



Oregon

Kate Brown, Governor

Department of Environmental Quality

Headquarters

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Portland, OR 97204-1390

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TTY: 711

May 19, 2016

CERTIFIED MAIL: 7014 2870 0001 3373 5586

TDY Industries, LLC
c/o CT Corporation System, Registered Agent
388 State Street, Suite 420
Salem, OR 97301

Re: Notice of Civil Penalty Assessment and Order
Case No. LQ/HW-WR-12-144

This letter is to inform you that the Oregon Department of Environmental Quality (DEQ) has issued you a civil penalty of \$43,353 for hazardous waste violations associated with zirconium swarf that you received at your Millersburg, Oregon, facility in July 2011 and later determined to be waste and shipped to a waste disposal facility operated by WTI/Heritage Inc, in East Liverpool, Ohio. These violations include failing to determine that the waste was hazardous, storing the waste without a hazardous waste storage facility permit, and offering the hazardous waste for transport without a hazardous waste manifest.

Improper management of hazardous wastes threatens public health and the environment. To protect public health and the environment, the legislature has enacted statutes and the DEQ has adopted rules establishing strict requirements for the accumulation, storage, handling, treatment, and disposal of hazardous wastes. 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.

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.

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.



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If you have any questions, please contact Jeff Bachman at (503) 229-5950. You may call toll-free within Oregon at 1-800-452-4011, extension 5950.

Sincerely,

*Susan Wheeler
ba*

Leah K. Feldon, Manager
Office of Compliance and Enforcement

Enclosures

cc: Susan Shewczyk, Western Region, Salem Office, DEQ
J. Mark Morford, Stoel Rives, LLP, 900 SW Fifth Ave., Portland, OR 97204-1268

1 for hearing.) You must mail the request for hearing to: **DEQ, Office of Compliance and**
2 **Enforcement - Appeals, 811 SW Sixth Avenue, Portland, Oregon 97204**, or fax it to **503-229-**
3 **5100**. An administrative law judge employed by the Office of Administrative Hearings will
4 conduct the hearing, according to ORS Chapter 183, OAR Chapter 340, Division 011 and OAR
5 137-003-0501 to 0700. You have a right to be represented by an attorney at the hearing, or you
6 may represent yourself unless you are a corporation, agency or association.

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

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

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20 Date

May 19, 2016

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Leah K. Feldon, 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: 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) because Respondent failed to make a hazardous waste determination of 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) because Respondent 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. P is assigned an initial value of 3 pursuant to OAR 340-012-0145(2)(a), because Respondent has two Class I equivalent violations stemming from Case No. LQ/HW-WR-06-034. This value is reduced by 4 pursuant to OAR 340-012-0145(2)(d)(A)(ii), because the formal enforcement action in which prior significant actions were cited was issued more than five years before the date the current violation occurred. P is assigned a final value of 0 because the value of P cannot be less than 0 pursuant to OAR 340-012-0145(2)(e).
- "H" is Respondent's history of correcting prior significant actions and receives a value of 1 according to OAR 340-012-0145(3)(d), because the sum of the "P" and "H" factors may not be less than 1 because Respondent did not make extraordinary efforts to correct or minimize the effects of all prior violations.
- "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 only one 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. Respondent is a large quantity generator of hazardous waste and is therefore familiar with its duty to perform a hazardous determination on all wastes it generates. In failing to take the actions necessary to correctly characterize the zirconium waste, 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 -1 according to OAR 340-012-0145(6)(e), because Respondent made reasonable efforts to prevent a recurrence of the violation by developing and implementing augmented protocols and procedures for sampling and analyzing wastes and making waste determinations.

"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 \$1,953. This is the amount Respondent gained by delaying spending \$46,244 to timely dispose of the waste from October 6, 2011 to July 25, 2012. This "EB" was calculated pursuant to OAR 340-012-0150(1) using the U.S. Environmental Protection Agency's BEN computer model.

