



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

March 25, 2022

CERTIFIED MAIL: 7018 1830 0001 5906 3565

Betty Gaustad, dba Covered Bridge BP
241 Sunny Valley Loop
Wolf Creek, OR 97497-9790

Re: Notice of Civil Penalty Assessment and Order
Case No. LQ/UST-WR-2021-201

DEQ is committed to balancing its vital obligation to enforce the law and protect the environment with a consideration of the dramatic disruptions to public health and the economy caused by the COVID-19 outbreak. We understand the outbreak may impact your ability to timely appeal, pay the assessed civil penalty, or comply with this order. You may submit to DEQ documentation identifying whether COVID-19-related disruption affects your ability to comply with this order. Visit our webpage <https://www.oregon.gov/deq/Pages/covid-19.aspx> for more information about documenting specific COVID-19 disruptions your facility may be encountering and how that affects your ability to comply. DEQ will exercise reasonable discretion regarding settlement of this order.

This letter is to inform you that DEQ has issued you a total civil penalty of \$8,991 for underground storage tank (UST) violations at your facility in Sunny Valley. DEQ documented numerous violations during its inspection on December 1, 2021. DEQ has cited you for the following monitoring and testing violations: failing to initially test its spill prevention and overfill prevention equipment prior to October 1, 2020, failing to conduct annual line tightness and leak detector testing, failing to perform monthly release detection monitoring, and failing to conduct monthly walkthrough inspections of the spill prevention equipment and release detection equipment. DEQ documented underground piping that was in contact with the soil which can subject it to corrosion. Additionally, you failed to properly maintain a spill bucket.

DEQ issued this penalty because proper monitoring and testing of the UST system and its release prevention and detection equipment is important to allow immediate response to any sign of release and ensure that releases are discovered quickly before contamination spreads beyond the immediate area of the USTs. If a leak goes unnoticed due to unmaintained release detection equipment, the leaking fuel can have lasting harmful effects on the environment or human health. Also, conducting monthly inspections and keeping required records is necessary to ensure that the spill prevention and release detection equipment for the UST system is working properly. Proper maintenance of the equipment at the facility is essential to prevent releases.

Included in Section IV of the enclosed Notice is an order requiring you to perform the required testing, monitoring and inspections and submit the results to DEQ, and to perform maintenance on the piping and spill bucket. You are required to submit documentation demonstrating your compliance to DEQ within thirty (30) days of this Notice becoming final. \$3,066 of the civil penalty represents the economic benefit you gained by failing to conduct the required testing, monitoring, inspections and maintenance at

the facility. If you complete these requirements, DEQ will consider recalculating the costs as delayed rather than avoided 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.oregon.gov

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 Esther Westbrook at 503-229-5374 or toll free in Oregon at 800-452-4011, extension 5374.

Sincerely,



Kieran O'Donnell, Manager
Office of Compliance and Enforcement

Enclosures

cc: Dylan Eckert, Eugene Office, DEQ

BEFORE THE ENVIRONMENTAL QUALITY COMMISSION
OF THE STATE OF OREGON

IN THE MATTER OF:	)	
BETTY GAUSTAD,	)	NOTICE OF CIVIL PENALTY
an individual,	)	ASSESSMENT AND ORDER
doing business as COVERED BRIDGE BP,	)	
	)	CASE NO. LQ/UST-WR-2021-201
Respondent.	)	

I. AUTHORITY

The Department of Environmental Quality (DEQ) issues this Notice of Civil Penalty Assessment and Order (Notice) pursuant to Oregon Revised Statutes (ORS) 468.100, ORS 468.126 through 468.140, ORS 466.706 through 466.882, ORS 466.994, ORS Chapter 183 and Oregon Administrative Rules (OAR) Chapter 340, Divisions 011, 012, and 150.

II. FINDINGS OF FACT

1. At all materials times, Respondent has owned and been the permittee of an underground storage tank (UST) system located at 235 Sunny Valley Loop in Sunny Valley, Josephine County, Oregon.

2. Since 1999, Respondent has operated the UST system under Certificate to Operate #10647.

3. The UST system consists of three USTs and connected piping. The UST system has a total capacity of approximately 14,069 gallons of gasoline and diesel fuel, which are regulated substances.

4. On December 1, 2021, DEQ conducted an inspection of the UST system and reviewed Respondent's records for the UST system.

5. As of December 1, 2021, Respondent had not tested the overfill prevention equipment and containment sumps used for interstitial monitoring.

6. As of December 1, 2021, Respondent had not performed line tightness testing within one (1) year of the previous test, which was performed on June 30, 2017.

7. As of December 1, 2021, Respondent had not performed testing of the line leak detectors within one (1) year of the previous test, which was performed on June 30, 2017.

