



# Oregon

John 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 1, 2013

RECEIVED

APR - 4 2013

REGION 10  
OFFICE OF REGIONAL COUNSEL

Danielle N. Granatt  
Veris Law Group  
1809 Seventh Avenue, Suite 1400  
Seattle WA 98101

Re: Tyree Oil  
Case No. WQ/SP-WR-11-050

Dear Ms. Granatt:

Attached please find the Mutual Agreement and Final Order in the above referenced case which became effective on March 28, 2012. Please send a check or money order in the amount of \$2,080 made payable to the Oregon State Treasurer to the Business Office, Department of Environmental Quality, 811 SW Sixth Avenue, Portland, OR 97204, prior to April 27, 2013.

The MAO requires your client to complete a Supplemental Environmental Project and to provide DEQ with a copy of report that contains the information set forth in Section VI, Paragraph 7 of the MAO. This documentation must be received by DEQ prior to September 27, 2013. If your client fails to provide this documentation by that date, the remaining civil penalty (\$8,320) will become immediately due and owing.

If you have any questions or need additional time to respond, feel free to contact me at (503) 229-5152 and thank you for your cooperation.

Sincerely,

Susan M. Elworth  
Environmental Law Specialist

Enclosure

cc: ✓ Andre Szalay, EPA, 1200 6<sup>th</sup> Avenue, Suite 900, Seattle WA 98101  
Business office, DEQ





BEFORE THE ENVIRONMENTAL QUALITY COMMISSION

OF THE STATE OF OREGON

IN THE MATTER OF: ) MUTUAL AGREEMENT  
TYREE OIL, INC., ) AND FINAL ORDER  
Respondent. ) No. WQ/SP-WR-11-050

I. AUTHORITY

This Mutual Agreement and Final Order (MAO) is issued pursuant to Oregon Revised Statutes (ORS) 468.100 and 468.126 through 468.140, ORS 468B.450 and 468B.455, ORS Chapter 468B and 183, and Oregon Administrative Rules (OAR) Chapter 340, Divisions 011 and 012.

II. FINDINGS OF FACT

1. During all relevant times, Respondent owned real property located at 1355 West 1<sup>st</sup> Avenue in Eugene, Oregon (the property).
2. On or about January 24, 2009, an above ground storage tank at the property released approximately 300 gallons of diesel onto the floor of a secondary containment area. The floor of the secondary containment area consisted of gravel and soil.
3. A small amount of diesel traveled through the subsurface until it entered the stormwater system.
4. On January 25, 2009, a sheen of diesel was discovered entering the Willamette River through an outfall of the stormwater system at Greenway Park in Eugene, Oregon.
5. The sheen was present in the Willamette River through January 26, 2009.

III. VIOLATIONS

By causing or allowing the discharge of oil into waters of the state without a permit authorizing such a discharge as alleged in Section II, Respondent violated ORS 468B.050(1)(a) and ORS 468B.450. These are Class I violations, pursuant to OAR 340-012-0055(1)(c).

IV. AGREEMENT

**NOW THEREFORE, it is stipulated and agreed that:**

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1           1. Respondent neither admits nor denies the facts or allegations contained in Sections II  
2 and III.

3           2. The Oregon Department of Environmental Quality (DEQ) and Respondent agree that the  
4 total civil penalty for the violations alleged in Section III is \$10,400. The findings and  
5 determination of the civil penalty is incorporated as Exhibit No. 1.

6           3. Respondent recognizes that the Environmental Quality Commission (Commission) has  
7 the power to impose a civil penalty for violations of Oregon law. Therefore, pursuant to ORS  
8 183.415(5), DEQ and Respondent agree to settle the violations alleged in Section III.

9           4. Pursuant to OAR 340-012-0030(17) and OAR 340-012-0145(2), the violations alleged  
10 in this MAO will be treated as prior significant actions in the event a future violation occurs.

11           5. Respondent hereby waives any rights to any and all notices, hearing, judicial review, and  
12 to service of a copy of this MAO. This MAO shall be effective when signed by DEQ.

13           6. This MAO is not intended to limit, in any way, DEQ's right to proceed against  
14 Respondent in any forum for any past or future violations not expressly settled herein.

15           7. In accordance with DEQ's Internal Management Directive on Supplemental  
16 Environmental Projects (SEPs), DEQ agrees to mitigate the \$10,400 civil penalty to \$2,080 and  
17 Respondent agrees to satisfactorily complete the approved SEP as set forth in Exhibit No. 2 which  
18 is incorporated by reference. Respondent will be deemed to have completed the SEP when DEQ  
19 receives a SEP Completion Report. The SEP Completion Report shall contain the following  
20 information:

- 21           a. A description of the SEP as implemented;
- 22           b. Certification that the SEP has been fully implemented;
- 23           c. Itemized costs, documented by copies of purchase orders and receipts or cancelled  
24 checks; and
- 25           d. A description of the environmental and public health benefits resulting from  
26 implementation of the SEP.

