



Oregon

Kate Brown, Governor

Department of Environmental Quality

Headquarters
811 SW 6th Ave
Portland, OR 97204-1390
(503) 229-5696
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TTY: 711

April 6, 2016

CERTIFIED MAIL: 7014 2870 0001 3378 2986

W.R. Grace & Co. – Conn.
c/o The Prentice-Hall Corporation System, Inc.
1127 Broadway Street NE Ste 310
Salem, OR 97301

Re: Notice of Civil Penalty Assessment and Order
Case No. LQ/HW-WR-15-223

This letter is to inform you that the Oregon Department of Environmental Quality (DEQ) has issued you a civil penalty of \$6,600 for illegally transporting hazardous waste to your facility in Albany. Additionally, the enclosed Notice cites you without penalty for violating an emergency preparedness requirement by failing to maintain adequate aisle space to allow access for emergency personnel and equipment.

DEQ issued this penalty because the transport of hazardous waste on a manifest, to permitted facilities, is an important requirement that ensures safe cradle-to-grave management of hazardous waste. DEQ appreciates your efforts to ensure the violation would not be repeated through training and revising procedures to require management approval for transport of materials to and from storage. DEQ considered these efforts when determining the amount of civil penalty.

If you wish to appeal this matter, DEQ must receive a request for a 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 - 811 S.W. 6th Ave., Portland, OR 97204

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.

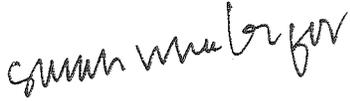
DEQ may allow you to resolve part of your penalty through the completion of a Supplemental Environmental Project (SEP). SEPs are environmental improvement projects that you sponsor in lieu of paying your penalty. Enclosed is more detail on how to pursue a SEP. SEP documents are available on the internet at <http://www.deq.state.or.us/programs/enforcement/SEP.htm>, or by calling the number below to request a paper copy.

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DEQ's rules are available on the internet at <http://www.deq.state.or.us/regulations/rules.htm>, or by calling the number below to request a paper copy.

If you have any questions, please contact DEQ Environmental Law Specialist Sarah Wheeler, at (503) 229-6927. You may call toll-free within Oregon at 1-800-452-4011, extension 6927.

Sincerely,



Leah K. Feldon, Manager
Office of Compliance and Enforcement

Enclosures

cc: Susan Shewczyk, DEQ, Salem Office
Shawn Conway, Site Manager, W.R. Grace & Co. – Conn., 1290 Industrial Way, Albany, OR
97322

1 BEFORE THE ENVIRONMENTAL QUALITY COMMISSION
2 OF THE STATE OF OREGON

3 IN THE MATTER OF:) NOTICE OF CIVIL PENALTY
4 W.R. GRACE & CO. – CONN.,) ASSESSMENT AND ORDER
5 Respondent.) CASE NO. LQ/HW-WR-15-223

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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 operates a manufacturing facility at 1290 Industrial Way in Albany, Oregon
14 (the Facility).
- 15 2. On or about May 20, 2015, Respondent determined that the following materials stored in
16 a Portland warehouse were no longer valuable and Respondent intended to dispose of them as
17 hazardous waste:

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Material (liquid)	Amount (pounds)	Flashpoint (degrees Fahrenheit)
Isooctane	235	10
Ethylbenzene	301	72
2,2-Dimethoxypropane	93	16
Triethyl orthoformate	1,467	86
Ethylene Dichloride	1990	55

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23 3. On June 10, 2015, Respondent directed a hazardous waste transporter to bring the
24 above-listed materials to the Facility.

25 4. Respondent did not prepare a uniform hazardous waste manifest, designating a facility
26 permitted to handle hazardous waste, for the transport of the above-listed materials.

27 5. The transporter delivered the above-listed materials to the Facility without a uniform

1 hazardous waste manifest on June 11, 2015.

2 6. Respondent properly disposed of the above-listed materials as hazardous waste on June
3 17, 2015.

4 7. DEQ has not issued a permit for Respondent to store, treat, or dispose of hazardous
5 waste at the Facility.

6 8. Respondent generates more than 2,200 pounds of hazardous waste at the Facility on a
7 monthly basis.

8 9. On July 29 and September 29, 2015, Respondent did not maintain enough aisle space in
9 Respondent's hazardous waste storage area for emergency personnel and equipment to have
10 unobstructed access in an emergency.

11 III. CONCLUSIONS

12 1. Respondent violated 40 CFR 262.20(a)(1) and (b), adopted by OAR 340-100-0002(1),
13 by offering hazardous waste for transport without preparing a uniform hazardous waste manifest
14 designating a facility permitted to handle hazardous waste. The wastes described in paragraph two above
15 are hazardous wastes pursuant to 40 CFR 262.21(a)(1), adopted by OAR 340-100-0002(1), designated
16 by Environmental Protection Agency (EPA) Waste Number D001. Additionally, the Ethylene
17 Dichloride waste is also hazardous waste pursuant to 40 CFR 261.33(e), adopted by OAR 340-100-
18 0002(1), designated by EPA Waste Number U077. This is a Class I violation, according to OAR 340-
19 012-0068(1)(e). DEQ hereby assesses a \$6,600 civil penalty for this violation.

