



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

October 12, 2023

CERTIFIED MAIL: 9589 0710 5270 0110 6011 18

Triangle Oil, Inc.
c/o Russell Young, Registered Agent
760 S. Canyon Boulevard
John Day, OR 97845

Re: Notice of Civil Penalty Assessment and Order
Case No. LQ/UST-ER-2023-103

This letter is to inform you that DEQ has issued you a total civil penalty of \$17,981 for underground storage tank (UST) violations at your facility in Mt. Vernon. DEQ documented numerous violations during its inspections in November 2021 and June 2023. DEQ has cited you for twelve violations, including failing to maintain or properly operate spill prevention, overfill prevention, and release detection equipment; failing to report and investigate a suspected release of fuel; failing to conduct required equipment testing; and failing to display a valid operating certificate.

DEQ issued this penalty because the Mt. Vernon facility is out of compliance with many important UST regulations. Proper operation and maintenance of the equipment at the facility is essential to prevent and detect releases of fuel into the environment. Although there was a suspected release of fuel at the facility, you failed to take action by reporting it to DEQ or investigating the 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.

Included in Section IV of the enclosed Notice is an order requiring you to investigate the suspected release and perform required repairs, maintenance and testing of the UST equipment. You must submit documentation demonstrating your compliance to DEQ within sixty (60) days of the Notice becoming final. \$8,756 of the civil penalty represents the economic benefit you gained by failing to conduct the required testing, monitoring, repairs, 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

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,

A handwritten signature in black ink, appearing to read "Kieran O'Donnell". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Kieran O'Donnell, Manager
Office of Compliance and Enforcement

Enclosures

cc: Trent Wright, Triangle Oil, Inc.: trent@centurytel.net
Dylan Eckert, Eugene Office, DEQ
Mark Drouin, Northwest Region, DEQ

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

3 IN THE MATTER OF:
4 TRIANGLE OIL, INC.,
an Oregon corporation,

5 Respondent.

)
) NOTICE OF CIVIL PENALTY
) ASSESSMENT AND ORDER

)
) CASE NO. LQ/UST-ER-2023-103

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 located at 393 E. Main Street in Mt. Vernon, Grant County, Oregon. Respondent
15 operates the UST system under Certificate to Operate #2615.

16 2. The UST system consists of six USTs and connected piping. The UST system has a total
17 capacity of approximately 47,00 gallons of gasoline, diesel fuel, and heating oil (kerosene), which are
18 regulated substances.

19 3. On November 16, 2021, DEQ conducted an inspection of the UST system and reviewed
20 Respondent's records for the UST system.

21 4. On March 15, 2022, DEQ issued a field citation (2022-FC-6596) to Respondent for
22 violations identified during the November 16, 2021, inspection. The field citation required that
23 Respondent take corrective actions to address the violations by May 1, 2022.

24 5. On June 27, 2023, DEQ conducted a follow-up inspection of the UST system to determine if
25 corrective actions were completed.

26 6. On November 16, 2021, the spill prevention equipment at the Facility was in the following
27 condition:

- a. The spill bucket for Tank 9 had approximately one gallon of gasoline accumulated in it along with debris, including dirt, leaves and a saturated absorbent pad;
- b. The spill bucket for Tank 8 had approximately one-half gallon of fuel accumulated in it; and
- c. The spill bucket for Tank 1 had approximately one gallon of fuel accumulated in it.

7. On June 27, 2023, the spill prevention equipment described in Paragraph 6 above had been cleaned out and was free of liquid and accumulated debris.

8. On June 27, 2023, the spill bucket for Tank 1 had a hole drilled into it to allow copper piping connected to the suction pump's air eliminator to discharge back into the tank. This rendered the spill bucket not liquid-tight.

9. On November 16, 2021, the overfill prevention equipment at the Facility was in the following condition:

- a. Tank 9 did not have overfill prevention equipment installed; and
- b. The gauging stick for Tank 8 was broken off, rendering the mechanical shut-off device unable to properly operate and fully close.

