



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 12, 2021

CERTIFIED MAIL: 7018 1830 0001 5903 9492

East Side Plating, Inc.
c/o Zarosinski Hartwig P.C., Registered Agent
9200 SE Sunnybrook Blvd, Suite 210
Clackamas OR 97015

Re: Notice of Civil Penalty Assessment and Order
Case No. LQ/HW-NWR-2020-027

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 \$21,000 for hazardous waste violations at your Plants 1, 2, and 3 at 8400 SE 26th Place in Portland. DEQ has also cited you, without penalty, in the enclosed Notice of Civil Penalty Assessment and Order (Notice) for several other violations of hazardous waste management, universal waste management, and emergency preparedness requirements. These violations were documented in a 2019 inspection and you addressed them by early 2020.

DEQ issued this penalty because as a large-quantity generator of hazardous wastes from your metal plating operations, accurately identifying and managing all of the wastes you generate is required and essential to ensure they are safely disposed of so as to protect human health and the environment. Some of the violations cited in the enclosed Notice were repeated from inspections in prior years, and DEQ has cited you in prior enforcement actions for hazardous waste violations.

DEQ appreciates your efforts to correct and minimize the impacts of the violations and 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 via check, money order, or e-check (ACH) by following the instructions on the attached invoice and logging in to Your DEQ Online here: <https://ordeq-edms-public.govonlinesaas.com/pub/login>

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: Zeb Bates, DEQ,
Audrey O'Brien, DEQ
Accounting, DEQ
Scott Henriksen, ScottH@eastsideplating.com

1 a. Forty-eight of the containers were stacked two high on pallets. Nine were stacked single
2 high on pallets.

3 b. One 55-gallon container, full and labeled “Cyclemaster debris,” containing plating solids
4 and debris generated from electroplating sump cleanouts, did not have a closed lid. Respondent was not
5 adding to or removing waste from the container at the time.

6 c. Four containers labeled “Cycle Master Sludge,” containing wastewater treatment sludge
7 from electroplating operations, had some of their contents released onto the exterior of the containers,
8 and surrounding pallet and floor.

9 d. Seven of the containers were labeled with accumulation start dates earlier than 90 days
10 from the inspection date of April 30, 2019, with accumulation start dates ranging from October 1, 2018
11 to February 12, 2019.

12 7. On April 30, 2019, Respondent stored one 250-gallon tote labeled as hazardous waste,
13 one-third full of “waste zincate 40,” a wastewater treatment sludge from electroplating operations, in
14 the wastewater treatment area of Plant 2 at the Facility. This tote did not have a closed cap. Respondent
15 was not adding to or removing waste from the tote at the time.

16 8. On April 30, 2019, in the main plating room area, Respondent stored a 55-gallon
17 satellite accumulation container, labeled as hazardous waste and containing zinc electroplating
18 wastewater sludge waste. The metal lid on the container did not have a ring clamp installed, such that if
19 the container was tipped, the contents could spill out. Respondent was not adding to or removing waste
20 from the container at the time.

21 9. On April 30, 2019, in the laboratory of the Facility, Respondent stored a five-gallon
22 satellite accumulation container labeled “Chrome and Chromate” and as hazardous waste, which had
23 residual waste on the exterior and underneath the container.

24 10. On April 30, 2019, Respondent stored mercury-containing waste lamps loose on a
25 shelving unit, not in closed packages or boxes, and not labeled as “Universal Waste – Lamp(s),” “Waste
26 Lamps,” or “Used Lamps.”

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1 specifically identified by EPA Waste Nos. F006 and D007. This is a Class II violation, according to
2 OAR 340-012-0068(2)(n). DEQ has not assessed a civil penalty for this violation.

3 5. On April 30, 2019, Respondent violated 40 CFR 273.13(d)(1), by failing to store universal
4 waste mercury-containing lamps in containers or packages that are closed, structurally-sound, and
5 adequate to prevent breakage, as described in Paragraphs 1-3 and 10 of Section II above. This is a Class II
6 violation, according to OAR 340-012-0068(2)(p). DEQ has not assessed a civil penalty for this violation.

