



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

May 14, 2018

CERTIFIED MAIL: 7016 3010 00006028 6855

Custom Excavating By Dean Larson Inc., doing business as
Trails End Recovery Facility
2060 SE Airport Lane,
Warrenton OR 97146

Re: Notice of Civil Penalty Assessment and Order
Case No. WQ/SW-NWR-2017-158

This letter is to inform you that the Oregon Department of Environmental Quality (DEQ) has issued you a civil penalty of \$23,104 for causing pollution to waters of the state and violating conditions of the National Pollutant Discharge Elimination System General Permit No.1200-Z at the Trails End Recovery Facility located at 2060 SE Airport Lane in Warrenton, Oregon.

DEQ issued this penalty because the Permit requires you to implement best management practices to prevent the exposure of stockpiles and containment bins and other industrial materials that may contain harmful pollutants to stormwater. In addition, Oregon law prohibits the unpermitted discharge of any liquid, solid or other materials to waters of the state. Your failure to comply with permit conditions requiring control of runoff and to prevent stockpiles from encroaching upon wetlands has resulted in the discharge of pollution to waters of the state of Oregon.

Included in Section IV is an order requiring you to submit a plan and timeline for restoring the wetland impacted by the stockpiles to DEQ within 30 days of the Order becoming final, and to restore the wetland within six months of the Order becoming final.

DEQ appreciates your efforts to address many of the violations observed at the site during DEQ's June 30th, 2017 inspection and considered these efforts when determining the violations cited and the amount of civil penalty.

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.

Custom Excavating By Dean Larson Inc.
Case No. WQ/SW-NWR-2017-158
Page 2

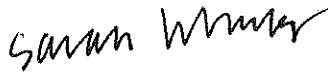
The attached Notice further details DEQ's reasons for issuing the penalty and provides further instructions for appealing the penalty. Please review and refer to it when discussing this case with DEQ.

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/administrative-rules.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,



Sarah G. Wheeler, Acting Manager
Office of Compliance and Enforcement

Enclosures

cc: Michael Kennedy, DEQ

1 BEFORE THE ENVIRONMENTAL QUALITY COMMISSION
2 OF THE STATE OF OREGON

3 IN THE MATTER OF:)
4 CUSTOM EXCAVATING BY DEAN) NOTICE OF CIVIL PENALTY
5 LARSON INC., an Oregon corporation,) ASSESSMENT AND ORDER
6 Respondent.) CASE NO. WQ/SW-NWR-2017-158

6 I. AUTHORITY

7 The Department of Environmental Quality (DEQ) issues this Notice of Civil Penalty Assessment
8 and Order (Notice) pursuant to Oregon Revised Statutes (ORS) 468.100, ORS 468.126 through 468.140,
9 ORS Chapter 183, ORS Chapter 468B, and Oregon Administrative Rules (OAR) Chapter 340, Divisions
10 011, 012, and 045.

11 II. FINDINGS OF FACT

12 1. On or about January 28, 2003, Respondent was assigned coverage under National
13 Pollutant Discharge Elimination System General Permit number 1200-Z (the "Permit") for its "Trails
14 End Recovery" facility located at 2060 SE Airport Lane, in Warrenton, Oregon (the "Site").

15 2. On or about October 16, 2012, Respondent was assigned coverage under the version of
16 the Permit that was applicable to the Site at all material times described herein.

17 3. On June 13, 2017, the Department of State Lands informed DEQ that there were large,
18 unstabilized stockpiles and overflowing compost containment bins at the Site.

19 4. On June 30, 2017, DEQ staff performed an inspection of the Site.

20 5. During the June 30, 2017, inspection DEQ staff observed a discharge from settling pond
21 No. 1 to a slough that discharges to the Lewis and Clark River (the Slough). The discharge to the
22 slough had an oily sheen and the soil at the water's edge of the slough was discolored.

23 6. During the June 30, 2017, inspection of the Site DEQ staff observed a large uncovered,
24 unstabilized stockpile of dirt or sandy soil on the southeastern edge of the Site that was spilling into a
25 wetland.

26 7. Schedule B, condition 7.a of the Permit requires permit registrants to conduct
27 inspections on a monthly basis when the facility is in operation.

1 8. During the inspection on June 30, 2017, DEQ staff requested copies of Respondent's
2 inspection reports for the past three years, which Respondent did not provide.

3 9. During the June 30, 2017, inspection of the Site DEQ staff observed compost
4 containment bins overflowing and spilling compost into a roadside ditch that flows east into the Slough.

5 10. Schedule A, condition 7.a.viii of the Permit prohibits vehicle washing that uses
6 detergents.

7 11. Schedule A, condition 7.c of the Permit prohibits the discharge or disposal of
8 stormwater mixed with wastewater.

