



Oregon

Tina Kotek, 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

March 21, 2023

CERTIFIED MAIL: 7018 1830 0001 5906 2704

Kashmir Uppal, dba Butler Market South
6136 S. Highway 97
Bend, OR 97702

Re: Notice of Civil Penalty Assessment and Order
Case No. LQ/UST-ER-2022-133

This letter is to inform you that DEQ has issued you a total civil penalty of \$11,797.50 for underground storage tank (UST) violations at your facility in Bend. DEQ documented numerous violations during its inspection on October 26, 2022. DEQ has cited you for failing to provide a method of release detection that can detect a release from any portion of the UST and the underground piping that routinely contains a regulated substance, by failing to have adequate release detection in the under-dispenser containment and the transition sump. DEQ has also cited you for the following monitoring and testing violations: failing to initially test spill prevention and overfill prevention equipment prior to October 1, 2020, failing to conduct annual line tightness and leak detector testing, failing to test the electronic and mechanical components of the release detection system, failing to conduct monthly and annual walkthrough inspections of the spill prevention equipment and release detection equipment, and failing to maintain records of monitoring. Additionally, you failed to properly maintain a spill bucket.

DEQ issued this penalty because you failed to install release detection equipment that complies with UST regulations when you installed new USTs in November 2016. Without proper release detection for piping in the under-dispenser containment and transition pump, any leaks from this piping would have gone undetected. Proper monitoring and testing of the UST system and its release prevention and detection equipment is important to ensure that releases are discovered quickly before contamination spreads beyond the immediate area of the USTs and allows immediate response to any sign of a release. If a leak goes unnoticed due to unmaintained release detection equipment, the leaking fuel can have lasting harmful effects on the environment or human health. Also, conducting monthly inspections and keeping required records is necessary to ensure that the spill prevention and release detection equipment for the UST system is working properly. Proper maintenance of the equipment at the facility is essential to prevent releases.

Included in Section IV of the Notice is an order requiring you to install sensors for piping release detection in the under-dispenser containment and transition sump and test the spill buckets and containment sumps. You are required to submit documentation demonstrating your compliance to DEQ within ninety (90) days of this Notice becoming final. \$5,696 of the civil penalty for Violation No. 1 represents the economic benefit you gained by failing to install this piping release detection equipment. If you complete these requirements, DEQ will consider recalculating the costs as delayed rather than avoided and will reduce the civil penalty accordingly.

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

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

Via email – DEQappeals@deq.oregon.gov

Via fax – 503-229-5100

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

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

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

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

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

Sincerely,



Kieran O'Donnell, Manager
Office of Compliance and Enforcement

Enclosures

cc: Francis Senger, Southgate Center Investments LLC: francis@missionbuilding.com
Dylan Eckert, Eugene Office, DEQ

1 BEFORE THE ENVIRONMENTAL QUALITY COMMISSION
2 OF THE STATE OF OREGON

3 IN THE MATTER OF:)
4 KASHMIR UPPAL,) NOTICE OF CIVIL PENALTY
5 an individual,) ASSESSMENT AND ORDER
6 doing business as BUTLER MARKET)
7 SOUTH,) CASE NO. LQ/UST-ER-2022-133
8 Respondent.)

9 I. AUTHORITY

10 The Department of Environmental Quality (DEQ) issues this Notice of Civil Penalty Assessment
11 and Order (Notice) pursuant to Oregon Revised Statutes (ORS) 468.100, ORS 468.126 through 468.140,
12 ORS 466.706 through 466.882, ORS 466.994, ORS Chapter 183 and Oregon Administrative Rules (OAR)
13 Chapter 340, Divisions 011, 012, and 150.

14 II. FINDINGS OF FACT

15 1. At all materials times, Respondent was permittee of an underground storage tank (UST)
16 system at Butler Market South, also known as Butler Market Deli & Gas, located at 61396 South
17 Highway 97 in Bend, Deschutes County, Oregon (the Facility). Respondent operates the UST system
18 under Certificate to Operate #9008.

