



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

September 1, 2021

CERTIFIED MAIL: 7018 1830 0001 5903 8884

Ennis-Flint, Inc.
c/o Corporation Service Company, Registered Agent
1127 Broadway St. NE Ste. 310
Salem, OR 97301

Re: Notice of Civil Penalty Assessment and Order
Case No. LQ/HW-WR-2020-245

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 \$8,400 for failing to mark containers of hazardous waste with an accumulation start date and failing to clearly label containers as "Hazardous Waste" at your facility located at 1675 Commercial Street NE, Salem, OR 97301. DEQ has also cited you, without penalty, for failing to maintain specific and accurate job descriptions for the positions at your facility related to hazardous waste management, failing to ship hazardous waste under accurate hazardous waste manifests in 2019, and failing to keep closed a container of hazardous waste in a satellite accumulation area.

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

Section IV of the attached Notice includes an order requiring you to submit to DEQ updated job descriptions for the Production Manager, Plant Manager, and Plant Administrator positions at the facility, within 30 days of the order becoming final by operation of law or on appeal. The job descriptions must comply with 40 CFR 265.16(d), as referenced in 40 CFR 262.34(a)(4), and must include specific hazardous waste related duties performed by those positions, including labeling and dating hazardous waste containers and conducting hazardous waste weekly inspections.

DEQ appreciates your efforts to correct the violations by properly marking and labeling the hazardous waste containers during DEQ's inspection in September 2020. In addition, your staff responsible for hazardous waste management have completed additional training since the September 2020 inspection. 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
Via fax – 503-229-6762

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 Becka Puskas at 503-229-5058 or toll free in Oregon at 800-452-4011, extension 5058

Sincerely,



Kieran O'Donnell, Manager
Office of Compliance and Enforcement

Enclosures

cc: Dena Vandenberg, EHS Manager, Ennis-Flint, Inc. DVandenberg@ennisflint.com
Patrick Moseley, Plant Manager, Ennis-Flint, Inc., PMoseley@ennisflint.com
Robert Anderson, Plant Administrator, Ennis-Flint, Inc., RAnderson@ennisflint.com
cc: Patrick Moseley, Plant Manager, Ennis-Flint, Inc., 1675 Commercial Street NE, Salem, OR
97301
Killian Condon, DEQ
Brian Fuller, DEQ
Accounting, DEQ

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

3 IN THE MATTER OF:
4 ENNIS-FLINT, INC.,
a North Carolina corporation,

5 Respondent.)

) NOTICE OF CIVIL PENALTY
) ASSESSMENT AND ORDER

) CASE NO. LQ/HW-WR-2020-245

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 466.990, 468.100, ORS 468.126 through 468.140, ORS Chapters 183 and 466 and Oregon
10 Administrative Rules (OAR) Chapter 340, Divisions 011, 012, 100 and 102.

11 II. FINDINGS OF FACT

- 12 1. Respondent operates a paint manufacturing facility located at 1675 Commercial St. NE,
13 Salem, Oregon (the Facility).
- 14 2. Respondent is a registered hazardous waste generator at the Facility, assigned United States
15 Environmental Protection Agency (EPA) identification number ORQ000025909.
- 16 3. Respondent's Facility generates more than 2,200 pounds of hazardous waste per calendar
17 month.
- 18 4. On September 29, 2020, DEQ inspected the Facility.
- 19 5. On September 29, 2020, one 55-gallon drum of D001-containing solvent waste located at
20 the fill line at the Facility, and sixteen 55-gallon drums of D001-containing solvent waste located at the
21 Facility's container washout building were not marked with an accumulation start date.
- 22 6. On September 29, 2020, one 55-gallon drum of D001-containing solvent waste located at
23 the fill line at the Facility and eight 55-gallon drums of D001-containing solvent waste located at the
24 container washout building at the Facility were not labeled or marked with the words "Hazardous
25 Waste."

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1 7. During the September 29, 2020 inspection, Respondent placed accumulation start dates on the
2 drums described in Section II, Paragraph 5 above and labeled the drums described in Section II, Paragraph
3 6 above as "Hazardous Waste."

4 8. On September 29, 2020, the job descriptions for Production Manager, Plant Manager and
5 Plant Administrator did not include descriptions that accurately reflect the hazardous waste related
6 duties for those positions, including labeling and dating hazardous waste containers and conducting
7 hazardous waste weekly inspections.

8 9. As of the date of this Notice, Respondent has not updated the job descriptions described in
9 Section II, Paragraph 8 above, with specific and accurate job descriptions including hazardous waste
10 related duties for those positions.

11 10. In 2019, Respondent offered for transport seventeen shipments of hazardous waste using the
12 incorrect RCRA ID for the Facility on the manifests.

