



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 19, 2018

CERTIFIED MAIL: 7016 0750 0000 3470 2978

EnviroTech Services, Inc.
c/o Business Filings Inc., Registered Agent
780 Commercial St SE Ste 100
Salem OR 97301

Re: Notice of Civil Penalty Assessment and Order
Case No. LQ/HW-ER-2018-073

This letter is to inform you that the Oregon Department of Environmental Quality (DEQ) has issued you a civil penalty of \$34,950 for the following violations relating to ignitable and reactive magnesium chloride wastes containing zirconium fines, which has caused multiple fires at your business in Prineville:

- Failing to accurately determine that your wastes were hazardous;
- Failing to immediately clean up releases of hazardous material;
- Storing hazardous waste more than 90 days without a permit; and
- Treating hazardous waste without a permit.

DEQ issued this penalty because improper management of hazardous waste threatens human health and the environment. To protect against such threats, the legislature has enacted statutes and DEQ has adopted rules establishing strict requirements for the identification, storage, handling, treatment, and disposal of hazardous waste. Your failure to comply with these requirements increases the risk that human health or the environment could be harmed by mismanagement of hazardous waste.

Additionally, in the attached Notice of Civil Penalty Assessment and Order (Notice), DEQ has cited you without penalty for multiple other violations of hazardous waste law, and included in Section IV of the Notice is an order requiring you to submit the following to DEQ:

1. Documentation of waste determinations for the sludge removed from Ponds A and B;
2. Waste shipping documents for sludges removed from the tank bottoms and ponds; and
3. Complete and accurate hazardous waste generator annual reports for 2015, 2016, and 2017, and pay all associated fees within 30 days of invoicing.

DEQ appreciates your efforts to address the violations by training your plant manager, cleaning up the spilled waste, labeling containers, implementing weekly inspections, and properly characterizing and disposing of hazardous waste. 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 – 503-229-5100

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

The attached Notice further details DEQ's reasons for issuing the penalty and provides further instructions for appealing the penalty. Please review 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 Bend Office
Mary Fritzmann, Hazardous Waste, DEQ HQ
Julie Cheney, Accounting, DEQ HQ
Steven Hill, Miller Nash Graham & Dunn LLP, steve.hill@millernash.com
Jeffrey Miller, Miller Nash Graham & Dunn LLP, jeff.miller@millernash.com

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

3 IN THE MATTER OF:) NOTICE OF CIVIL PENALTY
4 ENVIROTECH SERVICES, INC.,) ASSESSMENT AND ORDER
5 Respondent.) CASE NO. LQ/HW-ER-2018-073

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) 466.990, 468.100, ORS 468.126 through
9 468.140, ORS Chapters 183 and 466, and Oregon Administrative Rules (OAR) Chapter 340, Divisions
10 011, 012, 100-102, and 142.

11 II. FINDINGS OF FACT

12 1. Respondent operates a business of developing, distributing, and sales of anti-ice and de-
13 icer, dust control, and other products at 3842 Bus Evans Road in Prineville, Oregon (the Facility).

14 2. In 2010, Respondent registered with DEQ as a hazardous waste recycler and transporter
15 under U.S. Environmental Protection Agency (EPA) Identification Number ORQ000028893. On
16 Respondent's RCRA Waste Site Identification Form submitted in May 2010, in response to the
17 question: "Identify the federal hazardous waste codes that best describe your waste," Respondent
18 identified "D003 – Reactive."

19 3. DEQ staff inspected the Facility on multiple days from February 16 through March 19,
20 2018.

21 4. From 2010 through May 24, 2016, Respondent purchased anhydrous Magnesium
22 Chloride (MgCl₂) for use in Respondent's manufacturing process. The 2009 Safety Data Sheet (SDS)
23 described the MgCl₂ as ignitable, and a revised 2015 SDS stated that the MgCl₂ is especially
24 hazardous when wet. The MgCl₂ contains zirconium fines. A July 7, 2010, analysis of the MgCl₂
25 demonstrated chromium above the regulated level of 5.16 parts per million (ppm). The MgCl₂ also
26 demonstrated the characteristic of reactivity at the Facility, reacting violently with water, especially at
27 high temperatures.