19 2. The UST system consists of three USTs and connected piping. The UST system has a total
20 capacity of approximately 16,000 gallons of gasoline, which is a regulated substance. The USTs were
21 installed on or about November 21, 2016.

22 3. On October 26, 2022, DEQ conducted an inspection of the UST system and reviewed
23 Respondent's records for the UST system.

24 4. On October 26, 2022, some of the UST piping did not have release detection equipment
25 installed. There were no sensors for pipe interstitial monitoring in the under-dispenser containment and
26 no sensors for piping in the transition sump.

27 5. The piping described in Paragraph 4 above routinely contains gasoline.

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1 6. As of October 26, 2022, Respondent had not tested the overfill and spill prevention
2 equipment, including the containment sumps.

3 7. As of October 26, 2022, Respondent had not performed testing of the line leak detectors
4 within one (1) year of the previous test, or since the UST system was installed in 2016.

5 8. As of October 26, 2022, Respondent had not performed line tightness testing of the line leak
6 detectors within one (1) year of the previous test, or since the UST system was installed in 2016.

7 9. On November 28, 2022, Respondent performed line leak detector and line tightness testing.

8 10. The Facility uses interstitial monitoring (tank annular sensors) as its primary release
9 detection method.

10 11. As of October 26, 2022, Respondent had not tested the electronic and mechanical
11 components of the release detection system within the previous year, or since October 1, 2020.

12 12. On November 28, 2022, Respondent tested the electronic and mechanical components of the
13 release detection system.

14 13. On October 26, 2022, there was approximately one gallon of gasoline accumulated in the
15 spill bucket for the regular unleaded tank.

16 14. On or about November 11, 2022, Respondent cleaned out the spill bucket described in
17 Paragraph 13 above.

18 15. As of October 26, 2022, Respondent had not performed monthly walkthrough inspections of
19 the spill prevention equipment and release detection equipment, and Respondent did not have records of
20 such inspections for at least one year.

21 16. As of October 26, 2022, Respondent had not performed an annual operation and
22 maintenance walkthrough inspection, and Respondent did not have records of such an inspection for the
23 previous year.

24 17. On October 26, 2022, Respondent did not have accurate records of release detection
25 monitoring for the previous twelve (12) months. Respondent provided some records that had incorrect
26 dates and other inaccurate information. The records did not include the required sensor status
27 documentation used for interstitial monitoring. Many records were missing.

1 III. CONCLUSIONS

2 1. Respondent has violated OAR 340-150-0400(1)(a) by failing to provide a method of release
3 detection that can detect a release from any portion of the UST and the underground piping that routinely
4 contains a regulated substance, by failing to have adequate release detection in the under-dispenser
5 containment and the transition sump, as alleged in Section II above. This is a Class I violation according
6 to OAR 340-012-0067(1)(e). DEQ hereby assesses a civil penalty of \$6,696 for this violation.

7 2. Respondent has violated OAR 340-150-0310(10) by failing to initially test its spill
8 prevention and overflow prevention equipment prior to October 1, 2020, as alleged in Section II above.
9 This is a Class I violation according to OAR 340-012-0067(1)(j). DEQ hereby assesses a civil penalty of
10 \$1,341 for this violation.

11 3. Respondent has violated OAR 340-150-0410(2)(c) by failing to conduct line leak detector
12 testing annually, as alleged in Section II above. Since Respondent has not conducted testing since
13 November 2016, it has missed five annual tests. These are Class I violations according to OAR 340-012-
14 0067(1)(j). DEQ hereby assesses a civil penalty of \$1,015 for these violations.

15 4. Respondent has violated OAR 340-150-0410(3) by failing to conduct line tightness testing
16 annually, as alleged in Section II above. Since Respondent has not conducted testing since November
17 2016, it has missed five annual tests. These are Class I violations according to OAR 340-012-0067(1)(j).
18 DEQ hereby assesses a civil penalty of \$800 for these violations.

19 5. Respondent has violated OAR 340-150-0400(2) by failing to test the electronic and
20 mechanical components of the release detection system on an annual basis beginning on October 1,
21 2020, as alleged in Section II above. This is a Class I violation according to OAR 340-012-0067(1)(j).
22 DEQ hereby assesses a civil penalty of \$658 for this violation.

