



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

December 22, 2022

CERTIFIED MAIL: 7020 2450 0000 3349 5635

D.M. Stevenson Ranch, L.L.C.
c/o Victor W. Vankoten, Registered Agent
417 Sherman Ave., Suite 7
Hood River, OR 97031

Re: Notice of Civil Penalty Assessment and Order
Case No. LQ/UST-ER-2022-121

This letter is to inform you that DEQ has issued you a total civil penalty of \$2,240 for underground storage tank (UST) violations at your facility in Hood River. DEQ documented numerous violations during its inspection on August 9, 2022. DEQ has cited you for the following monitoring and testing violations: failing to initially test the spill prevention and overfill prevention equipment prior to October 1, 2020, failing to test the electronic and mechanical components of the release detection system, failing to conduct annual line tightness and line leak detector testing, and failing to conduct monthly walkthrough inspections.

DEQ issued this penalty because proper monitoring and testing of the UST system and its release prevention and detection equipment are important to ensure that releases are discovered quickly before contamination spreads beyond the immediate area of the USTs and allows immediate response to any sign of a release. If a leak goes unnoticed due to release detection equipment that is not functioning properly, the leaking fuel can have lasting harmful effects on the environment or human health.

DEQ appreciates your efforts minimize the impacts of the violations by conducting the required testing and training. DEQ considered these efforts when determining the amount of the civil penalties.

If you wish to appeal this matter, DEQ must receive a request for a hearing within 20 calendar days from your receipt of this letter. The hearing request must be in writing. Send your request to DEQ Office of Compliance and Enforcement:

Via mail – 700 NE Multnomah Street, Suite 600, Portland, Oregon 97232

Via email – DEQappeals@deq.oregon.gov

Via fax – 503-229-5100

Once DEQ receives your request, we will arrange to meet with you to discuss this matter. If DEQ does not receive a timely written hearing request, the penalty will become due. Alternatively, you can pay the penalty by sending a check or money order to the above address.

The attached Notice further details DEQ's reasons for issuing the penalty and provides further instructions for appealing the penalty. Please review and refer to it when discussing this case with DEQ.

DEQ may allow you to resolve part of your penalty through the completion of a Supplemental Environmental Project (SEP). SEPs are environmental improvement projects that you sponsor instead of paying a penalty. Further information is available by calling the number below or at <http://www.oregon.gov/deq/Regulations/Pages/SEP.aspx>.

DEQ's rules are available at <http://www.oregon.gov/deq/Regulations/Pages/Statutes.aspx> or by calling the number below.

If you have any questions, please contact Esther Westbrook at 503-229-5374 or toll free in Oregon at 800-452-4011, extension 5374.

Sincerely,



Kieran O'Donnell, Manager
Office of Compliance and Enforcement

Enclosures

cc: D.M. Stevenson Ranch, L.L.C., c/o Chuck Hinman, 1108 E Marina Way, Hood River, OR 97031
Lauren Dimock, Portland Office, DEQ
Mike Korten Hof, Portland Office, DEQ

BEFORE THE ENVIRONMENTAL QUALITY COMMISSION
OF THE STATE OF OREGON

IN THE MATTER OF:)
D.M. STEVENSON RANCH, L.L.C.,) NOTICE OF CIVIL PENALTY
a Washington limited liability company,) ASSESSMENT AND ORDER
Respondent.) CASE NO. LQ/UST-ER-2022-121

I. AUTHORITY

The Department of Environmental Quality (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 466.706 through 466.882, ORS 466.994, ORS Chapter 183 and Oregon Administrative Rules (OAR) Chapter 340, Divisions 011, 012, and 150.

II. FINDINGS OF FACT

1. At all materials times, Respondent was the owner and permittee of an underground storage tank (UST) system located at Hood River Shell at 1046 E. Marina Way in Hood River, Hood River County, Oregon (the Facility). Respondent operates the UST system under Certificate to Operate #11854.

2. The UST system consists of three USTs and connected piping. The UST system has a total capacity of approximately 40,000 gallons of gasoline and diesel fuel, which are regulated substances.

3. On August 9, 2022, DEQ conducted an inspection of the UST system and reviewed Respondent's records for the UST system.

4. As of August 9, 2022, Respondent had not tested the overfill and spill prevention equipment.

5. On October 4, 2022, Respondent tested the overfill and spill prevention equipment.

6. As of August 9, 2022, Respondent had not performed line tightness testing within one (1) year of the previous test, which was performed on May 8, 2020.

