



# 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  
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TTY 711

January 16, 2020

CERTIFIED MAIL: 7016 3010 0000 6028 8729

RPH-COVERAGE-INC.  
Naveed Tanveer, Registered Agent  
3904 Wellington Place  
West Linn, OR 97068

Re: Notice of Civil Penalty Assessment and Order  
Case No. LQ/UST-NWR-2019-278  
UST #10443

This letter is to inform you that DEQ has issued you a civil penalty of \$8,774 for violations at your underground storage tank (UST) facility located at 13040 NE Sandy Boulevard in Portland. You became the owner and permittee of the UST facility in July 2018.

In October 2019, DEQ conducted an inspection at the facility. During the inspection, you were unable to provide DEQ with records showing that you were monitoring your tanks and piping for a release at least every 30 days and recording the results. Additionally, three sumps contained fuel, which indicates a suspected release. You did not report this condition to DEQ, investigate this condition prior to DEQ bringing it to your attention, and you have not performed tightness testing on the sumps to determine if they released fuel into the environment. Also, the sensors in these sumps, which are installed to alert you to the presence of a fuel in the sumps, were not in alarm mode even though they were submerged in fuel. Finally, you have not trained your operators since you became the permittee. A trained operator likely would have known of the requirements for monitoring and reporting.

DEQ issued this penalty because properly completed release detection monitoring ensures that releases are discovered quickly before contamination spreads beyond the immediate area of the USTs and allows immediate response to any sign of a release. If a leak goes unnoticed due to poor monitoring practices or unmaintained release detection equipment, the leaking fuel can have lasting harmful effects on the environment or human health.

Included in Section IV of the attached Notice of Civil Penalty Assessment and Order is an order requiring you to submit the previous three months of release detection records for the USTs and piping along with documentation showing that the release detection equipment is operating properly, the results of a tightness test of the sumps, training records for your operators and a complete UST modification checklist. If you complete these requirements, DEQ will consider recalculating the economic benefit portion of the civil penalty (\$3,124) as delayed rather than avoided, as appropriate, and will reduce the civil penalty accordingly.

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

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

Via email – [DEQappeals@deq.state.or.us](mailto: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 Susan Elworth at 503-229-5152 or toll free in Oregon at 800-452-4011, extension 5152.

Sincerely,



Kieran O'Donnell, Manager  
Office of Compliance and Enforcement

Enclosures

cc: Mark Drouin, NWR, DEQ



1 10. During the inspection, Respondent was unable to provide DEQ with written verification that  
2 its operators had completed training.

3 11. On October 25, 2019, DEQ received documentation from Respondent that it had removed  
4 the fuel from the sumps and repaired the components of the UST system that was releasing fuel into the  
5 sumps. The documentation did not include tightness test results for the sumps.

6 12. As of the date of this Notice, DEQ has not received an UST System Modification Report  
7 and Checklist for the piping removal and installation conducted in June 2019.

8 III. CONCLUSIONS

9 1. Respondent violated OAR 340-150-0500(1) by failing to report a suspected release to DEQ  
10 within 24 hours. Specifically, the fuel in the turbine sumps is a suspected release as defined in OAR  
11 340-150-0500(1)(a) because a regulated substance was discovered in three separate secondary  
12 containments. The sumps are secondary containment, as that term is defined in OAR 340-150-  
13 0010(75), as they are used for interstitial monitoring of the piping. Respondent did not report these  
14 suspected releases to DEQ prior to DEQ's discovery. These are Class I violations according to OAR  
15 340-012-0074(2)(a). DEQ assesses a \$700 civil penalty for these violations.

16 2. Respondent violated OAR 340-150-0510(1) by failing to complete an investigation of a  
17 suspected release within seven days of discovery. As specifically alleged in Section II, paragraphs 11,  
18 although Respondent investigated the cause of the release and removed all regulated substances (as  
19 required by OAR 340-150-0510(3)(b)), a report was not received by DEQ within 7 days of discovery of  
20 the suspected release. Additionally, the report received by DEQ on October 25, 2019 did not include the  
21 results of tightness testing of the sumps, as required by OAR 340-150-0500(3)(a). This is a Class I  
22 violation according to OAR 340-012-0067(1)(a). DEQ assesses a \$2,602 civil penalty for this violation.

