



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 20, 2023

CERTIFIED MAIL: 9589 0710 5270 0110 6007 46

Oregon Department of Corrections
c/o Gary Ninman, Acting Inspector General
3723 Fairview Industrial Drive SE # 200
Salem, OR 97302

Re: Notice of Civil Penalty Assessment and Order
Case No. LQ/UST-ER-2022-088

This letter is to inform you that DEQ has issued you a total civil penalty of \$37,297 for underground storage tank (UST) violations at the Snake River Correctional Institution in Ontario. DEQ documented numerous violations during its inspection on June 9, 2022. DEQ has cited you for failing to test the spill prevention and overfill prevention equipment prior to October 1, 2020, failing to protect underground piping that routinely contains a regulated substance from corrosion, failing to maintain spill prevention equipment, failing to maintain overfill prevention equipment, and failing to have proper release detection equipment.

DEQ issued this penalty because you failed to ensure that your facility has leak detection equipment that complies with UST regulations. Without functional monitors, the automatic tank gauging systems would not alert the operator to a release. Proper maintenance of the equipment at the facility is essential to both prevent and detect releases. Also, 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.

Included in Section IV of the enclosed Notice is an order requiring you to repair or replace the malfunctioning spill and overfill prevention equipment and conduct testing; repair or perform maintenance on the tank release detection system and conduct testing; and for all metal piping and related components that contain a regulated substance, either ensure the equipment is isolated from corrosive elements by removing backfilled soil, or install cathodic protection. You are required to submit documentation demonstrating your compliance to DEQ within thirty (30) days of this Notice becoming final. \$32,597 of the civil penalty represents the economic benefit you gained by failing to conduct the required testing and equipment maintenance, repairs or upgrades 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
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,



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

Enclosures

cc: Mark A. Hardie, Snake River Correctional Institution: Mark.A.HARDIE@doc.oregon.gov
Jef Van Valkenburgh, Oregon Dept. of Justice: jef.vanvalkenburgh@doj.state.or.us
Dylan Eckert, Eugene 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	SNAKE RIVER CORRECTIONAL)	NOTICE OF CIVIL PENALTY
	INSTITUTION,)	ASSESSMENT AND ORDER
5	Respondent.)	CASE NO. LQ/UST-ER-2022-088

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8 I. AUTHORITY

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

13 II. FINDINGS OF FACT

14 1. At all materials times, Respondent was the permittee of an underground storage tank (UST)
15 system located at 777 Stanton Boulevard in Ontario, Malheur County, Oregon. The UST system is
16 owned by the Oregon Department of Corrections.

17 2. At all material times, Respondent operated the UST system under Certificate to Operate
18 #10720.

19 3. The UST system consists of four USTs and connected piping. The UST system has a total
20 capacity of approximately 16,500 gallons of gasoline and diesel fuel, which are regulated substances.

21 4. On June 9, 2022, DEQ conducted an inspection of the UST system and reviewed
22 Respondent's records for the UST system.

23 5. As of June 9, 2022, Respondent had not tested the overfill prevention equipment and
24 containment sumps used for interstitial monitoring.

25 6. On June 9, 2022, the piping under the dispensers was in contact with the soil. The piping
26 routinely contains diesel fuel and gasoline.

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1 7. On June 9, 2022, the spill prevention equipment at the Facility was in the following
2 condition:

- 3 a. The spill bucket for Tank 4 (diesel) was cracked, rendering it not liquid tight; and
- 4 b. The spill bucket for Tank 2 (diesel) was full or nearly full of diesel fuel and would not
5 have prevented the release of fuel in the event of a spill during fuel delivery.

6 8. On June 9, 2022, the overfill prevention devices (flapper valves) for Tanks 2 and 3 (diesel)
7 were not functioning. The flapper valves would not have automatically shut off flow into the tanks
8 when they were no more than 95 percent full.

9 9. On June 9, 2022, the monitors for the automated tank gauging systems for Tanks 3 and 4
10 (diesel) were not functioning, which rendered the release detection equipment for these tanks
11 inoperable.

12 III. CONCLUSIONS

13 1. Respondent has violated OAR 340-150-0310(10) by failing to initially test its spill
14 prevention and overfill prevention equipment prior to October 1, 2020, as alleged in Section II,
15 Paragraph 5 above. This is a Class I violation according to OAR 340-012-0067(1)(j). DEQ hereby
16 assesses a \$1,437 civil penalty for this violation.

