



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

July 5, 2023

CERTIFIED MAIL: 9589 0710 5270 0113 1774 98

Circle K Stores Inc.
c/o Corporation Service Company, Registered Agent
1127 Broadway Street NE, Suite 310
Salem, OR 97301

Re: Notice of Civil Penalty Assessment and Order
Case No. LQ/UST-NWR-2023-026

This letter is to inform you that DEQ has issued you a total civil penalty of \$47,124 for underground storage tank (UST) violations at Circle K #9638, your facility in Oregon City. DEQ documented numerous violations during its inspection on December 13, 2022. DEQ has cited you for failing to report and investigate a suspected fuel release, failing to maintain a spill bucket, failing to display a valid annual operating certificate, and failing to provide information about your compliance with financial responsibility requirements.

DEQ issued this penalty because you failed to take appropriate action after the interstitial sensor detected a possible release from your diesel tank. The sensor has been in alarm status since July 2022. You were required to report the alarm to DEQ and immediately investigate the suspected release. These actions are necessary to ensure quick and appropriate response to a release before contamination spreads beyond the immediate area of the USTs. Leaking fuel can have lasting harmful effects on the environment and human health. Also, maintaining spill prevention equipment is necessary to ensure that it will prevent releases as intended.

Included in Section IV of the enclosed Notice is an order requiring you to investigate the suspected release and perform maintenance on the spill bucket. You are required to submit documentation demonstrating your compliance to DEQ.

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: Sarah Longwell, Circle K Stores, Inc., 255 E. Rincon St., Suite 100, Corona, CA 92879
Aranza Blanca, Environmental Compliance Coordinator, Circle K Stores Inc.:
aranza.blanca@circlek.com
Keith Morris, District Manager, Circle K Stores Inc.: keith.morris@circlek.com
Store #9638: str09638@circlek.com
Lauren Dimock, Portland Office, DEQ
Mike Korten Hof, Portland Office, DEQ

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

3 IN THE MATTER OF:
4 CIRCLE K STORES INC.,
a Texas corporation,

5 Respondent.

)
) NOTICE OF CIVIL PENALTY
) ASSESSMENT AND ORDER

)
) CASE NO. LQ/UST-NWR-2023-026

6
7 I. AUTHORITY

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

12 II. FINDINGS OF FACT

13 1. At all materials times, Respondent was the permittee of an underground storage tank (UST)
14 system at Circle K #9638, located at 19791 Highway 213 in Oregon City, Clackamas County, Oregon
15 (the Facility). Respondent operates the UST system under Certificate to Operate #12004.

16 2. Respondent is the owner or permittee of 19 UST facilities in Oregon.

17 3. The UST system consists of three USTs and connected piping. The UST system has a total
18 capacity of approximately 35,000 gallons of gasoline and diesel fuel, which are regulated substances.

19 4. On December 13, 2022, DEQ conducted an inspection of the UST system and reviewed
20 Respondent's records for the UST system.

21 5. On December 13, 2022, the spill bucket for Tank 1 (unleaded gasoline) had approximately
22 one gallon of liquid accumulated in it. The liquid was a gasoline and water mixture.

23 6. On December 13, 2022, the interstitial sensor for Tanks 2/2A (diesel/premium) was in alarm
24 status. The sensor had been in alarm status since July 30, 2022. The alarm indicated that a release of
25 fuel may have occurred to the interstitial space of the UST.

26 7. As of December 13, 2022, Respondent had not reported the alarm or the suspected release to
27 DEQ.

1 8. As of December 13, 2022, Respondent had not made efforts to investigate or confirm the
2 suspected release.

3 9. On December 13, 2022, the operating certificate posted at the Facility was expired.

4 10. On December 13, 2022, Respondent did not provide documentation of compliance with
5 financial responsibility requirements for the UST system upon request.

6 III. CONCLUSIONS

7 1. Respondent has violated OAR 340-150-0310(1) by failing to maintain spill prevention
8 equipment by allowing fuel to accumulate in a spill bucket so that it would not prevent the release of fuel
9 to the environment when the transfer hose is detached from the fill pipe, as alleged in Section II, Paragraph
10 5 above. This is a Class II violation according to OAR 340-012-0053(2). DEQ hereby assesses a \$9,041
11 civil penalty for this violation.

