

DEPARTMENT OF ENVIRONMENTAL QUALITY

DIVISION 12

ENFORCEMENT PROCEDURE AND CIVIL PENALTIES

340-012-0026

Policy

(1) The goals of enforcement are to:

(a) Protect the public health and the environment;

(b) Obtain and maintain compliance with applicable environmental statutes and the department's rules, permits and orders;

(c) Deter future violators and violations; and

(d) Ensure an appropriate and consistent statewide enforcement program.

(2) The department shall endeavor by conference, conciliation and persuasion to solicit compliance.

(3) The department endeavors to address all alleged violations in order of priority, based on the actual or potential impact to human health or the environment, using increasing levels of enforcement as necessary to achieve the goals set forth in section (1) of this rule.

(4) The department subjects violators who do not comply with an initial enforcement action to increasing levels of enforcement until they come into compliance.

(5) The department assesses civil penalties based on the class of violation, the magnitude of violation, the application of the penalty matrices and aggravating and mitigating factors, and the economic benefit realized by the respondent.

(a) **Classification of Violation.** Each violation is classified as Class I, Class II or Class III. Class I violations have the greatest likelihood of actual or potential impact to human health or the environment or are of the greatest significance to the regulatory structure of the given environmental program. Class II violations are less likely than Class I violations to have actual or potential impact to human health or the environment. Class III violations have the least likelihood of actual or potential impact to human health and the environment. (See OAR 340-012-0053 to 340-012-0097.)

(b) **Magnitude of Violation.** For Class I and Class II violations, the department uses a selected magnitude or determines the magnitude based on the impact to human health and the environment resulting from that particular violation. A magnitude is not determined for Class III violations. (See OAR 340-012-0130 and 340-012-0135.)

(c) **Base Penalty Matrices.** The department uses the base penalty matrices to determine an appropriate penalty based on the classification and magnitude of the violation. (See OAR 340-012-0140.)

(d) **Aggravating and Mitigating Factors.** The department uses the aggravating and mitigating factors to adjust the base penalty to reflect the particular circumstances surrounding the violation. These factors include the duration of the violation, the respondent's past compliance history, the mental state of the respondent, and the respondent's cooperativeness in achieving compliance or remedying the situation. (See OAR 340-012-0145.)

(e) Economic Benefit. The department adds the economic benefit gained by the respondent to the civil penalty to achieve deterrence and create equity between the respondent and those regulated persons who have borne the expense of maintaining compliance. (See OAR 340-012-0150.)

(6) The department endeavors to issue a formal enforcement action within six months from completion of the investigation of the violation.

Stat. Auth.: ORS 459.995, 466, 467, 468.020, 468.996, 468A & 468B

Stats. Implemented: ORS 183.090, 454.635, 454.645, 459.376, 459.995, 465.900, 466.210, 466.880-895, 468.090-140, 468A.990, 468.992, 468B.025, 468B.220 & 468B.450

Hist.: DEQ 4-1989, f. & cert. ef. 3-14-89; DEQ 15-1990, f. & cert. ef. 3-30-90; DEQ 21-1992, f. & cert. ef. 8-11-92; DEQ 4-2005, f. 5-13-05, cert. ef. 6-1-05

340-012-0027

Rule Effective Date

These rules will become effective on March 31, 2006.

Stat. Auth.: ORS 468.020

Stats. Implemented: ORS 183.355, 454, 459, 465, 466, 468, 468A & 468B

Hist.: DEQ 4-2005, f. 5-13-05, cert. ef. 6-1-05; DEQ 4-2006, f. 3-29-06, cert. ef. 3-31-06

340-012-0028

Scope of Applicability

Amendments to OAR 340-012-0026 to 340-012-0170 shall only apply to formal enforcement actions issued by the Department on or after the effective date of such amendments and not to any contested cases pending or formal enforcement actions issued prior to the effective date of such amendments.

Stat. Auth.: ORS 454, 459.995, 466, 467, 468.020 & 468.996

Stats. Implemented: ORS 183.090, 454.635, 454.645, 459.376, 459.995, 465.900, 466.210, 466.880-895, 468.090-140, 468A.990, 468.992, 468B.025, 468B.220 & 468B.450

Hist.: DEQ 4-1989, f. & cert. ef. 3-14-89; DEQ 15-1990, f. & cert. ef. 3-30-90; DEQ 21-1992, f. & cert. ef. 8-11-92; Renumbered from 340-012-0080; DEQ 4-2005, f. 5-13-05, cert. ef. 6-1-05

340-012-0030

Definitions

All terms used in this division have the meaning given to the term in the appropriate substantive statute or rule or, in the absence of such definition, their common and ordinary meaning unless otherwise required by context or defined below:

(1) "Alleged Violation" means any violation cited in a Notice of Noncompliance, Warning Letter, Pre-Enforcement Notice, or Expedited Enforcement Offer that the department or other government agency records after observation, investigation or data collection, or for which the department receives independent evidence sufficient to issue a Notice of Noncompliance, Warning Letter, Pre-Enforcement Notice, or Expedited Enforcement Offer.

(2) "Class I Equivalent," which is used to determine the value of the "P" factor in the civil penalty formula, means two Class II violations, one Class II and two Class III violations, or three Class III violations.

(3) "Commission" means the Environmental Quality Commission.

- (4) "Compliance" means meeting the requirements of the applicable statutes, and commission or department rules, permits or orders.
- (5) "Conduct" means an act or omission.
- (6) "Director" means the director of the department or the director's authorized deputies or officers.
- (7) "Department" means the Department of Environmental Quality.
- (8) "Expedited Enforcement Offer" (EEO) means a written offer by the department to settle an alleged violation pursuant to the expedited procedure described in OAR 340-012-0170(2).
- (9) "Flagrant" or "flagrantly" means the respondent had actual knowledge that the conduct was unlawful and consciously set out to commit the violation.
- (10) "Formal Enforcement Action" (FEA) means a proceeding initiated by the department that entitles a person to a contested case hearing or that settles such entitlement, including, but not limited to, Notices of Violation, Notices of Civil Penalty, Penalty Demand Notices, department orders, commission orders, Mutual Agreement and Orders, and other consent orders.
- (11) "Intentional" means the respondent acted with a conscious objective to cause the result of the conduct.
- (12) "Magnitude of the Violation" means the extent and effects of a respondent's deviation from statutory requirements, rules, standards, permits or orders.
- (13) "Negligence" or "Negligent" means the respondent failed to take reasonable care to avoid a foreseeable risk of conduct constituting or resulting in a violation.
- (14) "Penalty Demand Notice" (PDN) means a written notice issued to a respondent by the department demanding payment of a stipulated penalty pursuant to the terms of an agreement entered into between the respondent and the department.
- (15) "Pre-Enforcement Notice" (PEN) means a written notice of an alleged violation that the department is considering for formal enforcement.
- (16) "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.
- (17) "Prior Significant Action" (PSA) means any violation cited in an FEA, with or without admission of a violation, that becomes final by payment of a civil penalty, by a final order of the commission or the department, or by judgment of a court.
- (18) "Reckless" or "Recklessly" means the respondent consciously disregarded a substantial and unjustifiable risk that the result would occur or that the circumstance existed. The risk must be of such a nature and degree that disregarding that risk constituted a gross deviation from the standard of care a reasonable person would observe in that situation.
- (19) "Residential Owner-Occupant" means the person who owns or otherwise possesses a single family dwelling unit, and who occupies that dwelling at the time of the alleged violation. The violation must involve or relate to the normal uses of a dwelling unit.
- (20) "Respondent" means the person to whom an FEA is issued.
- (21) "Systematic" means any violation that occurred or occurs on a regular basis.

(22) "Violation" means a transgression of any statute, rule, order, license, permit, or any part thereof and includes both acts and omissions.

(23) "Warning Letter" (WL) means a written notice of an alleged violation for which formal enforcement is not anticipated.

(24) "Willful" means the respondent had a conscious objective to cause the result of the conduct and the respondent knew or had reason to know that the result was not lawful.

Stat. Auth.: ORS 468.020 & 468.130

Stats. Implemented: ORS 459.376, 459.995, 465.900, 468.090-140, 466.880 - 466.895, 468.996 - 468.997, 468A.990 -

468A.992 & 468B.220

Hist.: DEQ 78, f. 9-6-74, ef. 9-25-74; DEQ 22-1984, f. & ef. 11-8-84; DEQ 22-1988, f. & cert. ef. 9-14-88; DEQ 4-1989, f. & cert. ef. 3-14-89; DEQ 15-1990, f. & cert. ef. 3-30-90; DEQ 21-1992, f. & cert. ef. 8-11-92; DEQ 4-1994, f. & cert. ef. 3-14-94; DEQ 19-1998, f. & cert. ef. 10-12-98; DEQ 4-2005, f. 5-13-05, cert. ef. 6-1-05; DEQ 14-2008, f. & cert. ef. 11-10-08

340-012-0035 [Renumbered to 340-011-0540]

340-012-0038

Warning Letters, Pre-Enforcement Notices, and Notices of Permit Violation and Expedited Enforcement Offers

(1) A Warning Letter (WL) is a written notice of an alleged violation for which formal enforcement is not anticipated. WLs may contain an opportunity to correct noncompliance as a means of avoiding formal enforcement. A WL generally will identify the alleged violation(s) found, what needs to be done to comply, and the consequences of further noncompliance. WLs will be issued under the direction of a manager or authorized representative. A person receiving a WL may provide information to the department to clarify the facts surrounding the alleged violation(s). If the department determines that the conduct identified in the WL did not occur, the department will withdraw or amend the WL, as appropriate, within 30 days. A WL is not an FEA and does not afford any person a right to a contested case hearing.

(2) A Pre-Enforcement Notice (PEN) is a written notice of an alleged violation that the department is considering for formal enforcement. A PEN generally will identify the alleged violations found, what needs to be done to comply, the consequences of further noncompliance, and the formal enforcement process that may occur. PENs will be issued under the direction of a manager or authorized representative. A person receiving a PEN may provide information to the department to clarify the facts surrounding the alleged violations. If the department determines that the conduct identified in the PEN did not occur, the department will withdraw or amend the PEN, as appropriate, within 30 days. Failure to send a PEN does not preclude the department from issuing an FEA. A PEN is not a formal enforcement action and does not afford any person a right to a contested case hearing.

(3) Notice of Permit Violation (NPV):

(a) Except as provided in subsection (3)(e) below, an NPV will be issued for the first occurrence of an alleged Class I violation of an air, water or solid waste permit issued by the department, and for repeated or continuing alleged Class II or Class III violations of an air, water, or solid waste permit issued by the department when a Notice of Noncompliance or WL has failed to achieve compliance or satisfactory progress toward compliance.

(b) An NPV is in writing, specifies the violation and states that a civil penalty will be imposed for the permit violation unless the permittee submits one of the following to the department within five working days of receipt of the NPV:

(A) A written response from the permittee certifying that the permittee is complying with all terms and conditions of the permit from which the violation is cited. The response must include a description of the information on which the permittee's certification relies sufficient to enable the department to determine that compliance has been achieved.

The certification must be signed by a Responsible Official based on information and belief after making reasonable inquiry. For purposes of this rule, "Responsible Official" means one of the following:

(i) For a corporation: a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy- or decision-making functions for the corporation; or the manager of one or more manufacturing, production, or operating facilities if authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures.

(ii) For a partnership or sole proprietorship: a general partner or the proprietor, respectively.

(iii) For a municipality, state, federal, or other public agency: either a principal executive officer or appropriate elected official.

(B) A written proposal, acceptable to the department, describing how the permittee will bring the facility into compliance with the permit. At a minimum, an acceptable proposal must include the following:

(i) A detailed plan and time schedule for achieving compliance in the shortest practicable time;

(ii) A description of the interim steps that will be taken to reduce the impact of the permit violation until the permittee is in compliance with the permit; and

(iii) A statement that the permittee has reviewed all other conditions and limitations of the permit and no other violations of the permit were discovered; or

(C) For a water quality permit violation, a written request to the department that the department follow procedures described in ORS 468B.032. Notwithstanding the requirement for a response to the department within five working days, the permittee may file a request under this paragraph within 20 days from the date of service of the NPV.

(c) If a compliance schedule approved by the department under paragraph (3)(b)(B) provides for a compliance period of more than six months, the compliance schedule must be incorporated into a final order that provides for stipulated penalties in the event of any failure to comply with the approved schedule. The stipulated penalties may be set at amounts equivalent to the base penalty amount appropriate for the underlying violation as set forth in OAR 340-012-0140;

(d) If the NPV is issued by a regional authority, the regional authority may require that the permittee submit information in addition to that described in subsection (3)(b).

(e) The department may assess a penalty without first issuing an NPV if:

(A) The violation is intentional;

(B) The water or air violation would not normally occur for five consecutive days;

(C) The permittee has received an NPV or an FEA with respect to any violation of the permit within the 36 months immediately preceding the alleged violation;

(D) The permittee is subject to the Oregon Title V operating permit program and violates any rule or standard adopted under ORS Chapter 468A or any permit or order issued under Chapter 468A; or

(E) The requirement to provide an NPV would disqualify a state program from federal approval or delegation. The permits and permit conditions to which this NPV exception applies include:

(i) Air Contaminant Discharge Permit (ACDP) conditions that implement the State Implementation Plan under the federal Clean Air Act;

(ii) Water Pollution Control Facility (WPCF) permit conditions that implement the Underground Injection Control program under the federal Safe Drinking Water Act;

(iii) National Pollutant Discharge Elimination System (NPDES) Permit conditions; and

(iv) Municipal Landfill Solid Waste Disposal Permit conditions that implement Subtitle D of the federal Solid Waste Disposal Act.

(f) For purposes of section (3), a "permit" includes permit renewals and modifications. No such renewal or modification will result in the requirement that the department provide the permittee with an additional advance notice before formal enforcement if the permittee has received an NPV, or other FEA, with respect to the permit, within the 36 months immediately preceding the alleged violation.

