



Oregon

Kate Brown, Governor

98

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

May 22, 2020

CERTIFIED MAIL: 7017 1450 0000 8310 0656

Genesis Acquisition Company, Inc. doing business as
Northland Furniture Company
TT Administrative Services LLC, Registered Agent
888 SW 5th Avenue, Suite 1600
Portland OR 97204

Re: Notice of Civil Penalty Assessment and Order
Case No. LQ/HW-ER-2019-153

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 DEQ has issued you a civil penalty of \$3,000 for storing hazardous waste beyond the allowable 180 days without a permit at your facility at 681 SE Glenwood Drive in Bend. Specifically, you stored alcohol reducer for approximately three years, from 2016 to 2019. In addition, DEQ cited you, without penalty, for storing hazardous waste in open containers and without proper labeling.

DEQ issued this penalty because improper management of hazardous waste, including the unpermitted and prolonged storage of hazardous wastes, threatens public health and the environment. To protect public health and the environment, the legislature has enacted statutes and DEQ has adopted rules establishing strict requirements for the accumulation, storage, labeling, handling, and disposal of hazardous waste. Your failure to comply with hazardous waste rules increased the risk that the public or the environment could be harmed by mismanagement of hazardous waste.

DEQ appreciates your efforts to correct the violations by transporting for disposal the alcohol reducer and by instituting work practices to ensure that your waste is properly stored and labeled. DEQ considered these efforts when determining the amount of the civil penalty

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

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

Via email – DEQappeals@deq.state.or.us

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 Susan Elworth at 503-229-5152 or toll free in Oregon at 800-452-4011, extension 5152.

Sincerely,



Kieran O'Donnell, Manager
Office of Compliance and Enforcement

Enclosures

cc: Brian Allen, Bend office, DEQ

1 BEFORE THE ENVIRONMENTAL QUALITY COMMISSION

2 OF THE STATE OF OREGON

3 IN THE MATTER OF:) NOTICE OF CIVIL PENALTY
4 GENESIS ACQUISITION COMPANY, INC.) ASSESSMENT AND ORDER
5 doing business as NORTHLAND)
6 FURNITURE COMPANY,) CASE NO. LQ/HW-ER-2019-153
7 Respondent.)

8 I. AUTHORITY

9 DEQ issues this Notice of Civil Penalty Assessment and Order (Notice) pursuant to Oregon
10 Revised Statutes (ORS) 466.095, 468.100 and 468.126 through 468.140, ORS 466.990, ORS Chapter 183
11 and Oregon Administrative Rules (OAR) Chapter 340, Divisions 011, 012, 100 and 102.

12 II. FINDINGS OF FACT

13 1. Respondent owns and operates a furniture manufacturing facility located at 681
14 Glenwood Drive in Bend, OR (the Facility).

15 2. At all relevant times, Respondent generates more than 100 but less than 1,000 kilograms
16 of hazardous waste.

17 3. On April 18, 2019, DEQ conducted an inspection of the Facility. At the time of the
18 inspection:

19 a. There were spent aerosol cans in an open 5-gallon container in the maintenance shop;

20 b. There was a 55-gallon drum in the lacquer mixing room that Respondent was using to
21 store waste lacquers and spent solvents generated in that area. The drum was not closed
22 and was not labeled with the words "hazardous waste"; and

23 c. There were two 55-gallon containers of liquid alcohol reducer waste in the lacquer
24 mixing room which were not labeled with the words "hazardous waste" or an
25 accumulation start date. Respondent had stored the liquid alcohol reducer waste since
26 2016, approximately three years prior to the inspection.

27 4. On June 19, 2019, the liquid alcohol reducer referenced in paragraph 3.c above, was
transported for disposal under Uniform Hazardous Waste Manifest #013592547 at which time
Respondent determined that it had a flash point of less than 60 degrees Celsius.

