



# 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

June 21, 2019

CERTIFIED MAIL: 7016 0750 0000 3470 4965

Isovolta, Inc.  
Attn: Andrew Healey, Registered Agent  
495 Territorial Road  
Harrisburg, OR 97446

Re: Notice of Civil Penalty Assessment and Order  
Case No. LQ/HW-WR-2019-095

This letter is to inform you that the Oregon Department of Environmental Quality (DEQ) has issued you a civil penalty of \$23,136 for failing to train your employees on hazardous waste management, to maintain a complete training plan, to perform a complete and accurate hazardous waste determination, and to properly label and store wastes generated at your facility in Harrisburg, Linn County, Oregon. Additionally, the enclosed Notice cites you without penalty for failing to otherwise manage hazardous wastes, universal wastes, and used oil in accordance with Oregon law.

DEQ issued this penalty because Isovolta has repeatedly been cited for hazardous waste violations in the past, and because improper storage and management of hazardous wastes threatens human health and the environment. To protect against such threats, the legislature has enacted statutes and DEQ has adopted rules establishing strict requirements for the identification, storage, handling, treatment, and disposal of hazardous waste. Your failure to comply with these requirements increases the risk that human health or the environment could be harmed by mismanagement of hazardous waste.

Included in Section IV of the Notice is an order requiring you to provide documentation to DEQ demonstrating that you have developed a personnel training plan for the management of hazardous waste at your facility within 15 days of the final order.

DEQ appreciates your efforts to correct the violations following DEQ's inspection by properly closing and labeling containers, shipping waste off-site to a permitted facility, and providing training to your employees. 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 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](mailto: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 Anzie St. Clair at 503-229-5422 or toll free in Oregon at 800-452-4011, extension 5422.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Kieran O'Donnell', is written over a horizontal line.

Kieran O'Donnell, Manager  
Office of Compliance and Enforcement

Enclosures

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

BEFORE THE ENVIRONMENTAL QUALITY COMMISSION  
OF THE STATE OF OREGON

IN THE MATTER OF: )  
ISOVOLTA, INC., an Oregon corporation, ) NOTICE OF CIVIL PENALTY  
Respondent. ) ASSESSMENT AND ORDER  
CASE NO. LQ/HW-WR-2019-095

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 466.190 and 466.990, ORS Chapter 183 and Oregon Administrative Rules (OAR) Chapter 340, Divisions 011, 012, 100, 101, 102, 111, and 113.

II. FINDINGS OF FACT

1. Respondent operates an aviation products manufacturing business at 495 Territorial Road in Harrisburg, Linn County, Oregon (the Facility).

2. At its Facility, Respondent manufactures customized laminates and thermoplastics for airplanes. As part of its manufacturing process, Respondent uses methyl ethyl ketone (MEK) and tetrachloroethylene as solvents at the Facility. Respondent also uses vinyl chloride and MEK in its products at the Facility and generates waste debris that exceeds 0.2 mg/l for vinyl chloride and 200 mg/l for MEK.

3. Respondent is registered with DEQ as a hazardous waste generator under U.S. Environmental Protection Agency (EPA) Identification Number ORD065280190.

4. Respondent reported to DEQ that the Facility has been a large-quantity generator of hazardous waste since at least 2010.

5. On February 8, 2019, Respondent was a large quantity generator of hazardous waste, generating more than 2,200 pounds of hazardous wastes on a monthly basis.

6. Respondent does not have a permit to treat, store, or dispose of hazardous waste.

7. DEQ inspected the Facility on February 8, 2019 and observed the conditions and quantities of waste stored at the Facility as well as Respondent's recordkeeping.

1           8. On or before February 8, 2019, Respondent placed for disposal at least five unpunctured  
2 aerosol cans containing toluene, xylene, and tetrachloroethylene into an open, uncovered 55-gallon  
3 container at the Facility that was not labeled with the words "hazardous waste" and did not have an  
4 accumulation start date written on it.

5           9. The aerosol cans contained compressed gasses that were ignitable.