23 3. Respondent violated OAR 340-150-0352(2) by failing to submit a completed UST system  
24 modification checklist to DEQ within 30 days after completing a modification. The removal and  
25 installation of piping in June 2019 was a modification (as defined in OAR 340-150-0010(51)) because  
26 Respondent installed more than 50 percent new underground piping. This is a Class II violation according  
27 to OAR 340-012-0067(2)(k). DEQ assesses a \$600 civil penalty for this violation.



1           1. Pay a total civil penalty of \$8,774. The determination of the civil penalties are attached as  
2 Exhibits 1 through 7 and are incorporated as part of this Notice. If you do not file a request for hearing as  
3 set forth in Section V below, your check or money order must be made payable to "**State Treasurer,**  
4 **State of Oregon**" and sent to the **DEQ, Business Office, 700 NE Multnomah Street, Suite 600,**  
5 **Portland, Oregon 97232.**

- 6           2. Within 30 days of this order becoming final by operation of law or on appeal, submit:
- 7           a. A complete UST system modification checklist for the piping modification completed in  
8           June 2019;
  - 9           b. The results of a suspected release investigation including tightness testing of the sumps;
  - 10           c. Documentation showing the automatic tank gauge and sensors have been reprogrammed  
11           such that they are monitoring all portions of the USTs and piping which regularly  
12           contained a regulated substance;
  - 13           d. Last three consecutive months of release detection records for the three USTs and  
14           connected underground piping; and
  - 15           e. Documentation that Respondent's operators have completed one of the training options  
16           in OAR 340-150-0210.

17 This documentation must be submitted to: Mark Drouin, DEQ, 700 NE Multnomah Street, Suite 600,  
18 Portland OR 97232.

#### 19           V. NOTICE OF RIGHT TO REQUEST A CONTESTED CASE HEARING

20           You have a right to a contested case hearing on this Notice, if you request one in writing. DEQ  
21 must receive your request for hearing **within 20 calendar days** from the date you receive this Notice. If  
22 you have any affirmative defenses or wish to dispute any allegations of fact in this Notice or attached  
23 exhibits, you must do so in your request for hearing, as factual matters not denied will be considered  
24 admitted, and failure to raise a defense will be a waiver of the defense. (See OAR 340-011-0530 for  
25 further information about requests for hearing.) You must send your request to: **DEQ, Office of**  
26 **Compliance and Enforcement, 700 NE Multnomah Street, Suite 600, Portland, Oregon 97232**, fax  
27 it to **503-229-5100** or email it to [DEQappeals@deq.state.or.us](mailto:DEQappeals@deq.state.or.us). An administrative law judge

1 employed by the Office of Administrative Hearings will conduct the hearing, according to ORS  
2 Chapter 183, OAR Chapter 340, Division 011 and OAR 137-003-0501 to 0700. You have a right to be  
3 represented by an attorney at the hearing, however you are not required to be. If you are an individual,  
4 you may represent yourself. If you are a corporation, partnership, limited liability company,  
5 unincorporated association, trust or government body, you must be represented by an attorney or a duly  
6 authorized representative, as set forth in OAR 137-003-0555.

7 Active duty Service members have a right to stay proceedings under the federal Service  
8 Members Civil Relief Act. For more information contact the Oregon State Bar at 1-800-  
9 452-8260, the Oregon Military Department at 503-584-3571, or the nearest United States Armed  
10 Forces Legal Assistance Office through <http://legalassistance.law.af.mil>. The Oregon Military  
11 Department does not have a toll free telephone number.

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

18  
19  
20  
21 1/16/2020  
22 Date

21 Kieran O'Donnell  
22 Kieran O'Donnell, Manager  
23 Office of Compliance and Enforcement  
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27

EXHIBIT 1

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

VIOLATION 1: Failing to report a suspected release to DEQ, in violation of OAR 340-150-0500(1).

CLASSIFICATION: This is a Class I violation pursuant to OAR 340-012-0074(2)(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 \$500 for a Class I, moderate magnitude violation in the matrix listed in OAR 340-012-0140(5)(b)(A)(ii) and applicable pursuant to OAR 340-012-0140(5)(a)(E). Respondent is the owner and permittee of one UST facility.