13 11. In May 2020, Respondent corrected the manifests described in Section II, Paragraph 10,
14 above.

15 12. On September 29, 2020, there was one 55-gallon container with D001-containing solvent
16 waste stored at the fill line at the Facility that was not securely closed.

17 III. CONCLUSIONS

18 Based upon the foregoing Findings of Fact, DEQ has determined that Respondent violated the
19 following provisions of Oregon law, including hazardous waste and used oil laws adopted by OAR
20 340-100-0002.

21 1. Respondent violated 40 CFR 262.34(a)(2) by failing to mark hazardous waste at the Facility
22 with an accumulation start date. Specifically, the seventeen drums of D001-containing solvent waste
23 stored at the Facility are hazardous waste, and Respondent failed to mark those drums with an
24 accumulation start date, as described in Section II, Paragraph 5 above. These are Class II violations,
25 according to OAR 340-012-0068(2)(a). DEQ hereby assesses a \$4,200 civil penalty for these violations.

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1 2. Respondent violated 40 CFR 262.34(a)(3) by failing to label or mark containers of
2 hazardous waste with the words "Hazardous Waste." Specifically, the nine 55 gallon drums of D001-
3 containing solvent waste at the Facility are hazardous waste, and Respondent failed to label or mark
4 those drums with the words "Hazardous Waste," as described in Section II, Paragraph 6 above. These
5 are Class III violations, according to OAR 340-012-0068(3)(b). DEQ hereby assesses a \$4,200 civil
6 penalty for these violations.

7 3. Respondent violated 40 CFR 265.16(d), as referenced in 40 CFR 262.34(a)(4) by failing to
8 maintain specific and accurate job descriptions for each position at the Facility related to hazardous waste
9 management, as described in Section II, Paragraph 8 above. This is a Class II violation according to OAR
10 340-012-0068(2)(o). DEQ has not assessed a civil penalty for this violation.

11 4. Respondent violated 40 CFR 262.20(a)(1) by offering hazardous waste for transport under
12 inaccurate hazardous waste manifests. Specifically, Respondent offered hazardous waste for transport on
13 17 occasions in 2019 using manifests with the incorrect RCRA ID, as described in Section II, Paragraph 10
14 above. These are Class II violations according to OAR 340-012-0068(2)(f). DEQ has not assessed a civil
15 penalty for these violations.

16 5. Respondent violated 40 CFR 265.173(a) as referenced by 40 CFR 262.34(c)(1)(i) by failing to
17 keep a container holding hazardous-waste closed. Specifically, as described in Section II, Paragraph 12,
18 above, D001-containing solvent waste is hazardous waste, and Respondent failed to keep closed one 55-
19 gallon container containing of such waste at the fill line at the Facility, which is a satellite accumulation
20 area. This is a Class II violation according to OAR 340-012-0068(2)(m). DEQ has not assessed a civil
21 penalty for this violation.

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1 IV. ORDER TO PAY CIVIL PENALTY AND TO COMPLY

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

4 1. Pay a total civil penalty of \$8,400. The determination of the civil penalties are attached as
5 Exhibits 1 and 2 and are 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 **700 NE Multnomah Street, Suite 600, Portland, Oregon 97232.**

9 2. Within 30 days of this order becoming final by operation of law or on appeal, submit to
10 DEQ updated job descriptions for the Production Manager, Plant Manager and Plant Administrator
11 positions at the facility that comply with 40 CFR 265.16(d), as referenced in 40 CFR 262.34(a)(4). The job
12 descriptions must include specific hazardous waste related duties performed by those positions, including
13 labeling and dating hazardous waste containers and conducting hazardous waste weekly inspections.

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

15 You have a right to a contested case hearing on this Notice, if you request one in writing. DEQ
16 must receive your request for hearing **within 20 calendar days** from the date you receive this Notice. If
17 you have any affirmative defenses or wish to dispute any allegations of fact in this Notice or attached
18 exhibits, you must do so in your request for hearing, as factual matters not denied will be considered
19 admitted, and failure to raise a defense will be a waiver of the defense. (See OAR 340-011-0530 for
20 further information about requests for hearing.) You must send your request to: **DEQ, Office of**
21 **Compliance and Enforcement, 700 NE Multnomah Street, Suite 600, Portland, Oregon 97232**, fax
22 it to **503-229-6762** or email it to DEQappeals@deq.state.or.us. An administrative law judge
23 employed by the Office of Administrative Hearings will conduct the hearing, according to ORS
24 Chapter 183, OAR Chapter 340, Division 011 and OAR 137-003-0501 to 0700. You have a right to be
25 represented by an attorney at the hearing, however you are not required to be. If you are an individual,
26 you may represent yourself. If you are a corporation, partnership, limited liability company,

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1 unincorporated association, trust or government body, you must be represented by an attorney or a duly
2 authorized representative, as set forth in OAR 137-003-0555.

