

DEPARTMENT OF ENVIRONMENTAL QUALITY

DIVISION 12

ENFORCEMENT PROCEDURE AND CIVIL PENALTIES

340-012-0054

Air Quality Classification of Violations

(1) Class I:

- (a) Constructing a new source or modifying an existing source without first obtaining a required New Source Review/Prevention of Significant Deterioration (NSR/PSD) permit;
- (b) Operating a major source, as defined in OAR 340-200-0020, without first obtaining the required permit;
- (c) Exceeding a Plant Site Emission Limit (PSEL);
- (d) Failing to install control equipment or meet performance standards as required by New Source Performance Standards under OAR 340 division 238 or National Emission Standards for Hazardous Air Pollutant Standards under OAR 340 division 244;
- (e) Exceeding a hazardous air pollutant emission limitation;
- (f) Failing to comply with an Emergency Action Plan;
- (g) Exceeding an opacity or emission limit (including a grain loading standard) or violating an operational or process standard, that was established pursuant to New Source Review/Prevention of Significant Deterioration (NSR/PSD), or the Western Backstop SO₂ Trading Program;
- (h) Exceeding an emission limit or violating an operational or process standard that was established to limit emissions to avoid classification as a major source, as defined in OAR 340-200-0020;
- (i) Exceeding an emission limit, including a grain loading standard, by a major source, as defined in OAR 340-200-0020, when the violation was detected during a reference method stack test;
- (j) Failing to perform testing or monitoring, required by a permit, rule or order, that results in failure to show compliance with a Plant Site Emission Limit (PSEL) or with an emission limitation or a performance standard set pursuant to New Source Review/Prevention of Significant Deterioration (NSR/PSD), National Emission Standards for Hazardous Air Pollutants (NESHAP), New Source Performance Standards (NSPS), Reasonable Achievable Control Technology (RACT), Best Achievable Control Technology (BACT), Maximum Achievable Control Technology (MACT), Typically Achievable Control Technology (TACT), Lowest Achievable Emissions Rates (LAER) or adopted pursuant to section 111(d) of the Federal Clean Air Act;

- (k) Causing emissions that are a hazard to public safety;
- (l) Violating a work practice requirement for asbestos abatement projects;
- (m) Storing or accumulating friable asbestos material or asbestos-containing waste material;
- (n) Conducting an asbestos abatement project, by a person not licensed as an asbestos abatement contractor;
- (o) Violating an OAR 340 division 248 disposal requirement for asbestos-containing waste material;
- (p) Failing to hire a licensed contractor to conduct an asbestos abatement project;
- (q) Openly burning materials which are prohibited from being open burned anywhere in the state by OAR 340-264-0060(3); or
- (r) Failing to install certified vapor recovery equipment.
- (s) Delivering for sale a noncompliant vehicle by an automobile manufacturer in violation of Oregon Low Emission Vehicle rules set forth in OAR 340 division 257.
- (t) Exceeding an Oregon Low Emission Vehicle average emission limit set forth in OAR 340 division 257.
- (u) Failing to comply with Zero Emission Vehicle (ZEV) sales requirements set forth in OAR 340 division 257.
- (v) Failing to obtain a Motor Vehicle Indirect Source Permit as required in OAR 340 division 257.
- (w) Selling, leasing, or renting a noncompliant vehicle by an automobile dealer or rental car agency in violation of Oregon Low Emission Vehicle rules set forth in OAR 340 division 257.

(2) **Class II:**

- (a) Constructing or operating a source required to have an Air Contaminant Discharge Permit (ACDP) without first obtaining such permit, unless otherwise classified;
- (b) Violating the terms or conditions of a permit or license, unless otherwise classified;
- (c) Modifying a source in such a way as to require a permit modification from the department without first obtaining such approval from the department, unless otherwise classified;
- (d) Exceeding an opacity limit, unless otherwise classified;
- (e) Exceeding a Volatile Organic Compound (VOC) emission standard, operational requirement, control requirement or VOC content limitation established by OAR 340 division 232;