27        ////



1 8. If any event occurs that is beyond Respondent's reasonable control and that causes or  
2 may cause a delay or deviation in performance of the requirements of paragraph 7 of this Section,  
3 Respondent shall immediately notify DEQ verbally of the cause of delay or deviation and its  
4 anticipated duration, the measures that have been or will be taken to prevent or minimize the delay  
5 or deviation, and the timetable by which Respondent proposes to carry out such measures.  
6 Respondent shall confirm in writing this information within five (5) working days of the onset of  
7 the event. It is Respondent's responsibility in the written notification to demonstrate to DEQ's  
8 satisfaction that the delay or deviation has been or will be caused by circumstances beyond the  
9 control and despite due diligence of Respondent. If Respondent so demonstrates, DEQ shall extend  
10 times of performance of related activities under this MAO in writing. Circumstances or events  
11 beyond Respondent's control include, but are not limited to, acts of nature, unforeseen strikes, work  
12 stoppages, fires, explosion, riot, sabotage, or war. Increased cost of performance or consultant's  
13 failure to provide timely reports may not be considered circumstances beyond Respondent's  
14 control.

15 9. This MAO constitutes a settlement and release by DEQ of all claims for civil penalties  
16 for the particular violations alleged in Section III. This release is conditioned upon the complete  
17 and satisfactory performance by Respondent of its obligations under this MAO, including  
18 completion of the SEP.

19 10. This MAO shall be binding on Respondent and its respective successors, agents, and  
20 assigns. The undersigned representative of Respondent certifies that he or she is fully authorized to  
21 execute and bind Respondent to this MAO. No change in ownership, corporate or partnership  
22 status of Respondent, or a change in the ownership of the properties affected by this MAO shall in  
23 any way alter any Respondent's obligation under this MAO, unless otherwise approved in writing  
24 by DEQ.

## 25 V. FINAL ORDER

26 The Commission hereby enters a final order:  
27

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1 1. Imposing upon Respondent a total civil penalty of \$10,400 for the violations alleged in  
2 this MAO, \$2,080 of which is due within thirty days after the effective date of this MAO. The  
3 remaining civil penalty (\$8,320) will be immediately due and owing to DEQ should Respondent  
4 fail to comply with the conditions of this MAO.

5 2. Requiring Respondent to submit documentation required in Section IV, paragraph 7  
6 above within 6 months from the effective date of this MAO unless Respondent requests and  
7 receives an extension of that date as set forth in Section IV, paragraph 8 above.

8 3. Requiring Respondent, in accordance with the DEQ's Internal Management Directive on  
9 SEPs, to:

10 a. Refrain from using the value of the SEP as a tax deduction or as part of a tax  
11 credit application; and,

12 b. Whenever Respondent publicizes the SEP or the results of the SEP, Respondent  
13 must state in a prominent manner that the project was undertaken in part as settlement of a DEQ  
14 enforcement action.

15 TYREE OIL, INC.

16 1/24/13  
17 Date

18 Ronald L Tyree  
Signature  
19 RONALD L. TYREE  
Name (print)  
20 PRESIDENT  
Title (print)

21 DEPARTMENT OF ENVIRONMENTAL QUALITY and  
22 ENVIRONMENTAL QUALITY COMMISSION

23 3/28/13  
24 Date

25 Leah E. Koss  
Leah E. Koss, Manager  
26 Office of Compliance and Enforcement  
27 on behalf of DEQ pursuant to OAR 340-012-0170  
on behalf of the EQC pursuant to OAR 340-011-0505

## EXHIBIT 1

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

- VIOLATION: Causing or allowing the discharge of oil into waters of the state without a permit authorizing such a discharge, in violation of ORS 468B.050(1)(a) and ORS 468B.450.
- CLASSIFICATION: This is a Class I violation pursuant to OAR 340-012-0055(1)(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 \$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)(K). The base penalty is doubled pursuant to OAR 340-012-0155(1)(b) because the discharge was a spill to waters of the state caused by Respondent's negligent conduct. The base penalty is therefore \$8,000.
- "P" is Respondent's prior significant actions as defined in OAR 340-012-0030(17) and receives a value of 0 according to OAR 340-012-0145(2)(a)(A) because Respondent has no prior significant actions.
- "H" is Respondent's history of correcting prior significant actions and receives a value of 0 according to OAR 340-012-0145(3)(a)(C) because Respondent has no prior significant actions.
- "O" is whether the violation was repeated or ongoing and receives a value of 2 according to OAR 340-012-0145(4)(a)(B), because the oil was present in the Willamette River on at least January 25 and 26, 2009.
- "M" is the mental state of the Respondent and receives a value of 2 according to OAR 340-012-0145(5)(a)(B), because the violation was caused by Respondent's negligence. Negligence means Respondent failed to take reasonable care to avoid a foreseeable risk of a violation. The release of diesel occurred when the bottom of an above-ground storage tank leaked, allowing product to enter the secondary containment. Once the leak was discovered, Respondent began to transfer diesel fuel to another tank. As the product was being transferred, pressure in the tank was released, causing the entire contents of the tank to be emptied into the secondary containment. The floor of the secondary containment is not



impervious but is instead constructed of gravel and dirt. Respondent's facility is located within ½ mile of the Willamette River. Respondent failed to take reasonable care to avoid allowing diesel fuel to enter the environment when it failed to construct its secondary containment structure in such a manner as to prevent oil from entering soil beneath the storage tank. Respondent should have known that once oil entered the soil, based on the proximity of the property to the river, a discharge of oil into waters of the state could occur.

