



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 6, 2021

CERTIFIED MAIL: 7018 1830 0001 5903 8754

Discount Towing & Recovery, LLC
c/o Donald Duddles, Registered Agent
3750 Mainline Dr. NE
Salem OR 97301

Re: Notice of Civil Penalty Assessment and Order
Case No. LQ/HW-WR-2020-244

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

This letter is to inform you that the Oregon Department of Environmental Quality (DEQ) has issued you a civil penalty of \$67,575 for multiple violations of environmental law, including failing to comply with hazardous waste, used oil, waste tire, and stormwater requirements, at your towing and recycling business in Salem.

DEQ issued this penalty because many of the environmental violations at your Facility posed a risk of serious environmental harm and have not yet been corrected, despite numerous communications from DEQ requesting corrective action and explaining how to comply.

Included in Section IV of the enclosed Notice is an order requiring you to take several actions to address the violations. Approximately \$25,000 of the civil penalty represents the economic benefit you gained as a result of the violations. 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.state.or.us
Via fax – 503-229-6762

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 Sarah Wheeler at 503-229-6927 or toll free in Oregon at 800-452-4011, extension 6927.

Sincerely,

A handwritten signature in blue ink, appearing to read "Kieran O'Donnell".

Kieran O'Donnell, Manager
Office of Compliance and Enforcement

Enclosures

cc: Chris Bayham, DEQ
Kathy Jacobsen, DEQ
Brian Fuller, DEQ
Zach Loboy, DEQ
Mary Fritzmann, DEQ
Accounting, DEQ
Andy Kapileo, ODOT, andy.p.kapileo@odot.state.or.us
Laura Pekarek, Marion County, LPekarek@co.marion.or.us

- e. Two 270-gallon totes, one orange in color one-fifth full of waste mixed gasoline, and one white, structurally-damaged and leaking, and completely full of waste mixed gasoline.
- f. One black metal 55-gallon drum, with punctures in the cover, labeled "used gas."
- g. Two structurally-damaged metal 55-gallon drums, one white and one blue, stored among a pile of waste tires, both partially filled with waste mixed gasoline.
- h. One inaccessible blue metal 55-gallon drum with unknown contents and a label from "American Petroleum Environmental Service."
- i. One red, approximately 275-gallon, heating oil tank at the Facility. The tank contained six inches of heating oil and was leaking onto the soil around it.
- j. Multiple additional 55-gallon containers storing mixtures of various quantities of waste mixed gasoline.
- k. Multiple inaccessible 55-gallon containers with unknown contents.

5. The containers described in Section II, Paragraph 4 above were not labeled as "hazardous waste," "used oil," or with the dates the wastes were first placed in the container.

6. The containers described in Section II, Paragraph 4 above were stored among other waste, equipment, and containers such that they were not accessible for inspections, spill containment or cleanup, or emergency response.

7. On July 13, 2020, Respondent stored at least 50 waste lead-acid batteries at the Facility, not in containers, many exposed to the elements, and some damaged and/or with covers removed.

8. On July 13, 2020, Respondent stored 10 mercury-containing switches removed from vehicles outside on a flatbed trailer, in an open, unlabeled yellow container outside at the Facility.

9. On July 13, 2020, Respondent stored a used oil filter such that they drained used oil onto the ground at the Facility.

10. On July 13, 2020, Respondent stored two unlabeled 55-gallon drums full of used oil outside at the Facility.

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1 11. On July 13, 2020, Respondent did not have any records of conducting weekly inspections of
2 hazardous waste storage areas at the Facility.

3 12. Respondent does not have a hazardous waste storage, treatment, or disposal permit for the
4 Facility.

5 13. Respondent has not applied for or obtained an EPA Site Identification Number for the Facility
6 from DEQ.

7 14. On July 13, 2020, Respondent had never trained employees in hazardous waste requirements.

8 15. Respondent does not have a waste tire storage permit for the Facility.

9 16. On July 13, 2020, Respondent stored approximately 4,000 tires, removed from vehicles and no
10 longer suitable for their original intended purpose because of wear, damage or defect, in piles at the
11 Facility.

12 17. Respondent does not have coverage for the Facility under National Pollutant Discharge
13 Elimination System (NPDES) Industrial Stormwater General Permit 1200-Z.

