



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 25, 2019

CERTIFIED MAIL: 7016 0750 0000 3470 3418

Safety-Kleen Systems, Inc.
c/o CT Corporation System, Registered Agent
780 Commercial St., Suite 100
Salem, OR 97301

Re: Notice of Civil Penalty Assessment and Order
Case No. LQ/HW-NWR-2018-049

This letter is to inform you that the Oregon Department of Environmental Quality (DEQ) has issued you a civil penalty of \$260,900 for violations of hazardous waste, asbestos, and solid waste law at your facility in Clackamas, Oregon. These violations include failure to comply with rules regulating your activities as a hazardous waste storage facility, generator and transporter.

Improper management of hazardous wastes threatens human health and the environment. To protect against such threats, the legislature has enacted statutes and DEQ has adopted rules establishing strict requirements for the accumulation, storage, handling, transport, treatment, and disposal of hazardous wastes. The legislature imposes financial assurance requirements to ensure that those who profit by providing hazardous waste management services bear the costs for addressing any harm their operations may pose or cause to human health and the environment. Your failure to comply with hazardous waste rules increases the risk that human health or the environment could be harmed by mismanagement of hazardous waste.

Included in Section IV of the attached Notice of Civil Penalty Assessment and Order (the Notice) is an order requiring you to correct deficiencies in the closure and hazard liability financial assurance requirements applicable to your hazardous waste storage facility. In addition, the order requires you to undertake action to determine whether the facility's hazardous waste storage tank is subject to vapor monitoring requirements and to perform monitoring activities until this work is completed.

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

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 Jeff Bachman at 503-229-5950 or toll free in Oregon at 800-452-4011, extension 5950.

Sincerely,



Kieran O'Donnell, Manager
Office of Compliance and Enforcement

Enclosures

cc: Heather Kuoppamaki, Northwest Region, DEQ
Jay Collins, Northwest Region, DEQ
Zebuliah Bates, Northwest Region, DEQ
Audrey O'Brien, Northwest Region, DEQ
Julie Cheney, Accounting, DEQ

1 6. 40 CFR 264.143(e)(1) states: “An owner or operator may satisfy the requirements
2 of this section by obtaining post-closure insurance which conforms to the requirements of this
3 paragraph and submitting a certificate of such insurance to the Regional Administrator.”

4 7. During the relevant times, Respondent obtained from Indian Harbor Insurance Company
5 annual post closure insurance policies (the Closure Policies) for the facility. The term of these policies
6 was from November 17 to November 17 of the following year for the following years 2014-15, 2015-
7 2016, 2016-2017, 2017-18 and 2018-2019.

8 8. 40 CFR 264.143(e)(8) states: “The policy must provide that the insurer may not cancel,
9 terminate, or fail to renew the policy except for failure to pay the premium.”

10 9. Respondent’s Closure Policies allow for the voiding of the policies by the insurer for
11 reasons other than failure to pay the premium.

12 10. 40 CFR 264.143(e)(8) further states: “The automatic renewal of the policy must, at a
13 minimum, provide the insured with the option of renewal at the face amount of the expiring policy.”

14 11. Respondent’s Closure Policies contain no language allowing Respondent to renew at the
15 face amount of the expiring policy.

16 12. 40 CFR 264.143(e)(8) further states: “Cancellation, termination, or failure to renew may
17 not occur and the policy will remain in full force and effect in the event that on or before the date of
18 expiration: (i) The Regional Administrator deems the facility abandoned; or (ii) The permit is
19 terminated or revoked or a new permit is denied; or (iii) Closure is ordered by the Regional
20 Administrator or a U.S. district court or other court of competent jurisdiction.”

21 13. Respondent’s Closure Policies do not contain the limits on cancellation, termination or
22 failure to renew enumerated in Paragraph 12 above.

23 14. 40 CFR 264.143(e)(3) states: “The closure insurance policy must be issued for a face
24 amount at least equal to the current closure cost estimate.”

25 15. The Closure Policies closure cost estimate for Respondent’s facility were calculated the
26 prior January, 10 months prior to each policy’s issuance in November.

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1 16. 40 CFR 264.147(a) states: “*Coverage for sudden accidental occurrences.* An owner or
2 operator of a hazardous waste treatment, storage, or disposal facility, or a group of such facilities, must
3 demonstrate financial responsibility for bodily injury and property damage to third parties caused by
4 sudden accidental occurrences arising from operations of the facility or group of facilities.”

5 17. 40 CFR 264.147(a)(1) states: “An owner or operator may demonstrate the required
6 liability coverage by having liability insurance as specified in this paragraph.”

7 18. During the relevant times, Respondent obtained from Indian Harbor Insurance Company
8 an annual pollution and remediation liability policy (the Liability Policies) for the facility for the
9 following periods, September 1, 2013 to November 1, 2014, and November 1 to November 1, 2014-15,
10 2015-16, 2016-17, 2017-18 and 2018-19.

11 19. Respondent’s Liability Policies do not cover “sudden accidental occurrences.”

12 20. 40 CFR 264.147(a) further states: “The owner or operator must have and maintain
13 liability coverage for sudden accidental occurrences in the amount of at least \$1 million per occurrence
14 with an annual aggregate of at least \$2 million, exclusive of legal defense costs.”

15 21. Respondent’s Liability Policies do not exclude legal defense costs from coverage.

