



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

March 11, 2022

CERTIFIED MAIL: 7018 1830 0001 5906 3411

Fitzpatrick Painting, Incorporated
c/o Timothy J. Fitzpatrick, Registered Agent
37949 Century Drive NE
Albany, OR 97322

Re: Notice of Civil Penalty Assessment and Order
Case No. LQ/HW-WR-2021-546

DEQ is committed to balancing its vital obligation to enforce the law and protect the environment with a consideration of the dramatic disruptions to public health and the economy caused by the COVID-19 outbreak. We understand the outbreak may impact your ability to timely appeal, pay the assessed civil penalty, or comply with this order. You may submit to DEQ documentation identifying whether COVID-19-related disruption affects your ability to comply with this order. Visit our webpage <https://www.oregon.gov/deq/Pages/covid-19.aspx> for more information about documenting specific COVID-19 disruptions your facility may be encountering and how that affects your ability to comply. DEQ will exercise reasonable discretion regarding settlement of this order.

This letter is to inform you that the Oregon Department of Environmental Quality (DEQ) has issued you a total civil penalty of \$17,200 for hazardous waste violations at your property in Albany. You disposed of hazardous waste at the property, which is not a permitted hazardous waste disposal facility, and failed to make hazardous waste determinations on wastes generated by your business. You were also cited, without penalty, for offering hazardous waste for offsite treatment, storage or disposal using an inaccurate hazardous waste manifest, and for improperly disposing of solid waste at the property.

DEQ issued this penalty because the hazardous waste you generated was not disposed of correctly and in a timely manner. Also, accurate hazardous waste determinations are essential to ensure legal and safe management of hazardous wastes. Your failure to comply with these hazardous waste requirements created a risk of harm to public health and the environment.

DEQ appreciates your efforts to minimize the effects of the violations by hiring a hazardous waste contractor to categorize and properly dispose of the wastes at your property. DEQ considered these efforts when determining the amount of the civil penalties.

You may pay the civil penalty as follows:

Pay online with e-check (ACH) or Credit Card. Go to Your DEQ Online here: <https://ydo.oregon.gov>. Select Register Account or Login, then select Pay Invoices/Fees on your account dashboard. Enter the Invoice number and Account ID included on the attached payment slip. Note: US Bank charges a 2.3% convenience charge for credit card transactions. ACH payments have no additional charges.

Pay by check or money order: Make checks payable to "Department of Environmental Quality" and mail to the address on the enclosed payment slip. Please make sure to include the payment slip with your check or money order and note the case number on your check.

If you wish to appeal this matter, DEQ must receive a request for a hearing within 20 calendar days from your receipt of this letter. The hearing request must be in writing. Send your request to DEQ Office of Compliance and Enforcement:

Via mail – 700 NE Multnomah Street, Suite 600, Portland, Oregon 97232

Via email – DEQappeals@deq.oregon.gov

Via fax – 503-229-5100

Once DEQ receives your request, we will arrange to meet with you to discuss this matter. If DEQ does not receive a timely written hearing request, the penalty will become due. Alternatively, you can pay the penalty by sending a check or money order to the above address.

The attached Notice further details DEQ's reasons for issuing the penalty and provides further instructions for appealing the penalty. Please review and refer to it when discussing this case with DEQ.

DEQ may allow you to resolve part of your penalty through the completion of a Supplemental Environmental Project (SEP). SEPs are environmental improvement projects that you sponsor instead of paying a penalty. Further information is available by calling the number below or at <http://www.oregon.gov/deq/Regulations/Pages/SEP.aspx>.

DEQ's rules are available at <http://www.oregon.gov/deq/Regulations/Pages/Statutes.aspx> or by calling the number below.

If you have any questions, please contact Esther Westbrook at 503-229-5374 or toll free in Oregon at 800-452-4011, extension 5374.