8. As of December 1, 2021, Respondent had not conducted release detection monitoring for the UST system using the statistical inventory reconciliation method (SIR) on a monthly basis, and Respondent did not have records of such monitoring for the previous twelve (12) consecutive months. Two tanks were not being monitored at all.

9. As of December 1, 2021, Respondent had not performed monthly walkthrough inspections of the spill prevention equipment and release detection equipment, and Respondent did not have records of such inspections for at least one year.

10. On December 1, 2021, the piping for the diesel fuel tank was buried in the soil. The piping routinely contains diesel fuel.

11. On December 1, 2021, the spill bucket for the tank storing premium gasoline was more than halfway full of liquid.

III. CONCLUSIONS

1. Respondent has violated OAR 340-150-0310(10) by failing to initially test its spill prevention and overfill prevention equipment prior to October 1, 2020, as alleged in Section II, Paragraph 5 above. This is a Class I violation according to OAR 340-012-0067(1)(j). DEQ hereby assesses a \$1,371 civil penalty for this violation.

2. Respondent has violated OAR 340-150-0410(3) by failing to conduct line tightness testing annually, as alleged in Section II, Paragraph 6 above. Since Respondent has not conducted testing since June 30, 2017, it has missed four annual tests. These are Class I violations according to OAR 340-012-0067(1)(j). DEQ hereby assesses a \$2,949 civil penalty for these violations.

3. Respondent has violated OAR 340-150-0410(2)(c) by failing to conduct operational line leak detector testing annually, as alleged in Section II, Paragraph 7 above. Since Respondent has not conducted testing since June 30, 2017, it has missed four annual tests. These are Class I violations according to OAR 340-012-0067(1)(j). DEQ hereby assesses a \$900 civil penalty for these violations.

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1 4. Respondent has violated OAR 340-150-0435(5) and (8) by failing to perform monthly SIR
2 monitoring and failing to keep records of such monitoring for twelve (12) months, as alleged in Section II,
3 Paragraph 8 above. These are Class I violations according to OAR 340-012-0067(1)(j). DEQ hereby
4 assesses a \$950 civil penalty for these violations.

5 5. Respondent has violated OAR 340-150-0315(1)(a) by failing to conduct walkthrough
6 inspections of the spill prevention equipment and release detection equipment every thirty (30) days, as
7 alleged in Section II, Paragraph 9 above. These are Class II violations according to OAR 340-012-0053(2).
8 DEQ hereby assesses a \$475 civil penalty for these violations.

9 6. Respondent has violated OAR 340-150-0320(1) by failing to protect underground piping that
10 routinely contains a regulated substance from corrosion, as alleged in Section II, Paragraph 10 above.
11 This is a Class I violation according to OAR 340-012-0067(1)(f). DEQ hereby assesses a \$1,216 civil
12 penalty for this violation.

13 7. Respondent has violated OAR 340-150-0310(1) by failing to maintain spill prevention
14 equipment, specifically a spill bucket, by allowing liquid to accumulate so that it would not prevent the
15 release of gasoline to the environment when the transfer hose is detached from the fill pipe, as alleged in
16 Section II, Paragraph 10 above. This is a Class I violation according to OAR 340-012-0067(1)(d). DEQ
17 hereby assesses a \$1,130 civil penalty for this violation.

18 IV. ORDER TO PAY CIVIL PENALTY AND TO COMPLY

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

21 1. Pay a total civil penalty of \$8,991. The determination of the civil penalties is attached as
22 Exhibits 1 – 7, which are incorporated as part of this Notice.

23 If you do not file a request for hearing as set forth in Section V below, your check or money
24 order must be made payable to "State Treasurer, State of Oregon" and sent to: **DEQ - Business**
25 **Office, 700 NE Multnomah Street, Suite 600, Portland, Oregon 97232.**

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2. Within thirty (30) days of this order becoming final by operation of law or on appeal, take the following actions to bring the UST system into compliance. Submit written documentation demonstrating compliance with each of the requirements below to Dylan Eckert, UST Inspector, by mail to: 165 E 7th Ave., Suite 100, Eugene, Oregon 97401 or by email to: Dylan.Eckert@deq.oregon.gov.

- a. Complete testing of spill and overfill prevention equipment;
- b. Complete line tightness testing;
- c. Complete testing of line leak detectors;
- d. For SIR monitoring, manually gauge all tanks at least once a day and submit results to the SIR company and maintain records. Submit any and all SIR records from the last twelve (12) months to Dylan Eckert at DEQ;
- e. Perform monthly walkthrough inspections and properly document the inspections;
- f. Either isolate the underground piping from corrosive elements or install cathodic protection for any portion of piping or fittings which are subject to corrosive elements; and
- g. Perform maintenance on the spill bucket as directed by the manufacturer to ensure that it is reasonably clean and dry.

