



# 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

October 5, 2021

CERTIFIED MAIL: 7018 1830 0001 5903 9461

NIC Industries, Inc.  
c/o Brian D. Hall, Registered Agent  
7050 Sixth St  
White City OR 97503

Re: Notice of Civil Penalty Assessment and Order  
Case No. LQ/HW-WR-2020-104

*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 \$63,600 for failing to accurately determine whether ignitable and toxic solvent waste you generated was hazardous waste, storing hazardous waste without a permit, and for offering it for transport without hazardous waste manifests and designating disposal at a permitted hazardous waste facility. In the enclosed Notice of Civil Penalty Assessment and Order (the Notice), DEQ also cited you, without penalty, for failing to report to DEQ as a large-quantity generator of hazardous waste, failing to label hazardous waste containers, and failing to adequately train your staff in hazardous waste requirements.

DEQ issued this penalty because the requirement for a generator to accurately characterize hazardous waste ensures that hazardous waste is safely managed and disposed. By failing to accurately characterize your waste, you contributed to approximately 35,000 pounds of hazardous waste generated at your business being stored in a parking lot in Klamath Falls for approximately a year and a half, creating a serious risk of harm to the public and the environment.

Due to the seriousness of the violations, especially the substantial likelihood of human and environmental exposure to hazardous waste and that the violations were a substantial deviation from the law, DEQ designated you as a Significant Non-Complier (SNC).

DEQ appreciates your efforts to address the violations by properly disposing of the hazardous wastes in October 2019 through February of 2020, submitting hazardous waste generator reports to DEQ, and training your staff in hazardous waste requirements. 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 – 503-229-6762

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 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: Brian Allen, DEQ  
Ron Doughten, DEQ  
Accounting, DEQ  
Chris Rich, Perkins Coie, [crich@perkinscoie.com](mailto:crich@perkinscoie.com)

1 BEFORE THE ENVIRONMENTAL QUALITY COMMISSION

2 OF THE STATE OF OREGON

3	IN THE MATTER OF:	)	NOTICE OF CIVIL PENALTY
4	NIC INDUSTRIES, INC.,	)	ASSESSMENT AND ORDER
		)	
5	Respondent.	)	CASE NO. LQ/HW-WR-2020-104

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 466.994, ORS Chapter 183 and Oregon Administrative Rules (OAR) Chapter 340, Divisions 011,  
10 012, 100 and 102.

11 II. FINDINGS OF FACT

12 1. Respondent operates a business manufacturing powder and ceramic coatings at 7050  
13 Sixth Street in White City, Oregon (the Facility).

14 2. Respondent generated at least 2,200 pounds of hazardous waste on a monthly basis at  
15 the Facility in 2018 and 2019.

16 3. Respondent generated at least 220 pounds of hazardous waste on a monthly basis, and in  
17 some months over 2,200 pounds of hazardous waste, at the Facility in 2016 and 2017.

18 4. At all material times, Respondent used and distilled solvents on-site, including since at  
19 least 2010 a parachlorobenzotrifluoride (PCBTF) solvent (“Oxsol 100”), and Respondent generated  
20 waste solvents and still bottoms from the solvent recovery unit at the Facility. At all material times,  
21 Respondent used approximately 20-50 gallons of PCBTF solvent per day at the Facility, and generated  
22 approximately half of a 55-gallon drum per month of still bottom waste. At all material times,  
23 Respondent generated approximately four 55-gallon drums of surplus waste distilled solvent per month,  
24 on average.

25 5. Respondent did not ship any waste PCBTF solvent off-site from the Facility from  
26 January 2013 to February 10, 2018.

27 ////

1           6.       On or about February 10, 2018, Respondent offered eight 55-gallon drums of distilled  
2 solvent waste to TNQ Developmental Employment, LLC (TNQ). The drums were not labeled as  
3 hazardous waste. TNQ invoiced Respondent \$1,420 for removal of six of the eight drums.

4           7.       On or about August 2, 2018, Respondent offered the following waste to TNQ, on a Bill  
5 of Lading signed by Seth Durham of TNQ, designating the waste to be shipped to TNQ, 707 South 5<sup>th</sup>  
6 Street, Klamath Falls, Oregon: 34 55-gallon drums of “cleaner,” seven totes of “cleaner,” and eight 55-  
7 gallon drums of “distillate.” The drums and totes were not labeled as hazardous waste. On or about  
8 August 3, 2018, Seth Durham under the name Tortoise Transport Company, LLC (Tortoise), invoiced  
9 Respondent \$16,133.02. The description of the invoiced services was “remove wastes per earlier  
10 quote.”