9 12. During the June 30, 2017, inspection of the Site DEQ staff observed that truck and truck
10 undercarriage washing with detergents was occurring on Site and discharging to stormwater settling
11 pond No. 1.

12 13. Schedule A, condition 1.iv. of the Permit requires that leaking or leak-prone vehicles and or
13 equipment be located in containment and diversion systems.

14 14. During the June 30, 2017, inspection of the Site DEQ staff observed derelict vehicles
15 and equipment that were leaking fluids and in an outdoor area without berms or secondary containment
16 where they were exposed to rain and adjacent to the Slough.

17 15. Schedule A, condition 1.h.iii of the Permit requires that permit registrants implement spill
18 prevention and response procedures including secondary containment and that necessary clean-up
19 materials are on-site and readily available.

20 16. During the June 30, 2017, inspection of the Site DEQ staff observed leaking and
21 uncovered barrels and leaking and uncovered garbage bins containing oils and other petroleum products
22 stored outside without cover or secondary containment. In addition, DEQ staff observed a bucket
23 labeled "spill kit" which was empty.

24 17. Schedule A, condition 1.a of the Permit requires that permit registrants minimize exposure
25 of processing and material storage to rain and runoff.

26 18. Schedule A, condition 1.d of the Permit requires exposed areas to be stabilized and
27 runoff contained using structural and nonstructural controls to minimize erosion of soil at the site and

1 sedimentation.

2 19. During the June 30, 2017, inspection of the Site DEQ staff observed multiple stockpiles
3 of rusting metals and unstabilized stockpiles of soil. All of these stockpiles were uncovered and
4 exposed to rain and runoff and there were no erosion and sediment controls in place.

5 20. Schedule A, condition 1.j of the Permit requires permit registrants to develop and
6 maintain an employee orientation and education program to inform personnel on the components and
7 goals of the Stormwater Pollution Control Plan and to train all employees who work in areas where
8 industrial materials or activities are exposed to stormwater or who are responsible for implementing
9 activities necessary to meet the conditions of the permit.

10 21. During the inspection on June 30, 2017, Respondent's staff told DEQ staff that it
11 performed no employee education.

12 22. Settling pond 1 discharges directly to the Slough, which is considered "waters of the
13 state" pursuant to ORS 468B.005(10).

14 23. The wetland described in paragraph 6, above, is considered "waters of the state"
15 pursuant to ORS 468B.005(10).

16 24. Schedule F, condition A3 of the Permit requires the permittee to correct any adverse impact
17 on the environment or human health resulting from noncompliance with the Permit.

18 III. CONCLUSIONS

19 1. On or about June 30, 2017, Respondent violated ORS 468B.025(1)(a) by causing
20 pollution to waters of the state. Specifically, as described in Section II, paragraph 5, Respondent
21 discharged liquid that had an oily sheen from settling pond No. 1 to the Slough, waters of the state. An
22 oily sheen indicates an alteration of the physical, chemical or biological properties of waters of the state
23 and tends to render the waters harmful to beneficial uses and is considered "pollution" pursuant to ORS
24 468B.005(5). This is a Class I violation, according to OAR 340-012-0055(1)(a). DEQ hereby assesses a
25 \$12,722 civil penalty for this violation.

26 2. On or about June 13, 2017, through at least June 30, 2017, Respondent violated ORS
27 468B.025(1)(a) by causing pollution to waters of the state. Specifically, as described in Section II,

1 paragraph 6, there is a large uncovered and unstabilized stockpile at the Site that is spilling its contents
2 of dirt into a wetland, waters of the state. Such an alteration of the physical characteristics of waters of
3 the state, including the discharge of solids, tends to render the waters harmful to beneficial uses and is
4 considered "pollution" pursuant to ORS 468B.005(5). This is a Class I violation, according to OAR
5 340-012-0055(1)(a). DEQ hereby assesses a \$8,800 civil penalty for this violation.

6 3. Since June 1, 2015, Respondent has violated ORS 468B.025(2) by violating Schedule B,
7 condition 7.a of the Permit by failing to conduct inspections on a monthly basis when the facility is in
8 operation as described in Section II paragraphs 7-8. This is a Class II violation, according to OAR 340-
9 012-0053(2). DEQ hereby assesses a \$1,582 civil penalty for this violation.

10 4. On or about June 13, 2017, through at least June 30, 2017, Respondent has violated ORS
11 468B.025(1)(a) by placing wastes in a location where they are likely to enter waters of the state by any
12 means. Specifically, as described in Section II, paragraph 9, there are containment bins containing
13 compost material that spills into the roadside ditch that flows into the Slough, waters of the state. This
14 is a Class II violation, according to OAR 340-012-0055(2)(c). DEQ has not assessed a civil penalty for
15 this violation.