(4) An Expedited Enforcement Offer (EEO) is a written offer by the department to settle an alleged violation that the department has determined may be resolved through its expedited enforcement procedures. An EEO will identify the alleged violation or violations to which the EEO applies and the amount for which the department will settle the alleged violation(s). It may also specify corrective actions that must be taken to address those violations. An EEO constitutes the department's offer to settle the violation(s) through a consent order. The EEO will be incorporated into a final commission order only if the alleged violator accepts the department's offer to settle by signing the EEO, paying the full amount stipulated in the offer, and waiving any right to administrative and judicial review regarding the EEO, the final commission order, or any violations settled therein. Violations cited in an EEO that are incorporated into a final commission order will be treated as "prior significant actions" in any subsequent formal enforcement action.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 468.020

Stats. Implemented: ORS 459.376, 468.090 - 468.140, 468A.990 & 468B.025

Hist.: DEQ 78, f. 9-6-74, ef. 9-25-74; DEQ 25-1979, f. & ef. 7-5-79; DEQ 22-1984, f. & ef. 11-8-84; DEQ 16-1985, f. & ef. 12-3-85; DEQ 22-1988, f. & cert. ef. 9-14-88; DEQ 4-1989, f. & cert. ef. 3-14-89; DEQ 15-1990, f. & cert. ef. 3-30-90; DEQ 21-1992, f. & cert. ef. 8-11-92; DEQ 4-1994, f. & cert. ef. 3-14-94; DEQ 19-1998, f. & cert. ef. 10-12-98; Renumbered from 340-012-0040, DEQ 4-2005, f. 5-13-05, cert. ef. 6-1-05; DEQ 14-2008, f. & cert. ef. 11-10-08

340-012-0040 [Renumbered to 340-012-0038]

340-012-0041

Formal Enforcement Actions

(1) FEAs may require that the respondent take action within a specified timeframe or may assess civil penalties. The department may issue an NPV or FEA whether or not it has previously issued a Notice of Noncompliance, WL or PEN related to the issue or violation. Unless specifically prohibited by statute or rule, the department may issue an FEA without first issuing an NPV.

(2) A Notice of Civil Penalty Assessment (CPA) may be issued for the occurrence of any class of violation that is not limited by the NPV requirement of OAR 340-012-0038(3).

(3) An Order may be in the form of a commission or department order, including any written order that has been consented to in writing by the parties thereto, including but not limited to, a Mutual Agreement and Order (MAO).

(4) A Penalty Demand Notice (PDN) may be issued according to the terms of any written final order that has been consented to in writing by the parties thereto, including, but not limited to, a MAO.

(5) The enforcement actions described in sections (2) through (4) of this rule in no way limit the department or commission from seeking any other legal or equitable remedies, including revocation of any department-issued license or permit, provided by ORS Chapters 183, 454, 459, 465, 466, 467, 468, 468A, and 468B.

Stat. Auth.: ORS 454.625, 459.376, 465.400-410, 466.625, 467.030, 468.020, 468A.025, 468A.045 & 468B.035
Stats. Implemented: ORS 454.635, 454.645, 459.376, 459.995, 465.900, 466.210, 466.880-895, 468.090-140,
468A.990, 468.992, 468B.025, 468B.220 & 468B.450
Hist.: DEQ 4-1989, f. & cert. ef. 3-14-89; DEQ 15-1990, f. & cert. ef. 3-30-90; DEQ 21-1992, f. & cert. ef. 8-11-92;
DEQ 4-1994, f. & cert. ef. 3-14-94; DEQ 19-1998, f. & cert. ef. 10-12-98; DEQ 4-2005, f. 5-13-05, cert. ef. 6-1-05

340-012-0042 [Renumbered to 340-012-0140]

340-012-0045

Civil Penalty Determination Procedure

Except as provided in OAR 340-012-0038(3), in addition to any other liability, duty, or other penalty provided by law, the department may assess a civil penalty for any violation. Except for civil penalties assessed under 340-012-0155(2), the department determines the amount of the civil penalty using the following procedures:

- (1) The classification of each violation is determined by consulting OAR 340-012-0053 to 340-012-0097;
- (2) The magnitude of the violation is determined as follows:
 - (a) The selected magnitude categories in OAR 340-012-0135 are used.
 - (b) If a selected magnitude is not specified in OAR 340-012-0135, or if information is not reasonably available to determine which selected magnitude applies, 340-012-0130 is used to determine the magnitude of the violation.
 - (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.
 - (d) The base penalty is adjusted by the application of aggravating or mitigating factors (P = prior significant actions, H = history in correcting prior significant actions, O = repeated or ongoing violation, M = mental state of the violator and C = efforts to correct) as set forth in OAR 340-012-0145.
 - (e) The appropriate economic benefit (EB) is determined as set forth in OAR 340-012-0150.(2) The results of the determinations made in section (1) are applied in the following formula to calculate the penalty: $BP + [(0.1 \times BP) \times (P + H + O + M + C)] + EB$.
- (3) In addition to the factors listed in section (1) of this rule, the director may consider any other relevant rule of the commission in assessing a civil penalty and will state the effect that rule had on the penalty amount.

Stat. Auth.: ORS 468.020
Stats. Implemented: ORS 454.635, 454.645, 459.376, 459.995, 465.900, 466.210, 466.880-895, 468.090-140,
468.992, 468A.990, 468B.025, 468B.220 & 468B.450
Hist.: DEQ 78, f. 9-6-74, ef. 9-25-74; DEQ 22-1984, f. & ef. 11-8-84; DEQ 22-1988, f. & cert. ef. 9-14-88; DEQ 4-1989, f. & cert. ef. 3-14-89; DEQ 15-1990, f. & cert. ef. 3-30-90; DEQ 21-1992, f. & cert. ef. 8-11-92; DEQ 4-1994, f. & cert. ef. 3-14-94; DEQ 19-1998, f. & cert. ef. 10-12-98; DEQ 1-2003, f. & cert. ef. 1-31-03; DEQ 4-2005, f. 5-13-05, cert. ef. 6-1-05

340-012-0047 [Renumbered to 340-012-0170]

340-012-0048 [Renumbered to 340-012-0165]

340-012-0049 [Renumbered to 340-012-0155]

340-012-0050 [Renumbered to 340-012-0054]

340-012-0053

Violations that Apply to all Programs

(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;
- (b) Submitting false, inaccurate or incomplete information to the department where the submittal masked a violation, caused environmental harm, or caused the department to misinterpret any substantive fact;
- (c) Failing to provide access to premises or records as required by statute, permit, order, consent order, agreement or consent judgment (formerly called judicial consent decree); or
- (d) Using fraud or deceit to obtain department approval, permit or license.

(2) Class II: Violating any otherwise unclassified requirement.

Stat. Auth.: ORS 468.020 & 468.130

Stats. Implemented: ORS 459.376, 459.995, 465.900, 465.992, 466.990 - 466.994, 468.090 - 468.140 & 468B.450

Hist.: DEQ 4-2005, f. 5-13-05, cert. ef. 6-1-05; DEQ 4-2006, f. 3-29-06, cert. ef. 3-31-06

340-012-0054

Air Quality Classification of Violations

(1) Class I:

- (a) Constructing a new source or modifying an existing source without first obtaining a required New Source Review/Prevention of Significant Deterioration (NSR/PSD) permit;
- (b) Operating a major source, as defined in OAR 340-200-0020, without first obtaining the required permit;
- (c) Exceeding a Plant Site Emission Limit (PSEL);
- (d) Failing to install control equipment or meet performance standards as required by New Source Performance Standards under OAR 340 division 238 or National Emission Standards for Hazardous Air Pollutant Standards under OAR 340 division 244;
- (e) Exceeding a hazardous air pollutant emission limitation;
- (f) Failing to comply with an Emergency Action Plan;
- (g) Exceeding an opacity or emission limit (including a grain loading standard) or violating an operational or process standard, that was established pursuant to New Source Review/Prevention of Significant Deterioration (NSR/PSD), or the Western Backstop SO₂ Trading Program;
- (h) Exceeding an emission limit or violating an operational or process standard that was established to limit emissions to avoid classification as a major source, as defined in OAR 340-200-0020;
- (i) Exceeding an emission limit, including a grain loading standard, by a major source, as defined in OAR 340-200-0020, when the violation was detected during a reference method stack test;
- (j) Failing to perform testing or monitoring, required by a permit, rule or order, that results in failure to show compliance with a Plant Site Emission Limit (PSEL) or with an emission limitation or a performance standard set pursuant to New Source Review/Prevention of Significant Deterioration (NSR/PSD), National Emission Standards for

Hazardous Air Pollutants (NESHAP), New Source Performance Standards (NSPS), Reasonable Achievable Control Technology (RACT), Best Achievable Control Technology (BACT), Maximum Achievable Control Technology (MACT), Typically Achievable Control Technology (TACT), Lowest Achievable Emissions Rates (LAER) or adopted pursuant to section 111(d) of the Federal Clean Air Act;

- (k) Causing emissions that are a hazard to public safety;
- (l) Violating a work practice requirement for asbestos abatement projects;
- (m) Storing or accumulating friable asbestos material or asbestos-containing waste material;
- (n) Conducting an asbestos abatement project, by a person not licensed as an asbestos abatement contractor;
- (o) Violating an OAR 340 division 248 disposal requirement for asbestos-containing waste material;
- (p) Failing to hire a licensed contractor to conduct an asbestos abatement project;
- (q) Openly burning materials which are prohibited from being open burned anywhere in the state by OAR 340-264-0060(3), or burning materials in a solid fuel burning device, fireplace, trash burner or other device as prohibited by OAR 340-262-0900(1).
- (r) Failing to install certified vapor recovery equipment.
- (s) Delivering for sale a noncompliant vehicle by an automobile manufacturer in violation of Oregon Low Emission Vehicle rules set forth in OAR 340 division 257.
- (t) Exceeding an Oregon Low Emission Vehicle average emission limit set forth in OAR 340 division 257.
- (u) Failing to comply with Zero Emission Vehicle (ZEV) sales requirements set forth in OAR 340 division 257.
- (v) Failing to obtain a Motor Vehicle Indirect Source Permit as required in OAR 340 division 257.
- (w) Selling, leasing, or renting a noncompliant vehicle by an automobile dealer or rental car agency in violation of Oregon Low Emission Vehicle rules set forth in OAR 340 division 257.

(2) Class II:

- (a) Constructing or operating a source required to have an Air Contaminant Discharge Permit (ACDP) without first obtaining such permit, unless otherwise classified;
- (b) Violating the terms or conditions of a permit or license, unless otherwise classified;
- (c) Modifying a source in such a way as to require a permit modification from the department without first obtaining such approval from the department, unless otherwise classified;
- (d) Exceeding an opacity limit, unless otherwise classified;
- (e) Exceeding a Volatile Organic Compound (VOC) emission standard, operational requirement, control requirement or VOC content limitation established by OAR 340 division 232;
- (f) Failing to timely submit an ACDP annual report;
- (g) Failing to timely submit a certification, report, or plan as required by rule or permit, unless otherwise classified;

- (h) Failing to timely submit a permit application or permit renewal application;
- (i) Failing to comply with the open burning requirements for commercial, construction, demolition, or industrial wastes in violation of OAR 340-264-0080 through 0180;
- (j) Failing to comply with open burning requirements in violation of any provision of OAR 340 division 264, unless otherwise classified; or burning materials in a solid fuel burning device, fireplace, trash burner or other device as prohibited by OAR 340-262-0900(2).
- (k) Failing to replace, repair, or modify any worn or ineffective component or design element to ensure the vapor tight integrity and efficiency of a stage I or stage II vapor collection system;
- (l) Failing to provide notification of an asbestos abatement project;
- (m) Failing to perform a final air clearance test or submit an asbestos abatement project air clearance report for an asbestos abatement project; or
- (n) Violating on road motor vehicle refinishing rules contained in OAR 340-242-0620.
- (o) Failing to comply with an Oregon Low Emission Vehicle reporting, notification, or warranty requirement set forth in OAR division 257.

(3) Class III:

- (a) Failing to perform testing or monitoring required by a permit, rule or order where missing data can be reconstructed to show compliance with standards, emission limitations or underlying requirements;
- (b) Constructing or operating a source required to have a Basic Air Contaminant Discharge Permit without first obtaining the permit;
- (c) Modifying a source in such a way as to require construction approval from the department without first obtaining such approval from the department, unless otherwise classified;
- (d) Failing to provide proper notification of an asbestos abatement project or failing to revise a notification when necessary, unless otherwise classified;
- (e) Submitting a late air clearance report that demonstrates compliance with the standards for an asbestos abatement project; or
- (f) Licensing a noncompliant vehicle by an automobile dealer or rental car agency in violation of Oregon Low Emission Vehicle rules set forth in OAR 340 division 257.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 468.020, 468A.025 & 468A.045

Stats. Implemented: ORS 468.020 & 468A.025

Hist.: DEQ 78, f. 9-6-74, ef. 9-25-74; DEQ 5-1980, f. & ef. 1-28-80; DEQ 22-1984, f. & ef. 11-8-84; DEQ 22-1988, f. & cert. ef. 9-14-88; DEQ 4-1989, f. & cert. ef. 3-14-89; DEQ 15-1990, f. & cert. ef. 3-30-90; DEQ 31-1990, f. & cert. ef. 8-15-90; DEQ 2-1992, f. & cert. ef. 1-30-92; DEQ 21-1992, f. & cert. ef. 8-11-92; DEQ 19-1993, f. & cert. ef. 11-4-93; DEQ 20-1993(Temp), f. & cert. ef. 11-4-93; DEQ 4-1994, f. & cert. ef. 3-14-94; DEQ 13-1994, f. & cert. ef. 5-19-94; DEQ 21-1994, f. & cert. ef. 10-14-94; DEQ 22-1996, f. & cert. ef. 10-22-96; DEQ 19-1998, f. & cert. ef. 10-12-98; DEQ 6-2001, f. 6-18-01, cert. ef. 7-1-01; Renumbered from 340-012-0050, DEQ 4-2005, f. 5-13-05, cert. ef. 6-1-05; DEQ 4-2006, f. 3-29-06, cert. ef. 3-31-06; DEQ 6-2006, f. & cert. ef. 6-29-06; DEQ 2-2011, f. 3-10-11, cert. ef. 3-15-11