12 2. Respondent has violated OAR 340-150-0500(1) by failing to report a suspected release of
13 fuel to the interstitial area of the UST to DEQ within 24 hours, as alleged in Section II, Paragraphs 6-7
14 above. This is a Class II violation according to OAR 340-012-0074(2)(a). DEQ hereby assesses a \$9,000
15 civil penalty for this violation.

16 3. Respondent has violated OAR 340-150-0510(1) by failing to immediately initiate
17 investigation and confirmation of a suspected release of fuel to the interstitial area of the UST, as
18 alleged in Section II, Paragraph 8 above. This is a Class I violation according to OAR 340-012-
19 0067(1)(a). DEQ hereby assesses a \$20,983 civil penalty for this violation.

20 4. Respondent has violated OAR 340-150-0163(1)(a) by failing to display a valid annual
21 operating certificate in a conspicuous location at the UST facility clearly visible to distributors depositing
22 regulated substances into the UST, as alleged in Section II, Paragraph 9 above. This is a Class II violation
23 according to OAR 340-012-0067(2)(n). DEQ hereby assesses a \$4,500 civil penalty for this violation.

24 5. Respondent has violated OAR 340-150-0163(1)(k) by failing to provide information to DEQ
25 about the UST system's compliance with financial responsibility requirements, as alleged in Section II,
26 Paragraph 10 above. This is a Class II violation according to OAR 340-012-0053(2). DEQ hereby
27 assesses a \$3,600 civil penalty for this violation.

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 \$47,124. The determination of the civil penalties is attached as
5 Exhibits 1 – 5, which 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 "**Department of Environmental Quality**" and sent to: **DEQ - Business**
8 **Office, 700 NE Multnomah Street, Suite 600, Portland, Oregon 97232.**

9 2. Comply with Oregon law by taking the following actions:

10 a. Within thirty (30) days of this Notice becoming final by operation of law or on
11 appeal, perform maintenance on the spill bucket; and

12 b. Immediately investigate the suspected release from Tanks 2/2A by scheduling a
13 service provider to visit the Facility. Notify UST Inspector Lauren Dimock (telephone: 503-229-6030)
14 prior to the visit so that she can be present. Ensure that the investigation is conducted according to
15 OAR 340-150-0510, and submit the results of the investigation to DEQ.

16 Documents should be sent to Inspector Lauren Dimock via email at Lauren.Dimock@deq.oregon.gov.

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

18 You have a right to a contested case hearing on this Notice, if you request one in writing. DEQ
19 must receive your request for hearing **within 20 calendar days** from the date you receive this Notice. If
20 you have any affirmative defenses or wish to dispute any allegations of fact in this Notice or attached
21 exhibits, you must do so in your request for hearing, as factual matters not denied will be considered
22 admitted, and failure to raise a defense will be a waiver of the defense. (See OAR 340-011-0530 for
23 further information about requests for hearing.) You must send your request to: **DEQ, Office of**
24 **Compliance and Enforcement, 700 NE Multnomah Street, Suite 600, Portland, Oregon 97232**, fax
25 it to **503-229-6762** or email it to DEQappeals@deq.oregon.gov. An administrative law judge
26 employed by the Office of Administrative Hearings will conduct the hearing, according to ORS
27 Chapter 183, OAR Chapter 340, Division 011 and OAR 137-003-0501 to 0700. You have a right to be

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

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

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

16
17
18
19 7/5/2023
Date

Kieran O'Donnell
Kieran O'Donnell, Manager
Office of Compliance and Enforcement

EXHIBIT 1

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

VIOLATION 1: Failing to maintain spill prevention equipment 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 \$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)(I) because Respondent is the owner or permittee of ten or more UST facilities.

"P" is whether Respondent has any prior significant actions, as defined in OAR 340-012-0030(19), in the same media as the violation at issue that occurred at a facility owned or operated by the same Respondent, and receives a value of 10. DEQ has issued at least 19 Field Citations against Respondent in the past ten years, which receives a value of 20 according to OAR 340-012-0145(2)(a)(C) and (D). However, according to OAR 340-012-0145(2)(b), the value of "P" shall not exceed 10.

"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 insufficient information on which to base a finding under paragraphs (3)(a) or (b).

"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 violation was documented on December 13, 2022, and has not been corrected as of the date of this Notice, which is a duration of more than six months.

