



Oregon

Tina Kotek, Governor

Department of Environmental Quality
Office of Compliance and Enforcement
700 NE Multnomah Street, Suite 600
Portland, OR 97232-4100
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March 14, 2024

CERTIFIED MAIL: 7017 1450 0000 8310 3084

Portland State University
c/o Cindy J. Starke, General Counsel
1825 SW Broadway
Portland, OR 97201

Re: Notice of Civil Penalty Assessment and Order
Case No. LQ/UST-NWR-2023-147

This letter is to inform you that DEQ has issued a total civil penalty of \$25,472 for underground storage tank (UST) violations at Portland State University's two UST systems that serve its emergency generators. The UST systems are located at the Smith Memorial Center and 1900 SW 4th Avenue. DEQ documented several violations during its inspection on October 17, 2023. DEQ has cited you for failing to have adequate release detection equipment at both facilities, failing to test the spill prevention and overfill prevention equipment at both facilities, failing to conduct line tightness testing on piping at the Smith facility, and failing to conduct annual operation and maintenance walkthrough inspections at both facilities.

DEQ issued this penalty because having proper release detection equipment installed and performing testing of piping and spill prevention and overfill prevention equipment are important to ensure that any 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 submit complete modification applications and install tank release detection equipment at both facilities within thirty (30) days, then submit required documentation within forty-five (45) days of completing the installation; complete testing of the spill prevention and overfill prevention equipment at both facilities within thirty (30) days, and conduct line tightness testing at the Smith facility within thirty (30) days.

\$16,772 of the civil penalty represents the economic benefit you gained by failing to install tank release detection equipment and conduct line tightness and spill and overfill prevention testing. If you complete these requirements, 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 – 503-229-5100

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,



Becca Puskas, Interim Manager
Office of Compliance and Enforcement

Enclosures

cc: Timothy Wright, PSU – EHS: tdw@pdx.edu
Dylan Eckert, Eugene Office, DEQ
Mark Drouin, Portland Office, DEQ

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

3 IN THE MATTER OF:) NOTICE OF CIVIL PENALTY
4 PORTLAND STATE UNIVERSITY,) ASSESSMENT AND ORDER
5 Respondent.) CASE NO. LQ/UST-NWR-2023-147

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

11 II. FINDINGS OF FACT

12 1. At all materials times, Respondent owned and was the permittee of two underground storage
13 tank (UST) systems at the Portland State University (PSU) Campus in Portland, Multnomah County,
14 Oregon.

15 2. The UST system for the Smith Memorial Center located at 1825 SW Broadway consists of
16 one UST and connected piping (Smith Facility). The UST system has a capacity of approximately
17 1,000 gallons of diesel fuel, which is a regulated substance. The tank stores diesel fuel to power an
18 emergency generator. Respondent operates the UST system under Certificate to Operate #12020.

19 3. The UST system for the building located at 1900 SW 4th Avenue consists of one UST and
20 connected piping (4th Ave. Facility). The UST system has a capacity of approximately 20,000 gallons
21 of diesel fuel. The tank stores diesel fuel to power an emergency generator. Respondent operates the
22 UST system under Certificate to Operate #6252.

23 4. On October 17, 2023, DEQ conducted an inspection of the UST systems described in
24 Paragraphs 2 and 3 above, and reviewed Respondent's records for the systems.

25 5. On October 17, 2023, the UST system at the 4th Ave. Facility did not have release detection
26 equipment installed.

27 ////

1 4. Respondent has violated OAR 340-150-0315(1)(a)(B) by failing to conduct annual operation
2 and maintenance walkthrough inspections at the Smith Facility and the 4th Ave. Facility, as alleged in
3 Section II above. These are Class II violations according to OAR 340-012-0053(2). DEQ hereby assesses a
4 \$1,200 civil penalty for these violations.

5 IV. ORDER TO PAY CIVIL PENALTY AND TO COMPLY

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

8 1. Pay a total civil penalty of \$25,472. 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 "**Oregon Department of Environmental Quality**" and sent to: **DEQ -**
12 **Business Office, 700 NE Multnomah Street, Suite 600, Portland, Oregon 97232.**

13 2. Comply with Oregon law by taking the following actions:

14 a. Within thirty (30) days of this Notice becoming final by operation of law or on
15 appeal, submit complete modification applications and install tank release detection equipment at the
16 Smith Facility and 4th Ave. Facility. Within forty-five (45) days of completing the installation, submit
17 the modification checklists, installation and testing documents, and one month of testing records;

18 b. Within thirty (30) days of this Notice becoming final by operation of law or on
19 appeal, complete testing of the spill prevention and overfill prevention equipment at the Smith Facility
20 and the 4th Ave. Facility; and

21 c. Within thirty (30) days of this Notice becoming final by operation of law or on
22 appeal, conduct line tightness testing at the Smith Facility.