- (f) Failing to timely submit an ACDP annual report;
 - (g) Failing to timely submit a certification, report, or plan as required by rule or permit, unless otherwise classified;
 - (h) Failing to timely submit a permit application or permit renewal application;
 - (i) Failing to comply with the open burning requirements for commercial, construction, demolition, or industrial wastes in violation of OAR 340-264-0080 through 0180;
 - (j) Failing to comply with open burning requirements in violation of any provision of OAR 340 division 264, unless otherwise classified;
 - (k) Failing to replace, repair, or modify any worn or ineffective component or design element to ensure the vapor tight integrity and efficiency of a stage I or stage II vapor collection system;
 - (l) Failing to provide notification of an asbestos abatement project;
 - (m) Failing to perform a final air clearance test or submit an asbestos abatement project air clearance report for an asbestos abatement project; or
 - (n) Violating on road motor vehicle refinishing rules contained in OAR 340-242-0620.
 - (o) Failing to comply with an Oregon Low Emission Vehicle reporting, notification, or warranty requirement set forth in OAR division 257.
- (3) **Class III:**
- (a) Failing to perform testing or monitoring required by a permit, rule or order where missing data can be reconstructed to show compliance with standards, emission limitations or underlying requirements;
 - (b) Constructing or operating a source required to have a Basic Air Contaminant Discharge Permit without first obtaining the permit;
 - (c) Modifying a source in such a way as to require construction approval from the department without first obtaining such approval from the department, unless otherwise classified;
 - (d) Failing to provide proper notification of an asbestos abatement project or failing to revise a notification when necessary, unless otherwise classified;
 - (e) Submitting a late air clearance report that demonstrates compliance with the standards for an asbestos abatement project; or
 - (f) Failing to display a temporary label on a certified woodstove.

(g) Licensing a noncompliant vehicle by an automobile dealer or rental car agency in violation of Oregon Low Emission Vehicle rules set forth in OAR 340 division 257.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 468.020, 468A.025 & 468A.045

Stats. Implemented: ORS 468.020 & 468A.025

Hist.: DEQ 78, f. 9-6-74, ef. 9-25-74; DEQ 5-1980, f. & ef. 1-28-80; DEQ 22-1984, f. & ef. 11-8-84; DEQ 22-1988, f. & cert. ef. 9-14-88; DEQ 4-1989, f. & cert. ef. 3-14-89; DEQ 15-1990, f. & cert. ef. 3-30-90; DEQ 31-1990, f. & cert. ef. 8-15-90; DEQ 2-1992, f. & cert. ef. 1-30-92; DEQ 21-1992, f. & cert. ef. 8-11-92; DEQ 19-1993, f. & cert. ef. 11-4-93; DEQ 20-1993(Temp), f. & cert. ef. 11-4-93; DEQ 4-1994, f. & cert. ef. 3-14-94; DEQ 13-1994, f. & cert. ef. 5-19-94; DEQ 21-1994, f. & cert. ef. 10-14-94; DEQ 22-1996, f. & cert. ef. 10-22-96; DEQ 19-1998, f. & cert. ef. 10-12-98; DEQ 6-2001, f. 6-18-01, cert. ef. 7-1-01; Renumbered from 340-012-0050, DEQ 4-2005, f. 5-13-05, cert. ef. 6-1-05; DEQ 4-2006, f. 3-29-06, cert. ef. 3-31-06

340-012-0135

Selected Magnitude Categories

(1) Magnitudes for selected Air Quality violations will be determined as follows if sufficient information is reasonably available to the department to make a determination:

(a) Opacity limitation violations:

(A) Major -- Opacity measurements or readings of 20 percent opacity or more over the applicable limitation, or an opacity violation by a federal major source as defined in OAR 340-200-0020;

(B) Moderate -- Opacity measurements or readings greater than 10 percent and less than 20 percent over the applicable limitation; or

(C) Minor -- Opacity measurements or readings of 10 percent or less over the applicable limitation.

(b) Operation of a major source, as defined in OAR 340-200-0020, without first obtaining the required permit: Major -- The Best Achievable Control Technology (BACT) analysis shows need for additional controls and/or if offsets are required.

(c) Air contaminant emission limitation violations for selected air pollutants: Magnitude determinations under this subsection shall be made based upon significant emission rate amounts listed in OAR 340-200-0020 (Tables 2 and 3).