"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. Respondent owns and operates 19 gas stations with USTs in Oregon and many nationwide, and it has employees responsible for environmental compliance. By failing to properly maintain a 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 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 maintenance to the spill bucket.

"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 \$41. This is the amount Respondent gained by avoiding spending \$50 to pump out the spill bucket and properly dispose of the liquid. This "EB" was calculated pursuant to OAR 340-012-0150(1) using the U.S. Environmental Protection Agency's BEN computer model.

PENALTY CALCULATION: $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$
= \$3,000 + [(0.1 x \$3,000) x (10 + 0 + 4 + 4 + 2)] + \$41
= \$3,000 + (\$300 x 20) + \$41
= \$3,000 + \$6,000 + \$41
= \$9,041

EXHIBIT 2

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

VIOLATION 2: Failing to report a suspected release to DEQ within 24 hours, in violation OAR 340-150-0500(1).

CLASSIFICATION: This is a Class II violation pursuant to OAR 340-012-0074(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 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 \$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)(I) because Respondent is the owner or permittee of ten or more UST facilities.

"P" is whether Respondent has any prior significant actions, as defined in OAR 340-012-0030(19), in the same media as the violation at issue that occurred at a facility owned or operated by the same Respondent and receives a value of 10. DEQ has issued at least 19 Field Citations against Respondent in the past ten years, which receives a value of 20 according to OAR 340-012-0145(2)(a)(C) and (D). However, according to OAR 340-012-0145(2)(b), the value of "P" shall not exceed 10.

"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 insufficient information on which to base a finding under paragraphs (3)(a) or (b).

"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 interstitial sensor went into alarm status on July 30, 2022, and Respondent had taken no action to report the alarm or suspected release as of the date of DEQ's inspection on December 13, 2022, which is a duration of more than five months.

"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. Respondent owns and operates 19 gas stations with USTs in Oregon and many nationwide, and it has employees responsible for environmental compliance. By failing to report a suspected release to DEQ, 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 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). Respondent did not report the suspected release to DEQ; it was discovered during an inspection.

"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 Respondent has not gained any economic benefit from the violation.

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

$$\begin{aligned} &= \$3,000 + [(0.1 \times \$3,000) \times (10 + 0 + 4 + 4 + 2)] + \$0 \\ &= \$3,000 + (\$300 \times 20) + \$0 \\ &= \$3,000 + \$6,000 + \$0 \\ &= \$9,000 \end{aligned}$$

EXHIBIT 3

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

VIOLATION 3: Failing to immediately initiate investigation and confirmation of a suspected release, in violation OAR 340-150-0510(1).

CLASSIFICATION: This is a Class I violation pursuant to OAR 340-012-0067(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 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 \$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)(I) because Respondent is the owner or permittee of ten or more UST facilities.

"P" is whether Respondent has any prior significant actions, as defined in OAR 340-012-0030(19), in the same media as the violation at issue that occurred at a facility owned or operated by the same Respondent, and receives a value of 10. DEQ has issued at least 19 Field Citations against Respondent in the past ten years, which receives a value of 20 according to OAR 340-012-0145(2)(a)(C) and (D). However, according to OAR 340-012-0145(2)(b), the value of "P" shall not exceed 10.

"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 insufficient information on which to base a finding under paragraphs (3)(a) or (b).

"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 interstitial sensor went into alarm status on July 30, 2022 and Respondent had taken no action to report the alarm or suspected release as of the date of DEQ's inspection on December 13, 2022, which is a duration of more than five months.

"M" is the mental state of Respondent and receives a value of 8 according to OAR 340-012-0145(5)(d) because Respondent's conduct was reckless. Respondent owns and operates 19 gas stations with USTs in Oregon and many nationwide, and it has employees responsible for environmental compliance. Although the interstitial sensor had been in alarm status since July 30, 2023, Respondent made no efforts to investigate the equipment or the suspected release. Additionally, during DEQ's inspection on December 13, 2022, the diesel pump was in "slow flow mode," which may have indicated that the line leak detector was detecting a

release over 3 gallons per hour. By failing to investigate a suspected release despite these indications, Respondent consciously disregarded a substantial and unjustifiable risk that a release of fuel had occurred. Because of the serious environmental and public health risks of a large fuel release, disregarding this 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 investigated the suspected release.