14 18. Respondent operates an oil/water separator at the Facility, which discharges to Claggett Creek,
15 as documented in As-Built Plans for the Facility provided by the City of Salem Public Works
16 Department.

17 III. CONCLUSIONS

18 Based upon the foregoing Findings of Fact, DEQ has determined that Respondent violated the
19 following provisions of Oregon law, including hazardous waste and used oil laws adopted by OAR
20 340-100-0002.

21 1. Respondent violated OAR 340-102-0011(2) by failing to conduct a complete and accurate
22 hazardous waste determination on all residues, as defined in OAR 340-100-0010(2)(ee) and 40 CFR 261.2,
23 that Respondent generated at the Facility. Specifically, Respondent failed to determine whether wastes
24 described in Paragraphs 4-8 of Section II above were hazardous waste when generated at the Facility.
25 Waste gasoline, used oil, and used antifreeze are ignitable and toxic hazardous waste pursuant to CFR
26 261.21(a)(1) and (b), and 40 CFR 261.24, specifically identified by Environmental Protection Agency
27 (EPA) Hazardous Waste Numbers (EPA Waste Nos.) D001, D006, D007, D008, and D018. Acidic and

1 basic wastes are corrosive hazardous wastes pursuant to 40 CFR 261.22(a)(1) and (b), identified as
2 EPA Waste No. D002. Waste lead-acid batteries are hazardous waste pursuant to 40 CFR 261.24,
3 identified as EPA Waste No. D008. Waste mercury-containing automotive switches are hazardous
4 waste pursuant to 40 CFR 261.24, identified as EPA Waste No. D009. These are Class I violations,
5 according to OAR 340-012-0068(1)(a). DEQ hereby assesses a \$16,632 civil penalty for these violations.

6 2. Respondent violated ORS 459.715(1) by establishing a waste tire storage site without a waste
7 tire storage permit. Specifically, on and before July 13, 2020, and ongoing as of the date of this Notice,
8 Respondent stored approximately 4,000 waste tires, as defined in ORS 459.705(11), at the Facility.
9 Respondent does not have a waste tire storage permit for the Facility. This is a Class I violation,
10 according to OAR 340-012-0066(1)(a). DEQ hereby assesses an \$11,487 civil penalty for this violation.

11 3. Respondent violated ORS 466.645(1) and OAR 340-142-0060(1) by failing to immediately
12 clean up releases of oil, as defined by ORS 466.605(8), at the Facility. Specifically, as described in
13 Paragraphs 1, 4.e, 4.f, 4.g, 4.i, and 9 of Section II above, Respondent failed to immediately clean up
14 various releases of oil at the Facility. This is a Class I violation, according to OAR 340-012-0081(1)(a).
15 DEQ hereby assesses a \$10,046 civil penalty for this violation.

16 4. Respondent violated ORS 468B.050(1)(d) by operating the Facility without coverage under a
17 water quality permit, as described in Paragraphs 1 and 17-18 of Section II above. A four inch
18 stormwater conveyance line originates from an oil/water separator at the Facility that discharges
19 stormwater to Claggett Creek. Claggett Creek is waters of the state as defined in ORS 468B.005(10).
20 This is a Class I violation, according to OAR 340-012-0055(1)(d). DEQ hereby assesses a \$29,410 civil
21 penalty for this violation.

22 5. Respondent violated 40 CFR 262.34(a)(2), as required by 40 CFR 262.34(d)(4), by failing
23 to mark containers storing hazardous waste with the date upon which each period of accumulation
24 begins. Specifically, Respondent failed to date containers of hazardous waste as described in
25 Paragraphs 4-5 of Section II above, and Paragraph 1 of this Section III. These are Class II violations,
26 according to OAR 340-012-0068(2)(a). DEQ has not assessed a civil penalty for these violations.

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1 6. Respondent violated 40 CFR 262.34(a)(3), as required by 40 CFR 262.34(d)(4), by failing
2 to mark containers storing hazardous waste as required. Specifically, Respondent failed to label
3 containers of hazardous waste with the words “hazardous waste” as described in Paragraphs 4-5 of
4 Section II above, and Paragraph 1 of this Section III. These are Class II violations, according to OAR
5 340-012-0068(2)(b). DEQ has not assessed a civil penalty for these violations.

