Oregon

April 2, 2015

Timothy Lawson Greene & Markley, P.C. 1515 SW 5th Ave., Suite 600 Portland, OR 97201 ENVIRONMENTAL
QUALITY
COMMISSION

Re: In the Matter of M & G Collections LLC OAH Case No.1403764
DEQ Case No. LQ/UST-NWR-14-036

The Oregon Environmental Quality Commission will hear this matter as part of its next regularly scheduled meeting. This contested case is scheduled for one hour, starting at 3:30 p.m. on Wednesday, April 15. Please plan to be at the meeting space at least 15 minutes before the start of the item. The commission meeting is at DEQ's headquarters in downtown Portland: 811 SW 6th Avenue, Portland, on the 10th floor in room EQC-A.

At the start of the item, the commission's legal counsel will outline basic facts of the contested case and provide other legal procedural information for the commissioners. Following that information, you, as the respondent, will have 10 minutes to provide opening remarks. DEQ will then have 10 minute to provide its remarks for the contested case. Following opening remarks, you will have five minutes for rebuttal or clarification, and DEQ will have the same. Per administrative law, no new information not otherwise contained in the record provided to the commission may be presented by any party to the matter. The commissioners will then have the opportunity to ask informational and clarifying questions before considering the matter and issuing a decision.

The materials for this matter will be posted, with the full meeting agenda, to: http://www.oregon.gov/deq/EQC/Pages/EQCMeetings.aspx. I can also provide a paper copy, or electronic version on CD, of the materials. Please let me know what formats you prefer.

If you have any questions about this process please call me at 503-229-5301 or email me at caldera.stephanie@deq.state.or.us

Sincerely,

Stephanie Caldera

Assistant to the Oregon Environmental Quality Commission



811 SW Sixth Avenue Portland, OR 97204-1390 (503) 229-5696

GREENE & MARKLEY, P.C.

ATTORNEYS

1515 SW FIFTH AVENUE, SUITE 600 PORTLAND, OREGON 97201-5492

TELEPHONE: (503) 295-2668 FACSIMILE: (503) 224-8434 E-MAIL: email@greenemarkley.com

COPY

OFFICE OF COMPLIANCE AND ENFORCEMENT

DEPARTMENT OF ENVIRONMENTAL QUALITY

timothy.lawson@greenemarkley.com

February 17, 2015

Via Hand-Delivery
Environment Quality Commission
c/o Dick Pedersen, Director, DEQ
811 SW Sixth Avenue
Portland, OR 97204

Re: M&G Collections, LLC

OAH Case No.: 1403764

DEQ Case No. LQ/UST-NWR-14-036

Dear Mr. Pedersen:

Enclosed for filing in the above-referenced matter is Respondent's Reply to Department's Answer to Exceptions and Brief.

Very truly yours,

GREENE & MARKLEY, P.C.

Timothy A. Lawson

TAL/ljp

Enclosure

cc: S. Ward Greene, Esq. (w/encls.)

Susan M. Elworth (w/encls.)

April 15-16, 2015, EQC meeting Page 2 of 5 BEFORE THE ENVIRONMENTAL QUALITY COMMISSION 1 FOR THE STATE OF OREGON 2 3 IN THE MATTER OF: RESPONDENT'S REPLY TO DEPARTMENT'S ANSWER TO 4 M&G COLLECTIONS, LLC **EXCEPTIONS AND BRIEF** 5 Respondent, OAH No. 1403764 No. LO/UST-NWR-14-036 6 7 Respondent M&G Collections, LLC ("Respondent") respectfully submits this Reply in opposition to the Department of Environmental Quality's ("Department") Answer in response to 8 Respondent's Exceptions and Brief, filed in appeal of the Corrected Ruling on Motion for 9 Summary Determination and Proposed and Final Order ("Proposed and Final Order"). 10 ARGUMENT 11 Respondent's Exceptions do not directly challenge the ALJ's "historical findings of fact. 12 Therefore these Exceptions are outside of the "clear and convincing evidence" standard of 13 review, which only applies where the appealing party seeks to overturn an ALJ's "finding of 14 historical fact." ORS 183.650(3). An ALJ makes a "finding of historical fact" only if the ALJ 15 "determines that an event did or did not occur in the past or that a circumstance or status did or 16 did not exist either before the hearing or at the time of the hearing." ORS 183.650(3) (emphasis 17 supplied). Respondent does not seek to overturn findings of historical fact. Instead, Respondent 18 seeks to either supplement the ALJ's findings with additional facts that were omitted despite 19 briefing, as in Exceptions 1 through 3, or to challenge those findings containing conclusions of 20 law, as in Respondent's remaining Exceptions 4 through 6. Accordingly, the statute's "clear and 21 convincing" evidence is inapposite on this appeal. 22 Magnitude of the Violation: Based upon two key facts, Respondent has raised an issue 23 of material fact that its violation of the 2011 Notice was of minor magnitude. First, Respondent 24 has never operated the tanks located on the Cornelius Estby property since coming into 25 ownership in 2009, and any pollution existing on the property occurred years earlier due to the

Attachment A2

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RESPONDENT'S REPLY TO DEPARTMENT'S ANSWER TO EXCEPTIONS Page 1 -AND BRIEF

GREENE & MARKLEY, P.C. 1515 S.W. Fifth Avenue, Suite 600 Portland, OR 97201 Telephone: (503) 295-2668 FterimE=000008-8434

Attachment A2 April 15-16, 2015, EQC meeting Page 3 of 5

- acts and omissions of its former owner, Dwight Estby. Respondent's Exceptions and Brief, Page
- 4, lines 20-25, and page 5, line 1. Indeed, the UST's were drained by DEQ while Estby was in
- 3 control of the property. Respondent's Exceptions and Brief page 3, line 25 and page 4, line 1.
- 4 Thus, Respondent cannot be characterized to have contributed to any risk to human health or the
- 5 environment by its inability to fully comply with DEQ's sampling directives.
- 6 Second, Respondent provided a sampling report and an account of its environmental
- 7 consultants that the data showed only mild contamination. This report, taken together with the
- g fact that M&G has not introduced any contamination from the UST's on the Cornelius Estby
- 9 Property, creates an issue of fact on that Respondent's inability to fully comply with the 2011
- 10 Notice had anything more than a *de minimis* impact on human health and the environment.
- However, the ALJ rejected this sampling report, as well as the fact that M&G has never operated
- 12 the UST's on the Cornelius Estby property, as "not persuasive." This runs contrary to the
- 13 principle standard that facts and inferences on a summary determination motion should be
- 14 resolved in a light most favorable to the non-moving party. See ORCP 47. Accordingly, the ALJ
- 15 erred in granting DEQ's Motion for Summary Determination on this issue, and Respondent is
- entitled to a full hearing to develop the record as to the magnitude of the violation.
- 17 "M" factor: DEQ still has not carried its burden to show that Respondent had a
- 18 "conscious objective to cause the violation." Throughout this case, Respondent has raised
- 19 financial hardship as a mitigating factor for its inability to strictly comply with the terms of the
- 20 2011 Notice. Certainly, Respondent's ability to pay is relevant to its mental state, and DEQ has
- 21 either ignored or glossed over this consideration.
- Respondent's financial hardship and its struggles to achieve some measure of compliance
- 23 run counter to DEQ's contention that Respondent has acted with a "conscious objective" to
- 24 violate the 2011 Notice. Respondent has no assets besides the Cornelius Estby property, but
- 25 Respondent did, in fact, attempt to comply with the 2011 Notice as far as its meager resources
- 26 would permit. These attempts included (1) Respondent's attempts to obtain prior sampling

Page 2 - RESPONDENT'S REPLY TO DEPARTMENT'S ANSWER TO EXCEPTIONS AND BRIEF

GREENE & MARKLEY, P.C. 1515 S.W. Fifth Avenue, Suite 600 Portland, OR 97201 Telephone: (503) 295-2668 Nterim⊞ (1000009-8434 Attachment A2 April 15-16, 2015, EQC meeting Page 4 of 5

- results from its former contractor, K&S Environmental, who withheld prior sampling results
- 2 from Respondent and DEQ; and (2) Respondent's performance of groundwater sampling upon
- 3 the property, albeit apparently not to the extent necessary to fully comply with DEQ's directives.
- 4 Respondent's Exceptions and Brief, page 5 lines 11-15 and 25, and page 6, lines 1-2.
- 5 Nevertheless, DEQ has either glossed over or completely ignored these facts in its response to
- 6 Respondent's Exceptions and Brief.
- Further, the Commission should reject DEQ's argument that Respondent cannot raise
- g issues related to the "M" factor. While briefing below focused on certain specific factors, all
- 9 issues relating to the legal basis of the amount of the penalty were preserved by the denials in
- 10 Respondent's answer and its affirmative defense of Financial Hardship. In addition, under
- analogous appellate standards of review, the Court of Appeals has explained that "it is apparent
- 12 that the ordinary rules of preservation are somewhat more lax when the case turns on the
- 13 applicability and construction of a statute." State v. Smith, 184 Or App 118, 122, 55 P3d 553
- 14 (2002). Respondent has at all times raised the defense of its financial inability to comply with the
- 15 2011 Notice. Thus, Respondent has preserved its arguments that DEQ's and the ALJ's error
- 16 concerning the interpretation of the term "intentionally."
- In sum, Respondent's financial hardship impeded its ability to comply, and it made
- 18 significant efforts to marshal its limited resources to attempt to comply with the 2011 Notice.
- 19 This belies the conclusions of DEQ and the ALJ that Respondent acted "intentionally" with a
- 20 "conscious objective to cause the violation under the penalty formula. Accordingly, an issue of
- 21 fact exists as to the "M" factor which warrants a full hearing.
- 22 "EB" Factor: Respondent is not "avoiding" payment or compliance. DEQ's arguments
- for the "EB" model do not take into account the atypical facts of this case. Respondent has never
- operated the UST's on the Cornelius Estby property, and it only became owner of the property by
- 25 exercise of its right of foreclosure against Dwight Estby, the actual responsible polluter of the
- 26 property. As an insolvent, passive owner of the property, Respondent is not in the business of

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Page 5 of 5 operating UST's; instead, it merely seeks to liquidate the property. Once the property is sold, 1 Respondent will be able to comply with DEQ's demands. Nevertheless, DEQ's rigid approach 2 throughout Respondent's ownership of the property has been to punish Respondent as if it were 3 an active operator, rather than an insolvent entity who is attempting to find a purchaser who will 4 put this unused, blighted property to better use. 5 CONCLUSION 6 For these reasons, Respondent requests that the Commission find that there are genuine 7 issues of material fact as to the amount of DEQ's penalty and remand to the ALJ to permit 8 Respondent a hearing as to the appropriate amount of the penalty. 9 DATED this 17th day of February, 2015. 10 GREENE & MARKLEY, P.C. 11 12 13 S. Ward Greene, OSB #77413 ward.greene@greenemarkley.com 14 Timothy A. Lawson, OSB #134112 timothy.lawson@greenemarkley.com 15 Attorneys for Respondent 16 17 18 19 20 21 22 23 24 25

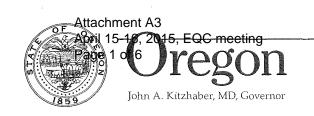
Attachment A2

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April 15-16, 2015, EQC meeting

Page 4 - RESPONDENT'S REPLY TO DEPARTMENT'S ANSWER TO EXCEPTIONS
AND BRIEF

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Department of Environmental Quality

Headquarters 811 SW Sixth Avenue Portland, OR 97204-1390 (503) 229-5696 FAX (503) 229-6124

TTY: 711

January 27, 2015

Via Hand Delivery Environmental Quality Commission c/o Stephanie Caldera 811 SW Sixth Avenue Portland, OR 97204

Re:

Department's Answer to Respondent's Exceptions and Brief

In the Matter of: M&G Collections, LLC

Case No. LQ/UST-NWR-14-036

OAH Case No. 1403764

Dear Ms. Caldera:

Please find enclosed for filing the Department's Answer to Respondent's Exceptions and Brief in the above-referenced matter.

Sincerely,

Susan M. Elworth

Environmental Law Specialist

Office of Compliance and Enforcement

Enclosure

Cc(w/encl): Timothy A. Lawson, Greene & Markley, PC, 1515 SW 5th Avenue, Suite 600,

Portland OR 97201

BEFORE THE ENVIRONMENTAL QUALITY COMMISSION 1 OF THE STATE OF OREGON 2 3 IN THE MATTER OF: DEPARTMENT'S ANSWER TO M&G COLLECTIONS, LLC, RESPONDENT'S EXCEPTIONS 4 Respondent OAH No. 1403764 5 No. LQ/UST-NWR-14-036 6 The Department of Environmental Quality (Department), submits this Answer to the 7 Environmental Quality Commission (Commission) in response to Respondent's Exceptions and 8 Brief filed in appeal of a Corrected Ruling on Motion for Summary Determination and Proposed 9 and Final Order (Proposed and Final Order). 10 I. CASE HISTORY 11 On October 25, 2011, the Department issued Respondent a Notice of Civil Penalty 12 Assessment and Order to Comply (2011 Notice) in Case No. LQ/LUST-NWR-11-104. 13 Respondent failed to request a hearing and the 2011 Notice became a final order on November 14 17, 2011. The 2011 Notice required Respondent to complete an investigation regarding the full 15 nature, magnitude and extent of soil and groundwater petroleum contamination at Respondent's 16 property and to submit an investigation report, along with other documentation. 17 On April 8, 2014, the Department issued a Notice of Civil Penalty Assessment (2014 18 Notice) to Respondent, which alleged that Respondent failed to complete the actions and submit 19 the documentation required under the 2011 Notice by the dates set forth in the 2011 Notice and 20 assessed a civil penalty of \$4,890. Respondent requested a hearing in writing on May 12, 2014. 21 On September 14, 2014, the Department filed a Motion for Summary Determination and 22 Exhibits 1 through 5. On October 24, 2014, Respondent filed a Response in Opposition to the 23 Motion and Exhibits R1 through R13. 24 On November 4, 2014, an Administrative Law Judge (ALJ) issued the Proposed and Final 25 Order which found that Respondent failed to comply with the requirements in the 2011 Notice and 26 is liable for a \$4,690 civil penalty.¹

¹ The ALJ reduced the value of the "C" factor in the civil penalty formula from 0 to -2.

Page 1 - DEPARTMENT'S ANSWER

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II. PETITIONER'S EXCEPTIONS

First, Respondent takes exceptions to Finding of Fact, paragraphs 1, 2, 5, 10 and 18 of the Proposed and Final Order. After reviewing the evidence submitted by both the Department and Respondent in the light most favorable to Respondent², the ALJ determined that the preponderance of the evidence supported the findings of fact. The Commission may not modify a finding of fact made by the ALJ unless it determines that there is clear and convincing evidence in the record that the finding was wrong. ORS 183.650(3). Respondent did not provide sufficient evidence to show that the findings of fact in the Proposed and Final Order are not supported by a preponderance of the evidence, a lower standard than clear and convincing.

Secondly, Respondent takes exception to the ALJ's ruling that there are no genuine issues of material fact in regards to the amount of the civil penalty and requests that the Commission remand the case to the ALJ for a hearing in regards to the magnitude of the violation, and the "M" and "EB" factors. Respondent admits that it did not comply with the 2011 Notice, so there is no issue as to whether the violation occurred. See Respondent's Exceptions and Brief, page 5, line 20-21.

Under OAR Chapter 340, Division 012, the formula for determining the amount of a civil penalty takes into consideration factors including prior enforcement actions, whether the violation was repeated or on-going, the cause of the violation, the person's cooperativeness in correcting or mitigating the violation, and any economic benefit gained by either delaying or avoiding the cost of compliance. OAR 340-012-0145. The Department must first determine the class and magnitude of the violation to determine the base penalty. The Department then increases or decreases the amount of the base penalty by application of the formula which is BP = $[(.1 \times BP) \times (P + H + O + M + C)] + EB. OAR 340-012-0045.$

Magnitude: Respondent argues that the ALJ erred when ruling that there is no genuine issue of material fact in regards to the magnitude of the violation. Specifically, Respondent argues

² An ALJ shall grant a motion for summary determination if, considering all evidence in a manner most favorable to the non-moving party, the record shows that: 1) there is no genuine issue as to any material fact that is relevant to resolution of the legal issues, and 2) the moving party is entitled to a favorable ruling as a matter of law. OAR 137-003-0580. CASE NO. LQ/UST-NWR-E4000014

Page 2 -DEPARTMENT'S ANSWER

that the "ALJ erred in by finding that Respondent's evidence proffered in support of contention that its violation had a de minimis effect on human health of the environment was not credible."

Respondent's Exceptions and Brief, page 5. In fact, the ALJ made no determination on the credibility of either the Department's or Respondent's evidence and instead stated:

the evidence in the record is **insufficient** to determine if Respondent's violation had a significant adverse impact on human health or the environment, or had no more than a de minimis adverse impact on human health or the environment.

The ALJ then goes on to suggest a type of evidence that could create a genuine issue of material fact such as "an affidavit from the mechanical engineer, that the violation had no more than a de minimis adverse impact on human health or the environment". *Proposed and Final Order, page* 19.

Proposed and Final Order, page 18, emphasis added.

Respondent also argues that Exhibit R11 shows that there is a genuine issue of material fact because it is "an account of the opinion of the environmental consultants who performed the analysis that the Property is "relatively clean" …, and that petroleum concentrations were lower than anticipated". *Respondent's Exceptions and Brief, page 5.* As suggested by the ALJ, such an opinion could have created a genuine issue of material fact, thus entitling Respondent to a hearing. But in fact, Exhibit R11 contains no such account or opinion by the consultant.

Finally, Respondent argues that the ALJ erred when she failed to place the burden of proof regarding magnitude on the Department. *Respondent's Exceptions and Brief, page 5*. In the instance of magnitude, OAR 340-012-0130(1) states that if OAR 340-012-0135 does not specify a magnitude for the specific violation, then the magnitude is moderate unless the Department has evidence showing that the magnitude should be major or minor. Respondent has the burden of proving the magnitude should be different than the magnitude alleged by the Department. *OAR 340-012-0130(2)*. The specific violation in this case is not listed in OAR 340-012-0135, thus it has a presumptive magnitude of moderate. The ALJ correctly ruled that the Department is not required to prove that the violation does not meet the criteria of either minor or major, instead that burden is upon Respondent. *Proposed and Final Order, page 18*.

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"M"Factor: Respondent argues that the ALJ erred when determining that there is no genuine issue of material fact in regards to the "M" factor in the civil penalty formula. Specifically, Respondent argues that the value of 8 upheld by the ALJ "ignores the fact that Respondent did in fact, perform an investigation on the Property's soil and groundwater." See Respondent's Exceptions and Brief, page 6. First, Respondent misstates the facts in the record. Although Respondent performed some groundwater sampling in 2012, there is no factual issue regarding whether or not Respondent completed an investigation regarding the full nature, magnitude and extent of soil and groundwater contamination, thus complying with the 2011 Notice. See Respondent's Exceptions and Brief, page 5, line 20-21. Secondly, Respondent misconstrues the facts which would support an "M" factor of 8, which denotes when a person intentionally acted or failed to act with actual knowledge of the requirement. Intentional is defined as acting "with a conscious objective to cause the result of the conduct." OAR 340-012-0030(13). The ALJ correctly ruled that Respondent knew of the requirements in the 2011 Notice and because of that knowledge, consciously failed to comply with the 2011 Notice.

Additionally, Respondent's request to have the Commission remand the case in regards to the "M" factor should be denied on equity grounds. Respondent failed to raise any arguments in regard to the "M" factor when presented with two prior chances to do so. At this late date, it should not now be allowed to do so.³

"EB" Factor: Respondent argues that the ALJ erred when determining that there is no genuine issue of material fact in regards to the "EB" factor in the civil penalty formula. The "EB" factor represents the approximate dollar sum that could be gained through noncompliance, and is calculated using the U.S. Environmental Protection Agency's BEN computer model. OAR 340-012-0150. One purpose of the EB factor is to put the entity in the same position as someone who did comply in a timely manner. The other equally important purpose is to deter potential

³ Respondent had twenty days to file a request for hearing that either admitted or denied all the facts alleged in the 2014 Notice and incorporated exhibit, otherwise those facts are admitted. OAR 340-011-0530. Respondent's request for hearing raised no issue in regards to the "M" factor. In Respondent's Response in Opposition to the Motion for Summary Determination, Respondent did not raise any argument in regard to the "M" factor. CASE NO. LQ/UST-NWR-14-036 Item E 000016

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violators from deciding it is cheaper to violate and pay the penalty than to pay the costs of compliance. The "EB" factor is intended to make all entities financially indifferent to complying.

Specifically, Respondent argues that because "it has no assets beyond the Property itself", that an issue of fact exists on whether or not an "EB" factor is appropriate. *See Respondent's Exceptions and Brief, page* 7. The financial condition of an entity is not a fact at issue when determining the value of the "EB" factor. The "EB" factor is determined by inputting costs into the BEN computer model. *OAR 340-012-0150(1)*. Additionally, the law only allows the Department the discretion to not assess the "EB" factor if the calculation is de minimis or there is insufficient information on which to make an estimate of the costs. *OAR 340-012-0150(3)*. Neither of those circumstances is present in this case. A Nor has Respondent pointed to any law, past cases or agency policy to support its contention that the Department cannot or should not assess the "EB" factor when a person is not profitable. The facts and the law support the finding that Respondent was appropriately assessed an "EB" factor.

IV. CONCLUSION

In conclusion, the ALJ, after reviewing all the evidence in the record in a light most favorable to Respondent, determined that there are no genuine issues of material fact in dispute regarding whether the violation occurred or the amount of the civil penalty, and as a matter of law, the Department is entitled to a ruling upholding the violation and the civil penalty. As such, the Department requests that the Commission deny Respondent's request to remand the matter to the ALJ for a hearing and instead uphold the Proposed and Final Order.

1/21/15 Susan M. El

Environmental Law Specialist

⁴ The Department's Internal Management Directive on the Penalty Factor for Economic Benefit states that de minimis means that the calculation under the BEN model is less than \$10. The Department used the actual or estimated cost of compliance in calculating the EB factor.

Jan. 16, 2015

Timothy Lawson Greene & Markley, P.C. 1515 SW 5th Ave., Suite 600 Portland, OR 97201 Oregon

ENVIRONMENTAL

QUALITY

COMMISSION

Re: In the Matter of M & G Collections LLC

OAH Case No.1403764

DEQ Case No. LQ/UST-NWR-14-036

The Oregon Environmental Quality Commission received your exceptions and brief related to the proposed order in the matter referenced above Jan. 2, 2015. Your materials were filed in a timely manner. This letter is a confirmation of receipt and notification of process.

DEQ now has until 5 p.m. on Feb. 2, 2015, to submit its answering brief in this matter. Please note, the answering brief is not required in the contested case process and has no bearing on this matter moving forward. Once both parties have filed all briefs in this process, this case will be scheduled at a regular commission meeting.

If you have any questions about this process please call me at 503-229-5301.

Sincerely,

Stephanie Caldera

Assistant to the Oregon Environmental Quality Commission

Cc: BY HAND DELIVERY - Susan Elworth, Oregon Department of Environmental Quality



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Attachment A5 April 15-16, 2015, EQC meeting Page 1 of 10

GREENE & MARKLEY, P.C.



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timothy.lawson@greenemarkley.com

COPY

January 2, 2015

Via Hand-Delivery

Environment Quality Commission c/o Dick Pedersen, Director, DEQ 811 SW Sixth Avenue Portland, OR 97204

Re:

M&G Collections, LLC

OAH Case No.: 1403764

DEQ Case No. LQ/UST-NWR-14-036

Dear Mr. Pedersen:

Enclosed for filing in the above-referenced matter is Respondent's Exceptions and Brief.

Very truly yours,

GREENE & MARKLEY, P.C.

Timothy A. Lawson

TAL/ljp

Enclosure

cc:

S. Ward Greene, Esq. (w/encls.)

Susan M. Elworth (w/encls.) (via first class, certified mail and email)

Attachment A5

April 15-16, 2015, EQC meeting

1		was the ex-husband of one of Respondent's members, Ethel Meyers. (Ex. R1.)
2		At that time, the UST system was still located on the Property (Ex. 1), but was not
3		being actively operated and had been pumped out by DEQ (Ex. R1.) The UST's
4		remained dry and inoperative throughout Respondent's ownership of the Property.
5		(Ex. R9, R10.)"
6	3.	Respondent objects to Finding of Fact, paragraph 5 as incomplete and proposes an
7	alternative finding:	
8		"In October and November 2009, May, August and December 2010, and February
9	-	and April 2011, DEQ sent Respondent letters reqesting the Respondent conduct
10		an investigation to determine the full nature, magnitude and extent of the
11		contamination caused by the UST system. The letters also requested that
12		Respondent submit the information required by OAR 340-122-0240(3) for any
13		field work completed by Respondent. (Ex. 1.) Respondent replied to these letters
14		by explaining Respondent's inability to otherwise raise funds to pay for this
15		testing (Ex. R8, R9), and Respondent also informed DEQ that K&S
16		Environmental, Inc. ("K&S"), an environmental consulting company, had
17		performed an investigation on the Property but refused to turn over results to
18		Respondent. (Ex. R8, R9.)"
19	4.	Respondent objects to Finding of Fact, paragraph 10 on the basis that it contains
20	conclusions o	f law and is incomplete and proposes an alternative finding:
21		"In March 2013, Respondent submitted a report to DEQ summarizing a
22		groundwater sampling event which occurred in December 2012. The report was
23		submitted past the deadline in the Final Order, but DEQ was at all times informed
24		as to the primary reason for the delay. K&S, who had performed sampling work
25		on the Property since before Respondent took title to the Property (Ex. R5), held

Page 2 - RESPONDENT'S EXCEPTIONS AND BRIEF

1		out on turning over results despite Respondent's partial payment of R&S sitees
2		and K&S filing a lien against the Property to protect its right to payment. (Ex. R6
3		R7, R8.) Respondent requested DEQ's assistance in requiring K&S, an
4		environmental consultant who regularly performs DEQ compliance work, to
5		demand that it turn over any information that it withheld form Respondent and
6		DEQ, but this request went unheeded. (Ex. R9.)"
7	5.	Respondent objects to Finding of Fact, paragraph 18 on the basis that it is based
8	upon an erroneous or unreasonable finding by DEQ and proposes an alternative finding:	
9		"Respondent received no economic benefit in light of the fact that it never
10		operated the USTs on the Property or conducted any other business on the
11		Property."
12	6.	Respondent objects to Conclusion of Law, paragraph 2 as unsupported by fact and
13	proposes an alternative conclusion:	
14		"Respondent shall pay a civil penalty in the modified amount of \$400."
15		BRIEF
16	I.	Background Facts
17	Respo	ndent is the reluctantowner of a decommissioned gas station in Cornelius, Oregon,
18	containing underground storage tanks ("UST") referred to by the Department ("DEQ") as	
19	Cornelius Estby (the "Property"). Respondent has never operated the station, it merely obtained	
20	the property via foreclosure against Dwight Estby. (Ex. R1, pg. 1.) Estby, through his business	
21	entities, operated a gas station on the Property. DEQ undertook enforcement action against Estby	
22	while his business entities were in possession of the Property, (Ex. R2 R4, R12.), but it is	
23	unknown to Respondent whether DEQ has attempted to collect from Estby after his interest in	
24	the Property was foreclosed. (See Ex. R3)	
25	The tanks on the Property were drained by DEQ before Respondent obtained title to the	
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Page 3 - RESPONDENT'S EXCEPTIONS AND BRIEF

- 1 Property, and Respondent has never utilized the tanks or operated any business on the Property.
- 2 (Ex. R1, R4, R9, R10.) Besides the Property, Respondent has no assets and generates no
- 3 revenue. Resondent's sole business activity has been to list the Property and seek an enterprising
- 4 buyer with the means to correct whatever environmental issues the Property may have.
- 5 (Department's Motion for Summary Adjudication, Ex. 5, pgs. 2-3.)

6 II. The Modified Penalty Amount is Unsupported by the Facts of this Case

- 7 Respondent's chief issue on this appeal is straightforward, that being that the
- 8 Administrative Law Judge (ALJ) erred by finding that no issue of fact exists as to Magnitude of
- 9 the Violation or the other factors underlying the penalty amount.
- A. Any Violation That May Have Occurred was Minor in Magnitude.
- Where no magnitude is specified for a particular violation, the standards set forth in OAR
- 12 340-012-00130 control the determination of the magnitude of the violation. In particular,
- subsection (4) of this rule informs the determination that a minor magnitude occurred:
- 14 (4) The magnitude of the violation is minor if 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 or the environment. In
- posed no more than a de minimis threat to human health or the environment. In making this finding, DEQ will consider all reasonably available information
- including, but not limited to: the degree of deviation from applicable statutes or
- commission and DEQ rules, standards, permits or orders; the extent of actual or threatened effects of the violation; the concentration, volume, or toxicity of the
- materials involved; and the duration of the violation.
- In this case, whatever harm may have arisen from Respondent's noncompliance was
- 20 clearly de minimis. At no time has Respondent operated the USTs located upon the Property, nor
- 21 did it ever engage in any meaningful activity on the Property. At all times, DEQ was aware that
- the site was shut down while Respondent has been in possession, and DEQ is also privy to the
- fact that that the USTs are dry. (Ex. R10.) Whatever pollution exists on the Property occurred
- due to the acts and ommissions of Dwight Estby. (Ex. R2, R4, R12.) Thus, there has been no
- 25 possibility for any new contamination to have occurred since DEQ issued the 2011 Notice, nor

Page 4 - RESPONDENT'S EXCEPTIONS AND BRIEF

18

Attachment A5 April 15-16, 2015, EQC meeting Page 6 of 10

was there any heightened risk to human health or the environment. 1 The ALJ erred in by finding that Respondent's evidence proffered in support of 2 contention that its violation had a de minimis effect on human health of the environment was not 3 credible. The ALJ justified the disregard of this evidence by stating that the evidence was 4 unreliable without an opinion from the mechanical engineer involved in the sampling. (Opinion, 5 p. 20.) However, this is insufficient to find that no issue of material fact existed as to the 6 violation. 7 By reference to analogous summary judgment standards under ORCP 47, the ALJ should 8 have resolved the facts in the light most favorable to the non-moving party. In its Motion for 9 Summary Determination, DEQ merely rested on its laurels and asserted that Respondent had the 10 burden of producing evidence that its violation was a minor magnitude. In its response, 11 Respondent produced a full sampling report and an account of the opinion of the environmental 12 consultants who performed the analysis that the Property is "relatively clean," with the data 13 showing only mild contamination, and that petroleum concentrations were lower than 14 anticipated. (Ex. R11.) Rather than giving weight to this evidence, the ALJ treated it as a non-15 factor in the summary judgment analysis and made a sweeping ruling denying Respondent any 16 opportunity to be heard and to present a fully developed record on this issue at a hearing. This 17 commission should find otherwise and remand for a hearing on the disputed issue of the effect on 18 19 human health and the environment

Finally, there was nothing untoward about Respondent's conduct above and beyond the
bare fact that it could not comply with the 2011 Notice. Respondent has been completely
forthright with DEQ about its financial condition and its objective for the Property. This
objective is simple; Respondent seeks to sell the Property to an acceptable buyer, who would
necessarily have the resources and the will to work with DEQ to perform whatever cleanup is
necessary on the Property, through a Prospective Purchaser Agreement or otherwise. DEQ also

Page 5 - RESPONDENT'S EXCEPTIONS AND BRIEF

knew that Respondent could not comply due to the strong arm tactics of K&S Environmental, 1 who withheld its results to the detriment of DEQ, Respondent, and the public. (Ex. R6, R7, R8.) 2 In sum, the ALJ's finding on the "Magnitude of Violation" issue is erroneous under the 3 facts of this case. Taken together, Respondent's lack of culpability in causing or contributing to 4 any petroleum release on the Property, the mild existing contamination of the soil and 5 groundwater, and Respondent's good faith in dealing with DEQ, contravenes this harsh finding 6 that any alleged violation on the part Respondent's was a moderate magnitude. Accordingly, the 7 issues of fact on this ground alone justifies remand for a full hearing on the amount of the 8 penalty. 9 B. The ALJ's Findings Underlying the Penalty Calculation are Erroneous. 10 Other genuine and material issues of fact remain with respect to the "aggravating and 11 mitigating factors" affecting the amount of the penalty. These include Respondent's mental 12 state, OAR 340-012-0145(5), and the economic benefit of noncompliance, OAR 340-012-0150. 13 First, the ALJ's assignment of a "8" to Respondent's mental state (the "M" under OAR 14 340-012-0145(5) and OAR 340-012-0150) is completely unjustified. This determination that 15 Respondent had a "conscious objective to cause the violation" borders on arbitrary and absurd, 16 and this finding ignores the fact the Respondent did in fact, perform an investigation on the 17 Property's soil and groundwater. DEQ knew that Respondent had been stymied in providing 18 results for prior sampling performed on the property by K&S, its contractor. This finding also 19 does not take into account Respondent's good faith efforts to come up with the money to attempt 20 some measure of compliance with the 2011 Notice in spite of its poor financial condition. 21 Instead, a "0" value is more appropriate, OAR 340-012-0145(5)(a), because, at DEQ has not 22 carried its burden to show any measure of mental culpability on the part of Respondent, and 23 certainly not to any extent necessary to show no disputed issue of material fact for purposes of 24 Summary Determination. 25 26

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Second, the "Economic Benefit" determination is similarly flawed. Respondent has not
 1
     "avoided" payment by any conventional definition; it has been unable to pay for the simple
2
     reason that it has no assets beyond the Property itself. In addition, Respondent has never
 3
     indicated that it intends to shirk any responsibilities. Indeed, at all times, Respondent has told
4
     DEQ that it will comply with DEQ's directives once it has the funds to do so. (Ex. 5, pages 12-
 5
     13.) Respondent has never operated the tanks on the Property; it is merely a passive owner
 6
     seeking to liquidate the Property. Any economic benefit should be found to be de minimis.
7
            Under Respondent's proposed alternative findings of fact and conclusions of law, the
8
     penalty should be calculated as follows under the formula set forth in OAR 340-012-0045(2)(e):
9
                    BP + [(0.1 \times BP) \times (P + H + O + M + C)] + EB
10
                    250 + [(0.1 \times 250) \times (4 + 0 + 4 + 0 + (-2)] + 0
                    250 + (25) \times (6) + 0
11
                    $250 + $150 + $0
                    $400
12
            At all times, Respondent has been forthcoming with DEQ about its financial condition.
13 (
     On multiple occasions, DEQ has apparently spurned Respondent's proposal to aid DEQ in
14
     pursuing the polluter who was the actual cause of the Property's condition, that party being
15
     Dwight Estby. DEQ decided to ignore the polluter and proceeded to hammer an entity which
16
     was owed money by Estby (Ex. R1) with no assets beyond the Property and no ability to pay.
17
     Respondent's honesty and attempts to work with DEQ have been met only with aloofness and
18
     punishment, and its fixation with penalizing Respondent, without more, will do nothing to
19
     achieve compliance with its UST program. The only thing that additional penalties will achieve
20
     is to spook any potential buyers from purchasing the Property. Without a purchaser, the Property
21
     will remain as it is, unused and blighted, and it will eventually end up in foreclosure.
22
    ///
23
24
25
            <sup>1</sup> DEQ was well informed that Dwight Estby was the cause of whatever environmental
    issues are present on the Property. [See Ex. R2, R10, R12.]
26
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Page 7 - RESPONDENT'S EXCEPTIONS AND BRIEF

1

2	For these reasons, Respondent respectfully requests that the Commission find that there
3	are genuine issues of material fact as to the amount of DEQ's penalty. In particular, DEQ's
4	findings, as modified by the ALJ's Opinion, concerning the magnitude of the violation and the
5	civil penalty formula are erroneous and should be rejected by this tribunal. Accordingly,
6	Respondent is entitled to an administrative hearing on these issues, and the Commission should
7	remand this case for a full hearing on the amount of the penalty.
8	Dated this 2nd day of January, 2015.
9	GREENE & MARKLEY, P.C.
10	
11	By S. Ward Greene, OSB #77413
12	ward Greene, OSB #77419 ward greene@greenemarkley.com Timothy A. Lawson, OSB #134112
13	timothy.lawson@greenemarkley.com Attorneys for Respondent
14	Attorneys for respondent
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CONCLUSION

26

Attachment A5



Dec. 12, 2014

Timothy Lawson Greene & Markley, P.C. 1515 SW 5th Ave., Suite 600 Portland, OR 97201 ENVIRONMENTAL
QUALITY
COMMISSION . .

Re: In the Matter of M & G Collections LLC OAH Case No.1403764

DEQ Case No. LQ/UST-NWR-14-036

The Oregon Environmental Quality Commission received your petition for commission review of the proposed order in the matter referenced above Dec. 3, 2014. Your materials were filed in a timely manner.

Please note that your Exceptions and Brief, a required filing in this contested case process, is due within 30 days of your filing for review. The brief must be received at DEQ no later than 5 p.m. on Friday, Jan. 2, 2015.

A copy of the Oregon administrative rules guiding this contested case process is enclosed with this letter. Once both parties have filed all briefs in this process, this case will be scheduled at a regular commission meeting.

If you have any questions about this process please call me at 503-229-5301.

Sincerely,

Stephanie Caldera

Assistant to the Oregon Environmental Quality Commission

Enclosure: Copy of OAR 340-011-0575

Cc: BY HAND DELIVERY - Susan Elworth, Oregon Department of Environmental Quality



811 SW Sixth Avenue Portland, OR 97204-1390 (503) 229-5696

GREENE & MARKLEY, P.C.

ATTORNEYS

1515 SW FIFTH AVENUE, SUITE 600 PORTLAND, OREGON 97201-5492

TELEPHONE: (503) 295-2668 FACSIMILE: (503) 224-8434 E-MAIL: email@greenemarkley.com

timothy.lawson@greenemarkley.com

December 3, 2014

Via Facsimile and E-mail

Environment Quality Commission c/o Dick Pedersen, Director, DEQ 811 SW Sixth Avenue Portland, OR 97204

Re:

M&G Collections, LLC

OAH Case No.: 1403764

DEQ Case No. LQ/UST-NWR-14-036

Dear Mr. Pedersen:

Enclosed for filing in the above-referenced matter is Respondent's Petition for Review.

Very truly yours,

GREENE & MARKLEY, P.C.

mnan Luwson

Timothy A. Lawson

TAL/ljp Enclosure

cc: S. Ward Greene, Esq. (w/encls.)

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2						
3						
4						
5	BEFORE THE ENVIRONMENTAL QUALITY COMMISSION					
6	FOR THE STATE OF OREGON					
7	IN THE MATTER OF: OAH Case No.: 1403764 DEC Grap No.: 1403764					
8	M & G COLLECTIONS LLC DEQ Case No.: LQ/UST-NWR-14-036 DEQ Case No.: LQ/UST-NWR-14-036					
9) RESPONDENT'S PETITION FOR Respondent,) REVIEW					
10						
11						
12	appealing the "Corrected Ruling on Motion for Summary Determination and Proposed and Final					
13	Order" that was issued by the Office of Administrative Hearings in the above captioned					
14	proceeding.					
15	Respondent intends that the Commission review the proposed order, and Respondent will					
16	file written exceptions and a brief with the Commission pursuant to OAR 340-011-0575(4).					
17	DATED this 3 rd day of December, 2014.					
18	GREENE & MARKLEY, P.C.					
19						
20	By lime the lower fawar S. Ward Greene, OSB #77413					
21	<u>ward.greene@greenemarkley.com</u> Timothy A. Lawson, OSB #134112 tim.lawson@greenemarkley.com					
22						
23	Attorneys for M & G Collections LLC					
24	\G:\Clients\6604\P M&G Petition for Review.wpd					
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Page 1 - M&G COLLECTION, LLC'S PETITION FOR COMMISSION REVIEW

GREENE & MARKLEY, P.C.

ATTORNEYS

1515 SW FIFTH AVENUE, SUITE 600 PORTLAND, OREGON 97201-5492

TELEPHONE: (503) 295-2668 FACSIMILE: (503) 224-8434 E-MAIL: email@greenemarkley.com

timothy.lawson@greenemarkley.com

December 3, 2014

Via Facsimile and E-mail

Environment Quality Commission c/o Dick Pedersen, Director, DEQ 811 SW Sixth Avenue Portland, OR 97204

Re:

M&G Collections, LLC OAH Case No.: 1403764

DEQ Case No. LQ/UST-NWR-14-036

Dear Mr. Pedersen:

Enclosed for filing in the above-referenced matter is Respondent's Petition for Review.

Very truly yours,

GREENE & MARKLEY, P.C.

Timothy A. Lawson

TAL/ljp Enclosure

cc: S. Ward Gree

S. Ward Greene, Esq. (w/encls.)

1					
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3					
4					
5	BEFORE THE ENVIRONMENTAL QUALITY COMMISSION				
6	FOR THE STATE OF OREGON				
7 8 9	IN THE MATTER OF: OAH Case No.: 1403764 DEQ Case No.: LQ/UST-NWR-14-036 M & G COLLECTIONS LLC RESPONDENT'S PETITION FOR REVIEW				
11	Respondent M & G Collections LLC respectfully submits this Petition for Review				
12					
13					
14	proceeding.				
15	Respondent intends that the Commission review the proposed order, and Respondent wil				
16	file written exceptions and a brief with the Commission pursuant to OAR 340-011-0575(4).				
17	DATED this 3 rd day of December, 2014.				
18	GREENE & MARKLEY, P.C.				
19					
20	S. Ward Greene, OSB #77413				
21					
22	Timothy A. Lawson, OSB #134112 <u>tim.lawson@greenemarkley.com</u> Attorneys for M & G Collections LLC				
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24	\G:\Clients\6604\P M&G Petition for Review.wpd				
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Page 1 - M&G COLLECTION, LLC'S PETITION FOR COMMISSION REVIEW

BEFORE THE OFFICE OF ADMINISTRATIVE HEARINGS STATE OF OREGON for the ENVIRONMENTAL QUALITY COMMISSION

IN THE MATTER OF:) CORRECTED RULING ON MOTION) FOR SUMMARY DETERMINATION,) AND PROPOSED AND FINAL ORDER ¹	
)	
M & G COLLECTIONS, LLC,) OAH Case No.: 1403764	
Respondent) Agency Case No.: LQ/UST-NWR-14-036	

HISTORY OF THE CASE

On April 8, 2014, the Department of Environmental Quality for the State of Oregon (DEQ or Department) issued a Notice of Civil Penalty Assessment and Order to M & G Collections, LLC (Respondent). On May 12, 2014, Respondent filed a request for hearing.

On June 27, 2014, DEQ referred the hearing request to the Office of Administrative Hearings (OAH). Senior Administrative Law Judge (ALJ) Bernadette Bignon was assigned to preside at hearing.

On August 27, 2014, a prehearing telephone conference was held. ALJ Bignon presided. Kieran O'Donnell, appearing on behalf of Susan Elworth, represented DEQ. S. Ward Greene, Attorney at Law, represented Respondent. Hearing was scheduled for December 2, 2014.

On September 25, 2014, Susan Elworth filed DEQ's Motion for Summary Determination (Motion) and Exhibits 1 through 5. On October 23, 2014, the case was reassigned to Senior ALJ Dove L. Gutman to issue the Ruling on the Motion for Summary Determination. On October 24, 2014, Mr. Green filed Respondent's Response in Opposition to the Motion and Exhibits R1 through R13.

ISSUES

- 1. Whether Respondent failed to comply with DEQ's Final Order in Agency Case No. LQ/LUST-NWR-11-104.
 - 2. Whether Respondent shall pay a civil penalty in the amount of \$4,890.

¹ Pursuant to OAR 137-003-0655(1), ALJ Gutman is issuing this Corrected Ruling on Motion for Summary Determination, and Proposed and Final Order to correct a citation on page 23 of the opinion. The incorrect portion of the citation is stricken through and in bold.

DOCUMENTS CONSIDERED

The following documents were reviewed and considered: DEQ's Motion for Summary Determination, Exhibits 1 through 5, Respondent's Response in Opposition to the Motion, and Exhibits R1 through R13.

LEGAL STANDARD FOR SUMMARY DETERMINATION

Motions for Summary Determination are governed by OAR 137-003-0580, which provides, in pertinent part:

- (1) Not less than 28 calendar days before the date set for hearing, the agency or a party may file a motion requesting a ruling in favor of the agency or party on any or all legal issues (including claims and defenses) in the contested case. The motion, accompanied by any affidavits or other supporting documents, shall be served on the agency and parties in the manner required by OAR 137-003-0520.
- (2) Within 14 calendar days after service of the motion, the agency or a party may file a response to the motion. The response may be accompanied by affidavits or other supporting documents and shall be served on the agency and parties in the manner required by OAR 137-003-0520.
- (3) The administrative law judge may establish longer or shorter periods than those under section (1) and (2) of this rule for the filing of motions and responses.

- (6) The administrative law judge shall grant the motion for a summary determination if:
- (a) The pleadings, affidavits, supporting documents (including any interrogatories and admissions) and the record in the contested case show that there is no genuine issue as to any material fact that is relevant to resolution of the legal issue as to which a decision is sought; and
- (b) The agency or party filing the motion is entitled to a favorable ruling as a matter of law.
- (7) The administrative law judge shall consider all evidence in a manner most favorable to the non-moving party or non-moving agency.

- (8) Each party or the agency has the burden of producing evidence on any issue relevant to the motion as to which that party or the agency would have the burden of persuasion at the contested case hearing.
- (9) A party or the agency may satisfy the burden of producing evidence through affidavits. Affidavits shall be made on personal knowledge, establish that the affiant is competent to testify to the matters stated therein and contain facts that would be admissible at the hearing.
- (10) When a motion for summary determination is made and supported as provided in this rule, a non-moving party or non-moving agency may not rest upon the mere allegations or denials contained in that party's or agency's notice or answer, if any. When a motion for summary determination is made and supported as provided in this rule, the administrative law judge or the agency must explain the requirements for filing a response to any unrepresented party or parties.
- (11) The administrative law judge's ruling may be rendered on a single issue and need not resolve all issues in the contested case.
- (12) If the administrative law judge's ruling on the motion resolves all issues in the contested case, the administrative law judge shall issue a proposed order in accordance with OAR 137-003-0645 incorporating that ruling or a final order in accordance with OAR 137-003-0665 if the administrative law judge has authority to issue a final order without first issuing a proposed order.

FINDINGS OF FACT

Background

- 1. In 2006, DEQ received a report that petroleum products had been released from an underground storage tank (UST) system used to store and dispense petroleum products located at 1021 East Baseline Street in Cornelius, Oregon (the Property). The Property was placed on DEQ's Leaking Underground Storage Tank Facility List. (Ex. 1.)
- 2. On May 18, 2009, M & G Collections, LLC (Respondent), became the owner of the Property. At that time, the UST system was still located on the Property and was not being actively operated. (*Id.*)
- 3. In August 2009, a groundwater sample was collected from monitoring well #1 located on the Property, which showed significant increase in a number of gasoline constituents from the

previous sample collected from this well. (Id.)

- 4. In November 2009, DEQ received a verbal report that soil samples had been collected from property south and west of the Property. (*Id.*)
- 5. In October and November 2009, May, August and December 2010, and February and April 2011, DEQ sent Respondent letters requesting that Respondent conduct an investigation to determine the full nature, magnitude and extent of the contamination caused by the UST system. The letters also requested that Respondent submit the information required by OAR 340-122-0240(3) for any field work completed by Respondent by certain dates. (*Id.*)

2011 Notice and Order to Comply

6. On October 25, 2011, DEQ issued to Respondent a Notice of Civil Penalty Assessment and Order to Comply (Notice and Order to Comply) in Agency Case No. LQ/LUST-NWR-11-104 that stated, in pertinent part:

I. AUTHORITY

This Notice of Civil Penalty Assessment and Order to Comply is issued pursuant to Oregon Revised Statutes (ORS) 468.100 and 468.126 through 468.140, ORS 466.706 through 466.835, ORS 466.994, ORS Chapter 183 and Oregon Administrative Rules (OAR) Chapter 340, Divisions 011, 012, 122 and 150.

II. FINDINGS OF FACT

- 1. In 2006, DEQ received a report that petroleum products had been released from an underground storage tank (UST) system used to store and dispense petroleum products located at 1021 East Baseline Street in Cornelius, Oregon (the Property). The Property was placed on DEQ's Leaking Underground Storage Tank Facility list.
- 2. On March 10, 2009, DEQ issued a General Permit Registration Temporary Closure Certificate (Certificate) for the UST system located on the Property. The Certificate expired on March 10, 2010.
- 3. On or about May 18, 2009, Respondent became the owner of the Property.
- 4. At the time that Respondent became the owner of the Property, the UST system was still located on the Property and not being actively operated.

- 5. Groundwater samples were collected from monitoring wells located on the Property on three occasions in 2008 and 2009, specifically in July 2008, October 2008 and August 2009.
- 6. In August 2009, the sample collected from monitoring well #1 showed significant increase in a number of gasoline constituents from the previous sample collected from this well.
- 7. In November 2009, DEQ received a verbal report that soil samples had been collected from the property south and west of the Property.
- 8. In October and November 2009, May, August and December 2010, and February and April 2011, DEQ sent Respondent letters requesting that Respondent conduct an investigation to determine the full nature, magnitude and extend of the contamination caused by the UST system. Additionally, the letters requested that Respondent submit the information required by OAR 340-122-0240(3) for any field work completed by Respondent by certain dates.
- 9. As of the date of this Notice, DEQ has not received a written report that includes the information required by OAR 340-122-0240(3), regarding the work completed in November 2009 or sufficient information determining the full nature, magnitude and extent of contamination caused by the UST system.
- 10. The last financial responsibility mechanism provided to DEQ regarding the UST system expired on December 21, 2009.
- 11. As of the date of this Notice, DEQ has not received, from Respondent, a complete application for temporary closure, the permit fee or evidence of a current, valid financial responsibility mechanism or evidence that the UST system has been permanently decommissioned.
- 12. As of the date of this Notice, DEQ has not received, from Respondent, a complete modification application as required by OAR 340-150-0052.

III. CONCLUSIONS

1. Since August 2009, Respondent has violated OAR 340-122-0217(1)(c) and OAR 340-122-0240(1) by failing to initiate and complete an investigation to determine the full nature, magnitude and extent of soil and groundwater contamination at the Property,

as alleged in Section II, paragraphs 5, 6, 7 and 8 above. Specifically, Respondent has failed to conduct quarterly groundwater monitoring when groundwater contamination has migrated beyond the immediate vicinity of the tank pit. Additionally, Respondent has failed to collect a sufficient number of soil samples. Respondent is responsible for completing this requirement since it is the owner of the UST system as defined in ORS 466.706(14). These are Class I violations pursuant to OAR 340-012-0074(1)(b). DEQ hereby assesses a \$25,565 civil penalty for these violations.

- 2. Since March 2009, Respondent has violated OAR 340-150-0167 by failing to obtain the appropriate general permit registration before operating an UST system in temporary closure, as alleged in Section II, paragraphs 2 and 11 above. Respondent is the owner of the UST system since Respondent owned the UST system during its operational life, as defined in OAR 340-150-0010(53). This is a Class II violation pursuant to OAR 340-012-0067(2)(f). DEQ hereby assesses a \$1,107 civil penalty for this violation.
- 3. Since December 2009, Respondent has violated OAR 340-150-0167 by failing to maintain a current, valid financial responsibility mechanism as alleged in Section II, paragraphs 10 and 11 above. Respondent is the owner of the UST system since Respondent owned the UST system during its operational life, as defined in OAR 340-150-0010(53). This is a violation of OAR 340-150-0135(3), which is a Class I violation pursuant to OAR 340-012-0067(1)(b). DEQ hereby assesses a \$1,693 civil penalty for this violation.
- 4. Since May 2009, Respondent has violated OAR 340-150-0052 by failing to submit a modification application within 60 days after a change in ownership of a property on which a UST is located, as alleged in Section II, paragraphs 3 and 12. This is a Class II violation pursuant to OAR 340-012-0067(2)(c). DEQ hereby assesses a \$596 civil penalty for this violation.
- 5. Since November 2009, Respondent has violated OAR 340-122-0217(1)(e) and 340-122-0240(3) by failing to submit information required by OAR 340-122-0240 within the timeframe approved by DEQ, as alleged in Section II, paragraphs 7, 8, and 9 above. Respondent is responsible for completing this requirement since it is the owner of the UST system as defined in ORS 466.706(14). This is a Class II violation pursuant to OAR 340-012-0074(2)(b). DEQ did not assess a civil penalty for this violation.

IV. ORDER TO PAY CIVIL PENALTY AND TO COMPLY²

Based upon the foregoing FINDINGS OF FACT AND CONCLUSIONS, Respondent is hereby ORDERED TO:

- 1. Within thirty (30) days from the date of this Notice and Order take all actions necessary to bring the UST system into compliance with OAR Chapter 340, Division 150, by submitting, to DEQ:
- a. a complete application for temporary closure general permit, the permit fee and evidence of a current, valid financial responsibility mechanism **or** a 30-day notice of permanent closure with the permit fee and begin decommissioning the UST as set forth in OAR 340-150-0168; and
- b. a complete modification application and a \$75 general permit modification fee; and
- c. the information required by OAR 340-122-0240(3) for any field work completed at the property prior to the issuance of this Notice and Order; and
- 2. Within sixty (60) days from the date of this Notice and Order:
- a. Complete an investigation regarding the full nature, magnitude and extent of soil and groundwater contamination associated with the release of petroleum at the Property. This investigation, as required under OAR 340-122-0240, must include installation of a sufficient number of monitoring wells capable of adequately characterizing both site hydrogeology and the vertical and horizontal magnitude and extent of groundwater contamination unless Respondent can demonstrate to DEQ that the groundwater contamination presents no potential threat to human health or the environment; and collection of a sufficient number of soil samples to determine the areal and vertical extent of soil contamination. Within forty-five (45) days of completing any investigation field work, submit a report to DEQ summarizing all steps taken to complete the investigation and all sampling results unless DEQ approves, in writing, an alternative reporting schedule.
- b. Begin quarterly groundwater monitoring from any monitoring wells either currently on the Property or adjacent properties or installed in the future. Within forty-five (45) days of each monitoring event, submit groundwater monitoring reports unless DEQ approves, in writing, an alternative reporting schedule.

² The Order to Pay Civil Penalty section in the 2011 Notice is numbered incorrectly.

All submittals required under this Order must be sent to: Jeff Schatz, Department of Environmental Quality, 2020 SW 4th Avenue, Suite 400, Portland, OR 97201.

4. Pay a total civil penalty of \$28,961. The determinations of the civil penalty are attached as Exhibits No. 1 through 4 and are incorporated as part of this Notice.

