



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
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TTY 711

October 5, 2021

CERTIFIED MAIL: 7018 1830 0001 5903 9478

Tortoise Transport Company, LLC and
TNQ Developmental Employment, LLC
c/o Seth Durham
1104 Tamera Dr.
Klamath Falls OR 97603

Re: Notice of Civil Penalty Assessment and Order
Case No. LQ/HW-ER-2020-103

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 Tortoise Transport Company, LLC, and TNQ Developmental Employment, LLC, a civil penalty of \$91,929 for hazardous waste violations related to the transportation, storage, and mismanagement of hazardous waste over the course of 2018 through early 2020.

DEQ issued this penalty because Respondents' transportation and storage of approximately 38,000 pounds of ignitable and toxic hazardous waste at a parking lot in Klamath Falls, from February 2018 until DEQ discovered the violations in the fall of 2019, created a substantial risk that the waste would be released and cause harm to human health or 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).

Approximately \$35,000 of the civil penalty represents the economic benefit you gained by avoiding the cost of legal disposal of the hazardous waste you picked up from NIC Industries, Inc. DEQ appreciates your efforts to address the violations by properly characterizing and disposing of the hazardous waste you picked up from other sites, reporting to DEQ, and taking hazardous waste training. DEQ considered these efforts when determining the amount of civil penalty.

Tortoise Transport Company, LLC and
TNQ Developmental Employment, LLC
Case No. LQ/HW-ER-2020-103
Page 2

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 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
Seth Durham, seth@tortoisetransportcompany.com

1 distillation.” The profiles certified that both wastes had flash points less than 140 degrees Fahrenheit
2 and were “EPA hazardous waste code D001.”

3 7. On or about February 10, 2018, TNQ picked up eight 55-gallon drums of distilled
4 solvent waste from NIC.

5 8. On or about August 2, 2018, TNQ picked up from NIC, on a Bill of Lading signed by
6 Seth Durham: 34 55-gallon drums of “cleaner,” six full and one half-full 275-gallon totes of “cleaner,”
7 and eight 55-gallon drums of “distillate.” The Bill of Lading designated the waste to be shipped to
8 TNQ, 707 South 5th Street, Klamath Falls, Oregon. On or about August 3, 2018, Seth Durham,
9 representing Tortoise, invoiced NIC. The description of the invoiced services was “remove wastes per
10 earlier quote.”

11 9. On or about November 30, 2018, Tortoise picked up a total of eighteen 55-gallon drums
12 of distilled solvent and still bottom waste from NIC. On or about November 30, 2018, Tortoise
13 invoiced NIC for “Quoted disposal,” referencing a letter quote for “disposal cost and transportation,”
14 which was from both Respondents and Seth Durham to NIC.

15 10. All of the waste described in Section II, paragraphs 6-9 above had a flash point of less
16 than 140 degrees Fahrenheit.

17 11. Respondents delivered the waste described in Section II, paragraphs 6-10 above to 1859
18 Riverside Drive in Klamath Falls, Oregon (the Facility), where it remained until it was properly
19 disposed of from October 2019 through February 2, 2020.

20 12. On August 13-14, September 10, and October 15, 2019, DEQ inspected Respondents’
21 trailer stored at the Facility. The trailer contained approximately 35,650 pounds of waste from the 2018
22 NIC shipments described in Section II, paragraphs 6-10 above.

23 13. During the August and September 2019 DEQ inspections there was a strong solvent
24 odor inside the trailer, three of the 55-gallon drums were bulging, one tote was leaking its contents onto
25 the floor of the trailer, and none of the containers or totes were marked as hazardous waste.

