



# 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 0110 6011 01

Malhi & Bal, LLC  
c/o Swarnjit Sandhu, Registered Agent  
211 N. Water Street  
Weston, OR 97886

Re: Notice of Civil Penalty Assessment and Order  
Case No. LQ/UST-ER-2022-138

This letter is to inform you that DEQ has issued you a total civil penalty of \$10,099 for underground storage tank (UST) violations at Suzi's Handy Mart, your facility in Weston. DEQ documented numerous violations during its inspection on September 12, 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 failing to maintain spill buckets and sumps. 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 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 employ a properly trained UST system operator.

DEQ issued this penalty because you failed to ensure that your facility has leak detection equipment that complies with UST regulations. Without proper release detection for piping in the under-dispenser containment, 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 enclosed Notice is an order requiring you to install release detection equipment in the under-dispenser containment, perform maintenance and repairs on the spill buckets and sumps, conduct overdue testing, and ensure that at least one facility employee completes Class A/B UST system operator training. You are required to submit documentation demonstrating your compliance to DEQ within thirty (30) days of this Notice becoming final. \$5,749 of the civil penalty represents the economic benefit you gained by failing to conduct the required testing, monitoring, inspections, and maintenance at the facility. 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](mailto: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: Dylan Eckert, Eugene Office, DEQ  
Mike Kortenhof, Portland Office, DEQ

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

3 IN THE MATTER OF: )  
4 MALHI & BAL, LLC, ) NOTICE OF CIVIL PENALTY  
an Idaho limited liability company, ) ASSESSMENT AND ORDER  
5 Respondent. ) CASE NO. LQ/UST-ER-2022-138  
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 owned and was the permittee of an underground storage  
14 tank (UST) system at Suzi’s Handy Mart, which is located at 211 North Water Street in Weston,  
15 Umatilla County, Oregon. Respondent operated the UST system under Certificate to Operate #673.

16 2. The UST system consists of three USTs and connected piping. The UST system has a total  
17 capacity of approximately 14,000 gallons of gasoline and diesel fuel, which are regulated substances.

18 3. On September 12, 2022, DEQ conducted an inspection of the UST system and reviewed  
19 Respondent’s records for the UST system.

20 4. As of September 12, 2022, Respondent had not tested the spill buckets and containment  
21 sumps used for piping release detection.

22 5. On September 12, 2022, the spill buckets and containments sumps at the Facility were in the  
23 following condition:

- 24 a. The spill bucket for Tank 1A (regular gasoline) was filled with debris, including dirt,  
25 leaves and mixed fuel and water;
- 26 b. The spill bucket for Tank 2A (premium gasoline) had approximately one gallon of  
27 gasoline accumulated in it;

- c. The spill bucket for Tank 2B (diesel) had approximately 1.5 gallons of diesel fuel accumulated in it;
- d. The containment sump for Tank 1A had a boot fitting that was in disrepair and did not seal the pipe to the sump, and there was a penetration for vapor recovery equipment that rendered it not liquid tight;
- e. The containment sump for Tank 2A had an open penetration for vapor recovery equipment that rendered it not liquid tight; and
- f. The containment sump for Tank 2B Diesel had an open vent line penetration and was missing a boot fitting, that rendered it not liquid tight.

6. On September 12, 2022, the under-dispenser containment (UDC) did not have leak detection equipment installed.

7. The piping in the UDC routinely contains gasoline and diesel fuel.

8. As of September 12, 2022, Respondent had not performed monthly walkthrough inspections of the spill prevention equipment and release detection equipment, and Respondent did not have records of such inspections for at least one year.

9. As of September 12, 2022, Respondent had not performed an annual operation and maintenance walkthrough inspection, and Respondent did not have records of such an inspection for the previous year.

10. The facility uses automatic tank gauging (ATG) as its primary release detection method and uses interstitial monitoring as its piping release detection method.

11. As of September 12, 2022, Respondent did not have records of ATG monitoring results for the previous twelve months.

12. As of September 12, 2022, Respondent had not tested the electronic and mechanical components of the ATG system within the previous year, or since prior to October 1, 2020.

13. On September 12, 2022, there was no staff at the facility who was trained as a Class A or B UST system operator.

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1 III. CONCLUSIONS

2 1. Respondent has violated OAR 340-150-0310(10) by failing to initially test its spill  
3 prevention and overflow prevention equipment prior to October 1, 2020, as alleged in Section II,  
4 Paragraph 4 above. This is a Class I violation according to OAR 340-012-0067(1)(j). DEQ hereby  
5 assesses a \$1,345 civil penalty for this violation.

6 2. Respondent has violated OAR 340-150-0310(1) by failing to maintain spill prevention  
7 equipment by allowing debris and fuel to accumulate in two spill buckets so that it would not prevent the  
8 release of fuel to the environment when the transfer hose is detached from the fill pipe, and failing to  
9 ensure that three containment sumps were liquid tight, as alleged in Section II, Paragraph 5 above. This is a  
10 Class II violation according to OAR 340-012-0053(2). DEQ hereby assesses a \$2,917 civil penalty for this  
11 violation.