16 5. On or about June 30, 2017, Respondent violated ORS 468B.025(2) by violating
17 condition 7.c of the Permit by discharging stormwater mixed with wastewater from truck washing
18 activities at the Site as described in Section II, paragraphs 10-12. This is a Class II violation, according to
19 OAR 340-012-0053(2). DEQ has not assessed a civil penalty for this violation.

20 6. On or about June 30, 2017, Respondent violated ORS 468B.025(2) by violating Schedule
21 A, condition 1.a.iv of the Permit by failing to locate leaking or leak-prone vehicles and equipment awaiting
22 maintenance in containment and diversion systems as described in Section II, paragraphs 13-14. This is a
23 Class II violation, according to OAR 340-012-0053(2). DEQ has not assessed a civil penalty for this
24 violation.

25 7. On or about June 30, 2017, Respondent violated ORS 468B.025(2) by violating Schedule
26 A, condition 1.h.iii of the Permit by failing to have the necessary clean-up material on-site and readily
27 available to clean up a leak, spill or other release as described in Section II, paragraphs 15-16. This is a

1 Class II violation, according to OAR 340-012-0053(2). DEQ has not assessed a civil penalty for this
2 violation.

3 8. On or about June 30, 2017, Respondent violated ORS 468B.025(2) by violating Schedule
4 A, condition 1.a and condition 1.d of the Permit by failing to minimize exposure of material storage areas
5 to rain and runoff and failing to implement erosion and sediment controls on the stockpiles at the Site as
6 described in Section II, paragraphs 17-19. This is a Class II violation, according to OAR 340-012-0053(2).
7 DEQ has not assessed a civil penalty for this violation.

8 9. Since October 16, 2012, Respondent has violated ORS 468B.025(2) by violating
9 Schedule A, condition 1.j of the Permit by failing to develop or maintain an employee orientation and
10 education program as described in paragraphs 20-21. This is a Class II violation, according to OAR 340-
11 012-0053(2). DEQ has not assessed a civil penalty for this violation.

12 IV. ORDER TO PAY CIVIL PENALTY AND TO COMPLY

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

- 15 1. Pay a total civil penalty of \$23,104. The determinations of the civil penalties are attached as
16 Exhibits 1, 2, and 3 and are incorporated as part of this Notice.
- 17 2. Within 30 days of this Order becoming final submit to DEQ for approval a plan and a timeline
18 for restoring the wetland impacted by the conditions described in Section II, paragraph 6. To be
19 approvable, the plan must propose restoration of the wetland to its natural ecological function
20 that existed prior to the impacts caused by Respondent's stockpile. Restoration work may not
21 begin until DEQ approves a restoration plan. Please send the proposed plan to DEQ, Attn.:
22 Michael Kennedy, 700 NE Multnomah St., Suite 600, Portland, OR 97232.
- 23 3. In accordance with the DEQ-approved plan, restore the wetland impacted by the conditions
24 described in Section II, paragraph 6 within 6 months of this Order becoming final.

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1 If you do not file a request for hearing as set forth in Section V below, your check or money
2 order must be made payable to "**State Treasurer, State of Oregon**" and sent to the **DEQ, Business**
3 **Office, 700 NE Multnomah Street, Suite 600, Portland, Oregon 97232**. Once you pay the penalty,
4 the Findings of Fact, Conclusions and Order become final.

5 V. NOTICE OF RIGHT TO REQUEST A CONTESTED CASE HEARING

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

20 Active duty service-members have a right to stay proceedings under the federal Service
21 Members Civil Relief Act. For more information, please call the Oregon State Bar at 1-800-
22 452-8260 or the Oregon Military Department at 1-800-452-7500. Additional information can be found
23 online at the United States Armed Forces Legal Assistance (AFLA) Legal Services Locator website
24 <http://legalassistance.law.af.mil/content/locator.php>.

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

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10 May 14, 2018

11 Date

Sarah G. Wheeler

12 Sarah G. Wheeler, Acting Manager
13 Office of Compliance and Enforcement
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EXHIBIT No.1

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

VIOLATION 1: Respondent violated ORS 468B.025(1)(a) by causing pollution to waters of the state on or about June 30, 2017 by discharging oily sheen from settling pond no.1 to the Slough.

CLASSIFICATION: This is a Class I violation pursuant to OAR 340-012-0055(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)(E)(iii) as Respondent has coverage under an NPDES General 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 1. Respondent has two prior significant actions, case no.: WQ/SW-NWR-09-068, that includes one Class I violation and one Class II violation, and case no.: WQ/SW-NWR-13-162 that includes one Class I violation. According to OAR 340-012-0145(2)(a)(C), (D) the value of these prior significant actions is 3. According to OAR 340-012-0145(2)(d)(A)(i), this amount is reduced by 2 because all the formal enforcement actions in which prior significant actions were cited were issued more than three years before the date the current violation occurred.