1 5. When Respondent processed the MgCl₂, its zirconium fines settled into tank bottoms
2 and filter socks.

3 6. Respondent has had at least seven fires at the Facility, caused by a reaction involving the
4 MgCl₂. At least three of the fires required assistance from the Prineville Fire Department to extinguish.
5 One fire occurred in November 2011, when Respondent moved zirconium sludge into drums. In
6 November 2012, Respondent was treating tank bottom sludge containing zirconium fines in an in-
7 ground concrete structure, when the material caught fire from the use of a non-sparking shovel to mix
8 the sludge. In May 2016, a vacuum truck removing the tank bottom sludge caught fire when the
9 zirconium material reacted in the truck tank. Fires have also occurred during treatment of the MgCl₂
10 waste stream at the Arlington Landfill.

11 7. On and before February 16, 2018, Respondent stored 12 super sacks outside at the
12 Facility, with a total of approximately 26,400 pounds of waste MgCl₂, containing zirconium, labeled
13 “Water Reactive” but not labeled as hazardous waste. These sacks had been stored there since May
14 2016, when the MgCl₂ in the super sacks had fused and become unusable for Respondent’s process,
15 and Respondent determined it was waste. The sacks of waste were deteriorated and tearing open at the
16 top and sides, and two of the sacks were laying on their sides, with approximately 15 pounds of waste
17 anhydrous MgCl₂ released onto the soil.

18 8. On February 16, 2018, Respondent stored 48 55-gallon drums of zirconium-containing
19 hydration tank bottom sludge and filter sock waste, in the “90 Day Hazardous Waste Storage” area at
20 the Facility. Of the 48 drums, 29 either had no labels or had labels that were so worn that they were
21 illegible. One of the drums had a label with an accumulation start date of April 20, 2017. Six of the
22 unlabeled drums contained hydration tank bottom waste that had ignited and burned in 2016. These six
23 drums were without lids. Respondent did not cover those six drums in order to allow the drums to
24 continue to undergo a reaction, off-gassing and expanding. The 48 drums contained approximately
25 37,600 pounds of sludge and filter sock waste containing zirconium.

26 9. On February 12, 2018, Respondent shipped 56,240 pounds of waste MgCl₂ containing
27 zirconium, labeled on hazardous waste manifest numbers 014918149JJK and 014918150JJK, as

1 “water-reactive” and “D003,” to a permitted hazardous waste disposal facility. This waste had been
2 stored at the Facility since May of 2016.

3 10. Respondent shipped the waste MgCl₂ for disposal on several occasions starting on March
4 28, 2013 through February 12, 2018 (approximately 21 shipments) without preparing land disposal
5 restriction notices.

6 11. On August 6, 2018, Respondent shipped 48 drums (approximately 37,600 pounds) of
7 drummed zirconium tank bottom sludge and filter sock waste with waste codes D001 and D006 on
8 Uniform Hazardous Waste Manifest number 019236623JJK to a permitted hazardous waste site for
9 disposal.

10 12. Respondent’s plant operator since 2015, who had job duties related to hazardous waste
11 management, had not been trained in hazardous waste regulations at the time of DEQ’s inspection.

12 13. At the time of DEQ’s inspections, Respondent was a large quantity generator of
13 hazardous waste, generating in excess of 2,200 pounds of hazardous waste on a monthly basis.

14 14. In 2012, Respondent used an in-ground concrete structure for storing and treating waste
15 sludge from the tank bottoms containing zirconium fines and for the purposes of rendering it less
16 hazardous and safer to store or transport. Respondent did not have a Waste Analysis Plan for the
17 treatment of the hazardous waste.

18 15. Respondent does not have a permit to treat, store, or dispose of hazardous waste.