16 22. 40 CFR 260.10 states: “‘*Incompatible waste*’ means a hazardous waste which is
17 unsuitable for: ... (2) Commingling with another waste or material under uncontrolled conditions
18 because the commingling might produce heat or pressure, fire or explosion, violent reaction, toxic
19 dusts, mists, fumes, or gases, or flammable fumes or gases.”

20 23. 40 CFR 264.177(c) states: “A storage container holding a hazardous waste that is
21 incompatible with any waste or other materials stored nearby in other containers, piles, open
22 tanks, or surface impoundments must be separated from the other materials or protected from them by
23 means of a dike, berm, wall, or other device.”

24 24. Section III.A.(10) of the Permit states that “A storage container holding a hazardous
25 waste that is incompatible with any waste or other materials stored nearby in other containers must be
26 separated from the other materials or protected from them by means of a dike, berm, wall, or other
27 device.”

1 25. On August 1, 2017, Respondent stored containers of wastes identified by Respondent as
2 incompatible in its Facility's storage area where the only separation of the incompatible wastes in the
3 event of leaks or spills was by an absorbent boom inadequate to prevent mixing of the wastes which, in
4 the event of release, would flow downslope to a central containment sump where they would react.

5 26. At all relevant times, Respondent generated at least 2,200 pounds of non-acute
6 hazardous waste per month at the Facility.

7 27. OAR 340-102-0011(2) states: "A person who generates a residue as defined in OAR
8 340-100-0010 must determine if that residue is a hazardous waste."

9 28. On August 1, 2017, DEQ inspectors observed at Respondent's Facility a container
10 holding approximately 225 gallons of wastewater generated and identified as non-hazardous by
11 Respondent when it was washed out of the tanker of a tanker truck.

12 29. At DEQ's request, Respondent later conducted laboratory analysis of the wastewater and
13 determined it to be a USEPA Hazardous Waste Code D001 ignitability characteristic hazardous waste
14 pursuant to 40 CFR 261.21.

15 30. 40 CFR 262.34(a)(3) states that a hazardous waste generator may not accumulate
16 hazardous waste on site unless "each container and tank is labeled or marked clearly with the words
17 'Hazardous
18 Waste.'"

19 31. On August 1, 2017, the container of D001 hazardous wastewater described in Paragraph
20 28, above, was not labeled with the words "Hazardous Waste."

21 32. 40 CFR 262.34(a)(2) states that a hazardous waste generator may not accumulate
22 hazardous waste on site unless: "The date upon which each period of accumulation begins is clearly
23 marked and visible for inspection on each container."

24 33. On August 1, 2017, the container of D001 hazardous wastewater described in Paragraph
25 28, above, was not marked with the date accumulation of waste in the container began.

26 34. At all relevant times, Respondent was registered as a hazardous waste transporter.

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35. 40 CFR 262.20(a) states: “A transporter may not accept hazardous waste from a generator unless it is accompanied by a manifest signed in accordance with the provisions of 40 CFR 262.20.”

36. Respondent accepted hazardous waste for transport without an accompanying manifest as follows:

Date	Generator	Waste	Quantity
01/30/18	Owens-Brockway Glass Container, Inc.	D006 (cadmium toxicity), D007 (chromium toxicity) and D008 (lead toxicity)	55 g (gallons)
01/19/16	Carry-On Trailer, Inc.	D018 (benzene toxicity), D022 (chloroform toxicity), D035 (methyl ethyl ketone toxicity), D039 (tetrachloroethylene toxicity), D001, F003 (listed spent solvents) and F005 (listed spent solvents).	70 g
03/21/16	Carry-On Trailer, Inc.	D0018, D022, D035, D039, D001, F003 and F005.	180 g
06/24/16	Carry-On Trailer, Inc.	D0018, D022, D035, D039, D001, F003 and F005.	120 g
10/10/16	Carry-On Trailer, Inc.	D0018, D022, D035, D039, D001, F003 and F005.	125 g
12/19/16	Carry-On Trailer, Inc.	D0018, D022, D035, D039, D001, F003 and F005.	180 g
01/05/16	Allflight Corporation	D001	5 g
02/02/16	Allflight Corporation	D001	5 g
03/01/16	Allflight Corporation	D001	5 g
03/29/16	Allflight Corporation	D001	5 g
04/08/16	Allflight Corporation	D001	5 g
04/26/16	Allflight Corporation	D001	5 g
05/24/16	Allflight Corporation	D001	5 g
06/22/16	Allflight Corporation	D001	5 g
07/19/16	Allflight Corporation	D001	5 g
08/16/16	Allflight Corporation	D001	5 g
09/13/16	Allflight Corporation	D001	5 g
10/11/16	Allflight Corporation	D001	5 g
11/10/16	Allflight Corporation	D001	5 g
01/04/17	Allflight Corporation	D001	5 g

37. Between March 5, 2015 and October 18, 2017, Respondent accepted for transport 13 shipments of hazardous wastes generated in painting operations, including D001, D006, D007, D008, F003, F005 wastes from JRJ Construction LLC as follows:

Shipment Number	Shipment Date	Manifest Number	Amount of Paint Waste (Gallons)	Generator Information on Manifest	Hazardous Waste Codes on Manifest
1	3/5/2015	009455454JJK	165	EPA ID ORQ000018069	None
2	10/2/2015	013987746JJK	110	EPA ID ORQ000018069	None
3	12/30/2015	004855070SKS	220	CESQG	None
4	5/31/2016	004855303SKS	165	CESQG	None
5	10/6/2016	004855455SKS	165	CESQG	None
6	1/23/2017	005526046SKS	165	CESQG	None
7	3/27/2017	005526095SKS	110	CESQG	None
8	4/21/2017	005526115SKS	165	CESQG	None
9	5/2/2017	005526133SKS	165	CESQG	None
10	6/7/2017	005526158SKS	165	CESQG	None
11	7/14/2017	005526185SKS	165	EPA ID ORQ000018069	D001, D006, D007, D008, F003, F005
12	9/20/2017	005526227SKS	550	EPA ID ORQ000018069	D001, D006, D007, D008, F003, F005
13	10/18/2017	005526256SKS	660	EPA ID ORQ000018069	D001, D006, D007, D008, F003, F005
Total			2,970		

38. At all relevant times, JRJ Construction LLC generated more than 220 but less than 2,200 pounds of hazardous waste per month.

