



# Oregon

Kate Brown, Governor

Department of Environmental Quality

Headquarters  
811 SW 6th Ave  
Portland, OR 97204-1390  
(503) 229-5696  
FAX (503) 229-6124  
TTY: 711

September 14, 2016

CERTIFIED MAIL: 7014 2870 0001 3373 6156

Kaiser Foundation Health Plan of the Northwest, dba Kaiser Permanente  
c/o The Prentice-Hall Corporation System, Inc., Registered Agent  
1127 Broadway Street NE  
Suite 310  
Salem, OR 97301

Re: Notice of Civil Penalty Assessment and Order  
Case No. LQ/HW-NWR-2016-099

This letter is to inform you that the Oregon Department of Environmental Quality (DEQ) has issued you a civil penalty of \$10,200 for storing hazardous waste at your facility for more than 90 days without a permit. In addition, DEQ cited you, without civil penalty, for failing to clearly label hazardous waste, failing to provide adequate aisle space, and failing to perform weekly inspections of your hazardous waste storage area.

DEQ issued this penalty because improper management of hazardous waste 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, handling, and disposal of hazardous waste. Your failure to comply with hazardous waste rules increases the risk that the public or the environment could be harmed by mismanagement of hazardous waste.

DEQ appreciates your efforts to correct the violation by eventually properly disposing of the hazardous waste stored at your facility. DEQ considered these efforts when determining the amount of civil penalty.

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

Via mail - 811 S.W. 6<sup>th</sup> Ave., Portland, OR 97204

Via fax - 503-229-5100

Once DEQ receives your request, we will arrange to meet with you to discuss this matter. If DEQ does not receive a timely written hearing request, the penalty will become due. Alternatively, you can pay the penalty by sending a check or money order to the above address.

The attached Notice further details DEQ's reasons for issuing the penalty and provides further instructions for appealing the penalty. Please review it and refer to it when discussing this case with DEQ.



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

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

If you have any questions, please contact DEQ Environmental Law Specialist Kieran O'Donnell, at (503) 229-5012. You may call toll-free within Oregon at 1-800-452-4011, extension 5012.

Sincerely,



Sarah G. Wheeler, Acting Manager  
Office of Compliance and Enforcement

Enclosures

cc: Jay Collins, DEQ, NWR  
Kaiser Permanente, c/o Jim Williams, 2701 NW Vaughn St., Ste. 150, Portland, OR 97210

1 BEFORE THE ENVIRONMENTAL QUALITY COMMISSION

2 OF THE STATE OF OREGON

3	IN THE MATTER OF:	)	NOTICE OF CIVIL PENALTY
4	KAISER FOUNDATION HEALTH PLAN	)	ASSESSMENT AND ORDER
4	OF THE NORTHWEST dba KAISER	)	
5	PERMANENTE	)	
5		)	CASE NO. LQ/HW-NWR-2016-099
6	Respondent.	)	

7 I. AUTHORITY

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

12 II. FINDINGS OF FACT

- 13 1. Respondent owns or operates a medical office located at 3600 N Interstate Avenue, in  
14 Portland (the Facility).
- 15 2. On August 5, 2015, DEQ conducted an inspection to determine Respondent’s compliance  
16 with hazardous waste law.
- 17 3. On August 5, 2015, Respondent stored the following at the Facility:
  - 18 a. One container of arsenic trioxide waste labeled with an accumulation start date  
19 of April 3, 2015, and without the words “Hazardous Waste;” and
  - 20 b. One container of arsenic trioxide waste labeled with an accumulation start date  
21 of January 19, 2015, and without the words “Hazardous Waste.”
- 22 4. On August 5, 2015, Respondent stored the above-referenced containers in a locked  
23 basement storage cage without aisle space adequate to allow immediate access to personnel or  
24 emergency responders.
- 25 5. On and before August 5, 2015, Respondent had not been conducting weekly inspections on  
26 the locked basement storage cage.

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1 IV. ORDER TO PAY CIVIL PENALTY

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

4 Pay a total civil penalty of \$10,200. The determination of the civil penalty is attached as Exhibit  
5 No. 1 and is incorporated as part of this Notice.

6 If you do not file a request for hearing as set forth in Section V below, your check or money order  
7 must be made payable to "State Treasurer, State of Oregon" and sent to the **DEQ, Business Office,**  
8 **811 S.W. Sixth Avenue, Portland, Oregon 97204.** Once you pay the penalty, the Findings of Fact,  
9 Conclusions and Order become final.

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

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

23 Active duty service-members have a right to stay proceedings under the federal Service  
24 members Civil Relief Act. For more information, please call the Oregon State Bar at 1-800-  
25 452-8260 or the Oregon Military Department at 1-800-452-7500. Additional information can be found  
26 online at the United States Armed Forces Legal Assistance (AFLA) Legal Services Locator website  
27 <http://legalassistance.law.af.mil/content/locator.php>.

1 If you fail to file a request for hearing in writing within 20 calendar days of receipt of the  
2 Notice, the Notice will become a final order by default without further action by DEQ, as per OAR  
3 340-011-0535(1). If you do request a hearing but later withdraw your request, fail to attend the hearing  
4 or notify DEQ that you will not be attending the hearing, DEQ will issue a final order by default  
5 pursuant to OAR 340-011-0535(3). DEQ designates the relevant portions of its files, including  
6 information submitted by you, as the record for purposes of proving a prima facie case.  
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10 September 14, 2016  
11 Date

10 Sarah Wheeler  
11 Sarah G. Wheeler, Acting Manager  
12 Office of Compliance and Enforcement  
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EXHIBIT No.1

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

VIOLATION No.1: Storing hazard waste for more than 90 days at a facility without a permit, in violation of ORS 466.095(1)(a) and 40 CFR 262.34(a), adopted pursuant to OAR 340-100-0002(1).

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

MAGNITUDE: The magnitude of the violation is major pursuant to OAR 340-012-0135(4)(c)(A)(ii) because the violation involved more than 2.2 pounds of acutely hazardous waste. The violation involved approximately 22 pounds of acutely 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 \$6,000 for a Class II, major magnitude violation in the matrix listed in OAR 340-012-0140(2)(b)(B)(i) and applicable pursuant to OAR 340-012-0140(2)(a)(M)(i) because the Respondent was a large quantity generator at the time of the violation.

"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)(f) because all of the prior significant actions (PSAs) are more than ten years old.

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

"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. The violation began 90 days after 1/19/15 and 4/3/15 and continued until August, 25, 2015, the date the hazardous waste was finally disposed. Therefore, there were more than 28 occurrences 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 highly-regulated large-quantity generator of hazardous waste, and has a trained Environmental Health and Safety department at its office in Portland which is tasked with overseeing hazardous waste compliance at its facilities. DEQ has provided Respondent with technical assistance regarding compliance issues, including the management of hazardous waste containers.

Therefore, given Respondent's sophistication and the prior technical assistance, it failed to take reasonable care to avoid a foreseeable risk of violation when it stored acutely hazardous waste at the Facility well past 90 days.

"C" is Respondent's efforts to correct or mitigate the violation and receives a value of -2 according to OAR 340-012-0145(6)(d), because Respondent eventually made some efforts to correct the violation. Respondent properly disposed of the hazardous waste on August 25, 2015, twenty days after DEQ's inspection on August 5, 2015.

"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 because there is was likely a de minimus delayed cost of properly disposing of the hazardous waste.

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 (0 + 1 + 4 + 4 + -2)] + \$0  
= \$6,000 + [\$600 x 7] + \$0  
= \$6,000 + \$4,200 + \$0  
= \$10,200