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1 2. Respondents violated 40 CFR 265.31, as referenced by 40 CFR 262.34(d)(4), by failing to
2 maintain and operate the Facility in a manner that minimizes the possibility of a release of hazardous waste
3 or hazardous waste constituents to air, soil, or surface water which could threaten human health or the
4 environment. Specifically, Respondents stored four bulging containers and one leaking tote of hazardous
5 waste at the Facility, as described in Section II, paragraphs 10-15 above. The wastes in the unsound
6 containers were hazardous wastes pursuant to 40 CFR 261.21(a)(1) and (b), and specifically identified
7 by EPA Waste No. D001. This is a Class II violation, according to OAR 340-012-0068(2)(o). DEQ
8 hereby assesses a \$12,000 civil penalty for this violation.

9 3. Respondents violated 40 CFR 263.20(a)(1) by accepting hazardous waste for transport
10 without a uniform hazardous waste manifest. Specifically, on February 10, 2018, August 3, 2018, and
11 November 30, 2018, Respondents accepted the waste described in Section II, paragraphs 6-10 above
12 from NIC. All of the wastes described in Section II, paragraphs 6-10 above are hazardous wastes pursuant
13 to 40 CFR 261.21(a)(1) and (b), and specifically identified by EPA Waste No. D001. Fifteen of the 55-
14 gallon drums were also D007 hazardous waste pursuant to 40 CFR 261.24. These are Class I violations,
15 according to OAR 340-012-0068(1)(e). DEQ hereby assesses a \$21,600 civil penalty for these violations.

16 4. Respondents violated OAR 340-102-0011(2) by failing to conduct a complete and accurate
17 hazardous waste determination on all residues, as defined in OAR 340-100-0010(2)(ee) and 40 CFR 261.2,
18 that Respondents generated at the Facility. Specifically, Respondents failed to determine whether wastes
19 described in Section II, paragraphs 14-15 above were hazardous waste when Respondents generated them
20 at the Facility. The mixtures of paint and solvent wastes described in Section II, paragraphs 14-15 and
21 Section III, paragraph 1 above, are hazardous wastes pursuant to 40 CFR 261.21(a)(1) and (b), and
22 specifically identified by EPA Waste No. D001. These are Class I violations, according to OAR 340-
23 012-0068(1)(a). DEQ has not assessed a civil penalty for this violation.

24 5. From at least August 13 through October 15, 2019, Respondents violated 40 CFR
25 262.34(a)(3), as referenced by 40 CFR 262.34(d)(4), by failing to label the containers of wastes described
26 in Section II, paragraphs 6-10 and 14-15 above as “hazardous waste,” as described in Section II,
27 paragraphs 12-15 above. All of the containers of waste described in Section II, paragraphs 12-15 of

1 Section II were not labeled as hazardous waste, but stored hazardous wastes pursuant to 40 CFR
2 261.21(a)(1) and (b), and specifically identified by EPA Waste No. D001. Fifteen of those unlabeled
3 55-gallon drums also contained D007 hazardous waste pursuant to 40 CFR 261.24. The wastes
4 described in Section II, paragraphs 6-10 and 14-15 above are hazardous wastes pursuant to 40 CFR
5 261.21(a)(1) and (b) and 40 CFR 261.24, and specifically identified by EPA Waste Nos. D001, D007,
6 and D035. These are Class II violations, according to OAR 340-012-0068(2)(b). DEQ has not assessed a
7 civil penalty for these violations.

8 6. From at least August 13 through October 15, 2019, Respondents violated 40 CFR 262.34(a)(2),
9 as referenced by 40 CFR 262.34(d)(4), by failing to label the containers of wastes described in Section II,
10 paragraphs 14-15 above with the date Respondents first began accumulating the waste in the containers.
11 The undated wastes described in Section II, paragraphs 14-15 above are hazardous wastes pursuant to
12 40 CFR 261.21(a)(1) and (b) and 40 CFR 261.24, and specifically identified by EPA Waste Nos. D001,
13 D007, and D035. These are Class II violations, according to OAR 340-012-0068(2)(a). DEQ has not
14 assessed a civil penalty for these violations.

