



Oregon

Kate Brown, Governor

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

August 11, 2022

CERTIFIED MAIL: 7018 1830 0001 5906 3831

Basque Station, Inc.
c/o James Zatica, Registered Agent
801 Main Street
Jordan Valley, OR 97910

Re: Notice of Civil Penalty Assessment and Order
Case No. LQ/UST-WR-2022-076

This letter is to inform you that DEQ has issued you a total civil penalty of \$14,809 for underground storage tank (UST) violations at your facility in Jordan Valley. DEQ documented numerous violations during its inspection on November 18, 2021. DEQ has cited you for the following monitoring and testing violations: failing to initially test the 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, failing to conduct monthly and annual walkthrough inspections, failing to test the automatic tank gauging (ATG) system and failing to retain ATG monitoring results. Other violations documented during the inspection included underground piping that was in contact with the soil which can subject it to corrosion, failing to display a valid operating certificate, failing to provide documentation of compliance with financial responsibility requirements and failing to have a trained UST system operator at the facility.

DEQ issued this penalty because proper monitoring and testing of the UST system and its release prevention and detection equipment is important to ensure 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 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, perform repairs or install corrosion detection on the exposed piping, and ensure that an employee completes Class A/B UST system operator training. You are required to submit documentation demonstrating your compliance to DEQ within thirty (30) days of this Notice becoming final. \$8,059 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.

Basque Station, Inc.
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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

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

3 IN THE MATTER OF:)
4 BASQUE STATION, INC.,) NOTICE OF CIVIL PENALTY
an Oregon corporation,) ASSESSMENT AND ORDER
5 Respondent.) CASE NO. LQ/UST-WR-2022-076
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7 I. AUTHORITY

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

12 II. FINDINGS OF FACT

- 13 1. At all materials times, Respondent has owned and been the permittee of an underground
14 storage tank (UST) system located at 807 Main Street in Jordan Valley, Malheur County, Oregon.
- 15 2. At all material times, Respondent operated the UST system under Certificate to Operate
16 #2231.
- 17 3. The UST system consists of four USTs and connected piping. The UST system has a total
18 capacity of approximately 40,000 gallons of gasoline and diesel fuel, which are regulated substances.
- 19 4. On November 18, 2021, DEQ conducted an inspection of the UST system. No records for
20 the UST system were provided for DEQ's review.
- 21 5. As of November 18, 2021, Respondent had not tested the overfill prevention equipment and
22 containment sumps used for interstitial monitoring.
- 23 6. As of November 18, 2021, Respondent had not performed line tightness testing within one
24 (1) year of the previous test, which was performed in 2016 or earlier.
- 25 7. As of November 18, 2021, Respondent had not performed testing of the line leak detectors
26 within one (1) year of the previous test, which was performed in 2016 or earlier.

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1 8. On November 18, 2021, the piping under the dispensers was in contact with the soil and
2 there was no containment under the dispensers. Some piping for the turbine sumps was also in contact
3 with the soil. The piping routinely contains gasoline and diesel fuel.

4 9. As of November 18, 2021, Respondent had not performed monthly walkthrough inspections
5 of the spill prevention equipment and release detection equipment, and Respondent did not have records
6 of such inspections for at least one year.

7 10. As of November 18, 2021, Respondent had not performed an annual operation and
8 maintenance walkthrough inspection, and Respondent did not have records of such an inspection for the
9 previous year.

10 11. The facility uses automatic tank gauging (ATG) as its primary release detection method.

11 12. As of November 18, 2021, Respondent did not have records of (ATG) monitoring results for
12 the previous twelve months.

13 13. As of November 18, 2021, Respondent had not tested the electronic and mechanical
14 components of the ATG system within the previous year.

15 14. On November 18, 2021, the facility did not have a valid operating certificate posted in a
16 conspicuous location where it was clearly visible to distributors delivering fuel.

17 15. On November 18, 2021, the facility did not provide documentation of compliance with
18 financial responsibility requirements for UST systems upon request.

19 16. On November 18, 2021, there was no staff at the facility who was trained as a Class A or B
20 UST system operator.

21 III. CONCLUSIONS

22 1. Respondent has violated OAR 340-150-0310(10) by failing to initially test its spill
23 prevention and overfill prevention equipment prior to October 1, 2020, as alleged in Section II,
24 Paragraph 5 above. This is a Class I violation according to OAR 340-012-0067(1)(j). DEQ hereby
25 assesses a \$1,490 civil penalty for this violation.

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1 2. Respondent has violated OAR 340-150-0410(3) by failing to conduct line tightness testing
2 annually, as alleged in Section II, Paragraph 6 above. Since Respondent has not conducted testing since at
3 least 2016, it has missed at least five annual tests. These are Class I violations according to OAR 340-
4 012-0067(1)(j). DEQ hereby assesses a \$5,214 civil penalty for these violations.