11          8.       On or about November 30, 2018, Respondent offered a total of eighteen 55-gallon  
12 drums of distilled solvent and still bottom waste to Tortoise. The drums were not labeled as hazardous  
13 waste. On or about November 30, 2018, Tortoise invoiced Respondent \$6,170 for “Quoted disposal.”

14          9.       All of the waste described in Section II, paragraphs 4-8 above had a flash point of less  
15 than 140 degrees Fahrenheit.

16          10.       When Respondent offered the waste described in Section II, paragraphs 4-9 above to  
17 TNQ and Tortoise, Respondent had not characterized any of it as hazardous waste. Respondent did not  
18 label it as hazardous waste or complete a uniform hazardous waste manifest identifying it as hazardous  
19 waste.

20          11.       After Respondent offered the waste to TNQ and Tortoise in 2018, the waste described in  
21 Section II, paragraphs 4-9 above was taken to 1859 Riverside Drive in Klamath Falls, Oregon, where it  
22 remained until October 2019 and February 2020 when Respondent and TNQ/Tortoise arranged for the  
23 waste to be properly characterized, transported, and disposed as hazardous waste at a permitted  
24 hazardous waste disposal facility.

25          12.       Neither 707 South 5<sup>th</sup> Street nor 1859 Riverside Drive in Klamath Falls, Oregon, are  
26 permitted hazardous waste treatment, storage, or disposal sites. Neither TNQ nor Tortoise nor  
27 Respondent’s Facility are permitted to treat, store, or dispose of hazardous waste.



1 and specifically identified by Environmental Protection Agency (EPA) Hazardous Waste Number  
2 (EPA Waste No.) D001. Fifteen of the 55-gallon drums were also D007 hazardous waste pursuant to 40  
3 CFR 261.24. These are Class I violations, according to OAR 340-012-0068(1)(e). DEQ hereby assesses a  
4 \$24,000 civil penalty for these violations.

5 3. Respondent violated ORS 466.095(1)(a) by storing hazardous waste at the Facility for more  
6 than 90 days without a hazardous waste storage permit, as described in Section II, paragraphs 2-5, and 12  
7 above. All of the illegally-stored hazardous wastes were ignitable hazardous wastes pursuant to 40 CFR  
8 261.21(a)(1) and (b), and specifically identified by Environmental Protection Agency (EPA) Hazardous  
9 Waste Number (EPA Waste No.) D001. Fifteen of the 55-gallon drums of illegally-stored hazardous  
10 waste were also D007 hazardous waste pursuant to 40 CFR 261.24. These are Class II violations,  
11 according to OAR 340-012-0068(2)(d). DEQ hereby assesses a \$26,400 civil penalty for these violations.

12 4. Respondent violated 40 CFR 262.34(a)(3) by failing to label containers of hazardous waste  
13 with the words "hazardous waste," as described in Section II, paragraphs 4-9 above. All of the distilled  
14 solvent and still bottoms are hazardous wastes pursuant to 40 CFR 261.21(a)(1) and (b), and specifically  
15 identified by Environmental Protection Agency (EPA) Hazardous Waste Number (EPA Waste No.)  
16 D001. Fifteen of the 55-gallon drums were also D007 hazardous waste pursuant to 40 CFR 261.24.  
17 These are Class II violations, according to OAR 340-012-0068(2)(b). DEQ has not assessed a civil penalty  
18 for these violations.

19 5. Respondent violated 40 CFR 265.16(1)(a) and (b) by failing to adequately train Facility  
20 personnel in hazardous waste management procedures within six months of the date of employment or  
21 new position at the Facility, as described in Section II, paragraphs 1-2 and 11 above. This is a Class II  
22 violation, according to OAR 340-012-0068(2)(l). DEQ has not assessed a civil penalty for this violation.

23 6. Respondent violated OAR 340-102-0041(2) and OAR 340-102-0065(1)(a) and (4) by failing to  
24 timely submit an accurate hazardous waste generation report and pay associated fees for 2018 and 2019.  
25 Specifically, by March 1, 2019 and March 1, 2020, Respondent did not report to DEQ as a large quantity  
26 generator of hazardous waste, report that Respondent generated the hazardous waste described in Section  
27 II, paragraphs 1-2, 4-9, and 14 above, or pay the activity verification fee as a large quantity generator and

1 the hazardous waste generation fee for that hazardous waste. Respondent submitted revised, accurate  
2 reports and fees for those years by July of 2020. These are Class II violations, according to OAR 340-012-  
3 0068(2)(t). DEQ has not assessed a civil penalty for this violation.

#### 4 IV. ORDER TO PAY CIVIL PENALTY

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

7 Pay a total civil penalty of \$63,600. The determination of the civil penalty is attached as Exhibits 1-  
8 3 and is incorporated as part of this Notice.