(A) Major:

(i) Exceeding the annual limit as established by permit, rule or order by more than the above amount;

(ii) Exceeding the monthly limit as established by permit, rule or order by more than ten percent of the above amount;

(iii) Exceeding the daily limit as established by permit, rule or order by more than 0.5 percent of the above amount; or

(iv) Exceeding the hourly limit as established by permit, rule or order by more than 0.1 percent of the above amount.

(B) Moderate:

(i) Exceeding the annual limit as established by permit, rule or order by an amount from 50 up to and including 100 percent of the above amount;

(ii) Exceeding the monthly limit as established by permit, rule or order by an amount from five up to and including ten percent of the above amount;

(iii) Exceeding the daily limit as established by permit, rule or order by an amount from 0.25 up to and including 0.50 percent of the above amount; or

(iv) Exceeding the hourly limit as established by permit, rule or order by an amount from 0.05 up to and including 0.10 percent of the above amount.

(C) Minor:

(i) Exceeding the annual limit as established by permit, rule or order by an amount less than 50 percent of the above amount;

(ii) Exceeding the monthly limit as established by permit, rule or order by an amount less than five percent of the above amount;

(iii) Exceeding the daily limit as established by permit, rule or order by an amount less than 0.25 percent of the above amount; or

(iv) Exceeding the hourly limit as established by permit, rule or order by an amount less than 0.05 percent of the above amount.

(d) Violations of Emergency Action Plans: Major -- Major magnitude in all cases.

(e) Violations of on road motor vehicle refinishing rules contained in OAR 340-242-0620: Minor -- Refinishing 10 or fewer on road motor vehicles per year.

(f) Asbestos violations:

(A) Major -- More than 260 lineal feet or more than 160 square feet of asbestos-containing material;

(B) Moderate -- From 40 lineal feet up to and including 260 lineal feet or from 80 square feet up to and including 160 square feet of asbestos-containing material; or

(C) Minor -- Less than 40 lineal feet or 80 square feet of asbestos-containing material.

(D) The magnitude of the asbestos violation may be increased by one level if the material was comprised of more than five percent asbestos.

(g) Open burning violations:

(A) Major -- Initiating or allowing the initiation of open burning of 20 or more cubic yards of commercial, construction, demolition and/or industrial waste; or 5 or more cubic yards of prohibited materials (inclusive of tires); or 10 or more tires;

(B) Moderate -- Initiating or allowing the initiation of open burning of 5 or more, but less than 20 cubic yards of commercial, construction, demolition and/or industrial waste; or 2 or more, but less than 5 cubic yards of prohibited materials (inclusive of tires); or 3 to 9 tires; or if the department lacks sufficient information upon which to make a determination of the type of waste, number of cubic yards or number of tires burned; or

(C) Minor -- Initiating or allowing the initiation of open burning of less than 5 cubic yards of commercial, construction, demolition and/or industrial waste; or less than 2 cubic yards of prohibited materials (inclusive of tires); or 2 or less tires.

(D) The selected magnitude may be increased one level if the department finds that one or more of the following are true, or decreased one level if the department finds that none of the following are true:

(i) The burning took place in an open burning control area;

(ii) The burning took place in an area where open burning is prohibited;

(iii) The burning took place in a non-attainment or maintenance area for PM10 or PM2.5; or

(iv) The burning took place on a day when all open burning was prohibited due to meteorological conditions.

(h) Oregon Low Emission Vehicle Non-Methane Gas (NMOG) or Green House Gas (GHG) fleet average emission limit violations:

(A) Major - Exceeding the limit by more than 10 percent; or

(B) Moderate - Exceeding the limit by 10 percent or less.

