



# 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  
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TTY 711

December 3, 2018

CERTIFIED MAIL: 7016 0750 0000 3470 3227

NW Metals Inc.  
c/o Alaka Worana, Registered Agent  
7600 NE Killingsworth St.  
Portland, OR 97218

Re: Amended Notice of Civil Penalty Assessment and Order  
DEQ Case No. WQ/SW-NWR-2018-063  
OAH Case No. 2018-ABC-02082

This letter is to inform you that the Oregon Department of Environmental Quality (DEQ) has issued the attached Amended Notice of Civil Penalty Assessment and Order (Amended Notice), in case No. WQ/SW-NWR-2018-063, pursuant to OAR 137-003-0530(4)(a). The Amended Notice cites NW Metals Inc. for additional violations of Oregon law and assesses additional civil penalties. Specifically, it cites NW Metals for failing to apply for an Air Contaminant Discharge Permit (ACDP) for the Arjez Shredder and for failing to implement the work plan approved by DEQ on July 3, 2018, as required by the Removal Action Order DEQ issued on March 28, 2018.

The Amended Notice assesses you an increased total civil penalty of \$77,419 for all violations. The additional civil penalties are calculated in Exhibits 6 and 7, which are attached to the Amended Notice. \$5,365 of the civil penalty represents the economic benefit you gained by failing to apply for the ACDP. If you complete this requirement, DEQ will consider recalculating the costs as delayed rather than avoided and will reduce the civil penalty accordingly. Included in Section IV is an order requiring immediate action to implement the work plan approved by DEQ on July 3, 2018, and to submit a complete application for an ACDP. The other corrective action orders in Section IV remain in effect.

Please note that the issuance of this Amended Notice does not affect the scheduling of the pre-hearing conference on December 28, 2018. DEQ accepts NW Metals Inc.'s appeal of Case No. WQ/SW-NWR-2018-063, received by DEQ on September 21, 2018, as applied to this Amended Notice. However, NW Metals Inc. may amend its appeal pursuant to OAR 340-011-0530(3).

If you have any questions, please contact Courtney Brown at 503-229-6839 or toll free in Oregon at 800-452-4011, extension 6839.

Sincerely,

Kieran O'Donnell, Manager  
Office of Compliance and Enforcement

cc: David Graiver, DEQ, Northwest Region  
Michael Greenburg, DEQ, Northwest Region  
Adam Kimmell, The Law Offices of Adam Kimmell, 2323 SE Tacoma St., Portland, OR 97202  
Office of Administrative Hearings, c/o ALJ Samantha Fair, PO Box 14020, Salem, OR 97309-4020

1 BEFORE THE ENVIRONMENTAL QUALITY COMMISSION

2 OF THE STATE OF OREGON

3	IN THE MATTER OF:	)	AMENDED NOTICE OF CIVIL PENALTY
4	NW METALS INC.,	)	ASSESSMENT AND ORDER
5	an Oregon corporation,	)	DEQ CASE NO. WQ/SW-NWR-2018-063
	Respondent.	)	OAH CASE NO. 2018-ABC-02082

6 I. AUTHORITY

7 The Department of Environmental Quality (DEQ) issues this Notice of Civil Penalty Assessment  
8 and Order (Notice) pursuant to Oregon Revised Statutes (ORS) 468.100, ORS 468.126 through 468.140,  
9 ORS 459.995, ORS 466.990, ORS Chapters 183, 459, 465, 468A, and 468B, and Oregon Administrative  
10 Rules (OAR) Chapter 340, Divisions 011, 012, 044, 064, 093, 100, 102, 111, 200, 210, and 216.

11 II. FINDINGS OF FACT

12 1. Since March 2014, Respondent has operated an automotive repair and dismantling  
13 facility located at 7600 NE Killingsworth Street, in Portland, Oregon (the Facility).

14 2. At the Facility, Respondent handles, processes, and stores used vehicles and vehicle  
15 parts, including used and waste tires. In addition, Respondent handles, processes and stores liquids  
16 commonly found in vehicles such as used oil and gasoline, antifreeze, power steering fluid, and other  
17 potentially toxic materials.