340-012-0055

Water Quality Classification of Violations

(1) Class I:

- (a) Causing pollution of waters of the state;
- (b) Reducing the water quality of waters of the state below water quality standards;
- (c) Discharging any waste that enters waters of the state, either without a waste discharge permit or from a discharge point not authorized by a waste discharge permit;
- (d) Operating a discharge source or conducting a disposal activity without first obtaining an individual permit or applying for coverage under a general permit for that discharge or disposal activity;
- (e) Failing to comply with statute, rule, or permit requirements regarding notification of a spill or upset condition, which results in a non-permitted discharge to public waters;
- (f) Failing to take appropriate action, as required by the municipal wastewater treatment works owner's department-approved pretreatment-compliance oversight program, against an industrial discharger to the municipal treatment works who violates any pretreatment standard or requirement, if the violation impairs or damages the treatment works, or causes major harm or poses a major risk of harm to public health or the environment;
- (g) Making unauthorized changes, modifications, or alterations to a facility operating under a Water Pollution Control Facility (WPCF) or National Pollutant Discharge Elimination System (NPDES) permit;
- (h) Allowing operation or supervision of a wastewater treatment and collection system without proper certification, by the permittee and/or owner;
- (i) Applying biosolids or domestic septage to a parcel of land that does not have department approval for land application;
- (j) Applying biosolids that do not meet the pollutant, pathogen or one of the vector attraction reduction requirements of 40 CFR 503.33(b)(1) through (10);
- (k) Violating a technology based effluent limitation, except for removal efficiency, in an NPDES or WPCF permit if:
 - (A) The discharge level (except for pH and bacteria) exceeds the limitation by 50 percent or more;
 - (B) The discharge is outside the permitted pH range by more than 2 pH units;
 - (C) The discharge exceeds a bacteria limit as a result of an inoperative disinfection system where there is no disinfection; or
 - (D) The discharge of reclaimed water exceeds a bacteria limit by more than five times the limit.
- (l) Violating a water quality based effluent limitation in an NPDES permit;
- (m) Violating a WPCF permit limitation in a designated groundwater management area if the exceedance is of a parameter for which the groundwater management area was established;
- (n) Failing to report an effluent limitation exceedance;
- (o) Failing to collect monitoring data required in Schedule B of the permit;

(p) Contracting for operation or operating a prohibited Underground Injection Control (UIC) system other than a cesspool that only disposes of human waste;

(q) Operating an Underground Injection Control (UIC) system that causes a data verifiable violation of federal drinking water standards in an aquifer used as an underground source of drinking water; or

(r) Failing to implement an erosion and sediment control plan in accordance with an NPDES permit.

(2) Class II:

(a) Violating a technology based effluent limitation, except for removal efficiency, in an NPDES or WPCF permit if:

(A) the discharge level (except for pH and bacteria) exceeds the limitation by 20 percent or more, but less than 50 percent, for biochemical oxygen demand (BOD), carbonaceous chemical oxygen demand (CBOD), and total suspended solids (TSS), or by 10 percent or more, but less than 50 percent, for all other limitations;

(B) the discharge is outside the permitted pH range by more than 1 pH unit but less than or equal to 2 pH units;

(C) the discharge exceeds a bacteria limit by a factor of five or more, unless otherwise classified; or

(D) the discharge of reclaimed water exceeds a bacteria limit by an amount equal to or less than five times the limit.

(b) Failing to timely submit a report or plan as required by rule, permit, or license, unless otherwise classified;

(c) Causing any wastes to be placed in a location where such wastes are likely to be carried into waters of the state by any means;

(d) Violating any management, monitoring, or operational plan established pursuant to a waste discharge permit, unless otherwise classified; or

(e) Failing to timely submit or implement a Total Maximum Daily Load (TMDL) Implementation Plan, by a Designated Management Agency (DMA), as required by department order.

(3) Class III:

(a) Failing to submit a complete discharge monitoring report;

(b) Violating a technology based effluent limitation, except for removal efficiency, in an NPDES or WPCF permit if:

(A) the discharge (except for pH and bacteria) exceeds the limitation by less than 20 percent for biochemical oxygen demand (BOD), carbonaceous chemical oxygen demand (CBOD), and total suspended solids (TSS), or by less than 10 percent for all other limitations;

(B) the discharge is outside the permitted pH range by 1 pH unit or less; or

(C) the discharge (except for reclaimed water) exceeds a bacteria limit by less than five times the limit.

(c) Failing to achieve a removal efficiency established in an NPDES or WPCF permit;

(d) Failing to register an Underground Injection Control (UIC) system, except for a UIC system prohibited by rule; or

(e) Failing to follow the owner's department-approved pretreatment program procedures, where such failure did not result in any harm to the treatment works and was not a threat to the public health or the environment.

Stat. Auth.: ORS 468.020 & 468B.015

Stats. Implemented: ORS 468.090 - 468.140, 468B.025, 468B.220 & 468B.305

Hist.: DEQ 78, f. 9-6-74, ef. 9-25-74; DEQ 22-1984, f. & ef. 11-8-84; DEQ 17-1986, f. & ef. 9-18-86; DEQ 22-1988, f. & cert. ef. 9-14-88; DEQ 4-1989, f. & cert ef. 3-14-89; DEQ 15-1990, f. & cert. ef. 3-30-90; DEQ 21-1992, f. & cert. ef. 8-11-92; DEQ 19-1998, f. & cert. ef. 10-12-98; DEQ 4-2005, f. 5-13-05, cert. ef. 6-1-05; DEQ 4-2006, f. 3-29-06, cert. ef. 3-31-06

340-012-0060

Onsite Sewage Disposal Classification of Violations

(1) Class I:

- (a) Performing sewage disposal services without a current license;
- (b) Installing or causing to be installed an onsite wastewater treatment system or any part thereof, or repairing or causing to be repaired any part thereof, without first obtaining a permit;
- (c) Disposing of septic tank, holding tank, chemical toilet, privy or other treatment facility contents in a manner or location not authorized by the department; or
- (d) Owning, operating or using an onsite wastewater treatment system that is discharging sewage or effluent to the ground surface or into waters of the state.

(2) Class II:

- (a) Failing to meet the requirements for satisfactory completion within 30 days after written notification or posting of a Correction Notice at the site;
- (b) Operating or using a nonwater-carried waste disposal facility without first obtaining a letter of authorization or permit;
- (c) Operating or using an onsite wastewater treatment system or part thereof without first obtaining a Certificate of Satisfactory Completion;
- (d) Advertising or representing oneself as being in the business of performing sewage disposal services without a current license;
- (e) Placing into service, reconnecting to or changing the use of an onsite wastewater treatment system in a manner that increases the projected daily sewage flow into the system without first obtaining an authorization notice, construction permit, alteration permit, or repair permit;
- (f) Failing to connect all plumbing fixtures to, or failing to discharge wastewater or sewage into, a department-approved system, unless failure results in sewage discharging to the ground surface or to waters of the state;
- (g) Allowing, by a licensed sewage disposal business, an uncertified installer to supervise or be responsible for the construction or installation of a system or part thereof;
- (h) Failing to submit an annual maintenance report, by a service provider of alternative treatment technologies; or
- (i) Failing to report that a required operation and maintenance contract has been terminated, by a service provider of alternative treatment technologies.

(3) Class III:

(a) Failing to obtain an operation and maintenance contract from a certified service provider, by an owner of an alternative treatment technology, recirculating gravel filter or commercial sand filter; or

(b) Placing an existing onsite wastewater treatment system into service or changing the dwelling or type of commercial facility, without first obtaining an authorization notice, where the design flow of the system is not exceeded.

Stat. Auth.: ORS 454.050, 454.625 & 468.020

Stats. Implemented: ORS 454.635, 454.645 & 468.090 - 468.140

Hist.: DEQ 78, f. 9-6-74, ef. 9-25-74; DEQ 4-1981, f. & ef. 2-6-81; DEQ 22-1984, f. & ef. 11-8-84; DEQ 22-1988, f. & cert. ef. 9-14-88; DEQ 4-1989, f. & cert. ef. 3-14-89; DEQ 15-1990, f. & cert. ef. 3-30-90; DEQ 21-1992, f. & cert. ef. 8-11-92; DEQ 19-1998, f. & cert. ef. 10-12-98; DEQ 3-2005, f. 2-10-05, cert. ef. 3-1-05; DEQ 4-2006, f. 3-29-06, cert. ef. 3-31-06

340-012-0065

Solid Waste Management Classification of Violations

(1) Class I:

(a) Establishing or operating a disposal site without first obtaining a registration or permit;

(b) Accepting solid waste for disposal in a permitted solid waste unit or facility that has been expanded in area or capacity without first submitting plans to the department and obtaining department approval;

(c) Disposing of or authorizing the disposal of a solid waste at a location not permitted by the department to receive that solid waste;

(d) Violating a lagoon freeboard limit that results in the overflow of a sewage sludge or leachate lagoon;

(e) Accepting for treatment, storage, or disposal at a solid waste disposal site, without approval from the department, waste defined as hazardous waste, waste from another state which is hazardous under the laws of that state, or wastes prohibited from disposal by statute, rule, permit, or order;

(f) Failing to properly construct, maintain, or operate in good functional condition, groundwater, surface water, gas or leachate collection, containment, treatment, disposal or monitoring facilities in accordance with the facility permit, department approved plans, or department rules;

(g) Failing to collect, analyze or report groundwater, surface water or leachate quality data in accordance with the facility permit, the facility environmental monitoring plan, or department rules;

(h) Mixing for disposal or disposing of recyclable material that has been properly prepared and source separated for recycling;

(i) Failing to establish or maintain financial assurance as required by statute, rule, permit or order;

(j) Failing to comply with the terms of a permit terminated due to a failure to submit a timely application for renewal; or

(k) Operating a composting facility in a manner that causes a discharge to surface water of pollutants, leachate or stormwater when that discharge is not authorized by a NPDES permit.

(2) Class II:

(a) Failing to accurately report the amount of solid waste disposed, by a permitted disposal site or a metropolitan service district;

(b) Failing to timely or accurately report the weight and type of material recovered or processed from the solid waste stream;

(c) Failing to comply with landfill cover requirements, including but not limited to daily, intermediate, and final covers, or limitation of working face size;

(d) Operating a Household Hazardous Waste (HHW) collection event or temporary site without first obtaining department approval or without complying with an approved plan for a HHW collection event; or

(e) Receiving or managing waste in violation of or without a department approved Special Waste Management Plan; or

(f) Unless otherwise specifically classified, operating a composting facility in a manner that fails to comply with the facility's registration, permit, department-approved plans or department rules.

(3) Class III:

(a) Failing to post required signs;

(b) Failing to control litter;

(c) Failing to notify the department of any name or address change; or

(d) Violating any labeling requirement under ORS 459A.675-685.

Stat. Auth.: ORS 459.045 & 468.020

Stats. Implemented: ORS 459.205, 459.376, 459.995 & 468.090 - 468.140

Hist.: DEQ 78, f. 9-6-74, ef. 9-25-74; DEQ 1-1982, f. & ef. 1-28-82; DEQ 22-1984, f. & ef. 11-8-84; DEQ 22-1988, f. & cert. ef. 9-14-88; DEQ 4-1989, f. & cert. ef. 3-14-89; DEQ 15-1990, f. & cert. ef. 3-30-90; DEQ 21-1992, f. & cert. ef. 8-11-92; DEQ 4-1994, f. & cert. ef. 3-14-94; DEQ 26-1994, f. & cert. ef. 11-2-94; DEQ 9-1996, f. & cert. ef. 7-10-96; DEQ 19-1998, f. & cert. ef. 10-12-98; DEQ 6-2001, f. 6-18-01, cert. ef. 7-1-01; DEQ 4-2005, f. 5-13-05, cert. ef. 6-1-05; DEQ 4-2006, f. 3-29-06, cert. ef. 3-31-06; DEQ 6-2009, f. & cert. ef. 9-14-09

340-012-0066

Solid Waste Tire Management Classification of Violations

(1) Class I:

(a) Establishing or operating a waste tire storage site without first obtaining a permit;

(b) Disposing of waste tires or tire-derived products at an unauthorized site;

(c) Violating the fire safety requirements of a waste tire storage site permit;

(d) Hauling waste tires without first obtaining a waste tire carrier permit; or

(e) Failing to establish and maintain financial assurance as required by statute, rule, permit or order.

(2) Class II: Failing to maintain written records of waste tire generation, storage, collection, transportation, or disposal.

(3) Class III:

(a) Failing to keep required records on use of vehicles;

- (b) Failing to post required signs;
- (c) Hiring or otherwise using an unpermitted waste tire carrier to transport waste tires; or
- (d) Hauling waste tires in a vehicle not identified in a waste tire carrier permit or failing to display required decals as described in a permittee's waste tire carrier permit.

Stat. Auth.: ORS 459.785 & 468.020

Stats. Implemented: ORS 459.705 - 459.790, 459.992 & 468.090 - 468.140

Hist.: DEQ 4-1989, f. & cert. ef. 3-14-89; DEQ 15-1990, f. & cert. ef. 3-30-90; DEQ 21-1992, f. & cert. ef. 8-11-92; DEQ 19-1998, f. & cert. ef. 10-12-98; DEQ 4-2005, f. 5-13-05, cert. ef. 6-1-05; DEQ 4-2006, f. 3-29-06, cert. ef. 3-31-06

340-012-0067

Underground Storage Tank (UST) Classification of Violations

(1) Class I:

- (a) Failing to investigate or confirm a suspected release;
- (b) Failing to establish or maintain the required financial responsibility mechanism;
- (c) Failing to obtain the appropriate general permit registration certificate before installing or operating an UST;
- (d) Failing to install spill and overfill protection equipment that will prevent a release, or failing to demonstrate to the department that the equipment is properly functioning;
- (e) Failing to install, operate or maintain a method or combination of methods for release detection such that the method can detect a release from any portion of the UST system;
- (f) Failing to protect from corrosion any part of an UST system that routinely contains a regulated substance;
- (g) Failing to permanently decommission an UST system;
- (h) Failing to obtain approval from the department before installing or operating vapor or groundwater monitoring wells as part of a release detection method;
- (i) Installing, repairing, replacing or modifying an UST system in violation of any rule adopted by the department;
- (j) Failing to conduct testing or monitoring, or to keep records where the failure constitutes a significant operational compliance violation;
- (k) Providing, offering or supervising tank services without the appropriate license;
- (l) Demonstrating negligence or incompetence in performing tank services; or
- (m) Failing to assess the excavation zone of a decommissioned or abandoned UST when directed to do so by the department.