6           10. Aerosol cans that have not been punctured can explode when heated or under pressure.

7           11. On or before February 8, 2019, Respondent disposed in its regular trash wipes generated at  
8 the Facility that were contaminated with spent solvents including MEK and tetrachloroethene.

9           12. On or before January 31, 2019, Respondent had placed an abandoned parts washer outdoors  
10 in the boneyard of the Facility containing approximately two gallons of a liquid mixture that was not  
11 securely enclosed and not labeled with the words "hazardous waste." On February 8, 2019,  
12 Respondent took a sample of the liquid mixture; testing results indicated the liquid mixture contained  
13 approximately 12,300 ug/L of tetrachloroethene.

14           13. On at least February 8, 2019, Respondent stored one unclosed 55-gallon container of MEK  
15 and vinyl chloride debris in a maintenance area at the Facility, generated from the adjoining coater and  
16 rotary screen cleaning rooms. The container did not have an accumulation start date written on it. The  
17 air surrounding the container had noticeable solvent odors.

18           14. On at least February 8, 2019, Respondent stored one 30-gallon garbage bag in a  
19 maintenance area at the Facility containing MEK and vinyl chloride debris, generated from the  
20 adjoining coater and rotary screen cleaning rooms. The bag was not closed, was not labeled with the  
21 words "hazardous waste" and did not have an accumulation start date written on it. The air surrounding  
22 the bag had noticeable solvent odors.

23           15. On at least February 8, 2019, Respondent stored one unclosed 55-gallon container of MEK  
24 distillation sludge bottoms that was not labeled with the words "hazardous waste" in the  
25 recycling/distillation room of the Facility.

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1 16. On at least February 8, 2019, Respondent stored one unclosed 55-gallon container of MEK  
2 debris in a satellite accumulation area and labeled with the words "hazardous waste" in the colormatch  
3 area of the Facility.

4 17. On at least February 8, 2019, Respondent stored one 5-gallon container of MEK debris  
5 waste in a satellite accumulation area in the recycling/distillation room that was not labeled with either  
6 the words "hazardous waste" or a description of the container's contents.

7 18. On February 8, 2019, Respondent stored one 5-gallon container of MEK-containing liquid  
8 waste in a satellite accumulation area in the screen cleaning room at the Facility that was not labeled  
9 with either the words "hazardous waste" or a description of the container's contents.

10 19. From on or about March 15, 2017 through to on or about March 5, 2019, Respondent stored  
11 waste mercury-containing fluorescent light bulbs in a 55-gallon container at the Facility labeled as  
12 "Universal Waste lamps" but with no accumulation start date written on it. On or about March 5, 2019,  
13 Respondent shipped the container off-site.

14 20. On February 8, 2019, Respondent stored two black 55-gallon drums labeled as hazardous  
15 waste in the Facility's 90-day hazardous waste storage room along the wall behind several other drums,  
16 obstructing a clear pathway to their location.

17 21. On or before February 8, 2019, Respondent stored used oil in one five-gallon container at  
18 the Facility labeled as "hydraulic fluid 10/4/18" but not with the words "used oil."

19 22. From on or about July 21, 2016 through to present, Respondent has not maintained a  
20 complete personnel training plan that adequately identifies the job title, job description, hazardous  
21 waste training type and frequency, and training completion dates for each named employee that is or  
22 was involved in hazardous waste management at the Facility.

23 23. On or about August 18, 2016, DEQ sent Respondent a letter titled "Warning Letter with  
24 Opportunity to Correct" describing hazardous waste violations observed by DEQ at its Facility on July  
25 21, 2016, including a failure to close containers of hazardous waste, a failure to label satellite  
26 accumulation area containers of hazardous waste, and a failure to maintain a complete personnel

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1 training plan. Respondent did not submit to DEQ documentation of its personnel training program in  
2 response to the August 18, 2016 letter.

3 24. On February 8, 2019, DEQ again requested a copy of Respondent's written personnel  
4 training plan. Respondent could not produce a plan that included written job descriptions of the  
5 hazardous waste management duties of its employees, or a list of designated training types and  
6 schedules for each employee.

