



Oregon

Kate Brown, Governor

Department of Environmental Quality
Office of Compliance and Enforcement
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(503) 229-5696
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TTY 711

August 11, 2021

CERTIFIED MAIL: 7018 1830 0001 5903 8792

Lane County
Dan Hurley, Director of Public Works
125 East 8th Avenue
Eugene OR 97401

Re: Notice of Civil Penalty Assessment and Order
Case No. LQ/UST-WR-2021-058
UST Facility #12162

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

This letter is to inform you that DEQ has issued you a civil penalty of \$13,465.50 for violating the requirements for the safe and proper operation and maintenance of your underground storage tank facility located at 125 East 8th Avenue in Eugene. Specifically, DEQ has cited you for failing to monitor the tank and connected piping for releases and test your overfill and spill prevention equipment. In addition, during an inspection in November 2020, you did not have the annual operation certificate posted at the facility.

DEQ issued this penalty because the failure to properly complete release detection testing and monitoring presents a risk of harm to human health and the environment. Testing and monitoring ensures 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, the leaking fuel can have lasting harmful effects on the environment. Overfills usually release much larger volumes than spills. When a tank is overfilled, large volumes can be released at the fill pipe and at other tank top openings. Testing your overfill equipment to ensure that it is functioning properly prevents these releases from occurring.

DEQ appreciates your efforts to correct the violations by completing the required testing of the spill and overfill prevention equipment. DEQ took these efforts into account when determining the amount of the civil penalty. \$4,953 of the civil penalty represents the economic benefit you have gained by failing to install a method of release detection. If you install release detection, 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 – 503-229-5100

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 Susan Elworth at 503-229-5152 or toll free in Oregon at 800-452-4011, extension 5152.

Sincerely,



Kieran O'Donnell, Manager
Office of Compliance and Enforcement

Enclosures

cc: Dylan Eckert, WR, DEQ

BEFORE THE ENVIRONMENTAL QUALITY COMMISSION
OF THE STATE OF OREGON

IN THE MATTER OF:) NOTICE OF CIVIL PENALTY
LANE COUNTY,) ASSESSMENT AND ORDER
Respondent) CASE NO. LQ/UST-WR-2021-58

I. AUTHORITY

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

II. FINDINGS OF FACT

1. Respondent is the owner and permittee of an underground storage tank system located at 125 East 8th Avenue in Eugene, Oregon which is used to store regulated substance for use in an emergency generator (UST system).

2. In August 2008, Respondent modified the UST system when it replaced the existing underground connected steel piping with underground connected double-walled piping which conveys regulated substance under suction. The piping was installed into a sump which surrounded the fill port of the UST.

3. On November 16, 2020, DEQ conducted an inspection of the UST system.

4. At the time of the inspection, Respondent was using a tank gauge that conducted monitoring for inventory control purposes only and an overfill flapper valve as an overfill prevention device.

5. During the inspection, Respondent was unable to provide DEQ with:

a. The results of monthly monitoring of the interstitial space of the double-walled piping (as required by OAR 340-150-0465); and

b. The results of an operational test of the overfill flapper valve and a tightness test of the sump (as required by OAR 340-150-0310(10)).

6. During the inspection, Respondent did not have its operation certificate posted at its facility.

7. On March 4, 2021, Respondent installed a spill bucket inside of the sump and had the spill bucket tightness tested.

1 8. On August 3, 2021, Respondent had a new flapper valve installed and tested for operation.

2 III. CONCLUSIONS

3 1. Respondent violated OAR 340-150-0310(10) by failing to test its spill and overfill
4 prevention equipment prior to October 1, 2020. Specifically, Respondent did not conduct tightness
5 testing on the sump or test the operability of the overfill flapper valve prior to October 1, 2020, as
6 alleged in Section II, paragraphs 2, 4, 5.b, 7 and 8. Respondent did not have its spill and overfill
7 prevention equipment tested until March and August 2021. This is a Class I violation according to OAR
8 340-012-0067(1)(j). DEQ assesses a \$1,650 civil penalty for this violation.