18 3. There are two underground injection control (UIC) systems (Drywell #1 and Drywell  
19 #2) located in the southwest corner of the Facility in the area where Respondent handles, processes, and  
20 stores used vehicles and waste tires.

21 4. Drywell #1 and Drywell # 2 are 20’ (feet) deep.

22 5. Drywell #1 and Drywell # 2 were authorized by rule on August 24, 2011, prior to  
23 Respondent’s operation of the Facility.

24 6. The depth to groundwater in and around the Facility is approximately 70’ feet.

25 7. There are catch basins on the property adjacent to the Facility (the Catch Basins) that  
26 drain to Drywell # 1 and Drywell # 2.

27 8. Stormwater runoff from Respondent’s Facility drains to the Catch Basins.

1 9. Stormwater runoff from Respondent's Facility drains to Drywell #1 and Drywell #2.

2 10. Water at the bottom of Drywell #1 was sampled on July 19, 2018. Sample results  
3 detected eleven Volatile Organic Compounds (VOCs) were detected in the water.

4 11. Samples of sludge were taken from the bottom of the inside of Drywell #1 on July 19,  
5 2018. Sample results detected petroleum hydrocarbons and ten metals, four of which exceeded  
6 background metals concentrations for the Portland Basin. In addition, sample results detected eleven  
7 semi-volatile organic compounds (SVOCs), five of which exceeded the EPA Regional Screening Level  
8 for Residential Soil Leaching to Groundwater.

9 12. Soil samples were taken adjacent to and 5' to 10' below the bottom of Drywell #1 on  
10 July 30, 2018. Sample results detected petroleum hydrocarbons and ten metals, two of which exceeded  
11 background metals concentrations for the Portland Basin. In addition, sample results detected eleven  
12 SVOCs. Two of those SVOCs exceeded the EPA Regional Screening Level for Residential Soil  
13 Leaching to Groundwater.

14 13. Soil samples were taken adjacent to and 5' to 10' below the bottom of Drywell #2 on  
15 July 30, 2018. Sample results detected petroleum hydrocarbons, nine metals, six VOCs, and ten  
16 SVOCs, one of which exceeded the EPA Regional Screening Level for Residential Soil Leaching to  
17 Groundwater.

18 14. On or before March 12, 2018, Respondent constructed, installed, and operated a full size  
19 vehicle shredder at the Facility.

20 15. The shredder was a new source that emitted VOCs and particulate matter.

21 16. Respondent did not notify DEQ in writing prior to constructing, installing, or operating  
22 the shredder.

23 17. On or about March 12, 2018, through March 13, 2018, a fire occurred at Respondent's  
24 Facility.

25 18. On March 14, 2018, DEQ performed an inspection of the Facility and observed:

26 a. A burned and severely damaged full size vehicle shredder;

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- b. Waste tires accumulated in disorganized, unstacked piles in many locations, outside on the ground, and throughout the Facility;
- c. Waste tires in poor condition, badly worn and without tread, overgrown with berry vines, or badly burned;
- d. No fire lanes around the piles of waste tires;
- e. Waste tires stacked up against and adjacent to buildings;
- f. One pile of waste tires approximately 20' tall, 25' wide, and 75' long, for a total of approximately 1,389 cubic yards;
- g. Waste tire piles without an approach and access road that was passable for a vehicle;
- h. Damaged and open containers labeled "used oil";
- i. Car batteries outside on the ground and in vehicles exposed to the elements;
- j. An above-grade riser that was dislodged from its buried casing for Drywell # 1;
- k. Rills and rivulets in the ground running from the burned areas to the Catch Basins;
- l. Vehicle dismantling areas located over bare ground, uncovered, and exposed to stormwater;
- m. The ground around Drywell # 1 and Drywell # 2 was stained with black dirt;
- n. The ground underneath partially dismantled vehicles was stained with black dirt and had an oily sheen; and
- o. Dark and stained soil in the areas in and around the Catch Basins.

19. Respondent removes antifreeze from automobiles, does not ship the antifreeze for reclamation and reuse, and instead mixes the antifreeze with used oil.

20. Respondent has not performed hazardous waste determinations on the antifreeze or the antifreeze mixed with used oil.

21. Antifreeze that is not reclaimed is considered a "residue" according to OAR 340-100-0010(2)(ee).

1           22.     Antifreeze is known to contain benzene and lead in high concentrations which often  
2 makes it characteristic of a hazardous waste.

