

**From:** [ROOT Jenny](#)  
**To:** [ROOT Jenny](#)  
**Subject:** FW: Division 12 revisions  
**Date:** Monday, January 13, 2014 10:33:20 AM

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**From:** WESTBROOK Esther  
**Sent:** Tuesday, March 19, 2013 1:17 PM  
**To:** GILLES Bruce A  
**Subject:** RE: Division 12 revisions

That's a great idea, but unfortunately I'm going to be out all of next week.

*Esther L. Westbrook, J.D.*  
Environmental Law Specialist  
DEQ Office of Compliance and Enforcement  
Tel: 503-229-5374


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**From:** GILLES Bruce A  
**Sent:** Tuesday, March 19, 2013 12:36 PM  
**To:** WESTBROOK Esther  
**Subject:** RE: Division 12 revisions

Esther,  
Please let me know if you can attend the next spills PMT scheduled next Tuesday from 9-11.  
Would be a good way to consolidate comments and move this forward.

*Bruce Gilles, Manager*  
*Cleanup and Emergency Response Program*  
*Oregon Department of Environmental Quality*  
*811 SW Sixth Avenue*  
*Portland, OR 97204*

*Phone: (503) 229-6391*  
*Cell: (971) 246-2300*

 Is it necessary to print this e-mail?

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**From:** WESTBROOK Esther  
**Sent:** Tuesday, March 19, 2013 11:47 AM  
**To:** GILLES Bruce A; MONROE Sheila; JOHNSON Keith; BELYEY David  
**Cc:** CARLOUGH Les  
**Subject:** Division 12 revisions

Hi all,

Here is the latest draft of the Division 12 enforcement rules. The primary changes that relate to

ER/spills are the following:

1. All spills violations used to be on the highest matrix, the \$8K. We have split up the penalties according to type of violator and spread them over 3 matrices: the \$12K (the new highest), the \$8K and the \$3K. See OAR 340-012-0140(2)(a)(N), -0140(3)(a)(K) and -0140(4)(a)(J).
2. Special/alternate penalties – OAR 340-012-0155
  - a. (1)(a) – increased maximum penalties to be closer to new maximums authorized by statute. This rule applies to other violations of Oregon law that cause extensive environmental damage and are caused intentionally, recklessly or flagrantly.
  - b. (1)(b) – increased maximums to \$100K for intentional or negligent discharge of oil or hazardous materials into waters of the state and failure to clean up. This special penalty is typically used in more serious spills cases, i.e. high mental state and big environmental impact. We created new factors for increasing penalties for violations to incorporate heightened mental state, materials that are more hazardous, very large volume, and impact on sensitive environments. The factors are applied to create a new multiplier for the applicable base penalty. These are based on suggestions and discussions with the spills penalties advisory committee.
3. DEQ discretion re. penalties - OAR 340-012-0160(3)
  - a. For spills into waters of the state, we added the ability for DEQ to give respondents credit (10% reduction in penalty) for exceeding DEQ regulations re. spill preparation and taking all reasonably expected precautions to prevent and be prepared for spill response. This was also based on advisory committee feedback.

Please take a look at the attached rules and let me know if you have any comments or questions on the matrix assignments or any of the other changes by COB on Wednesday, April 3. Thanks!

*Esther L. Westbrook, J.D.*

Environmental Law Specialist

DEQ Office of Compliance and Enforcement

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