(2) Magnitudes for selected violations pertaining to Water Quality will be determined as follows if sufficient information is reasonably available to the department to make a determination:

(a) Violating wastewater discharge permit effluent limitations:

(A) Major:

(i) The dilution (D) of the spill or technology based effluent limitation exceedance was less than two, when calculated as follows: $D = ((Q_R / 4) + Q_I) / Q_I$, where Q_R is the estimated receiving stream flow and Q_I is the estimated quantity or discharge rate of the incident;

(ii) The receiving stream flow at the time of the water quality based effluent limitation (WQBEL) exceedance was at or below the flow used to calculate the WQBEL; or

(iii) The resulting water quality from the spill or discharge was as follows:

(I) For discharges of toxic pollutants: C_S/D was more than C_{Acute} , where C_S is the concentration of the discharge, D is the dilution of the discharge as determined under (2)(a)(A)(i), and C_{Acute} is the concentration for acute toxicity (as defined by the applicable water quality standard);

(II) For spills or discharges affecting temperature, when the discharge temperature is at or above 32 degrees centigrade after two seconds from the outfall; or

(III) For BOD5 discharges: $(BOD5)/D$ is more than 10, where BOD5 is the concentration of the five day Biochemical Oxygen Demand of the discharge and D is the dilution of the discharge as determined under (2)(a)(A)(i).

(B) Moderate:

(i) The dilution (D) of the spill or the technology based effluent limitation exceedance was two or more but less than 10 when calculated as follows: $D = ((Q_R / 4) + Q_I) / Q_I$, where Q_R is the estimated receiving stream flow and Q_I is the estimated quantity or discharge rate of the discharge; or

(ii) The receiving stream flow at the time of the WQBEL exceedance was greater than, but less than twice, the flow used to calculate the WQBEL.

(C) Minor:

(i) The dilution (D) of the spill or the technology based effluent limitation exceedance was 10 or more when calculated as follows: $D = ((Q_R / 4) + Q_I) / Q_I$, where Q_R is the receiving stream flow and Q_I is the quantity or discharge rate of the incident; or

(ii) The receiving stream flow at the time of the WQBEL exceedance was twice the flow or more of the flow used to calculate the WQBEL.

(b) Violating numeric water-quality standards:

(A) Major:

- (i) Increased the concentration of any pollutant except for toxics, dissolved oxygen, pH, and turbidity, by 25 percent or more of the standard;
- (ii) Decreased the dissolved oxygen concentration by two or more milligrams per liter below the standard;
- (iii) Increased the toxic pollutant concentration by any amount over the acute standard or by 100 percent or more of the chronic standard;
- (iv) Increased or decreased pH by one or more pH units from the standard; or
- (v) Increased turbidity by 50 or more nephelometric turbidity units (NTU) over background.

(B) Moderate:

- (i) Increased the concentration of any pollutant except for toxics, pH, and turbidity by more than 10 percent but less than 25 percent of the standard;
- (ii) Decreased dissolved oxygen concentration by one or more, but less than two, milligrams per liter below the standard;
- (iii) Increased the concentration of toxics pollutants by more than 10 percent but less than 100 percent of the chronic standard;
- (iv) Increased or decreased pH by more than 0.5 pH unit but less than 1.0 pH unit from the standard; or
- (v) Increased turbidity by more than 20 but less than 50 NTU over background.

(C) Minor:

- (i) Increased the concentration of any pollutant, except for toxics, pH, and turbidity, by 10 percent or less of the standard;
- (ii) Decreased the dissolved oxygen concentration by less than one milligram per liter below the standard;
- (iii) Increased the concentration of toxic pollutants by 10 percent or less of the chronic standard;
- (iv) Increased or decreased pH by 0.5 pH unit or less from the standard; or
- (v) Increased turbidity by 20 NTU or less over background.

(c) The selected magnitude under (2)(a) or (b) may be increased one level if the violation:

- (i) Occurred in a water body that is water-quality limited (listed on the most current 303(d) list) and the discharge is the same pollutant for which the water body is listed;

(ii) Depressed oxygen levels or increased turbidity and/or sedimentation in a stream in which salmonids may be rearing or spawning as indicated by the beneficial use maps available at OAR 340-041-0101 through 0340;

(iii) Violated a bacteria standard either in shell-fish growing waters or during the period from June 1 through September 30; or

(iv) Resulted in a documented fish or wildlife kill.

(3) Magnitudes for selected violations pertaining to Solid Waste will be determined as follows if sufficient information is reasonably available to the department to make a determination:

(a) Operating a solid waste disposal facility without a permit:

(A) Major -- The volume of material disposed of exceeds 400 cubic yards;

(B) Moderate -- The volume of material disposed of is greater than or equal to 40 cubic yards and less than or equal to 400 cubic yards; or

(C) Minor -- The volume of materials disposed of is less than 40 cubic yards.