7. On or about October 4, 2022, Respondent performed line tightness testing.

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1 8. As of August 9, 2022, Respondent had not performed testing of the line leak detectors
2 within one (1) year of the previous test, which was performed on May 8, 2020.

3 9. On or about October 4, 2022, Respondent performed line leak detector testing.

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

5 11. As of August 9, 2022, Respondent had not tested the electronic and mechanical components
6 of the ATG system within the previous year, or since October 1, 2020.

7 12. On October 4, 2022, Respondent tested the electronic and mechanical components of the
8 ATG system.

9 13. As of August 9, 2022, Respondent had not performed monthly walkthrough inspections of
10 the spill prevention equipment and release detection equipment, and Respondent did not have records of
11 such inspections.

12 III. CONCLUSIONS

13 1. Respondent has violated OAR 340-150-0310(10) by failing to initially test its spill
14 prevention and overfill prevention equipment prior to October 1, 2020, as alleged in Section II,
15 Paragraphs 4-5 above. This is a Class I violation according to OAR 340-012-0067(1)(j). DEQ hereby
16 assesses a \$225 civil penalty for this violation.

17 2. Respondent has violated OAR 340-150-0410(3) by failing to conduct line tightness testing
18 annually, as alleged in Section II, Paragraphs 6-7 above. Since Respondent did not conduct testing between
19 May 8, 2020, and October 4, 2022, it missed two annual tests. These are Class I violations according to
20 OAR 340-012-0067(1)(j). DEQ hereby assesses a \$638 civil penalty for these violations.

21 3. Respondent has violated OAR 340-150-0410(2)(c) by failing to conduct operational line leak
22 detector testing annually, as alleged in Section II, Paragraphs 8-9 above. Since Respondent did not conduct
23 testing between May 8, 2020, and October 4, 2022, it missed two annual tests. These are Class I
24 violations according to OAR 340-012-0067(1)(j). DEQ hereby assesses a \$325 civil penalty for these
25 violations.

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1 4. Respondent has violated OAR 340-150-0400(2) by failing to test the electronic and
2 mechanical components of the release detection system annually, as alleged in Section II, Paragraphs 10-
3 12 above. Since Respondent did not conduct testing between October 1, 2020, and October 4, 2022, it
4 missed two annual tests. These are Class I violations according to OAR 340-012-0067(1)(j). DEQ hereby
5 assesses a \$652 civil penalty for these violations.

6 5. Respondent has violated OAR 340-150-0315(1)(a)(A) by failing to conduct walkthrough
7 inspections of the spill prevention equipment and release detection equipment every thirty (30) days, as
8 alleged in Section II, Paragraph 13 above. This is a Class II violation according to OAR 340-012-0053(2).
9 DEQ hereby assesses a \$400 civil penalty for this violation.

10 IV. ORDER TO PAY CIVIL PENALTY

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

13 Pay a total civil penalty of \$2,240. The determination of the civil penalties is attached as
14 Exhibits 1 – 5, which are incorporated as part of this Notice.

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

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

19 You have a right to a contested case hearing on this Notice, if you request one in writing. DEQ
20 must receive your request for hearing **within 20 calendar days** from the date you receive this Notice. If
21 you have any affirmative defenses or wish to dispute any allegations of fact in this Notice or attached
22 exhibits, you must do so in your request for hearing, as factual matters not denied will be considered
23 admitted, and failure to raise a defense will be a waiver of the defense. (See OAR 340-011-0530 for
24 further information about requests for hearing.) You must send your request to: **DEQ, Office of**
25 **Compliance and Enforcement, 700 NE Multnomah Street, Suite 600, Portland, Oregon 97232**, fax
26 it to **503-229-6762** or email it to DEQappeals@deq.oregon.gov. An administrative law judge
27 employed by the Office of Administrative Hearings will conduct the hearing, according to ORS

1 Chapter 183, OAR Chapter 340, Division 011 and OAR 137-003-0501 to 0700. You have a right to be
2 represented by an attorney at the hearing, however you are not required to be. If you are an individual,
3 you may represent yourself. If you are a corporation, partnership, limited liability company,
4 unincorporated association, trust or government body, you must be represented by an attorney or a duly
5 authorized representative, as set forth in OAR 137-003-0555.