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 **503-229-6762** or email it to DEQappeals@deq.oregon.gov. An administrative law judge employed by the Office of Administrative Hearings will conduct the hearing, according to ORS

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

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

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

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20 3/25/2022

21 Date



21 Kieran O'Donnell, Manager
22 Office of Compliance and Enforcement
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EXHIBIT 1

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

<u>VIOLATION NO. 1</u>	Failing to initially test spill prevention and overfill prevention equipment by October 1, 2020, in violation of OAR 340-150-0310(10).
<u>CLASSIFICATION:</u>	This is a Class I violation pursuant to OAR 340-012-0067(1)(j).
<u>MAGNITUDE:</u>	The magnitude of the violation is moderate, pursuant to OAR 340-012-0130(1), as there is no selected magnitude specified in OAR 340-012-0135 for this violation, and the information reasonably available to DEQ does not indicate a minor or major magnitude.
<u>CIVIL PENALTY FORMULA:</u>	The formula for determining the amount of penalty of each violation is: $BP + [(0.1 \times BP) \times (P + H + O + M + C)] + EB$
"BP"	is the base penalty, which is \$500 for a Class I, minor 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 or 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 was only one occurrence of the violation. Respondent failed to conduct testing by a specific date, October 1, 2020.
"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. In 2018, DEQ adopted the regulation requiring that the testing be completed prior to October 1, 2020, and provided extensive outreach to the regulated community on the requirement to conduct the testing prior to that date. Respondent reasonably should have known of the requirement to conduct the testing prior to October 1, 2020.

"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 completed the testing.

"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 \$671. This is the amount Respondent gained by avoiding spending \$1,000 to test the spill prevention and overfill prevention equipment. 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 + 0 + 2 + 2)] + \$671
= \$500 + (\$50 x 4) + \$671
= \$500 + \$200 + \$671
= \$1,371

EXHIBIT 2

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

VIOLATION NO. 2 Failing to conduct annual line tightness testing, in violation of OAR 340-150-0410(3).

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

MAGNITUDE: The magnitude of the violation is moderate, pursuant to OAR 340-012-0130(1), as there is no selected magnitude specified in OAR 340-012-0135 for this violation, and the information reasonably available to 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 or 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 were more than one but less than seven occurrences of the violation. Respondent failed to conduct annual testing on four occasions between June 30, 2017, the date of its last test, and the date of this Notice.

"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. By failing to conduct line tightness testing for four consecutive years, Respondent failed to take reasonable care to avoid a foreseeable risk that it would violate UST requirements.

"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 completed the testing..

"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 \$2,049. This is the amount Respondent gained by avoiding spending \$750 per year to conduct annual line tightness and leak detector testing for four years. This "EB" was calculated pursuant to OAR 340-012-0150(1) using the U.S. Environmental Protection Agency's BEN computer model.

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

$$\begin{aligned} &= \$500 + [(0.1 \times \$500) \times (0 + 0 + 2 + 4 + 2)] + \$2,049 \\ &= \$500 + (\$50 \times 8) + \$2,049 \\ &= \$500 + \$400 + \$2,049 \\ &= \$2,949 \end{aligned}$$

EXHIBIT 3

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

VIOLATION NO. 3 Failing to conduct annual operational line leak detector testing, in violation of OAR 340-150-0410(2)(c).

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

MAGNITUDE: The magnitude of the violation is moderate, pursuant to OAR 340-012-0130(1), as there is no selected magnitude specified in OAR 340-012-0135 for this violation, and the information reasonably available to 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 or 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 were more than one but less than seven occurrences of the violation. Respondent failed to conduct annual testing on four occasions between June 30, 2017, the date of its last test, and the date of this Notice.

"M" is the mental state of Respondent, and receives a value of 4 according to OAR 340-012-0145(5)(c) because Respondent's conduct was negligent. By failing to conduct line tightness testing for four consecutive years, Respondent failed to take reasonable care to avoid a foreseeable risk that it would violate UST requirements.

"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 completed the testing.

"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 the costs avoided as a result of this violation are included in Exhibit No. 2.

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 + 2 + 4 + 2)] + \$0
= \$500 + (\$50 x 8) + \$0
= \$500 + \$400 + \$0
= \$900

EXHIBIT 4

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

VIOLATION NO. 4 Failing to perform monthly statistical inventory reconciliation (SIR) monitoring and failing to keep records of such monitoring for twelve (12) months, in violation of OAR 340-150-0435(5) and (8).

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

MAGNITUDE: The magnitude of the violation is moderate, pursuant to OAR 340-012-0130(1), as there is no selected magnitude specified in OAR 340-012-0135 for this violation, and the information reasonably available to 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 or 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. Respondent is required to conduct SIR monitoring on a monthly basis. Respondent did not conduct SIR for at least twelve months.

