



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

August 28, 2020

CERTIFIED MAIL: 7017 1450 0000 8310 4593

Chemical Waste Management of the Northwest, Inc.
c/o CT Corporation System, Registered Agent
780 Commercial St SE Ste 100
Salem OR 97301

Re: Notice of Civil Penalty Assessment and Order
Case No. LQ/HW-ER-2020-094

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 the Oregon Department of Environmental Quality (DEQ) has issued you a civil penalty of \$60,000 for illegally disposing of radioactive solid waste at the hazardous waste landfill you operate in Arlington, and for failing to comply with the condition of your hazardous waste disposal permit that requires radiation screening for hazardous waste.

DEQ issued this penalty because radioactive waste is prohibited from disposal at the hazardous waste landfill, and you disposed of multiple shipments of radioactive waste in 2016-2019. DEQ is concerned that as the operator of a permitted and highly-regulated hazardous waste disposal facility, you repeatedly accepted this radioactive waste from fracking operations in North Dakota, with data indicating the concentration of radiation in the waste, and without the heightened level of scrutiny and screening of that data, or the applicable regulations, that this waste requires.

DEQ appreciates your efforts to address the violations by implementing radiation screening for solid and hazardous waste bulk loads coming into the facility, and improving procedures for screening profiles for potentially radioactive waste. DEQ considered these efforts when determining the amount of civil penalty. Additionally, the enclosed Notice includes an Order to provide DEQ with a written statement of what procedures are currently in place, or planned for implementation, at the Facility, to ensure compliance with the DEQ requirements cited in this Notice and all requirements of the Permit and Waste Analysis Plan, including the May 7, 2020, letter from DEQ.

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 Sarah Wheeler at 503-229-6927 or toll free in Oregon at 800-452-4011, extension 6927.

Sincerely,



Kieran O'Donnell, Manager
Office of Compliance and Enforcement

Enclosures

cc: Dan Duso, DEQ
David Anderson, DEQ
Accounting, DEQ
Jim Denson, JDenson@wm.com
Andrew Kenefick, AKenefick@wm.com
Jim Kincaid, jkincaid@cablehuston.com

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

3 IN THE MATTER OF:)
4 CHEMICAL WASTE MANAGEMENT)
5 OF THE NORTHWEST, INC.,)
 Respondent.) CASE NO. LQ/HW-ER-2020-094

6 I. AUTHORITY

7 The Department of Environmental Quality (DEQ) issues this Notice of Civil Penalty Assessment
8 and Order (Notice) pursuant to Oregon Revised Statutes (ORS) 468.100, ORS 468.126 through 468.140,
9 ORS 459.055 and 459.995, ORS 466.990, ORS Chapter 183 and Oregon Administrative Rules (OAR)
10 Chapter 340, Divisions 011, 012, 093, and 100.

11 II. FINDINGS OF FACT

12 1. Respondent operates a hazardous waste treatment, storage, and disposal facility in
13 Arlington, Oregon, pursuant to Permit Number ORD-089-452-353 (the Permit), issued by DEQ
14 pursuant to ORS Chapter 466.

15 2. The Permit does not authorize the Facility to accept radioactive waste.

16 3. In 2016, 2017, and 2019, Respondent reviewed and approved waste profile number
17 OR326111, from Oilfield Waste Logistics (OWL), the broker and transporter of the waste. These
18 profiles described the waste as consisting of filter socks, pipe scale, spilled unused frac sand, and
19 debris. Various wastes from fracking operations commonly contain Technologically Enhanced
20 Naturally Occurring Radioactive Materials (TENORM). OWL provided analytical data to Respondent
21 along with the profiles for all three years. That data indicated in each year that the filter sock waste
22 contained concentrations of combined radium (Ra) 226/228 (radium-226 plus radium-228) in excess of
23 5 picocuries per gram (pCi/g). Approximately 80% of the total waste shipped from OWL to
24 Respondent's Facility was filter socks.