12 3. Respondent has violated OAR 340-150-0400(1)(a) by failing to provide a method of release  
13 detection that can detect a release from any portion of the UST and the underground piping that routinely  
14 contains a regulated substance, specifically piping in the UDC, as alleged in Section II, Paragraphs 6 and 7  
15 above. This is a Class I violation according to OAR 340-012-0067(1)(e). DEQ hereby assesses a \$2,611  
16 civil penalty for this violation.

17 4. Respondent has violated OAR 340-150-0315(1)(a)(A) by failing to conduct walkthrough  
18 inspections of the spill prevention equipment and release detection equipment every thirty (30) days, as  
19 alleged in Section II, Paragraph 8 above. Since Respondent failed to conduct walkthrough inspections for  
20 at least a year, it missed at least 12 monthly walkthrough inspections. These are Class II violations  
21 according to OAR 340-012-0053(2). DEQ hereby assesses a \$425 civil penalty for these violations.

22 5. Respondent has violated OAR 340-150-0315(1)(a)(B) by failing to conduct an annual  
23 operation and maintenance walkthrough inspection, as alleged in Section II, Paragraph 9 above. This is a  
24 Class II violation according to OAR 340-012-0053(2). DEQ hereby assesses a \$350 civil penalty for this  
25 violation.

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1 6. Respondent has violated OAR 340-150-0465(6) by failing to retain the most current twelve  
2 consecutive months of release detection records, as alleged in Section II, Paragraphs 10 and 11 above. This  
3 is a Class II violation according to OAR 340-012-0053(2). DEQ hereby assesses a \$175 civil penalty for  
4 this violation.

5 7. Respondent has violated OAR 340-150-0400(2) by failing to test the electronic and  
6 mechanical components of the release detection system on an annual basis beginning on October 1,  
7 2020, which is three years of missed testing, as alleged in Section II, Paragraphs 10 and 12 above. These  
8 are Class I violations according to OAR 340-012-0067(1)(j). DEQ hereby assesses a \$1,454 civil penalty  
9 for these violations.

10 8. Respondent has violated OAR 340-150-0210(2) by failing to employ a Class A or B UST  
11 system operator at the facility, as alleged in Section II, Paragraphs 13 above. This is a Class II violation  
12 according to OAR 340-012-0067(2)(b). DEQ hereby assesses an \$822 civil penalty for this violation.

#### 13 IV. ORDER TO PAY CIVIL PENALTY AND TO COMPLY

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

16 1. Pay a total civil penalty of \$10,099. The determinations of the civil penalties are attached as  
17 Exhibits 1 – 8, which are incorporated as part of this Notice.

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

21 2. Within thirty (30) days of this order becoming final by operation of law or on appeal, take  
22 the following actions to bring the UST system into compliance with OAR Chapter 340, Division 150.  
23 Submit written documentation, including testing results, demonstrating compliance with each of the  
24 requirements below to Dylan Eckert, UST Inspector, by mail to: 165 E 7<sup>th</sup> Ave., Suite 100, Eugene,  
25 Oregon 97401 or by email to: [Dylan.Eckert@deq.oregon.gov](mailto:Dylan.Eckert@deq.oregon.gov):

26 a. Complete testing of the spill and overflow prevention equipment;

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- b. Complete maintenance and repairs on the spill prevention equipment and containment sumps;
- c. Install release detection equipment in the UDC and submit a completed Modification Checklist to DEQ; and
- d. Ensure that at least one facility employee completes Class A/B UST system operator training and receives a certificate.

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


You have a right to a contested case hearing on this Notice, if you request one in writing. DEQ must receive your request for hearing **within 20 calendar days** from the date you receive this Notice. If you have any affirmative defenses or wish to dispute any allegations of fact in this Notice or attached exhibits, you must do so in your request for hearing, as factual matters not denied will be considered admitted, and failure to raise a defense will be a waiver of the defense. (See OAR 340-011-0530 for further information about requests for hearing.) You must send your request to: **DEQ, Office of Compliance and Enforcement, 700 NE Multnomah Street, Suite 600, Portland, Oregon 97232**, fax it to **503-229-6762** or email it to [DEQappeals@deq.oregon.gov](mailto:DEQappeals@deq.oregon.gov). An administrative law judge employed by the Office of Administrative Hearings will conduct the hearing, according to ORS Chapter 183, OAR Chapter 340, Division 011 and OAR 137-003-0501 to 0700. You have a right to be represented by an attorney at the hearing, however you are not required to be. If you are an individual, you may represent yourself. If you are a corporation, partnership, limited liability company, unincorporated association, trust or government body, you must be represented by an attorney or a duly authorized representative, as set forth in OAR 137-003-0555.