(D) The magnitude of the violation may be raised by one magnitude if the material disposed of was either in the floodplain of waters of the state or within 100 feet of waters of the state.

(b) Failing to accurately report the amount of solid waste disposed:

(A) Major -- The amount of solid waste is underreported by 15 percent or more of the amount received;

(B) Moderate -- The amount of solid waste is underreported by 5 percent or more, but less than 15 percent, of the amount received; or

(C) Minor -- The amount of solid waste is underreported by less than 5 percent of the amount received.

(4) Magnitudes for selected violations pertaining to Hazardous Waste will be determined as follows if sufficient information is reasonably available to the department to make a determination:

(a) Failure to make a hazardous waste determination:

(A) Major -- Failure to make the determination on five or more waste streams;

(B) Moderate -- Failure to make the determination on three or four waste streams; or

(C) Minor -- Failure to make the determination on one or two waste streams.

(b) Hazardous Waste treatment and disposal violations OAR 340-012-0068(1)(b), (c), (h), (k), (l), (m), (p), (q) and (r):

(A) Major:

- (i) Treatment or disposal of more than 55 gallons or 330 pounds of hazardous waste; or
- (ii) Treatment or disposal of more than three gallons or 18 pounds of acutely hazardous waste.

(B) Moderate:

- (i) Treatment or disposal of 55 gallons or 330 pounds or less of hazardous waste; or
 - (ii) Treatment or disposal of three gallons or 18 pounds or less of acutely hazardous waste.
- (c) Hazardous waste management violations OAR 340-012-0068(1)(d), (e) (f), (g), (i), (j), (n), and (2)(a), (b), (d), (e), (h), (i), (k), (m), (n), (o), (p), (r) and (s):

(A) Major:

- (i) Hazardous waste management violations involving more than 1,000 gallons or 6,000 pounds of hazardous waste; or
- (ii) Hazardous waste management violations involving more than 20 gallons or 120 pounds of acutely hazardous waste.

(B) Moderate:

- (i) Hazardous waste management violations involving more than 250 gallons or 1,500 pounds, up to and including 1,000 gallons or 6,000 pounds of hazardous waste; or
- (ii) Hazardous waste management violations involving more than 5 gallons or 30 pounds, up to and including 20 gallons or 60 pounds of acutely hazardous waste.

(C) Minor:

- (i) Hazardous waste management violations involving 250 gallons or 1,500 pounds or less of hazardous waste; or
- (ii) Hazardous waste management violations involving 5 gallons or 30 pounds or less of acutely hazardous waste.

(5) Magnitudes for selected Used Oil violations (OAR 340-012-0072) will be determined as follows if sufficient information is reasonably available to the department to make a determination:

- (a) Used Oil violations OAR 340-012-0072(1)(f), (h), (i), (j); and (2)(a) through (j):

(A) Major -- Used oil management violations involving more than 1,000 gallons or 7,000 pounds of used oil or used oil mixtures;

(B) Moderate -- Used oil management violations involving more than 250 gallons or 1,750 pounds, up to and including 1,000 gallons or 7,000 pounds of used oil or used oil mixture; or

(C) Minor -- Used oil management violations involving 250 gallons or 1,750 pounds or less of used oil or used oil mixtures.

(b) Used Oil spill or disposal violations OAR 340-012-0072(1)(a) through (e), (g) and (k):

(A) Major -- A spill or disposal involving more than 420 gallons or 2,940 pounds of used oil or used oil mixtures;

(B) Moderate -- A spill or disposal involving more than 42 gallons or 294 pounds, up to and including 420 gallons or 2,940 pounds of used oil or used oil mixtures; or

(C) Minor -- A spill or disposal of used oil involving 42 gallons or 294 pounds or less of used oil or used oil mixtures.

[ED. NOTE: Tables & Publications referenced are available from the agency.]