23 6. Respondent has violated OAR 340-150-0310(1) by failing to maintain spill prevention
24 equipment, specifically a spill bucket, by allowing liquid to accumulate so that it would not prevent the
25 release of gasoline to the environment when the transfer hose is detached from the fill pipe, as alleged in
26 Section II above. This is a Class II violation according to OAR 340-012-0053(2). DEQ hereby assesses a
27 civil penalty of \$350 for this violation.

1 7. Respondent has violated OAR 340-150-0315(1)(a)(A) by failing to conduct walkthrough
2 inspections of the spill prevention equipment and release detection equipment every thirty (30) days, as
3 alleged in Section II above. These are Class II violations according to OAR 340-012-0053(2). DEQ hereby
4 assesses a \$400 civil penalty for these violations.

5 8. Respondent has violated OAR 340-150-0315(1)(a)(B) by failing to conduct annual operation
6 and maintenance walkthrough inspections, as alleged in Section II above. These are Class II violations
7 according to OAR 340-012-0053(2). DEQ hereby assesses a \$375 civil penalty for these violations.

8 9. Respondent has violated OAR 340-150-0465(6) by failing to retain the most current twelve
9 consecutive months of release detection records, as alleged in Section II above. This is a Class II violation
10 according to OAR 340-012-0053(2). DEQ hereby assesses a \$162.50 civil penalty for this violation.

11 IV. ORDER TO PAY CIVIL PENALTY AND TO COMPLY

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

14 1. Pay a total civil penalty of \$11,797.50. The determination of the civil penalties is attached as
15 Exhibits 1 – 9, which are incorporated as part of this Notice.

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

19 2. Within ninety (90) days of this order becoming final by operation of law or on appeal, bring
20 the UST system into compliance by completing installation of sensors for piping release in the under-
21 dispenser containment and transition sump and testing the spill buckets and containment sumps. Submit
22 written documentation demonstrating compliance to Dylan Eckert, UST Inspector, by mail to: 165 E.
23 7th Ave, Suite 100, Eugene, Oregon 97401 or by email to: dylan.eckert@deq.oregon.gov.

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

25 You have a right to a contested case hearing on this Notice, if you request one in writing. DEQ
26 must receive your request for hearing **within 20 calendar days** from the date you receive this Notice. If
27 you have any affirmative defenses or wish to dispute any allegations of fact in this Notice or attached

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

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

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

23
24
25 3/21/2023
26 Date

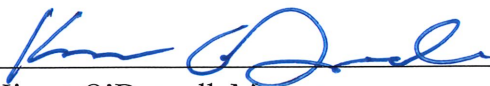
25 
26 Kieran O'Donnell, Manager
27 Office of Compliance and Enforcement

EXHIBIT 1

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

VIOLATION NO. 1 Failing to provide a method of release detection that can detect a release from any portion of the UST and the underground piping that routinely contains a regulated substance, in violation of OAR 340-150-0400(1)(a).

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 for this violation, and the information reasonably available to DEQ does not indicate a minor or major magnitude.

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

"BP" is the base penalty, which is \$500 for a Class I, moderate magnitude violation in the matrix listed in OAR 340-012-0140(5)(b)(A)(ii) and applicable pursuant to OAR 340-012-0140(5)(a)(E). Respondent is the 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 4 according to OAR 340-012-0145(4)(d) because the violation has been ongoing for more than 28 days. Respondent was required to install release detection on the piping when it installed the USTs in November 2016. As of the date of this Notice, Respondent has not completed installation of this equipment, which is a duration of approximately six years.

"M" is the mental state of Respondent, and receives a value of 4 according to OAR 340-012-0145(5)(c) because Respondent's conduct was negligent. When the tanks were installed in November 2016, proper release detection equipment was not installed. By failing to install this equipment by the deadline or even before DEQ's inspection on October 26, 2022, Respondent take reasonable care to avoid a foreseeable risk that it would violate UST requirements.

