



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

June 3, 2022

CERTIFIED MAIL: 7018 1830 0001 6172 5833

Burns' Davey Jones Locker, Inc.
c/o Stacie Burns, Registered Agent
91139 Cape Arago Highway
Charleston, OR 97420

Re: Notice of Civil Penalty Assessment and Order
Case No. LQ/UST-WR-2022-034

This letter is to inform you that DEQ has issued you a total civil penalty of \$5,144 for underground storage tank (UST) violations at your facility in Charleston. DEQ documented numerous violations during its inspection on October 20, 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 testing of the corrosion protection system, failing to conduct monthly walkthrough inspections of the spill prevention equipment and release detection equipment, failing to retain at least twelve (12) consecutive months of release detection records, and failing to test the electronic and mechanical components of the release detection system.

DEQ issued this penalty because proper monitoring and testing of the UST system and its release prevention and detection equipment are 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.

Included in Section IV of the enclosed Notice is an order requiring you to perform the required testing and inspections and submit the results to DEQ within thirty (30) days of this Notice becoming final. \$1,194 of the civil penalty represents the economic benefit you gained by failing to conduct the required testing and inspections 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: Andrea Garcia, Medford Office, DEQ
Mike Korten Hof, Eugene Office, DEQ

1 BEFORE THE ENVIRONMENTAL QUALITY COMMISSION

2 OF THE STATE OF OREGON

3	IN THE MATTER OF:)	
4	BURNS' DAVEY JONES LOCKER, INC.,)	NOTICE OF CIVIL PENALTY
4	an Oregon corporation,)	ASSESSMENT AND ORDER
5)	
5	Respondent.)	CASE NO. LQ/UST-WR-2022-043

6
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 been the permittee of an underground storage tank
14 (UST) system located at 91139 Cape Arago Highway in Charleston, Coos County, Oregon.

15 2. At all material times, Respondent operated the UST system under Certificate to Operate
16 #9324.

17 3. The UST system consists of three USTs and connected piping. The UST system has a total
18 capacity of approximately 18,000 gallons of gasoline and diesel fuel, which are regulated substances.

19 4. On October 20, 2021, DEQ conducted an inspection of the UST system and reviewed
20 Respondent's records for the UST system.

21 5. As of October 20, 2021, Respondent had not tested the overfill prevention equipment and
22 containment sumps used for interstitial monitoring.

23 6. As of October 20, 2021, Respondent had not had the corrosion protection equipment
24 inspected and tested for proper operation within the past three (3) years. The last test of the corrosion
25 protection equipment was conducted on September 13, 2016.

26 ///

27 ///

1 7. As of October 20, 2021, Respondent had not performed monthly walkthrough inspections of
2 the spill prevention equipment and release detection equipment, and Respondent did not have records of
3 such inspections for at least one year.

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

5 9. As of October 20, 2021, Respondent did not have records of (ATG) monitoring results for
6 the previous twelve months.

7 10. As of October 20, 2021, Respondent had not tested the electronic and mechanical
8 components of the ATG system within the previous year.

9 III. CONCLUSIONS

10 1. Respondent has violated OAR 340-150-0310(10) by failing to initially test its spill
11 prevention and overfill prevention equipment prior to October 1, 2020, as alleged in Section II,
12 Paragraph 5 above. This is a Class I violation according to OAR 340-012-0067(1)(j). DEQ hereby
13 assesses a \$1,181 civil penalty for this violation.

14 2. Respondent has violated OAR 340-150-0325(2)(b) by failing to have the corrosion protection
15 system inspected and tested for proper operation every three (3) years, as alleged in Section II, Paragraph 6
16 above. This is a Class I violation according to OAR 340-012-0067(1)(j). DEQ hereby assesses a \$1,423
17 civil penalty for this violation.

18 3. Respondent has violated OAR 340-150-0315(1)(a) by failing to conduct walkthrough
19 inspections of the spill prevention equipment and release detection equipment every thirty (30) days, as
20 alleged in Section II, Paragraph 7 above. This is a Class II violation according to OAR 340-012-0053(2).
21 DEQ hereby assesses a \$500 civil penalty for this violation.