"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 insufficient information on which to base a finding under paragraphs (3)(a) or (b).

"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).

"M" is the mental state of the Respondent, and receives a value of 8 according to OAR 340-012-0145(5)(c) because Respondent's conduct was reckless. Respondent is a permittee and has been previously cited in a formal enforcement action for failing to comply with permit conditions and so

Respondent is aware of the requirement to implement controls to prevent discharges offsite. By failing to implement appropriate best management practices to prevent oily liquids from entering its settling pond, and then failing to implement adequate measures to remove pollutants from the pond before its discharges, Respondent consciously disregarded a substantial and unjustifiable risk that it would discharge pollution to waters of the state.

"C" is Respondent's efforts to correct or mitigate the violation, and receives a value of -2 according to OAR 340-012-0145(6)(d) because Respondent eventually made some efforts to minimize the effects of the violation by minimizing the exposure of pollutants within the Site and increasing the treatment and capacity of their stormwater treatment basins.

"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 \$5,922. This is the amount Respondent gained by avoiding spending \$9,440 to perform maintenance at the Site. This "EB" was calculated pursuant to OAR 340-012-0150(1) using the U.S. Environmental Protection Agency's BEN computer model.

PENALTY CALCULATION: $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$
 $= \$4,000 + [(0.1 \times \$4,000) \times (1 + 0 + 0 + 8 + -2)] + \$5,922$
 $= \$4,000 + (\$400 \times 7) + \$5,922$
 $= \$4,000 + \$2,800 + \$5,922$
 $= \$12,722$

EXHIBIT No. 2

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

VIOLATION 2: Respondent violated ORS 468B.025(1)(a) by causing pollution to waters of the state on or about June 30, 2017 by allowing a large stockpile to spill into a wetland.

CLASSIFICATION: This is a Class I violation pursuant to OAR 340-012-0055(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)(E)(iii) as Respondent has coverage under an NPDES General 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 1. Respondent has two prior significant actions, case no.: WQ/SW-NWR-09-068, that includes one Class I violation and one Class II violation, and case no.: WQ/SW-NWR-13-162 that includes one Class I violation. According to OAR 340-012-0145(2)(a)(C), (D) the value of these prior significant actions is 3. According to OAR 340-012-0145(2)(d)(A)(i), this amount is reduced by 2 because all the formal enforcement actions in which prior significant actions were cited were issued more than three years before the date the current violation occurred.

"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 insufficient information on which to base a finding under paragraphs (3)(a) or (b).

"O" is whether the violation was repeated or ongoing, and receives a value of 3 according to OAR 340-012-0145(4)(c) because the uncovered, unstabilized stockpiles were first observed by DSL on June 13, 2017 and then again by DEQ on June 30, 2017 for a total of 17 days.

"M" is the mental state of the Respondent, and receives a value of 8 according to OAR 340-012-0145(5)(c) because Respondent's conduct was reckless. Respondent is a permittee and has been previously cited in a formal enforcement action for failing to comply with permit conditions and so

Respondent is aware of the requirement to implement controls to prevent discharges offsite. By failing to implement appropriate best management practices to prevent oily liquids from entering its settling pond, and then failing to implement adequate measures to remove pollutants from the pond before its discharges, Respondent consciously disregarded a substantial and unjustifiable risk that it would discharge pollution to waters of the state.

"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 as 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 as the economic benefit to Respondent from this violation is captured in Exhibit No.1.

PENALTY CALCULATION: $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$
 $= \$4,000 + [(0.1 \times \$4,000) \times (1 + 0 + 3 + 8 + 0)] + \0
 $= \$4,000 + (\$400 \times 12) + \$0$
 $= \$4,000 + \$4,800 + \$0$
 $= \$8,800$

EXHIBIT No. 3

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

VIOLATION 3: Respondent violated ORS 468B.025(2) by violating Schedule B, condition 7.a of the Permit. Specifically, Respondent failed to conduct monthly inspections.

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: $BP + [(0.1 \times BP) \times (P + H + O + M + C)] + EB$

Under OAR 340-012-0150(4), the Department elects to assess only the economic benefit Respondent gained through noncompliance and not a gravity-based civil penalty.

"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 \$1,582. This is the amount Respondent gained by avoiding conducting monthly inspections since June 1, 2015.

PENALTY CALCULATION: $Penalty = BP + [(0.1 \times BP) \times (P + H + O + M + C)] + EB$
 $= \$0 + [(0.1 \times \$0) \times (0 + 0 + 0 + 0 + 0)] + \$1,582$
 $= \$0 + (\$0 \times 0) + \$1,582$
 $= \$0 + \$0 + \$1,582$
 $= \$1,582$