10. On June 27, 2023, the overfill prevention equipment described in Paragraph 9 above was in the same condition.

11. On November 16, 2021, Tank 6 was not connected to the tank monitoring equipment. Tank 6 contained kerosene.

12. On June 27, 2023, Tank 6 was not connected to the tank monitoring equipment. Some of the kerosene had been removed, but the tank was not empty.

13. On November 16, 2021, the under-dispenser containment of four dispensers at the Facility had fuel accumulated in them.

14. On November 16, 2021, the soil surrounding the dispenser for Tank 1 was saturated with diesel fuel. Free product was present in the soil. The under-dispenser containment for Tank 1 had about two gallons of fuel accumulated in it.

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1 15. On November 16, 2021, and as of the date of this Notice, Respondent had not reported the
2 suspected release described in Paragraphs 13 and 14 above to DEQ.

3 16. On November 16, 2021, and as of the date of this Notice, Respondent had not made efforts
4 to investigate or confirm the suspected release.

5 17. On June 27, 2023, the under-dispenser containment for the cardlock was locked and unable
6 to be accessed. One of two retail dispensers contained approximately one gallon of a regulated
7 substance. The transition sump was filled with water and there was surface run-off causing sheening.

8 18. As of November 16, 2021, Respondent had not tested the spill prevention or overflow
9 prevention equipment at the Facility.

10 19. As of November 16, 2021, the cathodic protection equipment had been tested since on or
11 about October 14, 2014.

12 20. On or before February 15, 2022, Respondent tested the cathodic protection equipment and
13 the equipment passed testing.

14 21. On November 16, 2021, the Facility did not display a valid annual operating certificate in a
15 conspicuous location clearly visible to distributors depositing regulated substances into the USTs.

16 22. As of June 27, 2023, annual tightness testing of product piping had not taken place since
17 February 9, 2021.

18 23. As of June 27, 2023, annual functionality testing of line leak detectors had not taken place
19 since February 9, 2021.

20 24. As of June 27, 2023, Respondent had not conducted release detection calibration and
21 functionality testing.

22 25. On November 16, 2021, one of the mechanical line leak detectors had its vapor return line
23 disconnected, which allowed burping of fuel into the dispenser sump.

24 26. On June 27, 2023, the line leak detector's vapor return line was reattached.

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1 III. CONCLUSIONS

2 1. Respondent has violated OAR 340-150-0310(1) by failing to maintain spill prevention
3 equipment by allowing debris and fuel to accumulate in two spill buckets so that it would not prevent the
4 release of fuel to the environment when the transfer hose is detached from the fill pipe and failing to
5 replace or repair one spill bucket that was not liquid tight, as alleged in Section II, Paragraphs 6-8 above.
6 This is a Class I violation according to OAR 340-012-0067(1)(d). DEQ hereby assesses a \$1,443 civil
7 penalty for this violation.

8 2. Respondent has violated OAR 340-150-0310(2) by failing to install and properly maintain
9 overfill prevention equipment, as alleged as Section II, Paragraphs 9 – 10 above. This is a Class I violation
10 according to OAR 340-012-0067(1)(d). DEQ hereby assesses a \$1,683 civil penalty for this violation.

11 3. Respondent has violated OAR 340-150-0400(1)(a) by failing to provide a method of release
12 detection that can detect a release from any portion of the UST and the underground piping that routinely
13 contains a regulated substance, specifically failing to provide release detection for Tank 6, as alleged in
14 Section II, Paragraphs 11 – 12 above. This is a Class I violation according to OAR 340-012-0067(1)(e).
15 DEQ hereby assesses a \$2,908 civil penalty for this violation.

16 4. Respondent has violated OAR 340-150-0500(1) by failing to report a suspected release of
17 fuel to DEQ within 24 hours, as alleged in Section II, Paragraphs 13 – 15 above. This is a Class II
18 violation according to OAR 340-012-0074(2)(a). DEQ hereby assesses a \$600 civil penalty for this
19 violation.

