



Oregon

Kate Brown, Governor

Department of Environmental Quality

Office of Compliance and Enforcement

700 NE Multnomah St Ste 600

Portland, OR 97232-4100

(503) 229-5696

FAX (503) 229-5100

TTY: 711

March 7, 2017

CERTIFIED MAIL: 7014 2870 0001 3378 4744

Total Reclaim Incorporated
c/o Craig Lorch, Registered Agent
6427 NE 59th Place
Portland, OR 97218

CERTIFIED MAIL: 7014 2870 0001 3378 4720

Marten Law,
c/o Bradley M. Marten, Attorney for Respondent
1191 Second Ave, Suite 2200
Seattle, WA 98101

Re: Notice of Civil Penalty Assessment and Order
Case No. LQ/HW-NWR-2016-175

This letter is to inform you that the Oregon Department of Environmental Quality (DEQ) has issued Total Reclaim Incorporated (Total Reclaim) a civil penalty of \$164,400 for failing to perform a hazardous waste characterization, and failing to properly manage hazardous waste generated at Total Reclaim's facility in Portland. Specifically, Total Reclaim failed to properly recycle electronic waste that it collected under Oregon's e-waste recycling program. In addition, the attached Order requires Total Reclaim to submit annual hazardous waste generator reports for calendar year 2013, 2014, and 2015, and pay unpaid generator fees.

DEQ issued this penalty because DEQ's rules establish strict requirements for the accumulation, storage, handling, and disposal of hazardous waste to ensure the protection of the public health and the environment. Total Reclaim's failure to comply with hazardous waste rules increased the risk that the public or the environment could be harmed by mismanagement of the waste. In addition, Total Reclaim's activities undermined Oregon's e-waste recycling efforts.

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

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 it 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 in lieu of paying your penalty. SEP documents are available on the internet at <http://www.oregon.gov/deq/Regulations/Pages/SEP.aspx>, or by calling the number below to request a paper copy.

DEQ's rules are available on the internet at <http://www.oregon.gov/deq/Regulations/Pages/Statutes.aspx>, or by calling the number below to request a paper copy.

If you have any questions, please contact DEQ Environmental Law Specialist Kieran O'Donnell at (503) 229-5012. You may call toll-free within Oregon at 1-800-452-4011, extension 5012.

Sincerely,



Sarah G. Wheeler, Acting Manager
Office of Compliance and Enforcement

Enclosures

cc: Jay Collins, DEQ, NWR
Mary Fritzmann, HW Program Annual Report Coordinator, DEQ, HQ
Audrey O'Brien, Env. Partnerships Section Manager, DEQ, NWR
Loretta Pickerell, Materials Management Section Manager, DEQ, HQ
Gary Vrooman, Oregon DOJ

1 BEFORE THE ENVIRONMENTAL QUALITY COMMISSION

2 OF THE STATE OF OREGON

3 IN THE MATTER OF:) NOTICE OF CIVIL PENALTY
4 TOTAL RECLAIM INCORPORATED) ASSESSMENT AND ORDER
5 Respondent.) CASE NO. LQ/HW-NWR-2016-175

6
7 I. AUTHORITY

8 The Department of Environmental Quality (DEQ) issues this Notice of Civil Penalty Assessment
9 and Order (Notice) pursuant to Oregon Revised Statutes (ORS) 468.100 and 468.126 through 468.140,
10 ORS 466.990, ORS Chapter 183 and Oregon Administrative Rules (OAR) Chapter 340, Divisions 011,
11 012, and 100-102.

12 II. FINDINGS OF FACT

13 1. Respondent owns and operates an electronic waste processing facility located at 6427 NE
14 59th Place, in Portland, Oregon (the Facility).

15 2. At all relevant times, Respondent reported to DEQ that the Facility was a Conditionally
16 Exempt Generator (CEG) of hazardous waste.

17 3. From approximately 2009 to approximately 2015 Respondent offered for transport or
18 transported liquid crystal display (LCD) flat screen imaging devices containing mercury-bearing
19 compact fluorescent lamps (CFLs) (Flat Screens) to China where they were broken apart and left in
20 open outdoor piles.

21 4. From approximately 2009 to approximately 2015, Respondent offered for transport or
22 transported a minimum of 1,000 kilograms per month of Flat Screens.

23 5. Flat Screens commonly contain in excess of 5.0 milligrams per liter (mg/L) of lead using the
24 Toxicity Characteristic Leaching Procedure (TCLP) method of chemical analysis.

25 6. From approximately 2009 to approximately 2015, Respondent failed to completely and
26 accurately determine if any of the Flat Screens were hazardous waste.