Sincerely,



Kieran O'Donnell, Manager
Office of Compliance and Enforcement

Enclosures

cc: Killian Condon, Eugene Office, DEQ
Brian Fuller, Eugene Office, DEQ
Accounting, DEQ

BEFORE THE ENVIRONMENTAL QUALITY COMMISSION
OF THE STATE OF OREGON

IN THE MATTER OF:
FITZPATRICK PAINTING,
INCORPORATED,
an Oregon corporation,

Respondent.

NOTICE OF CIVIL PENALTY ASSESSMENT AND ORDER

CASE NO. LQ/HW-WR-2021-546

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 Chapters 459, 466, and 183, and Oregon Administrative Rules (OAR) Chapter 340, Divisions 011, 012, 093, and 100.

II. FINDINGS OF FACT

1. At all material times, Respondent owned the property located at 37949 Century Drive NE in Albany, Linn County, Oregon (the Property). Respondent operates a painting business at the Property.

2. Since 2016, Respondent generated solid wastes including paint waste and construction debris.

3. DEQ inspected the Property on June 29, 2020. At the time of the inspection, on the southern portion of the Property, there were approximately eighty containers of varying sizes, from pint-sized to 5-gallons, of waste discarded on the ground. The discarded containers of waste included five 5-gallon containers of unknown liquid residues.

4. As of June 29, 2020, Respondent had not performed hazardous waste determinations on the unknown residues described in Section II, Paragraph 3 above.

5. After the inspection, Respondent conducted a hazardous waste determination using knowledge of process, which determined that four of the five containers described in Section II, Paragraph 3 above contained ignitable hazardous waste.

6. The Property is not a permitted hazardous waste disposal site.

7. On or about November 24, 2020, Respondent offered waste for shipment on uniform hazardous waste manifest 000264412 DAT (the Manifest), stating that it was disposing of 400 pounds of waste paint material, and listing the following waste codes: D001 and D035.

8. The actual amount of hazardous waste shipped and disposed under the Manifest was 1,376 pounds.

9. The hazardous waste shipped and disposed under the Manifest fell under two additional waste codes: U080 (methylene chloride) and U239 (xylene).

10. On or about December 9, 2020, the Manifest was corrected to reflect the actual amount of waste and the additional waste codes.

11. On June 29, 2020, approximately two cubic yards of construction debris including bricks, concrete, drywall and asphalt was disposed on the eastern portion of the Property.

12. On June 29, 2020, there was red and white staining on the ground near the main building at the Property, where painting equipment had been cleaned. The rinse water containing water-based paint, which is solid waste, was disposed on the ground.

13. The Property is not a permitted solid waste disposal site.

III. CONCLUSIONS

1. On or before June 29, 2020, Respondent violated OAR 340-102-0011(2) by 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, as described in Section II, Paragraphs 1-5 above. Specifically, Respondent did not accurately characterize four waste streams of paint wastes, which are ignitable D001 hazardous wastes pursuant to 40 CFR 261.21(a)(1) and (3), as adopted by OAR 340-100-0002. These are Class I violations, according to OAR 340-012-0068(1)(a). DEQ hereby assesses a \$5,200 civil penalty for these violations.

2. On or before June 29, 2020, Respondent violated ORS 466.100(1) by disposing of hazardous waste, specifically four containers of ignitable D001 hazardous waste, at a site that was not permitted to accept hazardous waste, as described in Section II, Paragraphs 1-6 above. This is a Class I

///

violation according to OAR 340-012-0068(1)(h). DEQ hereby assesses a \$12,000 civil penalty for this violation.

3. On or about November 24, 2020, Respondent violated 40 CFR 262.20(a)(1) by offering hazardous waste for offsite treatment, storage or disposal using an inaccurate hazardous waste manifest, as described in Section II, Paragraphs 7-10 above. This is a Class II violation according to OAR 340-012-0068(2)(f). DEQ has not assessed a civil penalty for this violation.

