



Oregon

Kate Brown, Governor

Department of Environmental Quality
Office of Compliance and Enforcement
700 NE Multnomah Street, Suite 600
Portland, OR 97232-4100
(503) 229-5696
FAX (503) 229-5100
TTY 711

August 30, 2018

CERTIFIED MAIL: 7016 0750 0000 3470 3593

NW Metals Inc
c/o Alaka Worana, Registered Agent
7600 NE Killingsworth St.
Portland, OR 97218

Re: Notice of Civil Penalty Assessment and Order
Case No. WQ/SW-NWR-2018-063

This letter is to inform you that the Oregon Department of Environmental Quality (DEQ) has issued NW Metals Inc. (NW Metals) a civil penalty of \$52,854 for violating Oregon environmental law at a vehicle dismantling facility located at 7600 NE Killingsworth Street, in Portland, Oregon. Specifically, DEQ cited and penalized NW Metals for operating prohibited underground injection control (UIC) systems, placing wastes in a location where they may enter waters of the state, failing to perform a hazardous waste determination, operating a waste tire storage site without a permit and failing to properly manage waste tires.

The facility repairs, dismantles, and shreds used vehicles, generating waste materials, including waste tires, antifreeze, petroleum wastes, and other likely toxic and hazardous substances. When mismanaged, these wastes pose a threat of harm to human health and the environment. The UICs at the facility inject stormwater into the subsurface and may provide wastes a conduit to groundwater. DEQ rules prohibit UICs that may discharge potentially hazardous or toxic materials from industrial activities with stormwater. In addition, NW Metals' storage of an excessive amount of waste tires in large, disorganized piles throughout the facility, poses a threat of harm to the environment. Excessive piles of waste tires are a fire hazard and provide habitat for harmful vectors, including insects and rodents that can transmit pathogens. DEQ is concerned that given the volume and density of waste tires accumulated at the facility, coupled with the haphazard nature in which they are stored, NW Metals is exacerbating a known hazard.

Included in Section IV of the attached Notice is an order requiring NW Metals to take several actions by no later than October 1, 2018. First, NW Metals must either remove and properly dispose of all the waste tires from the facility or submit an application for a waste tire storage permit and documentation that the waste tires are managed in accordance with DEQ waste tire storage requirements. The application can be found at <https://www.oregon.gov/deq/FilterPermitsDocs/WTSApplication.pdf>. Second, the Notice requires NW Metals to cease operation of the prohibited UICs. This may be accomplished by closing the UICs or otherwise preventing stormwater runoff from your industrial activities from draining to the UICs. Finally, the Notice requires NW Metals submit a plan to DEQ for approval that describes how it will manage stormwater at the facility. \$16,354 of the civil penalty for the UIC-related violations represents the economic benefit NW Metals gained by failing to close the

UICs since it has been engaged in industrial activities at the site. \$1,250 of the civil penalty represents the economic benefit it gained by failing to properly dispose of waste tires. If you complete the requirements in the Notice, DEQ will consider recalculating these costs as delayed rather than avoided and will reduce the civil penalty accordingly.

Please continue to work with DEQ's air quality program on permitting your new shredder and with DEQ's cleanup program to comply with the Removal Action Order DEQ issued to you on March 28, 2018.

If you wish to appeal this matter, DEQ must receive a request for a hearing within 20 calendar days from your receipt of this letter. The hearing request must be in writing. Send your request to DEQ Office of Compliance and Enforcement:

Via mail – 700 NE Multnomah Street, Suite 600, Portland, Oregon 97232

Via email – DEQappeals@deq.state.or.us

Via fax – 503-229-5100

Once DEQ receives your request, we will arrange to meet with you to discuss this matter. If DEQ does not receive a timely written hearing request, the penalty will become due. Alternatively, you can pay the penalty by sending a check or money order to the above address.

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

DEQ may allow you to resolve part of your penalty through the completion of a Supplemental Environmental Project (SEP). SEPs are environmental improvement projects that you sponsor instead of paying a penalty. Further information is available by calling the number below or at <http://www.oregon.gov/deq/Regulations/Pages/SEP.aspx>.

DEQ's rules are available at <http://www.oregon.gov/deq/Regulations/Pages/Statutes.aspx> or by calling the number below.