6 7. Respondent violated 40 CFR 262.34(d)(5)(ii) by failing to post the following required
7 emergency response information at the hazardous waste storage area of the Facility: 1) name and telephone
8 number of the emergency coordinator, 2) location of the fire extinguishers and spill control material, and if
9 present, fire alarm, and 3) telephone number of the fire department. Specifically, Respondent stored the
10 wastes at the Facility as described in Paragraphs 4-8 of Section II above and Paragraph 1 of this Section
11 III, without posting this required emergency response information. This is a Class II violation, according
12 to OAR 340-012-0068(2)(c). DEQ has not assessed a civil penalty for this violation.

13 8. Respondent violated 40 CFR 265.35, as required by 40 CFR 262.34(d)(4), by failing to
14 maintain required aisle space where hazardous waste is stored. Specifically, Respondent stored the wastes
15 at the Facility as described in Paragraphs 4-8 of Section II above and Paragraph 1 of this Section III,
16 without establishing and maintaining aisle space to allow for the unobstructed movement of personnel,
17 fire protection equipment, spill control equipment, and decontamination equipment to any area of facility
18 operation in an emergency. This is a Class II violation, according to OAR 340-012-0068(2)(k). DEQ has
19 not assessed a civil penalty for this violation.

20 9. Respondent violated 40 CFR 265.174, as required by 40 CFR 262.34(d)(2), by failing to
21 inspect areas where hazardous waste containers are stored. Specifically, Respondent stored the wastes
22 described in Paragraphs 4-8 of Section II above and Paragraph 1 of this Section III, at the Facility, and
23 did not conduct weekly inspections of the areas where hazardous waste is stored. This is a Class II
24 violation, according to OAR 340-012-0068(2)(h). DEQ has not assessed a civil penalty for this violation.

25 10. Respondent violated 40 CFR 262.34(d)(5)(iii) by failing to ensure Respondent’s employees are
26 trained in proper hazardous waste handling and emergency procedures, relevant to their responsibilities
27 during normal facility operations and emergencies, as described in Paragraphs 1-14 of Section II above and

Paragraph 1 of this Section III. This is a Class II violation, according to OAR 340-012-0068(2)(l). DEQ has not assessed a civil penalty for this violation.

11. Respondent violated 40 CFR 262.12(a) by storing hazardous waste at the Facility without having received an EPA Resource Conservation and Recovery Act (RCRA) Site Identification Number. Specifically, Respondent stored the wastes described in Paragraphs 4-8 of Section II above and Paragraph 1 of this Section III, at the Facility on and before July 13, 2020, and is still storing them there without having this Site Identification Number for the Facility, as of the date of this Notice. This is a Class II violation, according to OAR 340-012-0068(2)(q). DEQ has not assessed a civil penalty for this violation.

IV. ORDER TO PAY CIVIL PENALTY AND TO COMPLY

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

1. Pay a total civil penalty of \$67,575. The determination of the civil penalty is attached in Exhibits 1-4 and incorporated as part of this Notice.

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

2. **Within 10 days** of this order becoming final by operation of law or on appeal, document that you have removed fluids from leaking containers and are storing all fluids in structurally sound containers, labeled as either "used oil" or "hazardous waste" as appropriate, and stored on the concrete pad with adequate aisle space to provide access for inspections and emergency response.

3. **Within 10 days** of this order becoming final by operation of law or on appeal, submit an application to DEQ for an EPA Resource Conservation and Recovery Act (RCRA) Site Identification Number and pay the associated fee when due. Call DEQ Headquarters Staff Mary Fritzmann at 503-229-6968 for assistance.

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1 4. **Within 30 days** of this order becoming final by operation of law or on appeal, submit the
2 results of hazardous waste determinations done on all of the waste gasoline and mixtures of automotive
3 fluids stored at the Facility, and documentation of planned arrangements for disposal of hazardous
4 wastes at a permitted hazardous waste disposal facility, and with transportation by a licensed hazardous
5 waste transporter. Within 30 days of receiving DEQ approval of the plan, dispose of the hazardous
6 waste as approved.