4. On or before June 29, 2020, Respondent violated OAR 340-093-0040(1) by disposing of solid waste, specifically construction debris and water-based paint residue from washing of painting equipment, at a property that was not permitted to accept solid waste, as described in Section II, Paragraphs 10-11 above. This is a Class I violation according to OAR 340-012-0065(1)(c). DEQ has not assessed a civil penalty for this violation.

IV. ORDER TO PAY CIVIL PENALTY

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

Pay a total civil penalty of \$17,200. The determination of the civil penalties is attached as Exhibit Nos. 1 and 2 and incorporated as part of this Notice.

If you do not file a request for hearing as set forth in Section V below, please pay the penalty as follows:

Pay online with e-check (ACH) or credit card. Go to Your DEQ Online here: <https://ydo.oregon.gov>. Select Register Account or Login, then select Pay Invoices/Fees on your account dashboard. Enter the Invoice number and Account ID included on the attached payment slip. Note: US Bank charges a 2.3% convenience charge for credit card transactions. ACH payments have no additional charges, or

Pay by check or money order: Make check payable to "Department of Environmental Quality" and mail to the address on the enclosed payment slip. Please make sure to include the payment slip with your check or money order and note the case number on your check.

////

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

2 You have a right to a contested case hearing on this Notice, if you request one in writing. DEQ
3 must receive your request for hearing **within 20 calendar days** from the date you receive this Notice. If
4 you have any affirmative defenses or wish to dispute any allegations of fact in this Notice or attached
5 exhibits, you must do so in your request for hearing, as factual matters not denied will be considered
6 admitted, and failure to raise a defense will be a waiver of the defense. (See OAR 340-011-0530 for
7 further information about requests for hearing.) You must send your request to: **DEQ, Office of**
8 **Compliance and Enforcement, 700 NE Multnomah Street, Suite 600, Portland, Oregon 97232**, fax
9 it to **503-229-5100** or email it to DEQappeals@deq.oregon.gov. An administrative law judge
10 employed by the Office of Administrative Hearings will conduct the hearing, according to ORS
11 Chapter 183, OAR Chapter 340, Division 011 and OAR 137-003-0501 to 0700. You have a right to be
12 represented by an attorney at the hearing, however you are not required to be. If you are an individual,
13 you may represent yourself. If you are a corporation, partnership, limited liability company,
14 unincorporated association, trust or government body, you must be represented by an attorney or a duly
15 authorized representative, as set forth in OAR 137-003-0555.

16 Active-duty Service members have a right to stay proceedings under the federal Service
17 Members Civil Relief Act. For more information contact the Oregon State Bar at 1-800-
18 452-8260, the Oregon Military Department at 503-584-3571, or the nearest United States Armed
19 Forces Legal Assistance Office through <http://legalassistance.law.af.mil>. The Oregon Military
20 Department does not have a toll-free telephone number.

21 If you fail to file a timely request for hearing, the Notice will become a final order by default
22 without further action by DEQ, as per OAR 340-011-0535(1). If you do request a hearing but later
23 withdraw your request, fail to attend the hearing or notify DEQ that you will not be attending the
24 hearing, DEQ will issue a final order by default pursuant to OAR 340-011-0535(3). DEQ designates

25 ///

26 ///

27 ///

1 the relevant portions of its files, including information submitted by you, as the record for purposes of
2 proving a prima facie case.

3
4
5 3/11/2022
6 Date



Kieran O'Donnell, Manager
Office of Compliance and Enforcement

EXHIBIT NO. 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 moderate pursuant to OAR 340-012-0135(4)(a)(B) because Respondent failed to make a hazardous waste determination on four waste streams.

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 \$4,000 for a Class I, moderate magnitude violation in the matrix listed in OAR 340-012-0140(3)(b)(A)(ii) and applicable pursuant to OAR 340-012-0140(4)(a)(J) because Respondent is a small 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 0 according to OAR 340-012-0145(2)(a)(A) because there are no prior significant actions.