If you do not file a request for hearing as set forth in Section V below, your check or money order must be made payable to "State Treasurer, State of Oregon" and sent to the DEQ, Business Office, 811 S.W. Sixth Avenue, Portland, Oregon 97204. Once you pay the penalty, the Findings of Fact, Conclusions and Order become final.

V. NOTICE OF RIGHT TO REQUEST A CONTESTED CASE HEARING

You have a right to a contested case hearing on this Notice, if you request one in writing. DEQ must receive the request for hearing within 20 calendar days from the date you receive this Notice. The request should include any affirmative defenses and either admit or deny each allegation of fact in this Notice. (See OAR 340-011-0530.) You must mail the request for hearing to: DEQ, Office of Compliance and Enforcement – Appeals, 811 SW Sixth Avenue, Portland, Oregon 97204, or fax to (503) 229-5100. An administrative law judge employed by the Office of Administrative Hearings will conduct the hearing, according to ORS Chapter 183, OAR Chapter 340, Division 011 and OAR 137-003-0501 to 0700. You have a right to be represented by an attorney at the hearing, or you may represent yourself unless you are a corporation, agency or association.

If you fail to file a request for hearing in writing within 20 calendar days of receipt of the Notice, the Notice will become a final order by default without further action by DEQ, as per OAR 340-011-0535(5). If you do request a hearing but later withdraw your request, fail to attend the hearing, or notify DEQ that you will not be attending the hearing, DEQ will issue a final order by default pursuant to OAR 137-003-0670. DEQ designates the relevant portions of its files, including information submitted by you, as the record for purposes of proving a prima facie case.

(Ex. 1; emphasis in original.) In the civil penalty calculations, DEQ determined that the magnitude of each violation (1 through 4) was moderate. (Ex. 1.)

- 7. Respondent did not file a Request for Hearing within 20 calendar days. (Ex. 2.)
- 8. On November 17, 2011, the Notice of Civil Penalty Assessment and Order to Comply in Agency Case No. LQ/LUST-NWR-11-104 became a Final Order. (*Id.*)
 - 9. On November 17, 2011, DEQ issued to Respondent a letter that stated, in part:

On October 27, 2011, you received a Notice of Civil Penalty Assessment and Order. Since you did not request a contested case hearing within the time allowed, the Order remains in effect. The Order requires you to pay the \$28,961 civil penalty and to within thirty days from the date of service of the Notice and Order to submit to DEQ:

a. a complete application for temporary closure general permit, the permit fee and evidence of a current, valid financial responsibility mechanism or a 30-day notice of permanent closure with the permit fee and begin decommissioning the UST as set forth in OAR 340-150-0168; and

b. a complete modification application and a \$75 general permit modification fee; and

c. the information required by OAR 340-122-0240(3) for any field work completed at the property prior to the issuance of this Notice and Order; []

Additionally, the Notice and Order required you to within sixty days from the date of service of the Notice and Order to complete an investigation regarding the full nature, magnitude and extent of soil and groundwater contamination associated with the release of petroleum at the property including installation of monitoring wells. You must also begin quarterly groundwater monitoring from any monitoring wells either currently installed or installed in the future.

(Ex. 2.)

Respondent's behavior

10. In March 2013, Respondent submitted a report to DEQ summarizing a groundwater sampling event which occurred in December 2012. The report did not satisfy the requirements in DEQ's Final Order and was 13 months past the deadline in the Final Order. (Exs.1, 2, 3.) DEQ did not receive any other reports from Respondent regarding the confirmed release of petroleum on the Property. (Ex. 3.)

- 11. DEQ did not receive from Respondent quarterly groundwater monitoring results. (*Id.*)
- 12. DEQ did not receive from Respondent a completed modification application for the UST on the Property. (*Id.*)
- 13. DEQ did not receive from Respondent a current, valid financial responsibility mechanism for the UST on the property. (*Id.*)
- 14. DEQ did not receive from Respondent a completed application for temporary closure or a thirty day notice of permanent closure for the UST on the property. (*Id.*)
- 15. DEQ did not receive from Respondent the documentation required in Final Order by the deadlines set forth in the Final Order. (Exs. 1, 2, 3.)

2014 Notice of Civil Penalty and Order

16. On April 8, 2014, DEQ issued a Notice of Civil Penalty Assessment and Order in Agency Case No. LQ/UST-NWR-14-036 that stated, in pertinent part:

I. AUTHORITY

This Notice of Civil Penalty Assessment and Order is issued pursuant to Oregon Revised Statutes (ORS) 468.100 and 468.126 through 468.140, ORS 466.706 through 466.835, ORS 466.994, ORS Chapter 183 and Oregon Administrative Rules (OAR) Chapter 340, Divisions 011, 012, 122 and 150.

II. FINDINGS OF FACT³

- 1. On or about May 18, 2009, Respondent became the owner of property located at 1021 East Baseline Street in Cornelius, Oregon (the Property).
- 2. On or about November 17, 2011, Respondent received a Notice of Civil Penalty Assessment and Order to Comply (2011 Notice) which required Respondent to:
- a. Submit, to DEQ, a complete application for temporary closure general permit, the permit fee and evidence of a current, valid financial responsibility mechanism, or a 30-day notice of permanent closure with the permit fee and begin decommissioning the UST on the Property as set forth in OAR 340-150-0168;

³ The Findings of Fact in the 2014 Notice are numbered incorrectly.

- b. Submit, to DEQ, a complete modification application and a \$75 general permit modification fee;
- c. Submit, to DEO, the information required by OAR 340-122-0240(3) for any field work completed at the Property prior to the issuance of the 2011 Notice;
- d. Complete an investigation regarding the full nature, magnitude and extent of soil and groundwater contamination associated with the release of petroleum at the Property and submit a report, to DEO, summarizing all steps taken to complete the investigation and all sampling results; and
- e. Begin quarterly groundwater monitoring from any monitoring wells and submit groundwater monitoring reports to DEQ.
- 5. Respondent failed to respond to the Notice and it is now a final order.
- 6. As of the date of this Notice, Respondent has failed to send the documentation required under the 2011 Notice to DEO by the deadlines set forth in the 2011 Notice.

III. CONCLUSIONS

1. By failing to complete the actions and submit the documentation required under the 2011 Notice, Respondent violated a final order of DEQ. These are Class I violations, according to OAR 340-012-0053(1)(a). DEQ hereby assesses a \$4,890 civil penalty for these violations.4

IV. ORDER TO PAY CIVIL PENALTY

Based upon the foregoing FINDINGS OF FACT AND CONCLUSIONS, Respondent is hereby ORDERED TO pay a total civil penalty of \$4,890. The determination of the civil penalty is attached as Exhibit No. 1 and is incorporated as part of this Notice.

If you do not file a request for hearing as set forth in Section V below, your check or money order must be made payable to "State Treasurer, State of Oregon" and sent to the DEQ, Business Office, 811 S.W. Sixth Avenue, Portland, Oregon 97204. Once you pay the penalty, the Findings of Fact, Conclusions and Order

⁴ It is unclear from the record whether or not Respondent paid the civil penalty assessed in the 2011 Notice.

become final.

V. NOTICE OF RIGHT TO REQUEST A CONTESTED CASE HEARING

You have a right to a contested case hearing on this Notice, if you request one in writing. DEQ must receive the request for hearing within 20 calendar days from the date you receive this Notice. The request should include any affirmative defenses and either admit or deny each allegation of fact in this Notice. (See OAR 340-011-0530.) You must mail the request for hearing to: DEQ, Office of Compliance and Enforcement – Appeals, 811 SW Sixth Avenue, Portland, Oregon 97204, or fax to (503) 229-5100. An administrative law judge employed by the Office of Administrative Hearings will conduct the hearing, according to ORS Chapter 183, OAR Chapter 340, Division 011 and OAR 137-003-0501 to 0700. You have a right to be represented by an attorney at the hearing, or you may represent yourself unless you are a corporation, agency or association.

If you fail to file a request for hearing in writing within 20 calendar days of receipt of the Notice, the Notice will become a final order by default without further action by DEQ, as per OAR 340-011-0535(5). If you do request a hearing but later withdraw your request, fail to attend the hearing, or notify DEQ that you will not be attending the hearing, DEQ will issue a final order by default pursuant to OAR 137-003-0670. DEQ designates the relevant portions of its files, including information submitted by you, as the record for purposes of proving a prima facie case.

(Ex. 4; emphasis in original.) In the civil penalty calculation, DEQ determined that the magnitude of the Respondent's violation was moderate because there was insufficient evidence to establish that the violation had a significant adverse impact on human health or the environment, or had no more than a de minimis adverse impact on human health or the environment. (Ex. 4.)

17. On May 12, 2014, Respondent filed a Request for Appeal of Civil Penalty Assessment and Order Through a Contested Case Hearing Under ORS 183.745 (Request for Hearing), which stated, in part:

Respondent requests an appeal of the April 8, 2014 Notice of Civil Penalty Assessment and Order through a Contested Case hearing under ORS 183.745.

1. Respondent admits the allegations of Paragraphs 1 through 5.

2. Respondent admits the allegations of Paragraph 6 insofar as it alleges that Respondent failed to send the required documentation by the deadlines set forth in the 2011 Notice. However, Respondent denies the allegation insofar as it claims that M & G did not send any documentation requested by DEQ.

FIRST AFFIRMATIVE DEFENSE

(Financial Hardship)

3. Respondent generates no income and has no assets besides the property at 1021 East Baseline Street in Cornelius, Oregon described in this order. At all material times, Respondent has lacked the financial capability to comply with the 2011 Notice. Respondent has sought financial assistance and forebearance from DEQ in documents filed on October 26, 2010, and relevant correspondence is attached to this response.

SECOND AFFIRMATIVE DEFENSE

(Part Performance)

4. Respondent provided DEQ with a ground water sampling report on or about March 4, 2013. Prior to the 2011 Notice, Respondent attempted to obtain the results of an investigation of the property performed by K & S Environmental, Inc. (K & S), but K & S refused to release the report until it was fully paid. Respondent kept DEQ fully informed of the dispute with K & S, and relevant correspondence with DEQ is attached to this response.

THIRD AFFIRMATIVE DEFENSE

(Magnitude of Violation)

5. Respondent disputes DEQ's determination in Exhibit No. 1 that alleges a "moderate magnitude violation." DEQ regulations do not specify a magnitude for this alleged violation in OAR 340-012-0135. DEQ fails to set forth any facts supporting its conclusion that any alleged violation rose beyond a minor magnitude.

(Ex. 5.)

Other information

18. Respondent received an economic benefit in the amount of \$3,490 by avoiding the following costs: \$75 for a modification application fee; \$540 per year for a permit fee; \$500 per

year for a financial responsibility mechanism; \$2,468 per groundwater monitoring event; and \$7,500 for collecting a sufficient number of soil samples. (Ex. 4.)

CONCLUSIONS OF LAW

- 1. Respondent failed to comply with DEQ's Final Order in Agency Case No. LQ/LUST-NWR-11-104.
 - 2. Respondent shall pay a civil penalty in the modified amount of \$4,690.

OPINION

DEQ contends that Respondent failed to comply with its Final Order and should pay a civil penalty. As the proponent of this position, DEQ has the burden of proof. ORS 183.450(2) and (5); Harris v. SAIF, 292 Or 683, 690 (1982) (general rule regarding allocation of burden of proof is that the burden is on the proponent of the fact or position); Cook v. Employment Div., 47 Or App 437 (1980) (in absence of legislation adopting a different standard, the standard in administrative hearings is preponderance of the evidence). Proof by a preponderance of evidence means that the fact finder is convinced that the facts asserted are more likely true than false. Riley Hill General Contractor v. Tandy Corp., 303 Or 390 (1987). As modified below, DEQ has met its burden.

The violation

DEQ contends that Respondent failed to comply with its Final Order in Agency Case No. LQ/LUST-NWR-11-104. Respondent contends that it provided partial performance. I agree with DEQ.

OAR 340-011-0535 is titled "Final Orders by Default" and provides, in part:

(1) If a person⁵ fails to request a hearing within the time allowed and no further evidence is necessary to make a prima facie case, the notice of a right to a contested case hearing will become final by operation of law as provided in OAR 137-003-0672.

OAR 137-003-0672 provides, in part:

(2) When the agency gives a party an opportunity to request a hearing and the party fails to request a hearing within the time allowed to make the request, the agency order is final and no further order need be served upon the party. ***.

OAR 340-012-0053 is titled "Classification of Violations that Apply to all Programs" and

⁵ "Person" includes, but is not limited to, individuals, corporations, associations, firms, partnerships, trusts, joint stock companies, public and municipal corporations, political subdivisions, states and their agencies, and the federal government and its agencies. OAR 340-012-0030(18).

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provides, in part:

(1) Class I:

(a) Violating a requirement or condition of a commission or department order, consent order, agreement, consent judgment (formerly called judicial consent decree) or compliance schedule contained in a permit;

(Emphasis in original.)

As indicated above, if a person fails to request a hearing within the time allowed, the notice of a right to a contested case hearing becomes a final order by operation of law. Pursuant to OAR 340-012-0053(1)(a), violating a requirement or condition of a DEQ order is a Class I violation.

On October 25, 2011, DEQ issued to Respondent a Notice of Civil Penalty Assessment and Order to Comply in Agency Case No. LQ/LUST-NWR-11-104, which indicated, among other things, that Respondent had 20 calendar days to file a written request for a contested case hearing or the Notice and Order to Comply would become a Final Order. Respondent did not file a Request for Hearing within 20 calendar days.

On November 17, 2011, the Notice of Civil Penalty Assessment and Order to Comply became a Final Order requiring Respondent to do the following:

- Within thirty (30) days from the date of the Notice and Order submit to DEQ:
 - o A complete application for temporary closure general permit, the permit fee and evidence of a current, valid financial responsibility mechanism **or** a 30-day notice of permanent closure with the permit fee and begin decommissioning the UST as set forth in OAR 340-150-0168; and
 - a complete modification application and a \$75 general permit modification fee;
 and
 - o the information required by OAR 340-122-0240(3) for any field work completed at the property prior to the issuance of this Notice and Order.
- Within sixty (60) days from the date of the Notice and Order:
 - O Complete an investigation regarding the full nature, magnitude and extent of soil and groundwater contamination associated with the release of petroleum at the Property. The investigation must include installation of a sufficient number of monitoring wells capable of adequately characterizing both site hydrogeology and the vertical and horizontal magnitude and extent of groundwater contamination unless Respondent can demonstrate to DEQ that the groundwater contamination presents no potential threat to human health or the environment; and collection of a sufficient number of soil samples to determine the areal and vertical extent of soil contamination. Within forty-five (45) days of completing any investigation field work, submit a report to DEQ summarizing all steps taken to complete the

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- investigation and all sampling results unless DEQ approves, in writing, an alternative reporting schedule.
- o Begin quarterly groundwater monitoring from any monitoring wells either currently on the Property or adjacent properties or installed in the future. Within forty-five (45) days of each monitoring event, submit groundwater monitoring reports unless DEQ approves, in writing, an alternative reporting schedule.

The evidence in the record establishes that Respondent failed to timely submit a completed application for temporary closure or a thirty day notice of permanent closure for the UST on the property; failed to timely submit a current, valid financial responsibility mechanism for the UST on the property; failed to timely submit a completed modification application and permit fee for the UST on the Property; failed to timely submit the information required by OAR 340-122-0240(3) for any field work completed at the property prior to the issuance of this Notice and Order; failed to timely submit a completed investigation regarding the full nature, magnitude and extent of soil and groundwater contamination associated with the release of petroleum at the Property, as well as the associated report summarizing all steps taken to complete the investigation and all sampling results; and failed to timely submit quarterly groundwater monitoring from the monitoring wells currently on the Property or adjacent properties, as well as the associated groundwater monitoring reports.

The evidence also establishes that although Respondent submitted a groundwater sampling report to DEQ in March 2013, the report failed to satisfy the requirements in DEQ's Final Order and was 13 months past the deadline in the Final Order.

In summary, Respondent failed to submit the documentation required in DEQ's Final Order by the deadlines set forth in the Final Order.

Accordingly, I find by a preponderance of the evidence that Respondent failed to comply with the requirements and/or conditions of DEQ's Final Order in Agency Case No. LQ/LUST-NWR-11-104, thereby violating said Final Order and committing a Class I violation.

Respondent contends that it lacked the financial capacity to comply with DEQ's Final Order. However, Respondent's inability to pay compliance costs is irrelevant to whether or not the violation occurred. Respondent, as the owner of the Property, was required to bring the UST on the Property into compliance with the law, including meeting the requirements and deadlines set forth in DEQ's Final Order. Respondent failed to do so and must held accountable for violating DEQ's Final Order. As such, Respondent's argument is not persuasive.

Respondent next contends that it partially performed when it submitted a report to DEQ in March 2013 summarizing a groundwater sampling event which occurred in December 2012. However, as stated previously, the report did not satisfy the requirements set forth in DEQ's Final Order. Additionally, the report was 13 months past the deadline mandated in the Final Order. Thus, Respondent's argument is unpersuasive.

The civil penalty

DEQ contends that Respondent should pay a civil penalty totaling \$4,890. Respondent contends that the penalty is inappropriate. As modified below, I agree with DEQ.

OAR 340-012-0045 is titled "Civil Penalty Determination Procedure" and provides, in pertinent part:

DEQ may assess a civil penalty for any violation, in addition to any other liability, duty, or other penalty provided by law. Except for civil penalties assessed under either OAR 340-012-0155 or OAR 340-012-0160, DEQ determines the amount of the civil penalty using the following formula: $BP + [(0.1 \times BP) \times (P + H + O + M + C)] + EB$.

- (1) BP is the base penalty and is determined by the following procedure:
- (a) The classification of each violation is determined according to OAR 340-012-0053 to 340-012-0097.
- (b) The magnitude of the violation is determined according to OAR 340-012-0130 and 340-012-0135.
- (c) The appropriate base penalty (BP) for each violation is determined by applying the classification and magnitude of each violation to the matrices in OAR 340-012-0140.
- (2) The base penalty is adjusted by the application of aggravating or mitigating factors set forth in OAR 340-012-0145.
- (3) The appropriate economic benefit (EB) is determined as set forth in OAR 340-012-0150.

Step one - the classification of the violation. OAR 340-012-0045(1)(a).

OAR 340-012-0053 is titled "Classification of Violations that Apply to all Programs" and provides, in material part:

(1) Class I:

(a) Violating a requirement or condition of a commission or department order, consent order, agreement, consent judgment (formerly called judicial consent decree) or compliance schedule contained in a permit; As indicated previously, Respondent failed to comply with the requirements and/or conditions of DEQ's Final Order in Agency Case No. LQ/LUST-NWR-11-104, thereby violating said Final Order and committing a Class I violation.

Step two - the magnitude of the violation. OAR 340-012-0045(1)(b).

OAR 340-012-0130 is titled "Determination of Violation Magnitude" and provides:

- (1) The appropriate magnitude of each civil penalty is determined by first applying the selected magnitude in OAR 340-012-0135. If none is applicable, the magnitude is moderate unless evidence shows that the magnitude is major under paragraph (3) or minor under paragraph (4).
- (2) The person against whom the violation is alleged has the opportunity and the burden to prove that a magnitude under paragraph (1), (3) or (4) of this rule is more probable than the alleged magnitude, regardless of whether the magnitude is alleged under OAR 340-012-0130 or 340-012-0135.
- (3) The magnitude of the violation is major if DEQ finds that the violation had a significant adverse impact on human health or the environment. In making this finding, DEQ will consider all reasonably available information, including, but not limited to: the degree of deviation from applicable statutes or commission and DEQ rules, standards, permits or orders; the extent of actual effects of the violation; the concentration, volume, or toxicity of the materials involved; and the duration of the violation. In making this finding, DEQ may consider any single factor to be conclusive.
- (4) The magnitude of the violation is minor if 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 or other environmental receptors. In making this finding, DEQ will consider all reasonably available information including, but not limited to: the degree of deviation from applicable statutes or commission and DEQ rules, standards, permits or orders; the extent of actual or threatened effects of the violation; the concentration, volume, or toxicity of the materials involved; and the duration of the violation.

Respondent's violation is not listed in OAR 340-012-0135. Additionally, the evidence in the record is insufficient to determine if Respondent's violation had a significant adverse impact on human health or the environment, or had no more than a de minimis adverse impact on human health or the environment. Therefore, I find that the magnitude of Respondent's violation is properly characterized as moderate.

Respondent contends that the violation is minor. However, Respondent, who has the burden of proof regarding that contention, failed to present reliable evidence, such as an affidavit from the mechanical engineer, 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 or other environmental receptors. Consequently, Respondent's argument is not persuasive.

Step three - the appropriate base penalty. OAR 340-012-0045(1)(c).

OAR 340-012-0140 is titled "Determination of Base Penalty" and provides, in relevant part:

(5) \$1,000 Penalty Matrix:

- (b) The base penalty values for the \$1,000 penalty matrix are as follows:
- (A) Class I

(ii) Moderate - \$500;

The base penalty for Respondent's Class I moderate violation is \$500.

Step four - aggravating and mitigating factors. OAR 340-012-0045(2).

OAR 340-012-0145 is titled "Determination of Aggravating or Mitigating Factors" and provides, in pertinent part:

- (1) Each of the aggravating or mitigating factors is determined, as described below, and then applied to the civil penalty formula in OAR 340-012-0045.
- (2) "P" is whether the respondent has any prior significant actions (PSAs). A violation becomes a PSA on the date the first enforcement action (FEA) in which it is cited is issued.
- (a) Except as otherwise provided in this section, the values for "P" and the finding that supports each are as follows:
- (A) 0 if no PSAs or there is insufficient information on which to base a finding under this section.

- (B) 1 if the PSAs included one Class II violation or two Class III violations; or
- (C) 2 if the PSAs included one Class I violation or Class I equivalent.
- (D) For each additional Class I violation or Class I equivalent, the value of "P" is increased by 1.
- (b) The value of "P" will not exceed 10.
- (c) If any of the PSAs were issued under ORS 468.996, the value of "P" will be 10.
- (d) In determining the value of "P," DEQ will:
- (A) Reduce the value of "P" by:
- (i) 2 if all the FEAs in which PSAs were cited were issued more than three years before the date the current violation occurred.
- (ii) 4 if all the FEAs in which PSAs were cited were issued more than five years before the date the current violation occurred.
- (B) Include the PSAs:
- (i) At all facilities owned or operated by the same respondent within the state of Oregon; and
- (ii) That involved the same media (air, water or land) as the violations that are the subject of the current FEA.
- (e) In applying subsection (2)(d)(A), the value of "P" may not be reduced below zero.
- (f) PSAs that are more than ten years old are not included in determining the value of "P."
- (3) "H" is the respondent's history of correcting PSAs. The values for "H" and the finding that supports each are as follows:
- (a) -2 if the respondent corrected all prior violations cited as PSAs.
- (b) -1 if the violations were uncorrectable and the respondent took reasonable efforts to minimize the effects of the violations cited as

PSAs; or

- (c) 0 if there is no prior history or if there is insufficient information on which to base a finding under paragraphs (3)(a) or (b).
- (d) The sum of values for "P" and "H" may not be less than 1 unless the respondent took extraordinary efforts to correct or minimize the effects of all PSAs. In no case may the sum of the values of "P" and "H" be less than zero.
- (4) "O" is whether the violation was repeated or ongoing. A violation can be repeated independently on the same day, thus multiple occurrences may occur within one day. Each repeated occurrence of the same violation and each day of a violation with a duration of more than one day is a separate occurrence when determining the "O" factor. Each separate violation is also a separate occurrence when determining the "O" factor. The values for "O" and the finding that supports each are as follows:
- (a) 0 if there was only once occurrence of the violation, or if there is insufficient information on which to base a finding under paragraphs (4)(b) through (4)(d).
- (b) 2 if there were more than one but less than seven occurrences of the violation.
- (c) 3 if there were from seven to 28 occurrences of the violation.
- (d) 4 if there were more than 28 occurrences of the violation.
- (e) DEQ may, at its discretion, assess separate penalties for each occurrence of a violation. If DEQ does so, the O factor for each affected violation will be set at 0. If DEQ assesses one penalty for multiple occurrences, the penalty will be based on the highest classification and magnitude applicable to any of the occurrences.
- (5) "M" is the mental state of the respondent. For any violation where the findings support more than one mental state, the mental state with the highest value will apply. The values for "M" and the finding that supports each are as follows:
- (a) 0 if there is insufficient information on which to base a finding under paragraphs (5)(b) through (5)(d).
- (b) 2 if the respondent had constructive knowledge (reasonably

should have known) of the requirement.

- (c) 4 if the respondent's conduct was negligent.
- (d) 8 if the respondent's conduct was reckless or the respondent acted or failed to act intentionally with actual knowledge of the requirement.
- (e) 10 if respondent acted flagrantly.
- (6) "C" is the respondent's efforts to correct or mitigate the violation. The values for "C" and the finding that supports each are as follows:
- (a) -5 if the respondent made extraordinary efforts to correct the violation or to minimize the effects of the violation, and made extraordinary efforts to ensure the violation would not be repeated.
- (b) -4 if the respondent made extraordinary efforts to ensure that the violation would not be repeated.
- (c) -3 if the respondent made reasonable efforts to correct the violation, or took reasonable affirmative efforts to minimize the effects of the violation.
- (d) -2 if the respondent eventually made some efforts to correct the violation, or to minimize the effects of the violation.
- (e) -1 if the respondent made reasonable efforts to ensure that the violation would not be repeated.
- (f) 0 if there is insufficient information to make a finding under paragraphs (6)(a) through (6)(e), or (6)(g) or if the violation or the effects of the violation could not be corrected or minimized.
- (g) 2 if the 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).

Prior significant actions (P). Respondent has a prior significant action involving two Class I violations and three Class II violations. Thus, the value assigned to (P) is 4. OAR 340-012-0145(2)(a)(C) and (D).

History of correcting prior significant actions (H). Respondent's history of correcting prior significant actions receives a value of 0. As such, the value assigned to (H) is 0. OAR 340-012-0145(3)(b).

Repeated or ongoing violations (O). Respondent's violation has been ongoing since it failed to timely submit documentation showing compliance that was required in DEQ's Final Order. Thus, Respondent's violation has taken place for more than 28 days or occurrences. Therefore, the value assigned to (O) is 4.

Mental state (M). DEQ contends that Respondent's conduct was intentional. I agree with DEQ.

"Intentional" means the respondent acted with a conscious objective to cause the result of the conduct. OAR 340-012-0030(13).

On October 25, 2011 and November 17, 2011, Respondent was notified by DEQ of the steps it needed to take to bring the UST on the Property into compliance. Despite this knowledge, Respondent failed to comply with the requirements and deadlines set forth in DEQ's Final Order. I find that Respondent acted with a conscious objective to cause the violation. Consequently, the value assigned to (M) is 8.

Efforts to correct (C). In March 2013, Respondent submitted to DEQ a report summarizing a groundwater sampling event which occurred in December 2012. Although the report did not meet all the requirements in the Final Order and was untimely submitted, Respondent made "some effort" to correct the violation. Thus, the value assigned to (C) is -2.

Economic benefit (EB). Respondent received an economic benefit of \$3,490 by avoiding the following costs: \$75 for a modification application fee; \$540 per year for the annual permit fee; \$500 per year for a financial responsibility mechanism; \$2,468 per groundwater monitoring event; and \$7,500 for collecting a sufficient number of soil samples. As such, the value assigned to (EB) is \$3,490.

The formula to calculate the penalty is: $BP + [(0.1 \times BP) \times (P + H + O + M + C)] + EB$. OAR 340-012-0045(2)(e). Applying the values from above, the civil penalty is as follows:

Therefore, Respondent shall pay a civil penalty totaling \$4,690.

Respondent contends that it does not have the assets to pay a civil penalty. However, pursuant to OAR 340-012-0162, the decision whether to reduce the civil penalty amount based on an inability to pay is within the sole discretion of DEQ. Accordingly, Respondent's argument is not persuasive.

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RULING

DEQ's Motion for Summary Determination is GRANTED.

The hearing scheduled for December 2, 2014 is CANCELLED.

ORDER

I propose DEQ issue the following order:

The Notice of Civil Penalty Assessment and Order issued on April 8, 2014 is AFFIRMED as MODIFIED.

Dove L. Gutman

Senior Administrative Law Judge Office of Administrative Hearings

APPEAL RIGHTS

If you are not satisfied with this decision, you have the right to have the decision reviewed by the Oregon Environmental Quality Commission (Commission). To have the decision reviewed, you must file a "Petition for Review" within 30 days of the date this order is served on you. Service, as defined in Oregon Administrative Rule (OAR) 340-011-0525, means the date that the decision is **mailed** to you, and not the date that you receive it.

The Petition for Review must comply with OAR 340-011-0575 and must be **received** by the Commission within 30 days of the date the Proposed and Final Order was mailed to you. You should mail your Petition for Review to:

Environmental Quality Commission c/o Dick Pedersen, Director, DEQ 811 SW Sixth Avenue Portland, OR 97204.

You may also fax your Petition for Review to (503) 229-6762 (the Director's Office).

Within 30 days of filing the Petition for Review, you must also file exceptions and a brief as provided in OAR 340-011-0575. The exceptions and brief must be **received** by the Commission within 30 days from the date the Commission received your Petition for Review. If you file a Petition but not a brief with exceptions, the Environmental Quality Commission may dismiss your Petition for Review.

If the Petition, exceptions and brief are filed in a timely manner, the Commission will set the matter for oral argument and notify you of the time and place of the Commission's meeting. The requirements for filing a petition, exceptions and briefs are set out in OAR 340-011-0575.

Unless you timely file a Petition for Review as set forth above, this Proposed Order becomes the Final Order of the Commission 30 days from the date this Proposed Order is mailed to you. If you wish to appeal the Final Order, you have 60 days from the date the Proposed Order becomes the Final Order to file a petition for review with the Oregon Court of Appeals. See ORS 183.480 et. seq.

CERTIFICATE OF MAILING

On November 4, 2014 I mailed the foregoing CORRECTED RULING ON MOTION FOR SUMMARY DETERMINATION, AND PROPOSED AND FINAL ORDER issued on this date in OAH Case No. 1403764.

By: First Class and Certified Mail
Certified Mail Receipt # 7013 2630 0002 3662 2887

Ward Greene Attorney at Law 1515 SW 5th Avenue, Suite 600 Portland OR 97201

By: First Class Mail

Susan Elworth
Dept. of Environmental Quality
811 SW 6th Ave
Portland OR 97204

Ryan Clark
Administrative Specialist
Hearing Coordinator

BEFORE THE OFFICE OF ADMINISTRATIVE HEARINGS STATE OF OREGON for the ENVIRONMENTAL QUALITY COMMISSION

IN THE MATTER OF:) RULING ON MOTION FOR SUMMARY) DETERMINATION, AND PROPOSED) AND FINAL ORDER
M & G COLLECTIONS, LLC,)) OAH Case No.: 1403764
Respondent) Agency Case No.: LQ/UST-NWR-14-036

HISTORY OF THE CASE

On April 8, 2014, the Department of Environmental Quality for the State of Oregon (DEQ or Department) issued a Notice of Civil Penalty Assessment and Order to M & G Collections, LLC (Respondent). On May 12, 2014, Respondent filed a request for hearing.

On June 27, 2014, DEQ referred the hearing request to the Office of Administrative Hearings (OAH). Senior Administrative Law Judge (ALJ) Bernadette Bignon was assigned to preside at hearing.

On August 27, 2014, a prehearing telephone conference was held. ALJ Bignon presided. Kieran O'Donnell, appearing on behalf of Susan Elworth, represented DEQ. S. Ward Greene, Attorney at Law, represented Respondent. Hearing was scheduled for December 2, 2014.

On September 25, 2014, Susan Elworth filed DEQ's Motion for Summary Determination (Motion) and Exhibits 1 through 5. On October 23, 2014, the case was reassigned to Senior ALJ Dove L. Gutman to issue the Ruling on the Motion for Summary Determination. On October 24, 2014, Mr. Green filed Respondent's Response in Opposition to the Motion and Exhibits R1 through R13.

ISSUES

- 1. Whether Respondent failed to comply with DEQ's Final Order in Agency Case No. LQ/LUST-NWR-11-104.
 - 2. Whether Respondent shall pay a civil penalty in the amount of \$4,890.

DOCUMENTS CONSIDERED

The following documents were reviewed and considered: DEQ's Motion for Summary Determination, Exhibits 1 through 5, Respondent's Response in Opposition to the Motion, and Exhibits R1 through R13.

LEGAL STANDARD FOR SUMMARY DETERMINATION

Motions for Summary Determination are governed by OAR 137-003-0580, which provides, in pertinent part:

- (1) Not less than 28 calendar days before the date set for hearing, the agency or a party may file a motion requesting a ruling in favor of the agency or party on any or all legal issues (including claims and defenses) in the contested case. The motion, accompanied by any affidavits or other supporting documents, shall be served on the agency and parties in the manner required by OAR 137-003-0520.
- (2) Within 14 calendar days after service of the motion, the agency or a party may file a response to the motion. The response may be accompanied by affidavits or other supporting documents and shall be served on the agency and parties in the manner required by OAR 137-003-0520.
- (3) The administrative law judge may establish longer or shorter periods than those under section (1) and (2) of this rule for the filing of motions and responses.

- (6) The administrative law judge shall grant the motion for a summary determination if:
- (a) The pleadings, affidavits, supporting documents (including any interrogatories and admissions) and the record in the contested case show that there is no genuine issue as to any material fact that is relevant to resolution of the legal issue as to which a decision is sought; and
- (b) The agency or party filing the motion is entitled to a favorable ruling as a matter of law.
- (7) The administrative law judge shall consider all evidence in a manner most favorable to the non-moving party or non-moving agency.
- (8) Each party or the agency has the burden of producing evidence on any issue relevant to the motion as to which that party or the agency would have the burden of persuasion at the contested case hearing.

- (9) A party or the agency may satisfy the burden of producing evidence through affidavits. Affidavits shall be made on personal knowledge, establish that the affiant is competent to testify to the matters stated therein and contain facts that would be admissible at the hearing.
- (10) When a motion for summary determination is made and supported as provided in this rule, a non-moving party or non-moving agency may not rest upon the mere allegations or denials contained in that party's or agency's notice or answer, if any. When a motion for summary determination is made and supported as provided in this rule, the administrative law judge or the agency must explain the requirements for filing a response to any unrepresented party or parties.
- (11) The administrative law judge's ruling may be rendered on a single issue and need not resolve all issues in the contested case.
- (12) If the administrative law judge's ruling on the motion resolves all issues in the contested case, the administrative law judge shall issue a proposed order in accordance with OAR 137-003-0645 incorporating that ruling or a final order in accordance with OAR 137-003-0665 if the administrative law judge has authority to issue a final order without first issuing a proposed order.

FINDINGS OF FACT

Background

- 1. In 2006, DEQ received a report that petroleum products had been released from an underground storage tank (UST) system used to store and dispense petroleum products located at 1021 East Baseline Street in Cornelius, Oregon (the Property). The Property was placed on DEQ's Leaking Underground Storage Tank Facility List. (Ex. 1.)
- 2. On May 18, 2009, M & G Collections, LLC (Respondent), became the owner of the Property. At that time, the UST system was still located on the Property and was not being actively operated. (*Id.*)
- 3. In August 2009, a groundwater sample was collected from monitoring well #1 located on the Property, which showed significant increase in a number of gasoline constituents from the previous sample collected from this well. (*Id.*)
- 4. In November 2009, DEQ received a verbal report that soil samples had been collected from property south and west of the Property. (*Id*.)
 - 5. In October and November 2009, May, August and December 2010, and February and

April 2011, DEQ sent Respondent letters requesting that Respondent conduct an investigation to determine the full nature, magnitude and extent of the contamination caused by the UST system. The letters also requested that Respondent submit the information required by OAR 340-122-0240(3) for any field work completed by Respondent by certain dates. (*Id.*)

2011 Notice and Order to Comply

6. On October 25, 2011, DEQ issued to Respondent a Notice of Civil Penalty Assessment and Order to Comply (Notice and Order to Comply) in Agency Case No. LQ/LUST-NWR-11-104 that stated, in pertinent part:

I. AUTHORITY

This Notice of Civil Penalty Assessment and Order to Comply is issued pursuant to Oregon Revised Statutes (ORS) 468.100 and 468.126 through 468.140, ORS 466.706 through 466.835, ORS 466.994, ORS Chapter 183 and Oregon Administrative Rules (OAR) Chapter 340, Divisions 011, 012, 122 and 150.

II. FINDINGS OF FACT

- 1. In 2006, DEQ received a report that petroleum products had been released from an underground storage tank (UST) system used to store and dispense petroleum products located at 1021 East Baseline Street in Cornelius, Oregon (the Property). The Property was placed on DEQ's Leaking Underground Storage Tank Facility list.
- 2. On March 10, 2009, DEQ issued a General Permit Registration Temporary Closure Certificate (Certificate) for the UST system located on the Property. The Certificate expired on March 10, 2010.
- 3. On or about May 18, 2009, Respondent became the owner of the Property.
- 4. At the time that Respondent became the owner of the Property, the UST system was still located on the Property and not being actively operated.
- 5. Groundwater samples were collected from monitoring wells located on the Property on three occasions in 2008 and 2009, specifically in July 2008, October 2008 and August 2009.
- 6. In August 2009, the sample collected from monitoring well #1 showed significant increase in a number of gasoline constituents

from the previous sample collected from this well.

- 7. In November 2009, DEQ received a verbal report that soil samples had been collected from the property south and west of the Property.
- 8. In October and November 2009, May, August and December 2010, and February and April 2011, DEQ sent Respondent letters requesting that Respondent conduct an investigation to determine the full nature, magnitude and extend of the contamination caused by the UST system. Additionally, the letters requested that Respondent submit the information required by OAR 340-122-0240(3) for any field work completed by Respondent by certain dates.
- 9. As of the date of this Notice, DEQ has not received a written report that includes the information required by OAR 340-122-0240(3), regarding the work completed in November 2009 or sufficient information determining the full nature, magnitude and extent of contamination caused by the UST system.
- 10. The last financial responsibility mechanism provided to DEQ regarding the UST system expired on December 21, 2009.
- 11. As of the date of this Notice, DEQ has not received, from Respondent, a complete application for temporary closure, the permit fee or evidence of a current, valid financial responsibility mechanism or evidence that the UST system has been permanently decommissioned.
- 12. As of the date of this Notice, DEQ has not received, from Respondent, a complete modification application as required by OAR 340-150-0052.

III. CONCLUSIONS

1. Since August 2009, Respondent has violated OAR 340-122-0217(1)(c) and OAR 340-122-0240(1) by failing to initiate and complete an investigation to determine the full nature, magnitude and extent of soil and groundwater contamination at the Property, as alleged in Section II, paragraphs 5, 6, 7 and 8 above. Specifically, Respondent has failed to conduct quarterly groundwater monitoring when groundwater contamination has migrated beyond the immediate vicinity of the tank pit. Additionally, Respondent has failed to collect a sufficient number of soil samples. Respondent is responsible for completing this

requirement since it is the owner of the UST system as defined in ORS 466.706(14). These are Class I violations pursuant to OAR 340-012-0074(1)(b). DEQ hereby assesses a \$25,565 civil penalty for these violations.

- 2. Since March 2009, Respondent has violated OAR 340-150-0167 by failing to obtain the appropriate general permit registration before operating an UST system in temporary closure, as alleged in Section II, paragraphs 2 and 11 above. Respondent is the owner of the UST system since Respondent owned the UST system during its operational life, as defined in OAR 340-150-0010(53). This is a Class II violation pursuant to OAR 340-012-0067(2)(f). DEQ hereby assesses a \$1,107 civil penalty for this violation.
- 3. Since December 2009, Respondent has violated OAR 340-150-0167 by failing to maintain a current, valid financial responsibility mechanism as alleged in Section II, paragraphs 10 and 11 above. Respondent is the owner of the UST system since Respondent owned the UST system during its operational life, as defined in OAR 340-150-0010(53). This is a violation of OAR 340-150-0135(3), which is a Class I violation pursuant to OAR 340-012-0067(1)(b). DEQ hereby assesses a \$1,693 civil penalty for this violation.
- 4. Since May 2009, Respondent has violated OAR 340-150-0052 by failing to submit a modification application within 60 days after a change in ownership of a property on which a UST is located, as alleged in Section II, paragraphs 3 and 12. This is a Class II violation pursuant to OAR 340-012-0067(2)(c). DEQ hereby assesses a \$596 civil penalty for this violation.
- 5. Since November 2009, Respondent has violated OAR 340-122-0217(1)(e) and 340-122-0240(3) by failing to submit information required by OAR 340-122-0240 within the timeframe approved by DEQ, as alleged in Section II, paragraphs 7, 8, and 9 above. Respondent is responsible for completing this requirement since it is the owner of the UST system as defined in ORS 466.706(14). This is a Class II violation pursuant to OAR 340-012-0074(2)(b). DEQ did not assess a civil penalty for this violation.

IV. ORDER TO PAY CIVIL PENALTY AND TO COMPLY¹

Based upon the foregoing FINDINGS OF FACT AND CONCLUSIONS, Respondent is hereby ORDERED TO:

¹ The Order to Pay Civil Penalty section in the 2011 Notice is numbered incorrectly.

- 1. Within thirty (30) days from the date of this Notice and Order take all actions necessary to bring the UST system into compliance with OAR Chapter 340, Division 150, by submitting, to DEQ:
- a. a complete application for temporary closure general permit, the permit fee and evidence of a current, valid financial responsibility mechanism **or** a 30-day notice of permanent closure with the permit fee and begin decommissioning the UST as set forth in OAR 340-150-0168; and
- b. a complete modification application and a \$75 general permit modification fee; and
- c. the information required by OAR 340-122-0240(3) for any field work completed at the property prior to the issuance of this Notice and Order; and
- 2. Within sixty (60) days from the date of this Notice and Order:
- a. Complete an investigation regarding the full nature, magnitude and extent of soil and groundwater contamination associated with the release of petroleum at the Property. This investigation, as required under OAR 340-122-0240, must include installation of a sufficient number of monitoring wells capable of adequately characterizing both site hydrogeology and the vertical and horizontal magnitude and extent of groundwater contamination unless Respondent can demonstrate to DEQ that the groundwater contamination presents no potential threat to human health or the environment; and collection of a sufficient number of soil samples to determine the areal and vertical extent of soil contamination. Within forty-five (45) days of completing any investigation field work, submit a report to DEQ summarizing all steps taken to complete the investigation and all sampling results unless DEQ approves, in writing, an alternative reporting schedule.
- b. Begin quarterly groundwater monitoring from any monitoring wells either currently on the Property or adjacent properties or installed in the future. Within forty-five (45) days of each monitoring event, submit groundwater monitoring reports unless DEQ approves, in writing, an alternative reporting schedule.

All submittals required under this Order must be sent to: Jeff Schatz, Department of Environmental Quality, 2020 SW 4th Avenue, Suite 400, Portland, OR 97201.

4. Pay a total civil penalty of \$28,961. The determinations of the

civil penalty are attached as Exhibits No. 1 through 4 and are incorporated as part of this Notice.

If you do not file a request for hearing as set forth in Section V below, your check or money order must be made payable to "State Treasurer, State of Oregon" and sent to the DEQ, Business Office, 811 S.W. Sixth Avenue, Portland, Oregon 97204. Once you pay the penalty, the Findings of Fact, Conclusions and Order become final.

V. NOTICE OF RIGHT TO REQUEST A CONTESTED CASE HEARING

You have a right to a contested case hearing on this Notice, if you request one in writing. DEQ must receive the request for hearing within 20 calendar days from the date you receive this Notice. The request should include any affirmative defenses and either admit or deny each allegation of fact in this Notice. (See OAR 340-011-0530.) You must mail the request for hearing to: DEQ, Office of Compliance and Enforcement – Appeals, 811 SW Sixth Avenue, Portland, Oregon 97204, or fax to (503) 229-5100. An administrative law judge employed by the Office of Administrative Hearings will conduct the hearing, according to ORS Chapter 183, OAR Chapter 340, Division 011 and OAR 137-003-0501 to 0700. You have a right to be represented by an attorney at the hearing, or you may represent yourself unless you are a corporation, agency or association.

If you fail to file a request for hearing in writing within 20 calendar days of receipt of the Notice, the Notice will become a final order by default without further action by DEQ, as per OAR 340-011-0535(5). If you do request a hearing but later withdraw your request, fail to attend the hearing, or notify DEQ that you will not be attending the hearing, DEQ will issue a final order by default pursuant to OAR 137-003-0670. DEQ designates the relevant portions of its files, including information submitted by you, as the record for purposes of proving a prima facie case.

(Ex. 1; emphasis in original.) In the civil penalty calculations, DEQ determined that the magnitude of each violation (1 through 4) was moderate. (Ex. 1.)

- 7. Respondent did not file a Request for Hearing within 20 calendar days. (Ex. 2.)
- 8. On November 17, 2011, the Notice of Civil Penalty Assessment and Order to Comply in Agency Case No. LQ/LUST-NWR-11-104 became a Final Order. (*Id.*)

9. On November 17, 2011, DEQ issued to Respondent a letter that stated, in part:

On October 27, 2011, you received a Notice of Civil Penalty Assessment and Order. Since you did not request a contested case hearing within the time allowed, the Order remains in effect. The Order requires you to pay the \$28,961 civil penalty and to within thirty days from the date of service of the Notice and Order to submit to DEQ:

a. a complete application for temporary closure general permit, the permit fee and evidence of a current, valid financial responsibility mechanism or a 30-day notice of permanent closure with the permit fee and begin decommissioning the UST as set forth in OAR 340-150-0168; and

b. a complete modification application and a \$75 general permit modification fee; and

c. the information required by OAR 340-122-0240(3) for any field work completed at the property prior to the issuance of this Notice and Order; []

Additionally, the Notice and Order required you to within sixty days from the date of service of the Notice and Order to complete an investigation regarding the full nature, magnitude and extent of soil and groundwater contamination associated with the release of petroleum at the property including installation of monitoring wells. You must also begin quarterly groundwater monitoring from any monitoring wells either currently installed or installed in the future.

(Ex. 2.)

Respondent's behavior

- 10. In March 2013, Respondent submitted a report to DEQ summarizing a groundwater sampling event which occurred in December 2012. The report did not satisfy the requirements in DEQ's Final Order and was 13 months past the deadline in the Final Order. (Exs.1, 2, 3.) DEQ did not receive any other reports from Respondent regarding the confirmed release of petroleum on the Property. (Ex. 3.)
- 11. DEQ did not receive from Respondent quarterly groundwater monitoring results. (*Id.*)
- 12. DEQ did not receive from Respondent a completed modification application for the UST on the Property. (*Id.*)

- 13. DEQ did not receive from Respondent a current, valid financial responsibility mechanism for the UST on the property. (*Id.*)
- 14. DEQ did not receive from Respondent a completed application for temporary closure or a thirty day notice of permanent closure for the UST on the property. (*Id.*)
- 15. DEQ did not receive from Respondent the documentation required in Final Order by the deadlines set forth in the Final Order. (Exs. 1, 2, 3.)

2014 Notice of Civil Penalty and Order

16. On April 8, 2014, DEQ issued a Notice of Civil Penalty Assessment and Order in Agency Case No. LQ/UST-NWR-14-036 that stated, in pertinent part:

I. AUTHORITY

This Notice of Civil Penalty Assessment and Order is issued pursuant to Oregon Revised Statutes (ORS) 468.100 and 468.126 through 468.140, ORS 466.706 through 466.835, ORS 466.994, ORS Chapter 183 and Oregon Administrative Rules (OAR) Chapter 340, Divisions 011, 012, 122 and 150.

II. FINDINGS OF FACT²

- 1. On or about May 18, 2009, Respondent became the owner of property located at 1021 East Baseline Street in Cornelius, Oregon (the Property).
- 2. On or about November 17, 2011, Respondent received a Notice of Civil Penalty Assessment and Order to Comply (2011 Notice) which required Respondent to:
- a. Submit, to DEQ, a complete application for temporary closure general permit, the permit fee and evidence of a current, valid financial responsibility mechanism, or a 30-day notice of permanent closure with the permit fee and begin decommissioning the UST on the Property as set forth in OAR 340-150-0168;
- b. Submit, to DEQ, a complete modification application and a \$75 general permit modification fee;
- c. Submit, to DEQ, the information required by OAR 340-122-0240(3) for any field work completed at the Property prior to the issuance of the 2011 Notice;

² The Findings of Fact in the 2014 Notice are numbered incorrectly.

- d. Complete an investigation regarding the full nature, magnitude and extent of soil and groundwater contamination associated with the release of petroleum at the Property and submit a report, to DEQ, summarizing all steps taken to complete the investigation and all sampling results; and
- e. Begin quarterly groundwater monitoring from any monitoring wells and submit groundwater monitoring reports to DEQ.
- 5. Respondent failed to respond to the Notice and it is now a final order.
- 6. As of the date of this Notice, Respondent has failed to send the documentation required under the 2011 Notice to DEQ by the deadlines set forth in the 2011 Notice.

III. CONCLUSIONS

1. By failing to complete the actions and submit the documentation required under the 2011 Notice, Respondent violated a final order of DEQ. These are Class I violations, according to OAR 340-012-0053(1)(a). DEQ hereby assesses a \$4,890 civil penalty for these violations.³

IV. ORDER TO PAY CIVIL PENALTY

Based upon the foregoing FINDINGS OF FACT AND CONCLUSIONS, Respondent is hereby ORDERED TO pay a total civil penalty of \$4,890. The determination of the civil penalty is attached as Exhibit No. 1 and is incorporated as part of this Notice.

If you do not file a request for hearing as set forth in Section V below, your check or money order must be made payable to "State Treasurer, State of Oregon" and sent to the DEQ, Business Office, 811 S.W. Sixth Avenue, Portland, Oregon 97204. Once you pay the penalty, the Findings of Fact, Conclusions and Order become final.

V. NOTICE OF RIGHT TO REQUEST A CONTESTED CASE HEARING

You have a right to a contested case hearing on this Notice, if you

³ It is unclear from the record whether or not Respondent paid the civil penalty assessed in the 2011 Notice.

request one in writing. DEQ must receive the request for hearing within 20 calendar days from the date you receive this Notice. The request should include any affirmative defenses and either admit or deny each allegation of fact in this Notice. (See OAR 340-011-0530.) You must mail the request for hearing to: DEQ, Office of Compliance and Enforcement – Appeals, 811 SW Sixth Avenue, Portland, Oregon 97204, or fax to (503) 229-5100. An administrative law judge employed by the Office of Administrative Hearings will conduct the hearing, according to ORS Chapter 183, OAR Chapter 340, Division 011 and OAR 137-003-0501 to 0700. You have a right to be represented by an attorney at the hearing, or you may represent yourself unless you are a corporation, agency or association.

If you fail to file a request for hearing in writing within 20 calendar days of receipt of the Notice, the Notice will become a final order by default without further action by DEQ, as per OAR 340-011-0535(5). If you do request a hearing but later withdraw your request, fail to attend the hearing, or notify DEQ that you will not be attending the hearing, DEQ will issue a final order by default pursuant to OAR 137-003-0670. DEQ designates the relevant portions of its files, including information submitted by you, as the record for purposes of proving a prima facie case.

(Ex. 4; emphasis in original.) In the civil penalty calculation, DEQ determined that the magnitude of the Respondent's violation was moderate because there was insufficient evidence to establish that the violation had a significant adverse impact on human health or the environment, or had no more than a de minimis adverse impact on human health or the environment. (Ex. 4.)

17. On May 12, 2014, Respondent filed a Request for Appeal of Civil Penalty Assessment and Order Through a Contested Case Hearing Under ORS 183.745 (Request for Hearing), which stated, in part:

Respondent requests an appeal of the April 8, 2014 Notice of Civil Penalty Assessment and Order through a Contested Case hearing under ORS 183.745.

- 1. Respondent admits the allegations of Paragraphs 1 through 5.
- 2. Respondent admits the allegations of Paragraph 6 insofar as it alleges that Respondent failed to send the required documentation by the deadlines set forth in the 2011 Notice. However, Respondent denies the allegation insofar as it claims that M & G did not send any documentation requested by DEQ.

FIRST AFFIRMATIVE DEFENSE

(Financial Hardship)

3. Respondent generates no income and has no assets besides the property at 1021 East Baseline Street in Cornelius, Oregon described in this order. At all material times, Respondent has lacked the financial capability to comply with the 2011 Notice. Respondent has sought financial assistance and forebearance from DEQ in documents filed on October 26, 2010, and relevant correspondence is attached to this response.

SECOND AFFIRMATIVE DEFENSE

(Part Performance)

4. Respondent provided DEQ with a ground water sampling report on or about March 4, 2013. Prior to the 2011 Notice, Respondent attempted to obtain the results of an investigation of the property performed by K & S Environmental, Inc. (K & S), but K & S refused to release the report until it was fully paid. Respondent kept DEQ fully informed of the dispute with K & S, and relevant correspondence with DEQ is attached to this response.

THIRD AFFIRMATIVE DEFENSE

(Magnitude of Violation)

5. Respondent disputes DEQ's determination in Exhibit No. 1 that alleges a "moderate magnitude violation." DEQ regulations do not specify a magnitude for this alleged violation in OAR 340-012-0135. DEQ fails to set forth any facts supporting its conclusion that any alleged violation rose beyond a minor magnitude.

(Ex. 5.)

Other information

18. Respondent received an economic benefit in the amount of \$3,490 by avoiding the following costs: \$75 for a modification application fee; \$540 per year for a permit fee; \$500 per year for a financial responsibility mechanism; \$2,468 per groundwater monitoring event; and \$7,500 for collecting a sufficient number of soil samples. (Ex. 4.)

CONCLUSIONS OF LAW

- 1. Respondent failed to comply with DEQ's Final Order in Agency Case No. LQ/LUST-NWR-11-104.
 - 2. Respondent shall pay a civil penalty in the modified amount of \$4,690.

OPINION

DEQ contends that Respondent failed to comply with its Final Order and should pay a civil penalty. As the proponent of this position, DEQ has the burden of proof. ORS 183.450(2) and (5); Harris v. SAIF, 292 Or 683, 690 (1982) (general rule regarding allocation of burden of proof is that the burden is on the proponent of the fact or position); Cook v. Employment Div., 47 Or App 437 (1980) (in absence of legislation adopting a different standard, the standard in administrative hearings is preponderance of the evidence). Proof by a preponderance of evidence means that the fact finder is convinced that the facts asserted are more likely true than false. Riley Hill General Contractor v. Tandy Corp., 303 Or 390 (1987). As modified below, DEQ has met its burden.

The violation

DEQ contends that Respondent failed to comply with its Final Order in Agency Case No. LQ/LUST-NWR-11-104. Respondent contends that it provided partial performance. I agree with DEQ.