7 5. **Within 30 days** of this order becoming final by operation of law or on appeal, submit
8 documentation to DEQ of the following:

- 9 a. The required emergency response information has been posted at the hazardous waste
10 storage area of the Facility;
- 11 b. You have implemented procedures for segregating, collecting, transferring, and storing
12 used oil (including used oil filters), other automotive fluids, waste batteries, and
13 mercury-containing equipment at the Facility that minimizes the threat of release to the
14 environment and ensures that where possible, they can be legally recycled;
- 15 c. You are conducting weekly inspections of the hazardous waste containers stored at the
16 Facility; and
- 17 d. You have trained employees in hazardous waste management and emergency
18 procedures.

19 6. **Within 60 days** of this order becoming final by operation of law or on appeal, provide a
20 plan to DEQ describing how you will properly remove and dispose of the waste tires at the Facility,
21 including timelines and specifics regarding using a permitted waste tire carrier and location of disposal.
22 Additionally, if you plan to store more than 100 waste tires at a time at the Facility, within 60 days of
23 this order becoming final by operation of law or on appeal, submit an application to DEQ for a waste
24 tire storage permit. You can find the application and information at

25 <https://www.oregon.gov/deq/mm/swpermits/Pages/SW-Permit-Applications.aspx>.

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1 7. **Within 60 days** of this order becoming final by operation of law or on appeal, excavate
2 areas of soil at the Facility, to a visually clean standard, where oil or other automotive fluids have
3 spilled to the ground. Collect and store the contaminated soil in containers, conduct a hazardous waste
4 determination on the contaminated soil, and provide the results to DEQ along with a plan for disposal.
5 Within 30 days of receiving DEQ approval of the disposal plan, dispose of the contaminated soil as
6 approved.

7 8. Submittals required by paragraphs 2-7 above must be sent to Chris Bayham, Oregon DEQ,
8 at either bayham.chris@deq.state.or.us or 165 East 7th Avenue, Suite 100, Eugene, OR 97401.

9 9. **Within 60 days** of this order becoming final by operation of law or on appeal, submit a
10 complete application for coverage of the Facility under the NPDES Industrial Stormwater General
11 Permit 1200-Z. You can find application materials and instructions at:

12 <https://www.oregon.gov/deq/wq/wqpermits/Pages/Stormwater-Industrial.aspx>

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

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

1 Active duty Service members have a right to stay proceedings under the federal Service
2 Members Civil Relief Act. For more information contact the Oregon State Bar at 1-800-
3 452-8260, the Oregon Military Department at 503-584-3571, or the nearest United States Armed
4 Forces Legal Assistance Office through <http://legalassistance.law.af.mil>. The Oregon Military
5 Department does not have a toll free telephone number.

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

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15 8/6/21
16 Date

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Kieran O'Donnell
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 1:** Failing to accurately determine if Respondent's residues (as defined in OAR 340-100-0010(2)(ee) and 40 CFR 261.2 as adopted by OAR 340-100-0002) were hazardous waste, in violation of OAR 340-102-0011(2).
- CLASSIFICATION:** This is a Class I violation pursuant to OAR 340-012-0068(1)(a).
- MAGNITUDE:** The magnitude of the violation is major pursuant to OAR 340-012-0135(4)(a)(A) because Respondent failed to make a hazardous waste determination on at least five waste streams (multiple containers of various mixtures of automotive fluids, petroleum-contaminated soil, three containers with acidic and basic residue, lead acid batteries and mercury-containing equipment).
- 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 \$8,000 for a Class I, major magnitude violation in the matrix listed in OAR 340-012-0140(3)(b)(A)(i) and applicable pursuant to OAR 340-012-0140(3)(a)(J) because Respondent is a small quantity generator of hazardous waste and violated a hazardous waste rule.
- "P" is whether Respondent has any prior significant actions, as defined in OAR 340-012-0030(19), in the same media as the violation at issue that occurred at a facility owned or operated by the same Respondent, and receives a value of 0 according to OAR 340-012-0145(2)(a)(A), because there are no prior significant actions.
- "H" is Respondent's history of correcting prior significant actions, and receives a value of 0 according to OAR 340-012-0145(3)(c) because there is no prior history.
- "O" is whether the violation was repeated or ongoing and receives a value of 4 according to OAR 340-012-0145(4)(d), because there are more than 28 occurrences of the violation. Each day of violation constitutes a separate occurrence. The violation has been ongoing since at least January 1, 2016, as the last records for legal disposal of these wastes predate January 1, 2016. The violation is ongoing 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. As an owner of a vehicle dismantling business, Respondent is in the business of generating waste automotive fluids that are commonly known to be ignitable and potentially harmful to the environment. By storing numerous unlabeled (and some unsound) containers of various mixtures of waste

automotive fluids and other wastes, including dozens of uncontained and unsound waste lead-acid batteries, and by continuing to fail to determine whether the wastes were hazardous since DEQ's inspection in July of 2020, despite repeated requests from DEQ to do so, Respondent failed to take reasonable care to prevent the foreseeable risk of committing this violation.

