



# Oregon

Kate Brown, 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

January 11, 2019

CERTIFIED MAIL: 7016 3010 0000 6028 6633

TDY Industries, LLC  
dba ATI Wah Chang  
c/o CT Corporation System  
780 Commercial St SE Ste 100  
Salem, OR 97301

Re: Notice of Civil Penalty Assessment and Order  
Case No. LQ/HW-WR-2018-216

This letter is to inform you that the Oregon Department of Environmental Quality (DEQ) has issued you a civil penalty of \$6,300 for failing to do a complete and accurate hazardous waste determination on waste that caught fire at your business in Albany in August of 2018.

DEQ issued this penalty because accurate hazardous waste determinations are essential to legal and safe management of hazardous wastes. The wastes generated from the zirconium reduction process at your facility have the potential to be ignitable and reactive, and have been at issue in previous violations and civil penalties at this facility and other locations where they have been stored and disposed.

DEQ appreciates your efforts to review your waste characterization procedures in order to prevent the violation from recurring in the future, and DEQ considered these efforts when determining the amount of civil penalty.

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.state.or.us](mailto:DEQappeals@deq.state.or.us)

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

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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 Sarah Wheeler at 503-229-6927 or toll free in Oregon at 800-452-4011, extension 6927.

Sincerely,



Kieran O'Donnell, Manager  
Office of Compliance and Enforcement

Enclosures

cc: Dan Lobato, DEQ, Eugene  
Brian Fuller, DEQ, Eugene  
Julie Cheney, DEQ, Accounting  
Geoff Tichenor, [gbtichenor@stoel.com](mailto:gbtichenor@stoel.com)

BEFORE THE ENVIRONMENTAL QUALITY COMMISSION  
OF THE STATE OF OREGON

IN THE MATTER OF: ) NOTICE OF CIVIL PENALTY  
TDY INDUSTRIES, LLC, dba ) ASSESSMENT AND ORDER  
ATI WAH CHANG, )  
Respondent. ) CASE NO. LQ/HW-WR-2018-216

## I. AUTHORITY

The Department of Environmental Quality (DEQ) issues this Notice of Civil Penalty Assessment and Order (Notice) pursuant to Oregon Revised Statutes (ORS) 468.100, ORS 468.126 through 468.140, ORS 466.190 and 466.990, ORS Chapter 183 and Oregon Administrative Rules (OAR) Chapter 340, Divisions 011, 012, and 100-102.

## II. FINDINGS OF FACT

1. Respondent operates a manufacturing business known as ATI Millersburg at 1600 Old Salem Road in Albany, Oregon (the Facility).

2. Every year since at least 1992, Respondent has reported annually to DEQ that the Facility is a large-quantity generator of hazardous waste.

3. Respondent generated more than 2,200 pounds of hazardous waste at the Facility on a monthly basis in 2018.

4. On and about August 28, 2018, Respondent stored approximately 20-30 cubic yards of comingled waste from Respondent's zirconium reduction process in two piles on an outdoor asphalt pad (the SLEP pad) at the Facility. The comingled waste from the process included burnt oxide, crucible scale and floor sweepings from the crucible and distillation furnaces, and contained magnesium and zirconium particles.

5. It rained the night of August 27, 2018. Zirconium and magnesium fines are potentially reactive and ignitable when wet. On August 28, Respondent's employee or agent used an excavator to move some of the waste on the SLEP pad. During the movement of the waste piles, hydrogen gas that had accumulated within an approximately one cubic yard pile of the waste, reacted and started the waste on fire.

1           6. On and before August 28, 2018, Respondent managed the waste on the SLEP pad as  
2 non-hazardous waste.

### III. CONCLUSIONS

4            Respondent violated OAR 340-102-0011(2) by failing to accurately determine if Respondent's  
5 residues (as defined in OAR 340-100-0010(2)(ee) and 40 CFR 261.2 as adopted by OAR 340-100-  
6 0002) were hazardous waste. Specifically, Respondent failed to accurately characterize waste generated  
7 from the zirconium reduction process that was stored on the SLEP pad on August 28, 2018. That waste  
8 was an ignitable hazardous waste pursuant to 40 CFR 261.21(a)(2) and (b), and identified by  
9 Environmental Protection Agency (EPA) Hazardous Waste Number D001. This is a Class I violation,  
10 according to OAR 340-012-0068(1)(a). DEQ hereby assesses a \$6,300 civil penalty for this violation.

#### IV. ORDER TO PAY CIVIL PENALTY

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

14 Pay a total civil penalty of \$6,300. The determination of the civil penalty is attached as Exhibit 1  
15 and is incorporated as part of this Notice.