39. 40 CFR 262.20(a)(1) requires that a uniform hazardous waste manifest be prepared according to the instructions in the appendix to 40 CFR Part 262.

40. The appendix to 40 CFR Part 262 requires the generator's U.S. EPA Identification Number (Item 1) and applicable federal and state waste codes (Item 13) be included on hazardous waste manifests.

41. The hazardous waste manifests for JRJ Construction shipments Nos. 3-10, described in Paragraph 37 above, did not include JRJ Construction's U.S. EPA Identification Number.

42. The hazardous waste manifests for JRJ Construction shipments Nos. 1-10, described in Paragraph 37 above, did not include any waste codes.

1 43. 40 CFR 264 Subpart BB establishes air emissions standards for equipment leaks for
2 owners or operators of hazardous waste treatment, storage and disposal facilities.

3 44. 40 CFR 264.1031 states: “*In light liquid service* means that the piece of equipment
4 contains or contacts a waste stream where the vapor pressure of one or more of the organic components
5 in the stream is greater than 0.3 kilopascals (kPa) at 20 °C, the total concentration of the pure organic
6 components having a vapor pressure greater than 0.3 kilopascals (kPa) at 20 °C is equal to or greater
7 than 20 percent by weight, and the fluid is a liquid at operating conditions.”

8 45. 40 CFR 264.1052(a)(1) states: “Each pump in light liquid service shall be monitored
9 monthly to detect leaks by the methods specified in § 264.1063(b).”

10 46. 40 CFR 264.1057(a) states: “Each valve in gas/vapor or light liquid service shall be
11 monitored monthly to detect leaks by the methods specified in § 264.1063(b).”

12 47. At all relevant times, Respondent operated a 20,000-gallon tank storing liquid organic
13 hazardous waste (spent solvent) and appurtenances including pipes, flanges, valves, pumps, a vat, and
14 in-line operations on the return and fill dock of the facility.

15 48. On April 10, 2017, Respondent collected a waste sample from the hazardous waste
16 storage tank. Analysis of the sample determined that the vapor pressure of the spent solvent was 1.19
17 kPa.

18 49. On September 19, 2017, Respondent collected a sample of spent solvent that was to be
19 placed in the hazardous waste storage tank. Analysis of the sample determined that the vapor pressure
20 of the spent solvent was 0.333 kPa.

21 50. 40 CFR 262.40(a) states: “A generator must keep a copy of each manifest signed in
22 accordance with § 262.23(a) for three years or until he receives a signed copy from the designated
23 facility which received the waste. This signed copy must be retained as a record for at least three
24 years from the date the waste was accepted by the initial transporter.”

25 51. During the August 1, 2017 DEQ inspection of Respondent’s Facility, Respondent was
26 unable to produce signed manifests for hazardous wastes that had been generated by Respondent at the
27 facility and transported off-site in the previous three years.

1 52. 40 CFR 268.7(a)(8) states: "Generators must retain on-site a copy of all notices,
2 certifications, waste analysis data, and other documentation produced pursuant to this section for at
3 least three years from the date that the waste that is the subject of such documentation was last
4 sent to on-site or off-site treatment, storage, or disposal."

5 53. During the August 1, 2017 DEQ inspection of Respondent's facility, Respondent was
6 unable to produce Land Disposal Restriction notices for hazardous wastes that had been generated by
7 Respondent at the Facility and transported off-site in the previous three years.

8 54. ORS 459.005(8)(a) 340-093-0030(38) states that "disposal site" means "land and
9 facilities used for the disposal, handling or transfer of, or energy recovery, material recovery and
10 recycling from solid wastes"

11 55. ORS 459.005(27) states that "Transfer Station" means "means a fixed or mobile facility
12 other than a collection vehicle where solid waste is deposited temporarily after being removed from the
13 site of generation but before being transported to a final disposal location."

14 56. OAR 340-248-280(7)(a) states that for each waste shipment of asbestos waste offered
15 for transport by a generator, the generator must record the information specified in the rule on a DEQ
16 form (ASN-4), and provide a copy of the form to the waste transporter.

17 57. OAR 340-248-280(8)(b)(B) states an asbestos waste transporter must provide a copy of
18 the ASN-4 record to the disposal site owners or operators when the asbestos-containing waste material
19 is delivered to the disposal site.