3           23.     Antifreeze typically contains ethylene glycol or propylene glycol which are known  
4 threats to human health and the environment.

5           24.     Mixing antifreeze with used oil creates a watery emulsion that requires additional  
6 processing and energy to render the used oil recyclable.

7           25.     On or about March 23, 2018, DEQ performed an inspection of the Facility and observed:

8                   a.     Approximately 3,000 waste tires distributed throughout the Facility in a manner  
9                   that was unchanged from March 14, 2018.

10                   b.     Two additional large piles of burned waste tires, one of those piles contained  
11                   approximately 1,500 - 2,000 tires, and the other contained 500-1,000 tires.

12           26.     On July 12, 2018, DEQ performed an inspection of the Facility and observed that except  
13 for a few small piles of tires that had been stacked vertically, the large piles of waste tires were being  
14 stored in the same manner as observed on March 14, 2018, and March 23, 2018.

15           27.     Respondent has increasingly accumulated waste tires at the Facility since 2016.

16           28.     On August 24, 2018, DEQ e-mailed Respondent that DEQ had determined an Air  
17 Contaminant Discharge Permit (ACDP) was required for the installation and operation of the Arjez  
18 VZ950 Universal Shredder (“Arjez Shredder”).

19           29.     On or about October 2, 2018, DEQ staff performed an inspection of the Facility and  
20 observed a pile of shredded metal approximately 15 feet in diameter. Respondent told DEQ that the  
21 Arjez Shredder was installed and operational at the Facility.

22           30.     The Arjez Shredder has the potential to emit 35.60 tons per year (tpy) of nitrogen oxide,  
23 19.28 tpy of carbon monoxide, and 41.83 tpy of VOCs.

24           31.     As of the date of this Notice and Order Respondent has not submitted an application for  
25 an ACDP for the Arjez Shredder.

26           32.     On March 28, 2018, DEQ issued Respondent a Removal Action Order (RAO).

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1           33.     Section V, paragraph 3.A of the RAO requires that Respondent implement a work plan  
2 to remove fire debris within 5 days of DEQ approval of the work plan.

3           34.     Section V, paragraph 3.B of the RAO requires that Respondent implement a work plan  
4 for surficial soil characterization to, in relevant part, “assess the extent of hazardous substances released  
5 to soil on unpaved areas of the property affected by fire suppression fire runoff or soot deposition”  
6 within 10 working days of DEQ approval of the work plan.

7           35.     DEQ approved the work plan required by Section V, paragraphs 3.A and 3.B of the  
8 RAO, with some addendums, on July 3, 2018.

9           36.     As of the date of this Amended Notice and Order Respondent has not removed fire  
10 debris or completed the assessment of surficial soils as required by the RAO.

### 11   III. CONCLUSIONS

12           1.     Since on or about March 2014, through the present, Respondent has violated OAR 340-  
13 044-0015(2)(c) by causing a prohibited Class V injection system at its Facility, as described in Section  
14 II above. Specifically, Respondent has engaged in vehicle dismantling and repair activities where used  
15 oil, antifreeze, petroleum products and other potentially hazardous or toxic materials commonly found  
16 in vehicles were disposed to the ground surface where they comingled with stormwater and discharged  
17 to Drywell # 1 and Drywell # 2. Drywell # 1 and Drywell # 2 are “Underground Injection Systems” and  
18 “Class V injection systems,” as defined by OAR 340-044-0005(24) and OAR 340-044-0011(5)(d)  
19 respectively, because they emplace or discharge industrial stormwater to the subsurface. Used oil and  
20 gasoline and antifreeze are considered “toxic materials,” as defined by OAR 340-044-0005(45),  
21 because they will cause or can reasonably be expected to cause a hazard to aquatic, human or animal  
22 life. These are Class I violations, according to OAR 340-012-0055(1)(p). DEQ hereby assesses a \$29,554  
23 civil penalty for these violations.