22 4. 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 8-9 above. This is a
24 Class I violation according to OAR 340-012-0067(1)(j). DEQ hereby assesses a \$1,000 civil penalty for
25 this violation.

26 ///

27 ///

1 5. 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 8 and 10 above. This is a Class I violation according to OAR
4 340-012-0067(1)(j). DEQ hereby assesses a \$1,040 civil penalty for this violation.

5 IV. ORDER TO PAY CIVIL PENALTY AND TO COMPLY

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

8 1. Pay a total civil penalty of \$5,144. The determination of the civil penalties is attached as
9 Exhibits 1 – 5, which are incorporated as part of this Notice.

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

13 2. Within thirty (30) days of this order becoming final by operation of law or on appeal, take
14 the following actions to bring the UST system into compliance OAR Chapter 340, Division 150.
15 Submit written documentation, including testing results, demonstrating compliance with each of the
16 requirements below to Andrea Garcia, UST Inspector, by mail to: 221 W. Stewart Avenue, Suite 201,
17 Medford, Oregon 97501 or by email to: Andrea.Garcia@deq.oregon.gov.

- 18 a. Complete testing of spill and overfill prevention equipment;
- 19 b. Complete testing of the corrosion protection system;
- 20 c. Complete tank release detection testing;
- 21 d. Complete testing of the ATG system; and
- 22 e. Perform monthly walkthrough inspections and properly document the inspections.

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

24 You have a right to a contested case hearing on this Notice, if you request one in writing. DEQ
25 must receive your request for hearing **within 20 calendar days** from the date you receive this Notice. If
26 you have any affirmative defenses or wish to dispute any allegations of fact in this Notice or attached
27 exhibits, you must do so in your request for hearing, as factual matters not denied will be considered

1 admitted, and failure to raise a defense will be a waiver of the defense. (See OAR 340-011-0530 for
2 further information about requests for hearing.) You must send your request to: **DEQ, Office of**
3 **Compliance and Enforcement, 700 NE Multnomah Street, Suite 600, Portland, Oregon 97232**, fax
4 it to **503-229-6762** or email it to DEQappeals@deq.oregon.gov. An administrative law judge
5 employed by the Office of Administrative Hearings will conduct the hearing, according to ORS
6 Chapter 183, OAR Chapter 340, Division 011 and OAR 137-003-0501 to 0700. You have a right to be
7 represented by an attorney at the hearing, however you are not required to be. If you are an individual,
8 you may represent yourself. If you are a corporation, partnership, limited liability company,
9 unincorporated association, trust or government body, you must be represented by an attorney or a duly
10 authorized representative, as set forth in OAR 137-003-0555.

11 Active-duty Service members have a right to stay proceedings under the federal Service
12 Members Civil Relief Act. For more information contact the Oregon State Bar at 1-800-
13 452-8260, the Oregon Military Department at 503-584-3571, or the nearest United States Armed
14 Forces Legal Assistance Office through <http://legalassistance.law.af.mil>. The Oregon Military
15 Department does not have a toll-free telephone number.

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

22
23
24 6/3/2022
25 Date


24 
25 Kieran O'Donnell, Manager
26 Office of Compliance and Enforcement
27

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. Respondent had one Class I violation and one Class II violation in Case No. LQ/UST-WR-2013-167, which receives an initial value of 2 according to OAR 340-012-0145(2)(a)(B) and (D). Because all the FEAs in which PSAs were cited were issued more than five years before the current violations occurred, the value of "P" is reduced by 4. OAR 340-012-0145(2)(d)(A)(ii). However, pursuant to OAR 340-012-0145(2)(e), the value of "P" is 0.
- "H" is Respondent's history of correcting prior significant actions and receives an initial 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). However, pursuant to OAR 340-012-0145(3)(d), the value of "H" is 1.
- "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 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 \$431. This is the amount Respondent gained by avoiding spending \$550 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 \times \$500) \times (0 + 1 + 0 + 2 + 2)] + \431
 $= \$500 + (\$50 \times 5) + \$431$
 $= \$500 + \$250 + \$431$
 $= \$1,181$

EXHIBIT 2

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

VIOLATION NO. 2 Failing to have the corrosion protection system inspected every three years, in violation of OAR 340-150-0325(2)(b).