7 25. Prior to the February 8, 2019 inspection, Respondent's most recent hazardous waste training  
8 took place on or about June 29, 2017 and focused solely on satellite accumulation storage requirements.

9 26. On February 8, 2019, DEQ requested a copy of Respondent's weekly inspection reports for  
10 all of its 90-day hazardous waste storage areas; Respondent could not produce any such records for the  
11 waste stored as described in paragraphs 13 and 14 above.

### 12 III. CONCLUSIONS

13 1. At all material times, Respondent is a generator (as defined by OAR 340-100-0010(1) and  
14 (2)(r) and 40 CFR 260.10, as adopted by OAR 340-100-0002) of hazardous waste (as defined by OAR  
15 340-100-0010(2)(t) and 40 CFR 261.3, as adopted by OAR 340-100-0002) and is subject to the hazardous  
16 waste management requirements referenced in Section III, paragraphs 2 through 9, pursuant to OAR 340-  
17 100-0002, OAR 340-102-0010(5), and OAR 340-102-0034(2).

18 2. Respondent has violated OAR 340-102-0011(2) by failing to accurately determine if  
19 Respondent's residues (as defined in OAR 340-100-0010(2)(ee) and 40 CFR 261.2 as adopted by OAR  
20 340-100-0002) generated at the Facility were hazardous waste. Specifically, as described above in Section  
21 II, paragraphs 8 through 12, Respondent did not accurately characterize the five aerosol cans, disposable  
22 wipes, and parts washer liquid generated at the Facility. The aerosol cans were hazardous wastes pursuant  
23 to 40 CFR 261.21(a)(3) and (b), and 40 CFR 261.24(a) and (b), as adopted by OAR 340-100-0002, and  
24 identified by EPA Hazardous Waste Numbers D001 and D039. The disposable wipes were hazardous  
25 wastes pursuant to 40 CFR 261.31(a), as adopted by OAR 340-100-0002, and identified by EPA  
26 Hazardous Waste Number F005. The parts washer liquid was hazardous waste pursuant to 40 CFR  
27 261.31(a), as adopted by OAR 340-100-0002, and identified by EPA Hazardous Waste Number F002.

1 These are Class I violations, according to OAR 340-012-0068(1)(a). DEQ hereby assesses a \$7,800 civil  
2 penalty for these violations.

3 3. Respondent violated 40 CFR 262.34(a)(1)(i) as it references 40 CFR 265.173(a), both as  
4 adopted by OAR 340-100-0002(1), by failing to store hazardous wastes in closed containers at the Facility,  
5 as described in Section II, paragraphs 8 through 10, and 12 through 16. The wastes in the parts washer and  
6 in the container of aerosol cans were hazardous wastes as described in Section III, paragraph 2 above. The  
7 wastes in the four containers of MEK liquid and sludge and MEK and vinyl chloride debris were  
8 hazardous wastes as identified by EPA Hazardous Waste Numbers D001, D035, D043, and F005, pursuant  
9 to 40 CFR 261.24(a) and (b), 40 CFR 261.21(a) and (b), and 40 CFR 261.31(a), each as adopted by OAR  
10 340-100-0002. These are Class II violations, according to OAR 340-012-0068(2)(m). DEQ hereby  
11 assesses a \$2,850 civil penalty for these violations.

12 4. Respondent has violated 40 CFR 262.34(a)(3), as adopted by OAR 340-100-0002, by failing to  
13 label four containers of hazardous waste with the words "hazardous waste," as described in Section II,  
14 paragraphs 8 through 10, 12, 14, and 15 above. The wastes in the unlabeled containers of MEK debris,  
15 MEK sludge, unpunctured aerosol cans, and parts washer fluid were hazardous wastes as described in  
16 Section III, paragraphs 2 and 3 above. These are Class II violations according to OAR 340-012-0068(2)(b)  
17 because Respondent failed to label four containers with a total combined capacity of at least 117 gallons.  
18 DEQ hereby assesses a \$2,850 civil penalty for these violations.