24           2.     Since on or about March 2014, through the present, Respondent has violated ORS  
25 468B.025(1)(a) by placing wastes in a location where they are likely to enter waters of the state by any  
26 means, as described in Section II above. Specifically, Respondent’s vehicle dismantling resulted in the  
27 disposal of vehicle fluids, including petroleum-based liquids, waste tires, scrap metal, and other waste

1  
2 materials onto the ground surface in and around its Facility where they may come in contact with stormwater and  
3 discharge through the Catch Basins and Drywell #1 and Drywell 2 to the groundwater beneath the Facility.  
4 Groundwater is a “water of the state,” as defined by ORS 468B.005(10). Vehicle fluids, waste tires, and  
5 scrap metal are “wastes,” as defined by ORS 468B.005(9) because they are industrial wastes that may alter  
6 the physical, chemical, or biological properties of waters of the state. This is a Class II violation pursuant  
7 to OAR 340-012-0055(2)(c). DEQ hereby assesses a \$6,600 civil penalty for this violation.

8           3. Respondent violated OAR 340-102-0011(2) by failing to completely and accurately determine  
9 if Respondent’s residue was hazardous waste, as described in Section II above. The antifreeze and  
10 antifreeze mixed with used oil were “residues,” as defined by OAR 340-100-0010(2)(ee) and “solid  
11 wastes,” as defined by 40 CFR § 261.2(b) because they were not reclaimed for reuse. In addition,  
12 antifreeze is known to contain benzene and lead in high concentrations which often makes it a  
13 characteristic hazardous waste. Furthermore, antifreeze typically contains ethylene glycol or propylene  
14 glycol which are known threats to human health and the environment. This is a Class I violation according  
15 to OAR 340-012-0068(1)(a). DEQ hereby assesses a \$1,050 civil penalty for this violation.

16           4. Respondent has violated OAR 340-064-0015(1) by establishing, operating, and expanding a  
17 waste tire storage site at the Facility, storing more than 1,500 waste tires, without obtaining a waste tire  
18 storage permit from DEQ, as described in Section II above. The tires at the Facility are “waste tires,” as  
19 defined by OAR 340-064-0010(33) because they are worn and damaged and no longer suitable for their  
20 original intended use. The Facility is a “storage site,” as defined by OAR 340-064-0010(25), because  
21 Respondent has accumulated waste tires at the Facility above ground. This is a Class I violation according  
22 to OAR 340-012-0066(1)(a). DEQ hereby assesses a \$10,850 civil penalty for this violation.

23           5. On or about March 14, 2018, through the present, Respondent has violated OAR 340-064-  
24 0035(4) by failing to operate a waste tire storage site in conformance with the applicable standards, as  
25 described in Section II above. Specifically, Respondent stored waste tires in excess of six feet in height,  
26 without fire lanes, adjacent to buildings, and in overgrown and un-ricked piles. This is a Class II violation,  
27 according to OAR 340-012-0053(2). DEQ hereby assesses a \$4,800 civil penalty for this violation.

1           6. Respondent violated OAR 340-111-0010(2)(b) by purposely mixing antifreeze with used oil  
2 making used oil less recyclable, as described in Section II above. This is a Class II violation according to  
3 OAR 340-012-0053(2). DEQ has not assessed a civil penalty for this violation.

4           7. On or before March 12, 2018, Respondent constructed, installed, and operated a full size  
5 stationary vehicle shredder that caused an increase in regulated pollutant emissions without notifying DEQ  
6 in writing prior to the installation in violation of OAR 340-210-215(1), as described in Section II above.  
7 Specifically, the full size stationary vehicle shredder was a new source of VOCs and particulate matter.  
8 VOCs and particulate matter are regulated air pollutants pursuant to OAR 340-200-0020(134). This is a  
9 Class II violation according to OAR 340-012-0053(2). DEQ has not assessed a civil penalty for this  
10 violation.

11           8. Since on or about October 2, 2018, Respondent has violated OAR 340-216-0020(3) by  
12 installing and operating an air contaminant source listed in OAR 340216-8010, table 1, part B, #85 without  
13 first obtaining an Air Contaminant Discharge Permit (ACDP) from DEQ, as described in Section II above.  
14 Specifically, the Arjez Shredder described in Section II paragraphs 28 and 29, is a stationary source, as  
15 defined by OAR 340-200-0020(173), that would have actual emissions, if the source were to operate  
16 uncontrolled, of 10 or more tons per year of nitrogen oxide, carbon monoxide, and VOCs. Nitrogen oxide,  
17 carbon monoxide and VOCs are “criteria pollutants” as defined by OAR 340-200-0020(36). This is a  
18 class II violation according to OAR 340-012-0054(2)(a). DEQ has assessed a civil penalty of \$10,165 for  
19 this violation.

