



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 5, 2023

CERTIFIED MAIL: 9589 0710 5270 0110 6011 49

Sisters of St. Mary of Oregon Maryville Corporation
dba Maryville Nursing Home
c/o Brett Cope, Registered Agent
4440 SW 148th Avenue
Beaverton, OR 97078

Re: Notice of Civil Penalty Assessment and Order
Case No. LQ/UST-NWR-2023-099

This letter is to inform you that DEQ has issued you a total civil penalty of \$1,409.50 for underground storage tank (UST) violations at your facility in Beaverton. Specifically, DEQ has cited you for failing to have adequate release detection for the UST for your emergency generator, failing to demonstrate safe suction for piping, failing to initially test the spill prevention and overfill prevention equipment prior to October 1, 2020, and failing to conduct monthly walkthrough inspections.

DEQ issued this penalty because having proper release detection equipment 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.

DEQ appreciates your efforts to correct the violations by implementing manual tank gauging and performing the required testing. DEQ considered these efforts 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.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: Vilmos Barka, Maryville Nursing Home: vbarka@maryville.care
Lauren Dimock, Portland Office, DEQ
Mark Drouin, Portland Office, DEQ

1 BEFORE THE ENVIRONMENTAL QUALITY COMMISSION
2 OF THE STATE OF OREGON

3 IN THE MATTER OF:)
4 SISTERS OF ST. MARY OF OREGON) NOTICE OF CIVIL PENALTY
5 MARYVILLE CORPORATION) ASSESSMENT AND ORDER
6 an Oregon nonprofit corporation,)
7 doing business as:) CASE NO. LQ/UST-NWR-2023-099
8 MARYVILLE NURSING HOME,)
9 Respondent.)

10 I. AUTHORITY

11 The Department of Environmental Quality (DEQ) issues this Notice of Civil Penalty Assessment
12 and Order (Notice) pursuant to Oregon Revised Statutes (ORS) 468.100, ORS 468.126 through 468.140,
13 ORS 466.706 through 466.882, ORS 466.994, ORS Chapter 183 and Oregon Administrative Rules (OAR)
14 Chapter 340, Divisions 011, 012, and 150.

15 II. FINDINGS OF FACT

16 1. At all materials times, Respondent owned and was the permittee of an underground storage
17 tank (UST) system located at 14645 SW Farmington Road in Beaverton, Washington County, Oregon
18 (the Facility).

19 2. Respondent operates the UST system under Certificate to Operate #8676.

20 3. The UST system consists of one UST and connected piping. The UST system has a capacity
21 of approximately 1,000 of diesel fuel, which is a regulated substance. The UST system stores diesel
22 fuel to power an emergency generator.

23 4. On April 13, 2023, DEQ conducted an inspection of the UST system and reviewed
24 Respondent's records for the UST system.

25 5. On April 13, 2023, the UST system did not have a method of release detection in place for
26 the tank.

27 6. On or about July 7, 2023, Respondent began using manual tank gauging as its release
detection method for the UST.

7. The UST system has "safe suction" piping with a check valve installed below the pump.

1 8. On April 13, 2023, Respondent was unable to show DEQ where the check valve was in the
2 system, and DEQ was not able to access or view this portion of the system to verify the location of the
3 check valve.

4 9. As of April 13, 2023, Respondent had not performed monthly walkthrough inspections of
5 the spill prevention and release detection equipment during the previous year, and Respondent did not
6 have records of such inspections for at least one year.

7 10. As of October 1, 2020, Respondent had not tested the tested the spill prevention or overfill
8 prevention equipment at the Facility.

9 11. On or about July 29, 2022, Respondent tested the spill bucket. The equipment passed
10 testing.

11 12. On or about July 7, 2023, Respondent tested the overfill prevention equipment. The
12 equipment passed testing.

13 III. CONCLUSIONS

14 1. Respondent has violated OAR 340-150-0400(1)(a) by failing to provide a method of release
15 detection that can detect a release from any portion of the UST and the underground piping that routinely
16 contains a regulated substance, as alleged in Section II, Paragraph 5 - 6 above. This is a Class I violation
17 according to OAR 340-012-0067(1)(e). DEQ hereby assesses a \$650 civil penalty for this violation.

18 2. Respondent has violated OAR 340-150-0410(6)(e) by failing to provide a method that allows
19 DEQ to readily determine compliance with safe suction requirements, as alleged in Section II, Paragraphs
20 7 - 8 above. This is a Class II violation according to OAR 340-012-0053(2). DEQ hereby assesses a
21 \$112.50 civil penalty for this violation.

22 3. Respondent has violated OAR 340-150-0315(a)(B) by failing to conduct walkthrough
23 inspections of the spill prevention and release detection equipment every thirty (30) days, as alleged in
24 Section II, Paragraph 9 above. Since Respondent failed to conduct walkthrough inspections for at least a
25 year, it missed at least twelve (12) monthly inspections. These are Class I violations according to OAR
26 340-012-0067(1)(e). DEQ hereby assesses a \$422 civil penalty for these violations.

