



# 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

October 17, 2023

CERTIFIED MAIL: 7016 2710 0000 4221 4223

Alpha Omega Trucking, LLC  
c/o Cari Dichter, Registered Agent  
14432 Stateline Rd  
Brookings OR 97415

Re: Notice of Civil Penalty Assessment and Order  
Case No. LQ-HW-WR-2022-574

This letter is to inform you that the Oregon Department of Environmental Quality (DEQ) has issued you a civil penalty of \$10,400 for failing to immediately clean up and report a spill of oil at your facility in Brookings. DEQ also cited you without civil penalty for failing to label two containers of used oil.

DEQ issued this penalty because immediate reporting to the Oregon Emergency Response System (OERS) and immediate cleanup measures are required to ensure that contaminants in used oil do not migrate and cause harm to the environment. By failing to take immediate action to clean up the spill of approximately 100 gallons of used oil on the ground, you risked adversely impacting the soil and water quality in the area.

DEQ appreciates your efforts to address the violations by excavating the contaminated soil and properly disposing of it at a permitted facility, within a week of DEQ identifying the violation. DEQ considered these efforts when determining the amount of civil penalty.

You may pay the civil penalty as follows:

Pay online with e-check (ACH) or Credit Card. Go to Your DEQ Online here: <https://ydo.oregon.gov>. Select Register Account or Login, then select Pay Invoices/Fees on your account dashboard. Enter the Invoice number and Account ID included on the attached payment slip. Note: US Bank charges a 2.3% convenience charge for credit card transactions. ACH payments have no additional charges.

Pay by check or money order: Make checks payable to "Department of Environmental Quality" and mail to the address on the enclosed payment slip. Please make sure to include the payment slip with your check or money order.

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 – 503-229-6762

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.

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 Sarah Wheeler at 971-301-0622.

Sincerely,



Kieran O'Donnell, Manager  
Office of Compliance and Enforcement

Enclosures

cc: Killian Condon, DEQ  
David Freeman, Alpha Omega Trucking, LLC, [davidf9933@gmail.com](mailto:davidf9933@gmail.com)

1 BEFORE THE ENVIRONMENTAL QUALITY COMMISSION

2 OF THE STATE OF OREGON

3 IN THE MATTER OF: ) NOTICE OF CIVIL PENALTY  
4 ALPHA OMEGA TRUCKING, LLC, ) ASSESSMENT AND ORDER  
5 Respondent. ) CASE NO. LQ-HW-WR-2022-574

6 I. AUTHORITY

7 The Department of Environmental Quality (DEQ) issues this Notice of Civil Penalty Assessment  
8 and Order (Notice) pursuant to Oregon Revised Statutes (ORS) 468.100, ORS 468.126 through 468.140,  
9 466.994, ORS Chapter 183 and Oregon Administrative Rules (OAR) Chapter 340, Divisions 011, 012,  
10 100-102, 111, and 142.

11 II. FINDINGS OF FACT

- 12 1. Respondent operates a business at 14432 Stateline Road in Brookings, Oregon (the  
13 Facility)
- 14 2. DEQ staff inspected the Facility on March 10, 2022.
- 15 3. On March 10, 2022, Respondent stored used oil in two containers at the Facility. The  
16 containers were not labeled with the words “used oil.”
- 17 4. Prior to March 10, 2022, approximately 100 gallons of used oil spilled onto the ground  
18 at the Facility. The ground was stained down several inches below the surface, and the stain covered the  
19 ground over an area approximately 15 feet by 30 feet. Respondent had covered up the spilled oil with a  
20 layer of a mixture of gravel, sand, and dirt.
- 21 5. Respondent did not notify the Oregon Emergency Management Division’s Oregon  
22 Emergency Response System (OERS) of the used oil spill.

23 III. CONCLUSIONS

- 24 1. Respondent violated OAR 340-142-0060(1) by failing to immediately clean up a spill of  
25 oil, as described in Section II, Paragraphs 1 and 4 above. As defined in OAR 340-142-0005(10),  
26 “immediately” in relation to response to a spill means that the actions necessary to protect human health  
27 and the environment take priority over all other concerns of the responsible person. The used oil spilled at

1 the Facility is “oil” as defined in OAR 340-142-0005(15). This is a Class I violation, according to OAR  
2 340-012-0081(1)(a). DEQ hereby assesses a \$6,000 civil penalty for this violation.