OAR 340-011-0535 is titled "Final Orders by Default" and provides, in part:

(1) If a person⁴ fails to request a hearing within the time allowed and no further evidence is necessary to make a prima facie case, the notice of a right to a contested case hearing will become final by operation of law as provided in OAR 137-003-0672.

OAR 137-003-0672 provides, in part:

(2) When the agency gives a party an opportunity to request a hearing and the party fails to request a hearing within the time allowed to make the request, the agency order is final and no further order need be served upon the party. ***.

OAR 340-012-0053 is titled "Classification of Violations that Apply to all Programs" and provides, in part:

(1) Class I:

⁴ "Person" includes, but is not limited to, individuals, corporations, associations, firms, partnerships, trusts, joint stock companies, public and municipal corporations, political subdivisions, states and their agencies, and the federal government and its agencies. OAR 340-012-0030(18).

(a) Violating a requirement or condition of a commission or department order, consent order, agreement, consent judgment (formerly called judicial consent decree) or compliance schedule contained in a permit;

(Emphasis in original.)

As indicated above, if a person fails to request a hearing within the time allowed, the notice of a right to a contested case hearing becomes a final order by operation of law. Pursuant to OAR 340-012-0053(1)(a), violating a requirement or condition of a DEQ order is a Class I violation.

On October 25, 2011, DEQ issued to Respondent a Notice of Civil Penalty Assessment and Order to Comply in Agency Case No. LQ/LUST-NWR-11-104, which indicated, among other things, that Respondent had 20 calendar days to file a written request for a contested case hearing or the Notice and Order to Comply would become a Final Order. Respondent did not file a Request for Hearing within 20 calendar days.

On November 17, 2011, the Notice of Civil Penalty Assessment and Order to Comply became a Final Order requiring Respondent to do the following:

- Within thirty (30) days from the date of the Notice and Order submit to DEQ:
 - A complete application for temporary closure general permit, the permit fee and evidence of a current, valid financial responsibility mechanism **or** a 30-day notice of permanent closure with the permit fee and begin decommissioning the UST as set forth in OAR 340-150-0168; and
 - a complete modification application and a \$75 general permit modification fee;
 and
 - o the information required by OAR 340-122-0240(3) for any field work completed at the property prior to the issuance of this Notice and Order.
- Within sixty (60) days from the date of the Notice and Order:
 - Complete an investigation regarding the full nature, magnitude and extent of soil and groundwater contamination associated with the release of petroleum at the Property. The investigation must include installation of a sufficient number of monitoring wells capable of adequately characterizing both site hydrogeology and the vertical and horizontal magnitude and extent of groundwater contamination unless Respondent can demonstrate to DEQ that the groundwater contamination presents no potential threat to human health or the environment; and collection of a sufficient number of soil samples to determine the areal and vertical extent of soil contamination. Within forty-five (45) days of completing any investigation field work, submit a report to DEQ summarizing all steps taken to complete the investigation and all sampling results unless DEQ approves, in writing, an alternative reporting schedule.
 - o Begin quarterly groundwater monitoring from any monitoring wells either

currently on the Property or adjacent properties or installed in the future. Within forty-five (45) days of each monitoring event, submit groundwater monitoring reports unless DEQ approves, in writing, an alternative reporting schedule.

The evidence in the record establishes that Respondent failed to timely submit a completed application for temporary closure or a thirty day notice of permanent closure for the UST on the property; failed to timely submit a current, valid financial responsibility mechanism for the UST on the property; failed to timely submit a completed modification application and permit fee for the UST on the Property; failed to timely submit the information required by OAR 340-122-0240(3) for any field work completed at the property prior to the issuance of this Notice and Order; failed to timely submit a completed investigation regarding the full nature, magnitude and extent of soil and groundwater contamination associated with the release of petroleum at the Property, as well as the associated report summarizing all steps taken to complete the investigation and all sampling results; and failed to timely submit quarterly groundwater monitoring from the monitoring wells currently on the Property or adjacent properties, as well as the associated groundwater monitoring reports.

The evidence also establishes that although Respondent submitted a groundwater sampling report to DEQ in March 2013, the report failed to satisfy the requirements in DEQ's Final Order and was 13 months past the deadline in the Final Order.

In summary, Respondent failed to submit the documentation required in DEQ's Final Order by the deadlines set forth in the Final Order.

Accordingly, I find by a preponderance of the evidence that Respondent failed to comply with the requirements and/or conditions of DEQ's Final Order in Agency Case No. LQ/LUST-NWR-11-104, thereby violating said Final Order and committing a Class I violation.

Respondent contends that it lacked the financial capacity to comply with DEQ's Final Order. However, Respondent's inability to pay compliance costs is irrelevant to whether or not the violation occurred. Respondent, as the owner of the Property, was required to bring the UST on the Property into compliance with the law, including meeting the requirements and deadlines set forth in DEQ's Final Order. Respondent failed to do so and must held accountable for violating DEQ's Final Order. As such, Respondent's argument is not persuasive.

Respondent next contends that it partially performed when it submitted a report to DEQ in March 2013 summarizing a groundwater sampling event which occurred in December 2012. However, as stated previously, the report did not satisfy the requirements set forth in DEQ's Final Order. Additionally, the report was 13 months past the deadline mandated in the Final Order. Thus, Respondent's argument is unpersuasive.

The civil penalty

DEQ contends that Respondent should pay a civil penalty totaling \$4,890. Respondent contends that the penalty is inappropriate. As modified below, I agree with DEQ.

OAR 340-012-0045 is titled "Civil Penalty Determination Procedure" and provides, in pertinent part:

DEQ may assess a civil penalty for any violation, in addition to any other liability, duty, or other penalty provided by law. Except for civil penalties assessed under either OAR 340-012-0155 or OAR 340-012-0160, DEQ determines the amount of the civil penalty using the following formula: BP + $[(0.1 \times BP) \times (P + H + O + M + C)] + EB$.

- (1) BP is the base penalty and is determined by the following procedure:
- (a) The classification of each violation is determined according to OAR 340-012-0053 to 340-012-0097.
- (b) The magnitude of the violation is determined according to OAR 340-012-0130 and 340-012-0135.
- (c) The appropriate base penalty (BP) for each violation is determined by applying the classification and magnitude of each violation to the matrices in OAR 340-012-0140.
- (2) The base penalty is adjusted by the application of aggravating or mitigating factors set forth in OAR 340-012-0145.
- (3) The appropriate economic benefit (EB) is determined as set forth in OAR 340-012-0150.

Step one - the classification of the violation. OAR 340-012-0045(1)(a).

OAR 340-012-0053 is titled "Classification of Violations that Apply to all Programs" and provides, in material part:

(1) Class I:

(a) Violating a requirement or condition of a commission or department order, consent order, agreement, consent judgment (formerly called judicial consent decree) or compliance schedule contained in a permit;

As indicated previously, Respondent failed to comply with the requirements and/or conditions of DEQ's Final Order in Agency Case No. LQ/LUST-NWR-11-104, thereby violating said Final Order and committing a Class I violation.

Step two - the magnitude of the violation. OAR 340-012-0045(1)(b).

OAR 340-012-0130 is titled "Determination of Violation Magnitude" and provides:

- (1) The appropriate magnitude of each civil penalty is determined by first applying the selected magnitude in OAR 340-012-0135. If none is applicable, the magnitude is moderate unless evidence shows that the magnitude is major under paragraph (3) or minor under paragraph (4).
- (2) The person against whom the violation is alleged has the opportunity and the burden to prove that a magnitude under paragraph (1), (3) or (4) of this rule is more probable than the alleged magnitude, regardless of whether the magnitude is alleged under OAR 340-012-0130 or 340-012-0135.
- (3) The magnitude of the violation is major if DEQ finds that the violation had a significant adverse impact on human health or the environment. In making this finding, DEQ will consider all reasonably available information, including, but not limited to: the degree of deviation from applicable statutes or commission and DEQ rules, standards, permits or orders; the extent of actual effects of the violation; the concentration, volume, or toxicity of the materials involved; and the duration of the violation. In making this finding, DEQ may consider any single factor to be conclusive.
- (4) The magnitude of the violation is minor if 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 or other environmental receptors. In making this finding, DEQ will consider all reasonably available information including, but not limited to: the degree of deviation from applicable statutes or commission and DEQ rules, standards, permits or orders; the extent of actual or threatened effects of the violation; the concentration, volume, or toxicity of the materials involved; and the duration of the violation.

Respondent's violation is not listed in OAR 340-012-0135. Additionally, the evidence in the record is insufficient to determine if Respondent's violation had a significant adverse impact on human health or the environment, or had no more than a de minimis adverse impact on human health or the environment. Therefore, I find that the magnitude of Respondent's violation is properly characterized as moderate.

Respondent contends that the violation is minor. However, Respondent, who has the burden of proof regarding that contention, failed to present reliable evidence, such as an affidavit from the mechanical engineer, 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 or other environmental receptors. Consequently, Respondent's argument is not persuasive.

Step three - the appropriate base penalty. OAR 340-012-0045(1)(c).

OAR 340-012-0140 is titled "Determination of Base Penalty" and provides, in relevant part:

(5) \$1,000 Penalty Matrix:

- (b) The base penalty values for the \$1,000 penalty matrix are as follows:
- (A) Class I

(ii) Moderate - \$500;

The base penalty for Respondent's Class I moderate violation is \$500.

Step four - aggravating and mitigating factors. OAR 340-012-0045(2).

OAR 340-012-0145 is titled "Determination of Aggravating or Mitigating Factors" and provides, in pertinent part:

- (1) Each of the aggravating or mitigating factors is determined, as described below, and then applied to the civil penalty formula in OAR 340-012-0045.
- (2) "P" is whether the respondent has any prior significant actions (PSAs). A violation becomes a PSA on the date the first enforcement action (FEA) in which it is cited is issued.
- (a) Except as otherwise provided in this section, the values for "P" and the finding that supports each are as follows:
- (A) 0 if no PSAs or there is insufficient information on which to base a finding under this section.
- (B) 1 if the PSAs included one Class II violation or two Class III violations; or
- (C) 2 if the PSAs included one Class I violation or Class I

equivalent.

- (D) For each additional Class I violation or Class I equivalent, the value of "P" is increased by 1.
- (b) The value of "P" will not exceed 10.
- (c) If any of the PSAs were issued under ORS 468.996, the value of "P" will be 10.
- (d) In determining the value of "P," DEQ will:
- (A) Reduce the value of "P" by:
- (i) 2 if all the FEAs in which PSAs were cited were issued more than three years before the date the current violation occurred.
- (ii) 4 if all the FEAs in which PSAs were cited were issued more than five years before the date the current violation occurred.
- (B) Include the PSAs:
- (i) At all facilities owned or operated by the same respondent within the state of Oregon; and
- (ii) That involved the same media (air, water or land) as the violations that are the subject of the current FEA.
- (e) In applying subsection (2)(d)(A), the value of "P" may not be reduced below zero.
- (f) PSAs that are more than ten years old are not included in determining the value of "P."
- (3) "H" is the respondent's history of correcting PSAs. The values for "H" and the finding that supports each are as follows:
- (a) -2 if the respondent corrected all prior violations cited as PSAs.
- (b) -1 if the violations were uncorrectable and the respondent took reasonable efforts to minimize the effects of the violations cited as PSAs; or
- (c) 0 if there is no prior history or if there is insufficient information on which to base a finding under paragraphs (3)(a) or (b).

- (d) The sum of values for "P" and "H" may not be less than 1 unless the respondent took extraordinary efforts to correct or minimize the effects of all PSAs. In no case may the sum of the values of "P" and "H" be less than zero.
- (4) "O" is whether the violation was repeated or ongoing. A violation can be repeated independently on the same day, thus multiple occurrences may occur within one day. Each repeated occurrence of the same violation and each day of a violation with a duration of more than one day is a separate occurrence when determining the "O" factor. Each separate violation is also a separate occurrence when determining the "O" factor. The values for "O" and the finding that supports each are as follows:
- (a) 0 if there was only once occurrence of the violation, or if there is insufficient information on which to base a finding under paragraphs (4)(b) through (4)(d).
- (b) 2 if there were more than one but less than seven occurrences of the violation.
- (c) 3 if there were from seven to 28 occurrences of the violation.
- (d) 4 if there were more than 28 occurrences of the violation.
- (e) DEQ may, at its discretion, assess separate penalties for each occurrence of a violation. If DEQ does so, the O factor for each affected violation will be set at 0. If DEQ assesses one penalty for multiple occurrences, the penalty will be based on the highest classification and magnitude applicable to any of the occurrences.
- (5) "M" is the mental state of the respondent. For any violation where the findings support more than one mental state, the mental state with the highest value will apply. The values for "M" and the finding that supports each are as follows:
- (a) 0 if there is insufficient information on which to base a finding under paragraphs (5)(b) through (5)(d).
- (b) 2 if the respondent had constructive knowledge (reasonably should have known) of the requirement.
- (c) 4 if the respondent's conduct was negligent.
- (d) 8 if the respondent's conduct was reckless or the respondent

acted or failed to act intentionally with actual knowledge of the requirement.

- (e) 10 if respondent acted flagrantly.
- (6) "C" is the respondent's efforts to correct or mitigate the violation. The values for "C" and the finding that supports each are as follows:
- (a) -5 if the respondent made extraordinary efforts to correct the violation or to minimize the effects of the violation, and made extraordinary efforts to ensure the violation would not be repeated.
- (b) -4 if the respondent made extraordinary efforts to ensure that the violation would not be repeated.
- (c) -3 if the respondent made reasonable efforts to correct the violation, or took reasonable affirmative efforts to minimize the effects of the violation.
- (d) -2 if the respondent eventually made some efforts to correct the violation, or to minimize the effects of the violation.
- (e) -1 if the respondent made reasonable efforts to ensure that the violation would not be repeated.
- (f) 0 if there is insufficient information to make a finding under paragraphs (6)(a) through (6)(e), or (6)(g) or if the violation or the effects of the violation could not be corrected or minimized.
- (g) 2 if the 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).

Prior significant actions (P). Respondent has a prior significant action involving two Class I violations and three Class II violations. Thus, the value assigned to (P) is 4. OAR 340-012-0145(2)(a)(C) and (D).

History of correcting prior significant actions (H). Respondent's history of correcting prior significant actions receives a value of 0. As such, the value assigned to (H) is 0. OAR 340-012-0145(3)(b).

Repeated or ongoing violations (O). Respondent's violation has been ongoing since it failed to timely submit documentation showing compliance that was required in DEQ's Final Order. Thus, Respondent's violation has taken place for more than 28 days or occurrences. Therefore, the value assigned to (O) is 4.

Mental state (M). DEQ contends that Respondent's conduct was intentional. I agree with DEQ.

"Intentional" means the respondent acted with a conscious objective to cause the result of the conduct. OAR 340-012-0030(13).

On October 25, 2011 and November 17, 2011, Respondent was notified by DEQ of the steps it needed to take to bring the UST on the Property into compliance. Despite this knowledge, Respondent failed to comply with the requirements and deadlines set forth in DEQ's Final Order. I find that Respondent acted with a conscious objective to cause the violation. Consequently, the value assigned to (M) is 8.

Efforts to correct (C). In March 2013, Respondent submitted to DEQ a report summarizing a groundwater sampling event which occurred in December 2012. Although the report did not meet all the requirements in the Final Order and was untimely submitted, Respondent made "some effort" to correct the violation. Thus, the value assigned to (C) is -2.

Economic benefit (EB). Respondent received an economic benefit of \$3,490 by avoiding the following costs: \$75 for a modification application fee; \$540 per year for the annual permit fee; \$500 per year for a financial responsibility mechanism; \$2,468 per groundwater monitoring event; and \$7,500 for collecting a sufficient number of soil samples. As such, the value assigned to (EB) is \$3,490.