7 6. On April 30, 2019, Respondent violated 40 CFR 273.14(e), by failing to label universal
8 waste mercury-containing lamps as either “Universal Waste – Lamp(s),” “Waste Lamps,” or “Used
9 Lamps,” as described in Paragraphs 1-3 and 10 of Section II above. This is a Class II violation, according
10 to OAR 340-012-0068(2)(p). DEQ has not assessed a civil penalty for this violation.

11 7. On April 30, 2019, Respondent violated 40 CFR 265.173(a) as referenced by 40 CFR
12 262.34(a)(1)(i), by failing to keep containers storing hazardous waste closed except when adding or
13 removing wastes, as described in Paragraphs 1-3, 6.b, 7, and 8 of Section II above. These are Class II
14 violations, according to OAR 340-012-0068(2)(m). DEQ has not assessed a civil penalty for these
15 violations.

16 8. On April 30, 2019, Respondent violated 40 CFR 265.52(d), as referenced by 40 CFR
17 262.34(1)(4), by failing to update emergency coordinators in the Facility’s contingency plan, as described
18 in Paragraphs 1-3 and 11 of Section II above. This is a Class II violation, according to OAR 340-012-
19 0068(2)(o). DEQ has not assessed a civil penalty for this violation.

20 9. On April 30, 2019, Respondent violated 40 CFR 265.53(b), as referenced by 40 CFR
21 262.34(a)(4), by failing to provide a current contingency plan to local emergency response authorities, as
22 described in Paragraphs 1-3 and 11 of Section II above. This is a Class III violation, according to OAR
23 340-012-0068(3)(e). DEQ has not assessed a civil penalty for this violation.

24 IV. ORDER TO PAY CIVIL PENALTY

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

27 Pay a total civil penalty of \$21,000. The determination of the civil penalty is attached as Exhibits 1

1 and 2, which are incorporated as part of this Notice.

2 If you do not file a request for hearing as set forth in Section V below, please pay the penalty via
3 check, money order, or e-check (ACH) by following the instructions on the attached invoice and logging in
4 to Your DEQ Online here: <https://ordeq-edms-public.govonlinesaas.com/pub/login>

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

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

20 Active duty Service members have a right to stay proceedings under the federal Service
21 Members Civil Relief Act. For more information contact the Oregon State Bar at 1-800-
22 452-8260, the Oregon Military Department at 503-584-3571, or the nearest United States Armed
23 Forces Legal Assistance Office through <http://legalassistance.law.af.mil>. The Oregon Military
24 Department does not have a toll free telephone number.

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

1 hearing, DEQ will issue a final order by default pursuant to OAR 340-011-0535(3). DEQ designates
2 the relevant portions of its files, including information submitted by you, as the record for purposes of
3 proving a prima facie case.
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6

7 10/12/2021
8 Date



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 Failing to accurately determine if Respondent's residue (as defined in OAR 340-100-0010(2)(ee) and 40 CFR 261.2 as adopted by OAR 340-100-0002) was 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 minor pursuant to OAR 340-012-0135(4)(a)(C) because Respondent failed to make a hazardous waste determination on one hazardous waste stream, "Waste 151 Strip Bath."

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 I, minor magnitude violation in the matrix listed in OAR 340-012-0140(2)(b)(A)(iii) and applicable pursuant to OAR 340-012-0140(2)(a)(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 an initial value of 11 according to OAR 340-012-012-0145(2)(a)(C) and (D), based on the following prior significant actions:

- On July 29, 2010, DEQ issued Respondent Notice of Civil Penalty Assessment and Order Number LQ/HW-NWR-2010-050, citing two Class I violations and three Class II violations.
- On May 12, 2011, DEQ issued Respondent Notice of Civil Penalty Assessment and Order Number LQ/HW-NWR-11-039, citing one Class I and one Class II violation.
- On August 27, 2013, DEQ issued Respondent Expedited Enforcement Offer (EEO) Number LQ-HW-0119, which Respondent accepted and includes one Class I violation and six Class II violations, and three Class III violations.
- On July 28, 2016, DEQ issued Respondent EEO Number 2016-EEO-1776, which Respondent accepted and includes one Class II violation.

The Class II and III violations referenced above equate to six total Class I equivalents, as defined in OAR 340-012-0030(2). According to OAR 340-012-0145(2)(b), this amount is reduced to 10 because the value of P will not exceed 10.