20 58. Respondent did not obtain ASN-4s from the generators prior to transporting and
21 delivering asbestos waste to the Facility, where it was temporarily stored prior to transfer to a final
22 disposal facility, as follows:

Generator	Transport Date	Amount
Linn-Benton Community College, Albany, OR	2/4/15	50 pounds (lbs)
Comcast, Beaverton, OR	2/11/15	40 lbs
Pacificorp, Portland, OR	7/8/15	10 lbs
Pacific Power, Portland, OR	7/23/15	75 lbs

1	Pacific Power, Portland, OR	12/3/15	130 lbs
2	Pacific Power, Portland, OR	12/30/15	130 lbs
3	Graphic Packaging International, Portland, OR	3/14/16	5 gallons
4	Columbia County, St. Helens, OR	4/23/16	1 cubic yard
5	Columbia County, St. Helens, OR	6/25/16	65 lbs
6	Camp Withycombe – USPFO, Clackamas, OR	11/30/16	422 lbs
7	Mitchell Brothers Truckline, Portland, OR	3/10/17	400 lbs
8	Central Oregon Utes Coutes, Redmond, OR	4/27/17	200 lbs
9	Graphic Packaging International, Inc., Portland, OR	8/12/17	400 lbs
10	Oregon Health Sciences University, Portland, OR	8/4/17	1 cubic foot
11	Forest Grove FMS, Forest Grove, OR	8/7/17	61 lbs
12			
13			
14			

15 59. ORS 459.205(1) states: "... a disposal site shall not be established, operated, maintained
16 or substantially altered, expanded or improved, and a change shall not be made in the method or type of
17 disposal at a disposal site, until the person owning or controlling the disposal site obtains a permit
18 therefor from the Department of Environmental Quality as provided in ORS 459.235."

19 60. Respondent did not have a solid waste disposal site permit at the time it stored the
20 asbestos wastes described in Paragraph 58, above, at the Facility.

21 III. CONCLUSIONS

22 1. Respondent has violated 40 CFR 264.143, adopted pursuant to OAR 340-100-0002, OAR
23 340-104-0143 and Condition II.O.(1) of the Permit by failing to provide adequate financial assurance
24 for closure of its Facility as described in Section II, Paragraphs 5-15, above. These are Class II
25 violations pursuant to OAR 340-012-0053(2). DEQ assesses a \$39,000 civil penalty for these
26 violations.

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1 2. Respondent has violated 40 CFR 264.147, adopted pursuant to OAR 340-100-0002, OAR 340-
2 104-0147 and Condition II.P.(1) of the Permit by failing to provide adequate hazard liability insurance for
3 its Facility as described in Section II, Paragraphs 16-21, above. These are Class I violations pursuant to
4 OAR 340-012-0068(1)(l). DEQ assesses a \$150,000 civil penalty for these violations.

5 3. Respondent has violated 40 CFR 264.177(c), adopted pursuant to OAR 340-100-0002, and
6 Condition III.A.(10) of the Permit by failing to adequately separate incompatible wastes as described in
7 Section II. Paragraphs 22-25. This is a Class I violation pursuant to OAR 340-012-0068(1)(q). DEQ
8 assesses a \$25,000 civil penalty for this violation.

9 4. Respondent violated OAR 340-102-0011(2) by failing to perform a hazardous waste
10 determination, as described in Section II, Paragraphs 27-29. This is a Class I violation pursuant to OAR
11 340-012-0068(1)(a). DEQ assesses a \$6,300 civil penalty for this violation.

12 5. Respondent violated 40 CFR 262.34(a)(3), adopted pursuant to OAR 340-100-0002, by failing
13 to label a hazardous waste container with the words “hazardous waste” as described in Section II,
14 Paragraphs 30-31. This is a Class II violation pursuant to OAR 340-012-0068(2)(b). DEQ assesses a
15 \$3,150 civil penalty for this violation.

16 6. Respondent violated 40 CFR 262.34(a)(2), adopted pursuant to OAR 340-100-0002, by failing
17 to mark a hazardous waste container with the date when accumulation of the waste in the container began
18 as described in Section II, Paragraphs 32-33. This is a Class II violation pursuant to OAR 340-012-
19 0068(2)(a). DEQ assesses a \$3,150 civil penalty for this violation.

20 7. Respondent violated 40 CFR 263.20(a), adopted pursuant to OAR 340-100-0002 when it
21 transported hazardous waste that was not accompanied by a hazardous waste manifest, as described in
22 Section II, Paragraphs 34-36. These are Class I violations pursuant to OAR 340-012-0068(1)(e). DEQ
23 assesses a \$30,900 civil penalty for these violations.

24 8. Respondent violated 40 CFR 263.20(a), adopted pursuant to OAR 340-100-0002, when it
25 transported hazardous waste that was not accompanied by a complete hazardous waste manifest, as
26 described in Section II, Paragraphs 37-42 above. These are Class II violations pursuant to OAR 340-012-
27 0068(2)(f). DEQ does not assess a civil penalty for these violations.

1 9. Respondent violated 40 CFR 262.40(a), adopted pursuant to OAR 340-100-0002, when it
2 failed to keep at the Facility signed manifests for wastes generated at the Facility and transported off site
3 within the prior three years, as described in Section II, Paragraphs 50-51, above. These are Class II
4 violations pursuant to OAR 340-012-0053(2). DEQ does not assess a civil penalty for these violations.

5 10. Respondent violated 40 CFR 268.7(a)(8), adopted pursuant to OAR 340-100-0002, when it
6 failed to keep at the Facility Land Disposal Restriction notices for wastes generated at the Facility and
7 transported off site within the prior three years, as described in Section II, Paragraphs 52-53, above. These
8 are Class II violations pursuant to OAR 340-012-0053(2). DEQ does not assess a civil penalty for these
9 violations.