The formula to calculate the penalty is: $BP + [(0.1 \times BP) \times (P + H + O + M + C)] + EB$. OAR 340-012-0045(2)(e). Applying the values from above, the civil penalty is as follows:

```
$500 + [(0.1 x $500) x (4 + 0 + 4 + 8 + -2)] + $3,490
$500 + [($50) x (14)] + $3,490
$500 + $700 + $3,490
$4,690
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Therefore, Respondent shall pay a civil penalty totaling \$4,690.

Respondent contends that it does not have the assets to pay a civil penalty. However, pursuant to OAR 340-012-0162, the decision whether to reduce the civil penalty amount based on an inability to pay is within the sole discretion of DEQ. Accordingly, Respondent's argument is not persuasive.

RULING

DEQ's Motion for Summary Determination is GRANTED.

The hearing scheduled for December 2, 2014 is CANCELLED.

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ORDER

I propose DEQ issue the following order:

The Notice of Civil Penalty Assessment and Order issued on April 8, 2014 is AFFIRMED as MODIFIED.

Dove L. Gutman

Senior Administrative Law Judge
Office of Administrative Hearings

APPEAL RIGHTS

If you are not satisfied with this decision, you have the right to have the decision reviewed by the Oregon Environmental Quality Commission (Commission). To have the decision reviewed, you must file a "Petition for Review" within 30 days of the date this order is served on you. Service, as defined in Oregon Administrative Rule (OAR) 340-011-0525, means the date that the decision is **mailed** to you, and not the date that you receive it.

The Petition for Review must comply with OAR 340-011-0575 and must be **received** by the Commission within 30 days of the date the Proposed and Final Order was mailed to you. You should mail your Petition for Review to:

Environmental Quality Commission c/o Dick Pedersen, Director, DEQ 811 SW Sixth Avenue Portland, OR 97204.

You may also fax your Petition for Review to (503) 229-6762 (the Director's Office).

Within 30 days of filing the Petition for Review, you must also file exceptions and a brief as provided in OAR 340-011-0575. The exceptions and brief must be **received** by the Commission within 30 days from the date the Commission received your Petition for Review. If you file a Petition but not a brief with exceptions, the Environmental Quality Commission may dismiss your Petition for Review.

If the Petition, exceptions and brief are filed in a timely manner, the Commission will set the matter for oral argument and notify you of the time and place of the Commission's meeting. The requirements for filing a petition, exceptions and briefs are set out in OAR 340-011-0575.

Unless you timely file a Petition for Review as set forth above, this Proposed Order becomes the Final Order of the Commission 30 days from the date this Proposed Order is mailed to you. If you wish to appeal the Final Order, you have 60 days from the date the Proposed Order becomes the Final Order to file a petition for review with the Oregon Court of Appeals. See ORS 183.480 et. seq.

CERTIFICATE OF MAILING

On November 3, 2014 I mailed the foregoing RULING ON MOTION FOR SUMMARY DETERMINATION, AND PROPOSED AND FINAL ORDER issued on this date in OAH Case No. 1403764.

By: First Class and Certified Mail
Certified Mail Receipt #7013 2630 0002 3662 2870

Ward Greene Attorney at Law 1515 SW 5th Avenue, Suite 600 Portland OR 97201

By: First Class Mail

Susan Elworth Dept. of Environmental Quality 811 SW 6th Ave Portland OR 97204

Ryan Clark
Administrative Specialist
Hearing Coordinator

Attachment C April 15-16, 2015, EQC meeting Page 26 of 26

SUMMARY DETERMINATION

1	BEFORE THE ENVIRONMENTAL QUALITY COMMISSION			
2	OF THE STATE OF OREGON			
3	IN THE MATTER OF: M & G COLLECTIONS, LLC,)) RESPONDENT'S RESPO) OPPOSITION TO DEPAD) MOTION FOR SUMMAD	RTMENT'S	
5) DETERMINATION)		
6	Respondent.	OAH Case No. 1403764 DEQ Case No. LQ/UST-N	JWR-14-036	
7	Ŷ			
8	INTROD	CTION		
9	M & G Collections, LLC ("M&G"), resp	tfully submits the following F	lesponse in	
10	opposition to the Department's Motion for Sumr	ry Adjudiction. In particular,	resolution of the	
11	amount of the penalty is inappropriate on summa	adjudication, in light of the g	genuine issues of	
12	material fact concerning the Department's applic	on of the facts of this case to	its civil penalty	
13	formula.			
14	LEGAL ST	NDARDS		
15	To prevail on its motion for summary adj	ication, the Department must	show that (1)	
16	there is no genuine issue of material fact that is relevant to resolution on the legal issues, and (2)			
17	the moving party is entitled to a favorable ruling as a matter of law.			
18	By reference to analogous summary judgment standards under ORCP 47, a fact is			
19	"material" if under applicable law, it might affect	ne outcome of the case. E.g.	Zygar v.	
20	Johnson, 169 Or App 638, 646 (2000). A factual	ispute is genuine if the evider	nce could allow	
21	the finder of fact to render a decision for the non-	oving party. See, e.g. ORCP	47 C.	
22	The administrative law judge's ruling may	e rendered on a single issue a	nd need not	
23	resolve all issues in the contested case. OAR 137	03-0580.		
24	BACKG	OUND		
25	Respondent is the owner of a decommissi	ed gas station in Cornelius, C	regon,	
26				
	re 1 - RESPONDENT'S RESPONSE IN OPPOSIT	ON TO DEPARTMENT'S M	OTION FOR	

the penalty amount.

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- containing underground storage tanks ("UST") referred to by the Department ("DEQ") as 1 Cornelius Estby (the "Property"). 2 As DEQ is aware, Respondent has never operated the station, it merely obtained the 3 property via foreclosure against Dwight Estby. [Ex. R1, pg. 1.] Estby, through his business 4 entities, operated a gas station on the Property. DEQ undertook enforcement action against Estby 5 while his business entities were in possession of the Property, [Ex. R2], but nothing on the record 6 indicates that DEQ has attempted to collect from Estby after his interest was foreclosed. [Ex. 7 R3.] 8 The tanks on the Property were drained by DEQ before M&G obtained title to the 9 Property. [Ex. R1, pg 1; Ex. R4.] M&G has never utilized the tanks or operated any business on 10 the Property. Besides the Property, M&G has no assets and generates no revenue. M&G's sole 11 business activity has been to list the Property and seek an enterprising buyer with the means to 12 correct whatever environmental issues the Property may have. [Department's Motion for 13 Summary Adjudication, Ex. 5, pgs. 2-3.] 14 ARGUMENT IN OPPOSITION TO DEQ'S MOTION 15 There are two key issues in this summary adjudication motion, comprising the two-step 16 analysis of whether DEO's proposed penalty should be rejected. The first issue for this tribunal 17 to consider is whether Respondent complied with the terms of the 2011 Notice. This prong is 18 relevant on the issue of **liability** for the proposed penalty. 19 The second issue in this case is whether the amount of the penalty imposed by DEQ is 20 appropriate. In other words, the second prong is determinative of the amount of appropriate 21 penalties. 22 Respondent submits that there is at least a genuine issue of material fact on the issue of 23
- 25 I. M&G Partially Performed the Requirements of the 2011 Notice.

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1	On the first prong, the response attached to M&G's request for a contested case speaks
2	for itself. Respondent acknowledges that it did not comply strictly with the four corners of the
3	2011 Notice and its associated deadlines. However, DEQ's insistence on strict compliance with
4	the 60 day period specified in the notice is puzzling, because the instant penalty was issued
5	approximately two years and three months after the 2011 Notice's 60 day period elapsed. In
6	addition, for DEQ to imply that M&G was remiss in meeting these requirements ignores facts
7	that were clearly within DEQ's knowledge.
8	Even before the 2011 Notice was issued, M&G attempted to complete an investigation
9	and submit a report for field work completed. However, M&G was stymied by an unethical
10	contractor, K&S Environmental, Inc ("K&S"). K&S had previously performed and submitted
1	reports to investigations on the Property to DEQ with respect to the Property while Dwight Estby
12	was in possession. [Ex. R5.] When M&G attempted to obtain the most recent reports generated
13	by K&S, K&S refused and withheld them from M&G and, by extension, from DEQ, until K&S
14	was paid in full, despite K&S protecting its right to payment by filing of a lien against the
15	Property. [Ex. R6, R7.] Of course, M&G lacked the funds pay to K&S, despite its strong arm
16	tactics. M&G's entreaties to DEQ to intervene and demand that K&S turn over the results of its
17	investigation of the Property went unheeded, and all parties lost the benefit of K&S's report. [Ex
18	R8, R9.]
9	Had this dispute turned out differently, M&G would still have not been strictly in
20	compliance with the terms of the 2011 Notice. However, M&G's financial predicament, its
21	related inability to obtain credit, and its efforts to comply notwithstanding, are all relevant to
22	determining the magnitude of the violation and the appropriateness of DEQ's proposed penalty.
23	II. The Proposed Penalty Amount is Unsupported by the Facts of this Case.
24	The amount of the penalty is inappropriate for two reasons. First, if any violation
25	occurred, it did not rise any higher than a minor magnitude. Second, multiple other findings
26	

Page 3 - RESPONDENT'S RESPONSE IN OPPOSITION TO DEPARTMENT'S MOTION FOR SUMMARY DETERMINATION

1	underlying the penalty calculation are flawed. In light of the facts set forth below, summary
2	adjudication is inappropriate on this issue.
3	A. Any Violation That May Have Occurred was Minor in Magnitude.
4	Where no magnitude is specified for a particular violation, the standards set forth in OAR
5	340-012-00130 control the determination of the magnitude of the violation. In particular,
6	subsection (4) of this rule guides DEQ's determination that a minor magnitude occurred:
7	(4) The magnitude of the violation is minor if DEQ finds that the violation had no more than a de minimis adverse impact on human health or the environment, and
8	posed no more than a de minimis threat to human health or the environment. In making this finding, DEQ will consider all reasonably available information
9 10	including, but not limited to: the degree of deviation from applicable statutes or commission and DEQ rules, standards, permits or orders; the extent of actual or threatened effects of the violation; the concentration, volume, or toxicity of the
11	materials involved; and the duration of the violation.
12	In this case, whatever harm may have arisen from M&G's noncompliance was clearly de
13	minimis. At no time has M&G operated the USTs located upon the Property, nor did it ever
14	engage in any meaningful activity on the Property. At all times, DEQ was aware that the site was
15	shut down while M&G has been in possession, and DEQ is also privy to the fact that that the
16	USTs are dry. [Ex. R10.] Thus, there has been no possibility for any new contamination to have
17	occurred since DEQ issued the 2011 Notice, nor was there any heightened risk to human health
18	or the environment.
19	In addition, the investigation that M&G did, in fact, submit to DEQ painted an optimistic
20	picture of the Property's soil and groundwater. According to the report and the opinion of the
21	environmental consultants who performed the analysis, the Property is "relatively clean," with
22	the data showing that only mild contamination, and that petroleum concentrations were lower
23	than anticipated. [Ex. R11.] This also militates in favor of a minor magnitude finding.
24	Finally, there was nothing untoward about M&G's conduct above and beyond the bare
25	fact that it could not comply with the 2011 Notice. At all times material, M&G has been
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Pag	e 4 - RESPONDENT'S RESPONSE IN OPPOSITION TO DEPARTMENT'S MOTION FOR MMARY DETERMINATION

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- completely open with DEQ about its financial condition and its objective for the Property. This 1 objective is simple; M&G seeks to sell the Property to an acceptable buyer, who would 2 necessarily have the resources and the will to work with DEQ to perform whatever cleanup is 3 necessary on the Property, through a Prospective Purchaser Agreement or otherwise. 4 However, M&G's honesty with DEQ has been met with impatience and punishment, 5 which have not been constructive for any party involved. DEQ's fixation with penalizing M&G, 6 without more, will do nothing to achieve compliance with its UST program. The only thing that 7 additional penalties will achieve is to spook any potential buyers from purchasing the Property. 8 9 Without a purchaser, the Property will remain as it is, unused and blighted, and it may eventually end up in foreclosure. 10 Indeed, M&G has attempted to reach an agreement with DEQ to bring the Property into 11 compliance, but DEQ has ignored M&G's good faith efforts to make the best of a difficult 12 situation. On multiple occasions, DEQ has apparently spurned M&G's proposal to aid DEQ in 13 pursuing the polluter who was the actual cause of the Property's condition, that party being 14 Dwight Estby.¹ 15 As one final note, it appears that a penalty for M&G's alleged violation – non-compliance 16 with a final order – is highly unusual.² This deviation from usual procedure, coupled with the 17 minimal likelihood of harm and M&G's good faith discussed above, lends further credence to 18 M&G's contention that a moderate magnitude penalty is clearly inappropriate in this case. 19 In sum, DEQ's finding on the "Magnitude of Violation" issue is erroneous under the facts 20 21 22 ¹ DEQ was well informed that Dwight Estby was the cause of whatever environmental issues are present on the Property. [See Ex. R2, R10, R12.] 23 ² A July 26, 2013 email from Susan Elworth to DEQ personnel notes in relevant part that
- ² A July 26, 2013 email from Susan Elworth to DEQ personnel notes in relevant part that "Ordinarily we don't require a PEN [pre-enforcement notice] for a final order violation (OCE sends out a letter informing the RP [responsible party] of the need to comply, but due to the length of time since that letter was sent (December 2011), a PEN makes sense." [Ex. R13.]

Page 5 - RESPONDENT'S RESPONSE IN OPPOSITION TO DEPARTMENT'S MOTION FOR SUMMARY DETERMINATION

- of this case. Taken together, M&G's lack of culpability in causing or contributing to any
- 2 petroleum release on the Property, the mild existing contamination of the soil and groundwater,
- and M&G's good faith in dealing with DEQ, contravenes DEQ's harsh finding that any alleged
- 4 violation on the part M&G's was anything more than a minor magnitude. Accordingly, on this
- 5 ground alone, this tribunal should deny summary adjudication on the amount of the penalty.
- B. DEQ's Findings Underlying the Penalty Calculation are Erroneous.
- 7 Other genuine and material issues of fact remain with respect to the "aggravating and
- 8 mitigating factors" affecting the amount of the penalty. These include M&G's efforts to correct
- 9 or mitigate, OAR 340-012-0145(6), and the economic benefit of noncompliance, OAR 340-012-
- 10 150.
- First, DEQ's assignment of a "2" to M&G's efforts to correct or mitigate the violation is
- 12 completely unjustified, and borders on arbitrary. This determination essentially states that M&G
- did not address the violation whatsoever. Of course, this proposed finding ignores the fact the
- 14 M&G did in fact, perform an investigation on the Property's soil and groundwater. It also does
- not take into account M&G's good faith efforts to come up with the money to attempt some
- measure of compliance with the 2011 Notice. Indeed, a "-2" value is more appropriate, OAR
- 17 340-012-0145(6)(d); although M&G's responded slowly at first, it did eventually make some
- 18 efforts to correct the violation and minimize the violation's effects by obtaining better
- information as the extent of any contamination on the Property, benefitting both DEQ and the
- 20 public.
- Second, the DEQ's "Economic Benefit" determination is similarly flawed. In fact, M&G
- 22 disagrees with the premise of DEQ's position. M&G has not "avoided" payment by any
- 23 conventional definition; it has been unable to pay for the simple reason that it has no assets
- 24 beyond the Property itself.
- Indeed, DEQ's continued imposition of penalties is counterproductive. M&G will be

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Page 6 - RESPONDENT'S RESPONSE IN OPPOSITION TO DEPARTMENT'S MOTION FOR SUMMARY DETERMINATION

1	unable to pay the penalty, and thus DEQ's lien for the penalty amount would attach to the		
2	Property. An additional DEQ lien would only serve to cause the Property, distressed as it is, to		
3	become less marketable. This will make it even less likely that M&G can find a buyer who will		
4	improve the Property's condition to DEQ's satisfaction.		
5	CONCLUSION		
6	For these reasons, M&G respectfully requests that the Administrative Law Judge find that		
7	there are genuine issues of material fact as to the amount of DEQ's penalty. In particular, DEQ's		
8	findings as to the magnitude of the violation and the civil penalty formula are erroneous and		
9	should be rejected by this tribunal. Accordingly, M&G is entitled to an administrative hearing on		
10	these issues, and DEQ's motion for summary adjudication should be denied in whole or in part.		
11	Dated this 24 th day of October, 2014.		
12	GREENE & MARKLEY, P.C.		
13	1. 4/1		
14	By Limpty Minan Fawson S. Ward Greene, OSB #77413		
15	ward.greene@greenemarkley.com Timothy A. Lawson, OSB #134112		
16	timothy.lawson@greenemarkley.com Attorneys for Respondent		
17			
18	\G:\Clients\6604\P Response to DEQ Mot Summary Adj.wpd		
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Attachment D

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April 15-16, 2015, EQC meeting

Page 7 - RESPONDENT'S RESPONSE IN OPPOSITION TO DEPARTMENT'S MOTION FOR SUMMARY DETERMINATION

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GREENE & MARKLEY, P.C.

ATTORNEYS

1515 SW FIFTH AVENUE, SUITE 600 PORTLAND, OREGON 97201-5492

TELEPHONE: (503) 295-2668 FACSIMILE: (503) 224-8434 E-MAIL: email@greenemarkley.com

Ward.greene@greenemarkley.com

November 11, 2009

Mr. Jeff K. Schatz, R.G. UST Cleanup Project Manager Department of Environmental Quality 2020 SW 4th Avenue, Suite 400 Portland, OR 97201-4987

> Re: Cornelius Estby II File No. 34-06-1375

Dear Mr. Schatz:

Just a quick note to respond briefly to your letter of October 28, 2009, to Ethel Meyers and to follow up on my voice mail message. As you may recall, this office has represented Ms. Meyers for a number of years in connection with claims that arose as a result of the actions of her ex-husband, Dwight Estby.

Please be sure that DEQ's records reflect the fact that Ms. Meyers is not an owner of the property in question. Rather, she is one of the members of M & G Collections LLC, an Oregon limited liability company. M & G Collections foreclosed the subject property and purchased it at the foreclosure sale.

We are troubled by the information in your letter concerning the most recent monitoring report. Ms. Meyers understood that the underground storage tanks had been pumped out by DEQ and that the likelihood of any new contamination was very low. Indeed, M & G Collections has not taken any action on the site which would have any effect on the existence of any contaminants.

EXHIBIT RI PAGE 1 OF 2

Item E 000093

Attachment D

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Mr. Jeff K. Schatz, R.G. November 11, 2009 Page 2

M & G is in the process of entering into a lease with a tenant who wishes to operate a gas station on the site. Please let me know what requirements DEQ will impose so that we can discuss the matter with the potential tenant and assure his compliance.

Please direct any further communications on this file to me. Your courtesy and cooperation will be sincerely appreciated.

Very truly yours,

Ward Greene

GREENE & MARKLEY, P.C.

SWG/cg

cc: Mr. Bill Knutson, P.E.

K&S Environmental, Inc.

\6604\G:\Clients\6604\L Schatz, Jeff DEQ 11-11-09.wpd

EXHIBIT $\frac{R_1}{2}$ PAGE $\frac{2}{2}$ OF $\frac{2}{2}$



Department of Environmental Quality

811 SW Sixth Avenue Portland, OR 97204-1390 503-229-5696 TTY: 503-229-6993

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BEFORE THE ENVIRONMENTAL QUALITY COMMISSION OF THE STATE OF OREGON

IN THE MATTER OF:

WESTERN DAKOTA ENTERPRISES, LLC,
an Oregon limited liability company, and
DWIGHT ESTBY,
Respondents.

NO. LQ/T-NWR-07-224 FINDINGS OF FACT, CONCLUSIONS OF LAW, AND FINAL ORDER

THIS MATTER came before the Director of the Department of Environmental Quality (Department or DEQ) acting on behalf of the Environmental Quality Commission (Commission) pursuant to Oregon Administrative Rules (OAR) 340-011-0535, on the Motion of the Office of Compliance and Enforcement of the DEQ. Having considered the Motion, records, and files in this case, and being fully cognizant of the contents thereof, on behalf of the Commission, I

hereby make the following Findings of Fact, Conclusions of Law, and Final Order.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

By Penalty Demand Notice (Notice) dated December 14, 2007, from the Department to Respondents, Western Dakota Enterpises, LLC and Dwight Estby, a civil penalty in the amount of \$11,000 was assessed for one or more violations specified therein. Service of the Notice was perfected by certified mailing upon Respondents on December 14, 2007. The Department did not receive a request for a hearing in a timely manner.

FINAL ORDER

IT IS HEREBY ORDERED that Respondents pay the Department the \$11,000 civil penalty plus interest pursuant to Oregon Revised Statute (ORS) 82.010, from the date this Final Order becomes final either upon appeal or by operation of law; and that if the civil penalty remains unpaid for more than ten (10) days after that date, this Final Order may be filed with each County Clerk and execution shall issue therefor. Additionally, Respondent must comply with the requirements set forth in Paragraph 8 of Mutual Agreement and Order no. LQ/T-NWR-06-204 within the timeframes set forth therein.

Page 1 FINDINGS OF FACT, CONCLUSIONS OF LAW, AND FINAL ORDER (CASE NO. LQ/T-NWR-07-224)

Return recorded document to:
DEPARTMENT OF ENVIRONMENTAL QUALITY
OFFICE OF COMPLIANCE AND ENFORCEMENT
811 SW SIXTH STREET
PORTLAND OR 97204-1390 EXHIBIT

Pursuant to ORS 183.480 and 183.482, appeal of this Order may be initiated by filing a petition for judicial review with the Oregon Court of Appeals within 60 days of the date of this Order. ENVIRONMENTAL QUALITY COMMISSION ne K. Hickman, Administrator Office of Compliance and Enforcement Department of Environmental Quality Pursuant to OAR 340-011-0505

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2	PEROPE THE PARTEON APAITAL OLIVIETY COMMISSION				
3	BEFORE THE ENVIRONMENTAL QUALITY COMMISSION OF THE STATE OF OREGON				
4) NO. LQ/T-NWR-07-036 IN THE MATTER OF:) FINDINGS OF FACT, CONICLUSIONS OF LAW				
5	TRI-COUNTY PETROLEUM, INC., an inactive Nevada corporation, registered to do business in Oregon,				
7	Respondent.				
8	THIS MATTER came before the Director of the Department of Environmental Quality				
9	(Department or DEQ) acting on behalf of the Environmental Quality Commission (Commission				
10	pursuant to Oregon Administrative Rules (OAR) 340-011-0535, on the Motion of the Office of				
11	Compliance and Enforcement of the DEQ. Having considered the Motion, records, and files in				
12	this case, and being fully cognizant of the contents thereof, on behalf of the Commission, I				
13	hereby make the following Findings of Fact, Conclusions of Law, and Final Order.				
14	FINDINGS OF FACT AND CONCLUSIONS OF LAW				
15	By Notice of Violation and Assessment of Civil Penalty (Notice) dated August 17, 2007				
16	from the Department to Respondent, Tri-County Petroleum, Inc., a civil penalty in the amount of				
17	\$4,921 was assessed for one or more violations specified therein. Service of the Notice was				
18	perfected on Respondent on September 24, 2007. The Department did not receive a request for a				
19	hearing in a timely manner.				
20	FINAL ORDER				
21	IT IS HEREBY ORDERED that Respondent pay the Department the \$4,921 civil penalty				
22	plus interest pursuant to Oregon Revised Statute (ORS) 82.010, from the date this Final Order				
23	becomes final either upon appeal or by operation of law; and that if the civil penalty remains				
24	unpaid for more than ten (10) days after that date, this Final Order may be filed with each Coun				
25	Clerk and execution shall issue therefor.				
26	1111				
27	////				
	Page 1 FINDINGS OF FACT, CONCLUSIONS OF LAW, AND FINAL ORDER (CASE NO. LQ/T-NWR-07-036) EXHIBIT				

EXHIBIT <u>R2</u> PARE E-900097 4

Pursuant to ORS 183.480 and 183.482, appeal of this Order may be initiated by filing a petition for judicial review with the Oregon Court of Appeals within 60 days of the date of this Order. ENVIRONMENTAL QUALITY COMMISSION loter 16, 2007 Jane/K. Hickman, Administrator Office of Compliance and Enforcement Department of Environmental Quality Pursuant to OAR 340-011-0505

Attachment D April 15-16, 2015, EQC meeting

S Ward Page 4 Aef 81

From:

S Ward Greene

Sent: To: Monday, January 07, 2013 2:03 PM Jeff Schatz (schatz.jeff@deq.state.or.us)

Subject:

Cornelius Gas Station

Dear Jeff:

It occurred to me that there has never been any enforcement action against Dwight Estby. Is that correct?

Has DEQ determined whether Mr. Estby maintained any insurance? As you know, any discharge or contamination took place while Mr. Estby owned the gas station.

Please let me know what DEQ's position is on this issue.

I look forward to speaking with you.

Best Regards,

Ward

S. Ward Greene GREENE & MARKLEY, P.C. 1515 SW Fifth Avenue, Suite 600 Portland, OR 97201 Telephone: (503) 295-2668

Fax: (503) 224-8434

www.greenemarkley.com

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Item E 000099



Department of Environmental Quality

Eastern Region The Dalles Office 400 East Scenic Drive, Suite 307

AUG 0 8 2008 The Dalles, OR 97058

FAX (541) 298-7330

NORTHWEST REGION

August 7, 2008

Dwight Estby 33030 NE Old Parrett Mountain Newberg, OR 97132

RE:

Cornelius Estby 1021 Baseline Rd. Cornelius, OR 97113 UST Facility ID No.5112 UST decommissioning

Dear Mr. Estby:

The Department of Environmental Quality (DEQ) has received and reviewed underground storage tank (UST) documents for closure of tanks at UST facility number 5112, located at 1021 Baseline Road in Cornelius, Oregon. The purpose of this letter is to document UST closure as required by Oregon Administrative Rule (OAR) 340-150-0168(8).

Based on DEO review of the documents received, the work appears to have met the requirements of OAR 340-150-0168 for decommissioning in place. DEQ has changed the status of one or more tanks from active to closed, with a decommissioning date of January 22, 2008. DEQ file and database records show the tank(s) as inactive and decommissioned. The documents received are on file at the DEQ Northwest Region Office in downtown Portland.

This letter is not related to the current Leaking Underground Storage Tank Cleanup, LUST 34-06-1375 at the same facility, and is not intended to be a no further action letter for that purpose. The DEO's determination will not be applicable if new or undisclosed facts show that the UST closure does not comply with the referenced rules.

As the Permittee you are required to maintain records of permanent closure, including the site assessment report and associated documents for three years after the permanent closure checklist and report have been reviewed by the DEQ. If the UST facility is sold within this time period, you must provide these records to the new property owner.

I can be reached at (503) 229-5496 if you have any questions.

Sincerely,

Gregory Toran

Environmental Specialist

Liz Clark for Gregory Foran

EXHIBIT Item E 000100 Attachment D
April 15-16, 2015, EQC meeting
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K&S Environmental, Inc.



4475 SW Scholls Ferry Rd., #256 ▲ Portland, OR 97225 (503) 291-1454 ▲ Fax 291-5425

JAN 2 4 ZU08

Greg Toran
DEQ – NW Region
2020 SW Fourth, Suite 400
Portland, OR 97201

Re: UST Decommissioning Report

Estby Service Station at 1021 Baseline Rd., Cornelius, OR

Dear Mr. Toran:

Attached with this letter you will find the UST Decommissioning Checklist and Site Assessment Report forms for two 3000 gallon USTs located at Estby's Cornelius service station in Cornelius, OR. The tanks had reportedly been decommissioned in place in the mid to late 1980s by PEMCO. The tanks were reportedly filled with pea gravel at that time, but no written documentation was available for the work. K&S Environmental, Inc. (K&S) presented a work plan to DEQ for sampling of soil and groundwater around the two tanks on September 17, 2007. That sampling plan was approved by you on 9/20/07 by e-mail. The work was completed in conjunction with other work associated with an ongoing subsurface investigation/cleanup at the site. The results of all sampling completed at the site by K&S are presented in two reports dated 8/10/06 and 10/11/07 already submitted to DEQ.

On 1/18/08, K&S met with Greg Toran of DEQ at the site to verify that the tanks had been properly decommissioned in place as was reported by Dwight Estby. The concrete over the tanks was removed and the tops of the two tanks were exposed by hand excavation. The two tanks were cut open and the tank interiors were inspected. It appeared that the tanks had been decommissioned by filling the tanks with pea gravel through a 4 inch fill located at the north end of each tank. The method for installing the pea gravel only allowed for the tanks to be filled approximately half full. The groundwater at the site was at the top of the tanks, and the remaining space in each tank was filled with water. No visual or olfactory evidence of soil or groundwater was noted in the soil or groundwater encountered around the tops of the tanks or inside each of the tanks. Based upon the lack of obvious contamination in the groundwater in and around the tank tops, it appears that an effort to clean the tanks had likely been made prior to placing pea gravel in them. On 1/22/08, K&S proceeded to fill the remaining void in the tanks with pea gravel. Approximately 2500 gallons of water was pumped from the tanks while a total of 15.81 tons of pea gravel was added to the two tanks. The tank excavation was then backfilled and the site was restored.

EXHIBIT

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The piping associated with the two tanks indicated that the west tank was a siphon tank piped to the east tank. The two tank vents ran to the south southeast and the above ground portions of the piping were likely removed during the demolition of the old station building and car wash. The product pipe ran from the north end of the east tank toward the location of the newer USTs. K&S has concluded that the area of the former dispenser associated with the decommissioned tanks had to have been excavated and removed to facilitate the installation of the newer USTs. It is K&S's judgment that borings B-1, B-2 and B-4 installed at the site as part of the investigation of the site provide an adequate assessment for the area of the former island at the site, thereby satisfying the requirements of the site assessment and closure of the two decommissioned 3000 gallon USTs.

Please do not hesitate to call if you have any questions.

Sincerely,

Bill Knutson, P.E.

Environmental Engineer

Cc Dwight Estby

EXHIBIT RS

- 1974 - 1975 - 1974 -

GREENE & MARKLEY, P.C.

ATTORNEYS

1515 SW FIFTH AVENUE, SUITE 600 PORTLAND, OREGON 97201-5492

TELEPHONE: (503) 295-2668 FACSIMILE: (503) 224-8434 E-MAIL: email@greenemarkley.com

Ward.greene@greenemarkley.com

December 11, 2009

Mr. Bill Knutson, P.E. Environmental Engineer K&S Environmental, Inc. 4475 SW Scholls Ferry Road, #256 Portland, OR 97225

Re: Cornelius Service Station

Dear Bill:

Just a quick note to follow up on our brief telephone conversation. Because you hung up on me, I was not able to finish my comments.

As you know, M&G Collections LLC foreclosed on Dwight Estby earlier this year. We have been unable to operate the station and have no money. As you also know, our hope has been to comply with any DEQ requirements so that we could sell or lease the station. Once that happens, M&G Collections will have money to pay its debts.

I understand you are refusing to release the report which you prepared for this property until your bill is paid. You threatened to lien the property and take other steps to force payment.

Please have your attorney contact me directly. I will respond promptly to any proper demand you may make. Do not contact Ethel Meyers in connection with this matter.

Very truly yours,

GREENE & MARKLEY, P.C.

S. Ward Greene

EXHIBIT RU

PAGE 1 OF 1

 $SWG/cg $$ \end{cases} $$ SWG/cg \higher Knutson I2-11-09.wpd $$$

Attachment D April 15-16, 2015, EQC meeting Page 19 of 81

DATE 12-31-2009

Order No. 523320

RECEIVED

JAN 04 2010

GREENE & MARKLEY, P.C.

M&G COLLECTIONS LLC %S WARD GREENE OWNER 1515 SW 5 AVE #600 PORTLAND OR 97201 CERT # 034 902 9936 0100522

GREENE & MARKELY, P.C. LENDER 1515 SW 5 AVE #600 PORTLAND OR 97201 CERT # 034 902 9943 0100522

This is to inform you that a lien has been filed by K & S ENVIRONMENTAL INC $4475~{\rm SW}$ SCHOLLS FRY #256 PORTLAND OR 97225 503.291.1454

against your property at 1021 E BASELINE ST CORNELIUS OR

PROPERTY ID# R0407090 & A AND A PORTION OF TAXLOT SOUTH, RANGE 3 WEST OF THE DESCRIBED IN WASHINGTON

with the County Recorder of WASHINGTON County on 12-21-2009, according to Oregon statute ORS 87.039. Pursuant to ORS 87.057, if payment is not received, a suit may be commenced to foreclose this lien after 10 days from mailing date of this notice.

EXHIBIT	R	1	
PAGE	-	0F	3

Attachment D April 15-16, 2015, EQC meeting Page 20 of 81

Rec # 2009 109896 Rec Date: 12-21-2009

CLAIM OF CONSTRUCTION LIEN

KNOW ALL MEN BY THESE PRESENTS: The undersigned, K & S ENVIRONMENTAL INC hereinaftercalled the claimant, has performed labor, transported or furnished materials and /or rented equipment under a contract between claimant and:

ETHEL MEYERS who was the CONTRACTOR, having charge of the construction of that certain improvement known as THE PROPERTY situated upon certain land in WASHINGTON county, State of Oregon, which is the site of the improvement, described as follows:

PROPERTY ID# R0407090 & A PORTION OF R0407081, TAXLOT 00200 AND A PORTION OF TAXLOT 00100 IN SECTION 04AB, TOWNSHIP 1 SOUTH, RANGE 3 WEST OF THE WILLAMETTE MERIDIAN, MORE FULLY DESCRIBED IN WASHINGTON COUNTY RECORDERS FILE# 2009042159.

The address of the improvement, if known, is 1021 E BASELINE ST, CORNELIUS OR in WASHINGTON County, Oregon.

The name of the owner or reputed owner of the land is: M&G COLLECTIONS LLC %S WARD GREENE

The name of the owner or reputed owner of the improvement is : M&G COLLECTIONS LLC % S WARD GREENE

The name of the person by whom claimant was employed or to whom materials were furnished and for whom labor was performed and/or equipment rented is ETHEL MEYERS. The person(s) just named, at all times herein mentioned, had knowledge of the construction.

Claimant commenced performance of the contract on October 30, 2009, completed the same on November 13, 2009, after which claimant ceased to provide labor, transport or furnish materials and/or rent equipment.

A Notice of the Right to a Lien in the form required by ORS 87.023 was delivered in person or delivered by registered or certified mail to owner on <<not applicable>>. This lien covers only those materials, equipment, and labor provided after a date which is eight days, not including Saturdays, Sundays, and other holidays, as defined in ORS 187.010, before the Notice of Right to a Lien was delivered or mailed.

The following is a true statment of claimant's demand after deducting all just credits and offsets, to-wit:

Labor \$ Materials \$ Equipment \$	1270.00 1020.00 1200.00	
Other INTERES/CHANGE ORD\$	968.70	
Lien fees \$	300.00	
Total\$	4758.70	
Less all credits and offsets(\$ Balance due Claimant\$	0.00 4758.70)

CLAIM OF
CONSTRUCTION LIEN
other than original contractor

K & S ENVIRONMENTAL INC

4475 SW SCHOLLS FRY #256 PORTLAND OR 97225

-Lien Claimant-

M&G COLLECTIONS LLC %S WARD GREENE

After recording return to: BUILDING BUREAU, INC.

Order # 523320 323 Washington St. Woodland, WA 98674

PAGE 2 OF 3

Attachment D April 15-16, 2015, EQC meeting Page 21 of 81

Claimant claims a lien for the amount last stated upon the said improvement and upon the site, to-wit: the land upon which said improvement is constructed, together with the land that may be required for the convenient use and occupation of the improvement constructed on the said site, to be determined by the court at the time of the forclosure of this lien.

In construing this instrument, the masculine pronoun means and includes the feminine and the neuter, and the singular includes the plural, as the circumstances may require.

- Claimant -

PAGEM E000 OF 3

Attachment D April 15-16, 2015, EQC meeting Page 22 of 81



ATTORNEYS

1515 SW FIFTH AVENUE, SUITE 600 PORTLAND, OREGON 97201-5492

TELEPHONE: (503) 295-2668 FACSIMILE: (503) 224-8434 E-MAIL: email@greenemarkley.com

ward.greene@greenemarkley.com

September 23, 2010

Mr. Jeff K. Schatz, R.G. UST Cleanup Project Manager Department of Environmental Quality 2020 SW 4th Avenue, Suite 400 Portland, OR 97201-4987

> Re: Cornelius Estby II UST Cleanup File No. 34-06-1375

Dear Jeff:

Just a quick note to follow up on our brief telephone conversation and to respond to your letter of August 19, 2010 (which we received on August 30, 2010).

As I explained, M&G Collections LLC foreclosed Dwight Estby out of the property. The LLC has never operated the property nor done anything which would create contamination or aggravate any existing problems. A substantial payment was made to K&S Environmental, Inc. when M&G took title to the property. M&G has no funds to make any further payments to K&S, but we have urged Mr. Knutson to turn over whatever information he has to DEQ.

I looked at the letter you sent on May 4, 2010. In it you said that the Ability-to-Pay Program might be available to M&G Collections. You also said that the business office would be sending appropriate forms. Although they may have been sent, I do not have them. If you would be so kind as to have the business office resend those forms, I will undertake to have them filled out and returned.

Again, thank you for your patience and cooperation. If there are any developments in our efforts to find a buyer, I will promptly notify you.

Very truly yours,

GREENE & MARKLEY, V.C.

Ward Greene

EXHIBIT R8

SWG/cg

Item E 000107



ATTORNEYS

1515 SW FIFTH AVENUE, SUITE 600 PORTLAND, OREGON 97201-5492

TELEPHONE: (503) 295-2668 FACSIMILE: (503) 224-8434 E-MAIL: email@greenemarkley.com

ward.greene@greenemarkley.com

December 16, 2010

Mr. Jeff K. Schatz, R.G. UST Cleanup Project Manager Department of Environmental Quality 2020 SW 4th Avenue, Suite 400 Portland, OR 97201-4987

> Re: Cornelius Estby II UST Cleanup File No. 34-06-1375

Dear Jeff:

I was disappointed to receive your letter dated December 14, 2010, regarding the Ability-To-Pay evaluation. Because the LLC has no money, and K&S Environmental, Inc. will not extend credit, there is no way to comply.

Moreover, this service station has not been operated a single day while it was owned by M & G Collections LLC. Consequently, there has been no ongoing contamination or ongoing violations of any kind.

Please feel free to contact K&S Environmental, Inc. and demand that it turnover any data that it obtained from this site. In my opinion, K&S has no right to withhold that information from DEQ.

Thank you for your continued courtesy and cooperation. Best holiday wishes.

Very truly yours,

GREENE & MARKLEY P.C.

. Ward Greene

SWG/cg

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EXHIBIT R9
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Item E 000108

6604

Attachment D
April 15-16, 2015, EQC meeting
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State of Oregon

Department of Environmental Quality

Memorandum

Date: February 24, 2014

To:

Susan Elworth DEQ/Headquarters

From:

Greg Toran DEQ/NWR

Subject:

UST facility 5112, Former Cornelius Estby

Susan,

I inspected this site twice in 2013, once as a drive by and once where I checked the tanks for liquids. There's been no change since the prior inspections and enforcement. The site is closed down and the tanks are dry.

M & G Collections hasn't corrected the UST registration violations listed in the 2011 department order. Specifically, submitting the owner modification application and the application to extended temporary closure.

With this memo I included information about current tank registration, fees past due, UST facility report, UST database screenshot representing inspection visit, and the PEN M & G Collections signed for last September.

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Attachment D April 15-16, 2015, EQC meeting

S Ward PG ge & he f 81

From:

S Ward Greene

Sent:

Monday, March 04, 2013 3:15 PM

To:

Jeff Schatz (schatz.jeff@deq.state.or.us)

Subject:

1021 SW Baseline Road, Cornelius, Oregon

Attachments:

Sampling Results Letter

Dear Jeff:

I am writing to pass along a copy of the ground water sampling report we obtained from AMEC. Please excuse my delay in forwarding the report. I had hoped there might be some developments in connection with a possible sale.

Regrettably, the potential sale has failed. The realtor is still looking for a possible lessee or buyer. So far, we have no developments to report.

In any event, I was pleased that, according to the engineer involved, these findings are "relatively clean." I presume that if we have to do any additional testing, DEQ will let us know.

If and when we have a new buyer, I will be back in touch. In the meantime, if you have any questions or concerns, please feel free to call.

Best Regards,

Ward

S. Ward Greene GREENE & MARKLEY, P.C. 1515 SW Fifth Avenue, Suite 600 Portland, OR 97201 Telephone: (503) 295-2668

Fax: (503) 224-8434

www.greenemarkley.com

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Attachment D April 15-16, 2015, EQC meeting **S Ward @ge@fe** 81

T

(C: Ethel

From:

Walker, Cora < Cora. Walker@amec.com>

Sent:

Friday, January 25, 2013 3:50 PM

To:

S Ward Greene

Cc:

Johnson, Lance; Esler, Charles T

Subject:

Sampling Results Letter

Attachments:

LetterSamplingResults.pdf

Ward,

Attached is a PDF copy of the Groundwater Sampling Results Letter for M&C Collections, Inc. in Cornelius, Oregon.

If you have any questions or comments regarding this letter please feel free to contact Lance Johnson at (503) 639-3400 or by email at lance.johnson@amec.com.

Thank you,

Cora Walker &

Administrative Assistant
AMEC
Environment & Infrastructure
7376 SW Durham Road
Portland, OR 97224
Phone 503-639-3400
Fax 503-620-7892
mailto:cora.walker@amec.com

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January 25, 2013

Project No. 3-61M-127450

Greene and Markley, P.C. 1515 SW 5th Ave Suite 600 Portland, Oregon 97201

Attention:

Ward Greene

Subject:

Groundwater Sampling and Laboratory Analytical Results

M&G Collections, Inc., 1021 Baseline Road Cornelius, Oregon

Dear Mr. Greene:

AMEC Environment & Infrastructure, Inc. (AMEC) conducted groundwater sampling at four monitoring wells at the above-listed property in Cornelius, Oregon (Site) on December 21, 2012. The groundwater sampling was performed in general accordance with our Proposal No. 12 288, dated December 6, 2012.

GROUNDWATER SAMPLING PROCEDURES

Groundwater samples were collected from four monitoring wells: MW-1, MW-2, MW-3, and MW-4. Groundwater samples were collected directly into new, laboratory provided sample containers and placed into a cooler containing ice. The samples were collected using low-flow sampling methodology (i.e. minimal drawdown). Field parameters, including pH, electrical conductance, temperature, and dissolved oxygen were measured at each location. The labeled samples were transported under standard chain-of-custody procedures to Apex Labs, LLC (Tigard, Oregon). The samples were analyzed for diesel- and oil-range hydrocarbons by Method NWTPH-Dx, gasoline-range hydrocarbons (GRO) by NWTPH-Gx, and volatile organic compounds (VOCs) by U.S. Environmental Protection Agency (EPA) Method 8260B. Quality Assurance/Quality Control (QA/QC) samples (trip blank, equipment blank) were collected and analyzed.

SUMMARY OF GROUNDWATER SAMPLING RESULTS

The following summary provides a brief overview of select groundwater analytical laboratory results. The full laboratory analytical report is attached to this letter.

AMEC Environment & Infrastructure, Inc. 7376 SW Durham Road Portland, Oregon USA 97224 Tel+1 (503) 639-3400 Fax+1 (503) 620-7892 www.amec.com

EXHIBIT | R | N | PAGE | 3 | OF 53



Diesel- and oil-range hydrocarbons

Oil-range hydrocarbons were "not detected" (ND) above laboratory detection limits in groundwater samples from the four monitoring wells. The diesel-range hydrocarbon concentrations in the four groundwater samples were 0.761 milligrams per liter (mg/L) at MW-1, 2.30 mg/L (MW-2), 0.237 mg/L (MW-3), and 1.35 mg/L (MW-4).

Gasoline-range hydrocarbons

Gasoline-range hydrocarbon concentrations in the four groundwater samples were 4.88 milligrams per liter (mg/L) at MW-1, 7.27 mg/L (MW-2), ND (MW-3), and 1.12 mg/L (MW-4).

Volatile Organic Compounds

The full list of volatile organic compounds (including benzene) analyzed is included in the attached report. The benzene concentrations in groundwater samples were 180 micrograms per liter (μ g/L) at MW-1, 5.5 μ g/L (MW-2), ND (MW-3), and 1.75 (MW-4).

Water Levels Measured at Site

On the date of sampling, December 21, 2012, the measured well water levels at the relatively flat site were 14.85 feet below top of casing (TOC) in MW-1, 3.26 TOC in (MW-2), 3.03 TOC in (MW-3), and 2.43 (TOC) in MW-4. Field sampling data forms are attached.

CLOSING

AMEC appreciates the opportunity in assisting M&G Collections with this project. Should you have any questions, please do not hesitate to contact either of the undersigned at (503) 639-3400.

Sincerely,

AMEC Environment & Infrastructure, Inc.

Reviewed by:

Lance Johnson, P.E.

Senior Mechanical Engineer

Chares T. Esler, CHMM

Principal

Attachments: APEX Laboratory Groundwater Analytical Report

AMEC Groundwater Sampling Field Forms

EXHIBIT <u>R ()</u>
PAGE <u>4</u> 0F <u>5 3</u>

AMEC Environment & Infrastructure, Inc.



ATTACHMENTS

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Attachment D April 15-16, 2015, EQC meeting Apex Pape 30 of 81

12232 S.W. Garden Place Tigard, OR 97223 503-718-2323 Phone 503-718-0333 Fax

Tuesday, January 8, 2013

Charles Esler
Amec Environment & Infrastructure, Inc
7376 SW Durham Road
Portland, OR 97224

RE: Cornelius / [none]

Enclosed are the results of analyses for work order <u>A12L497</u>, which was received by the laboratory on 12/21/2012 at 5:00:00PM.

Thank you for using Apex Labs. We appreciate your business and strive to provide the highest quality services to the environmental industry.

If you have any questions concerning this report or the services we offer, please feel free to contact me by email at: pnerenberg@apex-labs.com, or by phone at 503-718-2323.

PAGE (0 OF 53

Apex Laboratories

The results in this report apply to the samples analyzed in accordance with the chain of custody document. This analytical report must be reproduced in its entirety.

Philip Nerenberg, Lab Director

Philip Newberg

Attachment D April 15-16, 2015, EQC meeting

12232 S.W. Garden Place Tigard, OR 97223 503-718-2323 Phone 503-718-0333 Fax

Amec Environment & Infrastructure, Inc

7376 SW Durham Road

Portland, OR 97224

Project: Cornelius

Project Number: [none]

Project Manager: Charles Esler

Reported: 01/08/13 15:19

ANALYTICAL REPORT FOR SAMPLES

	SA	MPLE INFORMATI	ION	
Sample ID	Laboratory ID	Matrix	Date Sampled	Date Received
MW1-122112	A12L497-01	Water	12/21/12 12:15	12/21/12 17:00
MW2-122112	A12L497-02	Water	12/21/12 14:25	12/21/12 17:00
MW3-122112	A12L497-03	Water	12/21/12 13:40	12/21/12 17:00
MW4-122112	A12L497-04	Water	12/21/12 15:05	12/21/12 17:00
Trip Blank	A12L497-05	Water	12/21/12 00:00	12/21/12 17:00

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Attachment D April 15-16, 2015, EQC meeting $\operatorname{Apex}^{\operatorname{Page}} \operatorname{Apt}^{\operatorname{gal}} \operatorname{Aps}^{\operatorname{gal}}$

12232 S.W. Garden Place Tigard, OR 97223 503-718-2323 Phone 503-718-0333 Fax

Amec Environment & Infrastructure, Inc

7376 SW Durham Road

Portland, OR 97224

Project: Cornelius

Project Number: [none]

Project Manager: Charles Esler

Reported: 01/08/13 15:19

ANALYTICAL SAMPLE RESULTS

		Diese	and Oil Hyd	rocarbons by	NWTPH-Dx			
			Reporting	<u> </u>				
Analyte	Result	MDL	Limit	Units	Dilution	Date Analyzed	Method	Notes
MW1-122112 (A12L497-01)			Matrix: Wa	ater	Batch: 12125	76		
Diesel	0.761		0.202	mg/L	1	12/27/12 22:29	NWTPH-Dx	F-06
Oil	ND		0.404	11	Ħ	H	"	
Surrogate: o-Terphenyl (Surr)			Recovery: 86 %	Limits: 50-150 %	6 11	11	11	
MW2-122112 (A12L497-02)			Matrix: Wa	iter	Batch: 12125	76		
Diesel	2.30		0.400	mg/L	2	12/27/12 22:52	NWTPH-Dx	F-06
Oil	ND		0.800	н	11	**	n	
Surrogate: o-Terphenyl (Surr)			Recovery: 83 %	Limits: 50-150 %	6 "	11	31	
MW3-122112 (A12L497-03)			Matrix: Wa	iter	Batch: 12125	76		
Diesel	0.237		0.192	mg/L	1	12/27/12 23:16	NWTPH-Dx	F-06
Oil	ND		0.385	н	"	n	11	
Surrogate: o-Terphenyl (Surr)			Recovery: 96 %	Limits: 50-150 %	ó "	II	II.	
MW4-122112 (A12L497-04)			Matrix: Wa	iter	Batch: 12125	76		
Diesel	1.35		0.196	mg/L	1	12/27/12 23:39	NWTPH-Dx	F-06
Oil	ND		0.392	11	II.	н	it .	
Surrogate: o-Terphenyl (Surr)			Recovery: 89 %	Limits: 50-150 %	<u> </u>	11	и	

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Philip Nevenberg, Lab Director

Attachment D April 15-16, 2015, EQC meeting Apex Page 33 b \$1

12232 S.W. Garden Place Tigard, OR 97223 503-718-2323 Phone 503-718-0333 Fax

Amec Environment & Infrastructure, Inc

7376 SW Durham Road Portland, OR 97224 Project: Cornelius

Project Number: [none]

Project Manager: Charles Esler

Reported:

01/08/13 15:19

ANALYTICAL SAMPLE RESULTS

G	asoline Ra	nge Hydı	ocarbons (E	Benzene to Na	phthalene) l	by NWTPH-Gx		
			Reporting	,		· · · · · · · · · · · · · · · · · · ·		
Analyte	Result	MDL	Limit	Units	Dilution	Date Analyzed	Method	Notes
MW1-122112 (A12L497-01)			Matrix: Wa	ater	Batch: 12124	75		
Gasoline Range Organics	4.88		0.100	mg/L	1	12/21/12 19:25	NWTPH-Gx (MS)	
Surrogate: 4-Bromofluorobenzene (Sur)		R	ecovery: 116 %	Limits: 50-150 %	6 "	н	n	
1,4-Difluorobenzene (Sur)			121 %	Limits: 50-150 %	6 "	u	н	
MW2-122112 (A12L497-02)			Matrix: Wa	iter	Batch: 12125	18		
Gasoline Range Organics	7.27		1.00	mg/L	10	12/24/12 18:38	NWTPH-Gx (MS)	
Surrogate: 4-Bromofluorobenzene (Sur)	,	I	Recovery: 89 %	Limits: 50-150 %	ó 1	n	и	
1,4-Difluorobenzene (Sur)			91 %	Limits: 50-150 %	6 "	п	н	
MW3-122112 (A12L497-03RE1)			Matrix: Wa	iter	Batch: 12125	30		
Gasoline Range Organics	ND		0.100	mg/L	1	12/26/12 13:52	NWTPH-Gx (MS)	
Surrogate: 4-Bromofluorobenzene (Sur)		F	Recovery: 78 %	Limits: 50-150 %	ó "	н	и	
1,4-Difluorobenzene (Sur)			90 %	Limits: 50-150 %	ć "	11	11	
MW4-122112 (A12L497-04RE1)			Matrix: Wa	iter	Batch: 12125	30		
Gasoline Range Organics	1.12		0.100	mg/L	1	12/26/12 14:21	NWTPH-Gx (MS)	
Surrogate: 4-Bromofluorobenzene (Sur)		R	Recovery: 80 %	Limits: 50-150 %	; "	"	н	
1,4-Difluorobenzene (Sur)			93 %	Limits: 50-150 %	; "	и	п	

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12232 S.W. Garden Place Tigard, OR 97223 503-718-2323 Phone 503-718-0333 Fax

Amec Environment & Infrastructure, Inc

7376 SW Durham Road Portland, OR 97224 Project: Cornelius

Project Number: [none]
Project Manager: Charles Esler

Reported: 01/08/13 15:19

ANALYTICAL SAMPLE RESULTS

		Volatile	Organic Comp	ounds b	y EPA 8260B			
			Reporting					
Analyte	Result	MDL	Limit	Units	Dilution	Date Analyzed	Method	Notes
WW1-122112 (A12L497-01)			Matrix: Water		Batch: 121247	'5		
Acetone	ND		20.0	ug/L	1	12/21/12 19:25	EPA 8260B	
Bromobenzene	ND		0.500	**	н	II	И	
Bromochloromethane	ND		1.00	11	н	H	"	
Bromodichloromethane	ND		1.00		11	ŧŧ	II.	
Bromoform	ND		1.00	11	и	И	n	
Bromomethane	ND		5.00	f†	P	II.	11	
2-Butanone (MEK)	ND		10.0	n	11	ŧſ	п	
n-Butylbenzene	ND		5.10	18	n	U	п	R-01
sec-Butylbenzene	ND		1.00	ti	n	II .	11	
tert-Butylbenzene	ND		1.00	"	11	11	п	
Carbon tetrachloride	ND		0.500	**	Ħ	н	н	
Chlorobenzene	ND		0.500	н	11	н	n	
Chloroethane	ND		5.00	11	ft	tt	и	
Chloroform	ND		1.00	11	п	0	n	
Chloromethane	ND		5.00	и	Ħ	н	u	Q-30
2-Chlorotoluene	ND		1.00	11	If	11	н	•
4-Chlorotoluene	ND		1.00	н	11	н	11	
1,2-Dibromo-3-chloropropane	ND		5.00	н	11	"	н	
Dibromochloromethane	ND		1.00	tr	II	. н	н	
1,2-Dibromoethane (EDB)	ND		0.500	н	**	11	н	
Dibromomethane	ND		1.00	Ħ	п	tt	11	
1,2-Dichlorobenzene	ND		0.500	н	n	н	и	
1,3-Dichlorobenzene	ND		0.500	n	u	II.	н	
1,4-Dichlorobenzene	ND		0.500	**	н	н	11	
Dichlorodifluoromethane	ND		1.00	*	**	ri .	н	
1,1-Dichloroethane	ND		0.500	tt	н	ii ·	II.	
1,2-Dichloroethane (EDC)	ND		0.500	. "	11	11	. 11	
1,1-Dichloroethene	ND		0.500	н	и	Ħ		
cis-1,2-Dichloroethene	ND		0.500	11	n	н	и	
rans-1,2-Dichloroethene	ND		0.500	H	tt.	tt.	11	
,2-Dichloropropane	ND		0.500	11	и	н	н	
1,3-Dichloropropane	ND		1.00	н	· · · · · · · · · · · · · · · · · · ·	ш	**	
2,2-Dichloropropane	ND		1.00		н	н	" EXHIBI	T Q
1,1-Dichloropropene	ND		1.00		II	lt.	11	CONTRACTOR OF THE PARTY OF THE
cis-1,3-Dichloropropene	ND		1.00	11	"	11	" PAGE	10 OF

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Amec Environment & Infrastructure, Inc

7376 SW Durham Road Portland, OR 97224 Project: Cornelius

Project Number: [none]

Project Manager: Charles Esler

Reported: 01/08/13 15:19

ANALYTICAL SAMPLE RESULTS

Volatile Organic Compounds by EPA 8260B											
			Reporting								
Analyte	Result	MDL	Limit	Units	Dilution	Date Analyzed	Method	Notes			
/W1-122112 (A12L497-01)			Matrix: Wate	er	Batch: 121247	75					
trans-1,3-Dichloropropene	ND		1.00	ug/L	1	11	EPA 8260B				
Ethylbenzene	115		0.500	н	11	И	IT				
Hexachlorobutadiene	ND		5.00	. "	II	11	11				
2-Hexanone	ND		10.0	11	11	#	#1				
Isopropylbenzene	5.40		1.00	If	"	H.	и				
4-Isopropyltoluene	ND		1.00	н	II.	н	**				
4-Methyl-2-pentanone (MiBK)	ND		10.0	11	11	н	11				
Methyl tert-butyl ether (MTBE)	ND		1.00	11	11	tt	и				
Methylene chloride	ND		5.00	H	U	II.	n				
Naphthalene	48.8		2.00	Ħ	и	п	11				
n-Propylbenzene	11.8		0.500	If	11	11	**				
Styrene	ND		1.00	н	n	н	В				
,1,1,2-Tetrachloroethane	ND		0.500	n	**	II .	11				
,1,2,2-Tetrachloroethane	ND		0.500	11	Ħ	11	н				
Tetrachloroethene (PCE)	ND		0.500	II		н	n				
,2,3-Trichlorobenzene	ND		2.00	11	11	11	11				
,2,4-Trichlorobenzene	ND		2.00	и	U	11	н				
,1,1-Trichloroethane	ND		0.500	II	н	n	11				
,1,2-Trichloroethane	ND		0.500	17	"	n	11				
Trichloroethene (TCE)	ND		0.500	II	11	11	H				
Frichlorofluoromethane	ND		2.00	N	H	в	H				
,2,3-Trichloropropane	ND		1.00	tt	n	"	11				
,2,4-Trimethylbenzene	162		1.00	н	II	11	н				
,3,5-Trimethylbenzene	53.5	***	1.00	II .	И	н	н				
inyl chloride	ND		0.500	łi	"	n	tt				
ı,p-Xylene	287		1.00	u	If	u	H .				
-Xylene	145		0.500	H	11	H	Ħ				
Surrogate: Dibromofluoromethane (Surr)		Rec	covery: 112 % .	Limits: 80-120 %	н	II .	н				
1,4-Difluorobenzene (Surr)			•	Limits: 80-120 %	и	n	. 11				
Toluene-d8 (Surr)				Limits: 80-120 %		n	и				
4-Bromofluorobenzene (Surr)			94 %	Limits: 80-120 %	"	n	n				

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Amec Environment & Infrastructure, Inc

7376 SW Durham Road Portland, OR 97224

Project: Cornelius

Project Number: [none]

Project Manager: Charles Esler

Reported: 01/08/13 15:19

ANALYTICAL SAMPLE RESULTS

		Volatile	Organic C	ompounds by E	PA 8260B			
		_	Reporting	9				
Analyte	Result	MDL	Limit	Units	Dilution	Date Analyzed	Method	Notes
MW1-122112 (A12L497-01RE1)			Matrix: Wa		atch: 12125	11		
Benzene	180		2.50	ug/L	10	12/24/12 14:00	EPA 8260B	
Toluene	321		10.0	III	, II	11	Ħ	
Surrogate: Dibromofluoromethane (Surr)		Red	covery: 108 %	Limits: 80-120 %	1	H	u u	
1,4-Difluorobenzene (Surr)			100 %	Limits: 80-120 %	н	н	n	
Toluene-d8 (Surr)			96 %	Limits: 80-120 %	H	11	**	
4-Bromofluorobenzene (Surr)			93 %	Limits: 80-120 %	11	u u	#	
MW2-122112 (A12L497-02)			Matrix: Wa	ater Ba	atch: 12125	18		
Acetone	ND		200	ug/L	10	12/24/12 18:38	EPA 8260B	
Benzene	5.50		2.50	**	н	11	tt	
Bromobenzene	ND		5.00	11	н	H	и	
Bromochloromethane	ND		10.0	n	11	H	"	
Bromodichloromethane	ND		10.0	II .	n	tt	11	
Bromoform	ND		10.0	п	н	II.	11	
Bromomethane	ND		50.0	11	#	н	н	
2-Butanone (MEK)	ND		100	tt	II.	11	11	
n-Butylbenzene	10.5		10.0	п	н	11	11	
sec-Butylbenzene	ND		10.0	"	0	11	H	
tert-Butylbenzene	ND		10.0	u	н	11	11	
Carbon tetrachloride	ND		5.00	u.	11	II	н	
Chlorobenzene	ND		5.00	n	n	11	н	
Chloroethane	ND		50.0	и	n	n	11.	
Chloroform	ND		10.0	11	**	и	н	
Chloromethane	ND		50.0	II.	If	11	. 11	
2-Chlorotoluene	ND		10.0	н	11	H	п	
4-Chlorotoluene	ND		10.0	11	Ħ	11	n	
1,2-Dibromo-3-chloropropane	ND		50.0	и	11	II .	11	
Dibromochloromethane	ND		10.0	11	11	н	11	
1,2-Dibromoethane (EDB)	ND		5.00	II.	ıı	17	11	
Dibromomethane	ND		10.0	п	**	H	H	
1,2-Dichlorobenzene	ND		5.00	11	В	11	**	
1,3-Dichlorobenzene	ND		5.00	н	ti	н	п	
1,4-Dichlorobenzene	ND		5.00	0	Ħ	н	1) 5906 26 50	
Dichlorodifluoromethane	ND		10.0	H	11	tf.	" EXHII	BIT
1,1-Dichloroethane	ND		5.00	11	Ħ	п	" DACE	12
1,2-Dichloroethane (EDC)	ND	-	5.00	II .	Ħ	Ħ	" LYAC	. IX

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12232 S.W. Garden Place Tigard, OR 97223 503-718-2323 Phone 503-718-0333 Fax

Amec Environment & Infrastructure, Inc

7376 SW Durham Road Portland, OR 97224 Project: Cornelius

Project Number: [none]

Project Manager: Charles Esler

Reported: 01/08/13 15:19

ANALYTICAL SAMPLE RESULTS

Volatile Organic Compounds by EPA 8260B												