If you have any questions, please contact Courtney Brown at 503-229-6839 or toll free in Oregon at 800-452-4011, extension 6839.

Sincerely,



Kieran O'Donnell, Manager
Office of Compliance and Enforcement

Enclosures

cc: Derek Sandoz, Northwest Region, DEQ
Jay Collins, Northwest Region, DEQ
Chris Papinsick, Northwest Region, DEQ

1 9. Stormwater runoff from Respondent's Facility drains to Drywell #1 and Drywell #2.

2 10. Water at the bottom of Drywell #1 was sampled on July 19, 2018. Sample results
3 detected eleven Volatile Organic Compounds (VOCs) were detected in the water.

4 11. Samples of sludge were taken from the bottom of the inside of Drywell #1 on July 19,
5 2018. Sample results detected petroleum hydrocarbons and ten metals, four of which exceeded
6 background metals concentrations for the Portland Basin. In addition, sample results detected eleven
7 semi-volatile organic compounds (SVOCs), five of which exceeded the EPA Regional Screening Level
8 for Resident Soil to Groundwater.

9 12. Soil samples were taken adjacent to and 5' to 10' below the bottom of Drywell #1 on
10 July 30, 2018. Sample results detected petroleum hydrocarbons and ten metals, two of which exceeded
11 background metals concentrations for the Portland Basin. In addition, sample results detected eleven
12 SVOCs. Two of those SVOCs exceeded the EPA Regional Screening Level for Residential Soil to
13 Groundwater.

14 13. Soil samples were taken adjacent to and 5' to 10' below the bottom of Drywell #2 on
15 July 30, 2018. Sample results detected petroleum hydrocarbons, nine metals, six VOCs, and ten
16 SVOCs, one of which exceeded the EPA Regional Screening Level for Residential Soil to
17 Groundwater.

18 14. On or before March 12, 2018, Respondent constructed, installed, and operated a full size
19 vehicle shredder at the Facility.

20 15. The shredder was a new source that emitted VOCs and particulate matter.

21 16. Respondent did not notify DEQ in writing prior to constructing, installing, or operating
22 the shredder.

23 17. On or about March 12, 2018, through March 13, 2018, a fire occurred at Respondent's
24 Facility.

25 18. On March 14, 2018, DEQ performed an inspection of the Facility and observed:

26 a. A burned and severely damaged full size vehicle shredder;

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- b. Waste tires accumulated in disorganized, unstacked piles in many locations, outside on the ground, and throughout the Facility;
- c. Waste tires in poor condition, badly worn and without tread, overgrown with berry vines, or badly burned;
- d. No fire lanes around the piles of waste tires;
- e. Waste tires stacked up against and adjacent to buildings;
- f. One pile of waste tires approximately 20' tall, 25' wide, and 75' long, for a total of approximately 1,389 cubic yards;
- g. Waste tire piles without an approach and access road that was passable for a vehicle;
- h. Damaged and open containers labeled "used oil";
- i. Car batteries outside on the ground and in vehicles exposed to the elements;
- j. An above-grade riser that was dislodged from its buried casing for Drywell # 1;
- k. Rills and rivulets in the ground running from the burned areas to the Catch Basins;
- l. Vehicle dismantling areas located over bare ground, uncovered, and exposed to stormwater;
- m. The ground around Drywell # 1 and Drywell # 2 was stained with black dirt;
- n. The ground underneath partially dismantled vehicles was stained with black dirt and had an oily sheen; and
- o. Dark and stained soil in the areas in and around the Catch Basins.

19. Respondent removes antifreeze from automobiles, does not ship the antifreeze for reclamation and reuse, and instead mixes the antifreeze with used oil.

20. Respondent has not performed hazardous waste determinations on the antifreeze or the antifreeze mixed with used oil.

21. Antifreeze that is not reclaimed is considered a "residue" according to OAR 340-100-0010(2)(ee).

1 civil penalty for these violations.