20 5. Respondent has violated OAR 340-150-0510(1) by failing to immediately initiate
21 investigation and confirmation of a suspected release of fuel, as alleged in Section II, Paragraphs 13 –
22 14 and 16 above. This is a Class I violation according to OAR 340-012-0067(1)(a). DEQ hereby assesses
23 a \$1,543 civil penalty for this violation.

24 6. Respondent has violated OAR 340-150-0310(10) by failing to initially test its spill
25 prevention and overfill prevention equipment prior to October 1, 2020, as alleged in Section II,
26 Paragraph 18 above. This is a Class I violation according to OAR 340-012-0067(1)(j). DEQ hereby
27 assesses a \$1,930 civil penalty for this violation.

1 7. Respondent has violated OAR 340-150-0325(2)(b) by failing to have the corrosion protection
2 system inspected and tested for proper operation at least once every three years, as alleged in Section II,
3 Paragraphs 19 – 20 above. Since Respondent has not conducted the testing since October 2014, it has
4 missed two tests. These are Class I violations according to OAR 340-012-0067(1)(j). DEQ hereby assesses
5 a \$1,593 civil penalty for these violations.

6 8. Respondent has violated OAR 340-150-0163(1)(a) by failing to display a valid annual
7 operating certificate in a conspicuous location at the UST facility clearly visible to distributors depositing
8 regulated substances into the UST, as alleged in Section II, Paragraph 21 above. This is a Class II violation
9 according to OAR 340-012-0067(2)(n). DEQ hereby assesses a \$200 civil penalty for this violation.

10 9. Respondent has violated OAR 340-150-0410(3) by failing to conduct line tightness testing
11 annually, as alleged in Section II, Paragraph 22 above. Since Respondent has not conducted testing since
12 February 9, 2021, it has missed two annual tests. This is a Class I violation according to OAR 340-012-
13 0067(1)(j). DEQ hereby assesses a \$3,595 civil penalty for this violation.

14 10. Respondent has violated OAR 340-150-0410(2)(c) by failing to conduct operational line leak
15 detector testing annually, as alleged in Section II, Paragraph 23 above. Since Respondent has not
16 conducted testing since February 9, 2021, it has missed two annual tests. This is a Class I violation
17 according to OAR 340-012-0067(1)(j). DEQ hereby assesses a \$900 civil penalty for this violation.

18 11. Respondent has violated OAR 340-150-0400(2) by failing to test the electronic and mechanical
19 components of the release detection system on an annual basis beginning on October 1, 2020, as alleged in
20 Section II, Paragraph 24 above. This is a Class I violation according to OAR 340-012-0067(1)(j). DEQ
21 hereby assesses a \$1,211 civil penalty for this violation.

22 12. Respondent has violated OAR 340-150-0400(1)(c) by failing to install, operate or maintain
23 release detection equipment in accordance with the manufacturer's instructions by disconnecting vapor
24 lines from the leak detectors, as alleged in Section II, Paragraphs 25 – 26 above. This is a Class II violation
25 according to OAR 340-012-0053(2). DEQ hereby assesses a \$375 civil penalty for this violation.

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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 \$17,981. The determinations of the civil penalties are attached as
5 Exhibits 1 – 12, 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 "State Treasurer, State of Oregon" and sent to: **DEQ - Business**
8 **Office, 700 NE Multnomah Street, Suite 600, Portland, Oregon 97232.**

9 2. Within sixty (60) days of this order becoming final by operation of law or on appeal, take
10 the following actions to bring the UST system into compliance with OAR Chapter 340, Division 150.
11 Submit written documentation, including testing results, demonstrating compliance with each of the
12 requirements below to Dylan Eckert, UST Inspector, by mail to: 165 E 7th Ave., Suite 100, Eugene,
13 Oregon 97401 or by email to: Dylan.Eckert@deq.oregon.gov:

- 14 a. Complete testing of the spill and overfill prevention equipment;
- 15 b. Complete maintenance and repairs on the spill prevention equipment;
- 16 c. Install and complete repairs on the overfill prevention equipment;
- 17 d. Install release detection equipment for Tank 6 or place the tank in temporary closure;
- 18 and
- 19 e. Immediately investigate the suspected release from Tank 9 by scheduling a service
20 provider to visit the Facility. Ensure that the investigation is conducted according to
21 OAR 340-150-0510, and submit the results of the investigation to DEQ.