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

"O" is whether the violation was repeated or ongoing and receives a value of 2 according to OAR 340-012-0145(4)(b) because there were more than one but less than seven occurrences of the violation. Respondent failed to accurately determine that four waste streams were hazardous waste. Each waste stream is a separate occurrence 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. When Respondent failed to conduct hazardous waste determinations on ignitable paint wastes generated by its business, it failed to take reasonable care to avoid a foreseeable risk that it would violate hazardous waste regulations.

"C" is Respondent's efforts to correct or mitigate the violation and receives a value of -3 according to OAR 340-012-0145(6)(c) because Respondent made reasonable efforts to minimize the effects of the violation by making hazardous waste determination using knowledge of process and hiring a hazardous waste disposal contractor to properly dispose of the wastes.

"EB" is the approximate dollar value of the benefit gained and the costs avoided or delayed as a result of the Respondent's noncompliance. It is designed to "level the playing field" by taking away any economic advantage the entity gained and to deter potential violators from deciding it is cheaper to violate and pay the penalty than to pay the costs of compliance. In this case, "EB" receives a value of \$0 because there is insufficient information to make an estimate of the economic benefit, if any, received by Respondent from this violation.

PENALTY CALCULATION: $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$
= \$4,000 + [(0.1 x \$4,000) x (0 + 0 + 2 + 4 - 3)] + \$0
= \$4,000 + [\$400 x 3] + \$0
= \$4,000 + \$1,200 + \$0
= \$5,200

EXHIBIT No. 2

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

VIOLATION NO. 2 Failure to dispose of hazardous waste at a permitted hazardous waste disposal site as required by ORS 466.100(1).

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

MAGNITUDE: The magnitude of the violation is major pursuant to OAR 340-012-0135(4)(b)(A)(i) because Respondent failed to properly dispose of more than 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 \$8,000 for a Class I, major magnitude violation in the matrix listed in OAR 340-012-0140(3)(b)(A)(i) and applicable pursuant to OAR 340-012-0140(3)(a)(J) because Respondent is a small quantity generator of hazardous waste and violated a hazardous waste statute.

"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 4 according to OAR 340-012-0145(4)(d) because there were more than 28 occurrences of the violation. Each day of violation is a separate occurrence. The hazardous waste was illegally disposed from at least June 29, 2020 until November 24, 2020, which is approximately five months.

"M" is the mental state of the Respondent, and receives a value of 4 according to OAR 340-012-0145(5)(c) because Respondent's conduct was negligent. By disposing of hazardous waste from its business at its property rather than properly managing and disposing of it, Respondent failed to take reasonable care to avoid a foreseeable risk that it would violate hazardous waste requirements. Additionally, in DEQ Case No. AQ/OB-15-233 Respondent was cited for open burning of prohibited materials including paint cans, so it should have taken more care to properly dispose of its wastes.

"C" is Respondent's efforts to correct or mitigate the violation and receives a value of -3 according to OAR 340-012-0145(6)(c) because Respondent made reasonable efforts to minimize the effects of the violation by hiring a hazardous waste disposal contractor to properly dispose of the wastes.

"EB" is the approximate dollar value of the benefit gained and the costs avoided or delayed as a result of the Respondent's noncompliance. It is designed to "level the playing field" by taking away any economic advantage the entity gained and to deter potential violators from deciding it is cheaper to violate and pay the penalty than to pay the costs of compliance. In this case, "EB" receives a value of \$0 because there is insufficient information to make an estimate of the economic benefit, if any, received by Respondent from this violation.

PENALTY CALCULATION: $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$
= \$8,000 + [(0.1 x \$8,000) x (0 + 0 + 4 + 4 - 3)] + \$0
= \$8,000 + (\$800 x 5) + \$0
= \$8,000 + \$4,000 + \$0
= \$12,000