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. Respondent had one Class I violation and one Class II violation in Case No. LQ/UST-WR-2013-167, which receives an initial value of 2 according to OAR 340-012-0145(2)(a)(B) and (D). Because all the FEAs in which PSAs were cited were issued more than five years before the current violations occurred, the value of "P" is reduced by 4. OAR 340-012-0145(2)(d)(A)(ii). However, pursuant to OAR 340-012-0145(2)(e), the value of "P" is 0.

"H" is Respondent's history of correcting prior significant actions and receives an initial 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). However, pursuant to OAR 340-012-0145(3)(d), the value of "H" is 1.

"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 the testing prior to a specific date, on or about September 13, 2019.

"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 corrosion testing protection every three 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 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 \$573. This is the amount Respondent gained by avoiding spending \$666 to inspect the corrosion protection 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 + 1 + 0 + 4 + 2)] + \573
 $= \$500 + (\$50 \times 7) + \$573$
 $= \$500 + \$350 + \$573$
 $= \$1,423$

EXHIBIT 3

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

VIOLATION NO. 3 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. Respondent had one Class I violation and one Class II violation in Case No. LQ/UST-WR-2013-167, which receives an initial value of 2 according to OAR 340-012-0145(2)(a)(B) and (D). Because all the FEAs in which PSAs were cited were issued more than five years before the current violations occurred, the value of "P" is reduced by 4. OAR 340-012-0145(2)(d)(A)(ii). However, pursuant to OAR 340-012-0145(2)(e), the value of "P" is 0.

"H" is Respondent's history of correcting prior significant actions and receives an initial 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). However, pursuant to OAR 340-012-0145(3)(d), the value of "H" is 1.

"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 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 + 1 + 3 + 4 + 2)] + \0
 $= \$250 + (\$25 \times 10) + \$0$
 $= \$250 + \$250 + \$0$
 $= \$500$

EXHIBIT 4

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

VIOLATION NO. 4 Failing to retain at least twelve (12) consecutive months of release detection records, in violation of OAR 340-150-0400(1)(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. Respondent had one Class I violation and one Class II violation in Case No. LQ/UST-WR-2013-167, which receives an initial value of 2 according to OAR 340-012-0145(2)(a)(B) and (D). Because all the FEAs in which PSAs were cited were issued more than five years before the current violations occurred, the value of "P" is reduced by 4. OAR 340-012-0145(2)(d)(A)(ii). However, pursuant to OAR 340-012-0145(2)(e), the value of "P" is 0.

"H" is Respondent's history of correcting prior significant actions and receives an initial 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). However, pursuant to OAR 340-012-0145(3)(d), the value of "H" is 1.

"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 failed to maintain at least twelve months of release detection records, which is twelve occurrences of 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 keep and maintain release 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 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 leak detection records to DEQ.

"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 DEQ finds that the economic benefit Respondent gained by failing to keep 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 + 1 + 3 + 4 + 2)] + \0
 $= \$500 + (\$50 \times 10) + \$0$
 $= \$500 + \$500 + \$0$
 $= \$1,000$

EXHIBIT 5

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

- VIOLATION NO. 5 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. Respondent had one Class I violation and one Class II violation in Case No. LQ/UST-WR-2013-167, which receives an initial value of 2 according to OAR 340-012-0145(2)(a)(B) and (D). Because all the FEAs in which PSAs were cited were issued more than five years before the current violations occurred, the value of "P" is reduced by 4. OAR 340-012-0145(2)(d)(A)(ii). However, pursuant to OAR 340-012-0145(2)(e), the value of "P" is 0.
- "H" is Respondent's history of correcting prior significant actions and receives an initial 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). However, pursuant to OAR 340-012-0145(3)(d), the value of "H" is 1.
- "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, 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 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 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 \$190. This is the amount Respondent gained by avoiding spending \$250 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 + 1 + 0 + 4 + 2)] + \190
 $= \$500 + (\$50 \times 7) + \$190$
 $= \$500 + \$350 + \$190$
 $= \$1,040$