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

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

"O" is whether the violation was repeated or ongoing, and receives a value of 2 according to OAR 340-012-0145(4)(b) because there was more than one but less than seven occurrences of the violation. Although it is unknown for how long the fuel was in each of the sumps, Respondent failed to report three separate suspected releases to DEQ, specifically one in each of the sumps.

"M" is the mental state of the Respondent, and receives a value of 2 according to OAR 340-012-0145(5)(b) because Respondent had constructive knowledge (reasonably should have known) of the requirement. Respondent, as the permittee, reasonably should have known of the requirement to report the discovery of fuel in secondary containment, such as a sump, to DEQ.

"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). Respondent cannot now report the suspected release to DEQ after DEQ discovered the fuel in the sumps.

"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 DEQ is unable to make an estimate of any costs delayed or avoided as a result of this violation.

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

$$\begin{aligned} &= \$500 + [(0.1 \times \$500) \times (0 + 0 + 2 + 2 + 0)] + \$0 \\ &= \$500 + (\$50 \times 4) + \$0 \\ &= \$500 + \$200 + \$0 \\ &= \$700 \end{aligned}$$

EXHIBIT 2

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

VIOLATION 2: Failing to complete an investigation of a suspected release within seven days of discovery, in violation of OAR 340-150-0510(1).

CLASSIFICATION: This is a Class I violation pursuant to OAR 340-012-0067(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 \$500 for a Class I, moderate magnitude violation in the matrix listed in OAR 340-012-0140(5)(b)(A)(ii) and applicable pursuant to OAR 340-012-0140(5)(a)(E). Respondent is the owner and permittee of one UST facility.

"P" is whether Respondent has any prior significant actions, as defined in OAR 340-012-0030(19), in the same media as the violation at issue that occurred at a facility owned or operated by the same Respondent, and receives a value of 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. Although Respondent submitted a suspected release investigation report on October 25, 2019, this was later than seven days after the discovery of the suspected release (October 10, 2019). Additionally, Respondent has not submitted tightness testing results for the sumps, thus the violation is still on-going.

"M" is the mental state of the Respondent, and receives a value of 8 according to OAR 340-012-0145(5)(d) because Respondent acted or failed to act intentionally with actual knowledge of the requirement. In correspondence dated October 10, 2019, DEQ reminded Respondent of the requirement to submit the suspected release investigation information to DEQ by October 16, 2019. With actual knowledge of the requirement to submit that information by a date certain, Respondent failed to do so.

"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). Although Respondent conducted a portion of the required suspected release investigation, it has not submitted tightness testing results for the sumps.

"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 \$1,502. This is the amount Respondent gained by avoiding spending \$2,000 to have the sumps tightness tested since October 16, 2019. This "EB" was calculated pursuant to OAR 340-012-0150(1) using the U.S. Environmental Protection Agency's BEN computer model.

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

$$\begin{aligned} &= \$500 + [(0.1 \times \$500) \times (0 + 0 + 4 + 8 + 0)] + \$1,502 \\ &= \$500 + (\$50 \times 12) + \$1,502 \\ &= \$500 + \$600 + \$1,502 \\ &= \$2,602 \end{aligned}$$

EXHIBIT 3

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

VIOLATION 3: Failing to submit a complete UST system modification checklist, in violation of OAR 340-150-0352(2)).

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

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

"P" is whether Respondent has any prior significant actions, as defined in OAR 340-012-0030(19), in the same media as the violation at issue that occurred at a facility owned or operated by the same Respondent, and receives a value of 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. The violation has been ongoing since 30 days after the modification was complete – specifically since July 2019.

"M" is the mental state of the Respondent, and receives a value of 8 according to OAR 340-012-0145(5)(d) because Respondent acted or failed to act intentionally with actual knowledge of the requirement. At the time of the inspection in October 2019 and in correspondence since then, DEQ has reminded Respondent of the requirement to submit the modification checklist. Even with actual knowledge of the requirement to submit the checklist and that failing to do so is a violation, Respondent has not submitted the checklist.

"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). Respondent has not submitted the modification checklist.