20           9. Since on or about July 8, 2018, and since on or about July 13, 2018, Respondent has violated  
21 ORS 465.255(1)(a) by violating the RAO issued on March 28, 2018. Specifically, Respondent failed to  
22 remove fire debris within five days of DEQ approval of the Work Plan and failed to complete soil  
23 sampling and assessment within ten days of approval of the work plan as required by the RAO. This is a  
24 Class I violation pursuant to OAR 340-012-0053(1)(a). DEQ has assessed a civil penalty of \$14,400 for  
25 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 \$77,419. The determinations of the civil penalties are attached as  
5 Exhibits No. 1-7 and are incorporated as part of this Notice.

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

10 2. By no later than October 1, 2018, comply with the following conditions:

11 a. Either:

12 i. Remove all waste tires at the Facility; or

13 ii. Submit to DEQ a complete application for a waste tire storage permit, including  
14 the application fee and documentation demonstrating that waste tires at the  
15 Facility meet the standards for storage required by OAR 340-064-0035(4).  
16 Submit this information to DEQ, Attn: DEQ NWR Solid Waste Permit  
17 Coordinator, 700 NE Multnomah Street, Suite 600, Portland, OR 97232 or via  
18 email to [DEQNWR.SolidWastePermitCoordinator@deq.state.or.us](mailto:DEQNWR.SolidWastePermitCoordinator@deq.state.or.us); and

19 b. Submit to DEQ for approval a plan demonstrating how Respondent will manage  
20 stormwater runoff from the Facility. Submit this plan to DEQ, Attn: Derek Sandoz, 700  
21 NE Multnomah Street, 7<sup>th</sup> Floor Suite 600, Portland, OR 97232 or  
22 [sandoz.derek@deq.state.or.us](mailto:sandoz.derek@deq.state.or.us); and

23 c. Cease operation of the prohibited Class V UICs (Drywell # 1 and Drywell # 2).

24 3. Immediately submit a complete application for a Simple ACDP to DEQ, Attn.: David Graiver,  
25 700 NE Multnomah St., Suite 600, Portland, OR 97232-4100.

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1 4. Immediately implement the work plan approved by DEQ on July 3, 2018, and submit  
2 documentation to DEQ, attn.: Michael Greenburg, 700 NE Multnomah St., Suite 600, Portland,  
3 OR 97232-4100.

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

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

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

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1 If you fail to file a timely request for hearing, the Notice will become a final order by default  
2 without further action by DEQ, as per OAR 340-011-0535(1). If you do request a hearing but later  
3 withdraw your request, fail to attend the hearing or notify DEQ that you will not be attending the  
4 hearing, DEQ will issue a final order by default pursuant to OAR 340-011-0535(3). DEQ designates  
5 the relevant portions of its files, including information submitted by you, as the record for purposes of  
6 proving a prima facie case.  
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10 12/3/18

11 Date

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13 Kieran O'Donnell, Manager  
14 Office of Compliance and Enforcement  
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EXHIBIT 1

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

VIOLATION 1: Causing the operation of a prohibited Class V underground injection system in violation of OAR 340-044-0015(2)(c).

CLASSIFICATION: This is a Class I violation pursuant to OAR 340-012-0055(1)(p).

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 \$6,000 for a Class I, moderate magnitude violation in the matrix listed in OAR 340-012-0140 (2)(b)(A)(ii) and applicable pursuant to OAR 340-012-0140 (2)(a)(E)(iv).

"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 violation constitutes a separate occurrence. Respondent has caused the operation of the prohibited UICs since 2014, when it began operation of the Facility and discharged industrial wastes and toxic materials to the ground where it may discharge into Drywell # 1 and Drywell # 2, and continues to do so as of the date of issuance of this Notice.