10 11. Respondent violated OAR 340-248-0280(8)(b)(B) by transporting asbestos-containing waste
11 material to a disposal facility and failing to provide the facility with asbestos waste shipment forms, as
12 described in Section II, Paragraphs 54-58. These are Class I violations pursuant to OAR 340-012-
13 0054(1)(u). DEQ assesses a \$3,400 civil penalty for these violations.

14 12. Respondent violated ORS 459.205(1) when it operated a solid waste disposal facility without
15 first obtaining a permit as described in Section II, Paragraphs 59 and 60, above. These are Class I
16 violations pursuant to OAR 340-012-0065(1)(a). DEQ does not assess a civil penalty for these violations.

17 IV. ORDER TO PAY CIVIL PENALTY AND TO COMPLY

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

20 1. Pay a total civil penalty of \$260,900. The determination of the civil penalties are attached
21 as Exhibits 1-6, 7A-7C and 8 and are incorporated as part of this Notice. If you do not file a request for
22 hearing as set forth in Section V below, your check or money order must be made payable to "**State**
23 **Treasurer, State of Oregon**" and sent to the **DEQ, Business Office, 700 NE Multnomah Street,**
24 **Suite 600, Portland, Oregon 97232**. Once you pay the penalty, the Notice becomes final.

25 2. Within 60 days of this order becoming final by operation of law or on appeal, obtain
26 new insurance policies or other financial assurance mechanisms that meet the requirements in the
27 Permit and state and federal regulations and submit documentation of these mechanisms to DEQ. The

1 new policies must not contain any inconsistent or contradictory language and include all required
2 coverages and language.

3 3. Within 30 days of this order becoming final by operation of law or on appeal, submit to
4 DEQ for review and comment a sampling and analysis plan for determining the vapor pressure of each
5 of the pure organic components and the total volatile organic compound (VOC) content of the spent
6 solvents stored in the tank system described in Section II, Paragraph 47, above.

7 4. Beginning with the first full calendar quarter following the receipt of DEQ comments on
8 the sampling and analysis plan, revise the plan consistent with DEQ's comments and conduct quarterly
9 monitoring in accordance with the plan for four quarters.

10 5. Prior to the last day of each quarter in which sampling and analysis is conducted, submit
11 the sampling and analysis results to DEQ.

12 6. Beginning with the first full calendar month following the receipt of DEQ comments on
13 the sampling and analysis plan, and continuing for the next 11 calendar months, conduct monthly
14 monitoring for VOC leaks in the waste solvent tank system in accordance with EPA Method 21:
15 https://www.epa.gov/sites/production/files/2017-08/documents/method_21.pdf (as per 40 CFR
16 264.1052 a(1)). This tank system begins at the point of generation on the Return and Fill Dock. The
17 tank system includes appurtenances such as piping, pumps, flanges, valves and the waste storage tanks
18 themselves. The monitoring points shall at minimum include all points currently tagged for daily
19 inspection required to fulfill visible leak detection requirements. Respondent must maintain record of
20 these VOC monitoring instrument readings onsite and available for review.

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

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

1 **Compliance and Enforcement, 700 NE Multnomah Street, Suite 600, Portland, Oregon 97232**, fax
2 it to **503-229-5100** or email it to DEQappeals@deq.state.or.us. An administrative law judge
3 employed by the Office of Administrative Hearings will conduct the hearing, according to ORS
4 Chapter 183, OAR Chapter 340, Division 011 and OAR 137-003-0501 to 0700. You have a right to be
5 represented by an attorney at the hearing, however you are not required to be. If you are an individual,
6 you may represent yourself. If you are a corporation, partnership, limited liability company,
7 unincorporated association, trust or government body, you must be represented by an attorney or a duly
8 authorized representative, as set forth in OAR 137-003-0555.

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

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

20
21
22
23 1/25/19
24 Date

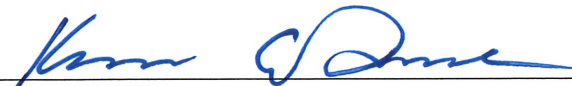
23 
24 Kieran O'Donnell, Manager
25 Office of Compliance and Enforcement

EXHIBIT 1

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

VIOLATION 1: Failing to comply with financial assurance requirements for TSD facility closure in violation of 40 CFR 264.143, adopted pursuant to OAR 340-100-0002.

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 applicable to 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 \$3,000 for a Class II, moderate magnitude violation in the matrix listed in OAR 340-012-0140(2)(b)(B)(ii) and applicable pursuant to OAR 340-012-0140(2)(a)(M)(ii) as Respondent has a hazardous waste storage permit for the facility at issue.

"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 10 pursuant to OAR 340-012-0145(2)(a) and (b), because Respondent has prior significant actions consisting of more than nine Class I equivalent violations stemming from Case No. LQ/HW-NWR-15-192.

"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)(e), because Respondent is being assessed separate penalties for each of five occurrences of the violation.

"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. As the operator of a permitted hazardous waste storage facility, Respondent is a highly regulated entity. Respondent's failure to take the actions necessary to ensure that it complied with the financial assurance

requirements for closure constituted a failure to take reasonable care to avoid the foreseeable risk of committing the violation.

"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).

"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 does not have the information to determine the difference in cost between Respondent's closure policy and a compliant policy.

PENALTY CALCULATION

$$\begin{aligned} \text{Single Penalty Calculation: } & \text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] \\ & = \$3,000 + [(0.1 \times \$3,000) \times (10 + 0 + 0 + 4 + 2)] \\ & = \$3,000 + (\$300 \times 16) \\ & = \$3,000 + \$4,800 \\ & = \$7,800 \end{aligned}$$

Pursuant to ORS 468.140(2), each day of violation constitutes a separate violation. Respondent's final civil penalty is calculated by multiplying the number of violations for which a gravity-based penalty is assessed, five, by the amount of penalty for a single violation, \$7,800, for a total civil penalty of \$39,000.