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

$$\begin{aligned} &= \$3,000 + [(0.1 \times \$3,000) \times (0 + 1 + 0 + 4 + (-)1)] + \$1,953 \\ &= \$3,000 + [\$300 \times 4] + \$1,953 \\ &= \$3,000 + \$1,200 + \$1,953 \\ &= \$6,153 \end{aligned}$$

EXHIBIT 2

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

VIOLATION 2: Unpermitted storage of hazardous waste in violation of ORS 466.095(1).

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

MAGNITUDE: The magnitude of the violation is major pursuant to OAR 340-012-0135(4)(b)(A)(i) because Respondent stored 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 \$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 Respondent 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. P is assigned an initial value of 3 pursuant to OAR 340-012-0145(2)(a), because Respondent has two Class I equivalent violations stemming from Case No. LQ/HW-WR-06-034. This value is reduced by 4 pursuant to OAR 340-012-0145(2)(d)(A)(ii), because the formal enforcement action in which prior significant actions were cited was issued more than five years before the date the current violation occurred. P is assigned a final value of 0 because the value of P cannot be less than 0 pursuant to OAR 340-012-0145(2)(e).

"H" is Respondent's history of correcting prior significant actions and receives a value of 1 according to OAR 340-012-0145(3)(d), because the sum of the "P" and "H" factors may not be less than 1 because Respondent did not make extraordinary efforts to correct or minimize the effects of all prior violations.

"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. Respondent determined that the zirconium swarf was waste on or about July 28, 2011 and stored the waste at its Albany facility until on or about December 6, 2011. Unpermitted storage began on October 27, 2011 when the 90 day period allowed for on-site storage expired. Each day constitutes a separate 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. Respondent is a large quantity generator of hazardous waste and is therefore familiar with its duties and obligations in regards to the hazardous waste it generates. This violation resulted from Respondent's

failure to exercise reasonable care by determining whether the zirconium swarf waste was hazardous and storing it in accordance with the applicable 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 correct the violation by disposing of the wastes at a properly permitted facility.

"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 the economic benefit for this violation is reflected in the penalty for Violation 1.

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 \$1,200) \times (0 + 1 + 4 + 4 + (-3))] + \0
= $\$12,000 + [\$1,200 \times 6] + \$0$
= $\$12,000 + \$7,200 + \$0$
= $\$19,200$

EXHIBIT 3

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

- VIOLATION 3: Offering hazardous waste for transport without preparing a hazardous waste manifest in violation of 40 CFR 262.20(a)(1), 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 major pursuant to OAR 340-012-0135(4)(c)(A)(i) because the violation involved more than 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 \$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 Respondent 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. P is assigned an initial value of 3 pursuant to OAR 340-012-0145(2)(a), because Respondent has two Class I equivalent violations stemming from Case No. LQ/HW-WR-06-034. This value is reduced by 4 pursuant to OAR 340-012-0145(2)(d)(A)(ii), because the formal enforcement action in which prior significant actions were cited was issued more than five years before the date the current violation occurred. P is assigned a final value of 0 because the value of P cannot be less than 0 pursuant to OAR 340-012-0145(2)(e).
- "H" is Respondent's history of correcting prior significant actions and receives a value of 1 according to OAR 340-012-0145(3)(d), because the sum of the "P" and "H" factors may not be less than 1 unless Respondent made extraordinary efforts to correct or minimize the effects of all prior violations.
- "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 only one 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. Respondent is a large quantity generator of hazardous waste and is therefore familiar with its duties and obligations in regards to the hazardous waste it generates, including the requirement to properly manifest hazardous waste shipments. This violation resulted from Respondent's failure to exercise reasonable care by determining whether the zirconium swarf waste was hazardous.

"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), 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 the economic benefit for this violation is reflected in the penalty for Violation 1.

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

$$\begin{aligned} &= \$12,000 + [(0.1 \times \$12,000) \times (0 + 1 + 0 + 4 + 0)] + \$0 \\ &= \$12,000 + [\$1,200 \times 5] + \$0 \\ &= \$12,000 + \$6,000 + \$0 \\ &= \$18,000 \end{aligned}$$