(2) Class II:

- (a) Continuing to use a method or methods of release detection after period allowed by rule has expired;

- (b) Failing to have a trained UST system operator for an UST facility after March 1, 2004;
 - (c) Failing to apply for a modified general permit registration certificate;
 - (d) Failing to have an operation certificate for each compartment of a multi-chambered or multi-compartment UST when at least one compartment or chamber has an operation certificate;
 - (e) Installing, repairing, replacing or modifying an UST or UST equipment without providing the required notifications;
 - (f) Failing to decommission an UST in compliance with the statutes and rules adopted by the department, including, but not limited to, performance standards, procedures, notification, general permit registration and site assessment requirements;
 - (g) Providing tank services at an UST facility that does not have the appropriate general permit registration certificate;
 - (h) Failing to obtain the identification number and operation certificate number before depositing a regulated substance into an UST, by a distributor;
 - (i) Failing, by a distributor, to maintain a record of all USTs into which it deposited a regulated substance;
 - (j) Allowing tank services to be performed by a person not licensed by the department;
 - (k) Failing to submit checklists or reports for UST installation, modification or suspected release confirmation activities;
 - (l) Failing to complete an integrity assessment before adding corrosion protection;
 - (m) Failing by an owner or permittee to pass the appropriate national examination before performing tank services; or
 - (n) Failing to provide the identification number or operation certificate number to persons depositing a regulated substance into an UST.
- (3) **Class III:** Failing to notify the new owner or permittee of the department's general permit registration requirements, by a person who sells an UST.

Stat. Auth.: ORS 466.720, 466.746, 466.882, 466.994 & 468.020

Stats. Implemented: ORS 466.706 - 466.835, 466.994 & 468.090 - 468.140

Hist.: DEQ 2-1988, f. 1-27-88, cert. ef. 2-1-88; DEQ 22-1988, f. & cert. ef. 9-14-88; DEQ 4-1989, f. & cert. ef. 3-14-89; DEQ 15-1990, f. & cert. ef. 3-30-90; DEQ 15-1991, f. & cert. ef. 8-14-91; DEQ 21-1992, f. & cert. ef. 8-11-92; DEQ 4-1994, f. & cert. ef. 3-14-94; DEQ 19-1998, f. & cert. ef. 10-12-98; DEQ 6-2003, f. & cert. ef. 2-14-03; DEQ 4-2005, f. 5-13-05, cert. ef. 6-1-05; DEQ 4-2006, f. 3-29-06, cert. ef. 3-31-06

340-012-0068

Hazardous Waste Management and Disposal Classification of Violations

(1) Class I:

- (a) Failing to make a complete and accurate hazardous waste determination of a residue as required by OAR 340-102-0011;
- (b) Failing to meet Land Disposal Restriction (LDR) requirements when disposing of hazardous waste;
- (c) Operating a hazardous waste treatment, storage or disposal facility (TSD) without first obtaining a permit or without having interim status;

(d) Treating, storing or accumulating hazardous waste in a hazardous waste management unit, as defined in 40 CFR 260.10, that does not meet the unit design or unit integrity assessment criteria for the hazardous waste management unit;

(e) Accepting, transporting or offering for transport hazardous waste without a uniform hazardous waste manifest;

(f) Transporting, delivering or designating on a manifest delivery of hazardous waste to a facility not authorized or permitted to manage hazardous waste; or failing to submit an exception report;

(g) Failing to comply with management requirements for ignitable, reactive, or incompatible hazardous waste;

(h) Illegally treating or disposing of a hazardous waste;

(i) Failing to submit Land Disposal Restriction notifications;

(j) Failing to have and maintain a closure plan or post closure plan for a Treatment, Storage or Disposal (TSD) facility or for each regulated hazardous waste management unit, as defined in 40 CFR 260.10, by the owner or operator of facility or unit;

(k) Failing to carry out closure or post closure plan requirements, by an owner or operator of a TSD facility, such that the certification for completing closure or post closure work is not submitted, or is incomplete, inaccurate, or non-compliant with the approved plans;

(l) Failing to establish or maintain financial assurance or hazard liability requirements in 40 CFR 264.147 or 40 CFR 265.147, by an owner or operator of a TSD facility;

(m) Failing to follow emergency procedures in a Contingency Plan or other emergency response requirements during an incident in which a hazardous waste or hazardous waste constituent is released to the environment or the incident presents a risk of harm to employees, emergency responders or the public;

(n) Failing to comply with the export requirements in 40 CFR 262.52 for hazardous wastes;

(o) Failing to properly install a groundwater monitoring system in compliance with permit requirements, by an owner or operator of a TSD facility;

(p) Failing to properly control volatile organic hazardous waste emissions, by a large-quantity hazardous waste generator or TSD facility, when such failure could result in harm to employees, the public or the environment;

(q) Failing to inspect, operate, monitor, keep records or maintain in compliance with a permit: hazardous waste landfill units, incineration equipment, Subpart X treatment equipment, hazardous waste treatment units, pollution abatement equipment for hazardous waste treatment or disposal, or hazardous waste monitoring equipment; or

(r) Failing to immediately clean up spills or releases or threatened spills or releases of hazardous waste, by any person having ownership or control over hazardous waste.

(2) Class II:

(a) Failing to place an accumulation start date on a container used for accumulation or storage of hazardous waste;

(b) Failing to label a tank having a capacity of 100 gallons or more, or containers equaling more than 110 gallon capacity used for accumulation or storage of hazardous waste;

(c) Failing to post required emergency response information next to the telephone, by a small quantity generator;

(d) Accumulating hazardous waste more than thirty (30) days beyond the specified accumulation time frame;

- (e) Failing to submit a manifest discrepancy report;
- (f) Shipping hazardous waste on manifests that do not comply with department rules;
- (g) Failing to prevent the unknown or unauthorized entry of a person or livestock into the waste management area of a treatment, storage or disposal facility;
- (h) Failing to conduct required inspections at hazardous waste generator accumulation sites or hazardous waste permitted storage areas;
- (i) Failing to prepare a contingency plan;
- (j) Failing to follow the requirements of a groundwater monitoring program, unless otherwise classified;
- (k) Failing to maintain adequate aisle space to allow the unobstructed movement of personnel, fire protection equipment, spill control equipment, and decontamination;
- (l) Generating, treating, storing or disposing of hazardous waste without complying with the Personnel Training requirements;
- (m) Failing to keep containers of hazardous waste closed, except when adding or removing wastes;
- (n) Failing to comply with the requirements for management of containers, including satellite accumulation, other than the requirements for ignitable, reactive or incompatible waste, by a hazardous waste generator or storage facility;
- (o) Failing to comply with the preparedness, prevention, contingency plan or emergency procedure requirements, unless otherwise classified;
- (p) Failing to manage universal waste and waste pesticide residue in compliance with the universal waste management requirements or waste pesticide requirements;
- (q) Failing to obtain a hazardous waste EPA identification number when required;
- (r) Failing to comply with 40 CFR 264 or 265 Subparts J, W or DD standards, other than unit design or unit integrity assessment;
- (s) Failing to comply with 40 CFR 264 or 265 Subparts AA, BB or CC standards for hazardous waste generator and TSD facilities, unless otherwise classified; or
- (t) Failing to timely submit an annual report, by a hazardous waste generator, TSD facility, or hazardous waste recycling facility.

(3) Class III:

- (a) Accumulating hazardous waste up to thirty (30) days beyond the specified accumulation time frame;
- (b) Failing to label containers equaling 110 gallon capacity or less used for the accumulation or storage of hazardous waste;
- (c) Failing to label a tank having less than 100 gallon capacity used for the accumulation or storage of hazardous waste;
- (d) Failing to maintain on site a copy of the one-time notification regarding hazardous waste that meets treatment standards by a hazardous waste generator; or

(e) Failing to submit a contingency plan to all police, fire, hospital and local emergency responders.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 459.995, 466.070 - 466.080, 466.625 & 468.020

Stats. Implemented: ORS 466.635 - 466.680, 466.990 - 466.994 & 468.090 - 468.140

Hist.: DEQ 1-1982, f. & ef. 1-28-82; DEQ 22-1984, f. & ef. 11-8-84; DEQ 9-1986, f. & ef. 5-1-86; DEQ 17-1986, f. & ef. 9-18-86; DEQ 22-1988, f. & cert. ef. 9-14-88; DEQ 4-1989, f. & cert. ef. 3-14-89; DEQ 15-1990, f. & cert. ef. 3-30-90; DEQ 21-1992, f. & cert. ef. 8-11-92; DEQ 19-1998, f. & cert. ef. 10-12-98; DEQ 6-2001, f. 6-18-01, cert. ef. 7-1-01; DEQ 13-2002, f. & cert. ef. 10-9-02; DEQ 4-2005, f. 5-13-05, cert. ef. 6-1-05; DEQ 4-2006, f. 3-29-06, cert. ef. 3-31-06

340-012-0071

Polychlorinated Biphenyl (PCB) Classification of Violations

(1) Class I:

(a) Treating, storing or disposing of PCBs anywhere other than a permitted PCB disposal facility or a location authorized by the department; or

(b) Establishing, constructing or operating a PCB disposal facility without first obtaining a permit or department authorization.

(2) **Class II:** Violating any other requirement related to the treatment, storage, generation or disposal of PCBs is classified under OAR 340-012-0053.

Stat. Auth.: ORS 459.995, 466.625, 467.030, 468.020 & 468.996

Stats. Implemented: ORS 466.255, 466.265 - 466.270, 466.530 & 466.990 - 466.994

Hist.: DEQ 22-1988, f. & cert. ef. 9-14-88; DEQ 4-1989, f. & cert. ef. 3-14-89; DEQ 15-1990, f. & cert. ef. 3-30-90; DEQ 21-1992, f. & cert. ef. 8-11-92; DEQ 19-1998, f. & cert. ef. 10-12-98; DEQ 6-2001, f. 6-18-01, cert. ef. 7-1-01; DEQ 4-2005, f. 5-13-05, cert. ef. 6-1-05; DEQ 4-2006, f. 3-29-06, cert. ef. 3-31-06

340-012-0072

Used Oil Management Classification of Violations

(1) Class I:

(a) Using used oil as a dust suppressant, pesticide, or otherwise spreading used oil directly in the environment;

(b) Burning a used oil mixture where the used oil mixture has less than 5,000 Btu/pound;

(c) Offering for sale used oil as specification used oil fuel when the used oil does not meet used oil fuel specifications;

(d) Selling off-specification used oil fuel to a facility not meeting the definition of an industrial boiler or furnace;

(e) Burning off-specification used oil in a device that does not meet the definition of an industrial boiler or furnace and is not otherwise exempt;

(f) Failing to make an on-specification used oil fuel determination when required, by a used oil generator, transporter, burner or processor;

(g) Storing or managing used oil in a surface impoundment;

(h) Failing to determine whether used oil exceeds the permissible halogen content, by a used oil transporter, burner or processor;

(i) Failing to perform required closure on a used oil tank or container, by a used oil processor or re-refiner;

(j) Failing to maintain required secondary containment at a used oil transfer facility or by a processor, burner, or marketer of used oil; or

(k) Failing to immediately clean up spills or releases or threatened spills or releases of used oil, by any person having ownership or control over the used oil.

(2) Class II:

(a) Failing to obtain a one time written notification from a burner before shipping off-specification used oil fuel, by a used oil generator, transporter, processor or re-refiner;

(b) Failing to develop, follow and maintain records of a written waste analysis plan, by a used oil processor;

(c) Failing to close or cover a used oil tank or container;

(d) Failing to timely submit annual used oil handling reports, by a used oil processor;

(e) Failing to label each container or tank used for the accumulation or storage of used oil on site, unless otherwise classified;

(f) Failing to keep a written operating record at the facility, by used oil processor;

(g) Failing to prepare and maintain an up-to-date preparedness and prevention plan, by a used oil processor; or

(h) Transporting, processing, re-refining, burning or marketing used oil without first obtaining an EPA ID number.

(3) Class III:

(a) Failing to label one container or tank in which used oil was accumulated on site, if five or more tanks or containers are present;

(b) Failing to label up to two containers used for the accumulation or storage of used oil on site; or

(c) Failing to label a tank having less than 100 gallon capacity when used for the accumulation or storage of used oil on site.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 459.995, 468.020, 468.869, 468.870 & 468.996

Stats. Implemented: ORS 459A.580 - 459A.585, 459A.590 & 468.090 - 468.140

Hist.: DEQ 33-1990, f. & cert. ef. 8-15-90; DEQ 21-1992, f. & cert. ef. 8-11-92; DEQ 19-1998, f. & cert. ef. 10-12-98; DEQ 4-2005, f. 5-13-05, cert. ef. 6-1-05; DEQ 4-2006, f. 3-29-06, cert. ef. 3-31-06

340-012-0073

Environmental Cleanup Classification of Violations

(1) **Class I:** Violating any otherwise unclassified environmental cleanup-related requirements are addressed under OAR 340-012-0053.

(2) **Class II:** Failing to provide information under ORS 465.250.