19 5. Respondent violated 40 CFR 262.34(c)(1)(ii), as adopted by OAR 340-100-0002, by failing to  
20 label satellite accumulation containers storing hazardous waste with the words "hazardous waste" or other  
21 words that identify the contents of the containers, as described in Section II, paragraphs 17 and 18. The  
22 waste in the two satellite accumulation containers was hazardous waste as identified by EPA Hazardous  
23 Waste Numbers D001, D035, and F005, pursuant to 40 CFR 261.24(a) and (b), 40 CFR 261.21(a) and (b),  
24 and 40 CFR 261.31(a), each as adopted by OAR 340-100-0002. These are Class III violations, according  
25 to OAR 340-012-0068(3)(b). DEQ hereby assesses a \$1,900 civil penalty for these violations.

26 6. Respondent violated 40 CFR 262.34(a)(2), as adopted by OAR 340-100-0002, by failing to  
27 label four containers of hazardous waste described in Section II, paragraphs 8 through 10 and 12 through

1 14, with the date when the period of accumulation began. The wastes in the containers lacking  
2 accumulation start dates were hazardous as described in Section III, paragraphs 2 and 3 above. These are  
3 Class II violations according to OAR 340-012-0068(2)(a). DEQ has not assessed a civil penalty for these  
4 violations.

5 7. Respondent violated 40 CFR 262.34(a)(4), as it references 40 CFR 265.35, both as adopted by  
6 OAR 340-100-0002, by failing to provide aisle space around two containers storing hazardous waste that  
7 was adequate to allow the unobstructed movement of emergency personnel and equipment, as described in  
8 Section II, paragraph 20 above. This is a Class II violation according to OAR 340-012-0068(2)(k). DEQ  
9 has not assessed a civil penalty for this violation.

10 8. Respondent has violated 40 CFR 262.34(a)(4) as it references 40 CFR 265.16(c) and (d), both  
11 as adopted by OAR 340-100-0002, by failing to train employees in the proper management of hazardous  
12 waste from on or about July 21, 2016 to May 29, 2019, and by failing to maintain all required elements of  
13 its personnel training plan at the Facility from on or about July 21, 2016 to present, as described in Section  
14 II, paragraphs 22 through 25. These are Class II violations according to OAR 340-012-0068(2)(l). DEQ  
15 hereby assesses a \$7,736 civil penalty for these violations.

16 9. Respondent violated 40 CFR 262.34(a)(1)(i) as it references 40 CFR 265.174, both as adopted  
17 by OAR 340-100-0002, by failing to conduct weekly inspections of hazardous waste storage containers in  
18 all of its 90-day storage areas, as described in Section II, paragraphs 16 through 18, and 26. These are  
19 Class II violations according to OAR 340-012-0068(2)(h). DEQ has not assessed civil penalties for these  
20 violations.

21 10. Respondent violated 40 CFR 273.15(a), as adopted by OAR 340-100-0002, by failing to ship a  
22 container of universal waste lamps off-site within one year of generation. The waste fluorescent lamps  
23 were mercury-containing universal waste lamps as defined in 40 CFR 273.5 and 273.9 and as adopted by  
24 OAR 340-100-0002. Respondent is a small quantity handler of universal wastes as defined in 40 CFR  
25 273.9 and as adopted by OAR 340-100-0002, generating less than 5,000 kilograms of universal waste.  
26 Respondent began accumulating the universal waste lamps on or about March 15, 2017 and did not ship  
27 ///



1 them off-site until on or about March 5, 2019, as described in Section II, paragraph 19. This is a Class II  
2 violation according to OAR 340-012-0068(2)(p). DEQ has not assessed a civil penalty for this violation.

3 11. Respondent violated 40 CFR 279.22(c)(1), as adopted by OAR 340-100-0002, by failing to  
4 label a container of used oil with the words "used oil," as described in Section II, paragraph 21. This is a  
5 Class III violation, according to OAR 340-012-0072(3)(c). DEQ has not assessed a civil penalty for this  
6 violation.