2 2. Since on or about March 2014, through the present, Respondent has violated ORS
3 468B.025(1)(a) by placing wastes in a location where they are likely to enter waters of the state by any
4 means, as described in Section II above. Specifically, Respondent's vehicle dismantling resulted in the
5 disposal of vehicle fluids, including petroleum-based liquids, waste tires, scrap metal, and other waste
6 materials onto the ground surface in and around its Facility where they may come in contact with stormwater and
7 discharge through the Catch Basins and Drywell #1 and Drywell 2 to the groundwater beneath the Facility.
8 Groundwater is a "water of the state," as defined by ORS 468B.005(10). Vehicle fluids, waste tires, and
9 scrap metal are "wastes," as defined by ORS 468B.005(9) because they are industrial wastes that may alter
10 the physical, chemical, or biological properties of waters of the state. This is a Class II violation pursuant
11 to OAR 340-012-0055(2)(c). DEQ hereby assesses a \$6,600 civil penalty for this violation.

12 3. Respondent violated OAR 340-102-0011(2) by failing to completely and accurately determine
13 if Respondent's residue was hazardous waste, as described in Section II above. The antifreeze and
14 antifreeze mixed with used oil were "residues," as defined by OAR 340-100-0010(2)(ee) and "solid
15 wastes," as defined by 40 CFR § 261.2(b) because they were not reclaimed for reuse. In addition,
16 antifreeze is known to contain benzene and lead in high concentrations which often makes it a
17 characteristic hazardous waste. Furthermore, antifreeze typically contains ethylene glycol or propylene
18 glycol which are known threats to human health and the environment. This is a Class I violation according
19 to OAR 340-012-0068(1)(a). DEQ hereby assesses a \$1,050 civil penalty for this violation.

20 4. Respondent has violated OAR 340-064-0015(1) by establishing, operating, and expanding a
21 waste tire storage site at the Facility, storing more than 1,500 waste tires, without obtaining a waste tire
22 storage permit from DEQ, as described in Section II above. The tires at the Facility are "waste tires," as
23 defined by OAR 340-064-0010(33) because they are worn and damaged and no longer suitable for their
24 original intended use. The Facility is a "storage site," as defined by OAR 340-0640010(25), because
25 Respondent has accumulated waste tires at the Facility above ground. This is a Class I violation according
26 to OAR 340-012-0066(1)(a). DEQ hereby assesses a \$10,850 civil penalty for this violation.

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- ii. Submit to DEQ a complete application for a waste tire storage permit, including the application fee and documentation demonstrating that waste tires at the Facility meet the standards for storage required by OAR 340-064-0035(4). Submit this information to DEQ, Attn: DEQ NWR Solid Waste Permit Coordinator, 700 NE Multnomah Street, Suite 600, Portland, OR 97232 or via email to DEQNWR.SolidWastePermitCoordinator@deq.state.or.us; and
- b. Submit to DEQ for approval a plan demonstrating how Respondent will manage stormwater runoff from the Facility. Submit this plan to DEQ, Attn: Derek Sandoz, 700 NE Multnomah Street, 7th Floor Suite 600, Portland, OR 97232 or sandoz.derek@deq.state.or.us; and
- c. Cease operation of the prohibited Class V UICs (Drywell # 1 and Drywell # 2).

V. NOTICE OF RIGHT TO REQUEST A CONTESTED CASE HEARING

You have a right to a contested case hearing on this Notice, if you request one in writing. DEQ must receive your request for hearing **within 20 calendar days** from the date you receive this Notice. If you have any affirmative defenses or wish to dispute any allegations of fact in this Notice or attached exhibits, you must do so in your request for hearing, as factual matters not denied will be considered admitted, and failure to raise a defense will be a waiver of the defense. (See OAR 340-011-0530 for further information about requests for hearing.) You must send your request to: **DEQ, Office of Compliance and Enforcement, 700 NE Multnomah Street, Suite 600, Portland, Oregon 97232**, fax it to **503-229-5100** or email it to DEQappeals@deq.state.or.us. An administrative law judge employed by the Office of Administrative Hearings will conduct the hearing, according to ORS Chapter 183, OAR Chapter 340, Division 011 and OAR 137-003-0501 to 0700. You have a right to be represented by an attorney at the hearing, however you are not required to be. If you are an individual, you may represent yourself. If you are a corporation, partnership, limited liability company, unincorporated association, trust or government body, you must be represented by an attorney or a duly authorized representative, as set forth in OAR 137-003-0555.