Stat. Auth.: ORS 465.280, 465.400 - 465.410, 465.435 & 468.020

Stats. Implemented: ORS 465.210 & 468.090 - 468.140

Hist.: DEQ 22-1988, f. & cert. ef. 9-14-88; DEQ 4-1989, f. & cert. ef. 3-14-89; DEQ 15-1990, f. & cert. ef. 3-30-90; DEQ 21-1992, f. & cert. ef. 8-11-92; DEQ 19-1998, f. & cert. ef. 10-12-98; DEQ 4-2005, f. 5-13-05, cert. ef. 6-1-05; DEQ 4-2006, f. 3-29-06, cert. ef. 3-31-06

340-012-0074

Underground Storage Tank (UST) Cleanup Classification of Violations

(1) **Class I:**

(a) Failing to report a confirmed release from an UST;

(b) Failing to initiate or complete the investigation or cleanup, or to perform required monitoring, of a release from an UST;

(c) Failing to conduct free product removal;

(d) Failing to properly manage petroleum contaminated soil;

(e) Failing to mitigate fire, explosion or vapor hazards;

(f) Demonstrating negligence or incompetence in performing soil matrix cleanup services; or

(g) Providing or supervising soil matrix cleanup services without obtaining the appropriate license.

(2) **Class II:**

(a) Failing to report a suspected release from an UST;

(b) Failing to timely submit reports or other documentation from the investigation or cleanup of a release from an UST; or

(c) Failing to timely submit a corrective action plan or submitting an incomplete corrective action plan.

Stat. Auth.: ORS 466.746, 466.994 & 468.020

Stats. Implemented: ORS 466.706 - 466.835 & 466.994

Hist.: DEQ 4-2005, f. 5-13-05, cert. ef. 6-1-05; DEQ 4-2006, f. 3-29-06, cert. ef. 3-31-06

340-012-0079

Heating Oil Tank (HOT) Classification of Violations

(1) **Class I:**

(a) Failing to report a release from an HOT when the failure is discovered by the department;

(b) Failing to initiate and complete the investigation or cleanup of a release from an HOT;

(c) Failing to initiate and complete free product removal;

(d) Failing to certify that heating oil tank services were conducted in compliance with all applicable regulations, by a service provider;

(e) Failing, by a responsible party or service provider, to conduct corrective action after the department rejects a certified report;

(f) Demonstrating negligence or incompetence in performing HOT services; or

(g) Providing or supervising HOT services without first obtaining the appropriate license.

(2) Class II:

(a) Failing to submit a corrective action plan;

(b) Failing to properly decommission an HOT;

(c) Failing to hold and continuously maintain errors and omissions or professional liability insurance, by a HOT service provider;

(d) Failing to have a supervisor present when performing HOT services;

(e) Failing to report a release from an HOT within 72 hours when the failure is reported to the department by the responsible person or the service provider; or

(f) Offering to provide heating oil tank services without first obtaining the appropriate service provider license.

Stat. Auth.: ORS 466.746, 466.858 - 466.994 & 468.020

Stats. Implemented: ORS 466.706, 466.858 - 466.882, 466.994 & 468.090 - 468.140

Hist.: DEQ 4-2005, f. 5-13-05, cert. ef. 6-1-05; DEQ 4-2006, f. 3-29-06, cert. ef. 3-31-06

340-012-0081

Oil and Hazardous Material Spill and Release Classification of Violations

(1) Class I:

(a) Failing to immediately clean up spills or releases or threatened spills or releases of oil or hazardous materials, by any person having ownership or control over the oil or hazardous materials;

(b) Failing to immediately notify the Oregon Emergency Response System (OERS) of the type, quantity and location of a spill of oil or hazardous material, and corrective and cleanup actions taken and proposed to be taken if the amount of oil or hazardous material released exceeds the reportable quantity, or will exceed the reportable quantity within 24 hours;

(c) Spilling or releasing any oil or hazardous materials which enters waters of the state;

(d) Failing to activate alarms, warn people in the immediate area, contain the oil or hazardous material or notify appropriate local emergency personnel;

(e) Failing to immediately implement a required plan; or

(f) Failing to take immediate preventative, repair, corrective or containment action in the event of a threatened spill or release.

(2) Class II:

- (a) Failing to submit a complete and detailed written report to the department of a spill of oil or hazardous material;
- (b) Failing to use the required sampling procedures and analytical testing protocols for oil and hazardous materials spills or releases;
- (c) Failing to coordinate with the department during the emergency response to a spill after being notified of the department's jurisdiction;
- (d) Failing to immediately report spills or releases within containment areas when reportable quantities are exceeded and exemptions are not met under OAR 340-142-0040;
- (e) Failing to immediately manage any spill or release of oil or hazardous materials consistent with the National Incident Management System (NIMS);
- (f) Improperly or without approval of the Department, treating, diluting or disposing of spill, or spill-related waters or wastes; or
- (g) Using chemicals to disperse, coagulate or otherwise treat a spill or release of oil or hazardous materials without prior department approval.

(3) Class III:

- (a) Failing to provide maintenance and inspections records of the storage and transfer facilities to the department upon request; or
- (b) Failing, by a vessel owner or operator, to make maintenance and inspection records, and oil transfer procedures available to the department upon request.

Stat. Auth.: ORS 466.625 & 468.020

Stats. Implemented: ORS 466.635 - 466.680, 466.992 & 468.090 - 468.140

Hist.: DEQ 1-2003, f. & cert. ef. 1-31-03; DEQ 7-2003, f. & cert. ef. 4-21-03; DEQ 4-2005, f. 5-13-05, cert. ef. 6-1-05; DEQ 4-2006, f. 3-29-06, cert. ef. 3-31-06

340-012-0082

Contingency Planning Classification of Violations

(1) Class I:

- (a) Failing to immediately implement the oil spill prevention and emergency response contingency plan or other applicable contingency plan, after discovering a spill;
- (b) Operating an onshore or offshore facility without an approved or conditionally approved oil spill prevention and emergency response contingency plan;
- (c) Entering into the waters of the state, by a covered vessel without an approved or conditionally approved oil spill prevention and emergency response contingency plan or purchased coverage under an umbrella oil spill prevention and emergency response contingency plan;
- (d) Failing to implement prevention measures identified in the facility or covered vessel spill prevention plan that directly results in a spill;
- (e) Failing to maintain equipment, personnel and training at levels described in an approved or conditionally approved oil spill prevention and emergency response contingency plan;

(f) Failing to establish and maintain financial assurance as required by statute, rule or order; or

(g) Failing by the owner or operator of an oil terminal facility, or covered vessel, to take all appropriate measures to prevent spills or overfilling during transfer of petroleum or hazardous material products.

(2) Class II:

(a) Failing to submit an oil spill prevention and emergency response contingency plan to the department at least 90 calendar days before beginning operations in Oregon, by any onshore or offshore facility or covered vessel;

(b) Failing to have available on site a simplified field document summarizing key notification and action elements of a required vessel or facility contingency plan;

(c) Failing, by a plan holder, to submit and implement required changes to a required vessel or facility contingency plan following conditional approval;

(d) Failing, by a covered vessel or facility contingency plan holder, to submit the required vessel or facility contingency plan for re-approval at least ninety (90) days before the expiration date of the required vessel or facility contingency plan;

(e) Failing to submit spill prevention strategies as required; or

(f) Failing to obtain department approval of the management or disposal of spilled oil or hazardous materials, or materials contaminated with oil or hazardous material, that are generated during spill response.

(3) Class III:

(a) Failing to provide maintenance and inspections records of the storage and transfer facilities to the department upon request;

(b) Failing, by a vessel owner or operator, to make maintenance and inspection records and oil transfer procedures available to the department upon request;

(c) Failing to have at least one copy of the required vessel or facility contingency plan in a central location accessible at any time by the incident commander or spill response manager;

(d) Failing to have the covered vessel field document available to all appropriate personnel in a conspicuous and accessible location;

(e) Failing to notify the department within 24 hours of any significant changes that could affect implementation of a required vessel or facility contingency plan; or

(f) Failing to distribute amended page(s) of the plan changes to the department within thirty (30) calendar days of the amendment.

Stat. Auth.: ORS 468B.350

Stats. Implemented: ORS 468B.345

Hist.: DEQ 1-2003, f. & cert. ef. 1-31-03; DEQ 4-2005, f. 5-13-05, cert. ef. 6-1-05; DEQ 4-2006, f. 3-29-06, cert. ef. 3-31-06

340-012-0083

Ballast Water Management Classification of Violations

(1) **Class I:** Discharging of ballast water without authorization.

(2) Class II:

- (a) Failing to report ballast water management information to the department at least 24 hours before entering the waters of this state; or
- (b) Failing to file an amended ballast water management report after a change in the vessel's ballast water management plan.

Stat. Auth.: ORS 783.600 - 783.992

Stats. Implemented: ORS 783.620

Hist.: DEQ 1-2003, f. & cert. ef. 1-31-03; DEQ 4-2005, f. 5-13-05, cert. ef. 6-1-05; DEQ 4-2006, f. 3-29-06, cert. ef. 3-31-06

340-012-0090 [Renumbered to **340-012-0135**]

340-012-0097

Dry Cleaning Classification of Violations

(1) Class I:

- (a) Discharging dry cleaning wastewater to a sanitary sewer, storm sewer, septic system, boiler or into waters of the state;
- (b) Failing to have a secondary containment system under and around each dry cleaning machine or each tank or container of stored solvent;
- (c) Failing to report a release outside of a containment system of more than one pound of dry cleaning solvent released in a 24-hour period;
- (d) Failing to repair the cause of a release within a containment system of dry cleaning solvent;
- (e) Failing to immediately clean up a release or repair the cause of a release outside of a containment system of dry cleaning solvents or waste water contaminated with solvent;
- (f) Illegally treating or disposing hazardous waste generated at a dry cleaning facility;
- (g) Transporting, delivering or designating on a manifest, delivery of hazardous waste generated at a dry cleaning facility to a destination facility not authorized or permitted to manage hazardous waste; or
- (h) Failing to conduct weekly perchloroethylene leak inspections, and to measure the perchloroethylene refrigerated condenser outlet temperature and log the results, by a dry cleaning owner or operator.

(2) Class II:

- (a) Failing to place or store hazardous waste generated at a dry cleaning facility in properly labeled and closed containers;
- (b) Accumulating hazardous waste beyond the specified accumulation time period;
- (c) Failing, by a dry cleaning owner or operator, to prominently post the Oregon Emergency Response System telephone number so the number is immediately available to all employees of the dry cleaning facility;
- (d) Failing to immediately clean up a release within a containment system of dry cleaning solvent or hazardous waste;

- (e) Failing to use closed, direct-coupled delivery, by a person delivering perchloroethylene to a dry cleaning facility;
 - (f) Failing to have closed, direct-coupled delivery for perchloroethylene, by a dry cleaning operator;
 - (g) Failing to remove all dry cleaning solvent or solvent containing residue or to disconnect utilities from the dry cleaning machine within 45 days of the last day of dry cleaning machine operations; or
 - (h) Failing to timely submit an annual report to the department, by a dry cleaning owner or operator.
- (3) **Class III:** Failing to notify the department of change of ownership or operator or closure at a dry cleaning business or dry cleaning store.

Stat. Auth.: ORS 466.070 - 466.080, 466.625 & 468.020
Stats. Implemented: ORS 466.635 - 466.680, 466.990, 466.994 & 468.090 - 468.140
Hist.: DEQ 4-2005, f. 5-13-05, cert. ef. 6-1-05; DEQ 4-2006, f. 3-29-06, cert. ef. 3-31-06

340-012-0130

Determination of Violation Magnitude

(1) For each civil penalty assessed, the magnitude is moderate unless:

(a) A selected magnitude is specified in 340-012-0135 and information is reasonably available to the department to determine the application of that selected magnitude; or

(b) The department determines, using information reasonably available to it, that the magnitude should be major under section (3) or minor under section (4).

(2) If the department determines, using information reasonably available to the department, that a general or selected magnitude applies, the department's determination is the presumed magnitude of the violation, but the person against whom the violation is alleged has the opportunity and the burden to prove that another magnitude applies and is more probable than the presumed magnitude.

(3) The magnitude of the violation is major if the department finds that the violation had a significant adverse impact on human health or the environment. In making this finding, the department will consider all reasonably available information, including, but not limited to: the degree of deviation from applicable statutes or commission and department 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, the department may consider any single factor to be conclusive.

(4) The magnitude of the violation is minor if the department 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, the department will consider all reasonably available information including, but not limited to: the degree of deviation from applicable statutes or commission and department 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 making this finding, the department may consider any single factor to be conclusive.

Stat. Auth.: ORS 468.020 & 468.130
Stats. Implemented: ORS 459.376, 459.995, 465.900, 465.992, 466.990 - 466.994, 468.090 - 468.140 & 468B.450
Hist.: DEQ 4-2005, f. 5-13-05, cert. ef. 6-1-05; DEQ 4-2006, f. 3-29-06, cert. ef. 3-31-06

340-012-0135

Selected Magnitude Categories

(1) Magnitudes for selected Air Quality violations will be determined as follows if sufficient information is reasonably available to the department to make a determination:

(a) Opacity limitation violations:

(A) Major -- Opacity measurements or readings of 20 percent opacity or more over the applicable limitation, or an opacity violation by a federal major source as defined in OAR 340-200-0020;

(B) Moderate -- Opacity measurements or readings greater than 10 percent and less than 20 percent over the applicable limitation; or

(C) Minor -- Opacity measurements or readings of 10 percent or less over the applicable limitation.

(b) Operation of a major source, as defined in OAR 340-200-0020, without first obtaining the required permit: Major -- The Best Achievable Control Technology (BACT) analysis shows need for additional controls and/or if offsets are required.

(c) Air contaminant emission limitation violations for selected air pollutants: Magnitude determinations under this subsection shall be made based upon significant emission rate amounts listed in OAR 340-200-0020 (Tables 2 and 3).

(A) Major:

(i) Exceeding the annual limit as established by permit, rule or order by more than the above amount;

(ii) Exceeding the monthly limit as established by permit, rule or order by more than ten percent of the above amount;

(iii) Exceeding the daily limit as established by permit, rule or order by more than 0.5 percent of the above amount; or

(iv) Exceeding the hourly limit as established by permit, rule or order by more than 0.1 percent of the above amount.

(B) Moderate:

(i) Exceeding the annual limit as established by permit, rule or order by an amount from 50 up to and including 100 percent of the above amount;

(ii) Exceeding the monthly limit as established by permit, rule or order by an amount from five up to and including ten percent of the above amount;

(iii) Exceeding the daily limit as established by permit, rule or order by an amount from 0.25 up to and including 0.50 percent of the above amount; or

(iv) Exceeding the hourly limit as established by permit, rule or order by an amount from 0.05 up to and including 0.10 percent of the above amount.