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

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

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17 9/1/2021
18 Date


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18 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 NO. 1 Failure to mark hazardous waste with an accumulation start date in violation of 40 CFR 262.34(a)(2).

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

MAGNITUDE: The magnitude of the violation is moderate pursuant to OAR 340-012-0135(4)(c)(B)(i) because the violation involved more than 250 gallons but less than 1,000 gallons of hazardous waste. Respondent failed to mark drums containing approximately 935 gallons of hazardous waste with an accumulation start date.

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.
- "P" is whether Respondent has any prior significant actions, as defined in OAR 340-012-0030(19), in the same media as the violation at issue that occurred at a facility owned or operated by the same Respondent, and receives a value of 0 according to OAR 340-012-0145(2)(a)(A), because there are no prior significant actions.
- "H" is Respondent's history of correcting prior significant actions, and receives a value of 0 according to OAR 340-012-0145(3)(c) because there is no prior history.
- "O" is whether the violation was repeated or ongoing, and receives a value of 3 according to OAR 340-012-0145(4)(c) because there were more than seven but less than 28 occurrences of the violation. On September 29, 2020, Respondent failed to mark accumulation start dates on seventeen 55-gallon drums.
- "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. Negligent means the respondent failed to take reasonable care to avoid a foreseeable risk of conduct constituting or resulting in a violation. Respondent has reported to DEQ as a LQG since 2006 and thus should be familiar with requirements applicable to LQGs. Moreover, Respondent was previously cited by DEQ for violating the requirement to label hazardous waste with an accumulation start date in Warning Letter with Opportunity to Correct No. 2016-WLOT-2043, issued by DEQ on November 22, 2016. Thus, by failing to mark the drums of hazardous waste as required, Respondent failed to take reasonable care to avoid a foreseeable risk of conduct constituting or resulting in a violation.

"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. During the September 29, 2020 inspection, Respondent placed accumulation start dates on the drums as directed by DEQ.

"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 any economic benefit that Respondent gained from the violation is de minimis.

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 (0 + 0 + 3 + 4 + -3)] + \0
 $= \$3,000 + (\$300 \times 4) + \$0$
 $= \$3,000 + \$1,200 + \$0$
 $= \$4,200$

EXHIBIT 2

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

VIOLATION NO. 2 Failure to label or mark containers of hazardous waste with the words "Hazardous Waste" in violation of 40 CFR 262.34(a)(3).

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

MAGNITUDE: The magnitude of the violation is moderate pursuant to OAR 340-012-0135(4)(c)(B)(i) because the violation involved more than 250 gallons but less than 1,000 gallons of hazardous waste. Respondent failed to mark containers containing approximately 995 gallons of hazardous waste with the words "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 \$3,000 for a Class II, moderate magnitude violation in the matrix listed in OAR 340-012-014(2)(b)(B)(ii) and applicable pursuant to OAR 340-012-0140(2)(a)(M)(i) because Respondent is a Large Quantity Generator.

"P" is whether Respondent has any prior significant actions, as defined in OAR 340-012-0030(19), in the same media as the violation at issue that occurred at a facility owned or operated by the same Respondent, and receives a value of 0 according to OAR 340-012-0145(2)(a)(A), because there are no prior significant actions.

"H" is Respondent's history of correcting prior significant actions, and receives a value of 0 according to OAR 340-012-0145(3)(c) because there is no prior history.

"O" is whether the violation was repeated or ongoing, and receives a value of 3 according to OAR 340-012-0145(4)(c) because there were more than seven but less than 28 occurrences of the violation. Respondent failed to label or mark nine 55-gallon drums of hazardous waste with the words "Hazardous Waste."

"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. Negligent means the respondent failed to take reasonable care to avoid a foreseeable risk of conduct constituting or resulting in a violation. Respondent has reported to DEQ as a LQG since 2006 and thus should be familiar with requirements applicable to LQGs. Moreover, Respondent was previously cited by DEQ for violating the requirement to label hazardous waste containers with the words "Hazardous Waste" in Warning Letter with Opportunity to Correct No. 2016-WLOTC-2043, issued by DEQ on November 22, 2016. Thus, by failing to mark the containers of hazardous waste as required, Respondent failed to take reasonable care to avoid a foreseeable risk of conduct constituting or resulting in a violation.

"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. During the September 29, 2020 inspection, Respondent labeled the containers with the words "Hazardous Waste" as directed by DEQ.

"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 any economic benefit Respondent gained as a result of the violation is de minimis.

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 (0 + 0 + 3 + 4 + -3)] + \0
 $= \$3,000 + (\$300 \times 4) + \$0$
 $= \$3,000 + \$1,200 + \$0$
 $= \$4,200$