9 2. Respondent violated OAR 340-150-0135(12) by failing to monitor its double-walled piping
10 using the interstitial monitoring release detection method in OAR 340-150-0465, on a monthly basis.
11 Pursuant to OAR 340-150-0465(4) and (6), Respondent is required to monitor its piping at least every 30
12 days, to record the results, and to retain the most current 12 consecutive months of records. As alleged in
13 Section II, paragraph 5.a, Respondent did not have records of monitoring for the 12 months prior to DEQ's
14 inspection, thus it did not monitor its piping for a release during those months. These are Class I violations
15 according to OAR 340-012-0067(1)(j). DEQ assesses a \$3,300 civil penalty for these violations.

16 3. Respondent violated OAR 340-150-0008(8) by failing to comply with the release detection
17 requirements in OAR 340-150-0450 through OAR 340-150-0470. Because the UST is used solely to
18 store regulated substance for an emergency power generator, Respondent was required to comply with the
19 release detection requirements in OAR 340-150-0450 through OAR 340-150-0470 prior to October 1,
20 2020. As alleged in Section II, paragraph 4, Respondent was using a tank gauge which conducted
21 inventory control monitoring only. According to OAR 340-150-0430(2), the use of inventory control as a
22 release detection method was not allowed after December 22, 2008. This is a Class I violation according
23 to OAR 340-012-0067(1)(e). DEQ assesses a \$7,953 civil penalty for this violation.

24 4. Respondent violated OAR 340-150-0150(1) by failing to post its operation certificate in a
25 conspicuous location at its UST facility, as alleged in Section II, paragraph 6. This is a Class II violation
26 according to OAR 340-012-0053(2). DEQ assesses a \$562.50 civil penalty for this violation.

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1 IV. ORDER TO PAY CIVIL PENALTY AND TO COMPLY

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

4 1. Pay a total civil penalty of \$13,465.50. The determination of the civil penalties are attached
5 as Exhibits 1 through 4 and are incorporated as part of this Notice. If you do not file a request for hearing
6 as set forth in Section V below, your check or money order must be made payable to "**State Treasurer,**
7 **State of Oregon**" and sent to the **DEQ, Business Office, 700 NE Multnomah Street, Suite 600,**
8 **Portland, Oregon 97232.**

9 2. Within 30 days of this order becoming final by operation of law or on appeal, submit the
10 following written documentation to: Dylan Eckert, DEQ, 165 E. 7TH Ave., Suite 100, Eugene, OR 97401:

11 a. A certificate showing that Respondent's Class A or Class B operator has repeated one of
12 the training options in OAR 340-150-0210(8), as required by OAR 340-150-0210(6); and

13 b. Installation of a release detection method for the UST that meets the requirements in OAR
14 340-150-0400(1).

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

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

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

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

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18 8/11/2021
19 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 NO. 1 Failing to initially test its spill and overfill prevention equipment, 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 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 \$1,500 for a Class I, moderate magnitude violation in the matrix listed in OAR 340-012-0140(4)(b)(A)(ii) and applicable pursuant to OAR 340-012-0140(4)(a)(I). Respondent is the permittee of three UST facilities.
- "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 an initial value of 4 according to OAR 340-012-0145(2)(a), because Respondent has three Class I violations in FC nos. 1079 and 1298. According to OAR 340-012-0145(2)(d)(A)(ii), this amount is reduced by 4 because all the formal enforcement actions in which prior significant actions were cited were issued more than five years before the date the current violation occurred. The final 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). Pursuant to OAR 340-012-0145(3)(d), this value is increased to 1 because Respondent did not take extraordinary efforts to correct or minimize the effects of all the PSAs.
- "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. Because Respondent was required to conduct the testing prior to a specific date, the violation occurred on one day only – specifically, 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)(d) because Respondent eventually made some efforts to correct the violation. Respondent has now installed new spill and overfill equipment and tested that equipment.