(C) Minor:

(i) Exceeding the annual limit as established by permit, rule or order by an amount less than 50 percent of the above amount;

(ii) Exceeding the monthly limit as established by permit, rule or order by an amount less than five percent of the above amount;

(iii) Exceeding the daily limit as established by permit, rule or order by an amount less than 0.25 percent of the above amount; or

(iv) Exceeding the hourly limit as established by permit, rule or order by an amount less than 0.05 percent of the above amount.

(d) Violations of Emergency Action Plans: Major -- Major magnitude in all cases.

(e) Violations of on road motor vehicle refinishing rules contained in OAR 340-242-0620: Minor -- Refinishing 10 or fewer on road motor vehicles per year.

(f) Asbestos violations:

(A) Major -- More than 260 lineal feet or more than 160 square feet of asbestos-containing material;

(B) Moderate -- From 40 lineal feet up to and including 260 lineal feet or from 80 square feet up to and including 160 square feet of asbestos-containing material; or

(C) Minor -- Less than 40 lineal feet or 80 square feet of asbestos-containing material.

(D) The magnitude of the asbestos violation may be increased by one level if the material was comprised of more than five percent asbestos.

(g) Open burning violations:

(A) Major -- Initiating or allowing the initiation of open burning of 20 or more cubic yards of commercial, construction, demolition and/or industrial waste; or 5 or more cubic yards of prohibited materials (inclusive of tires); or 10 or more tires;

(B) Moderate -- Initiating or allowing the initiation of open burning of 5 or more, but less than 20 cubic yards of commercial, construction, demolition and/or industrial waste; or 2 or more, but less than 5 cubic yards of prohibited materials (inclusive of tires); or 3 to 9 tires; or if the department lacks sufficient information upon which to make a determination of the type of waste, number of cubic yards or number of tires burned; or

(C) Minor -- Initiating or allowing the initiation of open burning of less than 5 cubic yards of commercial, construction, demolition and/or industrial waste; or less than 2 cubic yards of prohibited materials (inclusive of tires); or 2 or less tires.

(D) The selected magnitude may be increased one level if the department finds that one or more of the following are true, or decreased one level if the department finds that none of the following are true:

(i) The burning took place in an open burning control area;

(ii) The burning took place in an area where open burning is prohibited;

(iii) The burning took place in a non-attainment or maintenance area for PM10 or PM2.5; or

(iv) The burning took place on a day when all open burning was prohibited due to meteorological conditions.

(h) Oregon Low Emission Vehicle Non-Methane Gas (NMOG) or Green House Gas (GHG) fleet average emission limit violations:

(A) Major -- Exceeding the limit by more than 10 percent; or

(B) Moderate -- Exceeding the limit by 10 percent or less.

(2) Magnitudes for selected violations pertaining to Water Quality will be determined as follows if sufficient information is reasonably available to the department to make a determination:

(a) Violating wastewater discharge permit effluent limitations:

(A) Major:

(i) The dilution (D) of the spill or technology based effluent limitation exceedance was less than two, when calculated as follows: $D = ((QR / 4) + QI) / QI$, where QR is the estimated receiving stream flow and QI is the estimated quantity or discharge rate of the incident;

(ii) The receiving stream flow at the time of the water quality based effluent limitation (WQBEL) exceedance was at or below the flow used to calculate the WQBEL; or

(iii) The resulting water quality from the spill or discharge was as follows:

(I) For discharges of toxic pollutants: CS/D was more than CA_{acute} , where CS is the concentration of the discharge, D is the dilution of the discharge as determined under (2)(a)(A)(i), and CA_{acute} is the concentration for acute toxicity (as defined by the applicable water quality standard);

(II) For spills or discharges affecting temperature, when the discharge temperature is at or above 32 degrees centigrade after two seconds from the outfall; or

(III) For BOD5 discharges: $(BOD5)/D$ is more than 10, where BOD5 is the concentration of the five day Biochemical Oxygen Demand of the discharge and D is the dilution of the discharge as determined under (2)(a)(A)(i).

(B) Moderate:

(i) The dilution (D) of the spill or the technology based effluent limitation exceedance was two or more but less than 10 when calculated as follows: $D = ((QR / 4) + QI) / QI$, where QR is the estimated receiving stream flow and QI is the estimated quantity or discharge rate of the discharge; or

(ii) The receiving stream flow at the time of the WQBEL exceedance was greater than, but less than twice, the flow used to calculate the WQBEL.

(C) Minor:

(i) The dilution (D) of the spill or the technology based effluent limitation exceedance was 10 or more when calculated as follows: $D = ((QR / 4) + QI) / QI$, where QR is the receiving stream flow and QI is the quantity or discharge rate of the incident; or

(ii) The receiving stream flow at the time of the WQBEL exceedance was twice the flow or more of the flow used to calculate the WQBEL.

(b) Violating numeric water-quality standards:

(A) Major:

(i) Increased the concentration of any pollutant except for toxics, dissolved oxygen, pH, and turbidity, by 25 percent or more of the standard;

(ii) Decreased the dissolved oxygen concentration by two or more milligrams per liter below the standard;

(iii) Increased the toxic pollutant concentration by any amount over the acute standard or by 100 percent or more of the chronic standard;

(iv) Increased or decreased pH by one or more pH units from the standard; or

(v) Increased turbidity by 50 or more nephelometric turbidity units (NTU) over background.

(B) Moderate:

(i) Increased the concentration of any pollutant except for toxics, pH, and turbidity by more than 10 percent but less than 25 percent of the standard;

(ii) Decreased dissolved oxygen concentration by one or more, but less than two, milligrams per liter below the standard;

(iii) Increased the concentration of toxics pollutants by more than 10 percent but less than 100 percent of the chronic standard;

(iv) Increased or decreased pH by more than 0.5 pH unit but less than 1.0 pH unit from the standard; or

(v) Increased turbidity by more than 20 but less than 50 NTU over background.

(C) Minor:

(i) Increased the concentration of any pollutant, except for toxics, pH, and turbidity, by 10 percent or less of the standard;

(ii) Decreased the dissolved oxygen concentration by less than one milligram per liter below the standard;

(iii) Increased the concentration of toxic pollutants by 10 percent or less of the chronic standard;

(iv) Increased or decreased pH by 0.5 pH unit or less from the standard; or

(v) Increased turbidity by 20 NTU or less over background.

(c) The selected magnitude under (2)(a) or (b) may be increased one level if the violation:

(i) Occurred in a water body that is water-quality limited (listed on the most current 303(d) list) and the discharge is the same pollutant for which the water body is listed;

(ii) Depressed oxygen levels or increased turbidity and/or sedimentation in a stream in which salmonids may be rearing or spawning as indicated by the beneficial use maps available at OAR 340-041-0101 through 0340;

(iii) Violated a bacteria standard either in shell-fish growing waters or during the period from June 1 through September 30; or

(iv) Resulted in a documented fish or wildlife kill.

(3) Magnitudes for selected violations pertaining to Solid Waste will be determined as follows if sufficient information is reasonably available to the department to make a determination:

(a) Operating a solid waste disposal facility without a permit:

(A) Major -- The volume of material disposed of exceeds 400 cubic yards;

(B) Moderate -- The volume of material disposed of is greater than or equal to 40 cubic yards and less than or equal to 400 cubic yards; or

(C) Minor -- The volume of materials disposed of is less than 40 cubic yards.

(D) The magnitude of the violation may be raised by one magnitude if the material disposed of was either in the floodplain of waters of the state or within 100 feet of waters of the state.

(b) Failing to accurately report the amount of solid waste disposed:

(A) Major -- The amount of solid waste is underreported by 15 percent or more of the amount received;

(B) Moderate -- The amount of solid waste is underreported by 5 percent or more, but less than 15 percent, of the amount received; or

(C) Minor -- The amount of solid waste is underreported by less than 5 percent of the amount received.

(4) Magnitudes for selected violations pertaining to Hazardous Waste will be determined as follows if sufficient information is reasonably available to the department to make a determination:

(a) Failure to make a hazardous waste determination:

(A) Major -- Failure to make the determination on five or more waste streams;

(B) Moderate -- Failure to make the determination on three or four waste streams; or

(C) Minor -- Failure to make the determination on one or two waste streams.

(b) Hazardous Waste treatment and disposal violations OAR 340-012-0068(1)(b), (c), (h), (k), (l), (m), (p), (q) and (r):

(A) Major:

(i) Treatment or disposal of more than 55 gallons or 330 pounds of hazardous waste; or

(ii) Treatment or disposal of more than three gallons or 18 pounds of acutely hazardous waste.

(B) Moderate:

(i) Treatment or disposal of 55 gallons or 330 pounds or less of hazardous waste; or

(ii) Treatment or disposal of three gallons or 18 pounds or less of acutely hazardous waste.

(c) Hazardous waste management violations OAR 340-012-0068(1)(d), (e) (f), (g), (i), (j), (n), and (2)(a), (b), (d), (e), (h), (i), (k), (m), (n), (o), (p), (r) and (s):

(A) Major:

(i) Hazardous waste management violations involving more than 1,000 gallons or 6,000 pounds of hazardous waste; or

(ii) Hazardous waste management violations involving more than 20 gallons or 120 pounds of acutely hazardous waste.

(B) Moderate:

(i) Hazardous waste management violations involving more than 250 gallons or 1,500 pounds, up to and including 1,000 gallons or 6,000 pounds of hazardous waste; or

(ii) Hazardous waste management violations involving more than 5 gallons or 30 pounds, up to and including 20 gallons or 60 pounds of acutely hazardous waste.

(C) Minor:

(i) Hazardous waste management violations involving 250 gallons or 1,500 pounds or less of hazardous waste; or

(ii) Hazardous waste management violations involving 5 gallons or 30 pounds or less of acutely hazardous waste.

(5) Magnitudes for selected Used Oil violations (OAR 340-012-0072) will be determined as follows if sufficient information is reasonably available to the department to make a determination:

(a) Used Oil violations OAR 340-012-0072(1)(f), (h), (i), (j); and (2)(a) through (j):

(A) Major -- Used oil management violations involving more than 1,000 gallons or 7,000 pounds of used oil or used oil mixtures;

(B) Moderate -- Used oil management violations involving more than 250 gallons or 1,750 pounds, up to and including 1,000 gallons or 7,000 pounds of used oil or used oil mixture; or

(C) Minor -- Used oil management violations involving 250 gallons or 1,750 pounds or less of used oil or used oil mixtures.

(b) Used Oil spill or disposal violations OAR 340-012-0072(1)(a) through (e), (g) and (k):

(A) Major -- A spill or disposal involving more than 420 gallons or 2,940 pounds of used oil or used oil mixtures;

(B) Moderate -- A spill or disposal involving more than 42 gallons or 294 pounds, up to and including 420 gallons or 2,940 pounds of used oil or used oil mixtures; or

(C) Minor -- A spill or disposal of used oil involving 42 gallons or 294 pounds or less of used oil or used oil mixtures.

[ED. NOTE: Tables & Publications referenced are available from the agency.]

Stat. Auth.: ORS 468.065 & 468A.045

Stats. Implemented: ORS 468.090 - 468.140 & 468A.060

Hist.: DEQ 21-1992, f. & cert. ef. 8-11-92; DEQ 4-1994, f. & cert. ef. 3-14-94; DEQ 19-1998, f. & cert. ef. 10-12-98; DEQ 1-2003, f. & cert. ef. 1-31-03; Renumbered from 340-012-0090, DEQ 4-2005, f. 5-13-05, cert. ef. 6-1-05; DEQ 4-2006, f. 3-29-06, cert. ef. 3-31-06; DEQ 6-2006, f. & cert. ef. 6-29-06

340-012-0140

Determination of Base Penalty

(1) Except for Class III violations and for penalties assessed under OAR 340-012-0155, the base penalty (BP) is determined by applying the type, class and magnitude of the violation to the matrices set forth in this section. For Class III violations, no magnitude determination is required.

(2) \$8,000 Penalty Matrix:

(a) The \$8,000 penalty matrix applies to the following:

(A) Any violation of an air quality statute, rule, permit or related order committed by a person that has or should have a Title V permit or an Air Contaminant Discharge Permit (ACDP) issued pursuant to New Source Review (NSR) regulations or Prevention of Significant Deterioration (PSD) regulations, or section 112(g) of the federal Clean Air Act.

(B) Open burning violations as follows:

(i) Any violation of an open burning statute, rule, permit or related order committed by a permitted industrial facility.

(ii) Any violation of OAR 340-264-0060(3) in which 25 or more cubic yards of prohibited materials or more than 15 tires are burned, except when committed by a residential owner-occupant.

(C) Any violation of the Oregon Low Emission Vehicle rules (OAR 340-257) by an automobile manufacturer.

(D) Any violation of 468B.025(1)(a) or (1)(b), or of ORS 468B.050(1)(a) by a person without an National Pollutant Discharge Elimination System (NPDES) permit.

(E) Any violation of a water quality statute, rule, permit or related order by:

(i) A person that has a NPDES permit, or that has or should have a Water Pollution Control Facility (WPCF) permit, for a municipal or private utility sewage treatment facility with a permitted flow of five million or more gallons per day.

(ii) A person that has a major industrial source NPDES permit.

(iii) A person that has a population of 100,000 or more, as determined by the most recent national census, and either has or should have a WPCF Municipal Stormwater Underground Injection Control (UIC) System Permit, or has a NPDES Municipal Separated Storm Sewer Systems (MS4) Stormwater Discharge Permit.

(iv) A person that has or should have a WPCF permit for a major vegetable or fruit processing facility, for a major mining operation involving over 500,000 cubic yards per year, or for any mining operation using chemical leaching or froth flotation.

(v) A person that installs or operates a prohibited Class I, II, III, IV or V UIC system, except for a cesspool.

(F) Any violation of an underground storage tanks statute, rule, permit or related order committed by the owner, operator or permittee of 10 or more UST facilities or a person who is licensed or should be licensed by the department to perform tank services.