27 ///

1 IV. ORDER TO PAY CIVIL PENALTY

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

4 1. Pay a total civil penalty of \$164,400. The determinations of the civil penalties are attached as
5 Exhibit Nos. 1, 2, and 3 and are incorporated as part of this Notice.

6 If you do not file a request for hearing as set forth in Section V below, your check or money
7 order must be made payable to "**State Treasurer, State of Oregon**" and sent to the **DEQ, Business**
8 **Office, 811 S.W. Sixth Avenue, Portland, Oregon 97204**. Once you pay the penalty, the Findings of
9 Fact, Conclusions and Order become final.

10 2. Within 90 days of this order becoming final, submit annual Oregon DEQ hazardous waste
11 generator reports for the Portland facility for calendar years 2013, 2014, and 2015. Contact DEQ
12 Hazardous Waste Reporting Coordinator Mary Fritzmann at (503) 229-6968 with any questions in
13 regards to this filing. DEQ anticipates a total generator fee assessment of \$97,500 for Total Reclaim for
14 these three, not including late fees and other related charges. Pay the DEQ invoice promptly, within 30
15 days of billing.

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

17 You have a right to a contested case hearing on this Notice, if you request one in writing. You
18 must ensure that DEQ receives the request for hearing **within 20 calendar days** from the date you
19 receive this Notice. If you have any affirmative defenses or wish to dispute any allegations of fact in
20 this Notice or attached exhibits, you must include them in your request for hearing, as factual matters
21 not denied will be considered admitted, and failure to raise a defense will be a waiver of the defense.
22 (See OAR 340-011-0530 for further information about requests for hearing.) You must send your
23 request to: **DEQ, Office of Compliance and Enforcement, 700 NE Multnomah Street, Suite 600,**
24 **Portland, Oregon 97232**, fax it to **503-229-5100**, or email it to **DEQappeals@deq.state.or.us**. An
25 administrative law judge employed by the Office of Administrative Hearings will conduct the hearing,

26 ///

27 ///

1 according to ORS Chapter 183, OAR Chapter 340, Division 011 and OAR 137-003-0501 to 0700. You
2 have a right to be represented by an attorney at the hearing, or you may represent yourself unless you
3 are a corporation, agency or association.

4 Active duty service-members have a right to stay proceedings under the federal Service
5 members Civil Relief Act. For more information, please call the Oregon State Bar at 1-800-
6 452-8260 or the Oregon Military Department at 1-800-452-7500. Additional information can be found
7 online at the United States Armed Forces Legal Assistance (AFLA) Legal Services Locator website
8 <http://legalassistance.law.af.mil/content/locator.php>.

9 If you fail to file a request for hearing in writing within 20 calendar days of receipt of the
10 Notice, the Notice will become a final order by default without further action by DEQ, as per OAR
11 340-011-0535(1). If you do request a hearing but later withdraw your request, fail to attend the hearing
12 or notify DEQ that you will not be attending the hearing, DEQ will issue a final order by default
13 pursuant to OAR 340-011-0535(3). DEQ designates the relevant portions of its files, including
14 information submitted by you, as the record for purposes of proving a prima facie case.

15
16
17
18 March 7, 2017
19 Date

18 Sarah G. Wheeler
19 Sarah G. Wheeler, Acting 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 No. 1: Failing to completely and accurately determine if Respondent's residue was hazardous waste from approximately 2009 to 2015, in violation of OAR 340-102-0011(2).
- CLASSIFICATION: These are Class I violations 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 the Respondent failed to make a hazardous waste determination on one or two waste streams. The Respondent failed to make a hazardous waste determination on only one waste stream, the Flat Screens.
- 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, at the time of the violation, Respondent was a large quantity generator because it generated more than 1,000 kilograms of hazardous waste per month.
- "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 constitutes a separate occurrence. The violation occurred on each day that the Respondent generated Flat Screens in its electronic waste wastestream without performing a hazardous waste determination. Respondent engaged in this activity on at least a monthly basis from 2009 to 2015. Therefore, there were more than 28 occurrences of the violation.
- "M" is the mental state of the Respondent and receives a value of 8 according to OAR 340-012-0145(5)(d), because Respondent's conduct was reckless. Respondent is a major regional electronics recycler with the capacity and sophistication to understand and implement applicable Oregon law. In addition, Respondent was aware of hazardous waste regulations because it operates as a hazardous waste transporter and reports to DEQ under EPA ID

#ORD980981799. Respondent failed to conduct a hazardous waste determination on its Flat Screen waste stream, a process integral to its business. , Respondent consciously disregarded a substantial and unjustifiable risk from disposal of the flatscreen televisions. In addition, this risk constituted a gross deviation from the standard of care a reasonable person would observe in a similar situation.