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

23 You have a right to a contested case hearing on this Notice, if you request one in writing. DEQ
24 must receive your request for hearing **within 20 calendar days** from the date you receive this Notice. If
25 you have any affirmative defenses or wish to dispute any allegations of fact in this Notice or attached
26 exhibits, you must do so in your request for hearing, as factual matters not denied will be considered
27 admitted, and failure to raise a defense will be a waiver of the defense. (See OAR 340-011-0530 for

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

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

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

21
22
23 10/12/2023
24 Date

23 
24 Kieran O'Donnell, Manager
25 Office of Compliance and Enforcement
26
27

EXHIBIT 1

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

VIOLATION 1: Failing to properly operate and maintain spill prevention equipment, specifically three 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 2 according to OAR 340-012-0145(2)(a)(C), because Respondent had one Class I violation in 2016-FC-1587.

"H" is Respondent's history of correcting prior significant actions and receives a value of -2 according to OAR 340-012-0145(3)(a), because Respondent corrected all prior violations cited as PSAs.

"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 November 16, 2021, 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 buckets, 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)(d) because Respondent eventually made some efforts to correct the violation. Respondent cleaned out two of the spill buckets. However, as of the date of this Notice, Respondent has not submitted documentation to DEQ showing that it has repaired or replaced the spill bucket with a hole in it.

"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 \$643. This is the amount Respondent gained by avoiding spending \$843 to replace one 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 \times \$500) \times (2 - 2 + 4 + 4 - 2)] + \643
= $\$500 + (\$50 \times 6) + \$643$
= $\$500 + \$300 + \$643$
= $\$1,443$

EXHIBIT 2

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

VIOLATION 2: Failing to install and properly maintain 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 2 according to OAR 340-012-0145(2)(a)(C), because Respondent had one Class I violation in 2016-FC-1587.

"H" is Respondent's history of correcting prior significant actions and receives a value of -2 according to OAR 340-012-0145(3)(a), because Respondent corrected all prior violations cited as PSAs.

"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 November 16, 2021, 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 overfill prevention equipment.

"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 \$683. This is the amount Respondent gained by avoiding spending \$895 to replace one mechanical shutoff device. 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 (2 - 2 + 4 + 4 + 2)] + \683
= $\$500 + (\$50 \times 10) + \$683$
= $\$500 + \$500 + \$683$
= $\$1,683$

EXHIBIT 3

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

VIOLATION 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, specifically Tank 6, 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 2 according to OAR 340-012-0145(2)(a)(C), because Respondent had one Class I violation in 2016-FC-1587.

"H" is Respondent's history of correcting prior significant actions and receives a value of -2 according to OAR 340-012-0145(3)(a), because Respondent corrected all prior violations cited as PSAs.

"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 November 16, 2021, 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 November 2021 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 completed repairs to ensure that Tank 6 is being monitored.

"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 \$1,908. This is the amount Respondent gained by avoiding spending \$2,500 to replace a probe. 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 (2 - 2 + 4 + 4 + 2)] + \$1,908
= \$500 + (\$50 x 10) + \$1,908
= \$500 + \$500 + \$1,908
= \$2,908

EXHIBIT 4

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

VIOLATION 4: 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 \$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 2 according to OAR 340-012-0145(2)(a)(C), because Respondent had one Class I violation in 2016-FC-1587.