"C" is Respondent's efforts to correct or mitigate the violation, and receives a value of 2 according to OAR 340-012-0145(6)(g) because Respondent did not address the violation as described in paragraphs (6)(a) through (6)(e) and the facts do not support a finding under paragraph (6)(f). As of the date of this Notice, Respondent has not completed installation of release detection equipment.

"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 \$5,696. This is the amount Respondent gained by avoiding spending \$10,244 to install release detection equipment. This "EB" was calculated pursuant to OAR 340-012-0150(1) using the U.S. Environmental Protection Agency's BEN computer model.

PENALTY CALCULATION: $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$
 $= \$500 + [(0.1 \times \$500) \times (0 + 0 + 4 + 4 + 2)] + \$5,696$
 $= \$500 + (\$50 \times 10) + \$5,696$
 $= \$500 + \$500 + \$5,696$
 $= \$6,696$

EXHIBIT 2

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

- VIOLATION NO. 2 Failing to initially test spill prevention and overflow prevention equipment by October 1, 2020, in violation of OAR 340-150-0310(10).
- CLASSIFICATION: This is a Class I violation pursuant to OAR 340-012-0067(1)(j).
- MAGNITUDE: The magnitude of the violation is moderate, pursuant to OAR 340-012-0130(1), as there is no selected magnitude specified in OAR 340-012-0135 for this violation, and the information reasonably available to DEQ does not indicate a minor or major magnitude.
- CIVIL PENALTY FORMULA: The formula for determining the amount of penalty of each violation is: $BP + [(0.1 \times BP) \times (P + H + O + M + C)] + EB$
- "BP" is the base penalty, which is \$500 for a Class I, moderate magnitude violation in the matrix listed in OAR 340-012-0140(5)(b)(A)(ii) and applicable pursuant to OAR 340-012-0140(5)(a)(E). Respondent is the 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 or mitigate the violation, and receives a value of 2 according to OAR 340-012-0145(6)(g) because Respondent did not address the violation as described in paragraphs (6)(a) through (6)(e) and the facts do not support a finding under

paragraph (6)(f). As of the date of this Notice, Respondent has not completed the required testing.

"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 \$641. This is the amount Respondent gained by avoiding spending 1,200 to conduct testing of the spill prevention and overfill prevention equipment. This "EB" was calculated pursuant to OAR 340-012-0150(1) using the U.S. Environmental Protection Agency's BEN computer model.

PENALTY CALCULATION: $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$
 $= \$500 + [(0.1 \times \$500) \times (0 + 0 + 0 + 2 + 2)] + \641
 $= \$500 + (\$50 \times 4) + \$641$
 $= \$500 + \$200 + \$641$
 $= \$1,341$

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 since the equipment passed the testing and there was no evidence of a release, Respondent's failure to conduct line leak detector testing posed no more than a de minimis 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 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 at least five occasions between installing the USTs in November 2016 and the testing conducted in November 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 five 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 took reasonable affirmative efforts to minimize the effects of the violation. Respondent completed the testing on November 28, 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 \$690. This is the amount Respondent gained by avoiding spending \$225 per year to conduct annual line tightness and leak detector testing for five 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)] + \690
 $= \$250 + (\$25 \times 3) + \$690$
 $= \$250 + \$75 + \$690$
 $= \$1,015$

EXHIBIT 4

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

VIOLATION NO. 4 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 since the equipment passed the testing and there was no evidence of a release, Respondent's failure to conduct line tightness testing posed no more than a de minimis 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 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 at least five occasions between installing the USTs in November 2016 and the testing conducted in November 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 five 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 took reasonable affirmative efforts to minimize the effects of the violation. Respondent completed the testing on November 28, 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 \$475. This is the amount Respondent gained by avoiding spending \$155 per year to conduct annual line tightness testing for five 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: $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$

$$\begin{aligned} &= \$250 + [(0.1 \times \$250) \times (0 + 0 + 2 + 4 - 3)] + \$475 \\ &= \$250 + (\$25 \times 3) + \$475 \\ &= \$250 + \$75 + \$475 \\ &= \$800 \end{aligned}$$

EXHIBIT 5

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

- VIOLATION NO. 5 Failing to test the electronic and mechanical components of the release detection system on an annual basis, in violation of OAR 340-150-0400(2).
- CLASSIFICATION: This is a Class I violation pursuant to OAR 340-012-0067(1)(j).
- MAGNITUDE: The magnitude of the violation is 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 the testing and there was no evidence of a release, thus the failure to meet the timeframe in the regulation posed no more than a de minimis 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 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 two occurrences of the violation. Respondent failed to conduct testing in 2020 and 2021.
- "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. DEQ adopted the regulation requiring that the testing be completed prior to October 1, 2020, in 2018 and had 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 by October 1, 2020 and annually thereafter.