If you do not file a request for hearing as set forth in Section V below, your check or money order must be made payable to "**State Treasurer, State of Oregon**" and sent to the **DEQ, Business Office, 700 NE Multnomah Street, Suite 600, Portland, Oregon 97232**. Once you pay the penalty, the Notice becomes final.

V. NOTICE OF RIGHT TO REQUEST A CONTESTED CASE HEARING

You have a right to a contested case hearing on this Notice, if you request one in writing. DEQ must receive your request for hearing **within 20 calendar days** from the date you receive this Notice. If you have any affirmative defenses or wish to dispute any allegations of fact in this Notice or attached exhibit, you must do so in your request for hearing, as factual matters not denied will be considered admitted, and failure to raise a defense will be a waiver of the defense. (See OAR 340-011-0530 for further information about requests for hearing.) You must send your request to: **DEQ, Office of Compliance and Enforcement, 700 NE Multnomah Street, Suite 600, Portland, Oregon 97232**, fax

1 it to **503-229-5100** or email it to **[DEQappeals@deq.state.or.us](mailto:DEQappeals@deq.state.or.us)**. An administrative law judge  
2 employed by the Office of Administrative Hearings will conduct the hearing, according to ORS  
3 Chapter 183, OAR Chapter 340, Division 011 and OAR 137-003-0501 to 0700. You have a right to be  
4 represented by an attorney at the hearing, however you are not required to be. If you are an individual,  
5 you may represent yourself. If you are a corporation, partnership, limited liability company,  
6 unincorporated association, trust or government body, you must be represented by an attorney or a duly  
7 authorized representative, as set forth in OAR 137-003-0555.

8       Active duty service-members have a right to stay proceedings under the federal Service  
9 Members Civil Relief Act. For more information, please call the Oregon State Bar at 1-800-  
10 452-8260 or the Oregon Military Department at 1-800-452-7500. Additional information can be found  
11 online at the United States Armed Forces Legal Assistance (AFLA) Legal Services Locator website  
12 <http://legalassistance.law.af.mil/content/locator.php>.

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

19  
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22       11/11/19  
23 Date

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Kieran O'Donnell, Manager  
Office of Compliance and Enforcement

## EXHIBIT 1

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

- VIOLATION 1: Failing to accurately determine if Respondent's residues (as defined in OAR 340-100-0010(2)(ee) and 40 CFR 261.2 as adopted by OAR 340-100-0002) were hazardous waste, in violation of OAR 340-102-0011(2).
- CLASSIFICATION: This is a Class I violation pursuant to OAR 340-012-0068(1)(a).
- MAGNITUDE: The magnitude of the violation is minor pursuant to OAR 340-012-0135(4)(a)(C) because Respondent failed to make a hazardous waste determination on one waste stream.
- 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 \$3,000 for a Class I, minor magnitude violation in the matrix listed in OAR 340-012-0140(2)(b)(A)(iii) and applicable pursuant to OAR 340-012-0140(2)(a)(M)(i) because Respondent is a large quantity generator of hazardous waste and violated a hazardous waste rule.
- "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 8 according to OAR 340-012-0145(2)(a)(C) and (D), because Respondent had three Class I and three Class II violations in case number LQ/HW-WR-14-060, issued August 18, 2014, and three Class I violations in case number LQ/HW-WR-12-144, issued May 19, 2016.
- "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 insufficient information on which to base a finding under paragraphs (3)(a) or (b).
- "O" is whether the violation was repeated or ongoing and receives a value of 0 according to OAR 340-012-0145(4)(a), because there was one occurrence of the violation. Respondent failed to make a hazardous waste determination on or before at least August 28, 2018.
- "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 in failing to ensure procedures to accurately characterize all sources of waste prior to storing them on the asphalt pad was negligent. By failing to accurately determine that wastes containing zirconium fines were hazardous, when Respondent has many years of prior experience with the potential ignitability and reactivity of this waste, Respondent did not take reasonable care to prevent the foreseeable risk of committing this violation.

- "C" is Respondent's efforts to correct or mitigate the violation and receives a value of -1 according to OAR 340-012-0145(6)(e), because Respondent made reasonable efforts to ensure the violation would not be repeated. Respondent characterized the remaining wastes on the asphalt pad and conducted an evaluation of Respondent's waste characterization methods.
- "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 DEQ has insufficient information on which to base an estimate of more than a de minimus economic benefit for this violation.

PENALTY CALCULATION: Penalty = BP + [(0.1 x BP) x (P + H + O + M + C)] + EB  
= \$3,000 + [(0.1 x \$3,000) x (8 + 0 + 0 + 4 - 1)] + \$0  
= \$3,000 [\$300 x (11)] + \$0  
= \$3,000 + \$3,300 + \$0  
= \$6,300