(G) Any violation of a heating oil tank statute, rule, permit, license or related order committed by a person who is licensed or should be licensed by the department to perform heating oil tank services.

(H) Any violation of ORS 468B.485, or related rules or orders regarding financial assurance for ships transporting hazardous materials or oil.

(I) Any violation of a used oil statute, rule, permit or related order committed by a person who is a used oil transporter, transfer facility, processor or re-refiner, off-specification used oil burner or used oil marketer.

(J) Any violation of a hazardous waste statute, rule, permit or related order by:

(i) A person that is a large quantity generator or hazardous waste transporter.

(ii) A person that has or should have a treatment, storage or disposal facility permit.

(K) Any violation of an oil and hazardous material spill and release statute, rule, or related order.

(L) Any violation of a polychlorinated biphenyls (PCBs) management and disposal statute, rule, permit or related order.

(M) Any violation of ORS Chapter 465, UST or environmental cleanup statute, rule, related order or related agreement.

(N) Unless specifically listed under another penalty matrix, any violation of ORS Chapter 459 or any violation of a solid waste statute, rule, permit, or related order committed by:

(i) A person that has or should have a solid waste disposal permit.

(ii) A person with a population of 25,000 or more, as determined by the most recent national census.

(b) The base penalty values for the \$8,000 penalty matrix are as follows:

(A) Class I:

(i) Major — \$8000;

(ii) Moderate — \$4000;

(iii) Minor — \$2000.

(B) Class II:

(i) Major — \$4000;

(ii) Moderate — \$2000;

(iii) Minor — \$1000.

(C) Class III: \$750.

(3) \$6,000 Penalty Matrix:

(a) The \$6,000 penalty matrix applies to the following:

(A) Any violation of an air quality statute, rule, permit or related order committed by a person that has or should have an ACDP permit, except for NSR, PSD and Basic ACDP permits.

(B) Any violation of an asbestos statute, rule, permit or related order except those violations listed in section (5) of this rule.

(C) Any violation of a vehicle inspection program statute, rule, permit or related order committed by an auto repair facility.

(D) Any violation of the Oregon Low Emission Vehicle rules (OAR 340-257) by an automobile dealer or an automobile rental agency.

(E) Any violation of a water quality statute, rule, permit or related order committed by:

(i) A person that has a NPDES Permit, or that has or should have a WPCF Permit, for a municipal or private utility sewage treatment facility with a permitted flow of two million or more, but less than five million, gallons per day.

(ii) A person that has a minor industrial source NPDES Permit, or has or should have a WPCF Permit, for an industrial source.

(iii) A person that has or should have applied for coverage under an NPDES or a WPCF General Permit, except an NPDES Stormwater Discharge 1200-C General Permit for a construction site of one acre or more, but less than five acres in size and except for an NPDES 700-PM General Permit for suction dredges.

(iv) A person that has a population of less than 100,000 but more than 10,000, as determined by the most recent national census, and has or should have a WPCF Municipal Stormwater UIC System Permit or has an NPDES MS4 Stormwater Discharge Permit.

(v) A person that has or should have a WPCF permit for a mining operation involving from 100,000 up to 500,000 cubic yards other than those operations using chemical leachate or froth flotation.

(vi) A person that owns, and that has or should have registered, a UIC system that disposes of wastewater other than stormwater or sewage.

(F) Any violation of an UST statute, rule, permit or related order committed by a person who is the owner, operator or permittee of five to nine UST facilities.

(G) Unless specifically listed under another penalty matrix, any violation of ORS Chapter 459 or other solid waste statute, rule, permit, or related order committed by:

(i) A person that has or should have a waste tire permit; or

(ii) A person with a population of more than 5,000 but less than or equal to 25,000, as determined by the most recent national census.

(H) Any violation of a hazardous waste management statute, rule, permit or related order committed by a person that is a small quantity generator.

(b) The base penalty values for the \$6,000 penalty matrix are as follows:

(A) Class I:

(i) Major — \$6,000.

(ii) Moderate — \$3,000.

(iii) Minor — \$1,500.

(B) Class II:

(i) Major — \$3,000.

(ii) Moderate — \$1,500.

(iii) Minor — \$750.

(C) Class III: \$500.

(4) \$2,500 Penalty Matrix:

(a) The \$2,500 penalty matrix applies to the following:

(A) Any violation of any statute, rule, permit, license, or order committed by a person not listed under another penalty matrix.

(B) Any violation of an air quality statute, rule, permit or related order committed by a person not listed under another penalty matrix.

(C) Any violation of OAR 340-264-0060(3) in which 25 or more cubic yards of prohibited materials or more than 15 tires are burned by a residential owner-occupant.

(D) Any violation of a vehicle inspection program statute, rule, permit or related order committed by a natural person, except for those violations listed in section (5) of this rule.

(E) Any violation of a water quality statute, rule, permit, license or related order not listed under another penalty matrix and committed by:

(i) A person that has an NPDES permit, or has or should have a WPCF permit, for a municipal or private utility wastewater treatment facility with a permitted flow of less than two million gallons per day.

(ii) A person that has or should have applied for coverage under an NPDES Stormwater Discharge 1200-C General Permit for a construction site that is more than one, but less than five acres.

(iii) A person that has a population of 10,000 or less, as determined by the most recent national census, and either has an NPDES MS4 Stormwater Discharge Permit or has or should have a WPCF Municipal Stormwater UIC System Permit.

(iv) A person who is licensed to perform onsite sewage disposal services or who has performed sewage disposal services.

(v) A person, except for a residential owner-occupant, that owns and either has or should have registered a UIC system that disposes of stormwater or sewage.

(vi) A person that has or should have a WPCF individual stormwater UIC system permit.

(F) Any violation of an onsite sewage disposal statute, rule, permit or related order, except for a violation committed by the residential owner-occupant.

(G) Any violation of an UST statute, rule, permit or related order if the person is the owner, operator or permittee of two to four UST facilities.

(H) Any violation, except a violation related to a spill or release, of a used oil statute, rule, permit or related order committed by a person that is a used oil generator.

(I) Unless listed under another penalty matrix, any violation of a hazardous waste management statute, rule, permit or related order committed by a person that is a conditionally exempt generator if the violation does not impact the person's generator status.

(J) Any violation of ORS Chapter 459 or other solid waste statute, rule, permit, or related order committed by a person with a population less than 5,000, as determined by the most recent national census.

(K) Any violation of the labeling requirements of ORS 459A.675 through 459A.685.

(L) Any violation of rigid pesticide container disposal requirements by a conditionally exempt generator of hazardous waste.

(b) The base penalty values for the \$2,500 penalty matrix are as follows:

(A) Class I:

(i) Major — \$2500;

(ii) Moderate — \$1250;

(iii) Minor — \$625.

(B) Class II:

(i) Major — \$1250;

(ii) Moderate — \$625;

(iii) Minor — \$300.

(C) Class III: \$200.

(5) \$1,000 Penalty Matrix:

(a) The \$1,000 penalty matrix applies to the following:

(A) Any violation of an open burning statute, rule, permit or related order committed by a residential owner-occupant at the residence, not listed under another penalty matrix.

(B) Any violation of visible emissions standards by operation of a vehicle.

(C) Any violation of an asbestos statute, rule, permit or related order committed by a residential owner-occupant.

(D) Any violation of an onsite sewage disposal statute, rule, permit or related order of OAR chapter 340, division 44 committed by a residential owner-occupant.

(E) Any violation of an UST statute, rule, permit or related order committed by a person who is the owner, operator or permittee of one UST facility.

(F) Any violation of an HOT statute, rule, permit or related order not listed under another penalty matrix.

(G) Any violation of a dry cleaning facility statute, rule, permit or related order.

(H) Any violation of a statute, rule, permit or order relating to rigid plastic containers, except for violation of the labeling requirements under OAR 459A.675 through 459A.685.

(I) Any violation of a statute, rule or order relating to the opportunity to recycle.

(J) Any violation of OAR chapter 340, division 262 or other statute, rule or order relating to solid fuel burning devices, except a violation related to the sale of new or used solid fuel burning devices or the removal and destruction of used solid fuel burning devices.

(K) Any violation of an UIC system statute, rule, permit or related order by a residential owner-occupant, when the UIC disposes of stormwater or sewage.

(L) Any violation by a person that has or should have applied for coverage under an NPDES 700-PM General Permit for Suction Dredges.

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

(A) Class I:

(i) Major — \$1000;

(ii) Moderate — \$500;

(iii) Minor — \$250.

(B) Class II:

(i) Major — \$500;

(ii) Moderate — \$250;

(iii) Minor — \$125.

(C) Class III: \$100.

Stat. Auth.: ORS 468.020 & 468.090 - 468.140

Stats. Implemented: ORS 459.995, 459A.655, 459A.660, 459A.685 & 468.035

Hist.: DEQ 4-1989, f. & cert. ef. 3-14-89; DEQ 15-1990, f. & cert. ef. 3-30-90; DEQ 33-1990, f. & cert. ef. 8-15-90; DEQ 21-1992, f. & cert. ef. 8-11-92; DEQ 4-1994, f. & cert. ef. 3-14-94; DEQ 9-1996, f. & cert. ef. 7-10-96; DEQ 19-1998, f. & cert. ef. 10-12-98; DEQ 6-2001, f. 6-18-01, cert. ef. 7-1-01; Renumbered from 340-012-0042, DEQ 4-2005, f. 5-13-05, cert. ef. 6-1-05; DEQ 4-2006, f. 3-29-06, cert. ef. 3-31-06; DEQ 6-2006, f. & cert. ef. 6-29-06; DEQ 2-2011, f. 3-10-11, cert. ef. 3-15-11

340-012-0145

Determination of Aggravating or Mitigating Factors

(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).

(2) "P" is whether the respondent has any prior significant actions (PSAs). A violation becomes a PSA on the date the first 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 PSA included one Class II violation or two Class III violations.

(C) 2 if the PSA (s) 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," the department will:

(A) Reduce the value of "P" by:

(i) 2 if all the formal enforcement actions in which PSAs were cited were issued more than three years before the date the current violation occurred.

(ii) 4 if all the formal enforcement actions 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 violator 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.

(a) The values for "H" and the finding that supports each are as follows:

(A) -2 if the Respondent corrected all 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)(A) or (B).

(b) 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) The values for "O" and the finding that supports each are as follows:

(A) 0 if the violation existed for one day or less and did not recur on the same day, or if there is insufficient information on which to base a finding under paragraphs (4)(a)(B) through (4)(a)(D).

(B) 2 if the violation recurred on the same day, or existed for or occurred on more than one day up to and including six days, which need not be consecutive days.

(C) 3 if the violation existed for or occurred from seven to 28 days, which need not be consecutive days.

(D) 4 if the violation existed for or occurred on more than 28 days, which need not be consecutive days.

(b) The department may, at its discretion, assess separate penalties for each day that a violation occurs. If the department does so, the O factor for each affected violation will be set at 0.

(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.

(a) 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)(a)(B) through (5)(a)(D).

(B) 2 if the respondent's conduct was negligent or the respondent had constructive knowledge (reasonably should have known) that the conduct would be a violation. Holding a permit that prohibits or requires conduct is presumed to constitute at least constructive knowledge and may be actual knowledge depending on the specific facts of the case.

(C) 6 if the respondent's conduct was reckless, or the respondent had actual knowledge that its conduct would be a violation and respondent's conduct was intentional. A respondent that previously received a Notice of Noncompliance, WL, PEN or any FEA for the same violation is presumed to have actual knowledge. Holding a permit that prohibits or requires conduct may be actual knowledge depending on the specific facts of the case.

(D) 10 if respondent acted flagrantly.

(6) "C" is the respondent's efforts to correct the violation.

(a) The values for "C" and the finding that supports each are as follows:

(A) -3 if the respondent made extraordinary efforts to correct the violation, or took extraordinary efforts to minimize the effects of the violation.

(B) -2 if the respondent made reasonable efforts to correct the violation, reasonable affirmative efforts to minimize the effects of the violation, or extraordinary efforts to ensure the violation would not be repeated.

(C) -1 if the respondent eventually made efforts to correct the violation, or took affirmative efforts to minimize the effects of the violation.

(D) 0 if there is insufficient information to make a finding under paragraphs (6)(a)(A) through (6)(a)(C), or (6)(a)(E), or if the violation or the effects of the violation could not be corrected or minimized.

(E) 2 if the respondent did not address the violation as described in paragraphs (6)(a)(A) through (6)(a)(C) and the facts do not support a finding under paragraph (6)(a)(D).

Stat. Auth.: ORS 468.020 & 468.130

Stats. Implemented: ORS 459.376, 459.995, 465.900, 465.992, 466.990 - 994, 468.090 - 140 & 468B.450 Hist.: DEQ 4-2005, f. 5-13-05, cert. ef. 6-1-05

340-012-0150

Determination of Economic Benefit

(1) The Economic Benefit (EB) is the approximate dollar value of the benefit gained and the costs avoided or delayed (without duplication) as a result of the respondent's noncompliance. The EB may be determined using the U.S. Environmental Protection Agency's BEN computer model. Upon request of the respondent, the department will provide the name of the version of the model used and respond to any reasonable request for information about the content or operation of the model. The model's standard values for income tax rates, inflation rate and discount rate are presumed to apply to all respondents unless a specific respondent can demonstrate that the standard value does not reflect that respondent's actual circumstance. Upon request of the Respondent, the department will use the model in determining the economic benefit component of a civil penalty.

(2) The department may make, for use in the applicable model, a reasonable estimate of the benefits gained and the costs avoided or delayed by the respondent. Economic benefit will be calculated without duplicating or double-counting the advantages realized by respondent as a result of its noncompliance.

(3) The department need not calculate EB if the department makes a reasonable determination that the EB is de minimis or if there is insufficient information reasonably available to the department on which to make an estimate under section (2) of this rule.

(4) The department may assess EB whether or not it assesses any other portion of the civil penalty using the formula in OAR 340-012-0045.