"EB" is the approximate dollar value of the benefit gained and the costs avoided or delayed as a result of the Respondent's noncompliance. It is designed to "level the playing field" by taking away any economic advantage the entity gained and to deter potential violators from deciding it is cheaper to violate and pay the penalty than to pay the costs of compliance. In this case, "EB" receives a value of \$0 because DEQ is unable to make an estimate of any costs delayed or avoided as a result of this violation.

PENALTY CALCULATION:  $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$   
 $= \$250 + [(0.1 \times \$250) \times (0 + 0 + 4 + 8 + 2)] + \$0$   
 $= \$250 + (\$25 \times 14) + \$0$   
 $= \$250 + \$350 + \$0$   
 $= \$600$

EXHIBIT 4

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

VIOLATION 4: Failing to provide a method of release detection that can detect a release from the USTs, in violation of OAR 340-150-0400(1)(a).

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

MAGNITUDE: The magnitude of the violation is moderate pursuant to OAR 340-012-0130(1), as there is no selected magnitude specified in OAR 340-012-0135 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 \$500 for a Class I, moderate magnitude violation in the matrix listed in OAR 340-012-0140(5)(b)(A)(ii) and applicable pursuant to OAR 340-012-0140(5)(a)(E). Respondent is the owner and permittee of one UST facility.

"P" is whether Respondent has any prior significant actions, as defined in OAR 340-012-0030(19), in the same media as the violation at issue that occurred at a facility owned or operated by the same Respondent, and receives a value of 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. Respondent has been the permittee of the UST system since July 2018 and is required to have a method of release detection since that time. Respondent did not have a method of release detection for the two USTs during that time, thus the violation has been ongoing since July 2018.

"M" is the mental state of the Respondent, and receives a value of 8 according to OAR 340-012-0145(5)(d) because Respondent acted or failed to act intentionally with actual knowledge of the requirement. At the time of the inspection in October 2019 and in correspondence since then, DEQ has reminded Respondent of the requirement to reprogram its automatic tank gauge such that it would monitor all three USTs. Even with actual knowledge of the requirement to conduct release detection monitoring of all of its USTs, Respondent has not done so.

"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). Respondent has not provided DEQ with documentation showing that it has reprogrammed the automatic tank gauge such that it will monitor the two USTs.

"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 \$1,502. This is the amount Respondent gained by avoiding spending \$2,000 to reprogram the automatic tank gauge such that it would monitor all three USTs. This "EB" was calculated pursuant to OAR 340-012-0150(1) using the U.S. Environmental Protection Agency's BEN computer model.

PENALTY CALCULATION:  $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$   
= \$500 + [(0.1 x \$500) x (0 + 0 + 4 + 8 + 2)] + \$1,502  
= \$500 + (\$50 x 14) + \$1,502  
= \$500 + \$700 + \$1,502  
= \$2,702

EXHIBIT 5

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

VIOLATION 5: Failing to monitor the USTs and underground piping at least every 30 days, in violation of OAR 340-150-0465(3) and (6).

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

MAGNITUDE: The magnitude of the violation is moderate pursuant to OAR 340-012-0130(1), as there is no selected magnitude specified in OAR 340-012-0135 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 \$500 for a Class I, moderate magnitude violation in the matrix listed in OAR 340-012-0140(5)(b)(A)(ii) and applicable pursuant to OAR 340-012-0140(5)(a)(E). Respondent is the owner and permittee of one UST facility.

"P" is whether Respondent has any prior significant actions, as defined in OAR 340-012-0030(19), in the same media as the violation at issue that occurred at a facility owned or operated by the same Respondent, and receives a value of 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 3 according to OAR 340-012-0145(4)(c) because there were from seven to 28 occurrences of the violation. At the time of the inspection, Respondent was missing eleven months of release detection records for the one USTs which was being monitored by the automatic tank gauge. Additionally, Respondent was missing 5 months of records of monthly interstitial monitoring for the piping since the modification occurred in June 2019. There were a total of 16 missing records.

"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. Negligence means Respondent failed to take reasonable care to avoid a foreseeable risk of conduct resulting in a violation. Respondent has been the permittee of the facility since July 2018 and reasonably should have known of the requirement to monitor its USTs and piping for releases and to maintain monthly records of that monitoring. Prior to conducting the inspection, DEQ informed Respondent of what records would be required during the inspection including release

detection records. When Respondent failed to ensure that those records were available during the inspection, it failed to avoid a foreseeable risk of a violation.