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

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

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20 12 / 22 / 2022
21 Date

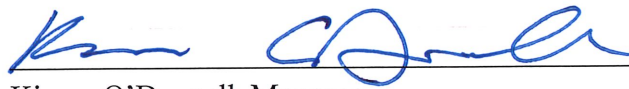
22 
23 Kieran O'Donnell, Manager
24 Office of Compliance and Enforcement
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EXHIBIT 1

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

- VIOLATION NO. 1 Failing to initially test spill prevention and overfill prevention equipment by October 1, 2020, in violation of OAR 340-150-0310(10).
- CLASSIFICATION: This is a Class I violation pursuant to OAR 340-012-0067(1)(j).
- MAGNITUDE: The magnitude of the violation is 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 Respondent completed the testing in October 2022 and there was no evidence of any spills or releases, so Respondent's delay in testing the spill prevention and overfill prevention equipment did not result in actual impact or threat to human health or the environment.
- CIVIL PENALTY FORMULA: The formula for determining the amount of penalty of each violation is: $BP + [(0.1 \times BP) \times (P + H + O + M + C)] + EB$
- "BP" is the base penalty, which is \$250 for a Class I, minor magnitude violation in the matrix listed in OAR 340-012-0140(5)(b)(A)(iii) and applicable pursuant to OAR 340-012-0140(5)(a)(E). Respondent is the owner or permittee of one UST facility.
- "P" is whether Respondent has any prior significant actions, as defined in OAR 340-012-0030(19), in the same media as the violation at issue that occurred at a facility owned or operated by the same Respondent, and receives a value of 0 according to OAR 340-012-0145(2)(a)(A), because there are no prior significant actions.
- "H" is Respondent's history of correcting prior significant actions and receives a value of 0 according to OAR 340-012-0145(3)(c), because there is no prior history.
- "O" is whether the violation was repeated or ongoing, and receives a value of 0 according to OAR 340-012-0145(4)(a) because there was only one occurrence of the violation. Respondent failed to conduct testing by a specific date, October 1, 2020.
- "M" is the mental state of the Respondent and receives a value of 2 according to OAR 340-012-0145(5)(b) because Respondent had constructive knowledge (reasonably should have known) of the requirement. In 2018, DEQ adopted the regulation requiring that the testing be completed prior to October 1, 2020, and provided extensive outreach to the regulated community on the requirement to conduct the testing prior to that date. Respondent

reasonably should have known of the requirement to conduct the testing prior to October 1, 2020.

"C" is Respondent's efforts to correct the violation and receives a value of -3 according to OAR 340-012-0145(6)(c) because Respondent made reasonable efforts to correct the violation. Respondent completed the testing on October 4, 2022.

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

PENALTY CALCULATION: $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$
 $= \$250 + [(0.1 \times \$250) \times (0 + 0 + 0 + 2 - 3)] + \0
 $= \$250 + (\$25 \times (-1)) + \$0$
 $= \$250 - \$25 + \$0$
 $= \$225$

EXHIBIT 2

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

- VIOLATION NO. 2 Failing to conduct annual line tightness testing, in violation of OAR 340-150-0410(3).
- CLASSIFICATION: This is a Class I violation pursuant to OAR 340-012-0067(1)(j).
- MAGNITUDE: The magnitude of the violation is 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 equipment passed testing in October 2022, and there was no evidence of any spills or releases, so Respondent's failure to conduct line tightness testing for two years did not result in actual impact or threat to human health or the environment.
- CIVIL PENALTY FORMULA: The formula for determining the amount of penalty of each violation is: $BP + [(0.1 \times BP) \times (P + H + O + M + C)] + EB$
- "BP" is the base penalty, which is \$250 for a Class I, minor magnitude violation in the matrix listed in OAR 340-012-0140(5)(b)(A)(iii) and applicable pursuant to OAR 340-012-0140(5)(a)(E). Respondent is the owner or permittee of one UST facility.
- "P" is whether Respondent has any prior significant actions, as defined in OAR 340-012-0030(19), in the same media as the violation at issue that occurred at a facility owned or operated by the same Respondent, and receives a value of 0 according to OAR 340-012-0145(2)(a)(A), because there are no prior significant actions.
- "H" is Respondent's history of correcting prior significant actions and receives a value of 0 according to OAR 340-012-0145(3)(c), because there is no prior history.
- "O" is whether the violation was repeated or ongoing, and receives a value of 2 according to OAR 340-012-0145(4)(b) because there were more than one but less than seven occurrences of the violation. Respondent failed to conduct annual testing on two occasions between May 2020 and October 2022.
- "M" is the mental state of the Respondent, and receives a value of 4 according to OAR 340-012-0145(5)(c) because Respondent's conduct was negligent. By failing to conduct line tightness testing for two consecutive years, Respondent failed to take reasonable care to avoid a foreseeable risk that it would violate UST requirements.