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1 Active duty service-members have a right to stay proceedings under the federal Service
2 Members Civil Relief Act. For more information, please call the Oregon State Bar at 1-800-
3 452-8260 or the Oregon Military Department at 1-800-452-7500. Additional information can be found
4 online at the United States Armed Forces Legal Assistance (AFLA) Legal Services Locator website
5 <http://legalassistance.law.af.mil/content/locator.php>.

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

12
13
14
15 8/30/18

16 Date

15 

16 Kieran O'Donnell, Manager
Office of Compliance and Enforcement

EXHIBIT 1

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

VIOLATION 1: Causing the operation of a prohibited Class V underground injection system in violation of OAR 340-044-0015(2)(c).

CLASSIFICATION: This is a Class I violation pursuant to OAR 340-012-0055(1)(p).

MAGNITUDE: The magnitude of the violation is moderate pursuant to OAR 340-012-0130(1), as there is no selected magnitude specified in OAR 340-012-0135 applicable to this violation, and the information reasonably available to DEQ does not indicate a minor or major magnitude.

CIVIL PENALTY FORMULA: The formula for determining the amount of penalty of each violation is: $BP + [(0.1 \times BP) \times (P + H + O + M + C)] + EB$

"BP" is the base penalty, which is \$6,000 for a Class I, moderate magnitude violation in the matrix listed in OAR 340-012-0140 (2)(b)(A)(ii) and applicable pursuant to OAR 340-012-0140 (2)(a)(E)(iv).

"P" is whether Respondent has any prior significant actions, as defined in OAR 340-012-0030(19), in the same media as the violation at issue that occurred at a facility owned or operated by the same Respondent, and receives a value of 0 according to OAR 340-012-0145(2)(a)(A), because there are no prior significant actions.

"H" is Respondent's history of correcting prior significant actions, and receives a value of 0 according to OAR 340-012-0145(3)(c) because there is no prior history.

"O" is whether the violation was repeated or ongoing, and receives a value of 4 according to OAR 340-012-0145(4)(d) because there were more than 28 occurrences of the violation. Each day of violation constitutes a separate occurrence. Respondent has caused the operation of the prohibited UICs since 2014, when it began operation of the Facility and discharged industrial wastes and toxic materials to the ground where it may discharge into Drywell # 1 and Drywell # 2, and continues to do so as of the date of issuance of this Notice.

"M" is the mental state of the Respondent, and receives a value of 8 according to OAR 340-012-0145(5)(d) because Respondent's conduct was reckless. By conducting an industrial activity that handles, stores and processes petroleum and other toxic materials from vehicles in an area where stormwater runoff could discharge to UICs and without containment or limiting the exposure of those substances to stormwater, Respondent consciously disregarded a substantial and unjustifiable risk that it was operating a prohibited Class V UIC.

"C" is Respondent's efforts to correct or mitigate the violation, and receives a value of 0 according to OAR 340-012-0145(6)(f) because there is insufficient information to make a finding under paragraphs (6)(a) through (6)(e), or (6)(g).

"EB" is the approximate dollar value of the benefit gained and the costs avoided or delayed as a result of the Respondent's noncompliance. It is designed to "level the playing field" by taking away any economic advantage the entity gained and to deter potential violators from deciding it is cheaper to violate and pay the penalty than to pay the costs of compliance. In this case, "EB" receives a value of \$16,354. This is the amount Respondent gained by avoiding spending \$20,000, to close the two UICs at the Facility. This "EB" was calculated pursuant to OAR 340-012-0150(1) using the U.S. Environmental Protection Agency's BEN computer model.

PENALTY CALCULATION: $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$
 $= \$6,000 + [(0.1 \times \$6,000) \times (0 + 0 + 4 + 8 + 0)] + \$16,354$
 $= \$6,000 + (\$600 \times 12) + \$16,354$
 $= \$6,000 + \$7,200 + \$16,354$
 $= \$29,554$

EXHIBIT 2

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

VIOLATION 2: Placing wastes in a location where they are likely to enter waters of the state by any means in violation of ORS 468B.025(1)(a).

CLASSIFICATION: This is a Class II violation pursuant to OAR 340-012-0055(2)(c).

MAGNITUDE: The magnitude of the violation is moderate pursuant to OAR 340-012-0130(1), as there is no selected magnitude specified in OAR 340-012-0135 applicable to this violation, and the information reasonably available to DEQ does not indicate a minor or major magnitude.