25 4. Between 2016 and 2019, OWL shipped 1,284.66 tons of waste generated from fracking
26 operations under profile OR326111, to Respondent's Facility where it was disposed of in the hazardous
27 waste landfill at the Facility.

1 5. The majority of the fracking waste described above, an estimated 996 tons, was
2 generated in North Dakota. North Dakota state regulations prohibit disposal of waste containing a
3 concentration of 5 or more pCi/g of combined Ra-226/228, except at a site issued a permit by North
4 Dakota to accept waste with up to 50 pCi/g of combined Ra-226/228 (North Dakota Administrative
5 Code 33-20-11-01, 33-20-11-02).

6 6. OAR 340-093-0040(4) provides: “Notwithstanding any other provision of law relating
7 to solid waste disposal, if the state of origin prohibits or restricts the disposal of any kind of solid waste
8 within the state of origin, such prohibition or restriction also shall apply to the disposal of the out-of-
9 state solid waste in Oregon.”

10 7. Statutes and regulations implemented by the Oregon Department of Energy, specifically,
11 ORS 469.300, 469.525, and OAR 345-050-0006, prohibit the disposal of radioactive waste at
12 Respondent’s Facility. On February 13, 2020, the Oregon Department of Energy issued a Notice of
13 Violation to Respondent, citing Respondent for violating OAR 345-050-0006 by disposing of
14 radioactive waste at the Facility as described above.

15 8. The Solid Waste Management Plan, which is Appendix E to the Facility’s Waste
16 Analysis Plan (WAP), requires that Respondent only accept solid waste at the Facility “based on the
17 conditions or limitations of existing permits and applicable regulations” (Condition 3.0) and that waste
18 will not be accepted if Respondent has incomplete information from the waste generator, or if the waste
19 cannot be disposed of at the Facility (Condition 3.3).

20 9. Condition 5.5.1 of the WAP requires Respondent to complete the following for non-
21 hazardous solid wastes: “Obtain sufficient chemical and physical characteristics information for proper
22 management of the waste,” and “Know the chemical and physical composition of the excepted material
23 before it is moved on-site.”

24 10. Table 3-1 of Respondent’s WAP for the Facility, which is Standalone Document
25 Number 1 to the Permit, lists “Radioactivity Screening” as “Mandatory” for incoming hazardous waste
26 shipments.

27 11. Permit Condition II.C.1 requires Respondent to follow the procedures in the WAP.

12. From approximately 2007 to March of 2020, Respondent did not screen any waste coming in to the Facility for radioactivity.

III. CONCLUSIONS

1. Respondent violated OAR 340-093-0040(1) and (4) by disposing of radioactive solid waste at a site not permitted to receive that waste. These are Class I violations, according to OAR 340-012-0065(1)(c). DEQ hereby assesses a \$33,600 civil penalty for these violations.

2. Respondent violated Permit Condition II.C.1 by failing to screen hazardous waste shipments for radiation as required by the Waste Analysis Plan. These are Class I violations, according to OAR 340-012-0068(1)(q). DEQ hereby assesses a \$26,400 civil penalty for these violations.

3. Respondent violated Permit Condition II.C.1 by accepting and disposing of solid waste in violation of Condition 5.5.1 of the WAP and Conditions 3.0 and 3.3 of the Solid Waste Management Plan (Appendix E to the WAP). This is a Class II violation, according to OAR 340-012-0053(2). DEQ has not assessed a civil penalty for this violation.

IV. ORDER TO PAY CIVIL PENALTY AND TO COMPLY

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

1. Pay a total civil penalty of \$60,000. The determination of the civil penalty is attached as Exhibits 1 and 2 and are incorporated as part of this Notice.