Stat. Auth.: ORS 468.065 & 468A.045

Stats. Implemented: ORS 468.090 - 468.140 & 468A.060

Hist.: DEQ 21-1992, f. & cert. ef. 8-11-92; DEQ 4-1994, f. & cert. ef. 3-14-94; DEQ 19-1998, f. & cert. ef. 10-12-98; DEQ 1-2003, f. & cert. ef. 1-31-03; Renumbered from 340-012-0090, DEQ 4-2005, f. 5-13-05, cert. ef. 6-1-05; DEQ 4-2006, f. 3-29-06, cert. ef. 3-31-06

340-012-0140

Determination of Base Penalty

(1) Except for Class III violations and for penalties assessed under OAR 340-012-0155, the base penalty (BP) is determined by applying the type, class and magnitude of the violation to the matrices set forth in this section. For Class III violations, no magnitude determination is required.

(2) \$8,000 Penalty Matrix:

(a) The \$8,000 penalty matrix applies to the following:

(A) Any violation of an air quality statute, rule, permit or related order committed by a person that has or should have a Title V permit or an Air Contaminant Discharge Permit (ACDP) issued pursuant to New Source Review (NSR) regulations or Prevention of Significant Deterioration (PSD) regulations, or section 112(g) of the federal Clean Air Act.

(B) Open burning violations as follows:

(i) Any violation of an open burning statute, rule, permit or related order committed by a permitted industrial facility.

(ii) Any violation of OAR 340-264-0060(3) in which 25 or more cubic yards of prohibited materials or more than 15 tires are burned, except when committed by a residential owner-occupant.

(C) Any violation of the Oregon Low Emission Vehicle rules (OAR 340-257) by an automobile manufacturer.

(D) Any violation of 468B.025(1)(a) or (1)(b), or of ORS 468B.050(1)(a) by a person without an National Pollutant Discharge Elimination System (NPDES) permit.

(E) Any violation of a water quality statute, rule, permit or related order by:

(i) A person that has a NPDES permit, or that has or should have a Water Pollution Control Facility (WPCF) permit, for a municipal or private utility sewage treatment facility with a permitted flow of five million or more gallons per day.

(ii) A person that has a major industrial source NPDES permit.

(iii) A person that has a population of 100,000 or more, as determined by the most recent national census, and either has or should have a WPCF Municipal Stormwater Underground Injection Control (UIC) System Permit, or has a NPDES Municipal Separated Storm Sewer Systems (MS4) Stormwater Discharge Permit.

(iv) A person that has or should have a WPCF permit for a major vegetable or fruit processing facility, for a major mining operation involving over 500,000 cubic yards per year, or for any mining operation using chemical leaching or froth flotation.

(v) A person that installs or operates a prohibited Class I, II, III, IV or V UIC system, except for a cesspool.

(F) Any violation of an underground storage tanks statute, rule, permit or related order committed by the owner, operator or permittee of 10 or more UST facilities or a person who is licensed or should be licensed by the department to perform tank services.

(G) Any violation of a heating oil tank statute, rule, permit, license or related order committed by a person who is licensed or should be licensed by the department to perform heating oil tank services.

(H) Any violation of ORS 468B.485, or related rules or orders regarding financial assurance for ships transporting hazardous materials or oil.

(I) Any violation of a used oil statute, rule, permit or related order committed by a person who is a used oil transporter, transfer facility, processor or re-refiner, off-specification used oil burner or used oil marketer.

(J) Any violation of a hazardous waste statute, rule, permit or related order by:

- (i) A person that is a large quantity generator or hazardous waste transporter.
- (ii) A person that has or should have a treatment, storage or disposal facility permit.
- (K) Any violation of an oil and hazardous material spill and release statute, rule, or related order.
- (L) Any violation of a polychlorinated biphenyls (PCBs) management and disposal statute, rule, permit or related order.
- (M) Any violation of ORS Chapter 465, UST or environmental cleanup statute, rule, related order or related agreement.
- (N) Unless specifically listed under another penalty matrix, any violation of ORS Chapter 459 or any violation of a solid waste statute, rule, permit, or related order committed by:
 - (i) A person that has or should have a solid waste disposal permit.
 - (ii) A person with a population of 25,000 or more, as determined by the most recent national census.
- (b) The base penalty values for the \$8,000 penalty matrix are as follows:
 - (A) Class I:
 - (i) Major -- \$8000;
 - (ii) Moderate -- \$4000;
 - (iii) Minor -- \$2000.
 - (B) Class II:
 - (i) Major -- \$4000;
 - (ii) Moderate -- \$2000;
 - (iii) Minor -- \$1000.
 - (C) Class III: \$750.
- (3) \$6,000 Penalty Matrix:
 - (a) The \$6,000 penalty matrix applies to the following:
 - (A) Any violation of an air quality statute, rule, permit or related order committed by a person that has or should have an ACDP permit, except for NSR, PSD and Basic ACDP permits.