"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 \$583. This is the amount Respondent gained by avoiding spending a total of \$675 in labor costs and the cost of a pressure decay test to investigate the suspected release. This "EB" was calculated pursuant to OAR 340-012-0150(1) using the U.S. Environmental Protection Agency's BEN computer model.

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

$$\begin{aligned} &= \$6,000 + [(0.1 \times \$6,000) \times (10 + 0 + 4 + 8 + 2)] + \$583 \\ &= \$6,000 + (\$600 \times 24) + \$583 \\ &= \$6,000 + \$14,400 + \$583 \\ &= \$20,983 \end{aligned}$$

EXHIBIT 4

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

VIOLATION NO. 4 Failing to display a valid annual operation certificate in a conspicuous location at the UST facility clearly visible to distributors depositing regulated substances into the UST, in violation of OAR 340-150-0163(1)(a).

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. Failing to display the operation certificate does not have the potential to result in impacts to the environment or human health.

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

"BP" is the base penalty, which is \$1,500 for a Class II, minor 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)(I) because Respondent is the owner or permittee of more than ten UST facilities.

"P" is whether Respondent has any prior significant actions, as defined in OAR 340-012-0030(19), in the same media as the violation at issue that occurred at a facility owned or operated by the same Respondent and receives a value of 10. DEQ has issued at least 19 Field Citations against Respondent in the past ten years, which receives a value of 20 according to OAR 340-012-0145(2)(a)(C) and (D). However, according to OAR 340-012-0145(2)(b), the value of "P" shall not exceed 10.

"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 insufficient information on which to base a finding under paragraphs (3)(a) or (b).

"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 was ongoing for more than 28 days. DEQ documented the violation on December 13, 2022, and it has not been corrected as of the date of this Notice, which is a duration of more than six 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. Respondent owns and operates 19

gas stations with USTs in Oregon and many nationwide, and it has employees responsible for environmental compliance. By failing to display a valid operation certificate, 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 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 corrected the violation by posting a valid operation certificate at the facility.

"EB" is the approximate dollar value of the benefit gained and the costs avoided or delayed as a result of the Respondent's noncompliance. It is designed to "level the playing field" by taking away any economic advantage the entity gained and to deter potential violators from deciding it is cheaper to violate and pay the penalty than to pay the costs of compliance. In this case, "EB" receives a value of \$0 because DEQ finds that Respondent has not gained any economic benefit from the violation.

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

$$\begin{aligned} &= \$1,500 + [(0.1 \times \$1,500) \times (10 + 0 + 4 + 4 + 2)] + \$0 \\ &= \$1,500 + (\$150 \times 20) + \$0 \\ &= \$1,500 + \$3,000 + \$0 \\ &= \$4,500 \end{aligned}$$

EXHIBIT 5

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

VIOLATION NO. 5 Failing to provide information to DEQ about the UST system's compliance with financial responsibility requirements, in violation of OAR 340-150-0163(1)(k).

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. Failing to provide financial responsibility documentation to DEQ did not have the potential to result in impacts to the environment or human health, considering that the facility was in compliance with the substantive requirements.

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

"BP" is the base penalty, which is \$1,500 for a Class II, minor 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)(I) because Respondent is the owner or permittee of more than ten UST facilities.

"P" is whether Respondent has any prior significant actions, as defined in OAR 340-012-0030(19), in the same media as the violation at issue that occurred at a facility owned or operated by the same Respondent, and receives a value of 10. DEQ has issued at least 19 Field Citations against Respondent in the past ten years, which receives a value of 20 according to OAR 340-012-0145(2)(a)(C) and (D). However, according to OAR 340-012-0145(2)(b), the value of "P" shall not exceed 10.

"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 insufficient information on which to base a finding under paragraphs (3)(a) or (b).

"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. The violation occurred during the inspection on December 13, 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. Respondent owns and operates 19 gas stations with USTs in Oregon and many nationwide, and it has employees responsible

for environmental compliance. By failing to conduct ensure that financial responsibility documentation was kept on site, 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 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 because DEQ finds that Respondent has not gained any economic benefit from the violation.

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

$$\begin{aligned} &= \$1,500 + [(0.1 \times \$1,500) \times (10 + 0 + 0 + 4 + 0)] + \$0 \\ &= \$1,500 + (\$150 \times 14) + \$0 \\ &= \$1,500 + \$2,100 + \$0 \\ &= \$3,600 \end{aligned}$$