"C" is Respondent's efforts to correct or mitigate the violation and receives a value of 2 according to OAR 340-012-0145(6)(g), because Respondent has not addressed 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 yet made a hazardous waste determination on the wastes, despite multiple requests from DEQ.

"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 \$632. This is the amount Respondent gained by avoiding spending at least an estimated \$885 to characterize hazardous waste at the Facility since January 1, 2016. This "EB" was calculated pursuant to OAR 340-012-0150(1) using the U.S. Environmental Protection Agency's BEN computer model.

PENALTY CALCULATION: $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$
= \$8,000 + [(0.1 x \$8,000) x (0 + 0 + 4 + 4 + 2)] + \$632
= \$8,000 [\$800 x (10)] + \$632
= \$8,000 + \$8,000 + \$632
= \$16,632

EXHIBIT 2

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

VIOLATION 2: Establishing a waste tire storage site without a waste tire storage permit, in violation of ORS 459.715(1).

CLASSIFICATION: This is a Class I violation pursuant to OAR 340-012-0066(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)(I)(i), because Respondent should have had a waste tire storage site 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 0 according to OAR 340-012-0145(2)(a)(A), because there are no prior significant actions.

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

"O" is whether the violation was repeated or ongoing, and receives a value of 4 according to OAR 340-012-0145(4)(d) because there were more than 28 occurrences of the violation. Each day of a violation with a duration of more than one day is a separate occurrence. Respondent has operated an unpermitted waste tire storage site since at least July 13, 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 in establishing and continuing to operate an unpermitted waste tire storage site was negligent. By accumulating approximately 4,000 waste tires at the Facility as of July 13, 2020, and continuing to store them without obtaining a permit as of the date of this Notice, despite receiving the Pre-Enforcement Notice in October of 2020, Respondent has failed to take reasonable care to avoid a foreseeable risk of committing a violation.

"C" is Respondent's efforts to correct or mitigate the violation, and receives a value of 2 according to OAR 340-012-0145(6)(g) because Respondent has not addressed the violation

as described in paragraphs (6)(a) through (6)(e) and the facts do not support a finding under paragraph (6)(f).

"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 \$3,487. This is the amount Respondent gained by avoiding spending an estimated \$5,250 to properly transport and dispose of approximately 4,000 waste tires since July 13, 2020. 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 x \$4,000) x (0 + 0 + 4 + 4 + 2)] + \$3,487
= \$4,000 + (\$400 x 10) + \$3,487
= \$4,000 + \$4,000 + \$3,487
= \$11,487

EXHIBIT 3

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

- VIOLATION 3: Failing to immediately clean up releases of oil at the Facility, in violation of ORS 466.645(1) and OAR 340-142-0060(1).
- CLASSIFICATION: This is a Class I violation pursuant to OAR 340-012-0081(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)(K) because Respondent violated an oil and hazardous material spill and release rule during a commercial activity.
- "P" is whether Respondent has any prior significant actions, as defined in OAR 340-012-0030(19), in the same media as the violation at issue that occurred at a facility owned or operated by the same Respondent, and receives a value of 0 according to OAR 340-012-0145(2)(a)(A), because there are no prior significant actions.
- "H" is Respondent's history of correcting prior significant actions, and receives a value of 0 according to OAR 340-012-0145(3)(c) because there is no prior history.
- "O" is whether the violation was repeated or ongoing, and receives a value of 4 according to OAR 340-012-0145(4)(d) because there were more than 28 occurrences of the violation. The violation has been ongoing from at least July 13, 2020, through the date of this Notice. Each day of a violation with a duration of more than one day is a separate occurrence.
- "M" is the mental state of the Respondent, and receives a value of 8 according to OAR 340-012-0145(5)(d) because Respondent's conduct in failing to immediately address releases was reckless, as defined in OAR 340-012-0030(20). In 2013, DEQ investigated a complaint of spilled gasoline or oil at the Facility, and in response to DEQ's inspection, Respondent cleaned up and properly disposed of contaminated soil. With that prior experience, and by failing to clean up releases of oil throughout the Facility at the time of DEQ's 2020 inspection, and continuing to fail to clean them up as of the date of this Notice, Respondent consciously disregarded a substantial and unjustifiable risk that Respondent's conduct was a violation and that the contamination is continuing. Given Respondent's history with DEQ