20 2. Respondent violated 40 CFR 265.35, adopted by OAR 340-100-0002(1), by failing to
21 maintain adequate aisle space in the hazardous waste storage area at the Facility to allow unobstructed
22 movement of personnel, fire protection equipment, spill control equipment and decontamination
23 equipment in an emergency. This is a Class II violation, according to OAR 340-012-0068(2)(k). DEQ has
24 not assessed a civil penalty for this violation.

25 IV. ORDER TO PAY CIVIL PENALTY

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

1 Pay a total civil penalty of \$6,600. The determination of the civil penalty is attached as Exhibit 1
2 and is incorporated as part of this Notice.

3 If you do not file a request for hearing as set forth in Section V below, your check or money order
4 must be made payable to "**State Treasurer, State of Oregon**" and sent to the **DEQ, Business Office,**
5 **811 S.W. Sixth Avenue, Portland, Oregon 97204.** Once you pay the penalty, the Findings of Fact,
6 Conclusions and Order become final.

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

8 You have a right to a contested case hearing on this Notice, if you request one in writing. You
9 must ensure that DEQ receives the request for hearing **within 20 calendar days** from the date you
10 receive this Notice. If you have any affirmative defenses or wish to dispute any allegations of fact in
11 this Notice or attached exhibits, you must include them in your request for hearing, as factual matters
12 not denied will be considered admitted, and failure to raise a defense will be a waiver of the defense.
13 (See OAR 340-011-0530 for further information about requests for hearing.) You must mail the request
14 for hearing to: **DEQ, Office of Compliance and Enforcement - Appeals, 811 SW Sixth Avenue,**
15 **Portland, Oregon 97204,** or fax it to **503-229-5100.** An administrative law judge employed by the
16 Office of Administrative Hearings will conduct the hearing, according to ORS Chapter 183, OAR
17 Chapter 340, Division 011 and OAR 137-003-0501 to 0700. You have a right to be represented by an
18 attorney at the hearing, or you may represent yourself unless you are a corporation, agency or
19 association.

20 Active duty service-members have a right to stay proceedings under the federal Service
21 members Civil Relief Act. For more information, please call the Oregon State Bar at 1-800-
22 452-8260 or the Oregon Military Department at 1-800-452-7500. Additional information can be found
23 online at the United States Armed Forces Legal Assistance (AFLA) Legal Services Locator website
24 <http://legalassistance.law.af.mil/content/locator.php>.

25 If you fail to file a request for hearing in writing within 20 calendar days of receipt of the
26 Notice, the Notice will become a final order by default without further action by DEQ, as per OAR
27 340-011-0535(1). If you do request a hearing but later withdraw your request, fail to attend the hearing

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or notify DEQ that you will not be attending the hearing, DEQ will issue a final order by default pursuant to OAR 340-011-0535(3). DEQ designates the relevant portions of its files, including information submitted by you, as the record for purposes of proving a prima facie case.

April 6, 2016
Date

Sarah Wheeler for
Leah K. Feldon, 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: Offering hazardous waste for transport without preparing a hazardous waste manifest designating a facility permitted to handle hazardous waste, in violation of 40 CFR 262.20(a)(1) and (b), as adopted by OAR 340-100-0002(1).

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), because Respondent offered approximately 4,086 pounds of hazardous waste for transport without a 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 \$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) because Respondent violated a hazardous waste rule and is a large quantity generator of hazardous waste.

"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) and (f), because there are no prior significant actions within the past ten years.

"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 within the past ten years.

"O" is whether the violation was repeated or ongoing and receives a value of 0 according to OAR 340-012-0145(4)(a), because there was one occurrence of the violation.

"M" is the mental state of the Respondent and receives a value of 2 according to OAR 340-012-0145(5)(b), because as a highly-regulated large quantity generator of hazardous waste, Respondent reasonably should have known of the regulations regarding transporting hazardous waste.

"C" is Respondent's efforts to correct the violation and receives a value of -1 according to OAR 340-012-0145(6)(e), because Respondent made reasonable efforts to ensure that the

violation would not be repeated, by training logistics personnel and instituting a new procedure requiring management approval before materials are transported to and from storage.

"EB" is the approximate economic benefit that an entity gained by not complying with the law. It is designed to "level the playing field" by taking away any economic advantage the entity gained and to deter potential violators from deciding it is cheaper to violate and pay the penalty than to pay the costs of compliance. In this case, "EB" receives a value of \$0, as DEQ has determined that there was no more than a de minimis economic benefit resulting from this violation.

PENALTY CALCULATION:

$$\begin{aligned} \text{Penalty} &= \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB} \\ &= \$6,000 + [(0.1 \times \$6,000) \times (0 + 0 + 0 + 2 - 1)] + \$0 \\ &= \$6,000 + [(\$600) \times (1)] + \$0 \\ &= \$6,000 + \$600 + \$0 \\ &= \$6,600 \end{aligned}$$