19 III. CONCLUSIONS

20 1. Respondent violated OAR 340-102-0011(2) by failing to accurately determine if
21 Respondent’s residues (as defined in OAR 340-100-0010(2)(ee) and 40 CFR 261.2 as adopted by OAR
22 340-100-0002) were hazardous waste. Specifically, Respondent did not accurately characterize the
23 following waste streams as hazardous waste:

- 24 a. Super sacks of waste anhydrous MgCl₂ containing zirconium, which is a D001 and
25 D003 hazardous waste pursuant to 40 CFR 261.21(a)(1) and 40 CFR 261.23(a)(2) and
26 (3), as adopted by OAR 340-100-0002; and

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1 b. Drummed hydration tank bottom sludge and filter socks containing zirconium, which is
2 a D001 hazardous waste pursuant to 40 CFR 261.21(a)(1), as adopted by OAR 340-100-
3 0002.

4 These are Class I violations, according to OAR 340-012-0068(1)(a). DEQ hereby assesses a \$3,900 civil
5 penalty for these violations.

6 2. Respondent violated ORS 466.645(1) and OAR 340-142-0060(1) by failing to immediately
7 clean up releases and threatened releases of hazardous material. OAR 340-142-0005(9) defines hazardous
8 material to include hazardous waste as defined in ORS 466.005. ORS 466.005(7)(b) defines hazardous
9 waste to include residues classified as hazardous by Oregon rule. The MgCl₂ released on the ground at the
10 Facility is a D001 and D003 hazardous waste pursuant to 40 CFR 261.21(a)(1) and 40 CFR
11 261.23(a)(2) and (3), as adopted by OAR 340-100-0002. OAR 340-142-0005(10) defines “immediately”
12 as taking priority over all other concerns of the responsible person. This is a Class I violation, according
13 to OAR 340-012-0081(1)(a). DEQ hereby assesses a \$1,650 civil penalty for this violation.

14 3. Respondent violated ORS 466.095(1)(a) by storing hazardous waste without a permit. As a
15 large quantity generator of hazardous waste, Respondent is allowed to store hazardous waste at the Facility
16 without a permit for 90 days or less, pursuant to 40 CFR 262.34, as adopted by OAR 340-100-0002.
17 Respondent does not have a permit to store hazardous waste, but stored the hazardous waste described
18 above from May 2016 through February and August 2018. This is a Class II violation, according to OAR
19 340-012-0068(2)(d). DEQ hereby assesses a \$9,000 civil penalty for this violation.

20 4. Respondent violated ORS 466.095(1)(c) by establishing and operating a hazardous waste
21 treatment site without a hazardous waste treatment site permit. Respondent conducted “treatment” (as
22 defined in ORS 466.005(16) and 40 CFR 260.10 as adopted by OAR 340-100-0002) of hazardous
23 zirconium-containing hydration tank bottom sludge and filter sock waste (D001 hazardous waste
24 pursuant to 40 CFR 261.21(a)(1), as adopted by OAR 340-100-0002) in open drums and in the in-
25 ground concrete structure. This is a Class I violation, according to OAR 340-012-0068(1)(c). DEQ hereby
26 assesses a \$20,400 civil penalty for this violation.

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1 5. Respondent violated 40 CFR 268.7(a)(2), as adopted by OAR 340-100-0002, by failing to
2 prepare land disposal notices when shipping hazardous waste for disposal. These are Class I violations,
3 according to OAR 340-012-0068(1)(a). DEQ has not assessed a civil penalty for these violations.

4 6. Respondent violated 40 CFR 262.20(a)(1), as adopted by OAR 340-100-0002, by failing to
5 prepare a complete and accurate uniform hazardous waste manifest. 19 of Respondent's hazardous waste
6 manifests had improper DOT Shipping Names in Block 9b and missing waste codes in Block 13. The
7 waste on the manifests was partially treated hydration tank bottom sludge containing zirconium (D001
8 hazardous waste pursuant to 40 CFR 261.21(a)(1), as adopted by OAR 340-100-0002). This is a Class II
9 violation, according to OAR 340-012-0068(2)(f). DEQ has not assessed a civil penalty for this violation.