"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 was reckless. By conducting an industrial activity that handles, stores and processes petroleum and other toxic materials from vehicles in an area where stormwater runoff could discharge to UICs and without containment or limiting the exposure of those substances to stormwater, Respondent consciously disregarded a substantial and unjustifiable risk that it was operating a prohibited Class V UIC.

"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 \$16,354. This is the amount Respondent gained by avoiding spending \$20,000, to close the two UICs at the Facility. This "EB" was calculated pursuant to OAR 340-012-0150(1) using the U.S. Environmental Protection Agency's BEN computer model.

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

$$\begin{aligned} &= \$6,000 + [(0.1 \times \$6,000) \times (0 + 0 + 4 + 8 + 0)] + \$16,354 \\ &= \$6,000 + (\$600 \times 12) + \$16,354 \\ &= \$6,000 + \$7,200 + \$16,354 \\ &= \$29,554 \end{aligned}$$

## EXHIBIT 2

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

VIOLATION 2: Placing wastes in a location where they are likely to enter waters of the state by any means in violation of ORS 468B.025(1)(a).

CLASSIFICATION: This is a Class II violation pursuant to OAR 340-012-0055(2)(c).

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 \$3,000 for a Class II, moderate magnitude violation in the matrix listed in OAR 340-012-0140 (2)(b)(B)(ii) and applicable pursuant to OAR 340-012-0140(2)(a)(D).

"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 violation constitutes a separate occurrence. Respondent has placed wastes in a location where they are likely to enter waters of the state since 2014, when it began operation of the Facility and disposed of wastes to the ground where they may discharge to groundwater, and continues to do so as of the date of issuance of this Notice.

"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 was reckless. By failing to properly contain, store, manage and handle vehicles parts and fluids at the Facility, Respondent consciously disregarded a substantial and unjustifiable risk that wastes from its Facility would be washed via stormwater to UICs which discharge to the subsurface and may ultimately discharge to groundwater.

"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. Respondent's economic benefit from this violation is captured in the EB assessed to close the prohibited UICs, as stated in Exhibit No. 1.

PENALTY CALCULATION:  $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$   
 $= \$3,000 + [(0.1 \times \$3,000) \times (0 + 0 + 4 + 8 + 0)] + \$0$   
 $= \$3,000 + (\$300 \times 12) + \$0$   
 $= \$3,000 + \$3,600 + \$0$   
 $= \$6,600$

EXHIBIT 3

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

VIOLATION 3: Failing to completely and accurately determine if Respondent's residue was 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 minor pursuant to OAR 340-012-0135(4)(a)(C) because Respondent failed to make a hazardous waste determination on one or two waste streams. The Respondent failed to make a hazardous waste determination on the waste antifreeze and the waste antifreeze mixed with used oil.

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 \$750 for a Class I, minor magnitude violation in the matrix listed in OAR 340-012-0140(4)(b)(A)(i) and applicable pursuant to OAR 340-012-0140(4)(a)(P) as Respondent violated an oil or hazardous waste rule and is not listed under another matrix.

"P" is whether Respondent has any prior significant actions, as defined in OAR 340-012-0030(19), in the same media as the violation at issue that occurred at a facility owned or operated by the same Respondent, and receives a value of 0 according to OAR 340-012-0145(2)(a)(A), because there are no prior significant actions.

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

"O" is whether the violation was repeated or ongoing and receives a value of 0 according to OAR 340-012-0145(4)(a), because there is insufficient information on which to base a finding under paragraphs (4)(b) through (4)(d). It is unknown on how many occasions that Respondent generated the waste or how long the waste was at the Facility.

"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. Antifreeze is known to contain toxic heavy metals such as lead. Respondent's facility manager failed to adhere to best management practices regarding the handling of antifreeze after having been previously informed by DEQ of the requirement to determine whether this waste was hazardous waste. Respondent failed to take reasonable care to avoid the foreseeable risk that it was violating the requirement to make a hazardous waste determination.



"C" is Respondent's efforts to correct or mitigate the violation, and receives a value of 0 according to OAR 340-012-0145(6)(f) because the violation or the effects of the violation could not be corrected or minimized.