- "H" is Respondent's history of correcting prior significant actions, and receives a value of -1 according to OAR 340-012-0145(3)(b) because the violations were uncorrectable and Respondent took reasonable efforts to minimize the effects of the violations cited as prior significant actions.
- "O" is whether the violation was repeated or ongoing, and receives a value of 0 according to OAR 340-012-0145(4)(a) because there was only one occurrence 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, and has been since 1992, a highly-regulated large quantity generator of hazardous waste, cited by DEQ for this and other hazardous waste violations in the past as detailed above. By failing to identify that three 55-gallon drums of waste were hazardous waste, Respondent failed to take reasonable care to avoid this foreseeable risk of committing this 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 took reasonable affirmative efforts to minimize the effects of the violation. On June 5, 2019, Respondent submitted a hazardous waste determination to 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, as DEQ does not have sufficient information on which to make an estimate.

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

$$= \$3,000 + [(0.1 \times \$3,000) \times (10 + (-1) + 0 + 4 + (-3))] + \$0$$

$$= \$3,000 + (\$300 \times 10) + \$0$$

$$= \$3,000 + \$3,000 + \$0$$

$$= \$6,000$$

EXHIBIT 2

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

VIOLATION NO. 2 Failing to maintain adequate aisle space to allow the unobstructed movement of personnel, fire protection equipment, spill control equipment, and decontamination equipment, in violation of 40 CFR 265.35 as referenced by 40 CFR 262.34(a)(4).

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

MAGNITUDE: The magnitude of the violation is major pursuant to OAR 340-012-0135(4)(c)(A) because the violation involved more than 1,000 gallons or 6,000 pounds of hazardous waste. Respondent stored 57 55-gallon drums (3,135 gallons) of hazardous waste without the required aisle space.

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 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 an initial value of 11 according to OAR 340-012-012-0145(2)(a)(C) and (D), based on the following prior significant actions:

- On July 29, 2010, DEQ issued Respondent Notice of Civil Penalty Assessment and Order Number LQ/HW-NWR-2010-050, citing two Class I violations and three Class II violations.
- On May 12, 2011, DEQ issued Respondent Notice of Civil Penalty Assessment and Order Number LQ/HW-NWR-11-039, citing one Class I and one Class II violation.
- On August 27, 2013, DEQ issued Respondent Expedited Enforcement Offer (EEO) Number LQ-HW-0119, which Respondent accepted and includes one Class I violation and six Class II violations, and three Class III violations.
- On July 28, 2016, DEQ issued Respondent EEO Number 2016-EEO-1776, which Respondent accepted and includes one Class II violation.

The Class II and III violations referenced above equate to six total Class I equivalents, as defined in OAR 340-012-0030(2). According to OAR 340-012-0145(2)(b), this amount is reduced to 10 because the value of P will not exceed 10.

- "H" is Respondent's history of correcting prior significant actions, and receives a value of -1 according to OAR 340-012-0145(3)(b) because the violations were uncorrectable and Respondent took reasonable efforts to minimize the effects of the violations cited as prior significant actions.
- "O" is whether the violation was repeated or ongoing, and receives a value of 4 according to OAR 340-012-0145(4)(d) because the violation was ongoing for more than 28 days. The violation was ongoing from at least April 30, 2019 through January 17, 2020 when Respondent submitted documentation of compliance to DEQ. 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 4 according to OAR 340-012-0145(5)(c) because Respondent's conduct was negligent. Respondent is, and has been since 1992, a highly-regulated large quantity generator of hazardous waste. Respondent was previously cited by DEQ for this violation in a 2014 Warning Letter and a 2016 Expedited Enforcement Offer. By storing 57 drums of hazardous waste, most stacked two-high, without access for inspections and emergency response, after being cited for this violation by DEQ twice previously within the past ten years, Respondent failed to take reasonable care to avoid this foreseeable risk of committing this violation.
- "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 submitted documentation of compliance to DEQ on January 17, 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 make an estimate.

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

$$= \$6,000 + [(0.1 \times \$6,000) \times (10 + (-1) + 4 + 4 + (-2))] + \$0$$

$$= \$6,000 + (\$600 \times 15) + \$0$$

$$= \$6,000 + \$9,000 + \$0$$

$$= \$15,000$$