2. Within 30 days of the date this Notice becomes final by operation of law or on appeal, submit the following to Dan Duso by mail at DEQ, 700 SE Emigrant Avenue, Pendleton, OR 97801, or by email at duso.dan@deq.state.or.us: a written statement of what procedures are currently in place, or planned for implementation, at the Facility, to ensure compliance with the DEQ requirements cited in this Notice and all requirements of the Permit and WAP, including the May 7, 2020, letter from DEQ.

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

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

2 You have a right to a contested case hearing on this Notice, if you request one in writing. DEQ
3 must receive your request for hearing **within 20 calendar days** from the date you receive this Notice. If
4 you have any affirmative defenses or wish to dispute any allegations of fact in this Notice or attached
5 exhibits, you must do so in your request for hearing, as factual matters not denied will be considered
6 admitted, and failure to raise a defense will be a waiver of the defense. (See OAR 340-011-0530 for
7 further information about requests for hearing.) You must send your request to: **DEQ, Office of**
8 **Compliance and Enforcement, 700 NE Multnomah Street, Suite 600, Portland, Oregon 97232**, fax
9 it to **503-229-5100** or email it to **DEQappeals@deq.state.or.us**. An administrative law judge
10 employed by the Office of Administrative Hearings will conduct the hearing, according to ORS
11 Chapter 183, OAR Chapter 340, Division 011 and OAR 137-003-0501 to 0700. You have a right to be
12 represented by an attorney at the hearing, however you are not required to be. If you are an individual,
13 you may represent yourself. If you are a corporation, partnership, limited liability company,
14 unincorporated association, trust or government body, you must be represented by an attorney or a duly
15 authorized representative, as set forth in OAR 137-003-0555.

16 Active duty Service members have a right to stay proceedings under the federal Service
17 Members Civil Relief Act. For more information contact the Oregon State Bar at 1-800-
18 452-8260, the Oregon Military Department at 503-584-3571, or the nearest United States Armed
19 Forces Legal Assistance Office through <http://legalassistance.law.af.mil>. The Oregon Military
20 Department does not have a toll free telephone number.

21 If you fail to file a timely request for hearing, the Notice will become a final order by default
22 without further action by DEQ, as per OAR 340-011-0535(1). If you do request a hearing but later
23 withdraw your request, fail to attend the hearing or notify DEQ that you will not be attending the
24 hearing, DEQ will issue a final order by default pursuant to OAR 340-011-0535(3). DEQ designates

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1 the relevant portions of its files, including information submitted by you, as the record for purposes of
2 proving a prima facie case.
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6 8/28/2020

7 Date

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9 Kieran O'Donnell, Manager
10 Office of Compliance and Enforcement
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EXHIBIT 1

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

VIOLATION NO. 1 Disposing of radioactive solid waste at a site not permitted to receive that waste, in violation of OAR 340-093-0040(1) and (4).

CLASSIFICATION: This is a Class I violation pursuant to OAR 340-012-0065(1)(c), because Respondent disposed of or authorized the disposal of solid waste at a location not permitted by DEQ to receive that solid waste.

MAGNITUDE: The magnitude of the violation is major pursuant to OAR 340-012-0135(3)(a)(A) because Respondent illegally disposed of an estimated 996 tons of radioactive waste, in excess of 400 cubic yards.

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)(Q)(i), because Respondent violated a solid waste rule and Respondent has a solid waste permit.

"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 7 according to OAR 340-012-0145(2)(a)(C) and (D), because Respondent has the following prior significant actions:

- Two Class I and two Class II violations (a Class I Equivalent, as defined in OAR 340-012-0030(2)) in case no. LQ/HW-ER-2012-082, issued January 23, 2013;
- One Class I violation in case no. LQ/HW-ER-2012-063, issued January 8, 2014; and
- Two Class I violations in case no. LQ/HW-ER-2015-044, issued May 6, 2015.

"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 insufficient information on which to base a finding under paragraphs (3)(a) or (b).

"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 accepted 80 shipments of prohibited waste from 2016-2019.