"C" is Respondent's efforts to correct or mitigate the violation, and receives a value of -3 according to OAR 340-012-0145(6)(c) because Respondent made reasonable efforts to minimize the effects of the violation by completing the testing on October 4, 2022.

"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 \$313. This is the amount Respondent gained by avoiding spending \$225 per year to conduct annual line tightness and leak detector testing for two years. This "EB" was calculated pursuant to OAR 340-012-0150(1) using the U.S. Environmental Protection Agency's BEN computer model.

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

$$\begin{aligned} &= \$250 + [(0.1 \times \$250) \times (0 + 0 + 2 + 4 - 3)] + \$313 \\ &= \$250 + (\$25 \times 3) + \$313 \\ &= \$250 + \$75 + \$313 \\ &= \$638 \end{aligned}$$

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 annual line leak detector testing, in violation of OAR 340-150-0410(2)(c).
- CLASSIFICATION: This is a Class I violation pursuant to OAR 340-012-0067(1)(j).
- MAGNITUDE: The magnitude of the violation is 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 equipment passed testing in October 2022, and there was no evidence of any spills or releases, so Respondent's failure to conduct line leak detector testing for two years did not result in actual impact or threat to human health or the environment.
- CIVIL PENALTY FORMULA: The formula for determining the amount of penalty of each violation is: $BP + [(0.1 \times BP) \times (P + H + O + M + C)] + EB$
- "BP" is the base penalty, which is \$250 for a Class I, minor magnitude violation in the matrix listed in OAR 340-012-0140(5)(b)(A)(iii) and applicable pursuant to OAR 340-012-0140(5)(a)(E). Respondent is the owner or permittee of one UST facility.
- "P" is whether Respondent has any prior significant actions, as defined in OAR 340-012-0030(19), in the same media as the violation at issue that occurred at a facility owned or operated by the same Respondent, and receives a value of 0 according to OAR 340-012-0145(2)(a)(A), because there are no prior significant actions.
- "H" is Respondent's history of correcting prior significant actions and receives a value of 0 according to OAR 340-012-0145(3)(c), because there is no prior history.
- "O" is whether the violation was repeated or ongoing, and receives a value of 2 according to OAR 340-012-0145(4)(b) because there were more than one but less than seven occurrences of the violation. Respondent failed to conduct annual line leak detector testing on two occasions between May 2020 and October 2022.
- "M" is the mental state of the Respondent, and receives a value of 4 according to OAR 340-012-0145(5)(c) because Respondent's conduct was negligent. By failing to conduct line leak detector testing for two consecutive years, Respondent failed to take reasonable care to avoid a foreseeable risk that it would violate UST requirements.

"C" is Respondent's efforts to correct or mitigate the violation, and receives a value of -3 according to OAR 340-012-0145(6)(c) because Respondent made reasonable efforts to minimize the effects of the violation by completing the testing on October 4, 2022.

"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 the economic benefit of this violation is included in the penalty for Violation 2.

PENALTY CALCULATION: $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$
 $= \$250 + [(0.1 \times \$250) \times (0 + 0 + 2 + 4 - 3)] + \0
 $= \$250 + (\$25 \times 3) + \$0$
 $= \$250 + \$75 + \$0$
 $= \$325$

EXHIBIT 4

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

- VIOLATION NO. 4 Failing to test the electronic and mechanical components of the release detection system on an annual basis, in violation of OAR 340-150-0400(2).
- CLASSIFICATION: This is a Class I violation pursuant to OAR 340-012-0067(1)(j).
- MAGNITUDE: The magnitude of the violation is 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 Respondent completed the testing in October 2022 and there was no evidence of any spills or releases, so Respondent's failure to test the release detection system did not result in actual impact or threat to human health or the environment.
- CIVIL PENALTY FORMULA: The formula for determining the amount of penalty of each violation is: $BP + [(0.1 \times BP) \times (P + H + O + M + C)] + EB$
- "BP" is the base penalty, which is \$250 for a Class I, minor magnitude violation in the matrix listed in OAR 340-012-0140(5)(b)(A)(iii) and applicable pursuant to OAR 340-012-0140(5)(a)(E). Respondent is the owner or permittee of one UST facility.
- "P" is whether Respondent has any prior significant actions, as defined in OAR 340-012-0030(19), in the same media as the violation at issue that occurred at a facility owned or operated by the same Respondent, and receives a value of 0 according to OAR 340-012-0145(2)(a)(A), because there are no prior significant actions.
- "H" is Respondent's history of correcting prior significant actions and receives a value of 0 according to OAR 340-012-0145(3)(c), because there is no prior history.
- "O" is whether the violation was repeated or ongoing, and receives a value of 2 according to OAR 340-012-0145(4)(b) because there were more than one but less than seven occurrences of the violation. Respondent failed to conduct annual testing on two occasions since October 1, 2020.
- "M" is the mental state of the Respondent, and receives a value of 4 according to OAR 340-012-0145(5)(c) because Respondent's conduct was negligent. By failing to conduct annual testing of the ATG system, Respondent failed to take reasonable care to avoid a foreseeable risk that it would violate UST requirements.

