



Oregon

Tina Kotek, 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

June 27, 2023

CERTIFIED MAIL: 9589 0710 5270 0110 6010 26

St. Charles Health System, Inc.
dba St. Charles Medical Center - Bend
c/o C T Corporation System, LLC, Registered Agent
780 Commercial Street SE, Suite 100
Salem, OR 97301

Re: Notice of Civil Penalty Assessment and Order
Case No. LQ/UST-ER-2022-132

This letter is to inform you that DEQ has issued you a total civil penalty of \$8,993 for underground storage tank (UST) violations at your facility in Bend. DEQ documented several violations during its inspection on October 25, 2022. DEQ has cited you for failing to initially test the spill prevention and overfill prevention equipment prior to October 1, 2020, failing to have adequate release detection on the USTs for your emergency generators, failing to conduct annual line tightness testing, and failing to keep release detection records.

DEQ issued this penalty because having proper release detection equipment installed and performing testing of spill prevention and overfill prevention 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 enclosed Notice is an order requiring you to perform the required testing and install release detection equipment. 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

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,



Kieran O'Donnell, Manager
Office of Compliance and Enforcement

Enclosures

cc: Thom Finch, St. Charles Medical Center – Bend: thfinch@scmc.org
Dylan Eckert, Eugene Office, DEQ
Mike Korten Hof, Portland Office, DEQ

BEFORE THE ENVIRONMENTAL QUALITY COMMISSION
OF THE STATE OF OREGON

IN THE MATTER OF:		
ST. CHARLES HEALTH SYSTEM, INC.,)	NOTICE OF CIVIL PENALTY
an Oregon nonprofit corporation,)	ASSESSMENT AND ORDER
doing business as ST. CHARLES)	
MEDICAL CENTER – BEND,)	CASE NO. LQ/UST-ER-2022-132
)	
Respondent.)	

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 owned and was the permittee of an underground storage tank (UST) system located at 2500 NE Neff Road in Bend, Deschutes County, Oregon (the Facility).
2. Respondent operates the UST system under Certificate to Operate #402.
3. The UST system consists of three USTs and connected piping. The UST system has a capacity of approximately 75,000 gallons of diesel fuel, which is a regulated substance. Two of the tanks store diesel fuel to power emergency generators.
4. On October 25, 2022, DEQ conducted an inspection of the UST system and reviewed Respondent's records for the UST system.
5. As of October 25, 2022, Respondent had not tested the tested the spill and overflow prevention equipment at the Facility.
6. On October 25, 2022, the pressurized piping did not have leak detection equipment installed.
7. The pressurized piping at the Facility routinely contains diesel fuel.

////

1 8. As of October 25, 2022, Respondent had not performed line tightness testing on the
2 pressurized piping within the previous two years, or since October 1, 2020.

3 9. On October 25, 2022, Respondent did not have any records of release detection monitoring
4 for the previous twelve (12) months.

5 III. CONCLUSIONS

6 1. Respondent has violated OAR 340-150-0310(10) by failing to initially test its spill
7 prevention and overflow prevention equipment prior to October 1, 2020, as alleged in Section II,
8 Paragraph 5 above. This is a Class I violation according to OAR 340-012-0067(1)(j). DEQ hereby
9 assesses a \$2,909 civil penalty for this violation.

10 2. Respondent has violated OAR 340-150-0400(1)(a) by failing to provide a method of release
11 detection that can detect a release from any portion of the UST and the underground piping that routinely
12 contains a regulated substance, as alleged in Section II, Paragraphs 6-7 above. This is a Class I violation
13 according to OAR 340-012-0067(1)(e). DEQ hereby assesses a \$2,700 civil penalty for this violation.

14 3. Respondent has violated OAR 340-150-0410(3) by failing to conduct line tightness testing
15 annually, as alleged in Section II, Paragraph 8 above. Since Respondent has not conducted testing since
16 October 1, 2020, it has missed two annual tests. These are Class I violations according to OAR 340-012-
17 0067(1)(j). DEQ hereby assesses a civil penalty of \$2,859 for these violations.

18 4. Respondent has violated OAR 340-150-0465(6) by failing to retain the most current twelve
19 consecutive months of release detection records, as alleged in Section II, Paragraph 9 above. This is a
20 Class II violation according to OAR 340-012-0053(2). DEQ hereby assesses a \$525 civil penalty for this
21 violation.