Analyte	Result	MDL	Reporting Limit	Units	Dilution	Date Analyzed	Method	Notes				
MW2-122112 (A12L497-02)			Matrix: Water		Batch: 12125	18						
1,1-Dichloroethene	ND		5.00	ug/L	10	11	EPA 8260B					
cis-1,2-Dichloroethene	ND		5.00	**	и	н	п					
trans-1,2-Dichloroethene	ND		5.00	Ħ	н	н	n					
1,2-Dichloropropane	ND		5.00	li .	11	11	H					
1,3-Dichloropropane	ND		10.0	н	**	11	п					
2,2-Dichloropropane	ND		10.0		tt	n	n					
1,1-Dichloropropene	ND		10.0	11	н	n	tf					
cis-1,3-Dichloropropene	ND		10.0	tt.	и .	Ħ	II					
trans-1,3-Dichloropropene	ND		10.0	н	Ħ	11	И					
Ethylbenzene	595		5.00	н	#	· n	п					
Hexachlorobutadiene	ND		50.0	11	II	' n	At					
2-Hexanone	ND		100	Ħ	11	н	tt.					
Isopropylbenzene	42.1		10.0	II	**	n	н					
1-Isopropyltoluene	ND		10.0	"	н	11	#					
1-Methyl-2-pentanone (MiBK)	ND		100	n	н	*1	u					
Methyl tert-butyl ether (MTBE)	ND		10.0	н	ti	n	н					
Methylene chloride	ND		50.0	"	H.	H	11					
Naphthalene	388		20.0	17	н	11	11					
n-Propylbenzene	86.8		5.00	It	н	ji .	n					
Styrene	ND		10.0	п	11	И	n					
1,1,1,2-Tetrachloroethane	ND		5.00	11	II	. 0	11					
1,1,2,2-Tetrachloroethane	ND	***	5.00	u	11	n	н					
Tetrachloroethene (PCE)	ND		5.00	н	11	н	н					
Toluene	19.4		10.0	**	II	н	n					
1,2,3-Trichlorobenzene	ND		20.0	ŧi.	H	**	tt.					
,2,4-Trichlorobenzene	ND		20.0	н :	"	11	и					
1,1,1-Trichloroethane	ND		5.00	n	1F	• н	н					
1,1,2-Trichloroethane	ND		5.00	II.	н	n	u					
Trichloroethene (TCE)	ND		5.00	и	"	н	н					
Trichlorofluoromethane	ND .		20.0	n	н	· n	Ħ					
,2,3-Trichloropropane	ND		10.0	Ħ	н	u	o ,					
,2,4-Trimethylbenzene	637		10.0	11	11	н	н					
,3,5-Trimethylbenzene	138		10.0	tr .	н	u	n	<i>F</i>				
Vinyl chloride	ND		5.00	H	#	н	" EXHI	RIT R				
m,p-Xylene	502		10.0	**	н	U						
o-Xylene	82.2		5.00	11	"	n	" PAGI	= 130F				

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12232 S.W. Garden Place Tigard, OR 97223 503-718-2323 Phone 503-718-0333 Fax

Amec Environment & Infrastructure, Inc

7376 SW Durham Road Portland, OR 97224 Project: Cornelius

Project Number: [none]
Project Manager: Charles Esler

Reported: 01/08/13 15:19

ANALYTICAL SAMPLE RESULTS

Volatile Organic Compounds by EPA 8260B												
			Reporting									
Analyte	Result	MDL	Limit	Units	Dilution	Date Analyzed	Method	Notes				
WW2-122112 (A12L497-02)			Matrix: Wa	iter !	Batch: 121251	8						
Surrogate: Dibromofluoromethane (Su	rr)	Re	covery: 100 %	Limits: 80-120 %	1	**	EPA 8260B					
1,4-Difluorobenzene (Surr)			99 %	Limits: 80-120 %	"	**	11					
Toluene-d8 (Surr)			102 %	Limits: 80-120 %		tt	"					
4-Bromofluorobenzene (Sur	rr)		97 %	Limits: 80-120 %	н	н	"					
/IW3-122112 (A12L497-03RE1)			Matrix: Wa	iter l	Batch: 121253	0						
Acetone	ND		20.0	ug/L	1	12/26/12 13:52	EPA 8260B					
Benzene	ND		0.250	, и	11	н	11					
Bromobenzene	ND		0.500	. н	11	11	н					
Bromochloromethane	ND		1.00	11	И	H.	н					
Bromodichloromethane	ND		1.00	п	ıı	н	11					
Bromoform	ND		1.00	н	"	#	n					
Bromomethane	ND		5.00	Ħ	"	11	н					
2-Butanone (MEK)	ND		10.0	н	н	H	н					
n-Butylbenzene	ND		1.00	II.	"	н	11					
sec-Butylbenzene	ND		1.00	H	11	n	11					
tert-Butylbenzene	ND		1.00	ti	н	n .	н					
Carbon tetrachloride	ND		0.500	**	H	н	**					
Chlorobenzene	ND		0.500	n	11	*1	11					
Chloroethane	ND		5.00	н	и	ti.	п					
Chloroform	ND		1.00	и	n	н	n					
Chloromethane	. ND		5.00	н	ŧŧ	н	n					
2-Chlorotoluene	ND		1.00	11	ш	11	n					
4-Chlorotoluene	ND		1.00	11	н	п	н					
1,2-Dibromo-3-chloropropane	ND		5.00	"	Ħ	11	11					
Dibromochloromethane	ND		1.00	11	II	II.	н					
1,2-Dibromoethane (EDB)	ND		0.500	н	H	11	11					
Dibromomethane	ND		1.00	**	11	n	н					
1,2-Dichlorobenzene	ND		0.500	и	11	н	Ħ					
,3-Dichlorobenzene	ND		0.500	п	**	9	н					
1,4-Dichlorobenzene	ND		0.500	n	11	u ·	н					
Dichlorodifluoromethane	ND		1.00	н	II	и	н					
1,1-Dichloroethane	ND		0.500	n	11	n	11	^				
1,2-Dichloroethane (EDC)	ND		0.500	u	ıı	IJ	" EXHI	BIT KI				
1,1-Dichloroethene	ND		0.500	11	n	11	" DAOI	11/0-				
cis-1,2-Dichloroethene	ND		0.500	tt.	11	н	" LAOE	-41 Ut				

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Attachment D April 15-16, 2015, EQC meeting ${ m Apex}^{ m Pa} { m Te} { m 39} { m pf} { m 81}$

12232 S.W. Garden Place Tigard, OR 97223 503-718-2323 Phone 503-718-0333 Fax

Amec Environment & Infrastructure, Inc

7376 SW Durham Road Portland, OR 97224 Project: Cornelius

Project Number: [none]
Project Manager: Charles Esler

Reported: 01/08/13 15:19

ANALYTICAL SAMPLE RESULTS

Volatile Organic Compounds by EPA 8260B												
-			Reporting									
Analyte	Result	MDL	Limit	Units	Dilution	Date Analyzed	Method	Notes				
/IW3-122112 (A12L497-03RE1)			Matrix: Water		Batch: 121253	0						
trans-1,2-Dichloroethene	ND		0.500	ug/L	1	11	EPA 8260B					
1,2-Dichloropropane	ND		0.500	н	н	u	H					
1,3-Dichloropropane	ND		1.00	н	н	н	"					
2,2-Dichloropropane	ND		1.00	11	11	"	"					
1,1-Dichloropropene	ND		1.00	**	**	11	n					
cis-1,3-Dichloropropene	ND		1.00	11	"	Ħ .	11					
rans-1,3-Dichloropropene	ND		1.00	H	n	Ħ	n					
Ethylbenzene	1.00		0.500	. "	n	H	н					
Hexachlorobutadiene	ND		5.00	11	#	II .	n					
2-Hexanone	ND		10.0	n	n	fi	11					
Isopropylbenzene	2.39		1.00	II	II.	11	н					
4-Isopropyltoluene	ND		1.00	н	II	и	11					
1-Methyl-2-pentanone (MiBK)	ND		10.0	11	н	n	H					
Methyl tert-butyl ether (MTBE)	ND		1.00	17	11	n	17					
Methylene chloride	ND		5.00	11	н	н	u					
Naphthalene	5.53		2.00	11	H	II	н					
1-Propylbenzene	0.970		0.500	11	н	Ħ	Ħ					
Styrene	ND		1.00	н	ŧŧ	11	u					
,1,1,2-Tetrachloroethane	ND		0.500	н	н	11	н					
,1,2,2-Tetrachloroethane	ND		0.500	11	11	"	n					
Tetrachloroethene (PCE)	ND		0.500	н	#	n.	11					
Coluene	ND		1.00		и	н	н					
,2,3-Trichlorobenzene	ND		2.00	11	п	п	11					
,2,4-Trichlorobenzene	ND		2.00	11	11	11	11					
,1,1-Trichloroethane	ND		0.500	"	11	W	n					
,1,2-Trichloroethane	ND		0.500	11	II	н	н					
Trichloroethene (TCE)	ND		0.500	н	н	. "	11					
Prichlorofluoromethane	ND		2.00	ıı	н	II	11					
,2,3-Trichloropropane	ND		1.00	H	#1	U	н					
,2,4-Trimethylbenzene	1.26		1.00	n	11	11	11	•				
,3,5-Trimethylbenzene	ND		1.00	**	11	Ħ	11					
/inyl chloride	ND		0.500	н	и	н	H					
n,p-Xylene	ND		1.00	11	п	Ħ	ŧr.	EXHIBIT (
o-Xylene	ND		0.500	В	ıı	н	н	*Strengtons				
Surrogate: Dibromofluoromethane (Surr				ts: 80-120 !	2/ II			PAGE 15 (

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Attachment D April 15-16, 2015, EQC meeting Apex at 4581

12232 S.W. Garden Place Tigard, OR 97223 503-718-2323 Phone 503-718-0333 Fax

Amec Environment & Infrastructure, Inc

7376 SW Durham Road Portland, OR 97224 Project: Cornelius

Project Number: [none]

Project Manager: Charles Esler

Reported: 01/08/13 15:19

ANALYTICAL SAMPLE RESULTS

			Reporting					
Analyte	Result	MDL	Limit	Units	Dilution	Date Analyzed	Method	Notes
WW3-122112 (A12L497-03RE1)			Matrix: Wa		atch: 121253	30		
Surrogate: 1,4-Difluorobenzene (Surr)		R	Recovery: 92 %	Limits: 80-120 %	1	n	EPA 8260B	
Toluene-d8 (Surr)			106 %	Limits: 80-120 %	11	н	**	
4-Bromofluorobenzene (Surr)			98 %	Limits: 80-120 %	**	11	H	
/IW4-122112 (A12L497-04RE1)			Matrix: Wa	iter Ba	atch: 121253	30		
Acetone	ND		20.0	ug/L	1	12/26/12 14:21	EPA 8260E	3
Benzene	1.75		0.250	11	11	H.	**	
Bromobenzene	ND		0.500	**	II	H	и	
Bromochloromethane	ND		1.00	u.	н	n	н	
Bromodichloromethane	ND		1.00	n	ti	ti	11	
Bromoform	ND		1.00	11	11	H	H	
Bromomethane	ND		5.00	n	н	11	Ħ	
2-Butanone (MEK)	ND		10.0	и .	н	#1	n	
n-Butylbenzene	ND		1.00	н		II .	**	
ec-Butylbenzene	ND		1.00	u	н	II .	Ħ	
ert-Butylbenzene	ND		1.00	Ħ	H	11	11	
Carbon tetrachloride	ND		0.500	II.	**	ti	15	
Chlorobenzene	ND		0.500	н	#	II	11	
Chloroethane	ND		5.00	n .	tt	11	11	
Chloroform	ND		1.00	u	H	и	п	
Chloromethane	ND		5.00	11	11	41	II	
-Chlorotoluene	ND		1.00	11	п	n	n	
-Chlorotoluene	ND		1.00	11	II	н	II	
,2-Dibromo-3-chloropropane	ND		5.00	н	11	. #	H	
Dibromochloromethane	ND		1.00	н	11	и	17	
,2-Dibromoethane (EDB)	ND		0.500	. U	H	н	H	
Dibromomethane	ND		1.00	H	"	u	И	
,2-Dichlorobenzene	ND		0.500	#1	11	п	n	
,3-Dichlorobenzene	ND		0.500		, n	II.	H	
,4-Dichlorobenzene	ND		0.500	н	11	Ð	н	
Dichlorodifluoromethane	ND		1.00	17	н	н	11	
,1-Dichloroethane	ND		0.500	11	N	11	и	
,2-Dichloroethane (EDC)	ND		0.500	н	#	н	H	
,1-Dichloroethene	ND		0.500	11	11	11	н	
is-1,2-Dichloroethene	ND		0.500	H	Ħ	tt.	II	EXHIBIT R PAGE 16
rans-1,2-Dichloroethene	ND		0.500	* n	11	н	Ħ	
							,	MAGE 161

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12232 S.W. Garden Place Tigard, OR 97223 503-718-2323 Phone 503-718-0333 Fax

Amec Environment & Infrastructure, Inc

7376 SW Durham Road

Portland, OR 97224

Project: Cornelius

Project Number: [none]

Project Manager: Charles Esler

Reported: 01/08/13 15:19

ANALYTICAL SAMPLE RESULTS

		Volatile	Organic Com	pounds by	EPA 8260B			
			Reporting					
Analyte	Result	MDL	Limit	Units	Dilution	Date Analyzed	Method	Notes
WW4-122112 (A12L497-04RE1)			Matrix: Water	r	Batch: 121253	0		
1,2-Dichloropropane	ND		0.500	ug/L	1	н	EPA 8260B	
1,3-Dichloropropane	ND		1.00	**	**	и	II .	
2,2-Dichloropropane	ND		1.00	11	R	N	n	
1,1-Dichloropropene	ND .		1.00	Ħ	н		п	
cis-1,3-Dichloropropene	ND	***	1.00	#	н	tt	н	
trans-1,3-Dichloropropene	ND		1.00	11	**	II.	n	
Ethylbenzene	94.2		0.500	11	n	It	11	
Hexachlorobutadiene	ND		5.00	* #	II	н	11	
2-Hexanone	ND		10.0	tt	H	11	п	
Isopropylbenzene	6.00		1.00	H	, н	n	н	
4-Isopropyltoluene	ND		1.00	11	11	U	n	
4-Methyl-2-pentanone (MiBK)	ND		10.0	Ħ	н	н	11	
Methyl tert-butyl ether (MTBE)	ND		1.00	u	н	11	11	
Methylene chloride	ND		5.00	u	n	u	н	
Naphthalene	18.6		2.00	11	II	н	n ·	
n-Propylbenzene	12.6		0.500	**	н	#	п	
Styrene	ND		1.00	н	71	n .	B	
1,1,1,2-Tetrachloroethane	ND		0.500	11	n	H	11	
1,1,2,2-Tetrachloroethane	ND		0.500	**	н	11	tr .	
Tetrachloroethene (PCE)	ND		0.500	H	**	11	н	
Toluene	18.1		1.00	11	H	n	11	
1,2,3-Trichlorobenzene	ND		2.00	11	И	11,	tt.	
1,2,4-Trichlorobenzene	ND		2.00	u	"	n	н	
1,1,1-Trichloroethane	ND		0.500	и	н	n	**	
1,1,2-Trichloroethane	ND		0.500	**	и	н	11	
Trichloroethene (TCE)	ND		0.500	н	n	U	н	
Trichlorofluoromethane	ND		2.00	п	н	II.	н	
1,2,3-Trichloropropane	ND		1.00	"		91	n	
1,2,4-Trimethylbenzene	85.7		1.00	н	**	n	н	
1,3,5-Trimethylbenzene	4.34		1.00	#1	н	n	н	
Vinyl chloride	ND		0.500	ŧŧ	H	н	**	
m,p-Xylene	61.4		1.00	11	"	tt.	н	
o-Xylene	76.5		0.500	tt	н	11	11	
Surrogate: Dibromofluoromethane (Surr	·)	Re	ecovery: 97 % Li	mits: 80-120 %	6 "	n .	n	

95 %

Limits: 80-120 %

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1,4-Difluorobenzene (Surr)

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12232 S.W. Garden Place Tigard, OR 97223 503-718-2323 Phone 503-718-0333 Fax

Amec Environment & Infrastructure, Inc

7376 SW Durham Road

Portland, OR 97224

Project: Cornelius

Project Number: [none]

Project Manager: Charles Esler

Reported:

01/08/13 15:19

ANALYTICAL SAMPLE RESULTS

Volatile Organic Compounds by EPA 8260B Reporting												
	D14) (D)	Reporting									
Analyte	Result	MDL	Limit	Units	Dilution	Date Analyzed	Method	Notes				
WW4-122112 (A12L497-04RE1)			Matrix: Wa		Batch: 12125							
Surrogate: Toluene-d8 (Surr)		Re	covery: 103 %	Limits: 80-120 %		11	EPA 8260B					
4-Bromofluorobenzene (Suri	r)		95 %	Limits: 80-120 %	"	"	II .					
Гrip Blank (А12L497-05)			Matrix: Wa	nter l	Batch: 12125	02						
Acetone	ND		20.0	ug/L	1	12/21/12 20:04	EPA 8260B	EST				
Benzene	ND		0.250	н	**	"	ti					
Bromobenzene	ND		0.500	Ħ	11	II.	II					
Bromochloromethane	ND		1.00	н	и	н	н					
Bromodichloromethane	ND		1.00	. 11	"	"	tt.					
Bromoform	ND		1.00	tl	n	tt.	и					
Bromomethane	ND		5.00	И	и	Ŋ	n					
2-Butanone (MEK)	ND	2012	10.0	n	11	11	**					
n-Butylbenzene	ND		1.00	11	**	11	н					
sec-Butylbenzene	ND		1.00	· ·	н	и	**					
tert-Butylbenzene	ND		1.00	II	11	н	tt.					
Carbon tetrachloride	ND		0.500	Ħ	11	R	II					
Chlorobenzene	ND		0.500	n	н	II	11					
Chloroethane	ND		5.00	и	**	n	H .					
Chloroform	ND		1.00	11	11	n.	н					
Chloromethane	ND		5.00	"	н	н	11					
2-Chlorotoluene	ND		1.00	W	11	11	II.					
4-Chlorotoluene	ND		1.00	11	н	11	11					
1,2-Dibromo-3-chloropropane	ND		5.00	n	H	н	n					
Dibromochloromethane	ND		1.00	"	u u	11	tt					
1,2-Dibromoethane (EDB)	ND		0.500	**	и	н .	н					
Dibromomethane	ND		1.00	и	11	н	u					
1,2-Dichlorobenzene	ND		0.500	**	II	n	и					
1,3-Dichlorobenzene	ND		0.500	н	n	н	11					
1,4-Dichlorobenzene	ND		0.500	н	n	18	II					
Dichlorodifluoromethane	ND		1.00	п	"	и	11					
1,1-Dichloroethane	ND		0.500	н	11	Ħ	II					
1,2-Dichloroethane (EDC)	ND		0.500	tt.	н	н	н					
1,1-Dichloroethene	ND		0.500	11	п	11	н					
cis-1,2-Dichloroethene	ND		0.500	п	n	н	11					
trans-1,2-Dichloroethene	ND		0.500	#1	11	"	н					
1,2-Dichloropropane	ND		0.500	If		II	9)					

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Philip Nerenberg, Lab Director

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12232 S.W. Garden Place Tigard, OR 97223 503-718-2323 Phone 503-718-0333 Fax

Amec Environment & Infrastructure, Inc

7376 SW Durham Road

Portland, OR 97224

Project: Cornelius

Project Number: [none]

Project Manager: Charles Esler

Reported:

01/08/13 15:19

ANALYTICAL SAMPLE RESULTS

		voiatile	Organic Con	npounas by	EPA 8260B			····
Analyte	Result	MDL	Reporting Limit	Units	Dilution	Date Analyzed	Method	Note
Trip Blank (A12L497-05)			Matrix: Wate	er	Batch: 121250	02		
1,3-Dichloropropane	ND		1.00	ug/L	1	u.	EPA 8260B	
2,2-Dichloropropane	ND _.		1.00	II.	II	н	н	
1,1-Dichloropropene	ND		1.00	n	II.	н	n	
cis-1,3-Dichloropropene	ND		1.00	II	H	H	n	
trans-1,3-Dichloropropene	ND		1.00	н	II.	н	н	
Ethylbenzene	ND		0.500	H	н	н	н	
Hexachlorobutadiene	ND		5.00	II	п	H	н	
2-Hexanone	ND		10.0	H	н	Ħ	н	
Isopropylbenzene	ND		1.00	н	н	H		
4-Isopropyltoluene	ND		1.00	и	. н	n	н	
4-Methyl-2-pentanone (MiBK)	ND		10.0	ıı	н	H	н	
Methyl tert-butyl ether (MTBE)	ND		1.00	n	н	n	н	
Methylene chloride	ND		5.00	ıı	н	n	н	
Naphthalene	ND		2.00	n	Ħ		н	
n-Propylbenzene	ND		0.500	II	н	n	н	
Styrene	ND		1.00	ij	n ·	и	н	
1,1,1,2-Tetrachloroethane	ND		0.500	ıı	· u	11	н	
1,1,2,2-Tetrachloroethane	ND		0.500	**	U	11	11	
Tetrachloroethene (PCE)	ND		0.500	**	n	Ħ	II	
Toluene	ND		1.00	11	If	11	11	
1,2,3-Trichlorobenzene	ND		2.00	• и	IF	н	n	
1,2,4-Trichlorobenzene	ND		2.00	н	11	* n	n	
1,1,1-Trichloroethane	ND		0.500	и	**	н	н	
1,1,2-Trichloroethane	ND		0.500	и	II.	n	н	
Trichloroethene (TCE)	ND		0.500	n	11	ti .	и	
Trichlorofluoromethane	ND		2.00	II	н	11	n	
1,2,3-Trichloropropane	ND		1.00	и	ŧ	н	II.	
1,2,4-Trimethylbenzene	ND		1.00	и	11	н	н	
1,3,5-Trimethylbenzene	ND		1.00	11	n.	н	n	
Vinyl chloride	ND		0.500	11	If	11	11	
n,p-Xylene	ND		1.00	н	Ħ	H	u	
o-Xylene	ND		0.500	н	n	и	И	
Surrogate: Dibromofluoromethane (Si	urr)	Re	covery: 101 %	Limits: 80-120 %	6 "	HT .	11	
1,4-Difluorobenzene (Surr)	*			Limits: 80-120 %			rr .	
Toluene-d8 (Surr)			101 %	Limits: 80-120 %	6 "	и	н	

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12232 S.W. Garden Place Tigard, OR 97223 503-718-2323 Phone 503-718-0333 Fax

Amec Environment & Infrastructure, Inc

7376 SW Durham Road

Portland, OR 97224

Project: Cornelius

Project Number: [none]

Project Manager: Charles Esler

Reported:

01/08/13 15:19

ANALYTICAL SAMPLE RESULTS

		Volatile	Organic Comp	ounds by l	EPA 8260B			
1			Reporting			740		
Analyte	Result	MDL	Limit	Units	Dilution	Date Analyzed	Method	Notes
Trip Blank (A12L497-05)			Matrix: Water	E	Batch: 121250)2		
Surrogate: 4-Bromofluorobenzene (Surr)		Red	covery: 98 % Lin	nits: 80-120 %	1	II	EPA 8260B	

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Attachment D April 15-16, 2015, EQC meeting Apex Page 450581

12232 S.W. Garden Place Tigard, OR 97223 503-718-2323 Phone 503-718-0333 Fax

Amec Environment & Infrastructure, Inc

7376 SW Durham Road Portland, OR 97224 Project: Cornelius

Project Number: [none]

Project Manager: Charles Esler

Reported:

01/08/13 15:19

QUALITY CONTROL (QC) SAMPLE RESULTS

			Diesel and	Oil Hydro	carbon	s by NWTP	H-Dx					
Analyte	Result	MDL	Reporting Limit	Units	Dil.	Spike Amount	Source Result	%REC	%REC Limits	RPD	RPD Limit	Notes
Batch 1212576 - EPA 3510	OC (Acid Ex	traction)				Wat	ter				
Blank (1212576-BLK1)				Pre	pared: 12/	27/12 13:07	Analyzed:	12/27/12 21	:18			
NWTPH-Dx												
Diesel	ND		0.182	mg/L	1			·				
Oil	ND		0.364	ŧI	н							
Surr: o-Terphenyl (Surr)	Recovery: 88 % Limits: 50-150 % Dilution: 1x											
LCS (1212576-BS1)				Pre	pared: 12/	27/12 13:07	Analyzed:	12/27/12 21	:41			
NWTPH-Dx												
Diesel	1.16		0.200	mg/L	1	1.25		93	70-130%			
Oil	1.17		0.400	11	н	u		94	11			
Surr: o-Terphenyl (Surr)		Re	ecovery: 97 %	Limits: 50	-150 %	Dilu	tion: lx					
LCS Dup (1212576-BSD1)				Pre	pared: 12/	27/12 13:07	Analyzed:	12/27/12 22	2:05			Q-19
NWTPH-Dx												
Diesel	1.10		0.200	mg/L	1	1.25		88	70-130%	6	20%	
Oil	1.16		0.400	11	R	"		93	97	2	20%	
Surr: o-Terphenyl (Surr)	TO THE PARTY OF TH	Re	ecovery: 91%	Limits: 50	-150 %	Dilu	tion: lx					***************************************

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12232 S.W. Garden Place Tigard, OR 97223 503-718-2323 Phone 503-718-0333 Fax

Amec Environment & Infrastructure, Inc

Project: Cornelius

7376 SW Durham Road

Project Number: [none]

Reported: 01/08/13 15:19

Portland, OR 97224

Project Manager: Charles Esler

QUALITY CONTROL (QC) SAMPLE RESULTS

	Gaso	line Ra	ange Hydroca	arbons (I	Benzene 1	o Naphtha	lene) by l	NWTPH-	-Gx			:
Analyte	Result	MDL	Reporting Limit	Units	Dil.	Spike Amount	Source Result	%REC	%REC Limits	RPD	RPD Limit	Notes
Batch 1212475 - EPA 5030B							Wat	ter				
Blank (1212475-BLK1)				P	Prepared: 12	21/12 09:00	Analyzed:	12/21/12 1	12:08			
NWTPH-Gx (MS)												
Gasoline Range Organics	ND		0,100	mg/L	1							
Surr: 4-Bromofluorobenzene (Sur)			Recovery: 83 %	Limits:	50-150 %	Dilu	ition: lx					
1,4-Difluorobenzene (Sur)			97 %	•	50-150 %		"					
LCS (1212475-BS2)				P	Prepared: 12/	21/12 09:00	Analyzed:	12/21/12 1	1:39			
NWTPH-Gx (MS)										•		
Gasoline Range Organics	0.390		0.100	mg/L	1	0.500		78	70-130%			
Surr: 4-Bromofluorobenzene (Sur)			Recovery: 81 %	Limits: .	50-150 %	Dilution: 1x		*********	·			
1,4-Difluorobenzene (Sur)			96 %	3	50-150 %		n					

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EXH

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12232 S.W. Garden Place Tigard, OR 97223 503-718-2323 Phone 503-718-0333 Fax

Amec Environment & Infrastructure, Inc

7376 SW Durham Road

Portland, OR 97224

Project: Cornelius

Project Number: [none]

Project Manager: Charles Esler

Reported:

01/08/13 15:19

QUALITY CONTROL (QC) SAMPLE RESULTS

	Gaso	line Ra	nge Hydroca	rbons (Benzene t	o Naphtha	lene) by	NWTPH-	Gx			
Analyte	Result	MDL	Reporting Limit	Units	Dil.	Spike Amount	Source Result	%REC	%REC Limits	RPD	RPD Limit	Notes
Batch 1212518 - EPA 5030B							Wa	ter				
Blank (1212518-BLK1)					Prepared: 12/	24/12 11:00	Analyzed:	12/24/12 1	4:21			
NWTPH-Gx (MS)												
Gasoline Range Organics	ND		0.100	mg/L	1	***				~~~		
Surr: 4-Bromofluorobenzene (Sur)		R	Recovery: 87 %	Limits:	50-150 %	Dilı	ition: 1x	-		· · · · · · · · · · · · · · · · · · ·		
1,4-Difluorobenzene (Sur)			93 %		50-150 %		. "					
LCS (1212518-BS2)				1	Prepared: 12/	24/12 11:00	Analyzed:	12/24/12 1	3:24			
WTPH-Gx (MS)								*** *******				
Gasoline Range Organics	0.391		0.100	mg/L	1	0.500		78	70-130%			
Surr: 4-Bromosluorobenzene (Sur)		R	ecovery: 90 %	6 Limits: 50-150 %		Dilu	ition: lx				12.71	
1,4-Difluorobenzene (Sur)			91 %		50-150 %		п					

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Philip Nerenberg, Lab Director

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12232 S.W. Garden Place Tigard, OR 97223 503-718-2323 Phone 503-718-0333 Fax

Amec Environment & Infrastructure, Inc

7376 SW Durham Road

Portland, OR 97224

Project: Cornelius

Project Number: [none]

Project Manager: Charles Esler

Reported:

01/08/13 15:19

QUALITY CONTROL (QC) SAMPLE RESULTS

	Gaso	line Ra	inge Hydroca	arbons (E	Benzene 1	o Naphtha	lene) by	NWTPH-	Gx			
Analyte	Result	MDL	Reporting Limit	Units	Dil.	Spike Amount	Source Result	%REC	%REC Limits	RPD	RPD Limit	Notes
Batch 1212530 - EPA 5030B							Wat	ter				
Blank (1212530-BLK1)				Pi	repared: 12/	26/12 09:30	Analyzed:	12/26/12 1	2:54			
NWTPH-Gx (MS)												
Gasoline Range Organics	ND		0.100	mg/L	1							
Surr: 4-Bromofluorobenzene (Sur)		1	Recovery: 82 %	Limits: 5	i0-150 %	Dilı	tion: lx				~~~~	
1,4-Difluorobenzene (Sur)			93 %	5	0-150 %		"					
LCS (1212530-BS2)				Pı	repared: 12/	26/12 09:30	Analyzed:	12/26/12 1	2:25			
NWTPH-Gx (MS)						***************************************		TO 3. 11. 1. 1. 1.	***************************************			
Gasoline Range Organics	0.416		0.100	mg/L	1	0.500		83	70-130%			
Surr: 4-Bromofluorobenzene (Sur)		Recovery: 81 %		Limits: 5	0-150 %	Dilu	tion: lx					
1,4-Difluorobenzene (Sur)			93 %	5	0-150 %		"					

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Philip Newberg

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Amec Environment & Infrastructure, Inc

Project: Cornelius

7376 SW Durham Road Portland, OR 97224 Project Number: [none]
Project Manager: Charles Esler

Reported: 01/08/13 15:19

QUALITY CONTROL (QC) SAMPLE RESULTS

Analyte	Result	MDL	Reporting Limit	Units	Dil.	Spike Amount	Source Result	%REC	%REC Limits	RPD	RPD Limit	Notes
Batch 1212475 - EPA 5030E	3						Wat	er				
Blank (1212475-BLK1)				Pre	pared: 12/	21/12 09:00			:08			
EPA 8260B					1							
Acetone	ND		20.0	ug/L	1						****	
Benzene	ND		0.250	"	H							
Bromobenzene	ND		0.500	н	н							
Bromochloromethane	ND		1.00	ti	11							
Bromodichloromethane	ND		1.00	11	n				uuu			
Bromoform	ND		1.00	II.	n							
Bromomethane	ND		5.00	n	н							
2-Butanone (MEK)	ND		10.0	H	ŧŧ							
n-Butylbenzene	ND		1.00	"	11							
sec-Butylbenzene	ND		1.00	11	n							
tert-Butylbenzene	ND		1.00	н	н							
Carbon tetrachloride	ND		0.500	н	n							
Chlorobenzene	ND		0.500	n	11							
Chloroethane	ND		5.00	n	u							
Chloroform	ND		1.00	u	11							
Chloromethane	ND		5.00	11	n							Q-3
2-Chlorotoluene	ND		1.00	11	11							
4-Chlorotoluene	ND		1.00	11	u							
1,2-Dibromo-3-chloropropane	ND		5.00	н	п							
Dibromochloromethane	ND		1.00	n	11							
1,2-Dibromoethane (EDB)	ND		0.500	п	II .							
Dibromomethane	ND		1.00	н	н							
1,2-Dichlorobenzene	ND		0.500	n	n							
1,3-Dichlorobenzene	ND		0.500	11	и							
1,4-Dichlorobenzene	ND		0.500	н	n							
Dichlorodifluoromethane	ND		1.00	11	11							
1,1-Dichloroethane	ND		0.500	u	11							
1,2-Dichloroethane (EDC)	ND		0.500	н	н							
1,1-Dichloroethene	ND		0.500	11	Ħ							
cis-1,2-Dichloroethene	ND		0.500	II	11							
trans-1,2-Dichloroethene	ND		0.500	н	11				****			
1,2-Dichloropropane	ND		0.500	11	п							
1,3-Dichloropropane	ND		1.00	H	н							
2,2-Dichloropropane	ND		1.00	11	ŧŧ							

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EXHIBIT (1) PAGE 25 OF 53

Philip Nerenberg, Lab Director

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Amec Environment & Infrastructure, Inc

7376 SW Durham Road

Portland, OR 97224

Project: Cornelius

Project Number: [none]

Reported: Project Manager: Charles Esler 01/08/13 15:19

QUALITY CONTROL (QC) SAMPLE RESULTS

			Denorting			Critica	Course		0/PEC		מממ	
Analyte	Result	MDL	Reporting Limit	Units	Dil.	Spike Amount	Source Result	%REC	%REC Limits	RPD	RPD Limit	Notes
Batch 1212475 - EPA 5030B							Wat	er				
Blank (1212475-BLK1)				Pro	epared: 12/	21/12 09:00	Analyzed:	12/21/12 12	:08			
1,1-Dichloropropene	ND		1.00	ug/L	ıı							
cis-1,3-Dichloropropene	ND		1.00	u	н							
trans-1,3-Dichloropropene	ND		1.00	н	**							
Ethylbenzene	ND		0.500	11	11							
Hexachlorobutadiene	ND		5.00	11	11							
2-Hexanone	ND		10.0	tt.	н							
Isopropylbenzene	ND		1.00	U	11							
4-Isopropyltoluene	ND		1.00	Ħ	н							
4-Methyl-2-pentanone (MiBK)	ND		10.0	11	11							
Methyl tert-butyl ether (MTBE)	ND		1.00	n	**							
Methylene chloride	ND		5.00	н	tr.							
Naphthalene	ND		2.00	**	н							
n-Propylbenzene	ND		0.500	H	H							
Styrene	ND		1.00	H	rr							
1,1,1,2-Tetrachloroethane	ND		0.500	11	11							
1,1,2,2-Tetrachloroethane	ND		0.500	11	11							
Tetrachloroethene (PCE)	ND		0.500	н	11							
Toluene	ND		1.00	n	n							
1,2,3-Trichlorobenzene	ND		2.00	ti .	H							
1,2,4-Trichlorobenzene	ND		2.00	n	11				***			
1,1,1-Trichloroethane	ND		0.500	11	н .							
1,1,2-Trichloroethane	ND		0.500	u	"							
Trichloroethene (TCE)	ND		0.500	н	11*							
Trichlorofluoromethane	ND		2.00	**	н							
1,2,3-Trichloropropane	ND		1.00	11	11							
1,2,4-Trimethylbenzene	ND		1.00	H	11							
1,3,5-Trimethylbenzene	ND		1.00	11	u				***			
Vinyl chloride	ND		0.500	11	н							
m,p-Xylene	ND		1.00	11	11							
o-Xylene	ND		0.500	п								
Surr: Dibromofluoromethane (Surr)		Rece	overy: 106 %	Limits: 80	-120 %	Dilu	tion: 1x					
1,4-Difluorobenzene (Surr)			102 %		-120 %		"					
Toluene-d8 (Surr)			98 %		-120 %		"					
4-Bromofluorobenzene (Surr)			92 %	80-	-120 %		"					
LCS (1212475-BS1)				_				2/21/12 11:1				

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Philip Nevenberg

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Philip Nerenberg, Lab Director

Amec Environment & Infrastructure, Inc

7376 SW Durham Road

Portland, OR 97224

Project: Cornelius

Project Number: [none]

Project Manager: Charles Esler

Reported: 01/08/13 15:19

QUALITY CONTROL (QC) SAMPLE RESULTS

Analyte	Result	MDL	Reporting Limit	Units	Dil.	Spike Amount	Source Result	%REC	%REC Limits	RPD	RPD Limit	Notes
Batch 1212475 - EPA 5030I	3						Wat	er				
LCS (1212475-BS1)				Pre	pared: 12/	21/12 09:00	Analyzed:	12/21/12 11	:10			
EPA 8260B												
Acetone	64.8		20.0	ug/L	1	40.0		162	70-130%			EST
Benzene	18.9		0.250	11	11	20.0		94	н			
Bromobenzene	20.3		0.500	n	#1	II		102	н			
Bromochloromethane	19.1		1.00	#1	11	H.		96	u			
Bromodichloromethane	21.2		1.00	н	n	II .		106	н			
Bromoform	20.0		1.00	H	11	"		100	H			
Bromomethane	29.2		5.00	11	"	н		146	n			EST
2-Butanone (MEK)	33.1		10.0	11	a	40.0		83	п			
n-Butylbenzene	20.4		1.00	11	11	20.0		102	н			
sec-Butylbenzene	20.3		1.00	ti	11	н	***	102	н			
tert-Butylbenzene	19.9		1.00	**	n	Ħ		99	н			
Carbon tetrachloride	20.7		0.500	11	11	ti		103	n			
Chlorobenzene	19.7		0.500	tt	н	9		99	11			
Chloroethane	18.3		5.00	H	n	0		91	11			EST
Chloroform	20.9		1.00	H	**	II		104	11			
Chloromethane	13.0		5.00	h	**	н		65	н			Q-30
2-Chlorotoluene	21.1		1.00	11	**	11		105	н			
4-Chlorotoluene	19.7		1.00	11	n	n		99	11			
1,2-Dibromo-3-chloropropane	19.6		5.00	II.	н	u		98	11			
Dibromochloromethane	20.6		1.00	H	н	n		103	17			
1,2-Dibromoethane (EDB)	22.5		0.500	н	11	Ħ		112	н			
Dibromomethane	22.2		1.00	Ħ	0	11		111	n			
1,2-Dichlorobenzene	20.8		0.500	11	н	II .		104	н			
1,3-Dichlorobenzene	22.0		0.500	"	**	"		110	11			
1,4-Dichlorobenzene	21.1		0.500	н	11	11		105	n			
Dichlorodifluoromethane	22.4		1.00	n	11	**		112	H			
1,1-Dichloroethane	20.4		0.500	11	н	n		102	11			
1,2-Dichloroethane (EDC)	19.5		0.500	*1	н	п		97	11			
1,1-Dichloroethene	16.3		0.500	н	n	н		81	u			
cis-1,2-Dichloroethene	20.2		0,500	н	n	11		101	n			
trans-1,2-Dichloroethene	20.3		0.500	. #1	п	0		101	н '			
1,2-Dichloropropane	19.4		0.500	91	n	н		97	11			
1,3-Dichloropropane	21.0		1.00	н	u	н		105	11			
2,2-Dichloropropane	21.8		1.00	h	Ħ	11		109	11			

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Philip Newberg

Philip Nerenberg, Lab Director

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Amec Environment & Infrastructure, Inc

Project: Cornelius

7376 SW Durham Road

Project Number: [none]

Reported:

Portland, OR 97224

01/08/13 15:19 Project Manager: Charles Esler

QUALITY CONTROL (QC) SAMPLE RESULTS

			Reporting			Spike	Source		%REC		RPD	
Analyte	Result	MDL	Limit	Units	Dil.	Amount	Result	%REC	Limits	RPD	Limit	Notes
Batch 1212475 - EPA 5030B							Wat	ter				
LCS (1212475-BS1)				F	Prepared: 12/	21/12 09:00	Analyzed:	12/21/12 11	:10			
1,1-Dichloropropene	20.8		1.00	ug/L	H	II		104	н			
cis-1,3-Dichloropropene	20.6		1.00	н	11	n		103	n			
trans-1,3-Dichloropropene	22.8		1.00	И	n	H		114	н			
Ethylbenzene	20.1		0.500	**	n	11		100	н			
Hexachlorobutadiene	21.3		5.00	If	Ħ	11		106	н			
2-Hexanone	36.5		10.0	Ħ	n	40.0		91	11			
Isopropylbenzene	20.8		1.00	н	11	20.0		104	11			
4-Isopropyltoluene	22.0		1.00	**	ff	н		110	11			
4-Methyl-2-pentanone (MiBK)	36.8		10.0	н	ti	40.0		92	н			
Methyl tert-butyl ether (MTBE)	18.5		1.00	н	ti	20.0		93	n			
Methylene chloride	19.0		5.00	"	Ħ	*1		95	11			
Naphthalene	19.6		2.00	**	11	tı		98	H			
n-Propylbenzene	20.4		0.500	n	Ħ	11		102	11			
Styrene	19.8		1.00	#1	п	71		99	н			
1,1,1,2-Tetrachloroethane	21.2		0.500	n	n n	"		106	n		***	
1,1,2,2-Tetrachloroethane	18.9		0.500	n	n	11		95	Ħ			
Tetrachloroethene (PCE)	20.5		0.500	11	n	11		102	11			
Toluene	19.2		1.00		U	11		96	n			
1,2,3-Trichlorobenzene	19.1		2.00	11	n	н		96	Ħ			
1,2,4-Trichlorobenzene	24.1		2.00	D	11	11		121	n .			
1,1,1-Trichloroethane	22.0		0.500	n	11	H		110	n			
1,1,2-Trichloroethane	20.8		0.500	н	11	**		104	11			
Trichloroethene (TCE)	21.1		0.500	**	Ħ	11		105	n			
Trichlorofluoromethane	21.3		2.00	11	n	п		107	n			
1,2,3-Trichloropropane	19.1		1.00	n	**	II		96	11			
1,2,4-Trimethylbenzene	20.6		1.00	#	11	ù		103	II .			
1,3,5-Trimethylbenzene	20.4		1.00	#	11	n		102	н			
Vinyl chloride	19.9		0.500	Ħ	н	n		100	11			
m,p-Xylene	41.2		1.00	n	II	40.0		103	11			
o-Xylene	20.8		0.500	п	n	20.0		104	u ·			
Surr: Dibromofluoromethane (Surr)		Rec	covery: 105%	Limits:	80-120 %	Dilu	ition: 1x					
1,4-Difluorobenzene (Surr)			99 %	ć	80-120 %		n					
Toluene-d8 (Surr)			99 %	ě	80-120 %		"					
4-Bromofluorobenzene (Surr)			96 %	ě	80-120 %		"					

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Attachment D April 15-16, 2015, EQC meeting

12232 S.W. Garden Place Tigard, OR 97223 503-718-2323 Phone 503-718-0333 Fax

Amec Environment & Infrastructure, Inc

7376 SW Durham Road

Portland, OR 97224

Project: Cornelius

Project Number: [none]

Project Manager: Charles Esler

Reported: 01/08/13 15:19

QUALITY CONTROL (QC) SAMPLE RESULTS

			Volatile Or	ganic Co	mpound	s by EPA 8	3260B					
Analyte	Result	MDL	Reporting Limit	Units	Dil.	Spike Amount	Source Result	%REC	%REC Limits	RPD	RPD Limit	Notes
Batch 1212502 - EPA 5030E	3						Wat	er				
Blank (1212502-BLK1)				Pre	epared: 12/	21/12 17:30	Analyzed:	12/21/12 19	:36			
EPA 8260B	***			-								
Acetone	ND		20.0	ug/L	1							EST
Benzene	ND		0.250	11	н							
Bromobenzene	ND		0.500	11	"							
Bromochloromethane	ND		1.00	11	n							
Bromodichloromethane	ND		1.00	n	11							
Bromoform	ND		1.00	II .	11							
Bromomethane	ND		5.00	n	11							
2-Butanone (MEK)	ND		10.0	II .	n							
n-Butylbenzene	ND		1.00	n	11							
sec-Butylbenzene	ND		1.00	н	41							
tert-Butylbenzene	ND		1.00	н	11							
Carbon tetrachloride	ND		0.500	н	11							
Chlorobenzene	ND		0.500	н	- 0							
Chloroethane	ND		5.00	н	11							
Chloroform	ND		1.00	11								
Chloromethane	ND		5.00	11	n							
2-Chlorotoluene	ND		1.00	tr.	**							
4-Chlorotoluene	ND		1.00	II	**							
1,2-Dibromo-3-chloropropane	ND		5.00	"	11							
Dibromochloromethane	ND		1.00	11	u	***			No EST No			
1,2-Dibromoethane (EDB)	ND		0.500	n	11		-					
Dibromomethane	ND		1.00	11	п							
1,2-Dichlorobenzene	ND		0.500	11	"							
1,3-Dichlorobenzene	ND		0.500	n	' "							
1,4-Dichlorobenzene	ND		0.500	н	ŧi							
Dichlorodifluoromethane	ND		1.00	**	п							
1,1-Dichloroethane	ND		0.500	11	и							
1,2-Dichloroethane (EDC)	ND		0.500	n	н							
1,1-Dichloroethene	ND		0.500	н	"							
cis-1,2-Dichloroethene	ND		0.500	н	0							
trans-1,2-Dichloroethene	ND		0.500	n	н							
1,2-Dichloropropane	ND ND		0.500	u ·	"							
1,3-Dichloropropane	ND ND		1.00	n	11							
				11	н							
2,2-Dichloropropane	ND		1.00	"	"					-		
						•						

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Philip Neumberg

Attachment D April 15-16, 2015, EQC meeting $Apex^{Page}555^{81}$

12232 S.W. Garden Place Tigard, OR 97223 503-718-2323 Phone 503-718-0333 Fax

Amec Environment & Infrastructure, Inc

7376 SW Durham Road

Portland, OR 97224

Project: Cornelius

Project Number: [none]

Project Manager: Charles Esler

Reported:

01/08/13 15:19

QUALITY CONTROL (QC) SAMPLE RESULTS

			Volatile O	rganic	Compound	s by EPA 8	3260B					
Analyte	Result	MDL	Reporting Limit	Units	Dil.	Spike Amount	Source Result	%REC	%REC Limits	RPD	RPD Limit	Notes
Batch 1212502 - EPA 5030B							Wat	ter			·	
Blank (1212502-BLK1)		·			Prepared: 12/	21/12 17:30	Analyzed:	12/21/12 19	:36			
1,1-Dichloropropene	ND		1.00	ug/L	II II							
cis-1,3-Dichloropropene	ND		1.00	11	Ħ							
trans-1,3-Dichloropropene	ND		1.00	n	11							
Ethylbenzene	ND		0.500	II.	II .							
Hexachlorobutadiene	ND		5.00	н	н							
2-Hexanone	ND		10.0	R	*1							
lsopropylbenzene	ND		1.00	11	11							
4-Isopropyltoluene	ND		1.00	n	u.							
4-Methyl-2-pentanone (MiBK)	ND		10.0	н	H							
Methyl tert-butyl ether (MTBE)	ND		1.00	ñ	н							
Methylene chloride	ND		5.00	11	11							
Naphthalene	ND		2.00	u	. 11							
n-Propylbenzene	ND		0.500	11	11							
Styrene	ND		1.00	**	н							
1,1,1,2-Tetrachloroethane	ND		0.500	11	**							
1,1,2,2-Tetrachloroethane	ND		0.500		11	-						
Tetrachloroethene (PCE)	ND		0.500	н	н	-						
Toluene	ND		1.00	11	11							
1,2,3-Trichlorobenzene	ND		2.00	n	II						700	B-02
1,2,4-Trichlorobenzene	ND		2.00	11	ij							B-02
1,1,1-Trichloroethane	ND		0.500	n	**							B-02
1,1,2-Trichloroethane	ND		0.500	11	U							
Trichloroethene (TCE)	ND		0.500	11	11							
Trichlorofluoromethane	ND		2.00	n	U							
1,2,3-Trichloropropane	ND ND		1.00	,,								
1,2,4-Trimethylbenzene	ND		1.00		11							
1,3,5-Trimethylbenzene	ND		1.00	н	n							
Vinyl chloride	ND		0.500	11	H.						~~~	
m,p-Xylene	ND ND		1.00									
o-Xylene	ND ND			11								
	עא		0.500									
'urr: Dibromofluoromethane (Surr)		Kec	overy: 101%	Limits:	80-120 %	Dilu	tion: 1x					
I,4-Difluorobenzene (Surr) Toluene-d8 (Surr)			100 % 101 %		80-120 % 80-120 %		"					
4-Bromofluorobenzene (Surr)			101 % 98 %		80-120 % 80-120 %		"					
LCS (1212502-BS1)			2371	,		1/12 17:30	A	2/21/12 10				

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Philip Neurberg

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Philip Nerenberg, Lab Director

Attachment D April 15-16, 2015, EQC meeting Apex Page 55581

12232 S.W. Garden Place Tigard, OR 97223 503-718-2323 Phone 503-718-0333 Fax

Amec Environment & Infrastructure, Inc

7376 SW Durham Road Portland, OR 97224 Project: Cornelius

Project Number: [none]

Project Manager: Charles Esler

Reported: 01/08/13 15:19

QUALITY CONTROL (QC) SAMPLE RESULTS

			Volatile Or	3ai no 00	pound	O Dy LIAC					·····	
Analyte	Result	MDL	Reporting Limit	Units	Dil.	Spike Amount	Source Result	%REC	%REC Limits	RPD	RPD Limit	Notes
Batch 1212502 - EPA 5030B	.						Wat	ter				
LCS (1212502-BS1)				Pre	pared: 12/	21/12 17:30	Analyzed:	12/21/12 1	8:38			
EPA 8260B												
Acetone	30.3		20.0	ug/L	1	40.0		76	70-130%			ESTI
Benzene	18.6		0.250	n .	n	20.0		93	11			
Bromobenzene	18.7		0.500	11	H	tt		94	41			
Bromochloromethane	18.7		1.00	11	11	H		94	"			
Bromodichloromethane	19.4		1.00	11	11	11		97	"			
Bromoform	18.5		1.00	11	II	II		92	11			
Bromomethane	23.2		5,00	Ħ	**	n		116	97 .			
2-Butanone (MEK)	37.0		10.0	**	n	40.0		93	n			
n-Butylbenzene	22.1		1.00	11	H	20.0		110	11			
sec-Butylbenzene	20.5		1.00	n	R	н		102	-0			
tert-Butylbenzene	19.9		1.00	11	**	**		99	н		***	
Carbon tetrachloride	19.6		0.500	Ħ	"	· n		98	u			
Chlorobenzene	20.0		0.500	II	n	н		100	0			
Chloroethane	16.2		5.00	ij	n	**		81	п			
Chloroform	19.2		1.00	11	H	Q.		96	**			
Chloromethane	19.4		5.00	н	11	н		97	H			
2-Chlorotoluene	18.9		1.00	ij	11	#		94	п			
4-Chlorotoluene	19.0		1.00	,n	91	**		95	II			
1,2-Dibromo-3-chloropropane	17.3		5.00	"	н	11		87	11			
Dibromochloromethane	19.2		1.00	11	11	н		96	tt			
1,2-Dibromoethane (EDB)	20.2		0.500	11	н	n n		101	н			
Dibromomethane	18.8		1.00	н	**	н		94	11			
1,2-Dichlorobenzene	20.2		0.500	P	11	11		101	n			
1,3-Dichlorobenzene	19.9		0.500	H	н	н		99	n			
1,4-Dichlorobenzene	19.7		0.500	н	11	0		98	11			
Dichlorodifluoromethane	21.6		1.00	11	н	II		108	п			
1,1-Dichloroethane	18.0		0.500	,,	ff	Ħ		90	11			
1,2-Dichloroethane (EDC)	18.9		0.500	n	11	II.		94	11			
1,1-Dichloroethene	19.3		0.500	"	11	11	-	97	tt			
cis-1,2-Dichloroethene	19.3		0.500	U	н	11		96	11			
trans-1,2-Dichloroethene	19.0		0.500	n	н	n		95	н			
1,2-Dichloropropane	18.1		0.500	н	u u	II .		90	ır			
1,3-Dichloropropane	19.7		1.00	11		**		98	11			
2,2-Dichloropropane	20.4		1.00	H	0	u u		102	· u			

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Item E 0001 40 26 of 44

Amec Environment & Infrastructure, Inc

Project: Cornelius

7376 SW Durham Road Portland, OR 97224 Project Number: [none]
Project Manager: Charles Esler

Reported:

01/08/13 15:19

QUALITY CONTROL (QC) SAMPLE RESULTS

			Donortino			Cnilca	Source		0/DEC		רוממ	
Analyte	Result	MDL	Reporting Limit	Units	Dil.	Spike Amount	Source Result	%REC	%REC Limits	RPD	RPD Limit	Notes
Batch 1212502 - EPA 5030B							Wat	ter				
LCS (1212502-BS1)				1	Prepared: 12/	21/12 17:30	Analyzed:	12/21/12 18	:38			
1,1-Dichloropropene	19.3		1.00	ug/L	u	н		96	н			
cis-1,3-Dichloropropene	18.8		1.00	n	u	н		94	H			
trans-1,3-Dichloropropene	20.0		1.00	n	. 10	н		100	н			
Ethylbenzene	19.6		0.500	Ħ	11	н		98	11			
Hexachlorobutadiene	22.0		5.00	Ħ	11	Ħ		110	**			
2-Hexanone	40.0		10.0	11	н	40.0		100	н			
Isopropylbenzene	21.3		1.00	Ħ	н	20.0		107	11			
4-Isopropyltoluene	20.8		1.00	11	н	11		104	11			
4-Methyl-2-pentanone (MiBK)	38.3		10.0	11	11	40.0		96	ti			
Methyl tert-butyl ether (MTBE)	17.7		1.00	11	"	20.0		88	o o			
Methylene chloride	20.0		5.00	11	11	**		100	11			
Naphthalene	32.3		2.00	11	11	II		161	a			EST
n-Propylbenzene	19.4		0.500	11	**	н		97	II			
Styrene	21.7		1.00	п	n	II		108	n			
1,1,1,2-Tetrachloroethane	20.0		0.500	и	0	11		100	n			
1,1,2,2-Tetrachloroethane	17.4		0.500	n	n	11		87	н			•
Tetrachloroethene (PCE)	21.6		0.500	н	н	**		108	н			
Toluene	19.8		1.00	11	H	li		99	#			
1,2,3-Trichlorobenzene	30.0		2.00	11	"	н		150	u u			B-02, ES
1,2,4-Trichlorobenzene	31.0		2.00	11	11	II		155	11			B-02, ES
1,1,1-Trichloroethane	19.3		0.500	11	п	11		96	н			
1,1,2-Trichloroethane	19.4		0.500	11	И	n		97	н			
Trichloroethene (TCE)	19.5		0.500	11	н	11		97	#			
Trichlorofluoromethane	19.2		2.00	11	н	Ü		96	**			
1,2,3-Trichloropropane	17.0		1.00	11	н	н		85	0			
1,2,4-Trimethylbenzene	20.6		1.00	n	0	**		103	n n			
1,3,5-Trimethylbenzene	20.0		1.00	**	#	11		100	n .			
Vinyl chloride	20.3		0.500	n	н	II.		101	н		***	
m,p-Xylene	41.1	***	1.00	ti	11	40.0		103	**			
o-Xylene	20.5		0.500	n	11	20.0		102	u			
Surr: Dibromofluoromethane (Surr)		Red	overy: 101%	Limits:	80-120 %	Dilu	tion: 1x					
1,4-Difluorobenzene (Surr)			99 %		80-120 %		"					
Toluene-d8 (Surr)			101 %		80-120 %		"					
4-Bromofluorobenzene (Surr)			95 %		80-120 %		"					

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Philip Neumberg

Amec Environment & Infrastructure, Inc

7376 SW Durham Road

Portland, OR 97224

Project: Cornelius

Project Number: [none]

Project Manager: Charles Esler

Reported: 01/08/13 15:19

QUALITY CONTROL (QC) SAMPLE RESULTS

	 		Volatile O	931,110 901		, / (
Analyte	Result	MDL	Reporting Limit	Units	Dil.	Spike Amount	Source Result	%REC	%REC Limits	RPD	RPD Limit	Notes
Batch 1212511 - EPA 5030B							Wat	er				
Blank (1212511-BLK1)				Pre	pared: 12/	24/12 09:00	Analyzed:	12/24/12 13	2:04			
EPA 8260B			·				· ·			•		
Benzene	ND		0.250	ug/L	1							
1,2-Dibromoethane (EDB)	ND		0.500	н								
1,2-Dichloroethane (EDC)	ND		0.500	11	"							
Ethylbenzene	ND		0.500	##	n							
Isopropylbenzene	ND		1.00	It	п							
Methyl tert-butyl ether (MTBE)	ND		1.00	H	11					~==		
Naphthalene	ND		2.00	н	"							
n-Propylbenzene	ND		0.500	**	11							
Toluene	ND		1.00	**	н							
1,2,4-Trimethylbenzene	ND		1.00	U .	n					****		
1,3,5-Trimethylbenzene	ND		1.00	11	11							
m,p-Xylene	ND		1.00	11	**							
o-Xylene	ND		0.500	н	"							
Surr: Dibromofluoromethane (Surr)		Red	covery: 112 %	Limits: 80	-120 %	Dilı	ution: lx					
I,4-Difluorobenzene (Surr)			103 %	80-	-120 %		n					
Toluene-d8 (Surr)			98 %	80-	-120 %		n					
4-Bromofluorobenzene (Surr)			93 %	80-	-120 %		"					
LCS (1212511-BS1)				Pre	pared: 12/	24/12 09:00	Analyzed:	12/24/12 11	:06			
EPA 8260B										_		
Benzene	19.2		0.250	ug/L	1	20.0		96	70-130%			
1,2-Dibromoethane (EDB)	22.2		0.500	"	н			111	ti			
1,2-Dichloroethane (EDC)	26.6		0.500	ч	11	Ħ		133	n		***	Q-29
Ethylbenzene	20.2		0.500	н	п	n		101	n			-
Isopropylbenzene	20.6		1.00	н	н	н		103	11			
Methyl tert-butyl ether (MTBE)	21.2		1.00	и	"	n		106	II.			
Naphthalene	20.8		2.00	n	11	ti .		104	н			
n-Propylbenzene	20.2		0.500	n	ij	u		101	n			
Toluene	19.1		1.00	16	11	п		96	0		4-4	
1,2,4-Trimethylbenzene	20.7		1.00	н	u	Ħ		104	н			
1,3,5-Trimethylbenzene	20.5		1.00	11	н	11		102	11			
m,p-Xylene	42.2		1.00	и	**	40.0		105	11			
o-Xylene	20.9		0.500	и	u	20.0		105	н			
Surr: Dibromofluoromethane (Surr)		Rec	overy: 106 %	Limits: 80-	120 %	Dilu	ition: lx					

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Philip Newberg

Amec Environment & Infrastructure, Inc

7376 SW Durham Road

7376 SW Durham Road Portland, OR 97224 Project: Cornelius

Project Number: [none]

Project Manager: Charles Esler

Reported:

01/08/13 15:19

QUALITY CONTROL (QC) SAMPLE RESULTS

			Volatile Or	ganic Co	mpound	Is by EPA 8	3260B					
Analyte	Result	MDL	Reporting Limit	Units	Dil.	Spike Amount	Source Result	%REC	%REC Limits	RPD	RPD Limit	Notes
Batch 1212511 - EPA 5030B	<u> </u>						Wat	er				
LCS (1212511-BS1)				Pr	epared: 12	/24/12 09:00	Analyzed:	12/24/12 11	:06			
Surr: 1,4-Difluorobenzene (Surr)		R	ecovery: 99 %	Limits: 80	0-120 %	Dil	ution: Ix					******
Toluene-d8 (Surr)			99 %	80	0-120 %		"					
4-Bromofluorobenzene (Surr)			90 %	80	0-120 %		"					
Duplicate (1212511-DUP1)				Pr	epared: 12	/24/12 11:00	Analyzed:	12/24/12 14	:29			
QC Source Sample: MW1-122112 (A	.12L497-01R	E1)			1							
EPA 8260B												
Benzene	184		2.50	ug/L	10		180			2	30%	
1,2-Dibromoethane (EDB)	ND		5.00	II	11		ND				30%	
1,2-Dichloroethane (EDC)	ND		5.00	II	11		ND				30%	
Ethylbenzene	87.7		5.00	11	u		92.4			5	30%	
Isopropylbenzene	ND		10.0	н	"		5.60			***	30%	
Methyl tert-butyl ether (MTBE)	ND		10.0	#	н		ND				30%	
Naphthalene	36.8		20.0	**	n		60.2			48	30%	Q-17
n-Propylbenzene	10.4		5.00	Ħ	n		12.2			16	30%	
Toluene	299		10.0	11	n		321			7	30%	
1,2,4-Trimethylbenzene	110		10.0	n	11		159			37	30%	Q-17
1,3,5-Trimethylbenzene	28.6		10.0	II.	II .		51.8			58	30%	Q-17
m,p-Xylene	221		10.0	н	н		269			20	30%	
o-Xylene	112		5.00	**	n		127			13	30%	
Surr: Dibromofluoromethane (Surr)		Rec	overy: 109 %	Limits: 80	0-120 %	Dili	ution: 1x					
1,4-Difluorobenzene (Surr)			102 %	80	0-120 %		"					
Toluene-d8 (Surr)			96 %	80	0-120%		**					
4-Bromofluorobenzene (Surr)			94 %	80)-120 %		"					

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Philip Nerenberg, Lab Director

Item E 0001479e 29 of 44

Amec Environment & Infrastructure, Inc

7376 SW Durham Road Portland, OR 97224 Project: Cornelius

Project Number: [none]

Project Manager: Charles Esler

Reported:

01/08/13 15:19

QUALITY CONTROL (QC) SAMPLE RESULTS

				····		0.11	-		0/000			
Analyte	Result	MDL	Reporting Limit	Units	Dil.	Spike Amount	Source Result	%REC	%REC Limits	RPD	RPD Limit	Notes
Batch 1212518 - EPA 5030E	3						Wat	ter				
Blank (1212518-BLK1)				Pre	pared: 12/	24/12 11:00	Analyzed:	12/24/12 14	:21			
EPA 8260B												
Acetone	ND		20.0	ug/L	1					·		
Benzene	ND		0.250	"	п							
Bromobenzene	ND		0.500	11	H							
Bromochloromethane	ND		1.00	11	"							
Bromodichloromethane	ND		1.00	H	0							
Bromoform	ND		1.00	H	#1							
Bromomethane	ND		5.00	Ħ	н			-				
2-Butanone (MEK)	ND		10.0	11	11							
n-Butylbenzene	ND		1.00	II.	**							
sec-Butylbenzene	ND		1.00	. "	11							
tert-Butylbenzene	ND		1.00	n	н							
Carbon tetrachloride	ND		0.500	11	"							
Chlorobenzene	ND		0.500	u	n							
Chloroethane	ND		5.00	H .	н							
Chloroform	. ND		1.00	Ħ	n							
Chloromethane	ND		5.00	ti	n							
2-Chlorotoluene	ND		1.00	11	n			www				
4-Chlorotoluene	ND		1.00	H	н							
1,2-Dibromo-3-chloropropane	ND		5.00	Ħ	n							
Dibromochloromethane	ND		1.00	11	11							
1,2-Dibromoethane (EDB)	ND		0.500	u	н							
Dibromomethane	· ND		1.00	n	н							
1,2-Dichlorobenzene	ND		0.500	tl .	u			***				
1,3-Dichlorobenzene	ND		0.500	**	"							
1,4-Dichlorobenzene	ND		0.500	11	11							
Dichlorodifluoromethane	ND		1.00	II.	#							
1,1-Dichloroethane	ND		0.500	**	н			-				
1,2-Dichloroethane (EDC)	ND		0.500		Ħ	-						
1,1-Dichloroethene	ND		0.500	н	H		~~~					
cis-1,2-Dichloroethene	ND		0.500	11	11							
trans-1,2-Dichloroethene	ND		0.500	u	n							
1,2-Dichloropropane	ND		0.500	11	u							
1,3-Dichloropropane	ND		1.00	•	11							
2,2-Dichloropropane	ND		1.00	н	11						-	

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Amec Environment & Infrastructure, Inc

Project: Cornelius

7376 SW Durham Road

Project Number: [none]
Project Manager: Charles Esler

Reported: 01/08/13 15:19

Portland, OR 97224

1 Toject Wanager. Charles Bater

QUALITY CONTROL (QC) SAMPLE RESULTS

Analyte												
	Result	MDL	Reporting Limit	Units	Dil.	Spike Amount	Source Result	%REC	%REC Limits	RPD	RPD Limit	Notes
Batch 1212518 - EPA 5030B							Wat	er				
Blank (1212518-BLK1)				Pre	pared: 12/	24/12 11:00	Analyzed:	12/24/12 14:	21			
1,1-Dichloropropene	ND		1.00	ug/L	11							
cis-1,3-Dichloropropene	ND		1.00	u	#1							
trans-1,3-Dichloropropene	ND		1.00	ü	**							
Ethylbenzene	ND	~~~	0.500	**	Ħ							
Hexachlorobutadiene	ND		5.00	н	ti							
2-Hexanone	ND		10.0	н	11							
Isopropylbenzene	ND		1.00	H	11							
4-Isopropyltoluene	ND		1.00	И	11							
4-Methyl-2-pentanone (MiBK)	ND		10.0	H	11							
Methyl tert-butyl ether (MTBE)	ND		1.00	. 11	It							
Methylene chloride	ND		5.00	**	11							
Naphthalene	ND		2.00	1t	и							
n-Propylbenzene	ND		0.500	11	н							
Styrene	ND		1.00		"							
1,1,1,2-Tetrachloroethane	ND		0.500		U							
1,1,2,2-Tetrachloroethane	ND		0.500	н	11							
Tetrachloroethene (PCE)	ND		0.500	#	n							
Toluene	ND		1.00	n	п				and has been			
1,2,3-Trichlorobenzene	ND		2.00	U	ti							
1,2,4-Trichlorobenzene	ND		2.00	11	11							
1,1,1-Trichloroethane	ND		0.500	n	II.							
1,1,2-Trichloroethane	ND		0.500	+1	н							
Trichloroethene (TCE)	ND		0.500	11	11							
Trichlorofluoromethane	ND		2.00	11	11							
1,2,3-Trichloropropane	ND		1.00	н	11							
1,2,4-Trimethylbenzene	ND		1.00	11	11				·			
1,3,5-Trimethylbenzene	ND		1.00	11	ti							
Vinyl chloride	ND		0.500	н	U						***	
m,p-Xylene	ND		1.00	11	н							
o-Xylene	ND		0.500	11	u							
Surr: Dibromofluoromethane (Surr)		Rec	overy: 103 %	Limits: 80	-120 %	Dilu	tion: 1x					
1,4-Difluorobenzene (Surr)			101 %		-120 %		u					
Toluene-d8 (Surr)			102 %	-80-	-120 %		"					
4-Bromofluorobenzene (Surr)			103 %	80-	-120 %		u					
LCS (1212518-BS1)				5		4/12 11:00		0/04/10 1=	<i></i>			

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Philip Nevenberg

EXHIBIT R II

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Philip Nerenberg, Lab Director

Item E 0001495: 31 of 44

Attachment D April 15-16, 2015, EQC meeting Apex Page 6 581

12232 S.W. Garden Place Tigard, OR 97223 503-718-2323 Phone 503-718-0333 Fax

Amec Environment & Infrastructure, Inc

7376 SW Durham Road Portland, OR 97224 Project: Cornelius

Project Number: [none]

Project Manager: Charles Esler

Reported:

01/08/13 15:19

QUALITY CONTROL (QC) SAMPLE RESULTS

	···-		Volatile Or	ganic Coi	mpound	s by EPA 8	260B					
Analyte	Result	MDL	Reporting Limit	Units	Dil.	Spike Amount	Source Result	%REC	%REC Limits	RPD	RPD Limit	Notes
Batch 1212518 - EPA 5030E	3						Wat	ter				
LCS (1212518-BS1)	-			Pre	pared: 12/	24/12 11:00	Analyzed:	12/24/12 12	2:56			
EPA 8260B												
Acetone	40.5		20.0	ug/L	1	40.0		101	70-130%			
Benzene	19.5		0.250	9	u	20.0		98	**			
Bromobenzene	19.6		0.500	11	n	0		98	tt .			
Bromochloromethane	.19.7		1.00	н	11	n		99	н			
Bromodichloromethane	21.0		1.00		11	II.		105	н			
Bromoform	20.4		1.00	n	11	n		102	11			
Bromomethane	22.7		5.00	11	#	И		113	n			
2-Butanone (MEK)	38.9		10.0	ti	**	40.0		97	11			
n-Butylbenzene	21.3		1.00	ft		20.0		107	t†			
sec-Butylbenzene	20.6		1.00	11	"	Ħ		103	11			
tert-Butylbenzene	20.0		1.00	11	H	**		100	11			
Carbon tetrachloride	20.6		0.500	u	11	11		103	н			
Chlorobenzene	21.0		0.500	"	n	11		105	n			
Chloroethane	16.6		5.00	"	11	II		83	n			
Chloroform	20.2		1.00	n	11	n		101	n			
Chloromethane	20.4		5.00	11	n	н		102	n			
2-Chlorotoluene	19.3		1.00	H	tt	n		97	11			
4-Chlorotoluene	19.6		1.00	"	11	n		98	n			
1,2-Dibromo-3-chloropropane	19.2		5.00	n	11	II		96	н			
Dibromochloromethane	21.0		1.00	11	11	ų		105	11			
1,2-Dibromoethane (EDB)	21,6		0.500	II .	H	11		108	tt.			
Dibromomethane	19.9		1.00	11	11	tt.		99	н			
1,2-Dichlorobenzene	21.1		0.500	н	11	"		105	**			
1,3-Dichlorobenzene	20.5		0.500	11	п	n		102	"			
1,4-Dichlorobenzene	20.5		0.500	n	H	TI TI		102	u			
Dichlorodifluoromethane	22.4		1.00	H.	Ħ	11		112	н			
1,1-Dichloroethane	19.0		0.500	*1	II	н		95	11			
1,2-Dichloroethane (EDC)	20.0		0.500	н	11	n		100	n			
1,1-Dichloroethene	20.2		0.500	n	tt	н		101	н			
cis-1,2-Dichloroethene	20.5		0.500	n	0	н		103	н			
trans-1,2-Dichloroethene	19.8		0.500	н		łt		99	11			
1,2-Dichloropropane	19.1		0.500	11	ti ti	H		96	n			
1,3-Dichloropropane	20.7		1.00	11	**	**	~~~	104	m ·			
2,2-Dichloropropane	21.6		1.00	n	ĸ	H.		108	u			

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Item F 0001248e 32 of 44

Attachment D April 15-16, 2015, EQC meeting $Apex^{Page}abs^{681}$

12232 S.W. Garden Place Tigard, OR 97223 503-718-2323 Phone 503-718-0333 Fax

Amec Environment & Infrastructure, Inc

7376 SW Durham Road

Portland, OR 97224

Project: Cornelius

Project Number: [none]

Project Manager: Charles Esler

Reported:

01/08/13 15:19

QUALITY CONTROL (QC) SAMPLE RESULTS

Analyte	Result	MDL	Reporting Limit	Units	Dil.	Spike Amount	Source Result	%REC	%REC Limits	RPD	RPD Limit	Notes
Batch 1212518 - EPA 5030B							Wa	ter				
LCS (1212518-BS1)				Pı	repared: 12	24/12 11:00	Analyzed:	12/24/12 12	:56			
1,1-Dichloropropene	20.0		1.00	ug/L	н	II	***	100	n			
cis-1,3-Dichloropropene	20.0		1.00	ш	11	н		100	u			
trans-1,3-Dichloropropene	21.6		. 1.00	н	н	н		108	п			
Ethylbenzene	20.5		0.500	н	**	ti-		102	н		***	
Hexachlorobutadiene	22.7		5.00	11	"	11		113	**			
2-Hexanone	44.5		10.0	u	11	40.0		111	11			
Isopropylbenzene	21.7		1.00	ıı	н	20.0		108	п			
4-Isopropyltoluene	20.5		1.00	и	n	n		103	11			
4-Methyl-2-pentanone (MiBK)	41.8		10.0	H	n	40.0		104	H			
Methyl tert-butyl ether (MTBE)	18.7		1.00	u	II	20.0		94	u			
Methylene chloride	20.6		5.00	0	н	н		103	H			
Naphthalene	25.9		2.00	н	n	"		129	*1			
n-Propylbenzene	19.9		0.500	**	n	11		99	11			
Styrene	22.4		1.00	n	11	**		112	ŧi			
1,1,1,2-Tetrachloroethane	21.0		0.500	н		11		105	н			
1,1,2,2-Tetrachloroethane	19.0		0.500	ti	н			95	11			
Tetrachloroethene (PCE)	22.3		0.500	tt.	41	11		111	0			
Toluene	20.8		1.00	п	. н	и		104	If			
1,2,3-Trichlorobenzene	26.5		2.00	н	н	n		132	н			Q-29
1,2,4-Trichlorobenzene	27.7		2.00	**	п	11		132	"			Q-29
1,1,1-Trichloroethane	20.1		0.500	II.	н	"		101	11			Q-25
1,1,2-Trichloroethane	20.1		0.500	н	11	н		101	11			
Trichloroethene (TCE)	20.4		0.500	n	n	. 11		102	11			
Trichlorofluoromethane	20.2		2.00	n	11	11		101	11			
1,2,3-Trichloropropane	18.8		1.00	н	,,	**		94	n			
1,2,4-Trimethylbenzene	20.8		1.00	0	Ħ	It		94 104	н			
1,3,5-Trimethylbenzene	20.6		1.00	н	31	11						
Vinyl chloride	20.6		0.500	" "	,,	" H		103	"			
m,p-Xylene			1.00	" "	11			107	"			
• •	42.0				"	40.0		105	"			
o-Xylene	21.0		0.500			20.0		105				
urr: Dibromofluoromethane (Surr)		Rec	overy: 101%	Limits: 80		Dilui	tion: 1x					
1,4-Difluorobenzene (Surr)			100 %		1-120 %		"					
Toluene-d8 (Surr) 4-Bromofluorobenzene (Surr)			101 % 95 %)-120 %)-120 %		"					

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Philip Neomberg

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Philip Nerenberg, Lab Director

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Attachment D April 15-16, 2015, EQC meeting Apex Page 3581

12232 S.W. Garden Place Tigard, OR 97223 503-718-2323 Phone 503-718-0333 Fax

Amec Environment & Infrastructure, Inc

7376 SW Durham Road Portland, OR 97224 Project: Cornelius

Project Number: [none]

Project Manager: Charles Esler

Reported:

01/08/13 15:19

QUALITY CONTROL (QC) SAMPLE RESULTS

			Volatile Or	ganic Col	mpouna	S DY EPA (3260B					
Analyte	Result	MDL	Reporting Limit	Units	Dil.	Spike Amount	Source Result	%REC	%REC Limits	RPD	RPD Limit	Notes
Batch 1212530 - EPA 5030B	3						Wat	er				
Blank (1212530-BLK1)		•		Pre	pared: 12/	26/12 09:30	Analyzed:	12/26/12 12	:54			
EPA 8260B									******			
Acetone	ND		20.0	ug/L	1							
Benzene	ND		0.250	11	n							
Bromobenzene	ND		0.500	11	и							
Bromochloromethane	ND		1.00	n	**							
Bromodichloromethane	ND		1.00	11	Ħ							
Bromoform	ND		1.00	II	1 н							
Bromomethane	ND		5.00	и	ti							
2-Butanone (MEK)	ND		10.0	H	10							
n-Butylbenzene	ND		1.00	#	н							
sec-Butylbenzene	ND		1.00	ıı	н							
tert-Butylbenzene	ND		1.00	H	11							
Carbon tetrachloride	ND		0.500	fr	n				,			
Chlorobenzene	ND		0.500	II.	н							
Chloroethane	ND		5.00	II	11							
Chloroform	ND		1.00	11	tt.							
Chloromethane	ND		5.00	11	11					***		
2-Chlorotoluene	ND		1.00	н	"							
4-Chlorotoluene	ND		1.00	11	II							
1,2-Dibromo-3-chloropropane	ND		5.00	Ħ	*1							
Dibromochloromethane	ND		1.00	n	n							
1,2-Dibromoethane (EDB)	ND		0.500	11	11							
Dibromomethane	ND		1.00	н	11							
1,2-Dichlorobenzene	ND		0.500	"	11							
1,3-Dichlorobenzene	ND		0.500	Ħ	н							
1,4-Dichlorobenzene	ND		0.500	*	н							
Dichlorodifluoromethane	ND		1.00	11	н						~~~	
1,1-Dichloroethane	ND		0.500	н	tt.							
1,2-Dichloroethane (EDC)	ND		0.500	н	n							
1,1-Dichloroethene	ND	~~~	0.500	11	#							
cis-1,2-Dichloroethene	ND		0.500	11	"							
trans-1,2-Dichloroethene	ND		0.500	u	n							
1,2-Dichloropropane	ND		0.500	n	н							
1,3-Dichloropropane	ND		1.00	II .	n							
2,2-Dichloropropane	ND		1.00	Ħ	н							

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The results in this report apply to the samples analyzed in accordance with the chain of custody document. This analytical report must be reproduced in its entirety.

Philip Nowberg

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Philip Nerenberg, Lab Director

Amec Environment & Infrastructure, Inc

Project: Cornelius

7376 SW Durham Road

Project Number: [none]
Project Manager: Charles Esler

Reported: 01/08/13 15:19

Portland, OR 97224

QUALITY CONTROL (QC) SAMPLE RESULTS

Analyte Result MDL Limit Units Dil. Amount Result VAREC Limits RPD Limit Name N				Reporting			Spike	Source		%REC		RPD	
Prepared: 12/26/12 09:30 Analyzed: 12/26/12 12:54	Analyte	Result	MDL	Limit	Units	Dil.	Amount	Result	%REC	Limits	RPD	Limit	Notes
1,1-Dichloropropene	Batch 1212530 - EPA 5030B							Wat	ter				
cis-1,3-Dichloropropene ND	Blank (1212530-BLK1)				Pre	pared: 12/2	26/12 09:30	Analyzed:	12/26/12 12	:54			
Tricklorothene ND		ND		1.00	-	н							
Comparison Com	cis-1,3-Dichloropropene	ND		1.00		н							
No	trans-1,3-Dichloropropene	ND		1.00	u	11							
Texachioroblane ND	Ethylbenzene	ND		0.500		**							
10	Hexachlorobutadiene	ND		5.00	. 11	11							
4-Isopropyltoluene	2-Hexanone	ND		10.0	н	ri							
#-Hostipy1-2-pentanone (MiBK) ND	Isopropylbenzene	ND		1.00	"	ŧi							
Methyl tert-butyl ether (MTBE) ND	4-Isopropyltoluene	ND		1.00	H	Ħ							
Methylene chloride ND 5.00 " " —	4-Methyl-2-pentanone (MiBK)	ND		10.0	н	н							
Naphthalene	Methyl tert-butyl ether (MTBE)	ND		1.00	н	н							
ND	Methylene chloride	ND		5.00	н	н							
1,1,1,2-Tetrachloroethane	Naphthalene	ND		2.00		н							
1,1,1,2-Tetrachloroethane ND 0.500 " " "	n-Propylbenzene	ND		0.500	Ħ	н	·						
1,1,2,2-Tetrachloroethane ND	Styrene	ND	سدد	1.00	ŧī	11							
Tetrachloroethene (PCE) ND 0.500 " " "	1,1,1,2-Tetrachloroethane	ND		0.500	n	11							
Toluene ND 1.00 " "	1,1,2,2-Tetrachloroethane	ND		0.500	п	**	-						
1,2,3-Trichlorobenzene ND 2.00 " " "	Tetrachloroethene (PCE)	ND		0.500	и	#1							
1,2,4-Trichlorobenzene ND 2.00 " " " 1,1,1-Trichloroethane ND 0.500 " " "	Toluene	ND		1.00	**	ti		M 144 M	***				
1,1,1-Trichloroethane	1,2,3-Trichlorobenzene	ND		2.00	н	u							
1,1,2-Trichloroethane	1,2,4-Trichlorobenzene	ND		2.00	11	н							
Trichloroethene (TCE) ND 0.500 " "	1,1,1-Trichloroethane	ND		0.500	tt	H							
Trichlorofluoromethane	1,1,2-Trichloroethane	ND		0.500	II	tř							
1,2,3-Trichloropropane ND 1.00 " " </td <td>Trichloroethene (TCE)</td> <td>ND</td> <td></td> <td>0.500</td> <td>H</td> <td>u</td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td>	Trichloroethene (TCE)	ND		0.500	H	u							
1,2,4-Trimethylbenzene ND 1.00 " "	Trichlorofluoromethane	ND		2.00	н	н							
1,3,5-Trimethylbenzene ND 1.00 " "	1,2,3-Trichloropropane	ND		1.00	18	h							
Vinyl chloride ND 0.500 " " <th< td=""><td>1,2,4-Trimethylbenzene</td><td>ND</td><td></td><td>1.00</td><td>H</td><td>11</td><td></td><td></td><td></td><td></td><td></td><td></td><td></td></th<>	1,2,4-Trimethylbenzene	ND		1.00	H	11							
m,p-Xylene ND 1.00 " "	1,3,5-Trimethylbenzene	ND		1.00	H	h							
o-Xylene ND 0.500 " " </td <td>Vinyl chloride</td> <td>ND</td> <td></td> <td>0.500</td> <td>**</td> <td>11</td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td>	Vinyl chloride	ND		0.500	**	11							
Surr Dibromofluoromethane (Surr) Recovery: 93 % Limits: 80-120 % Dilution: 1x I,4-Difluorobenzene (Surr) 94 % 80-120 % " Toluene-d8 (Surr) 104 % 80-120 % "	m,p-Xylene	ND		1.00	**	11					-		
1,4-Diffuorobenzene (Surr) 94 % 80-120 % " Toluene-d8 (Surr) 104 % 80-120 % "	o-Xylene	ND		0.500	11	**							
Toluene-d8 (Surr) 104 % 80-120 % "	Surr: Dibromofluoromethane (Surr)		R	ecovery: 93 %	Limits: 80	-120 %	Dilu	ution: 1x					
104 70 50-120 70	1,4-Difluorobenzene (Surr)			94 %	80-	-120 %		"					
4-Bromofluorobenzene (Surr) 99 % 80-120 % "	Toluene-d8 (Surr)			104 %	80-	-120 %		"					
	4-Bromofluorobenzene (Surr)			99 %	80-	-120 %		"					

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EYLIDII -

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12232 S.W. Garden Place Tigard, OR 97223 503-718-2323 Phone 503-718-0333 Fax

Amec Environment & Infrastructure, Inc

Project: Cornelius

7376 SW Durham Road Portland, OR 97224 Project Number: [none]
Project Manager: Charles Esler

Reported:

01/08/13 15:19

QUALITY CONTROL (QC) SAMPLE RESULTS

			Volatile Or	ganic Co	mpound	s by EPA 8	3260B	<u> </u>				
Analyte	Result	MDL	Reporting Limit	Units	Dil,	Spike Amount	Source Result	%REC	%REC Limits	RPD	RPD Limit	Notes
Batch 1212530 - EPA 5030E	3						Wat	ter				*
LCS (1212530-BS1)				Pre	pared: 12/	26/12 09:30	Analyzed:	12/26/12 1	1:56			
EPA 8260B							-					-
Acetone	85.7		20.0	ug/L	1	40.0		214	70-130%			EST
Benzene	21.1		0.250	11	11	20.0		105	п			
Bromobenzene	21.9		0.500	Ħ	11	n		110	н			
Bromochloromethane	20.5		1.00	н	n	n		103	11			
Bromodichloromethane	21.2		1.00	11	н	ti		106	11			
Bromoform	22.1		1.00	Ħ	Ħ	11		111	91			
Bromomethane	20.4		5.00	01	**	**		102	н			
2-Butanone (MEK)	45.2		10.0	#	11	40.0		113	н			