CIVIL PENALTY FORMULA: The formula for determining the amount of penalty of each violation is: $BP + [(0.1 \times BP) \times (P + H + O + M + C)] + EB$

"BP" is the base penalty, which is \$3,000 for a Class II, moderate magnitude violation in the matrix listed in OAR 340-012-0140 (2)(b)(B)(ii) and applicable pursuant to OAR 340-012-0140(2)(a)(D).

"P" is whether Respondent has any prior significant actions, as defined in OAR 340-012-0030(19), in the same media as the violation at issue that occurred at a facility owned or operated by the same Respondent, and receives a value of 0 according to OAR 340-012-0145(2)(a)(A), because there are no prior significant actions.

"H" is Respondent's history of correcting prior significant actions, and receives a value of 0 according to OAR 340-012-0145(3)(c) because there is no prior history.

"O" is whether the violation was repeated or ongoing, and receives a value of 4 according to OAR 340-012-0145(4)(d) because there were more than 28 occurrences of the violation. Each day of violation constitutes a separate occurrence. Respondent has placed wastes in a location where they are likely to enter waters of the state since 2014, when it began operation of the Facility and disposed of wastes to the ground where they may discharge to groundwater, and continues to do so as of the date of issuance of this Notice.

"M" is the mental state of the Respondent, and receives a value of 8 according to OAR 340-012-0145(5)(d) because Respondent's conduct was reckless. By failing to properly contain, store, manage and handle vehicles parts and fluids at the Facility, Respondent consciously disregarded a substantial and unjustifiable risk that wastes from its Facility would be washed via stormwater to UICs which discharge to the subsurface and may ultimately discharge to groundwater.

"C" is Respondent's efforts to correct or mitigate the violation, and receives a value of 0 according to OAR 340-012-0145(6)(f) because there is insufficient information to make a finding under paragraphs (6)(a) through (6)(e), or (6)(g).

"EB" is the approximate dollar value of the benefit gained and the costs avoided or delayed as a result of the Respondent's noncompliance. It is designed to "level the playing field" by taking away any economic advantage the entity gained and to deter potential violators from deciding it is cheaper to violate and pay the penalty than to pay the costs of compliance. In this case, "EB" receives a value of \$0. Respondent's economic benefit from this violation is captured in the EB assessed to close the prohibited UICs, as stated in Exhibit No. 1.

PENALTY CALCULATION: $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$
= \$3,000 + [(0.1 x \$3,000) x (0 + 0 + 4 + 8 + 0)] + \$0
= \$3,000 + (\$300 x 12) + \$0
= \$3,000 + \$3,600 + \$0
= \$6,600

EXHIBIT 3

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

VIOLATION 3: Failing to completely and accurately determine if Respondent's residue was hazardous waste, in violation of OAR 340-102-0011(2).

CLASSIFICATION: This is a Class I violation pursuant to OAR 340-012-0068(1)(a).

MAGNITUDE: The magnitude of the violation is minor pursuant to OAR 340-012-0135(4)(a)(C) because Respondent failed to make a hazardous waste determination on one or two waste streams. The Respondent failed to make a hazardous waste determination on the waste antifreeze and the waste antifreeze mixed with used oil.

CIVIL PENALTY FORMULA: The formula for determining the amount of penalty of each violation is: $BP + [(0.1 \times BP) \times (P + H + O + M + C)] + EB$

"BP" is the base penalty, which is \$750 for a Class I, minor magnitude violation in the matrix listed in OAR 340-012-0140(4)(b)(A)(i) and applicable pursuant to OAR 340-012-0140(4)(a)(P) as Respondent violated an oil or hazardous waste rule and is not listed under another matrix.

"P" is whether Respondent has any prior significant actions, as defined in OAR 340-012-0030(19), in the same media as the violation at issue that occurred at a facility owned or operated by the same Respondent, and receives a value of 0 according to OAR 340-012-0145(2)(a)(A), because there are no prior significant actions.

"H" is Respondent's history of correcting prior significant actions, and receives a value of 0 according to OAR 340-012-0145(3)(c) because there is no prior history.