(B) Any violation of an asbestos statute, rule, permit or related order except those violations listed in section (5) of this rule.

(C) Any violation of a vehicle inspection program statute, rule, permit or related order committed by an auto repair facility.

(D) Any violation of the Oregon Low Emission Vehicle rules (OAR 340-257) by an automobile dealer or an automobile rental agency.

(E) Any violation of a water quality statute, rule, permit or related order committed by:

(i) A person that has a NPDES Permit, or that has or should have a WPCF Permit, for a municipal or private utility sewage treatment facility with a permitted flow of two million or more, but less than five million, gallons per day.

(ii) A person that has a minor industrial source NPDES Permit, or has or should have a WPCF Permit, for an industrial source.

(iii) A person that has or should have applied for coverage under an NPDES or a WPCF General Permit, except an NPDES Stormwater Discharge 1200-C General Permit for a construction site of one acre or more, but less than five acres in size and except for an NPDES 700-PM General Permit for suction dredges.

(iv) A person that has a population of less than 100,000 but more than 10,000, as determined by the most recent national census, and has or should have a WPCF Municipal Stormwater UIC System Permit or has an NPDES MS4 Stormwater Discharge Permit.

(v) A person that has or should have a WPCF permit for a mining operation involving from 100,000 up to 500,000 cubic yards other than those operations using chemical leachate or froth flotation.

(vi) A person that owns, and that has or should have registered, a UIC system that disposes of wastewater other than stormwater or sewage.

(F) Any violation of an UST statute, rule, permit or related order committed by a person who is the owner, operator or permittee of five to nine UST facilities.

(G) Unless specifically listed under another penalty matrix, any violation of ORS Chapter 459 or other solid waste statute, rule, permit, or related order committed by:

(i) A person that has or should have a waste tire permit; or

(ii) A person with a population of more than 5,000 but less than or equal to 25,000, as determined by the most recent national census.

(H) Any violation of a hazardous waste management statute, rule, permit or related order committed by a person that is a small quantity generator.

(b) The base penalty values for the \$6,000 penalty matrix are as follows:

(A) Class I:

(i) Major -- \$6,000.

(ii) Moderate -- \$3,000.

(iii) Minor -- \$1,500.

(B) Class II:

(i) Major -- \$3,000.

(ii) Moderate -- \$1,500.

(iii) Minor -- \$750.

(C) Class III: \$500.

(4) \$2,500 Penalty Matrix:

(a) The \$2,500 penalty matrix applies to the following:

(A) Any violation of any statute, rule, permit, license, or order committed by a person not listed under another penalty matrix.

(B) Any violation of an air quality statute, rule, permit or related order committed by a person not listed under another penalty matrix.

(C) Any violation of OAR 340-264-0060(3) in which 25 or more cubic yards of prohibited materials or more than 15 tires are burned by a residential owner-occupant.

(D) Any violation of a vehicle inspection program statute, rule, permit or related order committed by a natural person, except for those violations listed in section (5) of this rule.

(E) Any violation of a water quality statute, rule, permit, license or related order not listed under another penalty matrix and committed by:

(i) A person that has an NPDES permit, or has or should have a WPCF permit, for a municipal or private utility wastewater treatment facility with a permitted flow of less than two million gallons per day.

(ii) A person that has or should have applied for coverage under an NPDES Stormwater Discharge 1200-C General Permit for a construction site that is more than one, but less than five acres.

(iii) A person that has a population of 10,000 or less, as determined by the most recent national census, and either has an NPDES MS4 Stormwater Discharge Permit or has or should have a WPCF Municipal Stormwater UIC System Permit.

(iv) A person who is licensed to perform onsite sewage disposal services or who has performed sewage disposal services.