9 If you do not file a request for hearing as set forth in Section V below, your check or money order  
10 must be made payable to "**State Treasurer, State of Oregon**" and sent to the **DEQ, Business Office,**  
11 **700 NE Multnomah Street, Suite 600, Portland, Oregon 97232.**

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

13 You have a right to a contested case hearing on this Notice, if you request one in writing. DEQ  
14 must receive your request for hearing **within 20 calendar days** from the date you receive this Notice. If  
15 you have any affirmative defenses or wish to dispute any allegations of fact in this Notice or attached  
16 exhibits, you must do so in your request for hearing, as factual matters not denied will be considered  
17 admitted, and failure to raise a defense will be a waiver of the defense. (See OAR 340-011-0530 for  
18 further information about requests for hearing.) You must send your request to: **DEQ, Office of**  
19 **Compliance and Enforcement, 700 NE Multnomah Street, Suite 600, Portland, Oregon 97232**, fax  
20 it to **503-229-6762** or email it to [DEQappeals@deq.state.or.us](mailto:DEQappeals@deq.state.or.us). An administrative law judge  
21 employed by the Office of Administrative Hearings will conduct the hearing, according to ORS  
22 Chapter 183, OAR Chapter 340, Division 011 and OAR 137-003-0501 to 0700. You have a right to be  
23 represented by an attorney at the hearing, however you are not required to be. If you are an individual,  
24 you may represent yourself. If you are a corporation, partnership, limited liability company,  
25 unincorporated association, trust or government body, you must be represented by an attorney or a duly  
26 authorized representative, as set forth in OAR 137-003-0555.

27 *////*

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

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

12  
13  
14  
15 10 / 5 / 2021  
16 Date


  
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 1: 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 waste, 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 at least three waste streams (at least two variations of ignitable and toxic waste solvent, and still bottoms).

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)(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 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 4 according to OAR 340-012-0145(4)(d), because there were more than 28 occurrences of the violation. Respondent failed to accurately characterize 66 drums and seven totes of hazardous waste upon generation, and because the violation was ongoing from at least February 2018 to November 2018. Each repeated occurrence of the same violation and each day of a violation with a duration of more than one day is a separate occurrence.

"M" is the mental state of the Respondent and receives a value of 10 according to OAR 340-012-0145(5)(e), because Respondent's conduct was flagrant, as defined in OAR 340-012-0030(11). In approximately 2010-2012, Respondent generated and recycled distilled solvent, and then was unable to find a continuing market for reuse of distilled solvent. Respondent had characterized and shipped some still bottom waste as D001 and D007 hazardous waste in 2016-2017. Respondent was aware of the EPA hazardous waste site

identification number requirement and obtained one for the last two TNQ/Tortoise shipments in 2018. Respondent failed to conduct accurate waste characterization upon generation for the 2018 shipments, and failed to take any measures to review or confirm what TNQ/Tortoise represented regarding waste characterization and ultimate disposition of the waste until approximately a year and a half after the first shipment. Respondent had actual knowledge that failing to do an accurate hazardous waste determination was unlawful and consciously set out to commit the violation by offering three separate shipments of hazardous waste (over 70 containers and 35,000 pounds of hazardous waste) without conducting such determinations.

"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 minimize the effects of the violation by properly disposing of the waste by February 2, 2020, and submitting accurate hazardous waste generator reports to DEQ in 2020.

"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 made a reasonable determination, pursuant to OAR 340-012-0150(4), based on the available information that Respondent did not gain more than a de minimis EB as a result of this violation. Respondent paid Tortoise Transport approximately \$23,000 in 2018 to transport and dispose of the waste, and then paid for proper characterization, transportation, and disposal in late October 2019 through February 2020. Additionally, Respondent could have done an accurate hazardous waste determination on these waste streams without incurring analytical costs, using knowledge of process and prior characterizations.

PENALTY CALCULATION:  $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$   
 $= \$6,000 + [(0.1 \times \$6,000) \times (0 + 0 + 4 + 10 - 2)] + \$0$   
 $= \$6,000 [\$600 \times (12)] + \$0$   
 $= \$6,000 + \$7,200 + \$0$   
 $= \$13,200$

EXHIBIT 2

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

VIOLATION 2: Offering hazardous waste for transport without preparing a uniform hazardous waste manifest and designating a permitted hazardous waste disposal facility, in violation of 40 CFR 262.20(a)(1) and (b).

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

MAGNITUDE: The magnitude of the violation is major pursuant to OAR 340-012-0135(4)(c)(A)(i) because the violation involved more than 1,000 gallons or 6,000 pounds of hazardous waste.