"O" is whether the violation was repeated or ongoing and receives a value of 0 according to OAR 340-012-0145(4)(a), because there is insufficient information on which to base a finding under paragraphs (4)(b) through (4)(d). It is unknown on how many occasions that Respondent generated the waste or how long the waste was at the Facility.

"M" is the mental state of the Respondent and receives a value of 4 according to OAR 340-012-0145(5)(c), because Respondent's conduct was negligent. Antifreeze is known to contain toxic heavy metals such as lead. Respondent's facility manager failed to adhere to best management practices regarding the handling of antifreeze after having been previously informed by DEQ of the requirement to determine whether this waste was hazardous waste. Respondent failed to take reasonable care to avoid the foreseeable risk that it was violating the requirement to make a hazardous waste determination.

"C" is Respondent's efforts to correct or mitigate the violation, and receives a value of 0 according to OAR 340-012-0145(6)(f) because the violation or the effects of the violation could not be corrected or minimized.

"EB" is the approximate dollar value of the benefit gained and the costs avoided or delayed as a result of the Respondent's noncompliance. It is designed to "level the playing field" by taking away any economic advantage the entity gained and to deter potential violators from deciding it is cheaper to violate and pay the penalty than to pay the costs of compliance. In this case, "EB" receives a value of \$0 as there is insufficient information on which to make an estimate. Although Respondent likely either delayed or avoided costs for not conducting hazardous waste determinations prior to this violation, it is unknown on how many occasions or for how long this cost was delayed or avoided.

PENALTY CALCULATION: $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$
= \$750 + [(0.1 x \$750) x (0 + 0 + 0 + 4 + 0)] + \$0
= \$750 + (\$75 x 4) + \$0
= \$750 + \$300 + \$0
= \$1,050

EXHIBIT 4

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

VIOLATION 4: Establishing, operating, and expanding a waste tire storage site that stores more than 1,500 waste tires without obtaining a permit from DEQ in violation of OAR 340-064-0015(1).

CLASSIFICATION: This is a Class I violation pursuant to OAR 340-012-0066(1)(a).

MAGNITUDE: The magnitude of the violation is moderate pursuant to OAR 340-012-0130(1), as there is no selected magnitude specified in OAR 340-012-0135 applicable to this violation, and the information reasonably available to DEQ does not indicate a minor or major magnitude.

CIVIL PENALTY FORMULA: The formula for determining the amount of penalty of each violation is: $BP + [(0.1 \times BP) \times (P + H + O + M + C)] + EB$

"BP" is the base penalty, which is \$4,000 for a Class I, moderate magnitude violation in the matrix listed in OAR 340-012-0140(3)(b)(A)(ii) and applicable pursuant to OAR 340-012-0140(3)(a)(I)(i) because Respondent should have a waste tire storage permit.

"P" is whether Respondent has any prior significant actions, as defined in OAR 340-012-0030(19), in the same media as the violation at issue that occurred at a facility owned or operated by the same Respondent, and receives a value of 0 according to OAR 340-012-0145(2) (a) (A), because there are no prior significant actions.

"H" is Respondent's history of correcting prior significant actions, and receives a value of 0 according to OAR 340-012-0145(3)(c) because there is no prior history.

"O" is whether the violation was repeated or ongoing, and receives a value of 4 according to OAR 340-012-0145(4)(d) because there were more than 28 occurrences of the violation. Each day of violation constitutes a separate occurrence. Respondent has been storing waste tires at the Facility since approximately 2016 and continues to do so as of the date of this Notice.

"M" is the mental state of the Respondent, and receives a value of 8 according to OAR 340-012-0145(5)(d) because Respondent's conduct was reckless. Respondent accumulated massive piles of waste tires at the Facility that are no longer fit for use on a vehicle. In doing so, Respondent consciously disregarded a substantial and unjustifiable risk that it was operating a waste tire storage site that needed a permit but took no steps to obtain one.

"C" is Respondent's efforts to correct or mitigate the violation and receives a value of 2 according to OAR 340-012-0145(6)(g) because Respondent did not address the violation as described in paragraphs (6)(a) through (6)(e) and the facts do not support a finding under paragraph (6)(f). As of the date of this Notice Respondent has not removed any appreciable amount of waste tires or submitted an application for a permit.