23 Submit testing results and documentation to UST Inspector Dylan Eckert via email to:

24 Dylan.Eckert@deq.oregon.gov.

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

26 You have a right to a contested case hearing on this Notice, if you request one in writing. DEQ
27 must receive your request for hearing **within 20 calendar days** from the date you receive this Notice. If

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

13 Active-duty Service members have a right to stay proceedings under the federal Service
14 Members Civil Relief Act. For more information contact the Oregon State Bar at 1-800-
15 452-8260, the Oregon Military Department at 503-584-3571, or the nearest United States Armed
16 Forces Legal Assistance Office through <http://legalassistance.law.af.mil>. The Oregon Military
17 Department does not have a toll-free telephone number.

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

24
25
26 3/14/2024
Date

27 Rebecca J Puskas
Becka Puskas, Interim 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)(e).

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 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 there were more than 28 occurrences of the violation. Each day of violation is a separate occurrence. Respondent was required to have release detection for the USTs serving its emergency generators by October 1, 2020. The violation has not been corrected as of the date of this Notice, which is a duration of more than three years.

"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. In March 2019, DEQ informed Respondent of the requirement to install release detection equipment for USTs serving emergency generators, however Respondent failed to install this equipment. By continuing to operate both UST systems without functional release detection, 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 completed installation of release detection equipment for its USTs.

"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 \$15,302. This is the amount Respondent gained by avoiding spending \$15,000 to install release detection equipment for two UST systems. This "EB" was calculated pursuant to OAR 340-012-0150(1) using the U.S. Environmental Protection Agency's BEN computer model.

PENALTY CALCULATION: $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$
 $= \$1,500 + [(0.1 \times \$1,500) \times (0 + 0 + 4 + 4 + 2)] + \$15,302$
 $= \$1,500 + (\$150 \times 10) + \$15,302$
 $= \$1,500 + \$1,500 + \$15,302$
 $= \$18,302$

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 line tightness testing, in violation of OAR 340-150-0410(5).
- 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 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 line tightness testing, which is required every three years, on two occasions since November 2016.
- "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 since 2016, 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 \$287. This is the amount Respondent gained by avoiding spending \$155 per test to conduct line tightness testing in 2019 and 2022. 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 \times \$1,500) \times (0 + 0 + 2 + 4 + 0)] + \287
 $= \$1,500 + (\$150 \times 6) + \$287$
 $= \$1,500 + \$900 + \$287$
 $= \$2,687$

EXHIBIT 3

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

- VIOLATION NO. 3 Failing to initially test spill prevention and overflow prevention equipment by October 1, 2020, in violation of OAR 340-150-0310(10), and by failing to test the equipment within three years, or by October 1, 2023, in violation of OAR 340-150-0310(8)(b) and (9).
- CLASSIFICATION: These are Class I violations 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 testing on two occasions, by October 1, 2020, and by October 1, 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. 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, and every three years thereafter.

"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 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 \$1,183. This is the amount Respondent gained by avoiding spending \$650 each year to conduct spill prevention and overfill prevention equipment testing at both facilities in 2020 and 2023. 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 + 2 + 0)] + \$1,183
= \$1,500 + (\$150 x 4) + \$1,183
= \$1,500 + \$600 + \$1,183
= \$3,283

EXHIBIT 4

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

- VIOLATION NO. 4 Failing to perform an annual operation and maintenance walkthrough inspection, in violation of OAR 340-150-0315(1)(a)(B).
- CLASSIFICATION: This is a Class II violation pursuant to OAR 340-012-0053(2).
- 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 \$750 for a Class II, moderate magnitude violation in the matrix listed in OAR 340-012-0140(4)(b)(B)(ii) and applicable pursuant to OAR 340-012-0140(4)(a)(I). Respondent is the 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 an annual operation and maintenance walkthrough inspection for at least the prior year at two facilities.
- "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 walkthrough inspections, 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 \$0 because DEQ finds that the economic benefit Respondent gained by failing to conduct walkthrough inspections was de minimis.

PENALTY CALCULATION: $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$
 $= \$750 + [(0.1 \times \$750) \times (0 + 0 + 2 + 4 + 0)] + \0
 $= \$750 + (\$75 \times 6) + \$0$
 $= \$750 + \$450 + \$0$
 $= \$1,200$