CIVIL PENALTY FORMULA: The formula for determining the amount of penalty of each violation is:  $BP + [(0.1 \times BP) \times (P + H + O + M + C)] + EB$

"BP" is the base penalty, which is \$12,000 for a Class I, major magnitude violation in the matrix listed in OAR 340-012-0140(2)(b)(A)(i) and applicable pursuant to OAR 340-012-0140(2)(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 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 2 according to OAR 340-012-0145(4)(b), because there was more than one but less than seven occurrences of the violation. Respondent offered three unmanifested shipments, in February, August, and November 2018.

"M" is the mental state of the Respondent and receives a value of 10 according to OAR 340-012-0145(5)(e), because Respondent's conduct was flagrant, as defined in OAR 340-012-0030(11). In approximately 2010-2012, Respondent generated and recycled distilled solvent, and then was unable to find a continuing market for reuse of distilled solvent. Respondent manifested and shipped some still bottom waste as D007 hazardous waste in 2016-2017. Respondent was aware of the EPA hazardous waste site identification number requirement and obtained one for the last two TNQ/Tortoise shipments in 2018. Despite this history and knowledge, Respondent repeatedly failed to ensure shipments of hazardous waste were shipped from the Facility on a hazardous waste manifest, which would have

designated a permitted disposal site and tracked the legal disposition of the hazardous waste. Given that Respondent had previously generated and manifested hazardous waste and obtained the hazardous waste site identification number required for transport of this hazardous waste, Respondent had actual knowledge that offering hazardous waste for transport without a hazardous waste manifest was unlawful. Respondent consciously set out to commit the violation by offering three separate shipments of hazardous waste (over 70 containers and 35,000 pounds of hazardous waste) without manifests.

"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 minimize the effects of the violation by properly manifesting and disposing of the hazardous waste by February 2, 2020.

"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 made a reasonable determination, pursuant to OAR 340-012-0150(4), based on the available information that Respondent did not gain more than a de minimis EB 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 \$1,200) x (0 + 0 + 2 + 10 - 2)] + \$0  
= \$12,000 [\$1,200 x (10)] + \$0  
= \$12,000 + \$12,000 + \$0  
= \$24,000

EXHIBIT 3

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

VIOLATION 1: Storing hazardous waste at the Facility for more than 90 days without a hazardous waste storage permit, in violation of ORS 466.095(1).

CLASSIFICATION: This is a Class I 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)(i) because Respondent illegally stored at least 1,000 gallons or 6,000 pounds of hazardous waste.

CIVIL PENALTY FORMULA: The formula for determining the amount of penalty of each violation is:  $BP + [(0.1 \times BP) \times (P + H + O + M + C)] + EB$

"BP" is the base penalty, which is \$12,000 for a Class I, major magnitude violation in the matrix listed in OAR 340-012-0140(2)(b)(A)(i) and applicable pursuant to OAR 340-012-0140(2)(M)(i) because Respondent is a large quantity generator of hazardous waste, should have had a hazardous waste storage permit, 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 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 4 according to OAR 340-012-0145(4)(d) because there were more than 28 occurrences of the violation. By storing the PCBTF hazardous waste at the unpermitted Facility beyond 90 days from generation, ongoing from approximately January of 2013 through at least February 10, 2018, Respondent committed the violation for over 28 days. Each repeated occurrence of the same violation and each day of a violation with a duration of more than one day is a separate occurrence.

"M" is the mental state of the Respondent and receives a value of 10 according to OAR 340-012-0145(5)(e), because Respondent's conduct was flagrant, as defined in OAR 340-012-0030(11). In approximately 2010-2012, Respondent generated and recycled distilled solvent, and then was unable to find a continuing market for reuse of distilled solvent. Respondent had characterized and shipped some still bottom waste as D001 and D007 hazardous waste in 2016-2017, and knew that waste PCBTF was ignitable and could contain chromium. Respondent had actual knowledge that storing hazardous waste without a permit was unlawful and consciously set out to commit the violation by storing over 70 containers

and 35,000 pounds of hazardous waste waste at the Facility in lieu of disposal for over four years.

"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 minimize the effects of the violation by properly disposing of the waste at a permitted facility by February 2, 2020.

"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 does not have sufficient information on which to base a reasonable estimate of the exact timing and amounts of hazardous waste generation and therefore costs delayed and economic benefit gained as a result of this violation.

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

$$\begin{aligned} &= \$12,000 + [(0.1 \times \$12,000) \times (0 + 0 + 4 + 10 - 2)] + \$0 \\ &= \$12,000 [\$1,200 \times (12)] + \$0 \\ &= \$12,000 + \$14,400 + \$0 \\ &= \$26,400 \end{aligned}$$