5 3. Respondent has violated OAR 340-150-0410(2)(c) by failing to conduct operational line leak
6 detector testing annually, as alleged in Section II, Paragraph 7 above. Since Respondent has not conducted
7 testing since at least 2016, it has missed at least five annual tests. These are Class I violations according
8 to OAR 340-012-0067(1)(j). DEQ hereby assesses a \$900 civil penalty for these violations.

9 4. 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 8 above.
11 This is a Class I violation according to OAR 340-012-0067(1)(f). DEQ hereby assesses a \$3,255 civil
12 penalty for this violation.

13 5. Respondent has violated OAR 340-150-0315(1)(a)(A) by failing to conduct walkthrough
14 inspections of the spill prevention equipment and release detection equipment every thirty (30) days, as
15 alleged in Section II, Paragraph 9 above. Since Respondent failed to conduct walkthrough inspections for
16 at least a year, it missed at least 12 monthly walkthrough inspections. These are Class II violations
17 according to OAR 340-012-0053(2). DEQ hereby assesses a \$475 civil penalty for these violations.

18 6. Respondent has violated OAR 340-150-0315(1)(a)(B) by failing to conduct an annual
19 operation and maintenance walkthrough inspection, as alleged in Section II, Paragraph 10 above. This is
20 a Class II violation according to OAR 340-012-0053(2). DEQ hereby assesses a \$400 civil penalty for this
21 violation.

22 7. Respondent has violated OAR 340-150-0450(5) by failing to retain at least twelve (12)
23 consecutive months of release detection records as alleged in Section II, Paragraphs 11-12 above. This is
24 a Class I violation according to OAR 340-012-0067(1)(j). DEQ hereby assesses a \$700 civil penalty for
25 this violation.

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1 8. Respondent has violated OAR 340-150-0400(2) by failing to test the electronic and
2 mechanical components of the release detection system on an annual basis beginning on October 1,
3 2020, as alleged in Section II, Paragraphs 11 and 13 above. This is a Class I violation according to OAR
4 340-012-0067(1)(j). DEQ hereby assesses a \$1,195 civil penalty for this violation.

5 9. Respondent has violated OAR 340-150-0163(1)(a) by failing to display a valid annual
6 operation certificate in a conspicuous location at the UST facility clearly visible to distributors depositing
7 regulated substances into the UST, as alleged in Section II, Paragraph 14 above. This is a Class II violation
8 according to OAR 340-012-0067(2)(n). DEQ hereby assesses a \$200 civil penalty for this violation.

9 10. Respondent has violated OAR 340-150-0163(1)(k) by failing to provide information to DEQ
10 about the UST system's compliance with financial responsibility requirements. This is a Class II violation
11 according to OAR 340-012-0053(2). DEQ hereby assesses a \$175 civil penalty for this violation.

12 11. Respondent has violated OAR 340-150-0210(2) by failing to employ a Class A or B UST
13 system operator at the facility. This is a Class II violation according to OAR 340-012-0067(2)(b). DEQ
14 hereby assesses an \$805 civil penalty for this violation.

15 IV. ORDER TO PAY CIVIL PENALTY AND TO COMPLY

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

18 1. Pay a total civil penalty of \$14,809. The determinations of the civil penalties are attached as
19 Exhibits 1 – 11, which are incorporated as part of this Notice.

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

23 2. Within thirty (30) days of this order becoming final by operation of law or on appeal, take
24 the following actions to bring the UST system into compliance OAR Chapter 340, Division 150.
25 Submit written documentation, including testing results, demonstrating compliance with each of the
26 requirements below to Dylan Eckert, UST Inspector, by mail to: 165 E 7th Ave., Suite 100, Eugene,
27 Oregon 97401 or by email to: Dylan.Eckert@deq.oregon.gov:

- 1 a. Complete testing of spill and overfill prevention equipment;
- 2 b. Complete line tightness and line leak detector testing;
- 3 c. Complete testing of the ATG system;
- 4 d. Either isolate the underground piping from corrosive elements or install cathodic
- 5 protection for any portion of piping or fittings which are subject to corrosive elements;
- 6 e. Conduct all required walkthrough inspections and properly document the inspections;
- 7 f. Post the annual operation certificate in a conspicuous location at the UST facility clearly
- 8 visible to fuel delivery drivers; and
- 9 g. Ensure that at least one facility employee completes Class A/B UST system operator
- 10 training and receives a certificate.