EXHIBIT 2

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

VIOLATION 2: Failing to comply with financial assurance requirements for TSD facility liability in violation of 40 CFR 264.147, adopted pursuant to OAR 340-100-0002.

CLASSIFICATION: This is a Class I violation pursuant to OAR 340-012-0068(1)(I).

MAGNITUDE: The magnitude of the violation is major pursuant to OAR 340-012-0135(4)(b)(A)(i) as there facility stores more than 55 gallons or 330 pounds of hazardous waste.

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 \$12,000 for a Class I, major magnitude violation in the matrix listed in OAR 340-012-0140(2)(b)(A)(i) and applicable pursuant to OAR 340-012-0140(2)(a)(M)(ii) as Respondent has a hazardous waste storage permit for the facility at issue.

"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 10 pursuant to OAR 340-012-0145(2)(a) and (b), because Respondent has prior significant actions consisting of more than nine Class I equivalent violations stemming from Case No. LQ/HW-NWR-15-192.

"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)(e) because Respondent is being assessed separate penalties for each of five occurrences of the violation.

"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. As the operator of a permitted hazardous waste storage facility, Respondent is a highly regulated entity. Respondent's failure to take the actions necessary to ensure that it complied with the financial assurance requirements for hazard liability constituted a failure to take reasonable care to avoid the foreseeable risk of committing the violation.

"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).

"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 does not have the information to determine the difference in cost between Respondent's liability policy and a compliant policy.

PENALTY CALCULATION

Single Penalty Calculation: $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})]$
= \$12,000 + [(0.1 x \$12,000) x (10 + 0 + 0 + 4 + 2)]
= \$12,000 + (1,200 x 16) + \$0
= \$12,000 + \$19,200 + \$0
= \$31,200

ORS 468.130(1) limits the maximum penalty for a single violation to \$25,000. Pursuant to ORS 468.140(2), each day of violation constitutes a separate violation. Respondent's final civil penalty is calculated by multiplying the number of violations for which a gravity-based penalty is assessed, six, by the amount of penalty for a single violation, \$25,000, for a total civil penalty of \$150,000.

EXHIBIT 3

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

VIOLATION 3: Failing to adequately separate incompatible wastes in violation of Section III.A(10) of the permit and 40 CFR 264.177(c).

CLASSIFICATION: This is a Class I violation pursuant to OAR 340-012-0068(1)(g).

MAGNITUDE: The magnitude of the violation is major pursuant to OAR 340-012-0135(4)(b)(A)(i) as the facility stores more than 55 gallons or 330 pounds of hazardous waste.

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 \$12,000 for a Class I, major magnitude violation in the matrix listed in OAR 340-012-0140(2)(b)(A)(i) and applicable pursuant to OAR 340-012-0140(2)(a)(M)(ii) as Respondent has a hazardous waste storage permit for the facility at issue.

"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 10 pursuant to OAR 340-012-0145(2)(a) and (b), because Respondent has prior significant actions consisting of more than nine Class I equivalent violations stemming from Case No. LQ/HW-NWR-15-192.

"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 the violation was observed on a single occasion.

"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. As the operator of a permitted hazardous waste storage facility, Respondent is a highly regulated entity. Respondent's failure to take the actions necessary to ensure that it complied with the management requirements for incompatible waste constitutes a failure to exercise reasonable care to avoid the foreseeable risk of committing the violation.

"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).

"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 does not have the information to estimate the cost of replacing the absorbent boom with an effective barrier.

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

$$\begin{aligned} &= \$12,000 + [(0.1 \times \$12,000) \times (10 + 0 + 0 + 4 + 2)] + \$0 \\ &= \$12,000 + (1,200 \times 16) + \$0 \\ &= \$12,000 + \$19,200 + \$0 \\ &= \$31,200 \end{aligned}$$

ORS 468.130(1) limits the maximum penalty for a single violation to \$25,000. The penalty for this violation is therefore \$25,000.

EXHIBIT 4

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

VIOLATION 4: Failing to perform a hazardous waste determination 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) as the violation involved only 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) as Respondent was a large quantity generator hazardous waste at the time of the violation.

"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 10 pursuant to OAR 340-012-0145(2)(a) and ((b), because Respondent has prior significant actions consisting of more than nine Class I equivalent violations stemming from Case No. LQ/HW-NWR-15-192.

"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 the violation was a single occurrence.

"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. As the large quantity hazardous waste generator, Respondent is a highly regulated entity familiar with its obligation to perform hazardous waste determinations. Respondent's failure to take the actions necessary to ensure that it performed a hazardous waste determination on the waste washwater constitutes a failure to exercise reasonable care to avoid the foreseeable risk of committing the violation.

"C" is Respondent's efforts to correct or mitigate the violation, and receives a value of -3 pursuant to OAR 340-012-0145(6)(c) as Respondent made reasonable efforts to correct the violation by performing a hazardous waste determination promptly after DEQ's 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 as any economic benefit Respondent received was de minimis.

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

$$\begin{aligned} &= \$3,000 + [(0.1 \times \$3,000) \times (10 + 0 + 0 + 4 + (-3))] + \$0 \\ &= \$3,000 + (300 \times 11) + \$0 \\ &= \$3,000 + \$3,300 + \$0 \\ &= \$6,300 \end{aligned}$$

EXHIBIT 5

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

VIOLATION 5: Failure to label a hazardous waste container with the words "Hazardous Waste" in violation of 40 CFR 262.34(a)(3), adopted pursuant to OAR 340-100-0002.