n-Butylbenzene	21.8		1.00	11		20.0		109	#1			
sec-Butylbenzene	21.0		1.00	11	"	11		105	0			
tert-Butylbenzene	21.1		1.00	11	11	11		105	II		***	
Carbon tetrachloride	19.6		0.500	11	0	#		98	н			
Chlorobenzene	21.4		0.500	н	п			107	н			
Chloroethane	18.4		5.00	н	11	17		92	Ħ			
Chloroform	21.4		1.00	"	#	11		107	n			
Chloromethane	16.8		5.00	11	ŧŧ	11		84	11			
2-Chlorotoluene	20.9		1.00	н		11		105	11			
4-Chlorotoluene	21.4		1.00	н	n	H		107	11			
1,2-Dibromo-3-chloropropane	19.8		5.00	11	11	11		99	II			
Dibromochloromethane	22.3		1.00	п	Ħ			111	n			
1,2-Dibromoethane (EDB)	23.1		0.500	н	н	11		115	n .			
Dibromomethane	20.5		1.00	11	n	**		102	n			
1,2-Dichlorobenzene	21.9		0.500	11	11	11		109	11			
1,3-Dichlorobenzene	22.6		0.500	11	u	n		113	II	~~~		
1,4-Dichlorobenzene	22,1		0.500	H	**	n		111	н			
Dichlorodifluoromethane	22.0		1.00	**	11	n .		110	11			
1,1-Dichloroethane	21.4		0.500	Ħ	**	н		107	и			
1,2-Dichloroethane (EDC)	18.6		0.500	Ħ	H	u		93	H			
1,1-Dichloroethene	20.1		0.500	Ħ	н	п		100	**			
cis-1,2-Dichloroethene	19.3		0.500	н	н	n		96	u			
trans-1,2-Dichloroethene	20.3	~~~	0.500	н	n	#		101	n			
1,2-Dichloropropane	22.4		0.500	11	11	п		112	. 0			
1,3-Dichloropropane	24.9		1.00	"	н	n		125	н			
2,2-Dichloropropane	20.4		1.00	11	**	tt .		102	11			

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EXHIBIT (K))
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12232 S.W. Garden Place Tigard, OR 97223 503-718-2323 Phone 503-718-0333 Fax

Amec Environment & Infrastructure, Inc

Project: Cornelius

7376 SW Durham Road

Project Number: [none]

Reported: 01/08/13 15:19

Portland, OR 97224

Project Manager: Charles Esler

QUALITY CONTROL (QC) SAMPLE RESULTS

			Volatile O	ganic C	ompounds	s by EPA 8	3260B					
Analyte	Result	MDL	Reporting Limit	Units	Dil.	Spike Amount	Source Result	%REC	%REC Limits	RPD	RPD Limit	Notes
Batch 1212530 - EPA 5030B		· ·					Wa	ter				
LCS (1212530-BS1)					Prepared: 12/2	26/12 09:30	Analyzed:	12/26/12 11:	:56			
1,1-Dichloropropene	21.7		1.00	ug/L	II	H		108	11			
cis-1,3-Dichloropropene	23.9		1.00	11	II	"		120	H.			
trans-1,3-Dichloropropene	25.8		1.00	н	n	11		129	11			
Ethylbenzene	22.6		0.500	н	н	Ħ		113	и			
Hexachlorobutadiene	22.4		5.00	н	u	П		112	11			
2-Hexanone	48.8		10.0	н	"	40.0		122	0			
Isopropylbenzene	22.4		1.00	*1	н	20.0		112	п			
4-Isopropyltoluene	21.8		1.00	11	11	н		109	и			
4-Methyl-2-pentanone (MiBK)	45.2		10.0	11	11	40.0		113	н			
Methyl tert-butyl ether (MTBE)	20.2		1.00	11	11	20.0		101	н			
Methylene chloride	20.0		5.00	ŧı	11	n		100	n			
Naphthalene	20.9		2.00	11	ti	II		104	H			
n-Propylbenzene	22.0		0.500	D	11	н		110	н			
Styrene	21.8		1.00	P	11	*1		109	11			
1,1,1,2-Tetrachloroethane	22.4		0.500	It	n	n		112	n .			
1,1,2,2-Tetrachloroethane	22.3		0.500	н	II	11		111	п			
Tetrachloroethene (PCE)	22.3		0.500	Ħ		II		112	н			
Toluene	22.8		1.00	n	10	н		114	н			
1,2,3-Trichlorobenzene	20.4		2.00	II	11	и		102	н			
1,2,4-Trichlorobenzene	24.8		2.00	H	II	п		124	11			
1,1,1-Trichloroethane	20.3		0.500	н	и	11		102	n			
1,1,2-Trichloroethane	22.8		0.500	#1	"	11		114	н			
Trichloroethene (TCE)	19.7		0.500	e e	11	н		99	11			
Trichlorofluoromethane	20.1		2.00	11	11	**		100	tt			
1,2,3-Trichloropropane	20.1		1.00	n	н	II.		100	41			
1,2,4-Trimethylbenzene	21.4		1.00	#1	n	11		107	11			
1,3,5-Trimethylbenzene	21.4		1.00	u.	H	н		107	,,			
Vinyl chloride	21.4		0.500	11	н	n		107	10			
m,p-Xylene	45.1		1:00	н	н	40.0		113	11			
o-Xylene	23.2		0.500	Ħ	н	20.0		116	н			
Surr: Dibromofluoromethane (Surr)	•		Recovery: 95 %	Limits:	80-120 %		ution: Ix					
1,4-Difluorobenzene (Surr)		•	94 %		80-120 %	2111	"					
Toluene-d8 (Surr)			106 %		80-120 %		"					
4-Bromofluorobenzene (Surr)			96 %		80-120 %		n					
Matrix Spike (1212530-MS1)				F	Prepared: 12/2	6/12 12:30	Analyzed:	12/26/12 14	50			

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Philip Newberg

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Philip Nerenberg, Lab Director

Attachment D April 15-16, 2015, EQC meeting Apex Page 310581

12232 S.W. Garden Place Tigard, OR 97223 503-718-2323 Phone 503-718-0333 Fax

Amec Environment & Infrastructure, Inc

7376 SW Durham Road

Portland, OR 97224

Project: Cornelius

Project Number: [none]

Project Manager: Charles Esler

Reported: 01/08/13 15:19

QUALITY CONTROL (QC) SAMPLE RESULTS

			Volatile Or	ganic Co	mpound	S DY EPA 8	3260B					
Analyte	Result	MDL	Reporting Limit	Units	Dil.	Spike Amount	Source Result	%REC	%REC Limits	RPD	RPD Limit	Notes
Batch 1212530 - EPA 5030E	3						Wat	ter				
Matrix Spike (1212530-MS1)				Рте	epared: 12/	26/12 12:30	Analyzed:	12/26/12 1	4:50			
QC Source Sample: MW4-122112 (A	A12L497-04R	E1)										
EPA 8260B												
Acetone	57.4		20.0	ug/L	1	40.0	ND	143	70-130%			EST
Benzene	23.0		0.250	11	tr	20.0	1.75	106				
Bromobenzene	20.6		0.500	11	n	n	ND	103	B			
Bromochloromethane	19.6		1.00	"	er er	11	ND	98	11			
Bromodichloromethane	20.7		1.00	11	н	11	ND	103	11			
Bromoform	20.6		1.00	n	11	11	ND	103	11			
Bromomethane	16.8		5.00	n	11	n	ND	84	ti			
2-Butanone (MEK)	26.1		10.0	ti .	11	40.0	ND	65	31			Q-01
n-Butylbenzene	23.3		1.00	11	н	20.0	ND	117	11			
sec-Butylbenzene	21.3		1.00	11	**	п	ND	106	II .			
tert-Butylbenzene	20.4		1.00	11	tr	н	ND	102	n			
Carbon tetrachloride	19.0		0.500	H	11	н	ND	95	H			
Chlorobenzene	20.5		0.500	#	Ħ	11	ND	102	n			
Chloroethane	18.5		5.00	н	н	11	ND	92	11			
Chloroform	20.2		1.00	11	11	11	ND	101	11			
Chloromethane	16.0		5.00	n .	п	п	ND	80	11			
2-Chlorotoluene	20.3		1.00	H	н	н	ND	102	н			
4-Chlorotoluene	21.2		1.00	н		11	ND	106	н			
1,2-Dibromo-3-chloropropane	19.7		5.00	ŤI.	11	11	ND	98	11			
Dibromochloromethane	20.2		1,00	n	11	11	ND	101	п			
1,2-Dibromoethane (EDB)	21.1		0.500	н	н	н	ND	106	н			
Dibromomethane	20.0		1.00	n	н	n	ND	100	н			
1,2-Dichlorobenzene	21.2		0.500	11	şf	п	ND	106	tt			
1,3-Dichlorobenzene	22.9		0.500	"	8	н	ND	114	u			
1,4-Dichlorobenzene	21.3		0.500	H	н	п	ND	106	n			
Dichlorodifluoromethane	24.2		1.00	II.	11	н	ND	121	o o			
1,1-Dichloroethane	22.4		0.500	н	п	**	ND	112	п	~~~		
1,2-Dichloroethane (EDC)	18.2		0.500	11	н	11	ND	91	п			
1,1-Dichloroethene	20.3		0.500	II	11	n	ND	102	п	***		
cis-1,2-Dichloroethene	19.8		0.500	"	11	n	ND	99	н			
trans-1,2-Dichloroethene	21.8		0.500	11	11	п	ND	109	11			
1,2-Dichloropropane	22.3		0.500	11	п	н	ND	111	ti.			
1,3-Dichloropropane	22.9		1.00	11	h	11	ND	115	н			

Apex Laboratories

The results in this report apply to the samples analyzed in accordance with the chain of custody document. This analytical report must be reproduced in its entirety.

Philip Neumberg

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Attachment D April 15-16, 2015, EQC meeting Apex 15-16, 2015

12232 S.W. Garden Place Tigard, OR 97223 503-718-2323 Phone 503-718-0333 Fax

Amec Environment & Infrastructure, Inc

7376 SW Durham Road

Portland, OR 97224

Project: Cornelius

Project Number: [none]

Project Manager: Charles Esler

Reported: 01/08/13 15:19

QUALITY CONTROL (QC) SAMPLE RESULTS

<u> </u>			TOIGHTO OF	gaine		ds by EPA						
Analyte	Result	MDL	Reporting Limit	Unit	s Dil.	Spike Amount	Source Result	%REC	%REC Limits	RPD	RPD Limit	Notes
Batch 1212530 - EPA 5030B							Wa	ter				
Matrix Spike (1212530-MS1)					Prepared: 1	2/26/12 12:30	Analyzed:	12/26/12 14	:50			
QC Source Sample: MW4-122112 (A	12L497-04R	E1)										
2,2-Dichloropropane	21.5		1.00	ug/L	. "	11	ND	107	11			
1,1-Dichloropropene	21.9		1.00	"	11	\$t	ND	109	tt			
cis-1,3-Dichloropropene	23.3		1.00	0	п	**	ND	116	II .			
trans-1,3-Dichloropropene	24.6		1.00	11	и	. 10	ND	123	н			
Ethylbenzene	111		0.500	n	II	11	94.2	84	n			
Hexachlorobutadiene	21.6		5.00	n	n	11	ND	108	n			
2-Hexanone	39.7		10.0	**	н	40.0	ND	99	Ħ			
lsopropylbenzene	27.2		1.00	, n	н	20.0	6.00	106	11			
4-Isopropyltoluene	23.0		1.00	11	н	**	ND	115	Ħ			
4-Methyl-2-pentanone (MiBK)	43.3		10.0	11	11	40.0	ND	108	tt			
Methyl tert-butyl ether (MTBE)	19.4		1.00	11	11	20.0	ND	97	н			
Methylene chloride	20.6		5.00	п	n	11	ND	103	Ħ			
Naphthalene	41.0		2.00	11	Ħ	11	18.6	112	H			
n-Propylbenzene	33.5		0.500	n	*11	11	12.6	105	11			
Styrene	21.2		1.00		**	Q.	ND	106	n			
1,1,1,2-Tetrachloroethane	20.5		0.500	н	11	11	ND	102	u			
1,1,2,2-Tetrachloroethane	21.4		0.500	н		II	ND	107	11			
Tetrachloroethene (PCE)	22.2		0.500	н	11	11	ND	111	11			
Toluene	39.3		1.00	11	u	п	18.1	106	II.			
1,2,3-Trichlorobenzene	21.0		2.00	h	11	n	ND	105	11			
1,2,4-Trichlorobenzene	24.1		2.00	11	н	н	ND	121	11			
1,1,1-Trichloroethane	19.4		0.500	. 11	11	н	ND	97	11		***	
1,1,2-Trichloroethane	20.9		0.500	ti	н	н	ND	104	u			
Trichloroethene (TCE)	19.8		0.500	11	"	**	ND	99	II			
Trichlorofluoromethane	21.3		2.00	н	,,	n	ND	106	11			
1,2,3-Trichloropropane	19.3		1.00			n	ND	97	11			
• •	19.3		1.00	11	tr	11	85.7	79	11			
1,2,4-Trimethylbenzene 1,3,5-Trimethylbenzene	24.8		1.00	11	11	н	4.34	102	11			
•	24.8		0.500	11	n	н	4.34 ND	102	,,			
Vinyl chloride				11	11	40.0	61.4	96				
m,p-Xylene	99.8		1.00	" H	"				"			
o-Xylene	94.0		0.500			20.0	76.5	88				
Surr: Dibromofluoromethane (Surr)		R	ecovery: 96%	Limits:	80-120 %	Dil	lution: 1x					
1,4-Difluorobenzene (Surr)			94 %		80-120 %		"					
Toluene-d8 (Surr)			104 %		80-120 %		"					

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The results in this report apply to the samples analyzed in accordance with the chain of custody document. This analytical report must be reproduced in its entirety.

Philip Newberg

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Philip Nerenberg, Lab Director

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Attachment D April 15-16, 2015, EQC meeting

12232 S.W. Garden Place Tigard, OR 97223 503-718-2323 Phone 503-718-0333 Fax

Amec Environment & Infrastructure, Inc

7376 SW Durham Road

Portland, OR 97224

Analyte

Project: Cornelius

Project Number: [none]

Project Manager: Charles Esler

Reported:

01/08/13 15:19

QUALITY CONTROL (QC) SAMPLE RESULTS

Volatile Organic Compounds by EPA 8260B

Result

MDL

Reporting Limit

Units

Spike Dil. Amount Source Result

Water

%REC

%REC RPD Limits

RPD Limit

Notes

Batch 1212530 - EPA 5030B

Matrix Spike (1212530-MS1)

Prepared: 12/26/12 12:30 Analyzed: 12/26/12 14:50

QC Source Sample: MW4-122112 (A12L497-04RE1)

Surr: 4-Bromofluorobenzene (Surr)

Recovery: 96 %

Limits: 80-120 %

Dilution: 1x

Apex Laboratories

Philip Newberg

The results in this report apply to the samples analyzed in accordance with the chain of custody document. This analytical report must be reproduced in its entirety.

Item E 000154e 40 of 44

12232 S.W. Garden Place Tigard, OR 97223 503-718-2323 Phone 503-718-0333 Fax

Amec Environment & Infrastructure, Inc

7376 SW Durham Road

Portland, OR 97224

Project: Cornelius

Project Number: [none]

Project Manager: Charles Esler

Reported: 01/08/13 15:19

SAMPLE PREPARATION INFORMATION

•		Die	esel and Oil Hydroca	rbons by NWTPH-Dx			
Prep: EPA 3510C (Acid Extrac	tion)		THE	Sample	Default	RL Prep
Lab Number	Matrix	Method	Sampled	Prepared	Initial/Final	Initial/Final	Factor
Batch: 1212576							
A12L497-01	Water	NWTPH-Dx	12/21/12 12:15	12/27/12 13:07	990mL/5mL	1000mL/5mL	1.01
A12L497-02	Water	NWTPH-Dx	12/21/12 14:25	12/27/12 13:07	1000mL/5mL	1000mL/5mL	1.00
A12L497-03	Water	NWTPH-Dx	12/21/12 13:40	12/27/12 13:07	1040mL/5mL	1000mL/5mL	0.96
A12L497-04	Water	NWTPH-Dx	12/21/12 15:05	12/27/12 13:07	1020mL/5mL	1000mL/5mL	0.98

		Gasoline Range H	ydrocarbons (Benz	ene to Naphthalene) b	y NWTPH-Gx		
Prep: EPA 5030B					Sample	Default	RL Prep
Lab Number	Matrix	Method	Sampled	Prepared	Initial/Final	Initial/Final	Factor
Batch: 1212475							
A12L497-01	Water	NWTPH-Gx (MS)	12/21/12 12:15	12/21/12 17:00	5mL/5mL	5mL/5mL	1.00
Batch: 1212518							
A12L497-02	Water	NWTPH-Gx (MS)	12/21/12 14:25	12/24/12 14:00	5mL/5mL	5mL/5mL	1.00
Batch: 1212530				+ -			
A12L497-03RE1	Water	NWTPH-Gx (MS)	12/21/12 13:40	12/26/12 12:30	5mL/5mL	5mL/5mL	1.00
A12L497-04RE1	Water	NWTPH-Gx (MS)	12/21/12 15:05	12/26/12 12:30	5mL/5mL	5mL/5mL	1.00

		Vo	olatile Organic Comp	ounds by EPA 8260B			
Prep: EPA 5030B					Sample	Default	RL Prep
Lab Number	Matrix	Method	Sampled	Prepared	Initial/Final	Initial/Final	Factor
Batch: 1212475							
A12L497-01	Water	EPA 8260B	12/21/12 12:15	12/21/12 17:00	5mL/5mL	5mL/5mL	1.00
Batch: 1212502							
A12L497-05	Water	EPA 8260B	12/21/12 00:00	12/21/12 18:38	5mL/5mL	5mL/5mL	1.00
Batch: 1212511							
A12L497-01RE1	Water	EPA 8260B	12/21/12 12:15	12/24/12 11:00	5mL/5mL	5mL/5mL	1.00
Batch: 1212518							
A12L497-02	Water	EPA 8260B	12/21/12 14:25	12/24/12 14:00	5mL/5mL	5mL/5mL	1.00
Batch: 1212530							
A12L497-03RE1	Water	EPA 8260B	12/21/12 13:40	12/26/12 12:30	5mL/5mL	5mL/5mL	1.00
A12L497-04RE1	Water	EPA 8260B	12/21/12 15:05	12/26/12 12:30	5mL/5mL	5mL/5mL	1.00

Apex Laboratories

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Philip Mountag

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Philip Nerenberg, Lab Director

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Attachment D April 15-16, 2015, EQC meeting Apex Labs Apex Page 71 of 81

12232 S.W. Garden Place Tigard, OR 97223 503-718-2323 Phone 503-718-0333 Fax

Amec Environment & Infrastructure, Inc

Project: Cornelius

7376 SW Durham Road

Project Number: [none]

Reported: 01/08/13 15:19

Portland, OR 97224

Project Manager: Charles Esler

Notes and Definitions

(hin	ifiers:
Qua.	micio.

Analyte detected in an associated blank at a level between one-half the MRL and the MRL. (See Notes and Conventions below.) B-02

Result reported as an Estimated Value. Recovery for Lab Control Spike (LCS) is above the upper control limit. Data may be biased high. **EST**

ESTa Result reported as an Estimated Value. Recovery of Continuing Calibration Verification sample above upper control limit for this analyte.

Data is likely biased high.

ESTb Result reported as an Estimated Value. Recovery of Continuing Calibration Verification sample below lower control limit for this analyte.

Data is likely biased low.

F-06 Results in the diesel organics range are primarily due to overlap from a gasoline range product.

Percent recovery and/or RPD is outside acceptance limits. Q-01

Q-17 RPD between original and duplicate sample is outside of established control limits.

Q-19 Blank Spike Duplicate (BSD) sample analyzed in place of Matrix Spike/Duplicate samples due to limited sample amount available for

analysis.

Q-29 Recovery for Lab Control Spike (LCS) is above the upper control limit. Data may be biased high.

Recovery for Lab Control Spike (LCS) is below the lower control limit. Data may be biased low. Q-30

R-01 The Reporting Limit for this analyte has been raised to account for matrix interference.

Notes and Conventions:

DET Analyte DETECTED

Analyte NOT DETECTED at or above the reporting limit ND

NR Not Reported

Sample results reported on a dry weight basis. Results listed as 'wet' or without 'dry'designation are not dry weight corrected. dry

RPD Relative Percent Difference

If MDL is not listed, data has been evaluated to the Method Reporting Limit only. MDL.

Water Miscible Solvent Correction has been applied to Results and MRLs for volatiles soil samples per EPA 8000C. WMSC

Batch QC

Unless specifically requested, this report contains only results for Batch QC derived from client samples included in this report. All analyses were performed with the appropriate Batch QC (including Sample Duplicates, Matrix Spikes and/or Matrix Spike Duplicates) in order to meet or exceed method and regulatory requirements. Any exceptions to this will be qualified in this report. Complete Batch QC results are available upon request. In cases where there is insufficient sample provided for Sample Duplicates and/or Matrix Spikes, a Lab Control Sample Duplicate (LCS Dup) is analyzed to demonstrate accuracy and precision of the extraction and analysis.

Blank Policy Apex assesses blank data for potential high bias down to a level equal to ½ the method reporting limit (MRL), except for conventional chemistry and HCID analyses which are assessed only to the MRL. Sample results flagged with a B or B-02 qualifier are potentially biased high if they are less than ten times the level found in the blank for inorganic analyses or less than five times the level found in the blank for organic analyses.

For accurate comparison of volatile results to the level found in the blank; water sample results should be divided by the dilution factor, and soil sample results should be divided by 1/50 of the sample dilution to account for the sample prep factor.

Apex Laboratories

The results in this report apply to the samples analyzed in accordance with the chain of custody document. This analytical report must be reproduced in its entirety

Philip Newberg

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Attachment D
April 15-16, 2015, EQC meeting ${
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m 72}_{
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m 72}$ of 81

12232 S.W. Garden Place Tigard, OR 97223 503-718-2323 Phone 503-718-0333 Fax

Amec Environment & Infrastructure, Inc

Project: Cornelius

7376 SW Durham Road Portland, OR 97224 Project Number: [none]

Project Manager: Charles Esler

Reported:

01/08/13 15:19

Results qualified as reported below the MRL may include a potential high bias if associated with a B or B-02 qualified blank. B and B-02 qualifications are not applied to J qualified results reported below the MRL.

- QC results are not applicable. For example, % Recoveries for Blanks and Duplicates, % RPD for Blanks, Blank Spikes and Matrix Spikes, etc.
- *** Used to indicate a possible discrepency with the Sample and Sample Duplicate results when the %RPD is not available. In this case, either the Sample or the Sample Duplicate has a reportable result for this analyte, while the other is Non Detect (ND).

Apex Laboratories

The results in this report apply to the samples analyzed in accordance with the chain of custody document. This analytical report must be reproduced in its entirety.

Philip Nowberg

PAGE 48 0F 25

Philip Nerenberg, Lab Director

Attachment D April 15-16, 2015, EQC meeting Apex Page 3581

12232 S.W. Garden Place Tigard, OR 97223 503-718-2323 Phone 503-718-0333 Fax

Amec Environment & Infrastructure, Inc

7376 SW Durham Road

Portland, OR 97224

Project: Cornelius

Project Number: [none]

Project Manager: Charles Esler

Reported:

01/08/13 15:19

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Philip Newberg

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Item E 000158 44-01-44

Attachment D April 15-16-20 15-AE-06-Greeting & Environmental, Inc.

1021 Baseline St

ante	A tot 91		NDWATE		ĺ		Cornel	ius Oregon	
		SAMPLING	3 FIELD F	FOR	W	AMEC Jo	0 荐:		
						Date: /:	2/21/12	•	
Field Personne	1: wyw						nitoring Wel	IID: www	į
Start Time: 11	45	Weather Condi	tions: 5	unn	~ Y	Ар	ргох. Air Ter	пр (F): 4s	-
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(degree C)	(S.U.)	(µS/cm)	(NTUs)	ug/	/L mg/L	(mV)	(feet TOC)	23:59)	(liters)
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14,27	£5, Lø O	177	Clean	<u>ت</u>	35	52.6	15.03	12.05	2 L
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ાંવાઇ	5.59	177	<u> </u>	6	. 33_	<u> 53,0</u>	15.06	1215	40
Results of Field	l Ferrous Irc	on Kit (mg/L):	The state of the s						Table Scale Control of the Control o
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		S/	AMPLING I	NFO	RIMATION	V/DATA			
QA/QC Sample (circle one):	Duplicate Lab	QA/QC N	IONE				Andrew Company of the	
Sampling Method	(circle one)	ı:	dedicated [Jual /	/alve Pur	nn	nerio	staltic pump	
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Attachment D

April 15-16-20 5, **EUCG Earth** & Environmental, Inc.

1021 Baseline St Cornellus Oregon

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Attachment D AMEC Earth & Environmental, Inc. 5, EQC meeting CROUNDWATER

1021 Baseline St Cornelius Oregon

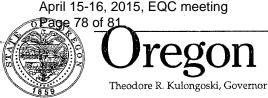
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Altachment D April 15-16, 20 5, EQC meetin & Environmental, Inc.

1021 Baseline St

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EXHIBIT R



August 17, 2007

Department of Environmental Quality

811 SW Sixth Avenue Portland, OR 97204-1390 503-229-5696

TTY: 503-229-6993

CERTIFIED MAIL 7006 0100 0002 8261 6922

Tri-County Petroleum, Inc. c/o Lawrence W. Mixon, Registered Agent 874 S.W. Baseline Hillsboro OR 97123 CERTIFIED MAIL 7006 0100 0002 8261 6939 Tri-County Petroleum, Inc. c/o Dwight Estby 1021 Baseline Road Cornelius OR 97113

CERTIFIED MAIL 7006 0100 0002 8261 6946

Dwight Estby doing business as Dwight Estby Enterprises 33030 N.E. Old Parrett Mountain Road Newberg OR 97132

Re:

Notice of Violation and Assessment of Civil Penalty

No. LQ/T-NWR-07-036 UST Facility #5112 Washington County

In 2001, Tri-County Petroleum, Inc. (Tri-County) became the permittee of five underground storage tanks (USTs) located at 1021 Baseline Road in Cornelius, Washington County, Oregon. Dwight Estby doing business as Dwight Estby Enterprises was listed as the tank owner on the permit application. Both Dwight Estby and Dwight Estby Enterprises have been either the owner or the permittee of the USTs since at least 1990. In April 2005, Respondents informed the Department of Environmental Quality (Department) that the UST system had been placed into temporary closure.

On April 3, 2006, Greg Toran with the Department of Environmental Quality (Department) conducted an inspection of the USTs. During the inspection, Mr. Toran learned that the UST system was equipped with an automatic tank gauging (ATG) system to detect releases from the USTs. For an ATG to comply with state requirements for release detection, the ATG must be approved for the type of USTs being used, and the permittee must, on a monthly basis, use the ATG to test the USTs for a release. Mr. Toran requested copies of the monthly test results for the past year. Tri-County was unable to provide any test results. Additionally, the type of ATG being used was not designed to be able to detect a release from two of the USTs because the USTs were manifolded together. In August 2006, the ATG was replaced and Respondents provided the Department with a month of release detection records.

Mr. Toran also observed that while Respondents were using line leak detectors to perform release detection on the piping associated with the USTs, he was unable to verify that Respondents had performed the required annual line tightness test on the piping or the required operational test of the line leak detectors since it had become the permittee. The annual tests ensure that the equipment is functioning correctly and determines if the piping is leaking at a lower rate than the release detection equipment is designed to detect. Properly functioning release detection

Attachment D
April 15-16, 2015, EQC meeting

Dwight Estby doing business as Dwigh. Lastby Enterprises and Tri-County Petroleur., Inc.

Case No. LQ/T-NWR-07-036

Page 2

equipment ensures that releases are discovered quickly before contamination spreads beyond the immediate area of the UST and allows immediate response to any sign of a release.

Federal and state law requires that all UST systems have an overfill prevention device in the form of either automatic shutoff devices, audible alarms or ball float valves in order to prevent overfilling of an UST. During an inspection, the owner and permittee must be able to demonstrate to the Department that the overfill prevention device is functioning properly. When an UST is overfilled, large volumes of fuel can be released at the fill pipe. During the inspection, Respondents informed Mr. Toran that they were using an alarm for overfill prevention. An audible alarm relies on a probe to activate the alarm when the UST is 90 percent full to provide the delivery person with sufficient time to shut off the delivery before overfilling the UST. During the inspection, Respondents were unable to show that the alarm was functioning.

During the inspections, Mr. Toran discovered that one of the five USTs was lined to provide corrosion protection in October 2005. Federal and state law required that all USTs have corrosion protection prior to December 1998. If an UST is not protected, there is a risk that the interior of the UST will be corroded by the gasoline and result in a release of gasoline to the environment. Additionally, Mr. Toran discovered that this modification of the UST was performed by an unlicensed person and without the required notifications to the Department. Notification to the Department prior to a modification ensures that the Department approves of the modification and that the person performing the modification is qualified to conduct the work. Due to Respondents' failure to provide notification to the Department and to use a licensed person to complete the modification, Respondents were required to conduct additional work to verify that the lining was completed properly and that the UST was structurally sound. This additional expense could have been avoided if Respondents had provided the required notification.

Respondents are liable for a civil penalty because, as the owner and permittee of the UST system, each is responsible for ensuring that the UST system is installed and operated in compliance with state and federal law. In the enclosed Notice, the Department has assessed a civil penalty in the amount of \$4,921, jointly and severally against both Respondents. The procedures set forth in OAR 340-012-0045 were used to determine the amount of the civil penalty. The Department's findings and civil penalty determination are attached to the Notice as Exhibit Nos. 1 through 3.

If Respondents wish to dispute the civil penalty, each must file a written request for a hearing, along with a written answer that admits or denies each of the facts alleged in Section II and III of the Notice. In the answer, each should also allege all affirmative defenses and provide reasons that they apply in this matter. Respondents will not be allowed to raise these issues at a later time, unless each can show good cause for the failure to do so.

The steps Respondents must follow to request a review of the Department's allegations and determinations in this matter are set forth in Section V of the enclosed Notice and in Oregon Administrative Rules 340-011-0530 and 137-003-0528 (copy enclosed). Respondents need to follow the rules to ensure that each does not lose its opportunity to dispute the Department's findings.

EXHIBIT R 12

Attachment D
April 15-16, 2015, EQC meeting
Page 2010 Eaby doing business as Dwight Estby Enterprises and Tri-Cours, Petroleum, Inc.
Case No. LQ/T-NWR-07-036

Page 3

If the Department does not receive a request for a hearing and answer within **twenty** calendar days from the date that each Respondent receives the enclosed documents, the Department will issue a Default Order and the civil penalty assessment will become final and enforceable. The request for hearing and answer can be faxed to the Department at (503) 229-5100.

If Respondents wish to discuss this matter, or believe there are mitigating factors that the Department might not have considered in assessing the civil penalty, a request for an informal discussion may be attached to the appeal. A request to discuss this matter with the Department does not waive the right to a contested case hearing if a timely request is filed.

Also enclosed is a copy of the Department's internal management directive regarding civil penalty mitigation for Supplemental Environmental Projects (SEPs). If Respondents are interested in having a portion of the civil penalty fund an SEP, Respondents should review the enclosed SEP directive.

I look forward to Respondents' cooperation in complying with Oregon environmental law in the future. If, however, any additional violations occur, each may be assessed additional civil penalties.

If Respondents have any questions about this action, please contact Susan Greco with the Department's Office of Compliance and Enforcement in Portland at (503) 229-5152 or toll-free at 1-800-452-4011, enforcement extension 5152.

Sincerely.

Dick Pedersen
Deputy Director

Enclosures

cc:

Greg Toran, NWR, DEQ

LQ Division, DEQ

Department of Justice

Environmental Protection Agency

Washington County District Attorney

Matthew Samwick, Oswego Law Group, 460 5th Street, Suite C, Lake Oswego OR 97034 (via certified mail)

PAGEtern E 0001653

Attachment D April 15-16, 2015, EQC meeting Page 81 of 81

TORAN Greg

From:

ELWORTH Susan

Sent:

Friday, July 26, 2013 11:26 AM

To:

KORTENHOF Mike; TORAN Greg; SCHATZ Jeff; PARRETT Kevin

Cc:

FELDON Leah

Subject:

M&G Collections (UST #5112; LUST #34-06-1375)

Everyone – In 2011, we issued an order and civil penalty to this company for both cleanup and compliance related violations. The company defaulted and in December 2011, we obtained a final order. The order required them to do the following:

- 1. Submit a modification application
- 2. Renew the temporary closure permit
- 3. Submit a report for field work completed in 2009
- 4. Complete an investigation including installing additional monitoring wells.

In the fall 2011, M&G submitted a work plan and in December 2012, completed some investigation work at the property, including sampling the wells. That said, they are not fully in compliance with the final order as they have not submitted 1, 2 or 3 above. Greg brought this site to my attention because he just did his three year inspection and the compliance violations have not been corrected. He is wondering what he should do in response to those on-going violations.

After the final order, there is some emails in the file about doing a follow-up enforcement action and I'm not sure if we agreed not to do so for some reason or if I dropped the ball or if there was combination of both. Regardless I apologize as I should have followed up on this a long time ago.

In regards to the compliance violations, because the failure to correct those is a violation of a final order, Greg should issue a PEN. Ordinarily we don't require a PEN for a final order violation (OCE sends out a letter informing the RP of the need to comply) but due to the length of time since that letter was sent (December 2011), a PEN makes sense. If Greg sends me the PEN and any additional information he may have, I don't need a referral form.

In regards to the investigation/cleanup violations, I would say that whether an additional enforcement action makes sense is whether the program feels that they are substantially in compliance based on the information submitted to us from the December 2012 sampling event. I leave that up to Jeff and Kevin to determine what the appropriate next steps should be in that regard.

Thanks!

Susan M. Elworth Department of Environmental Quality Environmental Law Specialist (503) 229-5152

EXHIBIT R \ 3

PAGE \ OF \ 1

Item E 000166

1	BEFORE THE ENVIRONMENTAL QUALITY COMMISSION							
2	OF THE STATE OF OREGON							
3 4	IN THE MATTER OF: M & G Collections, LLC, DEPARTMENT'S MOTION FOR SUMMARY DETERMINATION							
5	OAH Case No. 1403764 Respondent. DEQ Case No. LQ/UST-NWR-14-036							
6								
7	INTRODUCTION							
8	The Department of Environmental Quality (the Department), via this Motion for Summary							
9	Determination filed pursuant to OAR 137-003-0580, moves that the Administrative Law Judge rule							
0	in the Department's favor on all legal issues raised in the Department's Notice of Civil Penalty							
1	Assessment and Order (the 2014 Notice). This motion is supported by the attached exhibits, which							
2	establish that there are no genuine issues as to any material facts in this case and that the							
.3	Department is entitled to a favorable ruling as a matter of law.							
4	Pursuant to OAR 137-003-0630(2), the Department made a good faith effort to confer with							
15	Respondent on this Motion for Summary Determination.							
6	LEGAL STANDARD							
17	An Administrative Law Judge shall grant a motion for summary determination if,							
18	considering all evidence in a manner most favorable to the non-moving party, the record shows that:							
19	1) there is no genuine issue as to any material fact that is relevant to resolution of the legal issues,							
20	and 2) the moving party is entitled to a favorable ruling as a matter of law. OAR 340-003-0580.							
21	The ruling on summary determination may resolve some or all of the issues in the contested case.							
22	OAR 137-003-0580(11). Each party has the burden of producing evidence on any issue as to which							
23	that party would have the burden at a fact-finding hearing. OAR 137-003-0580(8).							
24	A respondent must file a request for a contested case hearing within twenty days of the							
25	date of service of the Notice. OAR 340-011-0530(1). The request must include a written							
26	response that admits or denies all factual matters alleged in the notice. OAR 340-011-0530(2).							

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PROCEDURAL HISTORY

On October 25, 2011, the Department issued Respondent a Notice of Civil Penalty
Assessment and Order to Comply (2011 Notice) in Case No. LQ/LUST-NWR-11-104. *Exhibit*1. Respondent failed to request a hearing within 20 calendar days; therefore, pursuant to OAR
340-011-0535(1), the 2011 Notice became a final order on November 17, 2011. *Exhibit* 2.

The Department did not receive the documentation required under the 2011 Notice by the dates set forth in the 2011 Notice. *Exhibit 3*.

On April 8, 2014, the Department issued the 2014 Notice to Respondent, which alleged that Respondent failed to comply with a final order of DEQ by failing to complete the actions and submit documentation required under the 2011 Notice. The 2014 Notice assessed a total civil penalty of \$4,890 for the above referenced violation. *Exhibit 4*. The 2014 Notice informed the Respondent of its right to a contested case hearing. In addition, the 2014 Notice instructed Respondent to include any disputed facts and affirmative defenses in its request for a contested case hearing. The 2014 Notice incorporates the attached Exhibit. *Exhibit 4, page 2*.

Respondent requested a contested case hearing in writing on May 12, 2014 ("Response"). *Exhibit 5*.

ARGUMENT IN SUPPORT OF MOTION

There are two issues in any case involving a violation and the resulting civil penalty assessment. The first issue is whether a violation occurred. If so, the second issue is whether the civil penalty assessment is correct. The Administrative Law Judge can grant this Motion for Summary Determination, either in whole or in part, if there are no genuine issues as to any material fact and the Department is entitled to a favorable ruling as a matter of law on either issue.

<u>Did the violation occur?</u> There are no material facts in dispute regarding whether the violation occurred, and thus as a matter of law, the Department is entitled to a ruling upholding the violation.

There is no genuine issue as to any material fact that the violation alleged in the 2014 Notice occurred.

Respondent admitted all of the alleged facts in Paragraphs 1 through 5 of the 2014 Notice. *Exhibit 5, para. 1*.

Respondent denied the allegations of Paragraph 6 of the 2014 Notice "insofar as it claims that [Respondent] did not send any documentation requested by [the Department]. *Id.* However, Paragraph 6 of the 2014 Notice does not make such a claim. Instead, it claims that "Respondent has failed to send the documentation required under the 2011 Notice to DEQ *by the deadlines set forth in the 2011 Notice." Exhibit 4* (emphasis added).

In March 2013, Respondent provided the Department with a groundwater sampling report (the Report). This fact does not dispel the fact that Respondent failed to comply with the 2011 Notice. First, the work completed did not satisfy the requirements in the 2011 Notice. *Exhibit 3*. Secondly, Respondent failed to submit the Report by the required deadline. The 2011 Notice required Respondent to, among other things, "[c]omplete an investigation regarding the full nature, magnitude and extent of soil and groundwater contamination" within 60 days from the date of the 2011 Notice and, "within 45 days of completing any investigation field work, submit a report to [the Department] summarizing all steps taken to complete the investigation and all sampling results." *Exhibit 1, Section IV, para. 2(a)*. In order to comply with the 2011 Notice, the Report was due in February 2012. Respondent submitted the Report in March 2013, 13 months past the date required by the 2011 Notice.

Additionally, Respondent has not alleged that it performed any of the other requirements of the 2011 Notice nor has Respondent submitted any of the other documentation required by the 2011 Notice. *Exhibit 3*.

Respondent did raise three affirmative defenses with regard to the 2014 Notice: specifically, financial hardship, partial performance and magnitude. The second affirmative

¹ The 2011 Notice became final in November 2011. The Report would have been required to be submitted to the Department within 105 days thereafter.

DEPARTMENT'S MOTION FOR SUMMARY DETERMINATION – LQ/LUST-NWR-14-036 Page 3 of 6

defense (partial performance) was addressed above. The third affirmative defense (magnitude) is addressed below in regards to the penalty calculation.

In regards to Respondent's defense that it has lacked the financial capacity to comply with the 2011 Notice, Respondent's ability or inability to pay compliance costs is irrelevant to whether or not the violation occurred. Respondent was required to comply with the 2011 Notice once it became final. The reason why Respondent failed to comply is irrelevant to determining if Respondent actually did comply.²

The Department is entitled to a favorable ruling as a matter of law that the violation alleged in the 2014 Notice occurred.

OAR 340-012-0053(1)(a) provides that it is a Class I violation to violate a requirement or condition of a department order. Respondent failed to meet the requirements of the 2011 Notice, a final department order. Even if it is determined that Respondent partly performed as it alleges in Paragraph 4 of its Response, Respondent has failed to meet all the other requirements of the 2011 Notice. By the plain language of the rule, violating even one requirement or condition of a department order constitutes a violation.

Is the civil penalty assessment is appropriate? There are no material facts in dispute regarding whether the civil penalty assessment is appropriate, and thus as a matter of law, the Department is entitled to a ruling upholding the civil penalty.

There is no genuine issue as to any material fact supporting the assessed civil penalty.

Respondent did not dispute any of the facts alleged in the Exhibit which is incorporated into the 2014 Notice. Instead, Respondent disputed the determination that the magnitude should be moderate. Specifically, Respondent alleges that "DEQ regulations do not specify a magnitude for this alleged violation in OAR 340-012-0135" and that DEQ has failed to "set forth any facts

² Additionally, Respondent's financial condition in regards to determining the amount of the civil penalty cannot be considered in this proceeding. The formula for determining the amount of a civil penalty does not consider a party's ability to pay the penalty and the Administrative Law Judge is prohibited from reducing a civil penalty below the amount established in the civil penalty formula or from considering equitable remedies. OAR 340-011-0570. Under OAR 340-012-0162, the decision whether to reduce the penalty amount on these grounds is a matter within the sole discretion of the Department.

supporting its conclusion that any alleged violation rose beyond a minor magnitude." *Exhibit 5, para. 5*.

The Department agrees that OAR 340-012-0135 does not specify a magnitude for this violation. However, OAR 340-012-0130(1) states that if OAR 340-012-0135 does not specify a magnitude for a specific violation, then the magnitude is "moderate unless evidence shows that the magnitude is major under paragraph (3) or minor under paragraph (4)." The alleged violator has the burden of proving the violation should be a different magnitude than the magnitude alleged by the Department. OAR 340-012-0130(2). Respondent has not offered any evidence to prove the violation is more probably of minor rather than moderate magnitude. In the context of a motion for summary determination, a person cannot rely merely upon statements to meet its burden of producing evidence to support its position. OAR 137-003-0580(10).

Respondent did not dispute any of the facts set forth in the Exhibit nor has it offered affirmative defenses with regard to the civil penalty assessment. Consequently, there are no material facts in dispute regarding the civil penalty assessed by the Department.

The Department is entitled to a favorable ruling as a matter of law that the civil penalty is appropriate.

The civil penalty formula that the Department must use in determining the amount of a civil penalty is prescribed by OAR 340-012-0045. The Department must first determine the class and magnitude of each violation, based on the facts of the case, to determine the base penalty for that violation. OAR 340-012-0053, OAR 340-012-0130, and OAR 340-012-0140. The Department then increases or decreases the amount of the base penalty by application of the facts to the civil penalty formula. OAR 340-012-0145. Aggravating and mitigating factors in the formula address prior history of violations, the duration of the violation, mental state, and efforts to correct the violation. The economic benefit portion of the civil penalty formula represents the approximate dollar amount of the economic benefit that Respondent gained through noncompliance as calculated using the Environmental Protection Agency's BEN computer model. OAR 340-012-0150. The Department appropriately applied the undisputed facts to the

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law. The Administrative Law Judge is prohibited from assessing a civil penalty that is not based on the amount established by applying the civil penalty formula set forth in OAR 340-012-0045.

CONCLUSION

The Department respectfully requests that the Administrative Law Judge find that there is no genuine issue as to any material fact relevant to resolution of the legal issues in this matter, and that the Department is entitled to a favorable ruling as a matter of law on the violation and civil penalty alleged in the 2014 Notice.

Based on such a ruling, and pursuant to OAR 137-003-0580(12), the Department requests that the Administrative Law Judge issue a proposed order finding that Respondent violated Oregon law as set forth in the 2014 Notice and ordering Respondent to pay the civil penalty assessed in the 2014 Notice. In the alternative, should this motion not be granted in its entirety, the Department respectfully requests that the Administrative Law Judge grant this motion in part.

9/25/14 Date

Susan Elworth

Environmental Law Specialist

Department of Environmental Quality



Department of Environmental Quality

Headquarters 811 SW Sixth Avenue Portland, OR 97204-1390 (503) 229-5696 FAX (503) 229-6124 TTY: 711

October 25, 2011

CERTIFIED MAIL 7009 2820 0001 4367 1983

M&G Collections LLC S. Ward Greene, Registered Agent 1515 SW 5th Avenue, Suite 600 Portland OR 97201

Re:

Notice of Civil Penalty Assessment and Order to Comply

No. LO/LUST-NWR-11-104

LUST #34-06-1375

This letter is to inform you that DEQ has issued you a civil penalty of \$28,961 for failing to investigate a petroleum release from an underground storage tank (UST) system located at 1021 East Baseline Street in Cornelius, Oregon, for failing to apply for a temporary closure certificate, and for failing to maintain a financial responsibility mechanism. You are the owner of the property and the UST system.

In August 2009, samples were collected from four monitoring wells currently installed on the property. One of these samples showed that the concentration of gasoline constituents had significantly increased as compared to a prior sample collected in October 2008. You have not completed any further groundwater sampling since August 2009. In the fall of 2009, your contractor informed DEQ that further investigation had been completed on a property south and west of your property. In spite of numerous requests from DEQ that you provide a report on this work, you have failed to provide DEQ with a complete, written report as required by DEQ's rules.

Until an UST is properly decommissioned, as the property owner, you are responsible for ensuring that the UST is operated and maintained in compliance with DEQ's regulations. In July 2011, DEQ sent you a Field Citation which requested that you submit an application for a temporary closure certificate, the permit fee and proof of a financial responsibility mechanism. As of this date, DEQ has not received this documentation. UST owners and permittees must demonstrate that they have the financial resources to pay the costs of cleaning up releases of petroleum and for compensating third parties for damages caused by a release. Payment of the permit fee ensures that DEQ has the necessary resources to fund its program, which includes inspections of facilities to ensure compliance.

If you wish to appeal this matter, you have 20 calendar days from receipt of this letter to request a contested case hearing. This hearing request must be in writing. Send your hearing request to DEQ Office of Compliance and Enforcement – Appeals:

Via mail - 811 S.W. 6th Ave., Portland, OR 97204

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 written hearing request from you within 20 days, the penalty will become Alternatively, you can pay the penalty by sending a check or money order to the above as

Item Food 143 libit 1

Attachment E

April 65:16:120:15, EQC meeting
Case 8. 9148 LUST-NWR-11-104
Page 2

The attached Notice further details DEQ's reasons for issuing the penalty and provides further instructions for appealing the penalty. <u>Please review and refer to it when discussing this case with DEQ.</u>

Included in Section IV of the Notice is an order requiring you to complete an investigation regarding the full nature, magnitude and extent of soil and groundwater contamination at the property. The order also requires you to submit a complete application for temporary closure general permit, the permit fee and evidence of a current, valid financial responsibility mechanism or a 30-day notice of permanent closure with the permit fee and begin decommissioning the UST system. \$17,961 of the civil penalty represents the economic benefit you gained by failing to complete these requirements. If you complete these requirements in a timely manner, DEQ will recalculate the economic benefit, as appropriate, and will reduce the civil penalty accordingly.

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 in lieu of paying your penalty. Enclosed is more detail on how to pursue a SEP.

DEQ's rules are available on the internet at http://www.deq.state.or.us/regulations/rules.htm or by calling the number below to request a paper copy.

If you have any questions, please contact DEQ Environmental Law Specialist Susan Elworth at (503) 229-5152. You may call toll-free within Oregon at 1-800-452-4011, extension 5152.

Sincerely,

Leah E. Koss, Manager

Seah E. Kors

Office of Compliance and Enforcement

Enclosures

cc:

Jeff Schatz, NWR, DEQ

Greg Toran, NWR, DEQ

Multnomah County District Attorney

1	BEFORE THE ENVIRONMENTAL QUALITY COMMISSION						
2	OF THE STATE OF OREGON						
3 4	IN THE MATTER OF: M&G COLLECTIONS LLC,) NOTICE OF CIVIL PENALTY ASSESSMENT AND ORDER						
5) TO COMPLY Respondent.) NO. LQ/LUST-NWR-11-104						
6	I. AUTHORITY						
7	This Notice of Civil Penalty Assessment and Order to Comply is issued pursuant to Oregon						
8	Revised Statutes (ORS) 468.100 and 468.126 through 468.140, ORS 466.706 through 466.835,						
9	ORS 466.994, ORS Chapter 183 and Oregon Administrative Rules (OAR) Chapter 340, Divisions						
10	011, 012, 122 and 150.						
11	II. FINDINGS OF FACT						
12	1. In 2006, DEQ received a report that petroleum products had been released from an						
13	underground storage tank (UST) system used to store and dispense petroleum products located at						
14	1021 East Baseline Street in Cornelius, Oregon (the Property). The Property was placed on						
15	DEQ's Leaking Underground Storage Tank Facility list.						
16	2. On March 10, 2009, DEQ issued a General Permit Registration Temporary Closure						
17	Certificate (Certificate) for the UST system located on the Property. The Certificate expired on						
18	March 10, 2010.						
19	3. On or about May 18, 2009, Respondent became the owner of the Property.						
20	4. At the time that Respondent became the owner of the Property, the UST system was						
21	still located on the Property and not being actively operated.						
22	5. Groundwater samples were collected from monitoring wells located on the Property						
23	on three occasions in 2008 and 2009, specifically in July 2008, October 2008 and August 2009.						
24	6. In August 2009, the sample collected from monitoring well #1 showed significant						
25	increase in a number of gasoline constituents from the previous sample collected from this well.						
26	7. In November 2009, DEQ received a verbal report that soil samples had been collected						
27	from the property south and west of the Property						

- 8. In October and November 2009, May, August and December 2010, and February and April 2011, DEQ sent Respondent letters requesting that Respondent conduct an investigation to determine the full nature, magnitude and extent of the contamination caused by the UST system. Additionally, the letters requested that Respondent submit the information required by OAR 340-122-0240(3) for any field work completed by Respondent by certain dates.
- 9. As of the date of this Notice, DEQ has not received a written report that includes the information required by OAR 340-122-0240(3) regarding the work completed in November 2009 or sufficient information determining the full nature, magnitude and extent of contamination caused by the UST system.
- 10. The last financial responsibility mechanism provided to DEQ regarding the UST system expired on December 21, 2009.
- 11. As of the date of this Notice, DEQ has not received, from Respondent, a complete application for temporary closure, the permit fee or evidence of a current, valid financial responsibility mechanism or evidence that the UST system has been permanently decommissioned.
- 12. As of the date of this Notice, DEQ has not received, from Respondent, a complete modification application as required by OAR 340-150-0052.

III. CONCLUSIONS

1. Since August 2009, Respondent has violated OAR 340-122-0217(1)(c) and 340-122-0240(1) by failing to initiate and complete an investigation to determine the full nature, magnitude and extent of soil and groundwater contamination at the Property, as alleged in Section II, paragraphs 5, 6, 7 and 8 above. Specifically, Respondent has failed to conduct quarterly groundwater monitoring when groundwater contamination has migrated beyond the immediate vicinity of the tank pit. Additionally, Respondent has failed to collect a sufficient number of soil samples. Respondent is responsible for completing this requirement since it is the owner of the UST system as defined in ORS 466.706(14). These are Class I violations pursuant to OAR 340-012-0074(1)(b). DEQ hereby assesses a \$25,565 civil penalty for these violations.

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- 2. Since March 2009, Respondent has violated OAR 340-150-0167 by failing to obtain the appropriate general permit registration before operating an UST system in temporary closure, as alleged in Section II, paragraphs 2 and 11 above. Respondent is the owner of the UST system since Respondent owned the UST system during its operational life, as defined in OAR 340-150-0010(53). This is a Class II violation pursuant to OAR 340-012-0067(2)(f). DEQ hereby assesses a \$1,107 civil penalty for this violation.
- 3. Since December 2009, Respondent has violated OAR 340-150-0167 by failing to maintain a current, valid financial responsibility mechanism as alleged in Section II, paragraphs 10 and 11 above. Respondent is the owner of the UST system since Respondent owned the UST system during its operational life, as defined in OAR 340-150-0010(53). This is a violation of OAR 340-150-0135(3) which is a Class I violation pursuant to OAR 340-012-0067(1)(b). DEQ hereby assesses a \$1,693 civil penalty for this violation.
- 4. Since May 2009, Respondent has violated OAR 340-150-0052 by failing to submit a modification application within 60 days after a change in ownership of a property on which a UST is located, as alleged in Section II, paragraphs 3 and 12. This is a Class II violation pursuant to 340-012-0067(2)(c). DEQ hereby assesses a \$596 civil penalty for this violation.
- 5. Since November 2009, Respondent has violated OAR 340-122-0217(1)(e) and 340-122-0240(3) by failing to submit information required by OAR 340-122-0240 within the timeframe approved by DEQ, as alleged in Section II, paragraphs 7, 8 and 9 above. Respondent is responsible for completing this requirement since it is the owner of the UST system as defined in ORS 466.706(14). This is a Class II violation pursuant to OAR 340-012-0074(2)(b). DEQ did not assess a civil penalty for this violation.

IV. ORDER TO PAY CIVIL PENALTY AND TO COMPLY

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

1. Within thirty (30) days from the date of this Notice and Order take all actions necessary to bring the UST system into compliance with OAR Chapter 340, Division 150, by submitting, to

DEQ:

- a. a complete application for temporary closure general permit, the permit fee and evidence of a current, valid financial responsibility mechanism **or** a 30-day notice of permanent closure with the permit fee and begin decommissioning the UST as set forth in OAR 340-150-0168; and
- b. a complete modification application and a \$75 general permit modification fee; and
- c. the information required by OAR 340-122-0240(3) for any field work completed at the property prior to the issuance of this Notice and Order; and
- 2. Within sixty (60) days from the date of this Notice and Order:
- a. Complete an investigation regarding the full nature, magnitude and extent of soil and groundwater contamination associated with the release of petroleum at the Property. This investigation, as required under OAR 340-122-0240, must include installation of a sufficient number of monitoring wells capable of adequately characterizing both site hydrogeology and the vertical and horizontal magnitude and extent of groundwater contamination unless Respondent can demonstrate to DEQ that the groundwater contamination presents no potential threat to human health or the environment; and collection of a sufficient number of soil samples to determine the areal and vertical extent of soil contamination. Within forty-five (45) days of completing any investigation field work, submit a report to DEQ summarizing all steps taken to complete the investigation and all sampling results unless DEQ approves, in writing, an alternative reporting schedule.
- b. Begin quarterly groundwater monitoring from any monitoring wells either currently on the Property or adjacent properties or installed in the future. Within forty-five (45) days of each monitoring event, submit groundwater monitoring reports unless DEQ approves, in writing, an alternative reporting schedule.

All submittals required under this Order must be sent to: Jeff Schatz, Department of Environmental Quality, 2020 SW 4th Avenue, Suite 400, Portland, OR 97201.

4. Pay a total civil penalty of \$28,961. The determinations of the civil penalty are attached

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as Exhibits No. 1 through 4 and are incorporated as part of this Notice.

If you do not file a request for hearing as set forth in Section V below, your check or money order must be made payable to "State Treasurer, State of Oregon" and sent to the DEQ, Business Office, 811 S.W. Sixth Avenue, Portland, Oregon 97204. Once you pay the penalty, the Findings of Fact, Conclusions and Order become final.

V. NOTICE OF RIGHT TO REQUEST A CONTESTED CASE HEARING

You have a right to a contested case hearing on this Notice, if you request one in writing. DEQ must receive the request for hearing within 20 calendar days from the date you receive this Notice. The request should include any affirmative defenses and either admit or deny each allegation of fact in this Notice. (See OAR 340-011-0530.) You must mail the request for hearing to: DEQ, Office of Compliance and Enforcement - Appeals, 811 SW Sixth Avenue, Portland, Oregon 97204, or fax to (503) 229-5100. An administrative law judge employed by the Office of Administrative Hearings will conduct the hearing, according to ORS Chapter 183, OAR Chapter 340, Division 011 and OAR 137-003-0501 to 0700. You have a right to be represented by an attorney at the hearing, or you may represent yourself unless you are a corporation, agency or association.

If you fail to file a request for hearing in writing within 20 calendar days of receipt of the Notice, the Notice will become a final order by default without further action by DEQ, as per OAR 340-011-0535(5). If you do request a hearing but later withdraw your request, fail to attend the hearing, or notify DEQ that you will not be attending the hearing, DEQ will issue a final order by default pursuant to OAR 137-003-0670. DEQ designates the relevant portions of its files, including information submitted by you, as the record for purposes of proving a prima facie case.

10 25 11 Date

Leah E. Koss, 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

<u>VIOLATION 1:</u> Failure to initiate and complete an investigation of a release from an

underground storage tank (UST), in violation of OAR 340-122-0217(1)(c)

and OAR 340-122-0240(1).

<u>CLASSIFICATION</u>: This is a Class I violation pursuant to OAR 340-012-0074(1)(b).

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 the Department

does not indicate a minor or major magnitude.