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

12 You have a right to a contested case hearing on this Notice, if you request one in writing. DEQ
13 must receive your request for hearing **within 20 calendar days** from the date you receive this Notice. If
14 you have any affirmative defenses or wish to dispute any allegations of fact in this Notice or attached
15 exhibits, you must do so in your request for hearing, as factual matters not denied will be considered
16 admitted, and failure to raise a defense will be a waiver of the defense. (See OAR 340-011-0530 for
17 further information about requests for hearing.) You must send your request to: **DEQ, Office of**
18 **Compliance and Enforcement, 700 NE Multnomah Street, Suite 600, Portland, Oregon 97232**, fax
19 it to **503-229-6762** or email it to DEQappeals@deq.oregon.gov. An administrative law judge
20 employed by the Office of Administrative Hearings will conduct the hearing, according to ORS
21 Chapter 183, OAR Chapter 340, Division 011 and OAR 137-003-0501 to 0700. You have a right to be
22 represented by an attorney at the hearing, however you are not required to be. If you are an individual,
23 you may represent yourself. If you are a corporation, partnership, limited liability company,
24 unincorporated association, trust or government body, you must be represented by an attorney or a duly
25 authorized representative, as set forth in OAR 137-003-0555.

26 Active-duty Service members have a right to stay proceedings under the federal Service
27 Members Civil Relief Act. For more information contact the Oregon State Bar at 1-800-

1 452-8260, the Oregon Military Department at 503-584-3571, or the nearest United States Armed
2 Forces Legal Assistance Office through <http://legalassistance.law.af.mil>. The Oregon Military
3 Department does not have a toll-free telephone number.

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

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8 / 11 / 2022
Date



Kieran O'Donnell, Manager
Office of Compliance and Enforcement

EXHIBIT 1

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

- VIOLATION NO. 1 Failing to initially test spill prevention and overfill prevention equipment by October 1, 2020, in violation of OAR 340-150-0310(10).
- 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 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 \$790. This is the amount Respondent gained by avoiding spending \$1,000 to test the spill prevention and overflow 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)] + \$790
= \$500 + (\$50 x 4) + \$790
= \$500 + \$200 + \$790
= \$1,490

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 at least five occasions between its last testing in 2016 or earlier 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 five 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 \$4,314. This is the amount Respondent gained by avoiding spending \$900 per year to conduct annual line tightness and leak detector testing for five 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: $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$
 $= \$500 + [(0.1 \times \$500) \times (0 + 0 + 2 + 4 + 2)] + \$4,314$
 $= \$500 + (\$50 \times 8) + \$4,314$
 $= \$500 + \$400 + \$4,314$
 $= \$5,214$

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 at least five occasions between its last testing in 2016 or earlier 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 five 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 \times \$500) \times (0 + 0 + 2 + 4 + 2)] + \0
 $= \$500 + (\$50 \times 8) + \$0$
 $= \$500 + \$400 + \$0$
 $= \$900$

EXHIBIT 4

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

VIOLATION 4: 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 November 18, 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 \$2,255. This is the amount Respondent gained by avoiding spending \$2,960 to conduct repairs so that soil and rock cannot contact the UST system piping 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: $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$

$$\begin{aligned} &= \$500 + [(0.1 \times \$500) \times (0 + 0 + 4 + 4 + 2)] + \$2,255 \\ &= \$500 + (\$50 \times 10) + \$2,255 \\ &= \$500 + \$500 + \$2,255 \\ &= \$3,255 \end{aligned}$$

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 NO. 6 Failing to perform an annual operation and maintenance walkthrough inspection, in violation of OAR 340-150-0315(1)(a)(B).
- 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 0 according to OAR 340-012-0145(4)(a) because there was one occurrence of the violation. Respondent failed to conduct one annual operation and maintenance walkthrough inspection since October 1, 2020.
- "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 an annual walkthrough inspection, 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 an annual operation and maintenance walkthrough 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 because DEQ finds that the economic benefit Respondent gained by failing to conduct a walkthrough inspection 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 x \$250) x (0 + 0 + 0 + 4 + 2)] + \$0
= \$250 + (\$25 x 6) + \$0
= \$250 + \$150 + \$0
= \$400

EXHIBIT 7

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

VIOLATION NO. 7 Failing to retain at least twelve (12) consecutive months of release detection records, in violation of OAR 340-150-0450(5).

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 0 according to OAR 340-012-0145(4)(a) because there was only one occurrence of the violation. Respondent failed to retain a full year's worth of records as required.

"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 retain leak detection records, 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 0 according to OAR 340-012-0145(6)(f) because the violation or the effects of the violation could not be corrected or minimized.

