 340-150-0400(2) by failing to test the electronic and  
11 mechanical components of the release detection system on an annual basis beginning on October 1,  
12 2020, as alleged in Section II, Paragraphs 6-7 above. This is a Class I violation according to OAR 340-  
13 012-0067(1)(j). DEQ hereby assesses a civil penalty of \$1,046 for this violation.

14 IV. ORDER TO PAY CIVIL PENALTY AND TO COMPLY

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

17 1. Pay a total civil penalty of \$3,126. The determination of the civil penalties is attached as  
18 Exhibits 1 – 3, which are incorporated as part of this Notice.

19 If you do not file a request for hearing as set forth in Section V below, your check or money  
20 order must be made payable to "**Department of Environmental Quality**" and sent to: **DEQ - Business**  
21 **Office, 700 NE Multnomah Street, Suite 600, Portland, Oregon 97232.**

22 2. Within thirty (30) days of this order becoming final by operation of law or on appeal, take  
23 the actions listed below to bring the UST system into compliance. Submit written documentation  
24 demonstrating compliance with each of the requirements below to Lauren Dimock, UST Inspector, by  
25 mail to: 700 NE Multnomah Street, Suite 600, Portland, Oregon 97232 or by email to:

26 [Lauren.Dimock@deq.oregon.gov](mailto:Lauren.Dimock@deq.oregon.gov):

27 ///



- a. Complete testing of the spill and overfill prevention equipment;
- b. Complete testing of the line leak detectors; and
- c. Complete tank monitor certification testing.

#### 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 exhibits, 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 600, Portland, Oregon 97232**, fax it to **503-229-6762** or email it to [DEQappeals@deq.oregon.gov](mailto:DEQappeals@deq.oregon.gov). 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, however you are not required to be. If you are an individual, you may represent yourself. If you are a corporation, partnership, limited liability company, unincorporated association, trust or government body, you must be represented by an attorney or a duly authorized representative, as set forth in OAR 137-003-0555.

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

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

7  
8  
9  
10 12 / 16 / 2022  
11 Date

  
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 initially test spill prevention and overfill prevention equipment by October 1, 2020, in violation of OAR 340-150-0310(10).
- CLASSIFICATION:                      This is a Class I violation pursuant to OAR 340-012-0067(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 for 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 \$500 for a Class I, moderate magnitude violation in the matrix listed in OAR 340-012-0140(5)(b)(A)(ii) and applicable pursuant to OAR 340-012-0140(5)(a)(E). Respondent is the owner or permittee of one UST facility.
- "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 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.
- "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 conduct testing by a specific date, October 1, 2020.
- "M" is the mental state of the Respondent and receives a value of 2 according to OAR 340-012-0145(5)(b) because Respondent had constructive knowledge (reasonably should have known) of the requirement. In 2018, DEQ adopted the regulation requiring that the testing be completed prior to October 1, 2020, and provided extensive outreach to the regulated community on the requirement to conduct the testing prior to that date. Respondent reasonably should have known of the requirement to conduct the testing prior to October 1, 2020.

"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). As of the date of this Notice, Respondent has not completed the testing.

"EB" is the approximate dollar value of the benefit gained and the costs avoided or delayed as a result of 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 \$423. This is the amount Respondent gained by avoiding spending \$685 to test the spill prevention and overfill prevention equipment. This "EB" was calculated pursuant to OAR 340-012-0150(1) using the U.S. Environmental Protection Agency's BEN computer model.

PENALTY CALCULATION:  $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$   
=  $\$500 + [(0.1 \times \$500) \times (0 + 0 + 0 + 2 + 2)] + \$423$   
=  $\$500 + (\$50 \times 4) + \$423$   
=  $\$500 + \$200 + \$423$   
=  $\$1,123$



## EXHIBIT 2

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

VIOLATION NO. 2                      Failing to conduct annual operational line leak detector testing, in violation of OAR 340-150-0410(2)(c).

CLASSIFICATION:                      This is a Class I violation pursuant to OAR 340-012-0067(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 for 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 \$500 for a Class I, moderate magnitude violation in the matrix listed in OAR 340-012-0140(5)(b)(A)(ii) and applicable pursuant to OAR 340-012-0140(5)(a)(E). Respondent is the owner or permittee of one UST facility.

"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 conduct annual testing on one occasion between June 4, 2020, and March 25, 2022.

"M" is the mental state of Respondent, and receives a value of 4 according to OAR 340-012-0145(5)(c) because Respondent's conduct was negligent. By failing to conduct line tightness testing for one year, Respondent failed to take reasonable care to avoid a foreseeable risk that it would violate UST requirements.

"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). As of the date of this Notice, Respondent has not submitted documentation showing that it has completed the testing.

"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 \$157. This is the amount Respondent gained by avoiding spending \$225 to conduct line leak detector testing. This "EB" was calculated pursuant to OAR 340-012-0150(1) using the U.S. Environmental Protection Agency's BEN computer model.

PENALTY CALCULATION:  $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$

$$\begin{aligned} &= \$500 + [(0.1 \times \$500) \times (0 + 0 + 0 + 4 + 2)] + \$157 \\ &= \$500 + (\$50 \times 6) + \$157 \\ &= \$500 + \$300 + \$157 \\ &= \$957 \end{aligned}$$

### EXHIBIT 3

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

VIOLATION NO. 3                      Failing to test the electronic and mechanical components of the release detection system on an annual basis, in violation of OAR 340-150-0400(2).

CLASSIFICATION:                      This is a Class I violation pursuant to OAR 340-012-0067(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 for 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 \$500 for a Class I, moderate magnitude violation in the matrix listed in OAR 340-012-0140(5)(b)(A)(ii) and applicable pursuant to OAR 340-012-0140(5)(a)(E). Respondent is the owner or permittee of one UST facility.

"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 conduct annual testing on one occasion between June 4, 2020, and March 25, 2022.

"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. By failing to conduct annual testing of the ATG system, Respondent failed to take reasonable care to avoid a foreseeable risk that it would violate UST requirements.

"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). As of the date of this Notice, Respondent has not submitted documentation showing that it has completed the testing.

"EB" is the approximate dollar value of the benefit gained and the costs avoided or delayed as a result of 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 \$246. This is the amount Respondent gained by avoiding spending \$325 to conduct testing of the ATG system. This "EB" was calculated pursuant to OAR 340-012-0150(1) using the U.S. Environmental Protection Agency's BEN computer model.

PENALTY CALCULATION:  $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$   
=  $\$500 + [(0.1 \times \$500) \times (0 + 0 + 0 + 4 + 2)] + \$246$   
=  $\$500 + (\$50 \times 6) + \$246$   
=  $\$500 + \$300 + \$246$   
=  $\$1,046$