15 IV. ORDER TO PAY CIVIL PENALTY

16 Based upon the foregoing FINDINGS OF FACTS AND CONCLUSIONS, Respondents are
17 hereby ORDERED TO:

18 Pay a total civil penalty of \$91,929. The determination of the civil penalties are attached as
19 Exhibits 1-3 and are incorporated as part of this Notice.

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

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

24 You have a right to a contested case hearing on this Notice, if you request one in writing. DEQ
25 must receive your request for hearing **within 20 calendar days** from the date you receive this Notice. If
26 you have any affirmative defenses or wish to dispute any allegations of fact in this Notice or attached
27 exhibits, you must do so in your request for hearing, as factual matters not denied will be considered

1 admitted, and failure to raise a defense will be a waiver of the defense. (See OAR 340-011-0530 for
2 further information about requests for hearing.) You must send your request to: **DEQ, Office of**
3 **Compliance and Enforcement, 700 NE Multnomah Street, Suite 600, Portland, Oregon 97232**, fax
4 it to **503-229-6762** or email it to DEQappeals@deq.state.or.us. An administrative law judge
5 employed by the Office of Administrative Hearings will conduct the hearing, according to ORS
6 Chapter 183, OAR Chapter 340, Division 011 and OAR 137-003-0501 to 0700. You have a right to be
7 represented by an attorney at the hearing, however you are not required to be. If you are an individual,
8 you may represent yourself. If you are a corporation, partnership, limited liability company,
9 unincorporated association, trust or government body, you must be represented by an attorney or a duly
10 authorized representative, as set forth in OAR 137-003-0555.

11 Active duty Service members have a right to stay proceedings under the federal Service
12 Members Civil Relief Act. For more information contact the Oregon State Bar at 1-800-
13 452-8260, the Oregon Military Department at 503-584-3571, or the nearest United States Armed
14 Forces Legal Assistance Office through <http://legalassistance.law.af.mil>. The Oregon Military
15 Department does not have a toll free telephone number.

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

22
23
24
25 10 / 5 / 2021
26 Date

25 
26 Kieran O'Donnell, Manager
27 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: Establishing a hazardous waste treatment, storage, or disposal facility without a permit, in violation of ORS 466.095(1)(a).

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

MAGNITUDE: The magnitude of the violation is major pursuant to OAR 340-012-0135(4)(b)(A)(i) because Respondents accepted more than 55 gallons or 330 pounds of hazardous waste at the Facility.

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)(M), because Respondents transported hazardous waste and should have had a hazardous waste treatment, storage, or disposal facility 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 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 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. The violation was ongoing since approximately February of 2018 when Respondents first began storing hazardous waste at the Facility, until February of 2020 when Respondents properly disposed of the hazardous waste at a permitted site.

"M" is the mental state of the Respondent, and receives a value of 8 according to OAR 340-012-0145(5)(d) because Respondents' conduct was reckless, as defined in OAR 340-012-0030(20). Respondents were in the business of waste transportation and brokering services, and in January of 2018, submitted waste profiles of the waste solvent and still bottoms to a permitted hazardous waste disposal facility. The profiles certified that the wastes had a flash point of less than 140 degrees Fahrenheit and were EPA hazardous waste code D001. By storing over 30,000 pounds of hazardous waste from multiple generators at an unpermitted facility for almost two years, Respondents consciously disregarded a substantial and unjustifiable risk that Respondents were operating an illegal Facility. Given the nature of Respondents' business, and the volume and duration of the violation, this risk was of such a

nature and degree that disregarding it constituted a gross deviation from the standard of care a reasonable person would observe in this situation.

"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 Respondents eventually made some efforts to minimize the effects of the violation. From January 23 through February 20, 2020, Respondents properly shipped and disposed of the hazardous waste originating from Jeld-Wen and Timber Products. NIC properly shipped and disposed of the waste from NIC.