22 IV. ORDER TO PAY CIVIL PENALTY AND TO COMPLY

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

25 1. Pay a total civil penalty of \$8,993. The determination of the civil penalties is attached as
26 Exhibits 1 - 4, which are incorporated as part of this Notice.

27 ///

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

4 2. Comply with Oregon law by taking the following actions within thirty (30) days of this
5 Notice becoming final by operation of law or on appeal:

6 a. Complete testing of the spill and overflow prevention equipment and submit the
7 results to DEQ;

8 b. Install electronic line leak detectors for the UST system and submit a completed
9 Modification Checklist to DEQ; and

10 c. Complete line tightness testing and submit the results to DEQ.

11 Documents should be sent to Inspector Dylan Eckert via email at Dylan.Eckert@deq.oregon.gov.

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 exhibits, 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.oregon.gov. 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
26 duly authorized representative, as set forth in OAR 137-003-0555.

27 ///

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.

12
13
14
15 6/27/2023

16 Date

15 

16 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 \$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)(I). Respondent is the owner or permittee of two 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 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 \$809. This is the amount Respondent gained by avoiding spending \$1,000 to test its 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: $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$
= \$1,500 + [(0.1 x \$1,500) x (0 + 0 + 0 + 2 + 2)] + \$809
= \$1,500 + (\$150 x 4) + \$809
= \$1,500 + \$600 + \$809
= \$2,909

EXHIBIT 2

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

- VIOLATION NO. 2 Failing to provide a method of release detection that can detect a release from any portion of the UST and the underground piping that routinely contains a regulated substance, in violation of OAR 340-150-0400(1)(a).
- 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 \$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)(I). Respondent is the owner or permittee of two 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 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 the violation has been ongoing for more than 28 days. Respondent was required to install release detection for the USTs serving its emergency generator by October 1, 2020. As of the date of this Notice, Respondent has not completed installation of this equipment, which is a duration of more than two years.
- "M" is the mental state of 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 release detection for emergency generator tanks by October 1, 2020, and provided extensive outreach to the regulated community. Respondent reasonably should have known of the requirement to install release detection for its emergency generator tank 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 installation of release detection equipment.

"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 \$0 because there is insufficient information on which to make an estimate of Respondent's economic benefit.

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 + 2 + 2)] + \$0
= \$1,500 + (\$150 x 8) + \$0
= \$1,500 + \$1,200 + \$0
= \$2,700

EXHIBIT 3

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

VIOLATION NO. 3 Failing to conduct annual line tightness testing, in violation of OAR 340-150-0410(3).

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 \$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)(I). Respondent is the owner or permittee of two 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 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 2 according to OAR 340-012-0145(4)(b) because there were more than one but less than seven occurrences of the violation. Respondent failed to conduct annual testing for two years, 2021 and 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 line tightness testing for two years, 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 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 \$459. This is the amount Respondent gained by avoiding spending \$225 per year to conduct annual line tightness testing for two years. 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 + 2 + 4 + 0)] + \$459
= \$1,500 + (\$150 x 6) + \$459
= \$1,500 + \$900 + \$459
= \$2,859

EXHIBIT 4

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

VIOLATION NO. 4 Failing to retain the most current twelve consecutive months of release detection records, in violation of OAR 340-150-0465(6).

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

MAGNITUDE: The magnitude of the violation is minor pursuant to OAR 340-012-0130(4) as there is no selected magnitude specified in OAR 340-012-0135 applicable to this violation and DEQ finds that the violation had no more than a de minimis adverse impact on human health or the environment, and posed no more than a de minimis threat to human health and the environment. In making this finding, DEQ considered that Respondent's failure to maintain records, in and of itself, did not result in actual impact or threat to human health or the environment.

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 \$375 for a Class II, minor magnitude violation in the matrix listed in OAR 340-012-0140(4)(b)(B)(iii) and applicable pursuant to OAR 340-012-0140(4)(a)(I). Respondent is the owner or permittee of two 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 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. DEQ documented the lack of recordkeeping during the inspection on October 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 maintain records of release detection monitoring, 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 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 because DEQ finds that the economic benefit Respondent gained by failing to maintain records was de minimis.

PENALTY CALCULATION: $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$
 $= \$375 + [(0.1 \times \$375) \times (0 + 0 + 0 + 4 + 0)] + \0
 $= \$375 + (\$37.50 \times 4) + \$0$
 $= \$375 + \$150 + \$0$
 $= \$525$