"C" is Respondent's efforts to correct the violation and receives a value of -1 according to OAR 340-012-0145(6)(a)(C) because Respondent took affirmative efforts to minimize the effects of the violation. Specifically, Respondents installed booms and absorbent pads into the Willamette River. Additionally, on February 4, 2009, Respondent removed the diesel from and cleaned the stormwater system to prevent further discharges.

"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 \$0 as there is insufficient information reasonably available to DEQ to make an estimate of the costs avoided or delayed.

PENALTY CALCULATION:

$$\begin{aligned} \text{Penalty} &= \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB} \\ &= \$8,000 + [(0.1 \times \$8,000) \times (0 + 0 + 2 + 2 - 1)] + \$0 \\ &= \$8,000 + (\$800 \times 3) + \$0 \\ &= \$8,000 + \$2,400 + \$0 \\ &= \$10,400 \end{aligned}$$



## SUPPLEMENTAL ENVIRONMENTAL PROJECT #1

### DESCRIPTION OF PROJECT

Tyree would install a state-of-the-art secondary containment system adjacent to a rail spur at its new transload facility located at 2340 Irving Road in Eugene, Oregon (Facility). The vault would be built out of structurally reinforced concrete and be about 4 feet wide, 4 feet deep, and extend approximately 550 feet, covering the entire length of the rail spur. The vault would be designed to capture and contain petroleum products released during loading or unloading of rail cars, including a "worst-case" release caused by a massive failure of the loading or storage systems. The proposed size of the vault would contain all products discharged during typical operations but also those discharged in a worst-case release, preventing significant damage to the environment while providing a high level of safety for emergency personnel. The proposed vault would provide containment far beyond that called for by SPCC rules, which require secondary containment structures be designed and built to contain a most likely discharge, taking into consideration the specific features of the facility and its operations. A most likely discharge in this area of the Facility would consist of drips or leaks from the loading or storage systems. The proposed vault would contain a substantially larger volume of product than expected in a most likely discharge. The vault would provide a secondary environmental benefit by capturing potentially contaminated stormwater during high rain events before the water entered the Facility's stormwater system.

### COST AND TIME TO IMPLEMENT

The project would take approximately four months to implement and cost approximately \$200,000.

### SEP CREDIT ANALYSIS

Tyree, as a small business employing fewer than 100 people, would deserve dollar-for-dollar credit for this outstanding pollution prevention project. The project would benefit the environment by greatly reducing the risk of a release of hazardous substances into the environment. The project is especially significant because the Facility is located within the Cascadia subduction zone, making it susceptible to earthquakes. Scientists predict a major earthquake will strike this region within next 50 years. The project could be a benchmark for control of worst-case discharges at other petroleum storage and distribution facilities located in earthquake-prone areas.

In 2011, EPA Region 10 approved a similar SEP for Pacific Functional Fluids, L.L.C. (PFF). EPCRA 10-2011-0014. PFF installed a secondary containment system at its facility designed to capture and contain spills along a rail line. PFF's system was not as robust as the one proposed by Tyree. PFF's system consisted of interlocking polyethylene pans connected to a holding tank. Tyree's proposed vault would be much larger in scope, design, and capability.

**Tyree Oil, Inc.**

**Description of Potential Receiving Waters for Supplemental Environmental Project #1 (Vault)**

The following describes the potential receiving waters in the vicinity of the Tyree's new transload facility located at 2340 Irving Road in Eugene, Oregon (Facility).

Stormwater runoff from the Facility will discharge to the A-1 Channel. The A-1 Channel connects to Amazon Creek approximately 7.9 miles north-northwest of the Facility. Amazon Creek discharges to the Long Tom River approximately 11.8 miles north of the Facility. The Long Tom River connects to the Willamette River approximately 21.5 miles north of the Facility. The Long Tom and Willamette Rivers are prime fish and migratory bird habitat with seasonal wetlands located along a 21.5 mile riparian corridor which begins approximately 2350 feet north of the Facility.

There are no containment structures or water treatment systems available to capture petroleum once a release has entered the A-1 Channel. This leaves the surrounding riparian corridor and connecting waters at risk in the event of a release of petroleum into the environment.

Tyree would construct a Vault to capture and contain petroleum products released during loading or unloading of railcars at the Facility, including a "worst-case" release caused by a massive failure of the loading or storage systems. The Vault would benefit the environment by preventing a potential release of petroleum products from entering the A-1 Channel and its connecting waters.