17 2. Respondent has violated OAR 340-150-0320(1) by failing to protect underground piping that
18 routinely contains a regulated substance from corrosion, as alleged in Section II, Paragraph 6 above.
19 This is a Class I violation according to OAR 340-012-0067(1)(f). DEQ hereby assesses a \$1,000 civil
20 penalty for this violation.

21 3. Respondent has violated OAR 340-150-0310(1) by failing to operate and maintain spill
22 prevention equipment by failing to replace or repair one spill bucket that was not liquid tight and allowing
23 fuel to accumulate in one spill bucket so that it would not prevent the release of fuel to the environment
24 when the transfer hose is detached from the fill pipe, as alleged in Section II, Paragraph 7 above. This is a
25 Class I violation according to OAR 340-012-0067(1)(d). DEQ hereby assesses a \$9,382 civil penalty for
26 this violation.

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1 4. Respondent has violated OAR 340-150-0310(2) by failing to properly operate overfill
2 prevention equipment, specifically flapper valves, as alleged as Section II, Paragraph 8 above. This is a
3 Class I violation according to OAR 340-012-0067(1)(d). DEQ hereby assesses a \$3,789 civil penalty for
4 this violation.

5 5. Respondent has violated OAR 340-150-0400(1)(a) by failing to provide a method of release
6 detection that can detect a release from any portion of the UST and the underground piping that routinely
7 contains a regulated substance, as alleged in Section II, Paragraph 9 above. This is a Class I violation
8 according to OAR 340-012-0067(1)(e). DEQ hereby assesses a \$21,689 civil penalty for this violation.

9 IV. ORDER TO PAY CIVIL PENALTY AND TO COMPLY

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

12 1. Pay a total civil penalty of \$37,297. The determination of the civil penalties is attached as
13 Exhibits 1–5, which are incorporated as part of this Notice.

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

17 2. Within thirty (30) days of this order becoming final by operation of law or on appeal, take
18 the following actions to bring the UST system into compliance with OAR Chapter 340, Division 150.
19 Submit written documentation, including testing results, demonstrating compliance with each of the
20 requirements below to Dylan Eckert, UST Inspector, by email to: Dylan.Eckert@deq.oregon.gov.

- 21 a. Repair or replace the malfunctioning spill and overfill prevention equipment and
22 conduct testing;
- 23 b. Repair or perform maintenance on the tank release detection system and conduct testing;
24 and
- 25 c. For all metal piping and related components that contain a regulated substance, either
26 ensure the equipment is isolated from corrosive elements by removing backfilled soil, or
27 install cathodic protection.

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

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

16 Active-duty Service members have a right to stay proceedings under the federal Service
17 Members Civil Relief Act. For more information contact the Oregon State Bar at 1-800-
18 452-8260, the Oregon Military Department at 503-584-3571, or the nearest United States Armed
19 Forces Legal Assistance Office through <http://legalassistance.law.af.mil>. The Oregon Military
20 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.

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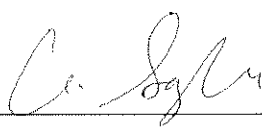

for Kieran O'Donnell, Manager
Office of Compliance and Enforcement

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 owner or permittee of one UST facility.

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

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

"O" is whether the violation was repeated or ongoing, and receives a value of 0 according to OAR 340-012-0145(4)(a) because there was only one occurrence of the violation. Respondent failed to conduct testing by a specific date, October 1, 2020.

"M" is the mental state of the Respondent and receives a value of 2 according to OAR 340-012-0145(5)(b) because Respondent had constructive knowledge (reasonably should have known) of the requirement. In 2018, DEQ adopted the regulation requiring that the testing be completed prior to October 1, 2020, and provided extensive outreach to the regulated community on the requirement to conduct the testing prior to that date. Respondent reasonably should have known of the requirement to conduct the testing prior to October 1, 2020.