#### 7 IV. ORDER TO PAY CIVIL PENALTY AND TO COMPLY

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

10 1. Pay a total civil penalty of \$23,136. The determination of the civil penalties are attached as  
11 Exhibits 1 through 5 and are incorporated as part of this Notice.

12 If you do not file a request for hearing as set forth in Section V below, your check or money  
13 order must be made payable to "**State Treasurer, State of Oregon**" and sent to the **DEQ, Business**  
14 **Office, 700 NE Multnomah Street, Suite 600, Portland, Oregon 97232**. Once you pay the penalty,  
15 the Notice becomes final.

16 2. Develop and submit to DEQ a written personnel training plan that meets all the  
17 requirements of 40 CFR 265.16(d). Within 10 days of this order becoming final by operation of law or  
18 on appeal, written documentation demonstrating Respondent's compliance must be sent to DEQ, Attn:  
19 Killian Condon by email at [condon.killian@deq.state.or.us](mailto:condon.killian@deq.state.or.us).

#### 20 V. NOTICE OF RIGHT TO REQUEST A CONTESTED CASE HEARING

21 You have a right to a contested case hearing on this Notice, if you request one in writing. DEQ  
22 must receive your request for hearing **within 20 calendar days** from the date you receive this Notice. If  
23 you have any affirmative defenses or wish to dispute any allegations of fact in this Notice or attached  
24 exhibits, you must do so in your request for hearing, as factual matters not denied will be considered  
25 admitted, and failure to raise a defense will be a waiver of the defense. (See OAR 340-011-0530 for  
26 further information about requests for hearing.) You must send your request to: **DEQ, Office of**  
27 **Compliance and Enforcement, 700 NE Multnomah Street, Suite 600, Portland, Oregon 97232**, fax

1 it to **503-229-5100** or email it to [DEQappeals@deg.state.or.us](mailto:DEQappeals@deg.state.or.us). An administrative law judge  
2 employed by the Office of Administrative Hearings will conduct the hearing, according to ORS  
3 Chapter 183, OAR Chapter 340, Division 011 and OAR 137-003-0501 to 0700. You have a right to be  
4 represented by an attorney at the hearing, however you are not required to be. If you are an individual,  
5 you may represent yourself. If you are a corporation, partnership, limited liability company,  
6 unincorporated association, trust or government body, you must be represented by an attorney or a duly  
7 authorized representative, as set forth in OAR 137-003-0555.

8 Active duty Service members have a right to stay proceedings under the federal Service  
9 Members Civil Relief Act. For more information contact the Oregon State Bar at 1-800-  
10 452-8260, the Oregon Military Department at 503-584-3571, or the nearest United States Armed  
11 Forces Legal Assistance Office through <http://legalassistance.law.af.mil>. The Oregon Military  
12 Department does not have a toll free telephone number.

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

19  
20  
21  
22  
23 Date

6/21/2019

24  
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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: 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 wastes, 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 three waste streams, namely the aerosol cans, the disposable wipes, and the parts washer fluid as described in Section II, paragraphs 8 through 12 of the Notice.

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 is a large 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 8 according to OAR 340-012-0145(2)(a)(C) and (D), because Respondent has fourteen Class II violations and one Class III violation in case no. LQ-HW-0112, issued on March 22, 2013. According to OAR 340-012-0145(2)(d)(A)(ii), this amount is reduced by 4 because all the formal enforcement actions in which prior significant actions were cited were issued more than five years before the date the current violation occurred.

"H" is Respondent's history of correcting prior significant actions, and receives a value -2 according to OAR 340-012-0145(3)(a) because Respondent corrected all violations cited as prior significant actions.

"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 is insufficient information on which to base a finding under paragraphs (4)(b) through (4)(d).