<u>CIVIL PENALTY FORMULA</u>: 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(2)(b)(A)(ii) and applicable pursuant to OAR 340-012-0140(2)(a)(M). Respondent violated an UST cleanup rule.

"P" is whether Respondent has any prior significant actions, as defined in OAR 340-012-0030(17), 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 Respondent does not have any prior significant actions.

"H" is Respondent's history of correcting prior significant action(s) and receives a value of 0 according to OAR 340-012-0145(3)(a)(C), because Respondent does not have any prior significant actions.

"O" is whether the violation was repeated or ongoing and receives a value of 4 according to OAR 340-012-0145(4)(a)(D), because the violation has been ongoing for more than 28 days. Respondent has not conducted quarterly groundwater monitoring since 2009.

"M" is the mental state of the Respondent and receives a value of 6 according to OAR 340-012-0145(5)(a)(C), because Respondent's conduct was reckless. In numerous letters, DEQ has requested that Respondent initiate groundwater monitoring and complete a site investigation by a date certain. Additionally, the letters stated that failure to do so would be a violation and could subject Respondent to the assessment of civil penalties. Respondent previously conducted groundwater monitoring in 2009. Respondent knew that groundwater monitoring was required and that failure to do so was a violation yet consciously disregarded a substantial and unjustifiable risk that a violation would occur when it failed to hire a consultant to conduct the monitoring.

"C" is Respondent's efforts to correct the violation and receives a value of 2 as Respondent has not addressed the violation as described in OAR 340-012-0145(6)(a)(A) through OAR 340-012-0145(6)(a)(C) and the facts do not support a finding under OAR 340-012-0145(6)(a)(D).

Attachment E April 15-16, 2015, EQC meeting

"EB" Page 15 of 48 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 \$16,765 as calculated using the BEN computer model, pursuant to OAR 340-012-0150. Since 2009, Respondent has avoided the cost of collecting and analyzing quarterly groundwater samples in the amount of \$2,468 per groundwater monitoring event and the cost of collecting a sufficient number of soil samples in the amount of \$7,500.

PENALTY CALCULATION:

Penalty = BP + [(0.1 x BP) x (P + H + O + M + C)] + EB = \$4,000 + [(0.1 x \$4,000) x (0 + 0 + 4 + 6 + 2)] + \$16,765 = \$4,000 + (\$400 x 12) + \$16,765 = \$4,000 + \$4,800 + \$16,765 = \$25,565

Pursuant to OAR 340-012-0150(5), DEQ elects to treat the violation as extending over at least as many days as necessary to recover the economic benefit of the violation. The violation has been on-going since 2009.

EXHIBIT 2

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

VIOLATION 2:

Failure to obtain the appropriate general permit registration before operating

an UST in temporary closure, in violation of OAR 340-150-0167(1).

CLASSIFICATION:

This is a Class II violation pursuant to OAR 340-012-0067(2)(f).

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 the Department

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 \$250 for a Class II, moderate magnitude violation in the matrix listed in OAR 340-012-0140(5)(b)(B)(ii) and applicable pursuant to OAR 340-012-0140(5)(a)(E). Respondent is the owner of one UST facility.

"P" is whether Respondent has any prior significant actions, as defined in OAR 340-012-0030(17), 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 Respondent does not have any prior significant actions.

"H" is Respondent's history of correcting prior significant action(s) and receives a value of 0 according to OAR 340-012-0145(3)(a)(C), because Respondent does not have any prior significant actions.

"O" is whether the violation was repeated or ongoing and receives a value of 4 according to OAR 340-012-0145(4)(a)(D), because the violation has been ongoing for more than 28 days. Respondent failed to apply for the appropriate permit registration since the prior certificate expired in March 2010. The violation has been on-going since that date.

"M" is the mental state of the Respondent and receives a value of 6 according to OAR 340-012-0145(5)(a)(C), because Respondent was reckless. Reckless means the respondent consciously disregarded a substantial and unjustifiable risk the result would occur. Since 2010, DEQ has informed Respondent of the need to obtain a permit for the UST. In July 2011, DEQ issued to Respondent a field citation which informed Respondent that continuing to operate the UST without a permit was a violation. When Respondent continued to fail to apply for a permit and pay the permit fees after issuance of the field citation, it disregarded a substantial and unjustifiable risk that it would violate the law.

"C" is Respondent's efforts to correct the violation and receives a value of 2 according to OAR 340-012-0145(6)(E) since Respondent has not addressed the violation and the facts do not support any other finding.

Attachment E April 15-16, 2015, EQC meeting Page 17 of 48

"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 \$557 as calculated using the BEN computer model, pursuant to OAR 340-012-0150. Since March 2010 when the prior certificate expired, Respondent has avoided paying the annual permit fee in the amount of \$540 per year.

PENALTY CALCULATION:

Penalty = BP + $[(0.1 \times BP) \times (P + H + O + M + C)] + EB$

 $= $250 + [(0.1 \times $250) \times (0 + 0 + 4 + 6 + 2)] + 557

 $= $250 + ($25 \times 12) + 557

= \$250 + \$300 + \$557

=\$1,107

EXHIBIT 3

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

VIOLATION 3:

Failure to maintain a current, valid financial responsibility mechanism, in

violation of OAR 340-150-0135(3).

CLASSIFICATION:

This is a Class I violation pursuant to OAR 340-012-0067(1)(b).

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 the Department

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 of one UST facility.

- "P" is whether Respondent has any prior significant actions, as defined in OAR 340-012-0030(17), 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 Respondent does not have any prior significant actions.
- "H" is Respondent's history of correcting prior significant action(s) and receives a value of 0 according to OAR 340-012-0145(3)(a)(C), because Respondent does not have any prior significant actions.
- "O" is whether the violation was repeated or ongoing and receives a value of 4 according to OAR 340-012-0145(4)(a)(D), because the violation has been ongoing for more than 28 days. Respondent has failed to maintain a financial responsibility mechanism since the prior mechanism expired in December 2009.
- "M" is the mental state of the Respondent and receives a value of 6 according to OAR 340-012-0145(5)(a)(C), because Respondent was reckless. Reckless means the respondent consciously disregarded a substantial and unjustifiable risk the result would occur. In July 2011, DEQ issued to Respondent a field citation which informed Respondent that he needed to obtain a financial responsibility mechanism for the UST. When Respondent continued to fail to obtain a mechanism after issuance of the field citation, it disregarded a substantial and unjustifiable risk that it would violate the law.
- "C" is Respondent's efforts to correct the violation and receives a value of 2 according to OAR 340-012-0145(6)(E) since Respondent has not addressed the violation and the facts do not support any other finding.

Attachment E April 15-16, 2015, EQC meeting Page 19 of 48

"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 \$593 as calculated using the BEN computer model, pursuant to OAR 340-012-0150. Since December 2010, Respondent has avoided paying, on an annual basis, \$500 for a financial responsibility mechanism.

PENALTY CALCULATION:

Penalty = BP + [(0.1 x BP) x (P + H + O + M + C)] + EB

$$= $500 + [(0.1 \times $500) \times (0 + 0 + 4 + 6 + 2)] + $593$$

$$= $500 + ($50 \times 12) + $593$$

$$= $500 + $600 + $593$$

^{= \$1,693}

EXHIBIT 4

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

VIOLATION 4:

Failure to submit a modification application, in violation of OAR 340-150-

0052.

CLASSIFICATION:

This is a Class II violation pursuant to OAR 340-012-0067(2)(c).

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 the Department

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 \$250 for a Class II, moderate magnitude violation in the matrix listed in OAR 340-012-0140(5)(b)(B)(ii) and applicable pursuant to OAR 340-012-0140(5)(a)(E). Respondent is the owner of one UST facility.

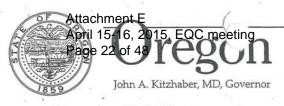
- "P" is whether Respondent has any prior significant actions, as defined in OAR 340-012-0030(17), in the same media as the violation at issue that occurred at a facility owned or operated by the same Respondent, and receives a value of 0 according to OAR 340-012-0145(2)(a)(A), because Respondent does not have any prior significant actions.
- "H" is Respondent's history of correcting prior significant action(s) and receives a value of 0 according to OAR 340-012-0145(3)(a)(C), because Respondent does not have any prior significant actions.
- "O" is whether the violation was repeated or ongoing and receives a value of 4 according to OAR 340-012-0145(4)(a)(D), because the violation has been ongoing for more than 28 days. Respondent has failed to submit a modification application since after it became the owner in May 2009.
- "M" is the mental state of the Respondent and receives a value of 6 according to OAR 340-012-0145(5)(a)(C), because Respondent was reckless. Reckless means the respondent consciously disregarded a substantial and unjustifiable risk the result would occur. In July 2011, DEQ issued to Respondent a field citation which informed Respondent that it needed to submit a modification application for the USTs. When Respondent continued to fail to submit that application after issuance of the field citation, it disregarded a substantial and unjustifiable risk that it would violate the law.
- "C" is Respondent's efforts to correct the violation and receives a value of 2 according to OAR 340-012-0145(6)(E) since Respondent has not addressed the violation and the facts do not support any other finding.

Attachment E April 15-16, 2015, EQC meeting Page 21 of 48

"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 \$46 as calculated using the BEN computer model, pursuant to OAR 340-012-0150. Since May 2009, Respondent has avoided paying \$75 for a modification application fee.

PENALTY CALCULATION:

= \$596



Department of Environmental Quality

Headquarters 811 SW Sixth Avenue Portland, OR 97204-1390 (503) 229-5696 FAX (503) 229-6124 TTY: 711

December 28, 2011

M&G Collections LLC S. Ward Greene, Registered Agent 1515 SW 5th Avenue, Suite 600 Portland OR 97201

Re:

Notice of Civil Penalty Assessment and Order to Comply

No. LQ/LUST-NWR-11-104

You were served a Notice of Civil Penalty Assessment and Order to Comply (Order) on October 25, 2011. Since you did not request a contested case hearing within the time allowed, the Order remains in effect. The Order requires you to pay the \$28,961 civil penalty. Because you failed to appeal the Order to the Oregon Court of Appeals within 60 days, the civil penalty is now due and payable. If the civil penalty remains unpaid for more than 10 days from the date of this letter, we will file the Order with the appropriate counties, thereby placing a lien on any property you own within Oregon. We will also refer the Order to the Department of Revenue or a private collection agency for collection, pursuant to ORS 293.231. Statutory interest on judgments is nine percent per annum.

Please promptly send a check or money order in the amount of \$28,961 and made payable to "Oregon State Treasurer" to: DEQ - Business Office, 811 SW 6th Avenue, Portland, Oregon 97204.

Please note that the Order requires you to complete an investigation regarding the full nature, magnitude and extent of soil and groundwater contamination at the property. The Order also requires you to submit a complete application for temporary closure general permit, the permit fee and evidence of a current, valid financial responsibility mechanism or a 30-day notice of permanent closure with the permit fee and begin decommissioning the UST system. The Department may take further legal action to enforce those requirements, including but not limited to additional civil penalties.

If you have any questions about paying your civil penalty, please call Deborah Nesbit at 503.229.5340. If you have any questions regarding the compliance requirements, please contact Jeff Schatz at 503.229.5024.

Sincerely,

Leah E. Koss, Manager

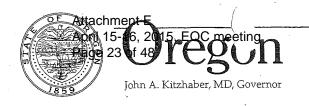
Office of Compliance and Enforcement

Zeah E. Kors

cc:

Business Office, HQ, DEQ Jeff Schatz, NWR, DEQ Greg Toran, NWR, DEQ





Department of Environmental Quality

Headquarters 811 SW Sixth Avenue Portland, OR 97204-1390 (503) 229-5696 FAX (503) 229-6124 TTY: 711

November 17, 2011

M&G Collections, LLC S. Ward Green, Registered Agent 1515 SW 5th Avenue, Suite 600 Portland OR 97201

Re: Notice of Civil Penalty Assessment and Order No. LQ/LUST-NWR-11-104

On October 27, 2011, you received a Notice of Civil Penalty Assessment and Order. Since you did not request a contested case hearing within the time allowed, the Order remains in effect. The Order requires you to pay the \$28,961 civil penalty and to within thirty days from the date of service of the Notice and Order to submit to DEO:

a. a complete application for temporary closure general permit, the permit fee and evidence of a current, valid financial responsibility mechanism or a 30-day notice of permanent closure with the permit fee and begin decommissioning the UST as set forth in OAR 340-150-0168; and

b. a complete modification application and a \$75 general permit modification fee; and c. the information required by OAR 340-122-0240(3) for any field work completed at the property prior to the issuance of this Notice and Order; and

Additionally, the Notice and Order required you to within sixty days from the date of service of the Notice and Order to complete an investigation regarding the full nature, magnitude and extent of soil and groundwater contamination associated with the release of petroleum at the property including installation of monitoring wells. You must also begin quarterly groundwater monitoring from any monitoring wells either currently installed or installed in the future.

Please send the documentation to: Jeff Schatz, Department of Environmental Quality, 2020 SW 4th Avenue, Suite 400, Portland, OR 97201. If you fail to comply, DEQ may take further legal actions to enforce those requirements, including additional civil penalties.

You may appeal the Order to the Oregon Court of Appeals as provided in ORS 183.480. but please note that an appeal will not stay any of the compliance requirements unless you request a stay pursuant to ORS 183.482(3), and a stay is granted.

If you do not file an appeal to the Oregon Court of Appeals within 60 days of the date of service of the Order (December 24, 2011) the civil penalty becomes due and payable 10 days after the time for appeal has passed (January 3, 2012). If the civil penalty remains unpaid after that time, liens may be filed against any property you own. You will not be able to clear title of your property in a sale without paying the penalty plus interest. The Department will also pursue collection of the penalty through other legal means.

Attachment E

April 15016, 2015, EQC meeting

Reg 240148tions, LLC

dated November 17, 2011

Page 2

If you do not intend to appeal, please promptly send a check or money order in the amount of \$28,961 and made payable to "Oregon State Treasurer" to: DEQ - Business Office, 811 SW 6th Avenue, Portland, Oregon 97204.

If you have any questions about this Final Order, please call Susan Elworth, Environmental Law Specialist, at (503) 229-5152. If you have any questions regarding the compliance requirements, please contact Jeff Schatz at (503) 229-5024.

Sincerely,

Leah E. Koss, Manager

Slak E. Kors

Office of Compliance and Enforcement

cc: Business Office, HQ, DEQ

Jeff Schatz, NWR, DEQ Greg Toran, NWR, DEQ

BEFORE THE OREGON ENVIRONMENTAL QUALITY COMMISSION

In the Matter of:)	
M&G COLLECTIONS, LLC.)	
Case No. LQ/LUST-NWR-14-036)	AFFIDAVIT
)	

I, Jeffrey Schatz, being duly sworn, depose and say that the following is true to the best of my knowledge:

- 1. That I am employed by the Oregon Department of Environmental Quality as a Project Manager in the Leaking Underground Storage Tank and Cleanup program.
- 2. That in the course of that employment, I have been assigned as the project manager to oversee the investigation and cleanup of a confirmed release of petroleum at a site located at 1021 E. Baseline Road in Cornelius, Oregon.
- 4. That based on my review of the Department's file, I know that the above named party submitted to the Department, in March 2013, a report summarizing a groundwater sampling event which occurred in December 2012.
- 5. That based on my review of the Department's file, I know that the Department has not received, since March 2013, any other reports regarding the release from the above named party.
- 6. That based on my review of the Department's file, I know that the Department has not received the results of quarterly groundwater monitoring from the above named party.

Date: 9-24-14

Jeffrey Schatz

Department of Environmental Quality

Sworn and subscribed before me this 24 rday of September 2014.

SEAL

OFFICIAL SEAL
BRENT J FUNK
NOTARY PUBLIC - OREGON
COMMISSION NO. 478233
MY COMMISSION EXPIRES MAY 14, 2017

Notary Public for Oregon

My Commission Expires



Attachment E April 15-16, 2015, EQC meeting

ELWORTSP Stustalia

From:

SCHATZ Jeff

Sent:

Monday, December 10, 2012 9:04 AM

To:

'S Ward Greene'

Cc:

PARRETT Kevin; ELWORTH Susan

Subject:

RE: Cornelius Property

Hello Ward-

I apologize for the delay in getting back to you. I was out of the office on Friday December 7 as part of my normal work schedule.

The proposal prepared by AMEC is consistent with accepted industry practices and standards. This work would represent the first step to getting back into compliance with Leaking UST regulations – a "snapshot" of current site conditions.

As indicated in the Order and in previous conversations, the completion of regular groundwater monitoring and delineation of the full magnitude and extent of contamination would be required to satisfy the Order.

Best regards,

Jeffrey K. Schatz, R.G.
Project Manager
Northwest Region Cleanup and Tanks
Oregon Department of Environmental Quality
2020 SW 4th Avenue, Suite 400
Portland, OR 97201
503-229-5024

From: S Ward Greene [mailto:Ward.Greene@greenemarkley.com]

Sent: Thursday, December 06, 2012 2:36 PM

To: SCHATZ Jeff Cc: Skip Rotticci

Subject: Cornelius Property

Dear Jeff:

Thank you for taking the time to chat with me on the telephone this morning.

Attached is a copy of the proposal we received from AMEC. Please confirm that the type of testing which AMEC is proposing to do is consistent with that which DEQ will need.

Again, I sincerely appreciate your help.

Best Regards,

Ward

Attachment E April 15-16, 2015, EQC meeting Page 27 of 48

S. Ward Greene GREENE & MARKLEY, P.C. 1515 SW Fifth Avenue, Suite 600 Portland, OR 97201 Telephone: (503) 295-2668

Fax: (503) 224-8434

www.greenemarkley.com

The information contained in this email message is privileged and confidential. It is intended only for the use of the intended recipient. If you received this communication in error, please reply to the sender indicating that fact and delete the copy you received. In addition, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited. Thank you.

BEFORE THE OREGON ENVIRONMENTAL QUALITY COMMISSION

In the Matter of:) .	
M&G COLLECTIONS, LLC)	
Case No. LQ/LUST-NWR-14-036)	AFFIDAVIT
)	

- I, Greg Toran, being duly sworn, depose and say that the following is true to the best of my knowledge:
- 1. That I am employed by the Oregon Department of Environmental Quality as a Natural Resource Specialist in the Underground Storage Tank program.
- 2. That in the course of that employment I regularly review the database which contains information on the compliance status and permit information regarding underground storage tank facilities.
- 3. That based on my review of the Department's database, I know that the Department has never received a completed modification application from the above named party for an underground storage tank facility located at 102 East Baseline Street in Cornelius, Oregon.
- 5. That based on my review of the Department's database, I know that the Department has never received a current, valid financial responsibility mechanism regarding the same facility from the above named party.
- 6. That based on my review of the Department's database, I know that the Department has not received a completed application for temporary closure or a thirty day notice of temporary closure from the above named party regarding the same facility.

Date: 9/24/14

Greg Toran

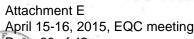
Department of Environmental Quality

Sworn and subscribed before me this 24/2 day of September 2014.

SEAL

OFFICIAL SEAL
BRENT J FUNK
NOTARY PUBLIC - OREGON
COMMISSION NO. 478233
MY COMMISSION EXPIRES MAY 14, 2017

My Commission Expires



April 15-16, 2015, EQC meeting
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I Colon A. Kitzhaber, MD, Governor

Department of Environmental Quality

Headquarters 811 SW Sixth Avenue Portland, OR 97204-1390 (503) 229-5696 FAX (503) 229-6124 TTY: 711

April 8, 2014

CERTIFIED MAIL No. 7013 1710 0000 1115 5652

M&G Collections, LLC c/o S. Ward Greene, Registered Agent 1515 S.W. 5th Avenue, Suite 600 Portland OR 97201

Re: Notice of Civil Penalty Assessment and Order

Case No. LQ/UST-NWR-14-036

UST Facility #5112

This letter is to inform you that DEQ has issued you a civil penalty of \$4,890 for failing to comply with a DEQ final order. The order became final on November 11, 2011, the date it was served on you, because you did not appeal the Order. The order is regarding the underground storage tank (UST) system located at 1021 East Baseline Street in Cornelius, Oregon. You are the owner of the property and the UST system.

In August 2009, samples were collected from four monitoring wells currently installed on the property. One of these samples showed that the concentration of gasoline constituents had significantly increased as compared to a prior sample collected in October 2008. Although you collected several groundwater samples since issuance of the Order, you have not completed an investigation or quarterly groundwater monitoring, as required by the Order.

Until an UST is properly decommissioned, as the property owner, you are responsible for ensuring that the UST is operated and maintained in compliance with DEQ's regulations. The Order also required you to submit an application for a temporary closure certificate, the permit fee and proof of a financial responsibility mechanism. As of this date, DEQ has not received this documentation. UST owners and permittees must demonstrate that they have the financial resources to pay the costs of cleaning up releases of petroleum and for compensating third parties for damages caused by a release. Payment of the permit fee ensures that DEQ has the necessary resources to fund its program, which includes inspections of facilities to ensure compliance.

If you wish to appeal this matter, you have 20 calendar days from receipt of this letter to request a contested case hearing. This hearing request must be in writing. Send your hearing request to DEQ Office of Compliance and Enforcement – Appeals:

Via mail - 811 S.W. 6th Ave., Portland, OR 97204 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 written hearing request from you within 20 days, the penalty will become due. Alternatively, you can pay the penalty by sending a check or money order to the above address.



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April 15-16, 2015, EQC meeting
Page 30 of 48
M&G Collections, LLC
Case No. LQ/UST-NWR-14-036
Page 2

The attached Notice further details DEQ's reasons for issuing the penalty and provides further instructions for appealing the penalty. <u>Please review it and refer to it when discussing this case with DEQ.</u>

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 in lieu of paying your penalty. Enclosed is more detail on how to pursue a SEP.

DEQ's rules are available on the internet at http://www.deq.state.or.us/regulations/rules.htm or by calling the number below to request a paper copy.

If you have any questions, please contact DEQ Environmental Law Specialist Susan Elworth at (503) 229-5152. You may call toll-free within Oregon at 1-800-452-4011, extension 5152.

Sincerely,

Commy When you

Leah K. Feldon, Manager
Office of Compliance and Enforcement

Enclosures

cc:

Greg Toran, NWR, DEQ Jeff Schatz, NWR, DEQ

Washington County District Attorney

BEFORE THE ENVIRONMENTAL QUALITY COMMISSION

OF THE STATE OF OREGON

IN THE MATTER OF: M&G COLLECTIONS LLC,	.)	NOTICE OF CIVIL PENALTY ASSESSMENT AND ORDER
Respondent.)	NO. LQ/UST-NWR-14-036

I. AUTHORITY

This Notice of Civil Penalty Assessment and Order is issued pursuant to Oregon Revised Statutes (ORS) 468.100 and 468.126 through 468.140, ORS 466.706 through 466.835, ORS 466.994, ORS Chapter 183 and Oregon Administrative Rules (OAR) Chapter 340, Divisions 011, 012, 122 and 150.

II. FINDINGS OF FACT

- 1. On or about May 18, 2009, Respondent became the owner of a property located at 1021 East Baseline Street in Cornelius, Oregon (the Property).
- 2. On or about November 17, 2011, Respondent received a Notice of Civil Penalty Assessment and Order to Comply (2011 Notice) which required Respondent to:
 - a. Submit, to DEQ, a complete application for temporary closure general permit, the permit fee and evidence of a current, valid financial responsibility mechanism, or a 30-day notice of permanent closure with the permit fee and begin decommissioning the UST on the Property as set forth in OAR 340-150-0168;
 - b. Submit, to DEQ, a complete modification application and a \$75 general permit modification fee;
 - c. Submit, to DEQ, the information required by OAR 340-122-0240(3) for any field work completed at the Property prior to the issuance of the 2011 Notice;
 - d. Complete an investigation regarding the full nature, magnitude and extent of soil and groundwater contamination associated with the release of petroleum at the Property and submit a report, to DEQ, summarizing all steps taken to complete the investigation and all sampling results; and

NOTICE OF CIVIL PENALTY ASSESSMENT AND ORDER

CASE NO. LQ/UST-NWR-14-036 Page 1 of 3

- e. Begin quarterly groundwater monitoring from any monitoring wells and submit groundwater monitoring reports to DEQ.
- 5. Respondent failed to respond to the Notice and it is now a final order.
- 6. As of the date of this Notice, Respondent has failed to send the documentation required under the 2011 Notice to DEQ by the deadlines set forth in the 2011 Notice.

III. CONCLUSIONS

By failing to complete the actions and submit the documentation required under the 2011 Notice, Respondent violated a final order of DEQ. These are Class I violations, according to OAR 340-012-0053(1)(a). DEQ hereby assesses a \$4,890 civil penalty for these violations.

IV. ORDER TO PAY CIVIL PENALTY

Based upon the foregoing FINDINGS OF FACTS AND CONCLUSIONS, Respondent is hereby ORDERED TO pay a total civil penalty of \$4,890. The determination of the civil penalty is attached as Exhibit No. 1 and is incorporated as part of this Notice.

If you do not file a request for hearing as set forth in Section V below, your check or money order must be made payable to "State Treasurer, State of Oregon" and sent to the DEQ, Business Office, 811 S.W. Sixth Avenue, Portland, Oregon 97204. Once you pay the penalty, the Findings of Fact, Conclusions and Order become final.

V. NOTICE OF RIGHT TO REQUEST A CONTESTED CASE HEARING

You have a right to a contested case hearing on this Notice, if you request one in writing. DEQ must receive the request for hearing within 20 calendar days from the date you receive this Notice. The request should include any affirmative defenses and either admit or deny each allegation of fact in this Notice. (See OAR 340-011-0530.) You must mail the request for hearing to: DEQ, Office of Compliance and Enforcement - Appeals, 811 SW Sixth Avenue, Portland, Oregon 97204, or fax to (503) 229-5100. An administrative law judge employed by the Office of Administrative Hearings will conduct the hearing, according to ORS Chapter 183, OAR Chapter 340, Division 011 and OAR 137-003-0501 to 0700. You have a right to be

NOTICE OF CIVIL PENALTY ASSESSMENT AND ORDER

CASE NO. LQ/UST-NWR-14-036 Page 2 of 3

represented by an attorney at the hearing, or you may represent yourself unless you are a corporation, agency or association.

If you fail to file a request for hearing in writing within 20 calendar days of receipt of the Notice, the Notice will become a final order by default without further action by DEQ, as per OAR 340-011-0535(5). If you do request a hearing but later withdraw your request, fail to attend the hearing, or notify DEQ that you will not be attending the hearing, DEQ will issue a final order by default pursuant to OAR 137-003-0535(3). DEQ designates the relevant portions of its files, including information submitted by you, as the record for purposes of proving a prima facie case.

Date Date

Leah E. Koss, 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 comply with a final order of DEQ.

CLASSIFICATION:

This is a Class I violation pursuant to OAR 340-012-0053(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 for this violation, and the information reasonably available to the Department 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) because Respondent is the owner 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 4 according to OAR 340-012-0145(2)(a)(C) and (D), because on November 17, 2011, the Department issued, Respondent a formal enforcement action in case no. LQ/LUST-NWR-11-104 which cited two Class I violations and three Class II violations.
- "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 insufficient information on which to base a finding under paragraphs (3)(a) or (b).
- "O" is whether the violation was repeated or ongoing and receives a value of 4 4 according to OAR 340-012-0145(4)(d), because there were more than 28 occurrences of the violation. The violation has been ongoing since 2011, when the order required Respondent to submit documentation showing compliance.
- "M" is the mental state of the Respondent and receives a value of 8 according to OAR 340-012-0145(5)(d), because Respondent acted or failed to act intentionally with actual knowledge of the requirement. Respondent received the 2011 Notice and therefore knew that it needed to correct the violation and submit documentation to DEQ but failed to do so. In a letter to DEQ in October 2012, Respondent admitted that it knew it needed to comply with DEQ requirements but did not have the money to do so.

Exhibit no. 1 Case No. LQ/UST-NWR-14-036

- "C" 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 the Notice, Respondent has not corrected the violation.
- "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 \$3,490 as calculated using the BEN computer model, pursuant to OAR 340-012-0150. Respondent continues to avoid spending the following costs: \$75 for a modification application fee; \$540 per year for the annual permit fee; \$500 per year for a financial responsibility mechanism; \$2,468 per groundwater monitoring event, and \$7,500 for collecting a sufficient number of soil samples.

PENALTY CALCULATION: Penalty = BP +
$$[(0.1 \times BP) \times (P + H + O + M + C)]$$
 + EB = $$500 + [(0.1 \times $500) \times (4 + 0 + 4 + 8 + 2)] + $3,490$ = $$500 + ($50 \times 18) + $3,490$ = $$500 + $900 + $3,490$ = $$4,890$

Attachment E

April 15-16, 2015, EQC meeting

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GREENE & MARKLEY, P.C.

1515 SW FIFTH AVE. STE. 600 PORTLAND, OREGON 97201-5492

TELEPHONE: (503) 295-2668 FACSIMILE: (503) 224-8434

FACSIMILE COVER LETTER

DATE

: May 12, 2014

FROM

: S. Ward Greene

SENDER

: ljp

RE

: M&G Collections, LLC

Notice of Civil Penalty and Assessment and Order

Case No. LQ/UST-NWR-14-036

UST Facility #5112

OUR FILE NO.

: 6604

PLEASE DELIVER THE FOLLOWING PAGE(S) TO:

NAME

: Leah K. Feldon, Manager

FAX NO.

: (503)229-6124

TIME SENT

We are transmitting a total of 13 pag

IF YOU DO NOT RECEIVE ALL PAGES, PLEASE PHONE US AT (503) 295-2668 OR RETURN A NOTE ON FAX NO. (503) 224-8434.

INCLUDING THIS COVER LETTER.

MESSAGE: Please see attached.

The information contained in the fax message is privileged and confidential. It is intended only for the use of the recipient named above (or the employee or agent responsible to deliver it to the intended recipient). If you receive this in error, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you have received this message in error, please notify the sender by telephone immediately, and return the original message to us at the above address via U.S. Postal Service. We will, of course, be happy to reimburse your postage costs. Thank you.

ORIGINALS:

[/] Will follow via Regular Mail

[] Will follow via _

[] Will NOT follow



Attachment E
April 15-16, 2015, EQC meeting
Page 37 of 48



ATTORNEYS

1515 SW FIFTH AVENUE, SUITE 600 PORTLAND, OREGON 97201-5492

TELEPHONE: (503) 295-2668 FACSIMILE: (503) 224-8434 E-MAIL: email@greenemarkley.com

Ward.greene@greenemarkley.com

May 12, 2014

Via Facsimile and First-Class Mail

Leah K. Feldon, Manager
Office of Compliance and Enforcement
Department of Environmental Quality
811 SW Sixtle Avenue
Portland, OR 97204

Re:

M&G Collections, LLC

Notice of Civil Penalty and Assessment and Order

Case No. LQ/UST-NWR-14-036

UST Facility #5112

Dear Leah:

As you know from our previous communications, M&G Collections, LLC ("M&G") has no money with which to pay for remediation or quarterly sampling. Its sole asset is the idled service station that has been the subject of DEQ's attention.

This property generates no income. M&G's sole business activity, after foreclosing Dwight Estby, has been to procure a buyer who would purchase and provide assurances that the property is clean. M&G has repeatedly kept DEQ apprised of this fact and has represented to prospective by yers of the need to enter into a Prospective Purchaser Agreement with DEQ.

M&G inderstands that environmental laws impose requirements on current owners of UST properties. However, M&G has never had the financial resources to obtain a financial responsibility mechanism in the first instance. Whatever limited credit M&G has available must be used to star e off property tax foreclosure.

M&G has never operated the service station. The property was obtained through foreclosure against Dwight Estby, the former owner and operator. Either he or his predecessors are the ones who caused whatever contamination may exist. M&G has suggested to DEQ that it pursue Mr. Estby, or his insurer, to hold him responsible for whatever problems he has caused.

05/12/2014 15:22 FAX 503 224 8434 Attachment E

April 15-16, 2015, EQC meeting Page 38 of 48

Leah K. Fe don, Manager May 12, 2014 Page 2

To solve whatever environmental issues may be present, M&G needs more time to sell the property. A sale will produce a buyer with the financial resources to remedy whatever contamination may have occurred, and the proceeds of the sale will pay off DEQ's liens on the property.

M&() is optimistic about finding a purchaser. However, assessing additional penalties would only i npede the property's sale and contemporaneous remediation and would not serve the public in erest. A second DEQ lien would likely spook prospective buyers who would otherwise be enterprising enough to take on the costs of remediation.

There fore, M&G wishes to explore settlement of this penalty. M&G would be prepared to provide D 3Q whatever assistance it would need to pursue Dwight Estby. Any recovery could be used to monitor and remediate the property. Should DEQ not wish to proceed with settlement, N &G will go forward with its appeal and invoke its rights to a contested case hearing.

Very truly yours,

GREENE & MARKLEY, P.C.

S. Ward Greene

SWG/tal Enclosure \G:\WIP\LJP\LDE(5-12-14.wpd April 15-16, 2015, EQC meeting Page 39 of 48

1	BEFORE THE ENVIRONMENTAL QUALITY COMMISSION				
2	OF THE STATE OF OREGON				
3	IN THE MATTER OF:) REQUEST FOR APPEAL OF CIVIL) PENALTY ASSESSMENT AND ORDER				
4	M&G COLLECTIONS LLC, Respondent.) FENALLY ASSESSMENT AND ORDER) THROUGH A CONTESTED CASE HEARING UNDER ORS 183.745				
5					
6	Respondent requests an appeal of the April 8, 2014 Notice of Civil Penalty Assessment				
7	and Order through a Contested Case hearing under ORS 183.745.				
8	1. Respondent admits the allegations of Paragraphs 1 through 5.				
9	2. Respondent admits the allegations of Paragraph 6 insofar as it alleges that				
10	respondent failed to send the required documentation by the deadlines set forth in the 2011				
11	Notice. However, Respondent denies the allegation insofar as it claims that M&G did not send				
12	2 any documentation requested by DEQ.				
13	3 <u>FIRST AFFIRMATIVE DEFENSE</u>				
14	14 (Financial Hardship)				
15	3. Respondent generates no income and has no assets besides the property at 1021				
16	East Baselin: Street in Cornelius, Oregon described in this order. At all material times,				
17	Respondent has lacked the financial capability to comply with the 2011 Notice. Respondent has				
18	sought financial assistance and forebearance from DEQ in documents filed on October 26, 2010,				
19	and relevant correspondence is attached to this response.				
20	SECOND AFFIRMATIVE DEFENSE				
21	(Part Performance)				
22	4. Respondent provided DEQ with a ground water sampling report on or about				
23	March 4, 20 3. Prior to the 2011 Notice, Respondent attempted to obtain the results of an				
24	investigation of the property performed by K&S Environmental, Inc. ("K&S"), but K&S refused				
25	to release the report until it was fully paid. Respondent kept DEQ fully informed of the dispute				
26	with K&S, and relevant correspondence with DEQ is attached to this response.				

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1	THIRD AFFIRMATIVE DEFENSE
2	(Magnitude of Violation)
3	5. Respondent disputes DEQ's determination in Exhibit No.1 that alleges a
4	"moderate in agnitude violation." DEQ regulations do not specify a magnitude for this alleged
5	violation in OAR 340-012-0135. DEQ fails to set forth any facts supporting its conclusion that
6	any alleged violation rose beyond a minor magnitude.
7	DATED this 12 day of May, 2014.
8	GREENE & MARKLEY, P.C.
9	\mathcal{A}
10	By Greene OSB #77413
11	ward.greene@greenemarkley.com Attorneys for M&G Collections LLC
12	\G:\WIP\LJP\P DE \? Resp.wpd
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Attachment E
April 15-16, 2015, EQC meeting
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Theodo e R. Kulongoski, Governor

Department of Environmental Quality

Headquarters 811 SW Sixth Avenue Portland, OR 97204-1390 (503) 229-5696 FAX (503) 229-6124 TTY 1-800-735-2900

May 3, 2010

CERTIFIED VIAIL NO.: 7005 1820 0001 7726 7241 RETURN RECEIPT REQUESTED

S. Ward Greene Greene & Mar dey, P.C. 1515 SW Fifth Avenue, Suite 600 Portland, OR 57201

Re:

Former Cornelius Estby II

Facility No: 5112

USTC No: 34-06-1375

Dear Mr. Wart,

You have indicated to this Department that the financial condition of M&G Collections LLC may preclude an ability to pay for underground storage tank site investigation and cleanup costs at 1021 E. Baseline Street, Cornelius, Oregon.

In order to assess your business's financial condition, the following information is requested:

- (1) Submittal of completed Statement of Financial Condition form for M&G Collections LLC;
- (2) Complete state and federal income tax information for the preceding three calendar years;
- (3) Identification of real estate owned by M&G Collections LLC, along with identification of all current and prospective liens against any real property owned; and
- (4) If you do not use the enclosed forms (which require your signature) then send a signed statement attesting that the information submitted accurately reflects the financial condition of any corporation or partnership in which you have an active or operating role.

Please submit the preceding information within Forty-five (45) days to Stephanie Holmes, Department of Environmental Quality, UST Program, 811 SW Sixth Ave., Portland, OR 97204. Please be advised that, if necessary, additional financial information may be requested.

Attachment E April 15-16, 2015, EQC meeting Page 42 of 48

Name: M&G Collections LLC

May 3, 2010

Page 2

Financial Information Request

Upon review of the submitted financial information, should the Department concur that M&G Collections L C is financially unable to pay for site investigation and cleanup costs, the Department will, to the extent possible, seek to recover any state funds spent on this site.

Also, enclosed you will find a copy of the Department's policy regarding confidentiality. The Department will maintain confidentiality of the completed Statement of Financial Condition as well as state and federal income tax information.

If you have an / questions, please do not hesitate to contact Stephanie Holmes at (503) 229-6085 or toll-free 1-800 452-4011.

Sincerely,

Andree Polloc c, Manager

UST Program.

Land Quality Division

cc: Stepha tie Holmes, DEQ/Headquarters
Dawn smerio, DEQ/ Headquarters
Jim Earris, DEQ/Headquarters
Jeff Schatz, DEQ/NWR-Portland

Lex alloL

April 15-16, 2015, EQC meeting Page 43 of 48

GREENE & MARKLEY, P.C.

ATTORNEYS

1515 SW FIFTH AVENUE, SUITE 600 PORTLAND, OREGON 97201-5492

TELEPHONE: (503) 295-2668 FACSIMILE: (503) 224-8434 E-MAIL: email@greenemarkley.com

ward.greene@greenemarkley.com

October 26, 2010

Ms. Stephanie Holmes
Department of Environmental Quality
UST Program
811 SW Sixth Avenue
Portland, OR 97204

Re: M&:G Collections, LLC Former Cornelius Estby II

> Fac ility No.: 5112 US FC No.: 34-06-1375

Dear Ms. Holmes:

In response to Ms. Pollock's letter dated September 29, 2010, I have enclosed the following doct ments:

- 1. Statement of Financial Condition for Individuals; and
- 2. Federal and state tax returns for the years 2007, 2008 and 2009.

The only real estate M&G Collections LLC owns is the property at 1021 E. Baseline Street, Cornelius, Oregon. Currently, Washington County and K&S Environmental Inc. hold liens against this property.

I am out of the office on vacation until November 15th. In the meantime, feel free to contact my associate, Sean Currie, if there is anything further you need.

Very truly yours,

GREENE & MARKLEY, P.C.

S. Ward Greene

SWG/cg Enclosures

Item E 000209

Attachment E
April 15-16, 2015, EQC meeting

Reage 44 of 48



Department of Environmental Quality

Northwest Region Portland Office 2020 SW 4th Avenue, Suite 400 Portland, OR 97201-4987

(503) 229-5263

Fax: (503) 229-6945 TTY: (503) 229-5471

Certified Mail Return Receipt Requested 7009-2250-0004-4678-0198

December 14, 2010

RECEIVED
DEC 1 4 2010 ()
GREENE & MARKLEY, RC.

ETHYL MEYERS
S. WARD GREENE
M&G COLLI CTIONS LLC
1515 SW FIF TH AVENUE STE 600
PORTLAND OR 97201-4952

Re:

Ability to Pay Determination
Cornelius Estby II

UST Cleanup File No. 34-06-1375

To Whom It May Concern:

This will info m you of the results of the Ability-to-Pay (ATP) evaluation performed by the Department o Environmental Quality (DEQ), for investigation, cleanup, and oversight costs concerning the underground storage tank (UST) release at the former Cornelius Estby property, located at 1021 East Baseline Street in Cornelius, Oregon (site). The DEQ's Budget Section has made its recommendation concerning this matter.

The ATP evaluation was performed by a DEQ Financial Analyst using financial documents provided by you on November 1, 2010. The ATP evaluation seeks to determine whether enforcement actions or expenses associated with investigation, cleanup, and/or cost recovery would constitute "undue economic hardship" as defined in Environmental Protection Agency (EPA) guidelines. The ATP process looks at factors including available cash flow, liquidity, and net worth in evaluating the financial condition of a Responsible Party.

The EPA standard in ability to pay cases is "undue economic hardship", which is reached when a penalty would force an individual into bankruptcy, put a business out of business, or would solve one financial problem by creating another. The findings of the evaluation did not support a finding of uncue economic hardship for Ms. Meyers or M&G Collections LLC.

As a result, DEQ requires the completion of tasks to correct violations of Underground Storage Tank Cleanur rules referenced in the Warning Letter (WL-NWR-LUST-10-0007) of August 19,

Attachment E April 15-16, 2015, EQC meeting Page 45 of 48

Cornelius Estby II 14 December 2010 Page 2 of 2

2010. Specifically, DEQ directs that a quarterly schedule of compliance monitoring be initiated at the site (Violation I). Secondly, DEQ requires submittal of the K&S Environmental, Inc. (K&S) report documenting November 2009 site investigation activities performed on an adjacent property (Violation II).

Because the request for the Ability to Pay determination was received subsequent to DEQ's issuance of Warning Letter WL-NWR-LUST-10-0007 but prior to the expiration of deadlines therein imposed, DEQ is providing you with a revised schedule for demonstrating compliance. Therefore, DEQ requests, within 30 days of the date of this letter, submittal of the K&S report documenting the 2009 off-site investigation. In addition, within 45 days of the date of this letter, DEQ requests; initiation of a program of quarterly compliance monitoring at the site.

Should these violations go uncorrected, this matter may be referred to the Department's Office of Compliance and Enforcement for formal enforcement action, including assessment of civil penalties and or a Department order.

If you have any questions, please contact me at (503) 229-5024 or the DEQ's Northwest Region office at (503) 229-5263.

Respectfully,

Jeff K. Schatz, R.Q

Project Manager

UST Cleanup Section

cc: Offic : of Compliance and Enforcement, DEQ Headquarters

(jks:JKS)

Attachment E April 15-16, 2015, EQC meeting Page 46 of 48

GREENE & MARKLEY, P.C.

ATTORNEYS

1515 SW FIFTH AVENUE, SUITE 600 PORTLAND, OREGON 97201-5492

TELEPHONE: (503) 295-2668 FACSIMILE: (503) 224-8434 <u>E-MAIL</u>: email@greenemarkley.com

ward.greene@greenemarkley.com

December 16, 2010

Mr. Jeff K. Schatz, R.G. UST Cleanup Project Manager Department of Environmental Quality 2020 SW 4th Avenue, Suite 400 Portland, OR 97201-4987

> Re: Connelius Estby II US T Cleanup File No. 34-06-1375

Dear Jeff:

I was disappointed to receive your letter dated December 14, 2010, regarding the Ability-To-Pay evaluation. Because the LLC has no money, and K&S Environmental, Inc. will not extend credit, there is no way to comply.

Moreover, this service station has not been operated a single day while it was owned by M & G Collect ons LLC. Consequently, there has been no ongoing contamination or ongoing violations of ar y kind.

Please feel free to contact K&S Environmental, Inc. and demand that it turnover any data that it obtained from this site. In my opinion, K&S has no right to withhold that information from DEQ.

Thank you for your continued courtesy and cooperation. Best holiday wishes.

Very truly yours,

GREENE & MARKLEY, P.C.

3. Ward Greene

SWG/cg

\6604\G:\Clients\6604\ . Schatz, Jeff DEQ 12-16-10.wpd

Attachment E April 15-16, 2015, EQC meeting Page 47 of 48

GREENE & MARKLEY, P.C.

ATTORNEYS

1515 SW FIFTH AVENUE, SUITE 600 PORTLAND, OREGON 97201-5492

TELEPHONE: (503) 295-2668 FACSIMILE: (503) 224-8434 E-MAIL; email@greenemarkley.com

ward.greene@greenemarkley.com

March 22, 2011

Mr. Jeff K. Schetz, R.G.
UST Cleanup Project Manager
Department of Environmental Quality
2020 SW 4th Avenue, Suite 400
Portland, OR 97201-4987

Re: Corr elius Estby II UST Cleanup File No. 34-06-1375

Dear Jeff:

Please excuse my delay in responding to your letter of February 8, 2011. Frankly, I was hoping to have some news concerning a potential sale of the property. Unfortunately, there are no new developments to report.

As you know, M&G Collections, LLC has no money with which to pay for remediation. The property was obtained through foreclosure from Dwight Estby. Either he or his predecessors are the ones who caused whatever contamination may exist. Ms. Meyers has already suffered crushing financial harm and has yet to recover anything from Mr. Estby.

K&S Environmental was paid to do some of the testing and investigation at the site, but refused to turnover its findings because we were unable to pay. I have suggested that you demand from K&S whatever data or other information it has compiled. I understand that K&S has asserted lien rights and will, therefore, be paid when and if the property is sold. It makes no sense for them to refuse to provide information to DEQ and thereby impede the sale of the property.

Please feel free to call or write if you would like to discuss the matter further.

Very truly yours,

GREENE & MARKLEY, P.C.

S. Ward Greene

SWG/cg

cc: Ethel Meyers

Item E 000213

Attachment E April 15-16, 2015, EQC meeting Page 48 of 48



GREENE & MARKLEY, P.C.

ATTORNEYS

1515 SW FIFTH AVENUE, SUITE 600 PORTLAND, OREGON 97201-5492

TELEPHONE: (503) 295-2668 FACSIMILE: (503) 224-8434 E-MAIL: email@greenemarkley.com

ward_greene@greenemarkley.com

May 9, 2011

Mr. Jeff K. Schatz, R.G. UST Cleanup Project Manager Department of Environmental Quality 2020 SW 4th Avenue, Suite 400 Portland, OR 97 201-4987

Re: Cornelius Estby II
UST Cleanup File No. 34-06-1375

Dear Jeff:

Just a quick note to respond to your letter dated April 14, 2011.

Please be sure to forward copies of my previous letters to the Office of Compliance and Enforcement when you provide them with the information regarding this problem. As you know, K&S Environmental, Inc. claims to have done an investigation, but has refused to submit its report. We understand K&S filed a lien and is, therefore, secured for the amount of any unpaid bill.

Both Ethel Meyers and I regret the fact that M&G Collections LLC has no money and no ability to pay K&S or to hire any other environmental engineer. Of course, M&G has never operated a gas station on this site and has promised to use the proceeds from any sale to complete any necessary investigation or remediation.

Thank yo a again for your cooperation.

Very truly yours,

GREENE & MARKLEY, P.C.

S-Ward Greene

SWG/cg

\6604\G:\Clients\6604\L S :hatz, Jeff DEQ 5-9-11.wpd

for the **DEPT. OF ENVIRONMENTAL QUALITY**

IN THE MATTER OF:) NOTICE OF IN-	PERSON HEARING
)	
M&G COLLECTIONS) OAH Case No.: 1	403764
) Agency Case No.:	: LQ/UST-NWR-14-036

PLEASE TAKE NOTICE that a contested case hearing has been scheduled in the above matter before the Office of Administrative Hearings.

Hearing Date: December 2, 2014

Hearing Time: 9:00 am

Location:

DEQ-Portland Office 811 SW 6th Ave Portland OR 97204

Your case has been assigned to Administrative Law Judge Bernadette Bignon an employee of the Office of Administrative Hearings. The Office of Administrative Hearings is an impartial tribunal, and is independent of the agency proposing the action.

Unless otherwise notified, all correspondence, inquiries, exhibits and filings should be sent to:

Bernadette Bignon Office of Administrative Hearings 7995 SW Mohawk St. Tualatin, OR 97062 Fax: (503) 612-4340

OAR 137-003-0520 requires a copy of any correspondence, exhibits or other filings to be provided to all parties and the agency at the same time they are provided to the ALJ. Please use the OAH case number above on all correspondence and filings.

A request for reset of the hearing must be submitted in writing prior to the hearing. A postponement request will only be granted on a showing of good cause and with the approval of the administrative law judge.

If you are hearing impaired, need a language interpreter or require another type of accommodation to participate in or attend the hearing, immediately notify the Office of Administrative Hearings at (503) 947-1579 or TDD at 1-800-735-1232 to make the appropriate arrangements. The Office of Administrative Hearings can arrange for an interpreter at the hearing. Interpreters must be certified or qualified in order to participate in a contested case hearing and may not have a conflict of interest with the hearing participants.

You are required to notify the Office of Administrative Hearings at (503) 947-1579 immediately if you change your address or telephone number prior to a decision in this matter.

CERTIFICATE OF MAILING

On August 27, 2014, I mailed the foregoing NOTICE OF IN-PERSON HEARING in OAH Case No. 1403764.

By: First Class and Certified Mail
Certified Mail Receipt # 7013 2630 0002 3662 2382

Ward Greene Attorney at Law 1515 SW 5th Avenue, Suite 600 Portland OR 97201

By: First Class Mail

Susan Elworth Dept. of Environmental Quality 811 SW 6th Ave Portland OR 97204

Ryan Clark
Administrative Specialist
Hearing Coordinator

Notice of Hearing-Notice to Members of the Armed Forces

A member of the Armed Forces (Army, Navy, Air Force, Marines, Coast Guard and National Guard) may be subject to the protection of the Servicemembers' Civil Relief Act (SCRA) 50 USC § 501 et seq. as amended. The SCRA provides certain protections to service members and their dependents, if specific conditions are met. If you qualify under the SCRA, you may be entitled to have the matter pending before the Office of Administrative Hearings (OAH) delayed (stayed) due to your military service. The SCRA also provides other protections. Service members may contact the Oregon State Bar toll-free inside Oregon at (800)452-8260 or (503) 620-0222 or the Oregon Military Department toll-free at (800)452-7500 for more information. The United States Armed Forces Legal Assistance Legal Services Locator website may be accessed at <u>legalassistance.law.af.mil</u>.

In order to qualify for the protections of the SCRA, a service member must show that he/she is: (1) an active duty service member; or (2) a member of the reserve component activated to serve in active federal service; or (3) a National Guard service member under Title 10 of the US Code; or (4) a National Guard service member under Title 32 of the US Code called to active duty for 30 days or more pursuant to a contingency mission specified by the President or Secretary of Defense or serving on Annual Training orders. Some provisions of the SCRA also cover dependents of qualifying service members who rely on the service member for at least half of their income. The SCRA continues to provide some protections for a short period of time after service is concluded. Additional protections may be available under ORS 399.238 if you are a member of the Oregon National Guard. It is important that you be aware of your dates of service at the time you contact the OAH and at hearing.

If you think you may qualify under one of the above criteria it is important that you notify the OAH, and the agency that initiated the action, prior to your hearing date so that steps can be taken to ensure that your rights under the SCRA are followed. You may also contact your Judge Advocate General at the installation where or near where you serve or your chain of command for more information regarding your rights under the SCRA.

Notice to Veterans of the Armed Forces

In 2011, the Oregon Legislature enacted Senate Bill 241 (SB 241). The purpose of SB 241 is for state agencies to assist in informing veterans of access to benefits. The Oregon Department of Veteran's Affairs has published a 40-page comprehensive benefit magazine containing state and federal veteran benefits information including: the disability claims process; contact information for veterans services offices; how to access health care; veteran transportation; veteran trauma education; long term care options; dependent and survivor benefits; burial benefits; education options; home loan information; taxation deferral and exemptions; employment resources and preferences; auto adaptive and clothing allowances; IDs, DMV license plates; medals and records; homelessness resources, veterans court's information and recreation benefits and memorials. You can read the entire magazine online at:

http://www.oregon.gov/odva/Documents/Veterans%20Benefits%20Magazine%202012%20sm.pdf

You can obtain other information regarding your benefits at: http://www.oregon.gov/ODVA/pages/index.aspx

Attachment F1

April 15 Continue Flo Gradine a Comunicación a Miembros de las Fuerzas Armadas Page 4 of 5 miembros de las Fuerzas Armadas (Ejército, Marina, Aeronáutica, Infantería de Marina, Guardia Costera y Guardia Nacional) podrán aspirar a la protección acordada por "Servicemembers' Civil Relief Act" (SCRA) (Ley de Asistencia Civil a miembros del Servicio) 501 50 USC § y normas relacionadas, conforme a enmienda. El SCRA otorga protecciones a miembros del servicio y a las personas a su cargo que reúnan requisitos específicos. Quienes reúnan los requisitos del SCRA podrán someter su pedido ante el "Office of Administrative Hearings" (OAH) (Oficina de Audiencias Administrativas) solicitando su diferimiento por causa de servicio militar. El SCRA suministra, además, otras protecciones. Para más informaciones, los miembros del servicio podrán contactar el "Oregon State Bar" desde el territorio del Estado a través de su línea gratuita, llamando al (800) 452-8260 / (503) 620-0222 ó al Oregon Militay Department, llamando al (800) 452-7500. Podrá accederse al "Legal Assistance Legal Services Locator" de las Fuerzas Armadas de los EEUU a través de: legalassistance.law.af.mil