CLASSIFICATION: This is a Class II violation pursuant to OAR 340-012-0068(2)(b).

MAGNITUDE: The magnitude of the violation is minor pursuant to OAR 340-012-0135(4)(c)(C) as the violation involved 250 gallons or 1,500 pounds or less of hazardous waste and no acutely hazardous waste.

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 \$1,500 for a Class II, minor magnitude violation in the matrix listed in OAR 340-012-0140(2)(b)(B)(iii) and applicable pursuant to OAR 340-012-0140(2)(a)(M)(i) as Respondent was a large quantity generator at the time of the violation.

"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 10 pursuant to OAR 340-012-0145(2)(a) and (b), because Respondent has prior significant actions consisting of more than nine Class I equivalent violations stemming from Case No. LQ/HW-NWR-15-192.

"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 the violation was observed on a single occasion.

"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. As a large quantity hazardous waste generator, Respondent is a highly regulated entity that routinely complies with the labeling requirement. Respondent's failure to take the actions necessary to ensure that it labeled the container of waste washwater constitutes a failure to exercise reasonable care to avoid the foreseeable risk of committing the violation.

"C" is Respondent's efforts to correct or mitigate the violation, and receives a value of -3 pursuant to OAR 340-012-0145(6)(c) as Respondent made reasonable efforts to correct the violation by labeling the container promptly after DEQ's 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 as any economic benefit Respondent received was de minimis.

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

$$\begin{aligned} &= \$1,500 + [(0.1 \times \$1,500) \times (10 + 0 + 0 + 4 + (-)3)] + \$0 \\ &= \$1,500 + (150 \times 11) + \$0 \\ &= \$1,500 + \$1,650 + \$0 \\ &= \$3,150 \end{aligned}$$

EXHIBIT 6

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

VIOLATION 6: Failure to mark a hazardous waste container with the date when accumulation of waste in the container began in violation of 40 CFR 262.34(a)(2), adopted pursuant to OAR 340-100-0002.

CLASSIFICATION: This is a Class II violation pursuant to OAR 340-012-0068(2)(a).

MAGNITUDE: The magnitude of the violation is minor pursuant to OAR 340-012-0135(4)(c)(C) as the violation involved 250 gallons or 1,500 pounds or less of hazardous waste and no acutely hazardous waste.

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 \$1,500 for a Class II, minor magnitude violation in the matrix listed in OAR 340-012-0140(2)(b)(B)(iii) and applicable pursuant to OAR 340-012-0140(2)(a)(M)(i) as Respondent was a large quantity generator at the time of the violation.

"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 10 pursuant to OAR 340-012-0145(2)(a) and (b), because Respondent has prior significant actions consisting of more than nine Class I equivalent violations stemming from Case No. LQ/HW-NWR-15-192.

"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 the violation was observed on a single occasion.

"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. As the large quantity hazardous waste generator, Respondent is a highly regulated entity. Respondent's failure to take the actions necessary to ensure that it labeled the container of waste washwater constitutes a failure to exercise reasonable care to avoid the foreseeable risk of committing the violation.

"C" is Respondent's efforts to correct or mitigate the violation, and receives a value of -3 pursuant to OAR 340-012-0145(6)(c) as Respondent made reasonable efforts to correct the violation by dating the container promptly after DEQ's 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 as any economic benefit Respondent received was de minimis.

PENALTY CALCULATION: $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$
 $= \$1,500 + [(0.1 \times \$1,500) \times (10 + 0 + 0 + 4 + (-)3)] + \0
 $= \$1,500 + (150 \times 11) + \0
 $= \$1,500 + \$1,650 + \$0$
 $= \$3,150$

EXHIBIT 7A

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

VIOLATION 7A: Accepting hazardous waste (generated by Owens-Brockway) for transport without a manifest in violation of 40 CFR 263.20(a), adopted pursuant to OAR 340-100-0002.

CLASSIFICATION: This is a Class I violation pursuant to OAR 340-012-0068(1)(e).

MAGNITUDE: The magnitude of the violation is minor pursuant to OAR 340-012-0135(4)(c)(C)(i) as the violation involved 250 gallons or 1,500 pounds or less of hazardous waste and no acutely hazardous waste.

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) as Respondent was a hazardous waste transporter at the time of the violation.

"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 10 pursuant to OAR 340-012-0145(2)(a) and (b), because Respondent has prior significant actions consisting of more than nine Class I equivalent violations stemming from Case No. LQ/HW-NWR-15-192.

"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 the violation involved a single shipment.

"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. As an experienced registered hazardous waste transporter that has been previously penalized in Oregon for transporting without a manifest, Respondent's failure to take the actions necessary to ensure that it complied with the manifest requirement constitutes a failure to exercise reasonable care to avoid the foreseeable risk of committing the violation.

"C" is Respondent's efforts to correct or mitigate the violation, and receives a value of 0 pursuant to OAR 340-012-0145(6)(f) as the violation or the effects of the violation could not be corrected or minimized.

"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 any economic benefit Respondent received was de minimis.