"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 has a Facility that generates hazardous waste and reports to DEQ annually on the wastes generated at the

Facility. Given Respondent's experience with hazardous waste regulations and its waste streams, Respondent did not take reasonable care to prevent the foreseeable risk of committing this violation when it failed to accurately characterize aerosol cans, disposable wipes, and waste parts washer fluid upon generation of the 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 took reasonable affirmative efforts to minimize the effects of the violation. Respondent characterized the aerosol cans, disposable wipes, and parts washer fluid and provided documentation to DEQ in March of 2019.

"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 DEQ has insufficient information on which to base an estimate of more than a de minimis economic benefit for this violation.

PENALTY CALCULATION:  $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$   
= \$6,000 + [(0.1 x \$6,000) x (4 + -2 + 0 + 4 + -3)] + \$0  
= \$6,000 + (\$600 x 3) + \$0  
= \$6,000 + \$1,800 + \$0  
= \$7,800

## EXHIBIT 2

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

- VIOLATION: Failing to store hazardous wastes in closed containers at the Facility in violation of 40 CFR 262.34(a)(1)(i) as it references 40 CFR 265.173(a), both as adopted by OAR 340-100-0002(1).
- CLASSIFICATION: This is a Class II violation pursuant to OAR 340-012-0068(2)(m).
- MAGNITUDE: The magnitude of the violation is minor pursuant to OAR 340-012-0135(4)(c)(C)(i) because the violation involved less than 250 gallons of hazardous waste. Specifically, Respondent stored hazardous wastes in four containers that had a total potential capacity of 195 gallons, in addition to approximately three gallons of hazardous waste in the parts washer and the five aerosol cans.
- 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 \$1,500 for a Class II, minor magnitude violation in the matrix listed in OAR 340-012-0140(2)(b)(B)(iii) and applicable pursuant to OAR 340-012-0140(2)(a)(M)(i) because Respondent is a large 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 8 according to OAR 340-012-0145(2)(a)(C) and (D), because Respondent has fourteen Class II violations and one Class III violation in case no. LQ-HW-0112, issued on March 22, 2013. According to OAR 340-012-0145(2)(d)(A)(ii), this amount is reduced by 4 because all the formal enforcement actions in which prior significant actions were cited were issued more than five years before the date the current violation occurred.
- "H" is Respondent's history of correcting prior significant actions, and receives a value -2 according to OAR 340-012-0145(3)(a) because Respondent corrected all violations cited as prior significant actions.
- "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. On February 8, 2019, Respondent had six containers of hazardous waste that were not closed, as described herein and in Section II, paragraphs 8 through 10 and 12 through 16 of the Notice.

"M" is the mental state of the Respondent, and receives a value of 8 according to OAR 340-012-0145(5)(d) because Respondent acted or failed to act intentionally with actual knowledge of the requirement. Respondent has a Facility that generates hazardous waste and reports to DEQ annually on the wastes generated at the Facility. Respondent was previously cited by DEQ in a 2013 Expedited Enforcement Offer (EEO) and again in a 2016 Warning Letter (WL) for failing to close its hazardous waste containers. Despite Respondent's experience with hazardous waste regulations and repeated prior notice of container closure requirements applicable to its Facility, Respondent intentionally failed to close its containers in accordance with 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 correct the violation. Respondent closed the containers and provided documentation to DEQ in March of 2019.

"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 DEQ has insufficient information on which to base an estimate of more than a de minimis economic benefit for this violation.

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

$$\begin{aligned} &= \$1,500 + [(0.1 \times \$1,500) \times (4 + -2 + 2 + 8 + -3)] + \$0 \\ &= \$1,500 + (\$150 \times 9) + \$0 \\ &= \$1,500 + \$1,350 + \$0 \\ &= \$2,850 \end{aligned}$$