"H" is Respondent's history of correcting prior significant actions and receives a value of -2 according to OAR 340-012-0145(3)(a), because Respondent corrected all prior violations cited as PSAs.

"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. DEQ observed the suspected release on November 16, 2021, and Respondent had taken no action to report the alarm or suspected release as of the date of this Notice, which is a duration of almost two years.

"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. As a permitted UST facility, Respondent is aware of the requirement to report suspected releases of petroleum products. DEQ notified Respondent of the reporting requirement during its inspection on November 16, 2021, but Respondent has still not reported the release. By failing to report a suspected release to DEQ, Respondent consciously disregarded a substantial and unjustifiable risk that it would violate spill prevention requirements. Because of the potential impacts of petroleum releases on human health and the environment, disregarding this risk constituted a gross deviation from the standard of care a reasonable permittee 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). 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: $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$
= $\$250 + [(0.1 \times \$250) \times (2 - 2 + 4 + 8 + 2)] + \0
= $\$250 + (\$25 \times 14) + \$0$
= $\$250 + \$350 + \$0$
= $\$600$

EXHIBIT 5

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

VIOLATION 5: 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 \$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 2 according to OAR 340-012-0145(2)(a)(C), because Respondent had one Class I violation in 2016-FC-1587.

"H" is Respondent's history of correcting prior significant actions and receives a value of -2 according to OAR 340-012-0145(3)(a), because Respondent corrected all prior violations cited as PSAs.

"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. DEQ observed the suspected release on November 16, 2021, and Respondent had taken no action to investigate the suspected release as of the date of this Notice, which is a duration of almost two years.

"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. As a permitted UST facility, Respondent is aware of the requirement to investigate and clean up releases of petroleum products. During its inspection on November 16, 2021, DEQ documented diesel fuel in the under-dispenser containment and in the soil surrounding the dispenser for Tank 1, and notified Respondent of the requirement to investigate the release. However, Respondent has not investigated the release as of the date of this Notice. By failing to investigate a petroleum release at its facility, Respondent consciously disregarded a substantial and unjustifiable risk that a release had occurred. Because of the potential impacts of petroleum

releases on human health and the environment, disregarding this risk constituted a gross deviation from the standard of care a reasonable permittee 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 \$343. This is the amount Respondent gained by avoiding spending \$450 for containment sump testing 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: $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$
 $= \$500 + [(0.1 \times \$500) \times (2 + 2 + 4 + 8 + 2)] + \343
 $= \$500 + (\$50 \times 14) + \$343$
 $= \$500 + \$700 + \$343$
 $= \$1,543$

EXHIBIT 6

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

VIOLATION NO. 6 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 2 according to OAR 340-012-0145(2)(a)(C), because Respondent had one Class I violation in 2016-FC-1587.

"H" is Respondent's history of correcting prior significant actions and receives a value of -2 according to OAR 340-012-0145(3)(a), because Respondent corrected all prior violations cited as PSAs.

"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 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 \$1,230. This is the amount Respondent gained by avoiding spending \$1,950 to conduct spill prevention and overfill prevention equipment testing. This "EB" was calculated pursuant to OAR 340-012-0150(1) using the U.S. Environmental Protection Agency's BEN computer model.

PENALTY CALCULATION: $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$
= $\$500 + [(0.1 \times \$500) \times (2 - 2 + 0 + 2 + 2)] + \$1,230$
= $\$500 + (\$50 \times 4) + \$1,230$
= $\$500 + \$200 + \$1,230$
= $\$1,930$

EXHIBIT 7

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

VIOLATION NO. 7 Failing to have the corrosion protection system inspected every three years, in violation of OAR 340-150-0325(2)(b).

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 2 according to OAR 340-012-0145(2)(a)(C), because Respondent had one Class I violation in 2016-FC-1587.

"H" is Respondent's history of correcting prior significant actions and receives a value of -2 according to OAR 340-012-0145(3)(a), because Respondent corrected all prior violations cited as PSAs.