"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). Respondent has not provided any release detection records to DEQ to show that it was conducting release detection monitoring either before or after the inspection.

"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 DEQ is unable to make estimate of any costs delayed or avoided by this violation.

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

$$\begin{aligned} &= \$500 + [(0.1 \times \$500) \times (0 + 0 + 3 + 4 + 2)] + \$0 \\ &= \$500 + (\$50 \times 9) + \$0 \\ &= \$500 + \$450 + \$0 \\ &= \$950 \end{aligned}$$

EXHIBIT 6

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

VIOLATION 6: Failing to maintain its release detection equipment, in violation of OAR 340-150-0400(1)(c).

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

"P" is whether Respondent has any prior significant actions, as defined in OAR 340-012-0030(19), in the same media as the violation at issue that occurred at a facility owned or operated by the same Respondent, and receives a value of 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). Although the sensors have likely not been functioning properly since the piping was modified in June 2019, it is unknown for certain how long the sensors in the sumps have not been properly functioning.

"M" is the mental state of the Respondent, and receives a value of 8 according to OAR 340-012-0145(5)(d) because Respondent acted or failed to act intentionally with actual knowledge of the requirement. Respondent should have had the sensors' operation checked at that time it modified the piping in June 2019. At the time of the inspection in October 2019 and in correspondence since then, DEQ has reminded Respondent of the requirement to maintain its release detection equipment such that it will function properly. Even with actual knowledge of the requirement to maintain its release detection equipment and that failing to do so is a violation, Respondent has not submitted documentation to DEQ showing that it has recalibrated the sensors.

"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). Respondent has not submitted documentation showing that it has recalibrated the sensors.

"EB" is the approximate dollar value of the benefit gained and the costs avoided or delayed as a result of the Respondent's noncompliance. It is designed to "level the playing field" by taking away any economic advantage the entity gained and to deter potential violators from deciding it is cheaper to violate and pay the penalty than to pay the costs of compliance. In this case, "EB" receives a value of \$0 because any costs avoided as a result of this violation were captured in Exhibit 4.

PENALTY CALCULATION:  $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$   
= \$250 + [(0.1 x \$250) x (0 + 0 + 0 + 8 + 2)] + \$0  
= \$250 + (\$25 x 10) + \$0  
= \$250 + \$250 + \$0  
= \$500

EXHIBIT 7

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

VIOLATION 7: Failing to train its operators, in violation of OAR 340-150-0210(2).

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

MAGNITUDE: The magnitude of the violation is moderate pursuant to OAR 340-012-0130(1), as there is no selected magnitude specified in OAR 340-012-0135 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 \$250 for a Class II, moderate magnitude violation in the matrix listed in OAR 340-012-0140(5)(b)(B)(ii) and applicable pursuant to OAR 340-012-0140(5)(a)(E). Respondent is the owner and permittee of one UST facility.

"P" is whether Respondent has any prior significant actions, as defined in OAR 340-012-0030(19), in the same media as the violation at issue that occurred at a facility owned or operated by the same Respondent, and receives a value of 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. Respondent has been the permittee of the UST facility since July 2018 thus the violation has been on-going since July 2018.

"M" is the mental state of the Respondent, and receives a value of 8 according to OAR 340-012-0145(5)(d) because Respondent acted or failed to act intentionally with actual knowledge of the requirement. At the time of the inspection in October 2019 and in correspondence since then, DEQ has reminded Respondent of the requirement to train its operators and submit documentation to DEQ of the completion of that training. Even with actual knowledge of the requirement to train its operators, Respondent has not done so.

"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). Respondent has not provided DEQ with documentation showing that it has trained its operators.

"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 \$120. This is the amount Respondent gained by avoiding spending \$150 to train its operators since July 2018. This "EB" was calculated pursuant to OAR 340-012-0150(1) using the U.S. Environmental Protection Agency's BEN computer model.

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

$$\begin{aligned} &= \$250 + [(0.1 \times \$250) \times (0 + 0 + 4 + 8 + 2)] + \$120 \\ &= \$250 + (\$25 \times 14) + \$120 \\ &= \$250 + \$350 + \$120 \\ &= \$720 \end{aligned}$$