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

PENALTY CALCULATION: $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$
 $= \$500 + [(0.1 \times \$500) \times (0 + 0 + 0 + 4 + 0)] + \0
 $= \$500 + (\$50 \times 4) + \$0$
 $= \$500 + \$200 + \$0$
 $= \$700$

EXHIBIT 8

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

VIOLATION NO. 8 Failing to test the electronic and mechanical components of the release detection system on an annual basis, in violation of OAR 340-150-0400(2).

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 0 according to OAR 340-012-0145(4)(a) because there was one occurrence of the violation. Respondent failed to conduct one annual test since October 1, 2020.

"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 annual testing of the ATG system, 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 testing of the ATG system.

"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 \$395. This is the amount Respondent gained by avoiding spending \$500 to conduct testing of the ATG system. 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 \times \$500) \times (0 + 0 + 0 + 4 + 2)] + \395
 $= \$500 + (\$50 \times 6) + \$395$
 $= \$500 + \$300 + \$395$
 $= \$1,195$

EXHIBIT 9

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

VIOLATION NO. 9 Failing to display a valid annual operation certificate in a conspicuous location at the UST facility clearly visible to distributors depositing regulated substances into the UST, in violation of OAR 340-150-0163(1)(a).

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

MAGNITUDE: The magnitude of the violation is minor pursuant to OAR 340-012-0130(4) as there is no selected magnitude specified in OAR 340-012-0135 applicable to this violation and DEQ finds that the violation had no more than a de minimis adverse impact on human health or the environment, and posed no more than a de minimis threat to human health and the environment. Failing to display the operation certificate does not have the potential to result in impacts to the environment or human health.

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 \$125 for a Class II, minor 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 4 according to OAR 340-012-0145(4)(d) because the violation has been ongoing for more than 28 days. DEQ documented the violation on November 18, 2021 and it has not been corrected as of 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 an annual walkthrough inspection, 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 provided documentation showing that the operation certificate is properly displayed at the facility.

"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 Respondent has not gained any economic benefit from the violation.

PENALTY CALCULATION: $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$
= \$125 + [(0.1 x \$125) x (0 + 0 + 0 + 4 + 2)] + \$0
= \$125 + (\$12.50 x 6) + \$0
= \$125 + \$75 + \$0
= \$200

EXHIBIT 10

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

VIOLATION NO. 10 Failing to provide information to DEQ about the UST system's compliance with financial responsibility requirements, in violation of OAR 340-150-0163(1)(k).

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

MAGNITUDE: The magnitude of the violation is minor pursuant to OAR 340-012-0130(4) as there is no selected magnitude specified in OAR 340-012-0135 applicable to this violation and DEQ finds that the violation had no more than a de minimis adverse impact on human health or the environment, and posed no more than a de minimis threat to human health and the environment. Failing to provide financial responsibility documentation to DEQ did not have the potential to result in impacts to the environment or human health, considering that the facility was in compliance with the substantive requirements.

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 \$125 for a Class II, minor 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 0 according to OAR 340-012-0145(4)(a) because there was only one occurrence of the violation. The violation occurred during the inspection on November 18, 2021.

"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 ensure that financial responsibility documentation was kept on site, 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 0 according to OAR 340-012-0145(6)(f) because the violation or the effects of the violation could not be corrected or minimized.

"EB" is the approximate dollar value of the benefit gained and the costs avoided or delayed as a result of the Respondent's noncompliance. It is designed to "level the playing field" by taking away any economic advantage the entity gained and to deter potential violators from deciding it is cheaper to violate and pay the penalty than to pay the costs of compliance. In this case, "EB" receives a value of \$0 because DEQ finds that Respondent has not gained any economic benefit from the violation.

PENALTY CALCULATION: $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$
 $= \$125 + [(0.1 \times \$125) \times (0 + 0 + 0 + 4 + 0)] + \0
 $= \$125 + (\$12.50 \times 4) + \$0$
 $= \$125 + \$50 + \$0$
 $= \$175$

EXHIBIT 11

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

VIOLATION NO. 11 Failing to employ a Class A or B UST system operator at the facility, 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 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 4 according to OAR 340-012-0145(4)(d) because the violation has been ongoing for more than 28 days. DEQ documented the violation on November 18, 2021, and it has not been corrected as of 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 have a properly trained system operator at the facility, 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 submitted documentation showing that it has a properly trained UST system operator employed at the facility.

"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 \$305. This is the amount Respondent gained by avoiding spending \$400 to send an employee to Class A/B operator training. This "EB" was calculated pursuant to OAR 340-012-0150(1) using the U.S. Environmental Protection Agency's BEN computer model.

PENALTY CALCULATION: $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$
 $= \$250 + [(0.1 \times \$250) \times (0 + 0 + 4 + 4 + 2)] + \305
 $= \$250 + (\$25 \times 10) + \$305$
 $= \$250 + \$250 + \$305$
 $= \$805$