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

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

7  
8  
9  
10 7/5/2023  
11 Date

  
Kieran O'Donnell, Manager  
Office of Compliance and Enforcement



## EXHIBIT 1

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

- VIOLATION NO. 1                      Failing to initially test 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 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 \$645. This is the amount Respondent gained by avoiding spending \$975 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 x \$500) x (0 + 0 + 0 + 2 + 2)] + \$645  
= \$500 + (\$50 x 4) + \$645  
= \$500 + \$200 + \$645  
= \$1,345

## EXHIBIT 2

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

VIOLATION 2: Failing to to maintain spill prevention equipment, specifically two spill buckets and three containment sumps, 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 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 September 12, 2022 and has not been corrected as of the date of this Notice, which is a duration of approximately nine 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. By failing to properly maintain spill bucket and sumps, 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 and repairs to the spill buckets and containment sumps.

"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 \$2,417. This is the amount Respondent gained by avoiding spending \$3,000 to complete maintenance and repairs to the spill buckets and containment sumps. This "EB" was calculated pursuant to OAR 340-012-0150(1) using the U.S. Environmental Protection Agency's BEN computer model.

PENALTY CALCULATION:  $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$   
 $= \$250 + [(0.1 \times \$250) \times (0 + 0 + 4 + 4 + 2)] + \$2,417$   
 $= \$250 + (\$25 \times 10) + \$2,417$   
 $= \$250 + \$250 + \$2,417$   
 $= \$2,917$

EXHIBIT 3

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

VIOLATION NO. 3 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 there were more than 28 occurrences of the violation. Each day of violation is a separate occurrence. The violation was documented on September 12, 2022 and has not been corrected as of the date of this Notice, which is a duration of approximately nine 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. When Respondent began operating the facility in 2017, it should have ensured that required release detection equipment was installed and working properly. By failing to install release detection equipment in the under-dispenser containment (UDC) before DEQ's inspection in September 2022 or after being notified of its noncompliance, 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 completed installation of release detection equipment in the UDC.

"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 \$1,611. This is the amount Respondent gained by avoiding spending \$2,000 to install release detection equipment in the UDC. 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 x \$500) x (0 + 0 + 4 + 4 + 2)] + \$1,611  
= \$500 + (\$50 x 10) + \$1,611  
= \$500 + \$500 + \$1,611  
= \$2,611

EXHIBIT 4

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

VIOLATION NO. 4 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 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 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 + 0)] + \$0  
= \$250 + (\$25 x 7) + \$0  
= \$250 + \$175 + \$0  
= \$425



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 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 0 according to OAR 340-012-0145(4)(a) because there was one occurrence of the violation. Respondent failed to conduct an annual operation and maintenance walkthrough inspection for at least the prior year.

"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 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 the economic benefit Respondent gained by failing to conduct walkthrough inspections was de minimis.

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

$$\begin{aligned} &= \$250 + [(0.1 \times \$250) \times (0 + 0 + 0 + 4 + 0)] + \$0 \\ &= \$250 + (\$25 \times 4) + \$0 \\ &= \$250 + \$100 + \$0 \\ &= \$350 \end{aligned}$$

EXHIBIT 6

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

VIOLATION NO. 6 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 September 12, 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 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 the economic benefit Respondent gained by failing to maintain records was de minimis.

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

$$\begin{aligned} &= \$125 + [(0.1 \times \$125) \times (0 + 0 + 0 + 4 + 0)] + \$0 \\ &= \$125 + (\$12.50 \times 4) + \$0 \\ &= \$125 + \$50 + \$0 \\ &= \$175 \end{aligned}$$

## EXHIBIT 7

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

- VIOLATION NO. 7 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 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 2 according to OAR 340-012-0145(4)(b) because there were three occurrences of the violation. Respondent failed to conduct testing for three years: 2020 - 2022.
- "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 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 \$754. This is the amount Respondent gained by avoiding spending \$325 per year to conduct annual testing for three 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:  $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$   
=  $\$500 + [(0.1 \times \$500) \times (0 + 0 + 2 + 2 + 0)] + \$754$   
=  $\$500 + (\$50 \times 4) + \$754$   
=  $\$500 + \$200 + \$754$   
=  $\$1,454$

EXHIBIT 8

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

VIOLATION NO. 8 Failing to employ a Class A or B UST system operator at the facility, in violation of OAR 340-150-0210(2).

CLASSIFICATION: This is a Class II violation pursuant to OAR 340-012-0067(2)(b).

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 4 according to OAR 340-012-0145(4)(d) because the violation has been ongoing for more than 28 days. DEQ documented the violation on September 12, 2022 and it has not been corrected as of the date of this Notice.

"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 have a properly trained system operator at the facility, 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 submitted documentation showing that it has a properly trained UST system operator employed 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 \$322. This is the amount Respondent gained by avoiding spending \$400 to send an employee to Class A/B operator training. 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 x \$250) x (0 + 0 + 4 + 4 + 2)] + \$322  
= \$250 + (\$25 x 10) + \$322  
= \$250 + \$250 + \$322  
= \$822