"O" is whether the violation was repeated or ongoing, and receives a value of 2 according to OAR 340-012-0145(4)(b) because there were more than one but less than seven occurrences of the violation. Respondent failed to conduct corrosion protection testing on two occasions in 2017 and 2020.

"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 conduct corrosion testing protection every three years, Respondent failed to take reasonable care to avoid a foreseeable risk that it would violate UST requirements.

"C" is Respondent's efforts to correct or mitigate the violation and receives a value of -3 according to OAR 340-012-0145(6)(c) because Respondent took reasonable affirmative efforts to minimize the effects of the violation by completing corrosion protection testing in February 2022.

"EB" is the approximate dollar value of the benefit gained and the costs avoided or delayed as a result of Respondent's noncompliance. It is designed to "level the playing field" by taking away any economic advantage the entity gained and to deter potential violators from deciding it is cheaper to violate and pay the penalty than to pay the costs of compliance. In this case, "EB" receives a value of \$943. This is the amount Respondent gained by avoiding spending \$750 to inspect and test the corrosion protection system in 2017 and 2020. 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 (2 - 2 + 2 + 4 - 3)] + \943
 $= \$500 + (\$50 \times 3) + \$943$
 $= \$500 + \$150 + \$943$
 $= \$1,593$

EXHIBIT 8

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

VIOLATION NO. 8 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 \$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 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 2 according to OAR 340-012-0145(2)(a)(C), because Respondent had one Class I violation in 2016-FC-1587.

"H" is Respondent's history of correcting prior significant actions and receives a value of -2 according to OAR 340-012-0145(3)(a), because Respondent corrected all prior violations cited as PSAs.

"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 November 18, 2021 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 display an operating 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 provided documentation showing that the operation certificate is properly displayed 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: $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$
= \$125 + [(0.1 x \$125) x (2 - 2 + 0 + 4 + 2)] + \$0
= \$125 + (\$12.50 x 6) + \$0
= \$125 + \$75 + \$0
= \$200

EXHIBIT 9

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

VIOLATION NO. 9 Failing to conduct annual line tightness testing, in violation of OAR 340-150-0410(3).

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

MAGNITUDE: The magnitude of the violation is 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 2 according to OAR 340-012-0145(2)(a)(C), because Respondent had one Class I violation in 2016-FC-1587.

"H" is Respondent's history of correcting prior significant actions and receives a value of -2 according to OAR 340-012-0145(3)(a), because Respondent corrected all prior violations cited as PSAs.

"O" is whether the violation was repeated or ongoing, and receives a value of 2 according to OAR 340-012-0145(4)(b) because there were more than one but less than seven occurrences of the violation. Respondent failed to conduct annual testing on two occasions between its last testing on February 9, 2021 and 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 conduct line tightness testing for two years, Respondent failed to take reasonable care to avoid a foreseeable risk that it would violate UST requirements.

"C" is Respondent's efforts to correct or mitigate the violation, and receives a value of 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 \$2,695. This is the amount Respondent gained by avoiding spending \$1,750 per year to conduct annual line tightness and leak detector testing for two years. This "EB" was calculated pursuant to OAR 340-012-0150(1) using the U.S. Environmental Protection Agency's BEN computer model.

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

$$\begin{aligned} &= \$500 + [(0.1 \times \$500) \times (2 - 2 + 2 + 4 + 2)] + \$2,695 \\ &= \$500 + (\$50 \times 8) + \$2,695 \\ &= \$500 + \$400 + \$2,695 \\ &= \$3,595 \end{aligned}$$

EXHIBIT 10

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

VIOLATION NO. 10 Failing to conduct annual operational line leak detector testing, in violation of OAR 340-150-0410(2)(c).

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

MAGNITUDE: The magnitude of the violation is 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 2 according to OAR 340-012-0145(2)(a)(C), because Respondent had one Class I violation in 2016-FC-1587.

"H" is Respondent's history of correcting prior significant actions and receives a value of -2 according to OAR 340-012-0145(3)(a), because Respondent corrected all prior violations cited as PSAs.