### EXHIBIT 3

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

- VIOLATION: Failing to label four containers of hazardous waste with the words "hazardous waste," in violation of 40 CFR 262.34(a)(3), as adopted by OAR 340-100-0002.
- CLASSIFICATION: This is a Class II violation pursuant to OAR 340-012-0068(2)(b).
- MAGNITUDE: The magnitude of the violation is minor pursuant to OAR 340-012-0135(4)(c)(C)(i) because the violation involved less than 250 gallons of hazardous waste. Specifically, Respondent stored hazardous wastes in two containers that had a total potential capacity of 85 gallons, in addition to approximately three gallons of hazardous waste in the parts washer and the five aerosol cans.
- 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 \$1,500 for a Class II, minor magnitude violation in the matrix listed in OAR 340-012-0140(2)(b)(B)(iii) and applicable pursuant to OAR 340-012-0140(2)(a)(M)(i) because Respondent is a large 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 8 according to OAR 340-012-0145(2)(a)(C) and (D), because Respondent has fourteen Class II violations and one Class III violation in case no. LQ-HW-0112, issued on March 22, 2013. According to OAR 340-012-0145(2)(d)(A)(ii), this amount is reduced by 4 because all the formal enforcement actions in which prior significant actions were cited were issued more than five years before the date the current violation occurred.
- "H" is Respondent's history of correcting prior significant actions, and receives a value -2 according to OAR 340-012-0145(3)(a) because Respondent corrected all violations cited as prior significant actions.
- "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. On February 8, 2019, Respondent had four containers of hazardous waste that were not labeled as described in Section II, paragraphs 8 through 10, 12, 14, and 15 of the Notice.



"M" is the mental state of the Respondent, and receives a value of 8 according to OAR 340-012-0145(5)(d) because Respondent failed to act intentionally with actual knowledge of the requirement. Respondent has a Facility that generates hazardous waste and reports to DEQ annually on the wastes generated at the facility. Respondent was previously cited by DEQ in a 2013 Expedited Enforcement Offer (EEO) and again in a 2016 Warning Letter (WL) for failing to properly label its hazardous waste containers. Despite Respondent's experience with hazardous waste regulations and repeated prior notice of container labeling requirements applicable to its Facility, Respondent intentionally failed to label its hazardous waste containers in accordance with 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 correct the violation. Respondent labelled the containers and provided documentation to DEQ in March and April of 2019.

"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 DEQ has insufficient information on which to base an estimate of more than a de minimis economic benefit for this violation.

PENALTY CALCULATION:  $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$   
= \$1,500 + [(0.1 x \$1,500) x (4 + -2 + 2 + 8 + -3)] + \$0  
= \$1,500 + (\$150 x 9) + \$0  
= \$1,500 + \$1,350 + \$0  
= \$2,850



## EXHIBIT 4

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

VIOLATION: Failing to label satellite accumulation containers storing hazardous waste with the words "hazardous waste" or other words that identify the contents of the containers at the Facility, in violation of 40 CFR 262.34(c)(1)(ii), as adopted by OAR 340-100-0002.

CLASSIFICATION: This is a Class III violation pursuant to OAR 340-012-0068(3)(b).

MAGNITUDE: The magnitude of the violation is minor pursuant to OAR 340-012-0135(4)(c)(C)(i) because the violation involved less than 250 gallons of hazardous waste. Specifically, Respondent stored hazardous wastes in two satellite accumulation containers that had a total potential capacity of 10 gallons.

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 \$1,000 for a Class III, minor magnitude violation in the matrix listed in OAR 340-012-0140(2)(b)(C) and applicable pursuant to OAR 340-012-0140(2)(a)(M)(i) because Respondent is a large 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 8 according to OAR 340-012-0145(2)(a)(C) and (D), because Respondent has fourteen Class II violations and one Class III violation in case no. LQ-HW-0112, issued on March 22, 2013. According to OAR 340-012-0145(2)(d)(A)(ii), this amount is reduced by 4 because all the formal enforcement actions in which prior significant actions were cited were issued more than five years before the date the current violation occurred.

"H" is Respondent's history of correcting prior significant actions, and receives a value -2 according to OAR 340-012-0145(3)(a) because Respondent corrected all violations cited as prior significant actions.

"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. On February 8, 2019, Respondent had two containers of hazardous waste that were not labeled with the words "hazardous waste" or a description of their contents as described in Section II, paragraphs 17 and 18 of the Notice.