3 2. Respondent violated OAR 340-142-0040(1) by failing to immediately notify OERS of a  
4 spill of a reportable quantity of oil, as described in Section II, Paragraphs 1, 4, and 5 above. According  
5 to OAR 340-142-0050(1)(c), any spill of oil to the ground in excess of 42 gallons is a reportable  
6 quantity. This is a Class I violation, according to OAR 340-012-0081(1)(b). DEQ hereby assesses a  
7 \$4,400 civil penalty for this violation.

8 3. Respondent violated 40 CFR 279.22(c)(1), as adopted by OAR 340-100-0002(4), by failing  
9 to label two containers storing used oil with the words “used oil” as described in Section II, Paragraphs 1  
10 and 3 above. These are Class III violations, according to OAR 340-012-0072(3)(b). DEQ has not  
11 assessed a civil penalty for these violations.

#### 12 IV. ORDER TO PAY CIVIL PENALTY

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

15 Pay a total civil penalty of \$10,400. The determination of the civil penalty is attached as  
16 Exhibits 1 and 2 and is incorporated as part of this Notice.

17 If you do not file a request for hearing as set forth in Section V below, please pay the penalty as  
18 follows:

19 Pay online with e-check (ACH) or Credit Card. Go to Your DEQ Online here:  
20 <https://ydo.oregon.gov>. Select Register Account or Login, then select Pay Invoices/Fees on your account  
21 dashboard. Enter the Invoice number and Account ID included on the attached payment slip. Note: US  
22 Bank charges a 2.3% convenience charge for credit card transactions. ACH payments have no additional  
23 charges.

24 Pay by check or money order: Make checks payable to “Department of Environmental  
25 Quality” and mail to the address on the enclosed payment slip. Please make sure to include the payment  
26 slip with your check or money order.

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

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

16 Active duty Service members have a right to stay proceedings under the federal Service  
17 Members Civil Relief Act. For more information contact the Oregon State Bar at 1-800-  
18 452-8260, the Oregon Military Department at 503-584-3571, or the nearest United States Armed  
19 Forces Legal Assistance Office through <http://legalassistance.law.af.mil>. The Oregon Military  
20 Department does not have a toll free telephone number.

21 If you fail to file a timely request for hearing, the Notice will become a final order by default  
22 without further action by DEQ, as per OAR 340-011-0535(1). If you do request a hearing but later  
23 withdraw your request, fail to attend the hearing or notify DEQ that you will not be attending the  
24 hearing, DEQ will issue a final order by default pursuant to OAR 340-011-0535(3). DEQ designates

25 ///

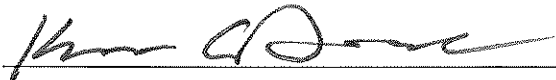
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1 the relevant portions of its files, including information submitted by you, as the record for purposes of  
2 proving a prima facie case.

3  
4 10/17/2023

5 Date



6 Kieran O'Donnell, Manager  
7 Office of Compliance and Enforcement  
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EXHIBIT 1

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

VIOLATION NO. 1                      Failing to immediately clean up a spill of oil, in violation of OAR 340-142-0060(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 340-012-0135(5)(b)(B) because the spill involved more than 42 gallons and less than 420 gallons of used oil.

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 and release rule, 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 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 is insufficient information on which to base a finding under paragraphs (4)(b) through (4)(d).

"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 as defined in OAR 340-012-0030(20). By covering up the spill rather than cleaning it up immediately, Respondent consciously disregarded the substantial and unjustifiable risk that Respondent was committing a violation. The risk of leaving used oil in the ground to migrate and contaminate the environment, including potentially reaching a nearby pond, was of such a nature and degree that disregarding that risk constituted a gross deviation from the standard of care a reasonable person would observe in that situation.

"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 took reasonable affirmative efforts to minimize the effects of the violation. DEQ inspected the Facility and identified the

violation on March 10, 2022. On March 14, 2022, Respondent submitted documentation that the contaminated soil had been cleaned up and properly disposed.

"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, as DEQ does not have sufficient information on which to base a finding that any economic benefit gained from delaying cleanup was more than de minimis.

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

$$\begin{aligned} &= \$4,000 + [(0.1 \times \$4,000) \times (0 + 0 + 0 + 8 + (-3))] + \$0 \\ &= \$4,000 + (\$400 \times 5) + \$0 \\ &= \$4,000 + \$2,000 + \$0 \\ &= \$6,000 \end{aligned}$$



EXHIBIT 2

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

VIOLATION NO. 2 Failing to immediately notify OERS of a spill of a reportable quantity of oil, in violation of OAR 340-142-0040(1).

