



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

September 12, 2023

CERTIFIED MAIL: 7016 2710 0000 4221 4186

Michael David Gedenberg
dba Mike Gedenberg Trucking
110 South Place
Astoria, OR 97103

Re: Notice of Civil Penalty Assessment and Order
Case No. LQ/SP-NWR-2023-059

This letter is to inform you that the Oregon Department of Environmental Quality (DEQ) has issued you a civil penalty of \$39,090 for failing to immediately clean up a spill or release of oil that occurred on February 9, 2023, when a truck owned by your company crashed, spilling diesel fuel on Highway 202 in Astoria. You were also cited, without penalty, for failing to submit a complete spill report.

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 environmental quality in general. Oregon law requires that spilled oil be immediately cleaned up to minimize these threats.

\$29,490 of the civil penalty amount represents the economic benefit you gained by failing to clean up the spill. If you reimburse ODOT for its cleanup costs, including the cost of hiring an environmental contractor, 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 black ink, appearing to read "Kieran O'Donnell". The signature is fluid and cursive, with the first name "Kieran" and last name "O'Donnell" clearly distinguishable.

Kieran O'Donnell, Manager
Office of Compliance and Enforcement

Enclosures

cc: Kevin Chan, Portland Office, DEQ
Wes Risher, Portland Office, 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 MICHAEL DAVID GEDENBERG,)
5 doing business as MIKE GEDENBERG) NO. LQ/SP-NWR-2023-059
6 TRUCKING,)
7 Respondent.)

8 I. AUTHORITY

9 The Department of Environmental Quality (DEQ) issues this Notice of Civil Penalty
10 Assessment and Order pursuant to Oregon Revised Statutes (ORS) 468.100 and 468.126 through
11 468.140, ORS Chapters 183 and 466, and Oregon Administrative Rules (OAR) Chapter 340,
12 Divisions 011 and 012, and 142.

13 II. FINDINGS OF FACT

14 1. On February 8, 2023, a truck owned by Respondent crashed on Highway 202 at mile
15 post 4.5, which is located in or near Astoria in Clatsop County, Oregon.

16 2. On February 8, 2023, approximately 20-70 gallons of diesel fuel was spilled or
17 released from the truck's fuel tank onto the roadway and the ground next to the roadway at the
18 location described above.

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

20 4. Respondent did not make efforts to contain or clean up the oil that had been spilled or
21 released.

22 5. On or about February 8, 2023, the Oregon Department of Transportation (ODOT)
23 responded to the spill. ODOT subsequently hired an environmental contractor to conduct a
24 cleanup. The cleanup began on February 8, 2023, and was completed on or about March 31,
25 2023.

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1 6. On February 10, 2023, DEQ sent Respondent a letter via email requesting that he
2 submit a completed spill report to DEQ by March 10, 2023. The email included a spill report
3 form along with a copy of OAR Chapter 340, Division 142 and a fact sheet called “What to Do
4 When You’ve Had a Spill.”

5 7. On March 8, 2023, Respondent requested an extension for submitting the spill report.
6 On March 9, 2023, DEQ granted an extension until March 13, 2023.

7 8. On March 12, 2023, Respondent submitted a document to DEQ via email called
8 “Oregon DEQ Spill Report” that primarily discussed the volume of the spill, along with
9 supporting documentation. The report did not describe the details of the spill, and it did not
10 include any description of the cleanup or steps taken to prevent a recurrence.

11 III. CONCLUSIONS

12 1. On February 8, 2023, Respondent violated ORS 466.645(1) by failing to
13 immediately clean up a spill or release of oil, as described in Section II, Paragraphs 1 - 5 above.
14 This is a Class I violation according to OAR 340-012-0081(1)(a). DEQ hereby assesses a \$39,090
15 civil penalty for this violation.

16 2. On or about March 12, 2023, Respondent violated OAR 340-142-0090 by failing to
17 submit a written report to DEQ describing all aspects of the spill and cleanup, and steps taken to
18 prevent a recurrence, as described in Section II, Paragraphs 6 - 8 above. This is a Class II violation
19 according to OAR 340-012-0081(2)(a). DEQ has not assessed a civil penalty for this violation.

20 IV. ORDER TO PAY CIVIL PENALTY

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

23 Pay a civil penalty of \$39,090. The determination of the civil penalty is attached as Exhibit
24 No. 1 and incorporated as part of this Notice.

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

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 "**Oregon Department of Environmental Quality**" and sent to:
3 **DEQ - Business Office, 700 NE Multnomah Street, Suite 600, Portland, Oregon 97232.**

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

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

6 You have a right to a contested case hearing on this Notice, if you request one in writing.
7 DEQ must receive your request for hearing **within 20 calendar days** from the date you receive
8 this Notice. If you have any affirmative defenses or wish to dispute any allegations of fact in this
9 Notice or attached exhibit, you must do so in your request for hearing, as factual matters not
10 denied will be considered admitted, and failure to raise a defense will be a waiver of the defense.
11 (See OAR 340-011-0530 for further information about requests for hearing.) You must send your
12 request to: **DEQ, Office of Compliance and Enforcement, 700 NE Multnomah Street, Suite**
13 **600, Portland, Oregon 97232**, fax it to **503-229-6762** or email it to:

14 **DEQappeals@deq.oregon.gov**. An administrative law judge employed by the Office of
15 Administrative Hearings will conduct the hearing, according to ORS Chapter 183, OAR Chapter
16 340, Division 011, and OAR 137-003-0501 to 0700. You have a right to be represented by an
17 attorney at the hearing, however you are not required to be. If you are an individual, you may
18 represent yourself. If you are a corporation, partnership, limited liability company,
19 unincorporated association, trust, or government body, you must be represented by an attorney or
20 a duly authorized representative, as set forth in OAR 137-003-0555.

21 Active-duty Service members have a right to stay proceedings under the federal Service
22 Members Civil Relief Act. For more information contact the Oregon State Bar at 1-800-
23 452-8260, the Oregon Military Department at 503-584-3571, or the nearest United States Armed
24 Forces Legal Assistance Office through <http://legalassistance.law.af.mil>. The Oregon Military
25 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
2 default without further action by DEQ, as per OAR 340-011-0535(1). If you do request a hearing
3 but later withdraw your request, fail to attend the hearing, or notify DEQ that you will not be
4 attending the hearing, DEQ will issue a final order by default pursuant to OAR 340-011-0535(3).
5 DEQ designates the relevant portions of its files, including information submitted by you, as the
6 record for purposes of proving a prima facie case.
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9 9/12/2023
10 Date

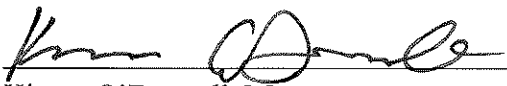
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Kieran O'Donnell, Manager
Office of Compliance and Enforcement

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 February 8, 2023, 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 business 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 response or cleanup actions. DEQ informed Respondent of its cleanup obligations on several occasions, but Respondent made no efforts to participate in the cleanup or reimburse ODOT after it arranged and paid for the cleanup. By failing to clean up a spill of approximately 20-70 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 and the spill occurred in close proximity to surface waters and groundwater was present in the excavation area, 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 \$29,490. This is the amount Respondent gained by avoiding spending a total of \$44,358 in cleanup costs. 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)] + \$29,490
= \$4,000 + [(\$400) x (14)] + \$29,490
= \$4,000 + \$5,600 + \$29,490
= \$39,090