"M" is the mental state of the Respondent, and receives a value of 8 according to OAR 340-012-0145(5)(d) because Respondent failed to act intentionally with actual knowledge of the requirement. Respondent has a Facility that generates hazardous waste and reports to DEQ annually on the wastes generated at the Facility. Respondent was previously cited by DEQ in a 2013 Expedited Enforcement Offer (EEO) and again in a 2016 Warning Letter (WL) for failing to properly label its satellite accumulation area hazardous waste containers. Despite Respondent's experience with hazardous waste regulations and repeated prior notice of container labeling requirements applicable to its Facility, Respondent intentionally failed to label its containers in accordance with 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 correct the violation. Respondent labelled the containers and provided documentation to DEQ in March and April of 2019.

"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 DEQ has insufficient information on which to base an estimate of more than a de minimis economic benefit for this violation.

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

$$\begin{aligned} &= \$1,000 + [(0.1 \times \$1,000) \times (4 + -2 + 2 + 8 + -3)] + \$0 \\ &= \$1,000 + (\$100 \times 9) + \$0 \\ &= \$1,000 + \$900 + \$0 \\ &= \$1,900 \end{aligned}$$

## EXHIBIT 5

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

VIOLATION: Failing to train employees in the proper management of hazardous wastes and failing to maintain all required elements of its personnel training plan at the Facility, in violation of 40 CFR 262.34(a)(4) as it references 40 CFR 265.16(c) and (d), both as adopted by OAR 340-100-0002.

CLASSIFICATION: This is a Class II violation pursuant to OAR 340-012-0068(2)(1).

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 Respondent is a large 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 8 according to OAR 340-012-0145(2)(a)(C) and (D), because Respondent has fourteen Class II violations and one Class III violation in case no. LQ-HW-0112, issued on March 22, 2013. According to OAR 340-012-0145(2)(d)(A)(ii), this amount is reduced by 4 because all the formal enforcement actions in which prior significant actions were cited were issued more than five years before the date the current violation occurred.

"H" is Respondent's history of correcting prior significant actions, and receives a value -2 according to OAR 340-012-0145(3)(a) because Respondent corrected all violations cited as prior significant actions.

"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. From on or about July 21, 2016 through to present, Respondent did not have a complete written personnel training plan at the Facility and did not provide employees with annual training that meets the requirements of 40 CFR 265.16(c) as it references 40 CFR 265.16(a).

"M" is the mental state of the Respondent, and receives a value of 8 according to OAR 340-012-0145(5)(d) because Respondent failed to act intentionally with actual knowledge of the requirement. Respondent has a Facility that generates hazardous waste and reports to DEQ annually on the wastes generated at the facility. Respondent was previously cited by DEQ in a 2013 Expedited Enforcement Offer (EEO) and again in a 2016 Warning Letter (WL) for failing to maintain personnel training records at the Facility. Despite Respondent's experience with hazardous waste regulations and the repeated prior notice of personnel training and recordkeeping requirements applicable to its Facility, Respondent intentionally failed to train its personnel for almost two years and intentionally failed to develop a complete training plan.

"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 there is insufficient information to make a finding under paragraphs (6)(a) through (6)(e), or (6)(g). On May 29, 2019, Respondent provided annual training to its employees. However, Respondent has not submitted documentation to DEQ that it has completed all elements of a hazardous waste personnel training plan to date.

"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 \$536. This is the amount Respondent gained by avoiding spending \$700 to pay its employees to attend a one hour training course on hazardous waste regulations. This "EB" was calculated pursuant to OAR 340-012-0150(1) using the U.S. Environmental Protection Agency's BEN computer model.

PENALTY CALCULATION:  $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$   
=  $\$3,000 + [(0.1 \times \$3,000) \times (4 + -2 + 4 + 8 + 0)] + \$536$   
=  $\$3,000 + (\$300 \times 14) + \$536$   
=  $\$3,000 + \$4,200 + \$536$   
=  $\$7,736$