CLASSIFICATION: This is a Class I violation pursuant to OAR 340-012-0081(1)(b).

MAGNITUDE: The magnitude of the violation is moderate pursuant to OAR 340-012-0135(5)(b)(B) because the spill involved more than 42 gallons and less than 420 gallons of used oil.

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 and release rule, 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 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 one occurrence of the violation.

"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 as defined in OAR 340-012-0030(15). Respondent is a professional trucking company. By failing to immediately report a large spill of oil, Respondent failed to take reasonable care to avoid this foreseeable risk of committing a violation.

"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 took reasonable affirmative efforts to minimize the effects of the violation. DEQ inspected the Facility and identified the violation on March 10, 2022. On March 14, 2022, Respondent submitted documentation that the contaminated soil had been cleaned up and properly disposed.

"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, as DEQ does not have sufficient information on which to base a finding that any economic benefit gained from delaying cleanup was more than de minimis.

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

$$\begin{aligned} &= \$4,000 + [(0.1 \times \$4,000) \times (0 + 0 + 0 + 4 + (-3))] + \$0 \\ &= \$4,000 + (\$400 \times 1) + \$0 \\ &= \$4,000 + \$400 + \$0 \\ &= \$4,400 \end{aligned}$$

Oregon Department of Environmental Quality  
 700 NE Multnomah Street, Suite 600  
 Portland, OR 97232-4100



State of Oregon  
**Department of Environmental Quality**

Phone: 503-229-5437  
 Fax: 503-229-5850

**CIVIL PENALTY - ORS 468.135(2)**

<b>DATE:</b>	October 17, 2023
<b>RESPONSE DATE :</b>	December 26, 2023
<b>TOTAL PENALTY:</b>	\$10,400.00

<b>Account Name:</b>	ALPHA OMEGA TRUCKING		
<b>Account Type:</b>	Vendor/Organization/Company	<b>Reference Number:</b>	CPGFD2400013
<b>SubSystem ID:</b>	205533	<b>FIMS Acct. ID:</b>	14083

**Penalty Summary**

Penalty Amount	Interest	Adjustment	Amount Paid	Total Penalty
\$ 10,400.00	\$ 0.00	\$ 0.00	\$ 0.00	\$ 10,400.00

Payment of this penalty is subject to the exercise of your options or right to appeal as described in the enclosed enforcement documents.

To Pay Online with ACH or Credit Card Visit <https://ydo.oregon.gov> and select 'Register Account'



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 PLEASE RETURN THIS PORTION WITH YOUR PAYMENT



<b>REFERENCE NO.</b>	CPGFD2400013		
<b>PAYCODE:</b>	00401 7400 10040 74001 0500 000000 00		
<b>FEE PROGRAM ID:</b>	950	<b>RESPONSE DATE:</b>	December 26, 2023
<b>FIMS ACCT. ID:</b>	14083	<b>TOTAL PENALTY DUE:</b>	\$10400.00

**AMOUNT ENCLOSED:**

MAKE CHECK PAYABLE TO: Department of Environmental Quality

DEQ FINANCIAL SERVICES - LBX4244  
 PO BOX 4244  
 PORTLAND OR 97208-4244

Check this box if updated address information has been provided on the back of the form.

00401 7400 10040 74001 0500 000000 0095000140836(CPGFD)240001300010400009



State of Oregon  
Department of  
Environmental  
Quality

# State of Oregon Department of Environmental Quality

CIVIL PENALTY - ORS 468.135(2)

700 NE Multnomah Street, Suite 600  
Portland, OR 97232-4100  
Phone: 503-229-5437  
Fax: 503-229-5850

## Penalty Detail

Transaction Date	Description	Amount
10/16/2023	2022-574 LQ-HW-WR-2022-574	\$10,400.00

### SFMS Agencies Use:

Trans Code	Treasury Fund	SFMS	Index	PCA (5)	Agency Object	Project #	Phase
723	00401	7400	10040	74001	0500	00000	00

## Address Changes

Please visit <https://ydo.oregon.gov> to update your mailing address online or provide the following information:

Name \_\_\_\_\_  
 Address \_\_\_\_\_  
 City, State, Zip \_\_\_\_\_