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1 4. Respondent has violated OAR 340-150-0310(10) by failing to initially test its spill
2 prevention and overflow prevention equipment prior to October 1, 2020, as alleged in Section II,
3 Paragraphs 10 - 12 above. This is a Class I violation according to OAR 340-012-0067(1)(j). DEQ hereby
4 assesses a \$225 civil penalty for this violation.

5 IV. ORDER TO PAY CIVIL PENALTY

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

8 Pay a total civil penalty of \$1,409.50. The determination of the civil penalties is attached as
9 Exhibits 1 - 4, which are incorporated as part of this Notice.

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

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

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

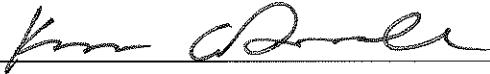
1 Active-duty Service members have a right to stay proceedings under the federal Service
2 Members Civil Relief Act. For more information contact the Oregon State Bar at 1-800-
3 452-8260, the Oregon Military Department at 503-584-3571, or the nearest United States Armed
4 Forces Legal Assistance Office 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.

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10/5/2023

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 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 \$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 4 according to OAR 340-012-0145(4)(d) because the violation was ongoing for more than 28 days. Respondent was required to have release detection for the UST serving its emergency generator by October 1, 2020. Respondent began conducting release detection by manual tank gauging on or about July 7, 2023. Therefore, the violation was ongoing for approximately two years and nine months.

"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 implement 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 -3 according to OAR 340-012-0145(6)(c) because Respondent made reasonable efforts to correct the violation. Respondent began conducting release detection by manual tank gauging on July 7, 2023.

"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 the economic benefit Respondent gained by delaying implementation of manual tank gauging was de minimis.

PENALTY CALCULATION: $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$
= \$500 + [(0.1 x \$500) x (0 + 0 + 4 + 2 - 3)] + \$0
= \$500 + (\$50 x 3) + \$0
= \$500 + \$150 + \$0
= \$650

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 that allows DEQ to readily determine compliance with safe suction requirements, in violation of OAR 340-150-0410(6)(e).

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 since Respondent provided proof of the valve location and there was no evidence of a release, Respondent's failure to provide access during the inspection posed no more than a de minimis 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 \$125 for a Class II, minor magnitude violation in the matrix listed in OAR 340-012-0140(5)(b)(B)(iii) and applicable pursuant to OAR 340-012-0140(5)(a)(E). Respondent is the 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 did not provide a method that allowed DEQ to readily determine compliance with safe suction requirements on the date of the inspection, April 13, 2023.

"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. As the permitted UST operator, Respondent reasonably should

have known that it was required to provide access for DEQ to inspect the safe suction system to verify compliance.

"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 corrected the violation by submitting a photo of the safe suction system on August 25, 2023.

"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 there is insufficient information on which to make an estimate of Respondent's economic benefit, if any.

PENALTY CALCULATION: $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$
 $= \$125 + [(0.1 \times \$125) \times (0 + 0 + 0 + 2 - 3)] + \0
 $= \$125 + (\$12.50 \times (-1)) + \$0$
 $= \$125 - \$12.50 + \$0$
 $= \$112.50$

EXHIBIT 3

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

VIOLATION NO. 3 Failing to perform monthly operation and maintenance walkthrough inspections, in violation of OAR 340-150-0315(1)(a)(A).

CLASSIFICATION: These are Class II violations 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 there was no evidence of any spills or releases, so Respondent's failure to conduct monthly walkthrough inspections 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 \$125 for a Class II, minor magnitude violation in the matrix listed in OAR 340-012-0140(5)(b)(B)(iii) 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 3 according to OAR 340-012-0145(4)(c) because there were from seven to 28 occurrences of the violation. Respondent did not conduct walkthrough inspections for at least twelve months.

"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 walkthrough inspections for at least twelve months, 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 \$122. This is the amount Respondent gained by avoiding spending \$120 to conduct monthly walkthrough inspections of the spill prevention and release detection equipment over the previous year. This "EB" was calculated pursuant to OAR 340-012-0150(1) using the U.S. Environmental Protection Agency's BEN computer model.

PENALTY CALCULATION: $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$
= $\$125 + [(0.1 \times \$125) \times (0 + 0 + 3 + 4 + 0)] + \122
= $\$125 + (\$25 \times 7) + \$122$
= $\$125 + \$175 + \$122$
= $\$422$

EXHIBIT 4

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

VIOLATION NO. 4 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 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 the equipment passed testing and there was no evidence of any spills or releases, so Respondent's failure to test its spill prevention and overfill prevention equipment by the deadline 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 \$250 for a Class I, minor magnitude violation in the matrix listed in OAR 340-012-0140(5)(b)(A)(iii) 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 -3 according to OAR 340-012-0145(6)(c) because Respondent made reasonable efforts to correct the violation. Respondent tested the spill bucket on July 29, 2022, and tested the overfill prevention equipment on July 7, 2023.

"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 the economic benefit Respondent gained by delaying testing was de minimis.

PENALTY CALCULATION: $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$
 $= \$250 + [(0.1 \times \$250) \times (0 + 0 + 0 + 2 - 3)] + \0
 $= \$250 + (\$25 \times (-1)) + \$0$
 $= \$250 - \$25 + \$0$
 $= \$225$