"O" is whether the violation was repeated or ongoing, and receives a value of 2 according to OAR 340-012-0145(4)(b) because there were more than one but less than seven occurrences of the violation. Respondent failed to conduct annual testing on two occasions between its last testing on February 9, 2021 and 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 conduct line leak detector testing for two years, Respondent failed to take reasonable care to avoid a foreseeable risk that it would violate UST requirements.

"C" is Respondent's efforts to correct or mitigate the violation, and receives a value of 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 \$0 as the costs avoided as a result of this violation are included in Exhibit No. 9.

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 (2 - 2 + 2 + 4 + 2)] + \$0
= \$500 + (\$50 x 8) + \$0
= \$500 + \$400 + \$0
= \$900

EXHIBIT 11

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

VIOLATION NO. 11 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 owner or permittee of one UST facility.

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

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

"O" is whether the violation was repeated or ongoing, and receives a value of 2 according to OAR 340-012-0145(4)(b) because there were more than one but less than seven occurrences of the violation. Respondent failed to conduct annual testing for two years since October 1, 2020.

"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 conduct annual testing of the ATG system, Respondent failed to take reasonable care to avoid a foreseeable risk that it would violate UST requirements.

"C" is Respondent's efforts to correct or mitigate the violation, and receives a value of 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 performed testing of the ATG 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 \$311. This is the amount Respondent gained by avoiding spending \$224 per year to conduct testing of the release detection system. This "EB" was calculated pursuant to OAR 340-012-0150(1) using the U.S. Environmental Protection Agency's BEN computer model.

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

$$\begin{aligned} &= \$500 + [(0.1 \times \$500) \times (2 - 2 + 2 + 4 + 2)] + \$311 \\ &= \$500 + (\$50 \times 8) + \$311 \\ &= \$500 + \$400 + \$311 \\ &= \$1,211 \end{aligned}$$

EXHIBIT 12

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

VIOLATION NO. 12 Failing to install, operate or maintain release detection equipment, leak detectors, in accordance with the manufacturer's instructions, in violation of OAR 340-150-0400(1)(c).

CLASSIFICATION: This is a Class II violation pursuant to OAR 340-012-0053(2).

MAGNITUDE: The magnitude of the violation is moderate, pursuant to OAR 340-012-0130(1), as there is no selected magnitude specified in OAR 340-012-0135 for this violation, and the information reasonably available to DEQ does not indicate a minor or major magnitude.

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

"BP" is the base penalty, which is \$250 for a Class II, moderate magnitude violation in the matrix listed in OAR 340-012-0140(5)(b)(B)(ii) and applicable pursuant to OAR 340-012-0140(5)(a)(E). Respondent is the owner or permittee of one UST facility.

"P" is whether Respondent has any prior significant actions, as defined in OAR 340-012-0030(19), in the same media as the violation at issue that occurred at a facility owned or operated by the same Respondent, and receives a value of 2 according to OAR 340-012-0145(2)(a)(C), because Respondent had one Class I violation in 2016-FC-1587.

"H" is Respondent's history of correcting prior significant actions and receives a value of -2 according to OAR 340-012-0145(3)(a), because Respondent corrected all prior violations cited as PSAs.

"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 November 18, 2021 and it was corrected prior to June 27, 2023.

"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 disconnecting the vapor return line, Respondent failed to take reasonable care to avoid a foreseeable risk that it would violate UST requirements.

"C" is Respondent's efforts to correct or mitigate the violation, and receives a value of -3 according to OAR 340-012-0145(6)(c) because Respondent made reasonable efforts to correct the violation by reconnecting the vapor return line to the leak detector prior to June 27, 2023.

"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: $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$
= \$250 + [(0.1 x \$250) x (2 - 2 + 4 + 4 - 3)] + \$0
= \$250 + (\$25 x 5) + \$0
= \$250 + \$125 + \$0
= \$375