"EB" is the approximate dollar value of the benefit gained and the costs avoided or delayed as a result of the Respondent's noncompliance. It is designed to "level the playing field" by taking away any economic advantage the entity gained and to deter potential violators from deciding it is cheaper to violate and pay the penalty than to pay the costs of compliance. In this case, "EB" receives a value of \$1,250. This is the amount Respondent gained by avoiding the costs to properly dispose of approximately 1500 waste tires at a cost of \$1.25 each since January 1, 2016. This "EB" was calculated pursuant to OAR 340-012-0150(1) using the U.S. Environmental Protection Agency's BEN computer model.

PENALTY CALCULATION: $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$

$$\begin{aligned} &= \$4,000 + [(0.1 \times \$4,000) \times (0 + 0 + 4 + 8 + 2)] + \$1,250 \\ &= \$4,000 + (\$400 \times 14) + \$1,250 \\ &= \$4,000 + \$5,600 + \$1,250 \\ &= \$10,850 \end{aligned}$$

EXHIBIT 5

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

VIOLATION 5: Storing waste tires at the Facility in a manner that violates the standards for waste tire storage sites at OAR 340-064-0035(4).

CLASSIFICATION: This is a Class II violation pursuant to OAR 340-012-0053(2).

MAGNITUDE: The magnitude of the violation is moderate pursuant to OAR 340-012-0130(1), as there is no selected magnitude specified in OAR 340-012-0135 applicable to this violation, and the information reasonably available to DEQ does not indicate a minor or major magnitude.

CIVIL PENALTY FORMULA: The formula for determining the amount of penalty of each violation is: $BP + [(0.1 \times BP) \times (P + H + O + M + C)] + EB$

"BP" is the base penalty, which is \$2,000 for a Class II, moderate magnitude violation in the matrix listed in OAR 340-012-0140(3)(b)(B)(ii) and applicable pursuant to OAR 340-012-0140(3)(a)(I)(i).

"P" is whether Respondent has any prior significant actions, as defined in OAR 340-012-0030(19), in the same media as the violation at issue that occurred at a facility owned or operated by the same Respondent, and receives a value of 0 according to OAR 340-012-0145(2)(a)(A), because there are no prior significant actions.

"H" is Respondent's history of correcting prior significant actions, and receives a value of 0 according to OAR 340-012-0145(3)(c) because there is no prior history.

"O" is whether the violation was repeated or ongoing, and receives a value of 4 according to OAR 340-012-0145(4)(d) because there were more than 28 occurrences of the violation. Each day of violation is a separate occurrence. The conditions of the waste tire piles were first observed by DEQ on March 14, 2018, and most recently on July 12, 2018, and have not been corrected as of the date of issuance of the Notice. The conditions have existed for more than 28 days.

"M" is the mental state of the Respondent, and receives a value of 8 according to OAR 340-012-0145(5)(d) because Respondent's conduct was reckless. Tires are known to be flammable and a source of pollution. Respondent has accumulated massive piles of waste tires at the Facility and failed to employ basic methods of storage to limit threats to the environment and human health and safety. In doing so, Respondent consciously disregarded a substantial and unjustifiable risk that it was creating site conditions that violated state laws designed to limit those threats. The risk was of 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.

"C" is Respondent's efforts to correct or mitigate the violation and receives a value of 2 according to OAR 340-012-0145(6)(g) because Respondent did not address the violation as described in paragraphs (6)(a) through (6)(e) and the facts do not support a finding under paragraph (6)(f). As of the date of this Notice Respondent has not organized the tire piles at the Facility in a manner that complies with state standards for waste tire storage sites.

"EB" is the approximate dollar value of the benefit gained and the costs avoided or delayed as a result of the Respondent's noncompliance. It is designed to "level the playing field" by taking away any economic advantage the entity gained and to deter potential violators from deciding it is cheaper to violate and pay the penalty than to pay the costs of compliance. In this case, "EB" receives a value of \$0. Information is not available to determine Respondent's economic benefit in failing to employ appropriate storage conditions.

PENALTY CALCULATION: $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$
 $= \$2,000 + [(0.1 \times \$2,000) \times (0 + 0 + 4 + 8 + 2)] + \0
 $= \$2,000 + (\$200 \times 14) + \$0$
 $= \$2,000 + \$2,800 + \$0$
 $= \$4,800$