"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 in accepting the radioactive waste for disposal was reckless. Respondent is a highly-regulated facility in the business of accepting solid and hazardous waste for disposal. Respondent knew the waste was generated from fracking

operations, and therefore that it had the potential to contain radiation. Respondent provided advice to the generator of the waste regarding exemptions for certain types and levels of radiation, but the wastes Respondent accepted had much higher levels of radiation than allowed, and Respondent had data indicating those levels when it approved the waste for disposal at the Facility. With that information, and by failing to ensure the waste properly met an exemption or was otherwise legal to dispose of at Respondent's Facility, Respondent consciously disregarded the substantial and unjustifiable risk that the result would occur or the circumstance existed. Given the highly-regulated nature of Respondent's business, Respondent's expertise, and the information Respondent had prior to accepting the waste, disregarding that risk constituted a gross deviation from the standard of care a reasonable person would observe in that situation.

"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 ensure the violation would not be repeated. Respondent promptly implemented radioactivity screening procedures for bulk shipments of solid and hazardous waste. Additionally, Respondent updated waste approvals procedures to require that any new or renewed generator profile that contains analysis for radionuclides must be held for further review prior to approval, including review by a fully-accredited radiation consultant.

"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 determined that Respondent didn't receive more than a de minimis economic benefit as a result of this violation.

PENALTY CALCULATION: $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$
= \$12,000 + [(0.1 x \$12,000) x (7 + 0 + 4 + 8 - 1)] + \$0
= \$12,000 + (\$1,200 x 18) + \$0
= \$12,000 + \$21,600 + \$0
= \$33,600

EXHIBIT 2

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

VIOLATION NO. 2 Failing to screen hazardous waste shipments for radiation as required by the Waste Analysis Plan, in violation of Permit Condition II.C.1.

CLASSIFICATION: This is a Class I violation pursuant to OAR 340-012-0068(1)(q), because Respondent failed to operate hazardous waste monitoring equipment in compliance with a permit.

MAGNITUDE: The magnitude of the violation is major pursuant to OAR 340-012-0135(4)(b)(A)(i) because the amount of hazardous waste that was not screened for radiation before disposal exceeded 55 gallons or 330 pounds.

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)(L)(ii), because Respondent violated a condition of Respondent's hazardous waste treatment, storage, and disposal permit.

"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 7 according to OAR 340-012-0145(2)(a)(C) and (D), because Respondent has the following prior significant actions:

- Two Class I and two Class II violations (a Class I Equivalent, as defined in OAR 340-012-0030(2)) in case no. LQ/HW-ER-2012-082, issued January 23, 2013;
- One Class I violation in case no. LQ/HW-ER-2012-063, issued January 8, 2014; and
- Two Class I violations in case no. LQ/HW-ER-2015-044, issued May 6, 2015.

"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 insufficient information on which to base a finding under paragraphs (3)(a) or (b).

"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 did not conduct the required screening for at least 28 days or shipments received.

"M" is the mental state of the Respondent, and receives a value of 2 according to OAR 340-012-0145(5)(b) because Respondent had constructive knowledge (reasonably should have

known) of the requirement. Table 3-1 of the Waste Analysis Plan states that radioactivity screening is mandatory for incoming hazardous waste shipments.

"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 ensure the violation would not be repeated. Respondent promptly implemented radioactivity screening procedures for bulk shipments of solid and hazardous waste. Additionally, Respondent updated waste approvals procedures to require that any new or renewed generator profile that contains analysis for radionuclides must be held for further review prior to approval, including review by a fully-accredited radiation consultant.

"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 determined that Respondent didn't receive more than a de minimis economic benefit as a result of this violation.

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

$$\begin{aligned} &= \$12,000 + [(0.1 \times \$12,000) \times (7 + 0 + 4 + 2 + 1)] + \$0 \\ &= \$12,000 + (\$1,200 \times 12) + \$0 \\ &= \$12,000 + \$14,400 + \$0 \\ &= \$26,400 \end{aligned}$$