"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. Although Respondent delayed spending \$1,500 to have the testing completed, when calculated pursuant to OAR 340-012-0150(1) using the U.S. Environmental Protection Agency's BEN computer model, any "EB" gained by that delay was de minimus.

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

$$\begin{aligned} &= \$1,500 + [(0.1 \times \$1,500) \times (0 + 1 + 0 + 2 - 2)] + \$0 \\ &= \$1,500 + (\$150 \times 1) + \$0 \\ &= \$1,500 + \$150 + \$0 \\ &= \$1,650 \end{aligned}$$

EXHIBIT 2

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

VIOLATION NO. 2 Failing to monitor its piping, in violation of OAR 340-150-0135(12).

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 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 \$1,500 for a Class I, moderate magnitude violation in the matrix listed in OAR 340-012-0140(4)(b)(A)(ii) and applicable pursuant to OAR 340-012-0140(4)(a)(I). Respondent is the permittee of three UST facilities.

"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 an initial value of 4 according to OAR 340-012-0145(2)(a), because Respondent has three Class I violations in FC nos. 1079 and 1298. According to OAR 340-012-0145(2)(d)(A)(ii), this amount is reduced by 4 because all the formal enforcement actions in which prior significant actions were cited were issued more than five years before the date the current violation occurred. The final 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). Pursuant to OAR 340-012-0145(3)(d), this value is increased to 1 because Respondent did not take extraordinary efforts to correct or minimize the effects of all the PSAs.

"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 monitoring its piping on a monthly basis and to retain at least the previous 12 months of records of that monitoring. Respondent failed to conduct the monitoring during at least the 12 months prior to DEQ's inspection, thus the violation occurred in each of those months for 12 separate occurrences.

"M" is the mental state of the Respondent, and receives a value of 8 according to OAR 340-012-0145(5)(d) because Respondent acted or failed to act intentionally with actual knowledge of the requirement. In January 2014, DEQ issued Respondent a field citation for failing to

conduct interstitial monitoring on its piping, thus Respondent had actual knowledge of the requirement to monitor its piping every month. Intentional means Respondent acted or failed to act with a conscious objective to cause the result of its conduct. When Respondent failed to monitor and record the results on a monthly basis, it failed to act with a conscious objective that the result of its conduct could occur.

"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. Respondent is unable to conduct monitoring which was required in the past.

"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 is unable to make an estimate of any costs delayed or avoided as a result of this violation.

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

$$\begin{aligned} &= \$1,500 + [(0.1 \times \$1,500) \times (0 + 1 + 3 + 8 + 0)] + \$0 \\ &= \$1,500 + (\$150 \times 12) + \$0 \\ &= \$1,500 + \$1,800 + \$0 \\ &= \$3,300 \end{aligned}$$

EXHIBIT 3

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

- VIOLATION NO. 3 Failing to conduct release detection monitoring, in violation of OAR 340-150-0008(8).
- CLASSIFICATION: This is a Class I violation pursuant to OAR 340-012-0067(1)(e).
- 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 \$1,500 for a Class I, moderate magnitude violation in the matrix listed in OAR 340-012-0140(4)(b)(A)(ii) and applicable pursuant to OAR 340-012-0140(4)(a)(I). Respondent is the permittee of three UST facilities.
- "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 an initial value of 4 according to OAR 340-012-0145(2)(a), because Respondent has three Class I violations in FC nos. 1079 and 1298. According to OAR 340-012-0145(2)(d)(A)(ii), this amount is reduced by 4 because all the formal enforcement actions in which prior significant actions were cited were issued more than five years before the date the current violation occurred. The final 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). Pursuant to OAR 340-012-0145(3)(d), this value is increased to 1 because Respondent did not take extraordinary efforts to correct or minimize the effects of all the PSAs.
- "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 between seven and 28 occurrences of the violation. Respondent was required to monitoring its UST for releases starting on October 1, 2020 and each month thereafter. Because Respondent has not installed a release detection monitoring method on its UST that meets the regulatory requirements, it has failed to monitor its UST each month since October 2020. Each month is a separate occurrence of the violation. There were ten separate occurrences of the violation starting in October 2020 through July 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. Negligence means Respondent failed to take reasonable care to avoid a foreseeable risk of conduct constituting or resulting in a violation. In 2018, DEQ adopted the regulation requiring that the release detection monitoring be conducted for emergency generator USTs and provided extensive outreach to the regulated community on this requirement. Respondent's tank gauge states that it can be used for inventory monitoring only. When Respondent failed to install a tank gauge that can conduct release detection monitoring, it failed to avoid the foreseeable risk that its conduct would result 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 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 installed a tank gauge which can conduct release detection monitoring.