"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 took reasonable affirmative efforts to minimize the effects of the violation. Respondent completed the testing on November 28, 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 \$383. This is the amount Respondent gained by avoiding spending \$325 per year to conduct annual 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: $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$
= $\$250 + [(0.1 \times \$250) \times (0 + 0 + 2 + 2 - 3)] + \383
= $\$250 + (\$25 \times 1) + \$383$
= $\$250 + \$25 + \$383$
= $\$658$

EXHIBIT 6

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

VIOLATION 6: Failing to to maintain spill prevention equipment, specifically a spill bucket, by allowing gasoline to accumulate so that it would not prevent the release of gasoline to the environment when the transfer hose is detached from the fill pipe, in violation of OAR 340-150-0310(1).

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 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. Each day of violation is a separate occurrence. The violation was documented on October 26, 2022 and corrected on November 11, 2022, which is a duration of 16 days.

"M" is the mental state of Respondent and receives a value of 4 according to OAR 340-012-0145(5)(c) because Respondent's conduct was negligent. By failing to properly maintain the spill bucket, Respondent failed to take reasonable care to avoid a foreseeable risk that it would violate spill prevention requirements.

"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 by cleaning out the spill bucket on November 11, 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 maintenance 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 + 3 + 4 - 3)] + \0
 $= \$250 + (\$25 \times 4) + \$0$
 $= \$250 + \$100 + \$0$
 $= \$350$

EXHIBIT 7

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

VIOLATION NO. 7 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 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 received training from its service provider and began conducting monthly walkthrough inspections in November 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 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

EXHIBIT 8

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

- VIOLATION NO. 8 Failing to perform an annual operation and maintenance walkthrough inspection, in violation of OAR 340-150-0315(1)(a)(B).
- 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 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 two occurrences of the violation. Respondent failed to conduct annual operation and maintenance walkthrough inspections in 2020 and 2021.
- "M" is the mental state of the Respondent, and receives a value of 4 according to OAR 340-012-0145(5)(c) because Respondent's conduct was negligent. By failing to conduct an annual walkthrough inspection, 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 received training from its service provider and began conducting annual walkthrough inspections in November 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 failing to conduct walkthrough inspections was de minimis.

PENALTY CALCULATION: $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$
 $= \$250 + [(0.1 \times \$250) \times (0 + 0 + 2 + 4 - 1)] + \0
 $= \$250 + (\$25 \times 5) + \$0$
 $= \$250 + \$125 + \$0$
 $= \$375$

EXHIBIT 9

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

- VIOLATION NO. 9 Failing to retain the most current twelve consecutive months of release detection records, in violation of OAR 340-150-0465(6).
- CLASSIFICATION: This is a Class II violation pursuant to OAR 340-012-0053(2).
- 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's failure to maintain records, in and of itself, 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 \$125 for a Class II, minor magnitude violation in the matrix listed in OAR 340-012-0140(5)(b)(B)(iii) and applicable pursuant to OAR 340-012-0140(5)(a)(E). Respondent is the 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. DEQ documented the lack of recordkeeping during the inspection on October 26, 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 maintain records of release detection monitoring, 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 received training from its service provider and began keeping adequate records in November 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 failing to maintain records was de minimis.

PENALTY CALCULATION: $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$
 $= \$125 + [(0.1 \times \$125) \times (0 + 0 + 0 + 4 - 1)] + \0
 $= \$125 + (\$12.50 \times 3) + \$0$
 $= \$125 + \$37.50 + \$0$
 $= \$162.50$