(v) A person, except for a residential owner-occupant, that owns and either has or should have registered a UIC system that disposes of stormwater or sewage.

(vi) A person that has or should have a WPCF individual stormwater UIC system permit.

(F) Any violation of an onsite sewage disposal statute, rule, permit or related order, except for a violation committed by the residential owner-occupant.

(G) Any violation of an UST statute, rule, permit or related order if the person is the owner, operator or permittee of two to four UST facilities.

(H) Any violation, except a violation related to a spill or release, of a used oil statute, rule, permit or related order committed by a person that is a used oil generator.

(I) Unless listed under another penalty matrix, any violation of a hazardous waste management statute, rule, permit or related order committed by a person that is a conditionally exempt generator if the violation does not impact the person's generator status.

(J) Any violation of ORS Chapter 459 or other solid waste statute, rule, permit, or related order committed by a person with a population less than 5,000, as determined by the most recent national census.

(K) Any violation of the labeling requirements of ORS 459A.675 through 459A.685.

(L) Any violation of rigid pesticide container disposal requirements by a conditionally exempt generator of hazardous waste.

(b) The base penalty values for the \$2,500 penalty matrix are as follows:

(A) Class I:

(i) Major -- \$2500;

(ii) Moderate -- \$1250;

(iii) Minor -- \$625.

(B) Class II:

(i) Major -- \$1250;

(ii) Moderate -- \$625;

(iii) Minor -- \$300.

(C) Class III: \$200.

(5) \$1,000 Penalty Matrix:

(a) The \$1,000 penalty matrix applies to the following:

(A) Any violation of an open burning statute, rule, permit or related order committed by a residential owner-occupant at the residence, not listed under another penalty matrix.

(B) Any violation of visible emissions standards by operation of a vehicle.

(C) Any violation of an asbestos statute, rule, permit or related order committed by a residential owner-occupant.

(D) Any violation of an onsite sewage disposal statute, rule, permit or related order of OAR chapter 340, division 44 committed by a residential owner-occupant.

(E) Any violation of an UST statute, rule, permit or related order committed by a person who is the owner, operator or permittee of one UST facility.

(F) Any violation of an HOT statute, rule, permit or related order not listed under another penalty matrix.

(G) Any violation of a dry cleaning facility statute, rule, permit or related order.

(H) Any violation of a statute, rule, permit or order relating to rigid plastic containers, except for violation of the labeling requirements under OAR 459A.675 through 459A.685.

(I) Any violation of a statute, rule or order relating to the opportunity to recycle.

(J) Any violation of a statute, rule, permit or order relating to woodstoves, except a violation related to the sale of new or used woodstoves.

(K) Any violation of an UIC system statute, rule, permit or related order by a residential owner-occupant, when the UIC disposes of stormwater or sewage.

(L) Any violation by a person that has or should have applied for coverage under an NPDES 700-PM General Permit for Suction Dredges.

(b) The base penalty values for the \$1,000 penalty matrix are as follows:

(A) Class I:

(i) Major -- \$1000;

(ii) Moderate -- \$500;

(iii) Minor -- \$250.

(B) Class II:

(i) Major -- \$500;

(ii) Moderate -- \$250;

(iii) Minor -- \$125.

(C) Class III: \$100.

Stat. Auth.: ORS 468.020 & 468.090 - 468.140

Stats. Implemented: ORS 459.995, 459A.655, 459A.660, 459A.685 & 468.035

Hist.: DEQ 4-1989, f. & cert. ef. 3-14-89; DEQ 15-1990, f. & cert. ef. 3-30-90; DEQ 33-1990, f. & cert. ef. 8-15-90; DEQ 21-1992, f. & cert. ef. 8-11-92; DEQ 4-1994, f. & cert. ef. 3-14-94; DEQ 9-1996, f. & cert. ef. 7-10-96; DEQ 19-1998, f. & cert. ef. 10-12-98; DEQ 6-2001, f. 6-18-01, cert. ef. 7-1-01;

Renumbered from 340-012-0042, DEQ 4-2005, f. 5-13-05, cert. ef. 6-1-05; DEQ 4-2006, f. 3-29-06, cert. ef. 3-31-06