"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 \$4,953. This is the amount Respondent gained by avoiding spending \$5,000 to install an automatic tank gauge since October 1, 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: $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$
 $= \$1,500 + [(0.1 \times \$1,500) \times (0 + 1 + 3 + 4 + 2)] + \$4,953$
 $= \$1,500 + (\$150 \times 10) + \$4,953$
 $= \$1,500 + \$1,500 + \$4,953$
 $= \$7,953$

EXHIBIT 4

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

<u>VIOLATION NO. 4</u>	Failing to post its operation certificate in a conspicuous location at its UST facility, in violation of OAR 340-150-0150(1).
<u>CLASSIFICATION:</u>	This is a Class II violation pursuant to OAR 340-012-0053(2).
<u>MAGNITUDE:</u>	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. In making this finding, DEQ considered that the purpose of the requirement to post an operation certificate is to inform distributors that the UST facility has a current, valid operation certificate. Because the UST facility is used to store fuel for an emergency generator, it would rarely receive deliveries, thus there would have been no more than a de minimis threat to human health or the environment as a result of failing to post the operation certificate.
<u>CIVIL PENALTY FORMULA:</u>	The formula for determining the amount of penalty of each violation is: $BP + [(0.1 \times BP) \times (P + H + O + M + C)] + EB$
"BP"	is the base penalty, which is \$375 for a Class II, minor magnitude violation in the matrix listed in OAR 340-012-0140(4)(b)(B)(iii) and applicable pursuant to OAR 340-012-0140(4)(a)(I). Respondent is the permittee of three UST facilities.
"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 an initial value of 4 according to OAR 340-012-0145(2)(a), because Respondent has three Class I violations in FC nos. 1079 and 1298. According to OAR 340-012-0145(2)(d)(A)(ii), this amount is reduced by 4 because all the formal enforcement actions in which prior significant actions were cited were issued more than five years before the date the current violation occurred. The final 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). Pursuant to OAR 340-012-0145(3)(d), this value is increased to 1 because Respondent did not take extraordinary efforts to correct or minimize the effects of all the PSAs.

- "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. DEQ documented the violation on one day only – specifically November 16, 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. Negligence means Respondent failed to take reasonable care to avoid a foreseeable risk of conduct constituting or resulting in a violation. The operation certificate states that it must be posted in a conspicuous location at the UST facility. When Respondent failed to do so, it failed to take reasonable care to avoid the risk that its failure would be a violation.
- "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 there is insufficient information to make a finding under paragraphs (6)(a) through (6)(e), or (6)(g).
- "EB" is the approximate dollar value of the benefit gained and the costs avoided or delayed as a result of the Respondent's noncompliance. It is designed to "level the playing field" by taking away any economic advantage the entity gained and to deter potential violators from deciding it is cheaper to violate and pay the penalty than to pay the costs of compliance. In this case, "EB" receives a value of \$0 as DEQ is unable to make an estimate of any costs delayed or avoided as a result of this violation.

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

$$\begin{aligned} &= \$375 + [(0.1 \times \$375) \times (0 + 1 + 0 + 4 + 0)] + \$0 \\ &= \$375 + (\$37.50 \times 5) + \$0 \\ &= \$375 + \$187.50 + \$0 \\ &= \$562.50 \end{aligned}$$