"EB" is the approximate dollar value of the benefit gained and the costs avoided or delayed as a result of the Respondent's noncompliance. It is designed to "level the playing field" by taking away any economic advantage the entity gained and to deter potential violators from deciding it is cheaper to violate and pay the penalty than to pay the costs of compliance. In this case, "EB" receives a value of \$0 as there is insufficient information on which to make an estimate. Although Respondent likely either delayed or avoided costs for not conducting hazardous waste determinations prior to this violation, it is unknown on how many occasions or for how long this cost was delayed or avoided.

PENALTY CALCULATION:  $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$   
= \$750 + [(0.1 x \$750) x (0 + 0 + 0 + 4 + 0)] + \$0  
= \$750 + (\$75 x 4) + \$0  
= \$750 + \$300 + \$0  
= \$1,050

EXHIBIT 4

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

VIOLATION 4: Establishing, operating, and expanding a waste tire storage site that stores more than 1,500 waste tires without obtaining a permit from DEQ in violation of OAR 340-064-0015(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 a waste tire storage 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 violation constitutes a separate occurrence. Respondent has been storing waste tires at the Facility since approximately 2016 and continues to do so as of the date of this Notice.

"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 was reckless. Respondent accumulated massive piles of waste tires at the Facility that are no longer fit for use on a vehicle. In doing so, Respondent consciously disregarded a substantial and unjustifiable risk that it was operating a waste tire storage site that needed a permit but took no steps to obtain one.

"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 removed any appreciable amount of waste tires or submitted an application for a permit.

"EB" is the approximate dollar value of the benefit gained and the costs avoided or delayed as a result of the Respondent's noncompliance. It is designed to "level the playing field" by taking away any economic advantage the entity gained and to deter potential violators from deciding it is cheaper to violate and pay the penalty than to pay the costs of compliance. In this case, "EB" receives a value of \$1,250. This is the amount Respondent gained by avoiding the costs to properly dispose of approximately 1500 waste tires at a cost of \$1.25 each 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:  $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$

$$\begin{aligned} &= \$4,000 + [(0.1 \times \$4,000) \times (0 + 0 + 4 + 8 + 2)] + \$1,250 \\ &= \$4,000 + (\$400 \times 14) + \$1,250 \\ &= \$4,000 + \$5,600 + \$1,250 \\ &= \$10,850 \end{aligned}$$

EXHIBIT 5

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

VIOLATION 5: Storing waste tires at the Facility in a manner that violates the standards for waste tire storage sites at OAR 340-064-0035(4).

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

MAGNITUDE: The magnitude of the violation is moderate pursuant to OAR 340-012-0130(1), as there is no selected magnitude specified in OAR 340-012-0135 applicable to this violation, and the information reasonably available to DEQ does not indicate a minor or major magnitude.

CIVIL PENALTY FORMULA: The formula for determining the amount of penalty of each violation is:  $BP + [(0.1 \times BP) \times (P + H + O + M + C)] + EB$

"BP" is the base penalty, which is \$2,000 for a Class II, moderate magnitude violation in the matrix listed in OAR 340-012-0140(3)(b)(B)(ii) and applicable pursuant to OAR 340-012-0140(3)(a)(I)(i).

"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 violation is a separate occurrence. The conditions of the waste tire piles were first observed by DEQ on March 14, 2018, and most recently on July 12, 2018, and have not been corrected as of the date of issuance of the Notice. The conditions have existed for more than 28 days.

"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 was reckless. Tires are known to be flammable and a source of pollution. Respondent has accumulated massive piles of waste tires at the Facility and failed to employ basic methods of storage to limit threats to the environment and human health and safety. In doing so, Respondent consciously disregarded a substantial and unjustifiable risk that it was creating site conditions that violated state laws designed to limit those threats. The risk was of a nature and degree that disregarding that risk

constituted a gross deviation from the standard of care a reasonable person would observe in that 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 organized the tire piles at the Facility in a manner that complies with state standards for waste tire storage sites.

"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. Information is not available to determine Respondent's economic benefit in failing to employ appropriate storage conditions.

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

$$\begin{aligned} &= \$2,000 + [(0.1 \times \$2,000) \times (0 + 0 + 4 + 8 + 2)] + \$0 \\ &= \$2,000 + (\$200 \times 14) + \$0 \\ &= \$2,000 + \$2,800 + \$0 \\ &= \$4,800 \end{aligned}$$

## EXHIBIT 6

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

VIOLATION 6: Operating an air contaminant discharge source without first obtaining an ACDP from DEQ.