(5) The department's calculation of EB may not result in a civil penalty for a violation that exceeds the maximum civil penalty allowed by rule or statute. However, when a violation has occurred or been repeated for more than one day, the department may treat the violation as extending over at least as many days as necessary to recover the economic benefit of the violation. When the purpose of treating a violation as extending over more than one day is to recover the economic benefit, the department has the discretion not to impose the base penalty portion of the civil penalty. Nothing in this section precludes the department from assessing a penalty of up to the maximum allowed for the violation by statute.

Stat. Auth.: ORS 468.020 & 468.090 - 468.140

Stats. Implemented: ORS 459.376, 459.995, 465.900, 465.992, 466.210, 466.990, 466.994, 467.050, 467.990, 468.090 - 468.140 & 468.996

Hist.: DEQ 4-2005, f. 5-13-05, cert. ef. 6-1-05

340-012-0155

Additional or Alternate Civil Penalties

(1) The following violations and violators may be subject to additional civil penalties as specified below:

(a) In addition to any other penalty prescribed by these rules, any person who intentionally or recklessly violates any provisions of ORS 164.785, 459.205-459.426, 459.705-459.790, Chapters 465, 466, 467, 468, or 468A or 468B or any rule or standard or order of the commission adopted or issued pursuant to 459.205-459.426, 459.705-459.790, Chapters 465, 466, 467, 468, 468A, or 468B, that results in or creates the imminent likelihood for an extreme hazard to the public health or that causes extensive damage to the environment, may incur a civil penalty of up to \$100,000. When determining the civil penalty to be assessed under this subsection, the director will apply the following procedures:

(A) Select one of the following base penalties after evaluating the cause of the violation:

(i) \$50,000 if the violation was caused intentionally;

(ii) \$75,000 if the violation was caused recklessly;

(iii) \$100,000 if the violation was caused flagrantly.

(B) Then determine the civil penalty through application of the following formula: $BP + [(1 \times BP) (P + H + O + C)] + EB$.

(b) In addition to any other penalty prescribed by these rules, any person who intentionally or negligently causes or permits the discharge of oil to waters of the state will incur a civil penalty not to exceed \$20,000 dollars for each violation. The amount of the penalty is determined by doubling the penalty derived from application of the \$8,000 penalty matrix in 340-012-0140(2) and the civil penalty formula contained in OAR 340-012-0045.

(c) In addition to any other penalty prescribed by these rules, any person who willfully or negligently causes or permits the discharge of oil to state waters will incur, in addition to any other penalty derived from application of the \$8,000 penalty matrix in 340-012-0140(2) and the civil penalty formula contained in OAR 340-012-0045, a civil penalty commensurate with the amount of damage incurred. The amount of the penalty will be determined by the director with the advice of the director of the Oregon Department of Fish and Wildlife. In determining the amount of the penalty, the director may consider the gravity of the violation, the previous record of the violator in complying with the provisions of ORS 468B.450 to 468B.460, and such other considerations the director deems appropriate.

(d) In addition to any other penalty prescribed by these rules, any person who has care, custody or control of a hazardous waste or a substance that would be a hazardous waste except for the fact that it is not discarded, useless or unwanted will incur a civil penalty according to the schedule set forth in this subsection for the destruction, due to

contamination of food or water supply by such waste or substance, of any of the following wildlife that are property of the state:

- (A) Each game mammal other than mountain sheep, mountain goat, elk or silver gray squirrel, \$400.
 - (B) Each mountain sheep or mountain goat, \$3,500.
 - (C) Each elk, \$750.
 - (D) Each silver gray squirrel, \$10.
 - (E) Each game bird other than wild turkey, \$10.
 - (F) Each wild turkey, \$50.
 - (G) Each game fish other than salmon or steelhead trout, \$5.
 - (H) Each salmon or steelhead trout, \$125.
 - (I) Each fur-bearing mammal other than bobcat or fisher, \$50.
 - (J) Each bobcat or fisher, \$350.
 - (K) Each specimen of any wildlife species whose survival is specified by the wildlife laws or the laws of the United States as threatened or endangered, \$500.
 - (L) Each specimen of any wildlife species otherwise protected by the wildlife laws or the laws of the United States, but not otherwise referred to in this section, \$25.
- (2) The following violations are subject to the civil penalties specified below, in lieu of civil penalties calculated pursuant to OAR 340-012-0045:
- (a) The department will assess a field penalty as specified under OAR 340-150-0250 unless the department determines that an owner, operator or permittee is not eligible for the field penalty.
 - (b) Any owner or operator of a vessel discharging ballast water in violation of ORS 783.635 may incur a civil penalty not to exceed \$5,000 for each violation. In determining the amount of the penalty, the director will consider whether the violation was intentional, negligent or without any fault and will consider the quality and nature of risks created by the violation, the previous record of the violator in complying with the provisions of 468B.450 to 468B.460, and such other considerations the director deems appropriate.
 - (c) Any owner or operator of a vessel violating the ballast water reporting requirements in ORS 783.640 will incur a civil penalty not to exceed \$500 per violation.
 - (d) Air emission sources operating under the Western Backstop SO₂ Trading Program will be assessed a civil penalty of at least \$5,000 for each ton and each day of violation in excess of the applicable allowance limitation as determined by OAR chapter 340 division 228.
 - (e) Any owner or operator of a confined animal feeding operation that has not applied for or does not have a permit required by ORS 468B.050 will be assessed a civil penalty of \$500.
 - (f) Any person that fails to comply with Toxics Use and Hazardous Waste Reduction Plan, system or summary requirements of ORS 465.003 to 465.034 may incur a civil penalty of \$500 for each violation on each day.

Stat. Auth.: ORS 465, 466, 468.020, 468.130, 468.996 & 783.992

Stats. Implemented: ORS 465.021, 466.785, 466.835, 466.992, 468.090 - 468.140, 468.996, 468B.220, 468B.450 & 783.992

Hist.: DEQ 15-1990, f. & cert. ef. 3-30-90; DEQ 21-1992, f. & cert. ef. 8-11-92; DEQ 9-2000, f. & cert. ef. 7-21-00; DEQ 1-2003, f. & cert. ef. 1-31-03; Renumbered from 340-012-0049, DEQ 4-2005, f. 5-13-05, cert. ef. 6-1-05; DEQ 4-2006, f. 3-29-06, cert. ef. 3-31-06; DEQ 14-2008, f. & cert. ef. 11-10-08

340-012-0160

Department Discretion Regarding Penalty Assessment

(1) In addition to that described in section (3) below, the department has the discretion to increase a base penalty determined under OAR 340-012-0140 to that derived using the next highest penalty matrix. Factors that may be taken into consideration in increasing a base penalty include the respondent's compliance history, the likelihood of future violations, the degree of environmental or human health impact, the deterrence impact and other similar factors.

(2) In determining a civil penalty, the director may reduce any penalty by any amount the director deems appropriate if the respondent has voluntarily disclosed the violation to the department. In deciding whether a violation has been voluntarily disclosed, the director may take into account any considerations the director deems appropriate, including whether the violation was:

(a) Discovered through an environmental auditing program or a systematic compliance program;

(b) Voluntarily discovered;

(c) Promptly disclosed;

(d) Discovered and disclosed independent of the government or a third party;

(e) Corrected and remedied;

(f) Prevented from recurring;

(g) Not repeated;

(h) Not the cause of significant harm to human health or the environment; and

(i) Disclosed and corrected in a cooperative manner.

(3) Regardless of any other penalty amount listed in this division, the director has the discretion to increase the penalty to \$10,000 per violation per day of violation based upon the facts and circumstances of the individual case.

(4) For violations of a department-issued permit with more than one permittee, the department may issue separate civil penalties to each permittee, given compliance objectives, including the level of deterrence needed.

Stat. Auth.: ORS 468.020, 468.130

Stats. Implemented: ORS 183.745, 459.376, 459.995, 465.900, 465.992, 466.990, 466.994, 468.090-468.140, 468.996, 468B.450

Hist.: DEQ 4-2005, f. 5-13-05, cert. ef. 6-1-05

340-012-0162

Inability to Pay the Penalty

(1) After a penalty is assessed, the department may reduce a penalty based on the respondent's inability to pay the full penalty amount. In order to do so, the department must receive information regarding the respondent's financial condition on a form required by the department along with any additional documentation requested by the department.

(2) If the respondent is currently unable to pay the full penalty amount, the first option is to place the respondent on a payment schedule with interest. The department may reduce the penalty only after determining that the respondent is unable to meet a payment schedule of a length the department determines is reasonable.

(3) In considering the respondent's ability to pay a civil penalty, the department may use the U.S. Environmental Protection Agency's ABEL, INDIPAY or MUNIPAY computer models to evaluate a respondent's financial condition or ability to pay the full civil penalty amount. Upon request of the respondent, the department will provide the respondent the name of the version of the model used and respond to any reasonable request for information about the content or operation of the model;

(4) The department, at its discretion, may refuse to reduce an assessed civil penalty. In exercising this discretion, the department may take into consideration any factor related to the violations or the respondent, including but not limited to the respondent's mental state, whether the respondent has corrected the violation or taken efforts to ensure the violation will not be repeated, whether the respondent's financial condition poses a serious concern regarding the respondent's ability to remain in compliance, the respondent's future ability to pay, and the respondent's real property or other assets.

Stat. Auth.: ORS 468.020, 468.130

Stats. Implemented: ORS 454.635, 454.645, 459.376, 459.995, 465.900, 465.992, 466.990-466.994, 468.090-468.140, 468B.220-468B.450

Hist.: DEQ 4-2005, f. 5-13-05, cert. ef. 6-1-05

340-012-0165

Stipulated Penalties

Nothing in OAR chapter 340, division 12 affects the ability of the commission or department to include stipulated penalties in a Mutual Agreement and Order, Consent Order, Consent Judgment or any other order or agreement issued under ORS Chapters 183, 454, 459, 465, 466, 467, 468, 468A, or 468B.

Stat. Auth.: ORS 454.625, 459.995, 468.020 & 468.996

Stats. Implemented: ORS 183.090 & 183.415

Hist.: DEQ 4-1989, f. & cert. ef. 3-14-89; DEQ 15-1990, f. & cert. ef. 3-30-90; DEQ 21-1992, f. & cert. ef. 8-11-92; DEQ 19-1998, f. & cert. ef. 10-12-98; Renumbered from 340-012-0048, DEQ 4-2005, f. 5-13-05, cert. ef. 6-1-05

340-012-0170

Compromise or Settlement of Civil Penalty by Department

(1) The department may compromise or settle a civil penalty assessed in a formal enforcement action at any amount that the department deems appropriate. In determining whether a penalty should be compromised or settled, the department may take into account the following:

(a) New information obtained through further investigation or provided by the respondent that relates to the penalty determination factors contained in OAR 340-012-0045;

(b) The effect of compromise or settlement on deterrence;

(c) Whether the respondent has or is willing to employ extraordinary means to correct the violation or maintain compliance;

(d) Whether the respondent has had any previous penalties which have been compromised or settled;

- (e) Whether the respondent has the ability to pay the civil penalty as determined by OAR 340-012-0160;
- (f) Whether the compromise or settlement would be consistent with the department's goal of protecting human health and the environment; and
- (g) The relative strength or weakness of the department's evidence.

(2) Expedited Enforcement Offers:

- (a) The department may pursue informal disposition of any alleged violation by making an expedited enforcement offer.
- (b) The decision as to whether to make an expedited enforcement offer with respect to any alleged violation is within the department's sole discretion, except as otherwise provided in this section (2).
- (c) In determining whether to make an expedited enforcement offer, the department must consider the amount of the economic benefit gained by the alleged violator as a result of the noncompliance; whether the alleged violator has been the subject of a formal enforcement action or been issued a warning letter or pre-enforcement notice for the same or similar violations; whether the alleged violation is isolated or ongoing; and the mental state of the alleged violator.
- (d) The department will not make an expedited enforcement offer to settle a Class I violation that has been repeated within the previous three years or to settle a violation that would be a major magnitude violation under OAR 340-012-0130(3) regardless of whether a selected magnitude under 340-012-0135 applies.
- (e) The penalty amount for an alleged violation cited in an expedited enforcement offer will be 40% of the moderate base penalty listed in OAR 340-012-0140 under the applicable matrix and the applicable classification.
- (f) Participation in the expedited enforcement program is voluntary. An alleged violator to whom the department makes an expedited enforcement offer is under no obligation to accept the offer.
- (g) A person to whom an expedited enforcement offer is made has 30 calendar days from the date of the offer to accept the offer by signing the expedited enforcement offer and submitting the signed expedited enforcement offer and payment for the total amount stipulated in the expedited enforcement offer. The signed expedited enforcement offer and payment are deemed submitted when received by the department.
- (h) By signing the expedited enforcement offer and submitting payment to the department in the total amount stipulated in the expedited enforcement offer, the alleged violator accepts the expedited enforcement offer, consents to the issuance of a final order of the commission which may include a compliance schedule, and agrees to waive any right to appeal or seek administrative or judicial review of the expedited enforcement offer, the final order, or any violation cited therein.
- (i) Expedited enforcement offers incorporated into final orders of the commission will be treated as prior significant actions in accordance with OAR 340-012-0145.
- (j) The department may initiate a formal enforcement action for any violation not settled by acceptance of the expedited enforcement offer.

Stat. Auth.: ORS 459, 466, 467, 468.020 & 468.130, 183.415, 183.745

Stats. Implemented: ORS 468.130-140, 183.415, 183.470, 183.745, 459.376, 459.995, 465.900, 466.990, 466.994, 468.035, 468.090 - 140 & 468B.220

Hist.: DEQ 78, f. 9-6-74, ef. 9-25-74; DEQ 22-1984, f. & ef. 11-8-84; DEQ 22-1988, f. & cert. ef. 9-14-88, Renumbered from 340-012-0075; DEQ 4-1989, f. & cert. ef. 3-14-89; DEQ 15-1990, f. & cert. ef. 3-30-90; DEQ 21-1992, f. & cert. ef. 8-11-92; Renumbered from 340-012-0047, DEQ 4-2005, f. 5-13-05, cert. ef. 6-1-05; DEQ 14-2008, f. & cert. ef. 11-10-08