"C" is Respondent's efforts to correct 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 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 \$737. This is the amount Respondent gained by avoiding spending \$960 to test 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)] + \$737
= \$500 + (\$50 x 4) + \$737
= \$500 + \$200 + \$737
= \$1,437

EXHIBIT 2

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

VIOLATION 2: Failing to protect underground piping that routinely contains a regulated substance from corrosion, in violation of OAR 340-150-0320(1).

CLASSIFICATION: This is a Class I violation pursuant to OAR 340-012-0067(1)(f).

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 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)(a)(D), because there were more than 28 occurrences of the violation. Each day of violation is a separate occurrence. DEQ documented the violation on June 9, 2022, and it is ongoing as of the date of this Notice.

"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 ensure that piping containing a regulated substance was not in contact with soil or rock or otherwise protected from corrosion, Respondent failed to take reasonable care to avoid a foreseeable risk that it would violate UST requirements.

"C" is Respondent's efforts to correct 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 to DEQ

showing that the piping is not in contact or covered with soil and rock or that corrosion protection has been installed on the piping.

"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 remove the backfilled soil was de minimis.

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

$$\begin{aligned} &= \$500 + [(0.1 \times \$500) \times (0 + 0 + 4 + 4 + 2)] + \$0 \\ &= \$500 + (\$50 \times 10) + \$0 \\ &= \$500 + \$500 + \$0 \\ &= \$1,000 \end{aligned}$$

EXHIBIT 3

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

VIOLATION 3: Failing to properly operate and maintain spill prevention equipment, specifically two spill buckets, in violation of OAR 340-150-0310(1).

CLASSIFICATION: This is a Class I violation pursuant to OAR 340-012-0067(1)(d).

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 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)(a)(D), because there were more than 28 occurrences of the violation. Each day of violation is a separate occurrence. The violation has been ongoing since at least June 9, 2022, when DEQ documented the violation.

"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 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 to DEQ showing that it has replaced the cracked spill bucket and performed maintenance.

"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 \$8,382. This is the amount Respondent gained by avoiding spending \$8,000 to replace a spill bucket. 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)] + \$8,382
= \$500 + (\$50 x 10) + \$8,382
= \$500 + \$500 + \$8,382
= \$9,382

EXHIBIT 4

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

VIOLATION 4: Failing to properly operate overfill prevention equipment in violation of OAR 340-150-0310(2).

CLASSIFICATION: This is a Class I violation pursuant to OAR 340-012-0067(1)(d).

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 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)(a)(D), because there were more than 28 occurrences of the violation. Each day of violation is a separate occurrence. The violation has been ongoing since at least June 9, 2022, when DEQ documented the violation.

"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 ensure it had functional overfill prevention equipment, Respondent failed to take reasonable care to avoid a foreseeable risk that it would violate UST requirements.

"C" is Respondent's efforts to correct 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 to DEQ showing that it has repaired or replaced the flapper valves.

"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 \$2,789. This is the amount Respondent gained by avoiding spending \$2,662 to replace two flapper valves. This "EB" was calculated pursuant to OAR 340-012-0150(1) using the U.S. Environmental Protection Agency's BEN computer model.

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

$$\begin{aligned} &= \$500 + [(0.1 \times \$500) \times (0 + 0 + 4 + 4 + 2)] + \$2,789 \\ &= \$500 + (\$50 \times 10) + \$2,789 \\ &= \$500 + \$500 + \$2,789 \\ &= \$3,789 \end{aligned}$$

EXHIBIT 5

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

VIOLATION 5: 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 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)(a)(D), because there were more than 28 occurrences of the violation. Each day of violation is a separate occurrence. The violation has been ongoing since at least June 9, 2022, when DEQ documented the violation.

"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 ensure that release detection equipment was properly installed and functional before DEQ's inspection in June 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 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 to DEQ

showing that it has repaired or installed new monitors for the automatic tank gauging system.

"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 \$20,689. This is the amount Respondent gained by avoiding spending \$19,747 to install new tank monitors at its Facility. This "EB" was calculated pursuant to OAR 340-012-0150(1) using the U.S. Environmental Protection Agency's BEN computer model.

PENALTY CALCULATION: $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$
 $= \$500 + [(0.1 \times \$500) \times (0 + 0 + 4 + 4 + 2)] + \$20,689$
 $= \$500 + (\$50 \times 10) + \$20,689$
 $= \$500 + \$500 + \$20,689$
 $= \$21,689$