"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 \$34,329. This is the amount Respondents gained by avoiding spending \$44,211, since at least November 30, 2018, to properly dispose of the 66 55-gallon drums and seven 350-gallon totes of hazardous waste that Respondents transported to, and stored and disposed at, the unpermitted Facility. This "EB" was calculated pursuant to OAR 340-012-0150(1) using the U.S. Environmental Protection Agency's BEN computer model.

PENALTY CALCULATION: $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$
 $= \$12,000 + [(0.1 \times \$12,000) \times (0 + 0 + 4 + 8 - 2)] + \$34,329$
 $= \$12,000 + (\$1,200 \times 10) + \$34,329$
 $= \$12,000 + \$12,000 + \$34,329$
 $= \$58,329$

EXHIBIT 2

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

- VIOLATION 2: Failing to maintain and operate the Facility in a manner that minimizes the possibility of a release of hazardous waste or hazardous waste constituents, in violation of 40 CFR 265.31, as referenced by 40 CFR 262.34(d)(4).
- CLASSIFICATION: This is a Class II violation pursuant to OAR 340-012-0068(2)(o).
- MAGNITUDE: The magnitude of the violation is major pursuant to OAR 340-012-0135(4)(c)(A)(i), as the violation involved more than 1,000 gallons 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 \$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), because Respondents transported hazardous waste and should have had a hazardous waste treatment, storage, or disposal facility 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 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 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. The violation was ongoing since at least August 13, 2019, when DEQ documented bulging and leaking containers at the Facility, through October 29, 2019, when NIC removed those containers from the Facility.
- "M" is the mental state of the Respondent, and receives a value of 8 according to OAR 340-012-0145(5)(d) because Respondents' conduct was reckless, as defined in OAR 340-012-0030(20). By storing bulging and leaking containers of hazardous waste in a parking lot for at least months and up to two years, Respondents consciously disregarded a substantial and unjustifiable risk that hazardous waste would be released and public health or the environment would be harmed. Because of the dangerous condition of the waste and drums, and the location and volume of the waste, the risk was of such a nature and degree that

Respondents' disregard of the risk constituted a gross deviation from the standard of care a reasonable person would observe in this situation.

"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 Respondents eventually made some efforts to minimize the effects of the violation by arranging for the characterization and disposal of some of the hazardous waste.

"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 finding that Respondents gained more than de minimus economic benefit as a result of this violation.

PENALTY CALCULATION: $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$
 $= \$6,000 + [(0.1 \times \$6,000) \times (0 + 0 + 4 + 8 - 2)] + \0
 $= \$6,000 + (\$600 \times 10) + \$0$
 $= \$6,000 + \$6,000 + \$0$
 $= \$12,000$

EXHIBIT 3

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

VIOLATION 3: Transporting hazardous waste without uniform hazardous waste manifests, in violation of 40 CFR 263.20(a)(1).

CLASSIFICATION: These are Class I violations 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 Respondents transported hazardous waste, should have had a hazardous waste 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 2 according to OAR 340-012-0145(4)(b), because there was more than one but less than seven occurrences of the violation. Respondents accepted three unmanifested shipments from NIC, in February, August, and November 2018.

"M" is the mental state of the Respondent and receives a value of 8 according to OAR 340-012-0145(5)(d), because Respondents' conduct was reckless, as defined in OAR 340-012-0030(20). By repeatedly accepting hazardous waste shipments without a hazardous waste manifest, Respondents consciously disregarded a substantial and unjustifiable risk that Respondents illegally transported hazardous waste. Given that Respondents were in the business of transportation, and the volume of hazardous waste involved over the course of almost a year's time, the risk was of such a nature and degree that Respondents' disregard of the risk constituted a gross deviation from the standard of care a reasonable person would observe in this situation.

"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 Respondents 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 Respondents 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 + 8 - 2)] + \$0
= \$12,000 [\$1,200 x (8)] + \$0
= \$12,000 + \$9,600 + \$0
= \$21,600