"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, pursuant to OAR 340-012-0150(3) because the economic benefit in this case is likely 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 (0 + 0 + 4 + 8 + 0)] + \$0
= \$3,000 + (\$300 x 12) + \$0
= \$3,000 + \$3,600 + \$0
= \$6,600

EXHIBIT No. 2

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

VIOLATION No.2: Offering for transport and transporting hazardous waste without a hazardous waste manifest from approximately 2009 to 2015, in violation of 40 CFR §262.20, and 40 CFR §263.20.

CLASSIFICATION: These are Class I violations pursuant to OAR 340-012-0068(1)(f).

MAGNITUDE: The magnitude of the violation is major pursuant to OAR 340-012-0135(4)(c)(A)(i) because Respondent offered for transport or transported more than 6,000 pounds of hazardous waste without a hazardous waste manifest.

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)(i), because, at the time of the violation, Respondent was a large quantity generator because it generated more than 1,000 kilograms of hazardous waste per month.

"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 0 according to OAR 340-012-0145(4)(e). DEQ is assessing a separate penalty for several occurrences of the violation. Each day of violation constitutes a separate occurrence. Respondent committed the violation multiple times per month, each year from 2009 to 2015.

"M" is the mental state of the Respondent and receives a value of 8 according to OAR 340-012-0145(5)(d), because Respondent's conduct was reckless. Respondent is a major regional electronics recycler with the capacity and sophistication to understand and implement applicable Oregon law. In addition, Respondent considered itself a conditionally exempt generator (CEG) of hazardous waste with EPA ID #ORD980981799, despite its failure to perform a hazardous waste determination on its Flat Screen waste stream. Respondent's failure to conduct a hazardous waste determination led to its failure to properly offer for transport and transport hazardous waste on a hazardous waste manifest, constituting a conscious disregard of a substantial and unjustifiable risk that the resulting violation would

occur. In addition, this risk constituted a gross deviation from the standard of care a reasonable person would observe in a similar situation.

"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, pursuant to OAR 340-012-0150(3) because the economic benefit specific to transport in this case is likely de minimis.

PENALTY CALCULATION: $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$
 $= \$12,000 + [(0.1 \times \$12,000) \times (0 + 0 + 0 + 8 + 0)] + \0
 $= \$12,000 + (\$1,200 \times 8) + \$0$
 $= \$12,000 + \$9,600 + \$0$
 $= \$21,600$

Respondent committed the violation multiple times per month, each year from 2009 to 2015. DEQ has elected to assess a civil penalty for one occurrence during each year the violation occurred. Therefore, DEQ has assessed a civil penalty for seven occurrences of the violation.

$$\$21,600 \times 7 = \$151,200$$

EXHIBIT No. 3

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

VIOLATION No. 3: Failing to submit to DEQ annual hazardous waste reports and fees as required of a large quantity generator, in violation of OAR 340-102-0041(2) and OAR 340-102-0065(1).

CLASSIFICATION: These are Class II violations pursuant to OAR 340-012-0068(2)(t).

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)(i), because, at the time of the violation, Respondent was a large quantity generator because it generated more than 1,000 kilograms of hazardous waste per month.

"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 1 but less than seven occurrences of the violation. Each day of violation constitutes a separate occurrence. The violation occurred on at least one day for each year that Respondent failed to file the appropriate report and fee, from 2009 to 2015. Therefore, there were approximately seven occurrences of the violation.

"M" is the mental state of the Respondent and receives a value of 8 according to OAR 340-012-0145(5)(d), because Respondent's conduct was reckless. Respondent is a major regional electronics recycler with the capacity and sophistication to understand and implement applicable Oregon law. In addition, Respondent maintained registration as a conditionally exempt generator (CEG) of hazardous waste with EPA ID #ORD980981799. Respondent's failure to conduct a hazardous waste determination on its Flat Screen waste stream

contributed to its failure to properly report as a large quantity generator of hazardous waste, the disposal of these wastes voiding the electronic waste exemption, which constitutes a conscious disregard of a substantial and unjustifiable risk that the resulting violation would occur. In addition, this risk constituted a gross deviation from the standard of care a reasonable person would observe in a similar situation.

"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 has not addressed the violation.

"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, pursuant to OAR 340-012-0150(3) because there is insufficient information on which to make an estimate. Respondent will be assessed late fees for missed transporter fees.

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 (0 + 0 + 2 + 8 + 2)] + \$0
= \$3,000 + (\$300 x 12) + \$0
= \$3,000 + \$3,600 + \$0
= \$6,600