and this requirement, the nature of the business, and the frequency and duration of the releases and threatened releases at the Facility, this risk is of such a nature and degree that disregarding it constitutes a gross deviation from the standard of care a reasonable person would observe in this situation.

"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 taken steps to address the violation.

"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 \$446, based upon Respondent's avoidance since January 1, 2016, of the costs to properly manage used oil, clean up and properly dispose of petroleum-contaminated soil, and provide emergency preparedness equipment (including spill response 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: $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$
= \$4,000 + [(0.1 x \$4,000) x (0 + 0 + 4 + 8 + 2)] + \$446
= \$4,000 + (\$400 x 14) + \$446
= \$4,000 + \$5,600 + \$446
= \$10,046

EXHIBIT 4

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

VIOLATION 4: Operating an industrial or commercial activity which would cause an increase in the discharge of wastes into waters of the state or which would otherwise alter the physical, chemical, or biological properties of waters of the state without coverage under a water quality permit, in violation of ORS 468B.050(1)(d).

CLASSIFICATION: These are Class I violations pursuant to OAR 340-012-0055(1)(d), because Respondent is operating a discharge source without applying for coverage under a general permit for that discharge.

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) because Respondent violated a water quality statute and should have applied for 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 0 according to OAR 340-012-0145(2)(a)(A), because there are no prior significant actions.

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

"O" is whether the violation was repeated or ongoing, and receives a value of 4 according to OAR 340-012-0145(4)(d) because there are more than 28 occurrences of the violation. Each day of violation constitutes a separate occurrence. The violation is ongoing since at least July 1, 2013.

"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, as defined in OAR 340-012-0030(15). On September 1, 2020, DEQ sent Respondent a letter notifying Respondent that the Facility may require coverage under the 1200-Z industrial stormwater permit, and

requesting that Respondent either apply for coverage, or submit information in support of an exemption from the requirement, by September 23, 2020. Additionally, Respondent has been on notice that industrial stormwater permit coverage was required since at least October 7, 2020, when DEQ issued Respondent a Pre-Enforcement Notice (PEN) which explained that the Facility did need coverage under the NPDES 1200-Z General Permit for stormwater discharges from Respondent's oil/water separator by way of a four-inch stormwater pipe to Claggett Creek, as documented in the as-built drawings on file with the City of Salem. On October 8, 2020, DEQ issued Respondent Expedited Enforcement Offer (EEO) Number 2020-EEO-5776, citing Respondent for this violation, and offering to resolve the violation for a reduced penalty and agreement to comply. Respondent did not accept the EEO, and as of the date of this Notice, Respondent has not made any efforts to comply with this requirement or otherwise respond to DEQ's notices. By failing to take any measures to address the violation since October 2020, despite these communications, Respondent failed to take reasonable care to avoid the foreseeable risk of conduct resulting in a violation.

"C" is Respondent's efforts to correct or mitigate the violation, and receives a value of 2 according to OAR 340-012-0145(6)(g), because Respondent has not addressed 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 made any efforts to obtain industrial stormwater permit coverage for 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 \$21,410. This is the amount Respondent gained by 1) avoiding spending a total of \$11,647 in permit fees since July 1, 2013, and 2) avoiding spending \$1,955 each year since 2014 on stormwater monitoring costs required by the permit. This "EB" was calculated pursuant to OAR 340-012-0150(1) using the U.S. Environmental Protection Agency's BEN computer model.

PENALTY CALCULATION: $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$
 $= \$4,000 + [(0.1 \times \$4,000) \times (0 + 0 + 4 + 4 + 2)] + \$21,410$
 $= \$4,000 + (\$400 \times 10) + \$21,410$
 $= \$4,000 + \$4,000 + \$21,410$
 $= \$29,410$