Para aspirar a las protecciones del SCRA, el miembro del servicio deberá presentar evidencias de ser: miembro activo del servicio, o (2) miembro del módulo de reserva activado para prestar servicios en el servicio federal activo; o (3) miembro del servicio de la Guardia Nacional, de conformidad al Title (Título) 10 del US Code (Código de los EEUU) o (4) miembro del servicio de la Guardia Nacional de acuerdo al Title (Título) 32 del US Code (Código de los EEUU) llamado para cumplir servicios activos durante 30 días o más en cumplimiento de misiones eventuales especificadas por el Presidente o la Secretaría de Defensa o en servicio de disposiciones de Entrenamiento Anual. Algunas de las provisiones del SCRA cubren también a las personas a cargo de los miembros del servicio que tengan derecho y que representen por lo menos la mitad de su ingreso. El SCRA continuará proporcionando algunas protecciones por un breve periodo de tiempo una vez que el servicio haya sido completado. Los miembros del "Oregon National Guard" podrán contar con protecciones adicionales, de conformidad con ORS 399.238. Es importante que conozca las fechas de servicios, tanto en el momento en que contacte el OAH, como en el momento de la audiencia.

De considerarse encuadrado dentro de los requisitos mencionados, es importante que, con anterioridad a la fecha de audiencia, notifique al OAH y a la agencia en la que inició la acción, de manera de poder tomarse los recaudos necesarios para asegurar que los derechos otorgados por SCRA sean tenidos en consideración. En relación a los derechos mencionados en SCRA y, para mayor información, podrá también contactar al "Judge Advocate General" de la sede en la que presta servicios, a una cercana a ésta, o a su cadena de commandos.

Aviso a los veteranos de las fuerzas armadas

En 2011, el Cuerpo Legislativo de Oregon promulgó el Proyecto de Ley del Senado número 241 (SB 241). El propósito del SB 241 es que las agencias estatales ayuden a informar a los veteranos sobre el acceso a beneficios. El Departamento de Asuntos para Veteranos de Oregon ha publicado una completa revista de 40 páginas sobre los beneficios, la cual contiene información sobre beneficios estatales y federales para veteranos incluyendo: el proceso de reclamación por discapacidad; información de contacto de las oficinas de servicios para veteranos; cómo obtener acceso a atención médica; transporte para veteranos; educación sobre trauma para veteranos; opciones de atención médica a largo plazo; beneficios para dependientes y sobrevivientes; beneficios funerarios; opciones educativas; información de préstamos para vivienda; aplazamiento de impuestos y exenciones; recursos y preferencias laborales; adaptaciones para vehículos y asignaciones para ropa; identificaciones, placas DMV; medallas y registros; recursos de vivienda, información legal para veteranos y beneficios recreativos y de monumentos. Puede leer la revista completa en línea en: http://www.oregon.gov/odva/Documents/Veterans%20Benefits%20Magazine%202012%20sm.p df Usted puede obtener más información sobre sus beneficios en:



Oregon John A. Kitzhaber MD, Governor

Office of Administrative Hearings

PO Box 14020 Salem OR 97309-4020 (503) 947-1515 FAX (503) 947-1923

TYY: 1-800-735-1232

This concerns your hearing. If you do not understand the enclosed important document, please IMMEDIATELY contact the Office of Administrative Hearings at 1-800-311-3394.

Spanish:

Esto concierne a su audiencia. Si no entiende el importante documento adjunto, por favor comuníquese INMEDIATAMENTE con la Oficina de Audiencias Administrativas (Office of Administrative Hearings) llamando al 1-800-311-3394.

Vietnamese:

Tài liệu này liên quan đến phiên điều giải của quý vị. Nếu quý vị không hiểu rõ hồ sơ quan trọng đính kèm, xin vui lòng liên lạc NGAY với Văn Phòng Điều Giải Hành Chánh (Office of Administrative Hearings) số 1-800-311-3394.

Russian:

Этот документ имеет отношение к Вашему слушанию и является важным. Если Вы не понимаете приложенный документ, пожалуйста, НЕМЕДЛЕННО свяжитесь с Управлением административных слушаний (Office of Administrative Hearings) по телефону 1-800-311-3394.

Chinese:

隨附重要文件,相關您的聽證一事。如果您不理解這些文件的內容,請立即與行政聽證處 (Office of Administrative Hearings)聯絡,電話號碼是1-800-311-3394.

Korean:

이것은 귀하의 심의회에 관계되는 서류입니다. 동봉한 주요 서류를 이해하지 못하시면 즉시 심의회 행정실(Office of Administrative Hearings, 1-800-311-3394) 로 연락하시기 바랍니다.

Romanian

Aceasta se referă la audiența dumneavoastră. Dacă nu înțelegeți documentul important inclus, vă rugăm să contactați IMEDIAT Biroul de Audiențe Administrative (Office of Administrative Hearings) la 1-800-311-3394.

Laotian:

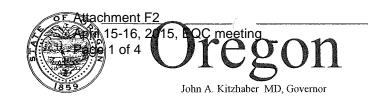
ນີ້ແມ່ນກຽ່ວກັບອຸທອນຂອງທ່ານ. ຖ້າທ່ານບໍ່ເຂົ້າໃຈເອກະສານສຳຄັນທີແນບມາພ້ອມນີ້, ກະລຸນາຕິດຕໍ່ກັບຫ້ອງການບໍລິຫານການອຸທອນທັນທີ (Office of Administrative Hearing) ຕາມເລກໂທ 1-800-311-3394

Arabic:

يتعلق هذا الإشعار بالجلسة الإدارية التي حددت لك. إذا تعذر عليك فهم الوثيقة المرفقة, نرجوك الاتصال في الحال بمكتب الجلسات الإدارية office of).
Administrative Hearings)بالرقم التالي3394-11-800-11.

Cambodian:

ជ្យងក្តីនេះស្តីពីបញ្ហាសវនាការតារ់របស់អ្នក ។ បើអ្នកមិនយល់ពីឯកសរសំខាន់ដែលអេឃឹមកជាមួយទេ សូមទាក់ទងមក មន្ត្រីទៅការិយាល័យសវនាការផ្នែករដ្ឋបាល (Office of Administrative Hearings) ភ្លាម១ តាមលេខ 1-800-311-3394



Carice of Administrative Hearings

PO Box 14020 Salem, OR 97309-4020 (503) 947-1579 FAX (503) 947-1923

August 27, 2014

Ward Greene Attorney at Law 1515 SW 5th Avenue, Suite 600 Portland, OR 97201

And via Email at: Ward.greene@greenemarkley.com

Kieran Odonnell, for Susan Elworth Department of Environmental Quality 811 SW 6th Ave Portland, OR 97204

And via Email at: Elworth.susan@deq.state.or.us

RE: In the Matter of M & G Collections,

For the Oregon Department of Environmental Quality

OAH Case No. 1403764

Agency Case No. LQ/UST-NWR-14-036

Dear Mr. Greene and Mr. Odonnell:

At the prehearing teleconference held today in the above matter, among other things, I reviewed pleading documents with the parties. During that review, Mr. Greene indicated that Respondent may not have received the notice required pursuant to ORS 183.413(2). Therefore, I have attached to Mr. Greene's copy of this letter a Notice of Contested Case Rights and Procedures specific to hearings conducted for the Department of Environmental Quality.

Please contact Mr. Clark at the OAH if further assistance is needed.

Sincerely,

<u>Bernadette H. Bignon</u> Senior Administrative Law Judge Office of Administrative Hearings Attachment F2
April 15-16, 2015, Editing OF ENVIRONMENTAL QUALITY HEARINGS
Page 2 of 4

IMPORTANT INFORMATION FOR PREPARING FOR YOUR HEARING

NOTICE OF CONTESTED CASE RIGHTS AND PROCEDURES

Under ORS 183.413(2), you must be informed of the following:

- 1. <u>Law that applies</u>. The hearing is a contested case and it will be conducted under ORS Chapter 183 and Oregon Administrative Rules of the Department of Environmental Quality, Chapters 137 and 340.
- 2. <u>Rights to an attorney</u>. You may represent yourself at the hearing, or be represented by an attorney or an authorized representative, such as a partner, officer, or an employee. If you are a company, corporation, organization or association, you must be represented by an attorney or an authorized representative. Prior to appearing on your behalf, an authorized representative must provide a written statement of authorization. If you choose to represent yourself, but decide during the hearing that an attorney is necessary, you may request a recess. About half of the parties are not represented by an attorney. DEQ will be represented by an Assistant Attorney General or an Environmental Law Specialist.
- 3. <u>Administrative law judge</u>. The person presiding at the hearing is known as the administrative law judge. The administrative law judge is an employee of the Office of Administrative Hearings under contract with the Environmental Quality Commission. The administrative law judge is not an employee, officer or representative of the agency.
- 4. <u>Appearance at hearing</u>. If you withdraw your request for a hearing, notify either DEQ or the administrative law judge that you will not appear at the hearing, or fail to appear at the hearing, a final default order will be issued. This order will be issued only upon a prima facie case based on DEQ's file. No hearing will be conducted.
- 5. <u>Address change or change of representative</u>. It is your responsibility to notify DEQ and the administrative law judge of any change in your address or a withdrawal or change of your representative.
- 6. <u>Interpreters</u>. If you have a disability or do not speak English, the administrative law judge will arrange for an interpreter. DEQ will pay for the interpreter if (1) you require the interpreter due to a disability or (2) you file with the administrative law judge a written statement under oath that you are unable to speak English and you are unable to obtain an interpreter yourself. You must provide notice of your need for an interpreter at least 14 days before the hearing.
- 7. <u>Witnesses</u>. All witnesses will be under oath or affirmation to tell the truth. All parties and the administrative law judge will have the opportunity to ask questions of all witnesses. DEQ or the administrative law judge will issue subpoenas for witnesses on your behalf if you show that their testimony is relevant to the case and is reasonably needed to establish your position. You are not required to issue subpoenas for appearance of your own witnesses. If you are represented by an attorney, your attorney may issue subpoenas. Payment of witness fees and mileage is your responsibility.
- 8. Order of evidence. A hearing is similar to a court trial but less formal. The purpose of the hearing is to determine the facts and whether DEQ's action is appropriate. In most cases, DEQ will offer its evidence first in support of its action. You will then have an opportunity to present

Antielle 160 30 150 se O EU Portuguidence. Finally, DEQ and you will have an opportunity to rebut any exidence.

- 9. <u>Burden of presenting evidence</u>. The party who proposes a fact or position has the burden of proving that fact or position. You should be prepared to present evidence at the hearing which will support your position. You may present physical, oral or written evidence, as well as your own testimony.
- 10. <u>Admissible evidence</u>. Only relevant evidence of a type relied upon by reasonably prudent persons in the conduct of their serious affairs will be considered. Hearsay evidence is not automatically excluded. Rather, the fact that it is hearsay generally affects how much the Commission will rely on it in reaching a decision.

There are four kinds of evidence:

- a. Knowledge of DEQ and the administrative law judge. DEQ or the administrative law judge may take "official notice" of conclusions developed as a result of its knowledge in its specialized field. This includes notice of general, technical or scientific facts. You will be informed should DEQ or the administrative law judge take "official notice" of any fact and you will be given an opportunity to contest any such facts.
- b. Testimony of witnesses. Testimony of witnesses, including you, who have knowledge of facts may be received in evidence.
- c. Writings. Written documents including letters, maps, diagrams and other written materials may be received in evidence.
- d. Experiments, demonstrations and similar means used to prove a fact. The results of experiments and demonstrations may be received in evidence if they are reliable.
- 11. <u>Objections to evidence</u>. Objections to the consideration of evidence must be made at the time the evidence is offered. Objections are generally made on one of the following grounds:
 - a. The evidence is unreliable;
 - b. The evidence is irrelevant or immaterial and has no tendency to prove or disprove any issue involved in the case;
 - c. The evidence is unduly repetitious and duplicates evidence already received.
- 12. <u>Continuances</u>. There are normally no continuances granted at the end of the hearing for you to present additional testimony or other evidence. Please make sure you have all your evidence ready for the hearing. However, if you can show that the record should remain open for additional evidence, the administrative law judge may grant you additional time to submit such evidence.
- 13. <u>Record</u>. A record will be made of the entire proceeding to preserve the testimony and other evidence for appeal. This will be done by tape recorder. This tape and any exhibits received in the record will be the whole record of the hearing and the only evidence considered by the administrative law judge. A copy of the tape is available upon payment of a minimal amount, as established by DEQ. A transcript of the record will not normally be prepared, unless there is an appeal to the Court of Appeals.

Attachment F2 April 15-16, 2015, EQC meeting

P4.9 roposed and Final Order. The administrative law judge has the authority to issue a proposed order based on the evidence at the hearing. The proposed order will become the final order of the Environmental Quality Commission if you do not petition the Commission for review within 30 days of service of the order. The date of service is the date the order is mailed to you, not the date that you receive it. The Department must receive your petition seeking review within 30 days. See OAR 340-011-0132.

15. <u>Appeal</u>. If you are not satisfied with the decision of the Commission, you have 60 days from the date of service of the order, to appeal this decision to the Court of Appeals. See ORS 183.480 *et seq*.

April 15-16, 2015, EQC meeting Page 1 of 6 BEFORE THE OFFICE OF ADMINISTRATIVE HEARINGS STATE OF OREGON

for the DEPT. OF ENVIRONMENTAL QUALITY

IN THE MATTER OF:)	NOTICE OF PREHEARING CONFERENCE
M&G COLLECTIONS)	OAH Case No.: 1403764
)	Agency Case No.: LQ/UST-NWR-14-036

PLEASE TAKE NOTICE that a prehearing conference has been scheduled in the above matter before the Office of Administrative Hearings.

Prehearing Date:

August 27, 2014

Prehearing Time:

9:00 am

Location:

By Telephone: Prehearing Phone Numbers and Access Code:

Toll Free - 1-877-622-4041 ACCESS CODE - 7103764

IMPORTANT PREHEARING PHONE INSTRUCTIONS

At the date and time of your prehearing conference you must:

- 1. Call the toll free prehearing phone number listed above.
- 2. When asked for the Access Code, enter the code listed above followed by the "#" key.
- 3. If the administrative law judge is not already on the line, remain on the line for five (5) minutes past the prehearing time.
- 4. If you fail to call within five (5) minutes after the time set for the prehearing conference, the prehearing conference may proceed without you.
- 5. If you have any trouble connecting to the prehearing or are on hold more than five (5) minutes past the prehearing start time, call the Office of Administrative Hearings immediately at (503) 947-1579.
- 6. ONLY call the prehearing phone number to attend your prehearing.

The following may be addressed at the prehearing conference: identification of issues, motions, preliminary rulings, documentary and testimonial evidence (if known), exchange of witness lists (if known), procedural conduct of the hearing, date, time and location of the hearing, and other matters relating to the hearing. Failure to participate in the prehearing will not preclude the Administrative Law Judge from making decisions on issues raised during the prehearing. (OAR 137-003-0575)

Your case has been assigned to Administrative Law Judge Bernadette Bignon an employee of the Office of Administrative Hearings. The Office of Administrative Hearings is an impartial tribunal, and is independent of the agency proposing the action.

Unless otherwise notified, all correspondence, inquiries, exhibits and filings should be sent to:

Bernadette Bignon Office of Administrative Hearings 7995 SW Mohawk St. Tualatin, OR 97062 Fax: (503) 612-4340

Attachment F3
April 15-16, 2015, EQC meeting
PAGE 2376003-0520 requires a copy of any correspondence, exhibits or other filings to be provided to all parties and the agency at the same time they are provided to the ALJ. Please use the OAH case number above on all correspondence and filings.

A request for reset of the hearing must be submitted in writing prior to the hearing. A postponement request will only be granted on a showing of good cause and with the approval of the administrative law judge.

If you are hearing impaired, need a language interpreter or require another type of accommodation to participate in or attend the hearing, immediately notify the Office of Administrative Hearings at (503) 947-1579 or TDD at 1-800-735-1232 to make the appropriate arrangements. The Office of Administrative Hearings can arrange for an interpreter at the hearing. Interpreters must be certified or qualified in order to participate in a contested case hearing and may not have a conflict of interest with the hearing participants.

You are required to notify the Office of Administrative Hearings at (503) 947-1579 immediately if you change your address or telephone number prior to a decision in this matter.

CERTIFICATE OF MAILING

On July 23, 2014, I mailed the foregoing NOTICE OF PREHEARING CONFERENCE in OAH Case No. 1403764.

By: First Class Mail

M&G Collections Ward Greene 1515 SW 5th Avenue, Suite 600 Portland OR 97201

Susan Elworth
Dept. of Environmental Quality
811 SW 6th Ave
Portland OR 97204

Ryan Clark

Administrative Specialist Hearing Coordinator

A member of the Armed Forces (Army, Navy, Air Force, Marines, Coast Guard and National Guard) may be subject to the protection of the Servicemembers' Civil Relief Act (SCRA) 50 USC § 501 et seq. as amended. The SCRA provides certain protections to service members and their dependents, if specific conditions are met. If you qualify under the SCRA, you may be entitled to have the matter pending before the Office of Administrative Hearings (OAH) delayed (stayed) due to your military service. The SCRA also provides other protections. Service members may contact the Oregon State Bar toll-free inside Oregon at (800)452-8260 or (503) 620-0222 or the Oregon Military Department toll-free at (800)452-7500 for more information. The United States Armed Forces Legal Assistance Legal Services Locator website may be accessed at Legalassistance.law.af.mil.

In order to qualify for the protections of the SCRA, a service member must show that he/she is: (1) an active duty service member; or (2) a member of the reserve component activated to serve in active federal service; or (3) a National Guard service member under Title 10 of the US Code; or (4) a National Guard service member under Title 32 of the US Code called to active duty for 30 days or more pursuant to a contingency mission specified by the President or Secretary of Defense or serving on Annual Training orders. Some provisions of the SCRA also cover dependents of qualifying service members who rely on the service member for at least half of their income. The SCRA continues to provide some protections for a short period of time after service is concluded. Additional protections may be available under ORS 399.238 if you are a member of the Oregon National Guard. It is important that you be aware of your dates of service at the time you contact the OAH and at hearing.

If you think you may qualify under one of the above criteria it is important that you notify the OAH, and the agency that initiated the action, prior to your hearing date so that steps can be taken to ensure that your rights under the SCRA are followed. You may also contact your Judge Advocate General at the installation where or near where you serve or your chain of command for more information regarding your rights under the SCRA.

Notice to Veterans of the Armed Forces

In 2011, the Oregon Legislature enacted Senate Bill 241 (SB 241). The purpose of SB 241 is for state agencies to assist in informing veterans of access to benefits. The Oregon Department of Veteran's Affairs has published a 40-page comprehensive benefit magazine containing state and federal veteran benefits information including: the disability claims process; contact information for veterans services offices; how to access health care; veteran transportation; veteran trauma education; long term care options; dependent and survivor benefits; burial benefits; education options; home loan information; taxation deferral and exemptions; employment resources and preferences; auto adaptive and clothing allowances; IDs, DMV license plates; medals and records; homelessness resources, veterans court's information and recreation benefits and memorials. You can read the entire magazine online at: http://www.oregon.gov/odva/Documents/Veterans%20Benefits%20Magazine%202012%20sm.pdf

You can obtain other information regarding your benefits at: http://www.oregon.gov/ODVA/pages/index.aspx

Attachment F3

April 15**Genzoni; allo de Astricia – Comunicación a Miembros de las Fuerzas Armadas**Page **5.06** (miembros de las Fuerzas Armadas (Ejército, Marina, Aeronáutica, Infantería de Marina, Guardia Costera y Guardia Nacional) podrán aspirar a la protección acordada por "Servicemembers' Civil Relief Act" (SCRA) (Ley de Asistencia Civil a miembros del Servicio) 501 50 USC § y normas relacionadas, conforme a enmienda. El SCRA otorga protecciones a miembros del servicio y a las personas a su cargo que reúnan requisitos específicos. Quienes reúnan los requisitos del SCRA podrán someter su pedido ante el "Office of Administrative Hearings" (OAH) (Oficina de Audiencias Administrativas) solicitando su diferimiento por causa de servicio militar. El SCRA suministra, además, otras protecciones. Para más informaciones, los miembros del servicio podrán contactar el "Oregon State Bar" desde el territorio del Estado a través de su línea gratuita, llamando al (800) 452-8260 / (503) 620-0222 ó al Oregon Militay Department, llamando al (800) 452-7500. Podrá accederse al "Legal Assistance Legal Services Locator" de las Fuerzas Armadas de los EEUU a través de: legalassistance.law.af.mil

Para aspirar a las protecciones del SCRA, el miembro del servicio deberá presentar evidencias de ser: miembro activo del servicio, o (2) miembro del módulo de reserva activado para prestar servicios en el servicio federal activo; o (3) miembro del servicio de la Guardia Nacional, de conformidad al Title (Título) 10 del US Code (Código de los EEUU) o (4) miembro del servicio de la Guardia Nacional de acuerdo al Title (Título) 32 del US Code (Código de los EEUU) llamado para cumplir servicios activos durante 30 días o más en cumplimiento de misiones eventuales especificadas por el Presidente o la Secretaría de Defensa o en servicio de disposiciones de Entrenamiento Anual. Algunas de las provisiones del SCRA cubren también a las personas a cargo de los miembros del servicio que tengan derecho y que representen por lo menos la mitad de su ingreso. El SCRA continuará proporcionando algunas protecciones por un breve periodo de tiempo una vez que el servicio haya sido completado. Los miembros del "Oregon National Guard" podrán contar con protecciones adicionales, de conformidad con ORS 399.238. Es importante que conozca las fechas de servicios, tanto en el momento en que contacte el OAH, como en el momento de la audiencia.

De considerarse encuadrado dentro de los requisitos mencionados, es importante que, con anterioridad a la fecha de audiencia, notifique al OAH y a la agencia en la que inició la acción, de manera de poder tomarse los recaudos necesarios para asegurar que los derechos otorgados por SCRA sean tenidos en consideración. En relación a los derechos mencionados en SCRA y, para mayor información, podrá también contactar al "Judge Advocate General" de la sede en la que presta servicios, a una cercana a ésta, o a su cadena de comandos.

Aviso a los veteranos de las fuerzas armadas

En 2011, el Cuerpo Legislativo de Oregon promulgó el Proyecto de Ley del Senado número 241 (SB 241). El propósito del SB 241 es que las agencias estatales ayuden a informar a los veteranos sobre el acceso a beneficios. El Departamento de Asuntos para Veteranos de Oregon ha publicado una completa revista de 40 páginas sobre los beneficios, la cual contiene información sobre beneficios estatales y federales para veteranos incluyendo: el proceso de reclamación por discapacidad; información de contacto de las oficinas de servicios para veteranos; cómo obtener acceso a atención médica; transporte para veteranos; educación sobre trauma para veteranos; opciones de atención médica a largo plazo; beneficios para dependientes y sobrevivientes; beneficios funerarios; opciones educativas; información de préstamos para vivienda; aplazamiento de impuestos y exenciones; recursos y preferencias laborales; adaptaciones para vehículos y asignaciones para ropa; identificaciones, placas DMV; medallas y registros; recursos de vivienda, información legal para veteranos y beneficios recreativos y de monumentos. Puede leer la revista completa en línea en: http://www.oregon.gov/odva/Documents/Veterans%20Benefits%20Magazine%202012%20sm.pdf Usted puede obtener más información sobre sus beneficios en: http://www.oregon.gov/ODVA/pages/index.aspx

Office of Administrative Hearings

PO Box 14020 Salem OR 97309-4020 (503) 947-1515 FAX (503) 947-1923 TYY: 1-800-735-1232

This concerns your hearing. If you do not understand the enclosed important document, please IMMEDIATELY contact the Office of Administrative Hearings at 1-800-311-3394.

Spanish:

Esto concierne a su audiencia. Si no entiende el importante documento adjunto, por favor comuníquese INMEDIATAMENTE con la Oficina de Audiencias Administrativas (Office of Administrative Hearings) llamando al 1-800-311-3394.

Vietnamese:

Tài liệu này liên quan đến phiên điều giải của quý vị. Nếu quý vị không hiểu rõ hồ sơ quan trọng đính kèm, xin vui lòng liên lạc NGAY với Văn Phòng Điều Giải Hành Chánh (Office of Administrative Hearings) số 1-800-311-3394.

Russian:

Этот документ имеет отношение к Вашему слушанию и является важным. Если Вы не понимаете приложенный документ, пожалуйста, НЕМЕДЛЕННО свяжитесь с Управлением административных слушаний (Office of Administrative Hearings) по телефону 1-800-311-3394.

Chinese:

隨附重要文件,相關您的聽證一事。如果您不理解這些文件的內容,請立即與行政聽證處 (Office of Administrative Hearings)聯絡,電話號碼是1-800-311-3394.

Korean:

이것은 귀하의 심의회에 관계되는 서류입니다. 동봉한 주요 서류를 이해하지 못하시면 즉시 심의회 행정실(Office of Administrative Hearings, 1-800-311-3394) 로 연락하시기 바랍니다.

Romanian

Aceasta se referă la audiența dumneavoastră. Dacă nu înțelegeți documentul important inclus, vă rugăm să contactați IMEDIAT Biroul de Audiențe Administrative (Office of Administrative Hearings) la 1-800-311-3394.

Laotian

ນີ້ແມ່ນກຽ່ວກັບອຸທອນຂອງທ່ານ. ຖ້າທ່ານບໍ່ເຂົ້າໃຈເອກະສານສາຄັນທີແນບມາພ້ອມນີ້, ກະລຸນາຕິດຕໍ່ກັບຫ້ອງການບໍລິຫານການອຸທອນທັນທີ (Office of Administrative Hearing) ຕາມເລກໂທ 1-800-311-3394

Arabic:

يتعلق هذا الإشعار بالجلسة الإدارية التي حددت لك. إذا تعذر عليك فهم الوثيقة المرفقة, نرجوك الاتصال في الحال بمكتب الجلسات الإدارية office of)
Administrative Hearings)بالرقم التالي 400-311-800-1.

Cambodian:

អ្នងក្តីនេះស្តីតីបញ្ហាសាខាការអាំរបស់អ្នក ។ បើអ្នកមិនយល់ពីឯកសាសំខាន់ដែលអេឡើមកជាមួយទេ សូមទាក់ទងមក មន្ត្រីនៅកេរិយាល័យសាខាករផ្នែករដ្ឋបាល (Office of Administrative Hearings) ភ្នាម១ តាមរល៖ 1-800-311-3394

GREENE & MARKLEY, P.C.

ATTORNEYS

1515 SW FIFTH AVENUE, SUITE 600 PORTLAND, OREGON 97201-5492

TELEPHONE: (503) 295-2668 FACSIMILE: (503) 224-8434 E-MAIL: email@greenemarkley.com

Ward.greene@greenemarkley.com

May 12, 2014



Via Facsimile and First-Class Mail

Leah K. Feldon, Manager Office of Compliance and Enforcement Department of Environmental Quality 811 SW Sixth Avenue Portland, OR 97204

Re: M&G Collections, LLC

Notice of Civil Penalty and Assessment and Order

Case No. LQ/UST-NWR-14-036

UST Facility #5112

Dear Leah:

As you know from our previous communications, M&G Collections, LLC ("M&G") has no money with which to pay for remediation or quarterly sampling. Its sole asset is the idled service station that has been the subject of DEQ's attention.

This property generates no income. M&G's sole business activity, after foreclosing Dwight Estby, has been to procure a buyer who would purchase and provide assurances that the property is clean. M&G has repeatedly kept DEQ apprised of this fact and has represented to prospective buyers of the need to enter into a Prospective Purchaser Agreement with DEQ.

M&G understands that environmental laws impose requirements on current owners of UST properties. However, M&G has never had the financial resources to obtain a financial responsibility mechanism in the first instance. Whatever limited credit M&G has available must be used to stave off property tax foreclosure.

M&G has never operated the service station. The property was obtained through foreclosure against Dwight Estby, the former owner and operator. Either he or his predecessors are the ones who caused whatever contamination may exist. M&G has suggested to DEQ that it pursue Mr. Estby, or his insurer, to hold him responsible for whatever problems he has caused.

Attachment G April 15-16, 2015, EQC meeting Page 2 of 12

Leah K. Feldon, Manager May 12, 2014 Page 2

To solve whatever environmental issues may be present, M&G needs more time to sell the property. A sale will produce a buyer with the financial resources to remedy whatever contamination may have occurred, and the proceeds of the sale will pay off DEQ's liens on the property.

M&G is optimistic about finding a purchaser. However, assessing additional penalties would only impede the property's sale and contemporaneous remediation and would not serve the public interest. A second DEQ lien would likely spook prospective buyers who would otherwise be enterprising enough to take on the costs of remediation.

Therefore, M&G wishes to explore settlement of this penalty. M&G would be prepared to provide DEQ whatever assistance it would need to pursue Dwight Estby. Any recovery could be used to monitor and remediate the property. Should DEQ not wish to proceed with settlement, M&G will go forward with its appeal and invoke its rights to a contested case hearing.

Very truly yours,

GREENE & MARKLEY, P.C.

S. Ward Greene

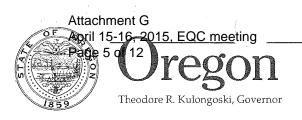
SWG/tal Enclosure \G:\WIP\LJP\L DEQ 5-12-14.wpd

1	BEFORE THE ENVIRONMENTAL QUALITY COMMISSION			
2	OF THE STATE OF OREGON			
3 4	IN THE MATTER OF:) REQUEST FOR APPEAL OF CIVIL) PENALTY ASSESSMENT AND ORDER M&G COLLECTIONS LLC, Respondent.) THROUGH A CONTESTED CASE) HEARING UNDER ORS 183.745			
5				
6	Respondent requests an appeal of the April 8, 2014 Notice of Civil Penalty Assessment			
7	and Order through a Contested Case hearing under ORS 183.745.			
8	1. Respondent admits the allegations of Paragraphs 1 through 5.			
9	2. Respondent admits the allegations of Paragraph 6 insofar as it alleges that			
10	respondent failed to send the required documentation by the deadlines set forth in the 2011			
11	Notice. However, Respondent denies the allegation insofar as it claims that M&G did not send			
12	any documentation requested by DEQ.			
13	FIRST AFFIRMATIVE DEFENSE			
14	4 (Financial Hardship)			
15	3. Respondent generates no income and has no assets besides the property at 1021			
16	6 East Baseline Street in Cornelius, Oregon described in this order. At all material times,			
17	7 Respondent has lacked the financial capability to comply with the 2011 Notice. Respondent has			
18	8 sought financial assistance and forebearance from DEQ in documents filed on October 26, 2010,			
19	9 and relevant correspondence is attached to this response.			
20	SECOND AFFIRMATIVE DEFENSE			
21	(Part Performance)			
22	4. Respondent provided DEQ with a ground water sampling report on or about			
23	March 4, 2013. Prior to the 2011 Notice, Respondent attempted to obtain the results of an			
24	investigation of the property performed by K&S Environmental, Inc. ("K&S"), but K&S refused			
25	to release the report until it was fully paid. Respondent kept DEQ fully informed of the dispute			
26	with K&S, and relevant correspondence with DEQ is attached to this response.			

Page 1 - REQUEST FOR APPEAL OF CIVIL PENALTY ASSESSMENT AND ORDER THROUGH A CONTESTED CASE HEARING UNDER ORS 183.745 GREENE &

GREENE & MARKLEY, P.C. 1515 S.W. Fifth Avenue, Suite 600 Portland, OR 97201 Iteme ephole (603) 295-2668 Facsimile: (503) 224-8434

1	THIRD AFFIRMATIVE DEFENSE
2	(Magnitude of Violation)
3	5. Respondent disputes DEQ's determination in Exhibit No.1 that alleges a
4	"moderate magnitude violation." DEQ regulations do not specify a magnitude for this alleged
5	violation in OAR 340-012-0135. DEQ fails to set forth any facts supporting its conclusion that
6	any alleged violation rose beyond a minor magnitude.
7	DATED this 12 day of May, 2014.
8	GREENE & MARKLEY, P.C.
9	\mathcal{M}_{i}
10	S. Ward Greene, OSB #77413
11	ward.greene@greenemarkley.com Attorneys for M&G Collections LLC
12	\G:\WIP\LJP\P DEQ Resp.wpd
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May 3, 2010

Department of Environmental Quality

Headquarters 811 SW Sixth Avenue Portland, OR 97204-1390 (503) 229-5696 FAX (503) 229-6124 TTY 1-800-735-2900

CERTIFIED MAIL NO.: 7005 1820 0001 7726 7241 RETURN RECEIPT REQUESTED

S. Ward Greene Greene & Markley, P.C. 1515 SW Fifth Avenue, Suite 600 Portland, OR 97201

Re:

Former Cornelius Estby II

Facility No: 5112

USTC No: 34-06-1375

Dear Mr. Ward,

You have indicated to this Department that the financial condition of M&G Collections LLC may preclude an ability to pay for underground storage tank site investigation and cleanup costs at 1021 E. Baseline Street, Cornelius, Oregon.

In order to assess your business's financial condition, the following information is requested:

- (1) Submittal of completed Statement of Financial Condition form for M&G Collections LLC;
- (2) Complete state and federal income tax information for the preceding three calendar years;
- (3) Identification of real estate owned by M&G Collections LLC, along with identification of all current and prospective liens against any real property owned; and
- (4) If you do not use the enclosed forms (which require your signature) then send a signed statement attesting that the information submitted accurately reflects the financial condition of any corporation or partnership in which you have an active or operating role.

Please submit the preceding information within Forty-five (45) days to Stephanie Holmes, Department of Environmental Quality, UST Program, 811 SW Sixth Ave., Portland, OR 97204. Please be advised that, if necessary, additional financial information may be requested.

Attachment G April 15-16, 2015, EQC meeting Page 6 of 12

Name: M&G Collections LLC

May 3, 2010

Page 2

Financial Information Request

Upon review of the submitted financial information, should the Department concur that M&G Collections LLC is financially unable to pay for site investigation and cleanup costs, the Department will, to the extent possible, seek to recover any state funds spent on this site.

Also, enclosed you will find a copy of the Department's policy regarding confidentiality. The Department will maintain confidentiality of the completed Statement of Financial Condition as well as state and federal income tax information.

If you have any questions, please do not hesitate to contact Stephanie Holmes at (503) 229-6085 or toll-free 1-800-452-4011.

Sincerely,

Andree Pollock, Manager

UST Program

Land Quality Division

cc: Stephanie Holmes, DEQ/Headquarters

Dawn Ismerio, DEQ/Headquarters
Jim Harris, DEQ/Headquarters
Jeff Schatz, DEQ/NWR-Portland

GREENE & MARKLEY, P.C.

ATTORNEYS

1515 SW FIFTH AVENUE, SUITE 600 PORTLAND, OREGON 97201-5492

TELEPHONE: (503) 295-2668 FACSIMILE: (503) 224-8434 E-MAIL: email@greenemarkley.com

ward.greene@greenemarkley.com

October 26, 2010

Ms. Stephanie Holmes Department of Environmental Quality UST Program 811 SW Sixth Avenue Portland, OR 97204

Re: M&G Collections, LLC Former Cornelius Estby II

Facility No.: 5112

USTC No.: 34-06-1375

Dear Ms. Holmes:

In response to Ms. Pollock's letter dated September 29, 2010, I have enclosed the following documents:

- 1. Statement of Financial Condition for Individuals; and
- 2. Federal and state tax returns for the years 2007, 2008 and 2009.

The only real estate M&G Collections LLC owns is the property at 1021 E. Baseline Street, Cornelius, Oregon. Currently, Washington County and K&S Environmental, Inc. hold liens against this property.

I am out of the office on vacation until November 15th. In the meantime, feel free to contact my associate, Sean Currie, if there is anything further you need.

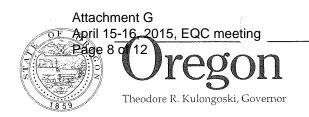
Very truly yours,

GREENE & MARKLEY, P.C.

S. Ward Greene

SWG/cg Enclosures

Item E 000236



Department of Environmental Quality

Northwest Region Portland Office 2020 SW 4th Avenue, Suite 400 Portland, OR 97201-4987

(503) 229-5263

Fax: (503) 229-6945 TTY: (503) 229-5471

Certified Mail Return Receipt Requested 7009-2250-0004-4678-0198

December 14, 2010

RECEIVED
DEC 1 4 2010
GREENE & MARKLEY, RC.

ETHYL MEYERS
S. WARD GREENE
M&G COLLECTIONS LLC
1515 SW FIFTH AVENUE STE 600
PORTLAND OR 97201-4952

Re:

Ability to Pay Determination Cornelius Estby II UST Cleanup File No. 34-06-1375

To Whom It May Concern:

This will inform you of the results of the Ability-to-Pay (ATP) evaluation performed by the Department of Environmental Quality (DEQ), for investigation, cleanup, and oversight costs concerning the underground storage tank (UST) release at the former Cornelius Estby property, located at 1021 East Baseline Street in Cornelius, Oregon (site). The DEQ's Budget Section has made its recommendation concerning this matter.

The ATP evaluation was performed by a DEQ Financial Analyst using financial documents provided by you on November 1, 2010. The ATP evaluation seeks to determine whether enforcement actions or expenses associated with investigation, cleanup, and/or cost recovery would constitute "undue economic hardship" as defined in Environmental Protection Agency (EPA) guidelines. The ATP process looks at factors including available cash flow, liquidity, and net worth in evaluating the financial condition of a Responsible Party.

The EPA standard in ability to pay cases is "undue economic hardship", which is reached when a penalty would force an individual into bankruptcy, put a business out of business, or would solve one financial problem by creating another. The findings of the evaluation did not support a finding of undue economic hardship for Ms. Meyers or M&G Collections LLC.

As a result, DEQ requires the completion of tasks to correct violations of Underground Storage Tank Cleanup rules referenced in the Warning Letter (WL-NWR-LUST-10-0007) of August 19,

Attachment G April 15-16, 2015, EQC meeting Page 9 of 12

Cornelius Estby II 14 December 2010 Page 2 of 2

2010. Specifically, DEQ directs that a quarterly schedule of compliance monitoring be initiated at the site (Violation I). Secondly, DEQ requires submittal of the K&S Environmental, Inc. (K&S) report documenting November 2009 site investigation activities performed on an adjacent property (Violation II).

Because the request for the Ability to Pay determination was received subsequent to DEQ's issuance of Warning Letter WL-NWR-LUST-10-0007 but prior to the expiration of deadlines therein imposed, DEQ is providing you with a revised schedule for demonstrating compliance. Therefore, DEQ requests, within 30 days of the date of this letter, submittal of the K&S report documenting the 2009 off-site investigation. In addition, within 45 days of the date of this letter, DEQ requests initiation of a program of quarterly compliance monitoring at the site.

Should these violations go uncorrected, this matter may be referred to the Department's Office of Compliance and Enforcement for formal enforcement action, including assessment of civil penalties and/or a Department order.

If you have any questions, please contact me at (503) 229-5024 or the DEQ's Northwest Region office at (503) 229-5263.

Respectfully,

Jeff K. Schatz, R. G

Project Manager UST Cleanup Section

Office of Compliance and Enforcement, DEQ Headquarters

(jks:JKS)

cc:

GREENE & MARKLEY, P.C.

ATTORNEYS

1515 SW FIFTH AVENUE, SUITE 600 PORTLAND, OREGON 97201-5492

TELEPHONE: (503) 295-2668 FACSIMILE: (503) 224-8434 E-MAIL: email@greenemarkley.com

ward.greene@greenemarkley.com

December 16, 2010

Mr. Jeff K. Schatz, R.G. UST Cleanup Project Manager Department of Environmental Quality 2020 SW 4th Avenue, Suite 400 Portland, OR 97201-4987

> Re: Cornelius Estby II UST Cleanup File No. 34-06-1375

Dear Jeff:

I was disappointed to receive your letter dated December 14, 2010, regarding the Ability-To-Pay evaluation. Because the LLC has no money, and K&S Environmental, Inc. will not extend credit, there is no way to comply.

Moreover, this service station has not been operated a single day while it was owned by M & G Collections LLC. Consequently, there has been no ongoing contamination or ongoing violations of any kind.

Please feel free to contact K&S Environmental, Inc. and demand that it turnover any data that it obtained from this site. In my opinion, K&S has no right to withhold that information from DEQ.

Thank you for your continued courtesy and cooperation. Best holiday wishes.

Very truly yours,

GREENE & MARKLEY, P.C.

Ward Greene

SWG/cg

\6604\G:\Clients\6604\L Schatz, Jeff DEQ 12-16-10.wpd



ATTORNEYS

1515 SW FIFTH AVENUE, SUITE 600 PORTLAND, OREGON 97201-5492

TELEPHONE: (503) 295-2668 FACSIMILE: (503) 224-8434 E-MAIL: email@greenemarkley.com

ward.greene@greenemarkley.com

March 22, 2011

Mr. Jeff K. Schatz, R.G. UST Cleanup Project Manager Department of Environmental Quality 2020 SW 4th Avenue, Suite 400 Portland, OR 97201-4987

> Re: Cornelius Estby II UST Cleanup File No. 34-06-1375

Dear Jeff:

Please excuse my delay in responding to your letter of February 8, 2011. Frankly, I was hoping to have some news concerning a potential sale of the property. Unfortunately, there are no new developments to report.

As you know, M&G Collections, LLC has no money with which to pay for remediation. The property was obtained through foreclosure from Dwight Estby. Either he or his predecessors are the ones who caused whatever contamination may exist. Ms. Meyers has already suffered crushing financial harm and has yet to recover anything from Mr. Estby.

K&S Environmental was paid to do some of the testing and investigation at the site, but refused to turnover its findings because we were unable to pay. I have suggested that you demand from K&S whatever data or other information it has compiled. I understand that K&S has asserted lien rights and will, therefore, be paid when and if the property is sold. It makes no sense for them to refuse to provide information to DEQ and thereby impede the sale of the property.

Please feel free to call or write if you would like to discuss the matter further.

Very truly yours,

GREENE & MARKLEY, P.O.

Ward Greene

SWG/cg

cc: Ethel Meyers

Item E 000240

GREENE & MARKLEY, P.C.

ATTORNEYS

1515 SW FIFTH AVENUE, SUITE 600 PORTLAND, OREGON 97201-5492

TELEPHONE: (503) 295-2668 FACSIMILE: (503) 224-8434 E-MAIL: email@greenemarkley.com

ward.greene@greenemarkley.com

May 9, 2011

Mr. Jeff K. Schatz, R.G. UST Cleanup Project Manager Department of Environmental Quality 2020 SW 4th Avenue, Suite 400 Portland, OR 97201-4987

> Re: Cornelius Estby II UST Cleanup File No. 34-06-1375

Dear Jeff:

Just a quick note to respond to your letter dated April 14, 2011.

Please be sure to forward copies of my previous letters to the Office of Compliance and Enforcement when you provide them with the information regarding this problem. As you know, K&S Environmental, Inc. claims to have done an investigation, but has refused to submit its report. We understand K&S filed a lien and is, therefore, secured for the amount of any unpaid bill.

Both Ethel Meyers and I regret the fact that M&G Collections LLC has no money and no ability to pay K&S or to hire any other environmental engineer. Of course, M&G has never operated a gas station on this site and has promised to use the proceeds from any sale to complete any necessary investigation or remediation.

Thank you again for your cooperation.

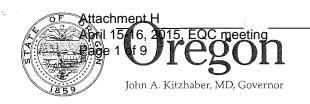
Very truly yours

GREENE & MARKLEY, P.C.

S-Ward Greene

SWG/cg

\6604\G:\Clients\6604\L Schatz, Jeff DEQ 5-9-11.wpd



Department of Environmental Quality

Headquarters 811 SW Sixth Avenue Portland, OR 97204-1390 (503) 229-5696 FAX (503) 229-6124 TTY: 711

April 8, 2014

CERTIFIED MAIL No. 7013 1710 0000 1115 5652

M&G Collections, LLC c/o S. Ward Greene, Registered Agent 1515 S.W. 5th Avenue, Suite 600 Portland OR 97201

Re:

Notice of Civil Penalty Assessment and Order

Case No. LQ/UST-NWR-14-036

UST Facility #5112

This letter is to inform you that DEQ has issued you a civil penalty of \$4,890 for failing to comply with a DEQ final order. The order became final on November 11, 2011, the date it was served on you, because you did not appeal the Order. The order is regarding the underground storage tank (UST) system located at 1021 East Baseline Street in Cornelius, Oregon. You are the owner of the property and the UST system.

In August 2009, samples were collected from four monitoring wells currently installed on the property. One of these samples showed that the concentration of gasoline constituents had significantly increased as compared to a prior sample collected in October 2008. Although you collected several groundwater samples since issuance of the Order, you have not completed an investigation or quarterly groundwater monitoring, as required by the Order.

Until an UST is properly decommissioned, as the property owner, you are responsible for ensuring that the UST is operated and maintained in compliance with DEQ's regulations. The Order also required you to submit an application for a temporary closure certificate, the permit fee and proof of a financial responsibility mechanism. As of this date, DEQ has not received this documentation. UST owners and permittees must demonstrate that they have the financial resources to pay the costs of cleaning up releases of petroleum and for compensating third parties for damages caused by a release. Payment of the permit fee ensures that DEQ has the necessary resources to fund its program, which includes inspections of facilities to ensure compliance.

If you wish to appeal this matter, you have 20 calendar days from receipt of this letter to request a contested case hearing. This hearing request must be in writing. Send your hearing request to DEQ Office of Compliance and Enforcement – Appeals:

Via mail - 811 S.W. 6th Ave., Portland, OR 97204 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 written hearing request from you within 20 days, the penalty will become due. Alternatively, you can pay the penalty by sending a check or money order to the above address.

Attachment H
MREG16-16-2915s, EQComeeting
Case No. 19Q/UST-NWR-14-036
Page 2

The attached Notice further details DEQ's reasons for issuing the penalty and provides further instructions for appealing the penalty. <u>Please review it and refer to it when discussing this case with DEQ.</u>

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 in lieu of paying your penalty. Enclosed is more detail on how to pursue a SEP.

DEQ's rules are available on the internet at http://www.deq.state.or.us/regulations/rules.htm or by calling the number below to request a paper copy.

If you have any questions, please contact DEQ Environmental Law Specialist Susan Elworth at (503) 229-5152. You may call toll-free within Oregon at 1-800-452-4011, extension 5152.

Sincerely,

Leah K. Feldon, Manager

Chron Much for

Office of Compliance and Enforcement

Enclosures

cc: Greg Toran, NWR, DEQ

Jeff Schatz, NWR, DEQ

Washington County District Attorney

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BEFORE THE ENVIRONMENTAL QUALITY COMMISSION

OF THE STATE OF OREGON

IN THE MATTER OF:

M&G COLLECTIONS LLC,

Respondent.

)

NOTICE OF CIVIL PENALTY

ASSESSMENT AND ORDER

NO. LQ/UST-NWR-14-036

I. AUTHORITY

This Notice of Civil Penalty Assessment and Order is issued pursuant to Oregon Revised Statutes (ORS) 468.100 and 468.126 through 468.140, ORS 466.706 through 466.835, ORS 466.994, ORS Chapter 183 and Oregon Administrative Rules (OAR) Chapter 340, Divisions 011, 012, 122 and 150.

II. FINDINGS OF FACT

- 1. On or about May 18, 2009, Respondent became the owner of a property located at 1021 East Baseline Street in Cornelius, Oregon (the Property).
- 2. On or about November 17, 2011, Respondent received a Notice of Civil Penalty Assessment and Order to Comply (2011 Notice) which required Respondent to:
 - a. Submit, to DEQ, a complete application for temporary closure general permit, the permit fee and evidence of a current, valid financial responsibility mechanism, or a 30-day notice of permanent closure with the permit fee and begin decommissioning the UST on the Property as set forth in OAR 340-150-0168;
 - b. Submit, to DEQ, a complete modification application and a \$75 general permit modification fee;
 - c. Submit, to DEQ, the information required by OAR 340-122-0240(3) for any field work completed at the Property prior to the issuance of the 2011 Notice;
 - d. Complete an investigation regarding the full nature, magnitude and extent of soil and groundwater contamination associated with the release of petroleum at the Property and submit a report, to DEQ, summarizing all steps taken to complete the investigation and all sampling results; and

- e. Begin quarterly groundwater monitoring from any monitoring wells and submit groundwater monitoring reports to DEQ.
- 5. Respondent failed to respond to the Notice and it is now a final order.
- 6. As of the date of this Notice, Respondent has failed to send the documentation required under the 2011 Notice to DEQ by the deadlines set forth in the 2011 Notice.

III. CONCLUSIONS

By failing to complete the actions and submit the documentation required under the 2011 Notice, Respondent violated a final order of DEQ. These are Class I violations, according to OAR 340-012-0053(1)(a). DEQ hereby assesses a \$4,890 civil penalty for these violations.

IV. ORDER TO PAY CIVIL PENALTY

Based upon the foregoing FINDINGS OF FACTS AND CONCLUSIONS, Respondent is hereby ORDERED TO pay a total civil penalty of \$4,890. The determination of the civil penalty is attached as Exhibit No. 1 and is incorporated as part of this Notice.

If you do not file a request for hearing as set forth in Section V below, your check or money order must be made payable to "State Treasurer, State of Oregon" and sent to the DEQ, Business Office, 811 S.W. Sixth Avenue, Portland, Oregon 97204. Once you pay the penalty, the Findings of Fact, Conclusions and Order become final.

V. NOTICE OF RIGHT TO REQUEST A CONTESTED CASE HEARING

You have a right to a contested case hearing on this Notice, if you request one in writing. DEQ must receive the request for hearing within 20 calendar days from the date you receive this Notice. The request should include any affirmative defenses and either admit or deny each allegation of fact in this Notice. (See OAR 340-011-0530.) You must mail the request for hearing to: DEQ, Office of Compliance and Enforcement - Appeals, 811 SW Sixth Avenue, Portland, Oregon 97204, or fax to (503) 229-5100. An administrative law judge employed by the Office of Administrative Hearings will conduct the hearing, according to ORS Chapter 183, OAR Chapter 340, Division 011 and OAR 137-003-0501 to 0700. You have a right to be

corporation, agency or association.

Date 8th 2014

represented by an attorney at the hearing, or you may represent yourself unless you are a

Notice, the Notice will become a final order by default without further action by DEQ, as per

attend the hearing, or notify DEQ that you will not be attending the hearing, DEQ will issue a

final order by default pursuant to OAR 137-003-0535(3). DEQ designates the relevant portions

of its files, including information submitted by you, as the record for purposes of proving a prima

Office of Compliance and Enforcement

OAR 340-011-0535(5). If you do request a hearing but later withdraw your request, fail to

If you fail to file a request for hearing in writing within 20 calendar days of receipt of the

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facie case.

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NOTICE OF CIVIL PENALTY ASSESSMENT AND ORDER

CASE NO. LQ/UST-NWR-14-036 Page 3 of 3

EXHIBIT NO. 1

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

VIOLATION 1:

Failing to comply with a final order of DEQ.

CLASSIFICATION:

This is a Class I violation pursuant to OAR 340-012-0053(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 for this violation, and the information reasonably available to the Department 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) because Respondent is the owner 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 4 according to OAR 340-012-0145(2)(a)(C) and (D), because on November 17, 2011, the Department issued, Respondent a formal enforcement action in case no. LQ/LUST-NWR-11-104 which cited two Class I violations and three Class II violations.
- "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 insufficient information on which to base a finding under paragraphs (3)(a) or (b).
- "O" is whether the violation was repeated or ongoing and receives a value of 4 4 according to OAR 340-012-0145(4)(d), because there were more than 28 occurrences of the violation. The violation has been ongoing since 2011, when the order required Respondent to submit documentation showing compliance.
- "M" is the mental state of the Respondent and receives a value of 8 according to OAR 340-012-0145(5)(d), because Respondent acted or failed to act intentionally with actual knowledge of the requirement. Respondent received the 2011 Notice and therefore knew that it needed to correct the violation and submit documentation to DEQ but failed to do so. In a letter to DEQ in October 2012, Respondent admitted that it knew it needed to comply with DEQ requirements but did not have the money to do so.

Exhibit no. 1 Case No. LQ/UST-NWR-14-036

- "C" 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 the Notice, Respondent has not corrected the violation.
- "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 \$3,490 as calculated using the BEN computer model, pursuant to OAR 340-012-0150. Respondent continues to avoid spending the following costs: \$75 for a modification application fee; \$540 per year for the annual permit fee; \$500 per year for a financial responsibility mechanism; \$2,468 per groundwater monitoring event, and \$7,500 for collecting a sufficient number of soil samples.

PENALTY CALCULATION: Penalty = BP +
$$[(0.1 \times BP) \times (P + H + O + M + C)]$$
 + EB = $$500 + [(0.1 \times $500) \times (4 + 0 + 4 + 8 + 2)] + $3,490$ = $$500 + ($50 \times 18) + $3,490$ = $$500 + $900 + $3,490$ = $$4,890$

CERTIFICATE OF SERVICE

I hereby certify that on April 22, 2014, I personally served:

Notice of Civil Penalty Assessment and Order (NCP & O)

In the matter of:

M&G Collections LLC c/o S. Ward Greene, Registered Agent 1515 SW 5th Avenue, Suite 600 Portland OR 97201

DEQ Case No. LQ/UST-NWR-14-036

Served upon:

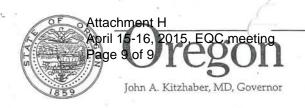
S. Ward Greene, Registered Agent for M&G Collections LLC 1515 SW 5th Avenue, Suite 600 Portland OR 97201

By hand delivering the NCP & O to the address above on April 22, 2014.

Deborah Nesbit

Office of Compliance and Enforcement Department of Environmental Quality

eborahvash



Department of Environmental Quality

Headquarters 811 SW Sixth Avenue Portland, OR 97204-1390 (503) 229-5696 FAX (503) 229-6124

TTY: 711

RECEIVED

APR 22 2014

BY: JF 9:12

April 8, 2014

CERTIFIED MAIL No. 7013 1710 0000 1115 5652

M&G Collections, LLC c/o S. Ward Greene, Registered Agent 1515 S.W. 5th Avenue, Suite 600 Portland OR 97201

Re:

Notice of Civil Penalty Assessment and Order

Case No. LQ/UST-NWR-14-036

UST Facility #5112

This letter is to inform you that DEQ has issued you a civil penalty of \$4,890 for failing to comply with a DEQ final order. The order became final on November 11, 2011, the date it was served on you, because you did not appeal the Order. The order is regarding the underground storage tank (UST) system located at 1021 East Baseline Street in Cornelius, Oregon. You are the owner of the property and the UST system.

In August 2009, samples were collected from four monitoring wells currently installed on the property. One of these samples showed that the concentration of gasoline constituents had significantly increased as compared to a prior sample collected in October 2008. Although you collected several groundwater samples since issuance of the Order, you have not completed an investigation or quarterly groundwater monitoring, as required by the Order.

Until an UST is properly decommissioned, as the property owner, you are responsible for ensuring that the UST is operated and maintained in compliance with DEQ's regulations. The Order also required you to submit an application for a temporary closure certificate, the permit fee and proof of a financial responsibility mechanism. As of this date, DEQ has not received this documentation. UST owners and permittees must demonstrate that they have the financial resources to pay the costs of cleaning up releases of petroleum and for compensating third parties for damages caused by a release. Payment of the permit fee ensures that DEQ has the necessary resources to fund its program, which includes inspections of facilities to ensure compliance.

If you wish to appeal this matter, you have 20 calendar days from receipt of this letter to request a contested case hearing. This hearing request must be in writing. Send your hearing request to DEQ Office of Compliance and Enforcement – Appeals:

Via mail - 811 S.W. 6th Ave., Portland, OR 97204

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 written hearing request from you within 20 days, the penalty will become due. Alternatively, you can pay the penalty by sending a check or money order to the above address.