PENALTY CALCULATION: $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$
= \$3,000 + [(0.1 x \$3,000) x (10 + 0 + 0 + 4 + 0)] + \$0
= \$3,000 + (300 x 14) + \$0
= \$3,000 + \$4,200 + \$0
= \$7,200

EXHIBIT 7B

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

VIOLATION 7B: Accepting hazardous waste (generated by Carry-On Trailer) for transport without a manifest in violation of 40 CFR 263.20(a), adopted pursuant to OAR 340-100-0002.

CLASSIFICATION: This is a Class I violation pursuant to OAR 340-012-0068(1)(e).

MAGNITUDE: The magnitude of the violation is moderate pursuant to OAR 340-012-0135(4)(c)(B)(i) as the violation involved more than 250 gallons or 1,500 pounds, but less than 1,000 gallons or 6,000 pounds of hazardous waste.

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 \$6,000 for a Class I, moderate magnitude violation in the matrix listed in OAR 340-012-0140(2)(b)(A)(ii) and applicable pursuant to OAR 340-012-0140(2)(a)(M)(i) as Respondent was a hazardous waste transporter at the time of the violation.

"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 10 pursuant to OAR 340-012-0145(2)(a) and (b), because Respondent has prior significant actions consisting of more than nine Class I equivalent violations stemming from Case No. LQ/HW-NWR-15-192.

"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 2 according to OAR 340-012-0145(4)(b) because the violation involved transportation of three separate shipments of unmanifested waste as described in Section II, Paragraph 36 of the 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. As an experienced registered hazardous waste transporter that has been previously penalized in Oregon for transporting without a manifest, Respondent's failure to take the actions necessary to ensure that it complied with the manifest requirement constitutes a failure to exercise reasonable care to avoid the foreseeable risk of committing the violation.

"C" is Respondent's efforts to correct or mitigate the violation, and receives a value of 0 pursuant to OAR 340-012-0145(6)(f) as the violation or the effects of the violation could not be corrected or minimized.

"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 any economic benefit Respondent received was de minimis.

PENALTY CALCULATION: $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$
= \$6,000 + [(0.1 x \$6,000) x (10 + 0 + 2 + 4 + 0)] + \$0
= \$6,000 + (\$600 x 16) + \$0
= \$6,000 + \$9,600 + \$0
= \$15,600

EXHIBIT 7C

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

VIOLATION 7C: Accepting hazardous waste (generated by Allflight) for transport without a manifest in violation of 40 CFR 263.20(a), adopted pursuant to OAR 340-100-0002.

CLASSIFICATION: This is a Class I violation pursuant to OAR 340-012-0068(1)(e).

MAGNITUDE: The magnitude of the violation is minor pursuant to OAR 340-012-0135(4)(c)(C)(i) as the violation involved 250 gallons or 1,500 pounds or less of hazardous waste and no acutely hazardous waste.

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) as Respondent was a hazardous waste transporter at the time of the violation.

"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 10 pursuant to OAR 340-012-0145(2)(a) and (b), because Respondent has prior significant actions consisting of more than nine Class I equivalent violations stemming from Case No. LQ/HW-NWR-15-192.

"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 3 according to OAR 340-012-0145(4)(c) because the violation involved transport of 14 separate shipments of hazardous waste as described in Section II, Paragraph 36 of the 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. As an experienced registered hazardous waste transporter that has been previously penalized in Oregon for transporting without a manifest, Respondent's failure to take the actions necessary to ensure that it complied with the manifest requirement constitutes a failure to exercise reasonable care to avoid the foreseeable risk of committing the violation.

"C" is Respondent's efforts to correct or mitigate the violation, and receives a value of 0 pursuant to OAR 340-012-0145(6)(f) as the violation or the effects of the violation could not be corrected or minimized.

"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 any economic benefit Respondent received was de minimis.

PENALTY CALCULATION: $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$
= $\$3,000 + [(0.1 \times \$3,000) \times (10 + 0 + 3 + 4 + 0)] + \0
= $\$3,000 + (300 \times 17) + \0
= $\$3,000 + \$5,100 + \$0$
= $\$8,100$

EXHIBIT 8

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

VIOLATION 8: Transporting asbestos waste to a disposal facility without providing the facility with asbestos waste shipment forms (ASN-4s).

CLASSIFICATION: This is a Class I violation pursuant to OAR 340-012-0054(1)(u).

MAGNITUDE: The magnitude of the violation is minor pursuant to OAR 340-012-0135(1)(i) and -0130(4) because the violation did not cause a potential for human exposure to asbestos fibers.

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 \$2,000 for a Class I, minor magnitude violation in the matrix listed in OAR 340-012-0140(3)(b)(A)(iii) and applicable pursuant to OAR 340-012-0140(3)(a)(B).

"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 3 according to OAR 340-012-0145(4)(c) because there were 15 occurrences of the violation as detailed in Section II, Paragraph 15 of the 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. As a business operating in Oregon, Respondent has the duty to ascertain the regulations that apply to its activities and comply with them. By failing to take the actions necessary to comply with the asbestos transport rule, Respondent failed to exercise reasonable care to avoid the foreseeable risk of committing the violation.

"C" is Respondent's efforts to correct or mitigate the violation, and receives a value of 0 according to OAR 340-012-0145(6)(f) because the violation or the effects of the violation could not be corrected or minimized.

"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 any economic benefit Respondent received was de minimis.

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

$$\begin{aligned} &= \$2,000 + [(0.1 \times \$2,000) \times (0 + 0 + 3 + 4 + 0)] + \$0 \\ &= \$2,000 + (\$200 \times 7) + \$0 \\ &= \$2,000 + \$1,400 + \$0 \\ &= \$3,400 \end{aligned}$$