CLASSIFICATION: This is a Class II violation pursuant to OAR 340-012-0054(2)(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 \$2,000 for a Class II, moderate magnitude violation in the matrix listed in OAR 340-012-0140(3)(b)(B)(ii) and applicable pursuant to OAR 340-012-0140(3)(a)(A) because Respondent should have an ACDP.

"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. DEQ confirmed operation of the shredder during an inspection on October 2, 2018. As of the date of the Amended Notice and Order, Respondent has failed to submit an application for an ACDP. Each day of violation is a separate occurrence according to OAR 340-012-0145(4).

"M" is the mental state of the Respondent, and receives a value of 8 according to OAR 340-012-0145(5)(d) because Respondent failed to act intentionally with actual knowledge of the requirement. DEQ e-mailed Respondent on August 24, 2018, informing it of DEQ's determination that an ACDP permit was required for the installation and operation of the Arjez Shredder. A hard copy of the same was given to Respondent on October 2, 2018. In addition, DEQ informed Respondent's consultant that an ACDP was required on October 31, 2018. A Pre-Enforcement Notice was sent to Respondent on November 7, 2018,

informing Respondent of the permit requirement. As of the date of this Amended Notice and Order Respondent has not obtained or applied for an ACDP. By failing to apply for the permit, in spite of being informed repeatedly of the requirement, Respondent has intentionally failed to act.

"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 Amended Notice, Respondent has not applied for an ACDP.

"EB" is the approximate dollar value of the benefit gained and the costs avoided or delayed as a result of the Respondent's noncompliance. It is designed to "level the playing field" by taking away any economic advantage the entity gained and to deter potential violators from deciding it is cheaper to violate and pay the penalty than to pay the costs of compliance. In this case, "EB" receives a value of \$5,365. This is the amount Respondent gained by avoiding spending \$7,200 on the simple ACDP application fee since October 2, 2018. This "EB" was calculated pursuant to OAR 340-012-0150(1) using the U.S. Environmental Protection Agency's BEN computer model.

PENALTY CALCULATION:  $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$   
= \$2,000 + [(0.1 x \$2,000) x (0 + 0 + 4 + 8 + 2)] + \$5,365  
= \$2,000 + (\$200 x 14) + \$5,365  
= \$2,000 + \$2,800 + \$5,365  
= \$10,165

EXHIBIT 7

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

VIOLATION 7: Violating the deadlines in the RAO issued on March 28, 2018, in violation of ORS 465.255(1)(a).

CLASSIFICATION: Violating a requirement of a department order is a Class I violation pursuant to OAR 340-012-0053(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 \$6,000 for a Class I, moderate magnitude violation in the matrix listed in OAR 340-012-0140(2)(b)(A)(ii) and applicable pursuant to OAR 340-012-0140(2)(a)(P).

"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. Respondent was required to implement elements of the work plan by July 8, 2018, and July 13, 2018. As of the date of this Amended Notice Respondent has not implemented certain elements of the work plan. Each day of violation is a separate occurrence according to OAR 340-012-0145(4).

"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 was reckless. On August 21, 2018, DEQ sent Respondent a Warning Letter with Opportunity to Correct informing Respondent that it was in violation of the RAO and extending the deadlines for removal of debris to September 7, 2018, and completion of soil sample collection to September 14, 2018. By failing to comply



with the deadlines, Respondent has consciously disregarded a substantial and unjustifiable risk that it would violation the RAO.

"C" 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 Amended Notice, Respondent has not implemented the work plan approved by DEQ on July 3, 2018.

"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. There is insufficient information available upon which to estimate Respondent's economic benefit.

PENALTY CALCULATION:  $Penalty = BP + [(0.1 \times BP) \times (P + H + O + M + C)] + EB$   
 $= \$6,000 + [(0.1 \times \$6,000) \times (0 + 0 + 4 + 8 + 2)] + \$0$   
 $= \$6,000 + (\$600 \times 14) + \$0$   
 $= \$6,000 + \$8,400 + \$0$   
 $= \$14,400$