1 4. Respondent violated 40 CFR 262.34(d)(4) (as adopted by OAR 340-100-0002) by failing to
2 clearly mark the date upon which each period of accumulation began for containers of hazardous waste
3 and to mark those containers with the words "hazardous waste," as required by 40 CFR 262.34(a)(2).
4 Specifically, Respondent stored the waste alcohol reducer without marking it with the words "hazardous
5 waste" or an accumulation start date, as alleged in Section II, paragraph 3.c. Respondent also stored the
6 container of waste lacquer and spent solvents without marking that container with the words "hazardous
7 waste" as alleged in Section II, paragraph 3.b. These are Class II violations according to OAR 340-012-
8 0068(2)(b). DEQ did not assess a civil penalty for these violations.

9 IV. ORDER TO PAY CIVIL PENALTY

10 Based upon the foregoing FINDINGS OF FACTS AND CONCLUSIONS, Respondent is
11 hereby ORDERED TO pay a total civil penalty of \$3,000. The determination of the civil penalty is
12 attached as Exhibit 1 and is incorporated as part of this Notice. If you do not file a request for hearing as
13 set forth in Section V below, your check or money order must be made payable to "**State Treasurer,**
14 **State of Oregon**" and sent to the **DEQ, Business Office, 700 NE Multnomah Street, Suite 600,**
15 **Portland, Oregon 97232.**

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. DEQ
18 must receive your request for hearing **within 20 calendar days** from the date you receive this Notice. If
19 you have any affirmative defenses or wish to dispute any allegations of fact in this Notice or attached
20 exhibit, you must do so in your request for hearing, as factual matters not denied will be considered
21 admitted, and failure to raise a defense will be a waiver of the defense. (See OAR 340-011-0530 for
22 further information about requests for hearing.) You must send your request to: **DEQ, Office of**
23 **Compliance and Enforcement, 700 NE Multnomah Street, Suite 600, Portland, Oregon 97232,** fax
24 it to **503-229-5100** or email it to **DEQappeals@deq.state.or.us**. An administrative law judge
25 employed by the Office of Administrative Hearings will conduct the hearing, according to ORS
26 Chapter 183, OAR Chapter 340, Division 011 and OAR 137-003-0501 to 0700. You have a right to be
27 represented by an attorney at the hearing, however you are not required to be. If you are an individual,

1 you may represent yourself. If you are a corporation, partnership, limited liability company,
2 unincorporated association, trust or government body, you must be represented by an attorney or a duly
3 authorized representative, as set forth in OAR 137-003-0555.

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

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

15
16
17
18 5/22/2020
19 Date

20
21
22
23
24
25
26
27

Kieran O'Donnell, Manager
Office of Compliance and Enforcement

EXHIBIT 1

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

VIOLATION 1: Storing hazardous waste at an unpermitted location, in violation of ORS 466.095(1)(a).

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

MAGNITUDE: The magnitude of the violation is moderate pursuant to OAR 340-012-0135(4)(b)(B)(i) because Respondent stored 55 gallons or less of hazardous waste. Specifically, Respondent was storing less than one 55-gallon container of the liquid alcohol reducer 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 \$2,000 for a Class II, moderate magnitude violation in the matrix listed in OAR 340-012-0140(3)(b)(B)(ii) and applicable pursuant to OAR 340-012-0140(3)(a)(J). Respondent is a small 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), 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. Respondent stored the hazardous waste for more than three years, thus the violation was on-going for more than 28 days.

"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. Negligence means Respondent failed to take reasonable care to avoid a foreseeable risk of conduct constituting or resulting in a violation. Respondent knew that the alcohol reducer was waste as it had stopped using the chemical at least 3 years prior to DEQ's inspection. By failing to dispose of the waste in a timely manner, Respondent failed to take reasonable care to avoid illegally storing the waste.

"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

correct the violation. Following DEQ's inspection, Respondent immediately labeled the containers of alcohol reducer and then had the waste characterized and disposed of.

"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. Although Respondent delayed spending \$400 to dispose of the alcohol reducer from sometime in 2016 until June 2019, the EB value, when calculated using the U.S. Environmental Protection Agency's BEN computer model, would be de minimus

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

$$\begin{aligned} &= \$2,000 + [(0.1 \times \$2,000) \times (0 + 0 + 4 + 4 - 3)] + \$0 \\ &= \$2,000 + (\$200 \times 5) + \$0 \\ &= \$2,000 + \$1,000 + \$0 \\ &= \$3,000 \end{aligned}$$