"C" is Respondent's efforts to correct or mitigate the violation, and receives a value of -3 according to OAR 340-012-0145(6)(c) because Respondent made reasonable efforts to minimize the effects of the violation by completing the testing on October 4, 2022.

"EB" is the approximate dollar value of the benefit gained and the costs avoided or delayed as a result of Respondent's noncompliance. It is designed to "level the playing field" by taking away any economic advantage the entity gained and to deter potential violators from deciding it is cheaper to violate and pay the penalty than to pay the costs of compliance. In this case, "EB" receives a value of \$327. This is the amount Respondent gained by avoiding spending \$250 annually to conduct testing of the ATG system for two years. This "EB" was calculated pursuant to OAR 340-012-0150(1) using the U.S. Environmental Protection Agency's BEN computer model.

PENALTY CALCULATION: $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$
 $= \$250 + [(0.1 \times \$250) \times (0 + 0 + 2 + 4 - 3)] + \327
 $= \$250 + (\$25 \times 3) + \$327$
 $= \$250 + \$75 + \$327$
 $= \$652$

EXHIBIT 5

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

- VIOLATION NO. 5 Failing to perform monthly walkthrough inspections of the spill prevention equipment and release detection equipment, in violation of OAR 340-150-0315(1)(a).
- CLASSIFICATION: This is a Class II violation pursuant to OAR 340-012-0053(2).
- MAGNITUDE: The magnitude of the violation is moderate, pursuant to OAR 340-012-0130(1), as there is no selected magnitude specified in OAR 340-012-0135 for this violation, and the information reasonably available to DEQ does not indicate a minor or major magnitude.
- CIVIL PENALTY FORMULA: The formula for determining the amount of penalty of each violation is: $BP + [(0.1 \times BP) \times (P + H + O + M + C)] + EB$
- "BP" is the base penalty, which is \$250 for a Class II, moderate magnitude violation in the matrix listed in OAR 340-012-0140(5)(b)(B)(ii) and applicable pursuant to OAR 340-012-0140(5)(a)(E). Respondent is the owner or permittee of one UST facility.
- "P" is whether Respondent has any prior significant actions, as defined in OAR 340-012-0030(19), in the same media as the violation at issue that occurred at a facility owned or operated by the same Respondent, and receives a value of 0 according to OAR 340-012-0145(2)(a)(A), because there are no prior significant actions.
- "H" is Respondent's history of correcting prior significant actions and receives a value of 0 according to OAR 340-012-0145(3)(c), because there is no prior history.
- "O" is whether the violation was repeated or ongoing, and receives a value of 3 according to OAR 340-012-0145(4)(c) because there were from seven to 28 occurrences of the violation. Respondent is required to conduct walkthrough inspections on a monthly basis. Respondent did not conduct walkthrough inspections for at least twelve months.
- "M" is the mental state of the Respondent, and receives a value of 4 according to OAR 340-012-0145(5)(c) because Respondent's conduct was negligent. By failing to conduct walkthrough inspections for at least twelve months, Respondent failed to take reasonable care to avoid a foreseeable risk that it would violate UST requirements.
- "C" is Respondent's efforts to correct or mitigate the violation, and receives a value of -1 according to OAR 340-012-0145(6)(e) because Respondent made reasonable efforts to ensure that the violation would not be repeated. Respondent ensured that an employee conducted monthly walkthrough inspections beginning in September 2022 and submitted copies of inspection records to 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 \$0 because DEQ finds that the economic benefit Respondent gained by failing to conduct walkthrough inspections was de minimis.

PENALTY CALCULATION: $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$
= \$250 + [(0.1 x \$250) x (0 + 0 + 3 + 4 - 1)] + \$0
= \$250 + (\$25 x 6) + \$0
= \$250 + \$150 + \$0
= \$400