"M" is the mental state of Respondent, and receives a value of 4 according to OAR 340-012-0145(5)(c) because Respondent's conduct was negligent. By failing to conduct SIR monitoring for at least twelve months, Respondent failed to take reasonable care to avoid a foreseeable risk that it would violate UST requirements.

"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 completed the testing.

"EB" is the approximate dollar value of the benefit gained and the costs avoided or delayed as a result of 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 there is insufficient information on which to make an estimate of Respondent's economic benefit, if any.

PENALTY CALCULATION: $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$
= $\$500 + [(0.1 \times \$500) \times (0 + 0 + 3 + 4 + 2)] + \$0$
= $\$500 + (\$50 \times 9) + \$0$
= $\$500 + \$450 + \$0$
= $\$950$

EXHIBIT 5

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

- VIOLATION NO. 5 Failing to perform monthly walkthrough inspections of the spill prevention equipment and release detection equipment, in violation of OAR 340-150-0315(1)(a).
- 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 for 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 or 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. Respondent is required to conduct walkthrough inspections on a monthly basis. Respondent did not conduct walkthrough inspections for at least twelve months.
- "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. By failing to conduct walkthrough inspections for at least twelve months, Respondent failed to take reasonable care to avoid a foreseeable risk that it would violate UST requirements.
- "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 performed walkthrough inspections.

"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 finds that the economic benefit Respondent gained by failing to conduct walkthrough inspections was de minimis.

PENALTY CALCULATION: $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$
 $= \$250 + [(0.1 \times \$250) \times (0 + 0 + 3 + 4 + 2)] + \$0$
 $= \$250 + (\$25 \times 9) + \$0$
 $= \$250 + \$225 + \$0$
 $= \$475$

EXHIBIT 6

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

VIOLATION 6: Failing to protect underground piping that routinely contains a regulated substance from corrosion, in violation of OAR 340-150-0320(1).

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

MAGNITUDE: The magnitude of the violation is moderate, pursuant to OAR 340-012-0130(1), as there is no selected magnitude specified in OAR 340-012-0135 for this violation, and the information reasonably available to 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 or 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)(a)(D), because there were more than 28 occurrences of the violation. Each day of violation is a separate occurrence. DEQ documented the violation on December 1, 2021, and it is ongoing as of the date of this Notice.

"M" is the mental state of Respondent and receives a value of 4 according to OAR 340-012-0145(5)(c) because Respondent's conduct was negligent. By failing to ensure that piping containing a regulated substance was not in contact with soil or rock or otherwise protected from corrosion, Respondent failed to take reasonable care to avoid a foreseeable risk that it would violate UST requirements.

"C" is Respondent's efforts to correct 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 submitted documentation to DEQ

showing that the piping is not in contact or covered with soil and rock or that corrosion protection has been installed on the piping.

"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 \$216. This is the amount Respondent gained by avoiding spending \$320 to either install new containment sumps so that soil and rock cannot contact the piping or to install a corrosion protection system to protect the piping. 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 + 4 + 2)] + \$216
= \$500 + (\$50 x 10) + \$216
= \$500 + \$500 + \$216
= \$1,216

EXHIBIT 7

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

VIOLATION 7: Failing to to maintain spill prevention equipment, specifically a spill bucket, by allowing liquid to accumulate so that it would not prevent the release of gasoline to the environment when the transfer hose is detached from the fill pipe, in violation of OAR 340-150-0310(1).

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

MAGNITUDE: The magnitude of the violation is moderate, pursuant to OAR 340-012-0130(1), as there is no selected magnitude specified in OAR 340-012-0135 for this violation, and the information reasonably available to 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 or 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)(a)(D), because there were more than 28 occurrences of the violation. Each day of violation is a separate occurrence. The violation has been ongoing since at least December 1, 2021, when DEQ documented the violation.

"M" is the mental state of Respondent and receives a value of 4 according to OAR 340-012-0145(5)(c) because Respondent's conduct was negligent. By failing to properly maintain the spill bucket, Respondent failed to take reasonable care to avoid a foreseeable risk that it would violate spill prevention requirements.

"C" is Respondent's efforts to correct 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 submitted documentation to DEQ showing that it has performed maintenance on the spill bucket.

"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 \$130. This is the amount Respondent gained by avoiding spending \$200 to perform maintenance on the spill bucket. This "EB" was calculated pursuant to OAR 340-012-0150(1) using the U.S. Environmental Protection Agency's BEN computer model.

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

$$\begin{aligned} &= \$500 + [(0.1 \times \$500) \times (0 + 0 + 4 + 4 + 2)] + \$130 \\ &= \$500 + (\$50 \times 10) + \$130 \\ &= \$500 + \$500 + \$130 \\ &= \$1,130 \end{aligned}$$