10 7. Respondent violated 40 CFR 262.34(a)(1)(i) as it references 40 CFR 265.171, both as adopted
11 by OAR 340-100-0002, by failing to maintain hazardous waste containers in good condition. Respondent
12 stored waste anhydrous MgCl₂ containing zirconium, which is a D001 and D003 hazardous waste
13 pursuant to 40 CFR 261.21(a)(1) and 40 CFR 261.23(a)(2) and (3), as adopted by OAR 340-100-0002,
14 in deteriorated, torn, and overturned super sacks, some releasing hazardous waste onto the ground at the
15 Facility. This is a Class II violation, according to OAR 340-012-0068(2)(n). DEQ has not assessed a civil
16 penalty for this violation.

17 8. Respondent violated 40 CFR 265.16, as adopted by OAR 340-100-0002, by failing to train
18 employees in the proper management of hazardous waste and to respond effectively to emergencies. This
19 is a Class II violation, according to OAR 340-012-0068(2)(l). DEQ has not assessed a civil penalty for this
20 violation.

21 9. Respondent violated 40 CFR 265.174, as adopted by OAR 340-100-0002, by failing to conduct
22 weekly inspections of hazardous waste storage containers. This is a Class II violation, according to OAR
23 340-012-0068(2)(h). DEQ has not assessed a civil penalty for this violation.

24 10. Respondent violated 40 CFR 262.34(a)(2), as adopted by OAR 340-100-0002, by failing to
25 label hazardous waste storage containers with the date upon which each period of accumulation began.
26 This is a Class II violation, according to OAR 340-012-0068(2)(a). DEQ has not assessed a civil penalty

27
for this violation.

1 for this violation.

2 11. Respondent violated 40 CFR 262.34(a)(3), as adopted by OAR 340-100-0002, by failing to
3 label hazardous waste storage containers with the words "Hazardous Waste." This is a Class II violation,
4 according to OAR 340-012-0068(2)(b). DEQ has not assessed a civil penalty for this violation.

5 12. Respondent violated OAR 340-102-0041(2) and OAR 340-102-0065(1) by failing to submit to
6 DEQ annual hazardous waste generator reports and fees as required for a large quantity generator of
7 hazardous waste for at least 2013 through 2017. These are Class II violations, according to OAR 340-012-
8 0068(2)(t). DEQ has not assessed a civil penalty for these violations.

9 IV. ORDER TO PAY CIVIL PENALTY AND TO COMPLY

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

12 1. Pay a total civil penalty of \$34,950. The determination of the civil penalty is attached as
13 Exhibits 1-4 which are incorporated as part of this Notice.

14 As provided in ORS 466.990(3) and (4), the civil penalty collected for the violation of ORS
15 466.645(1) and OAR 340-142-0060(1) (Violation 2 in Section III above) shall be deposited in the Oil and
16 Hazardous Material Emergency Response and Remedial Action Fund established in ORS 466.670.

17 If you do not file a request for hearing as set forth in Section V below, your check or money
18 order must be made payable to "**State Treasurer, State of Oregon**" and sent to the **DEQ, Business**
19 **Office, 700 NE Multnomah Street, Suite 600, Portland, Oregon 97232**. Once you pay the penalty,
20 the Findings of Fact, Conclusions and Order become final.

21 2. Within 30 days of this order becoming final by operation of law or on appeal, submit the
22 following to Brian Allen, DEQ, 475 NE Bellevue Drive, Suite 110, Bend, Oregon 97701:

23 a. Documentation of waste determinations for the sludge removed from Ponds A and B,
24 and

25 b. Waste shipping documents for sludges removed from the tank bottoms and ponds.

26 3. Within 90 days of this order becoming final, submit to DEQ complete and accurate annual
27 Oregon DEQ hazardous waste generator reports for the Facility for calendar years 2015, 2016, and

1 2017. Contact DEQ Hazardous Waste Reporting Coordinator Mary Fritzmann at 503-229-6968 for
2 assistance with this filing. Within 30 days of receiving DEQ invoices, pay all invoiced amounts.

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

4 You have a right to a contested case hearing on this Notice, if you request one in writing. DEQ
5 must receive your request for hearing **within 20 calendar days** from the date you receive this Notice. If
6 you have any affirmative defenses or wish to dispute any allegations of fact in this Notice or attached
7 exhibits, you must do so in your request for hearing, as factual matters not denied will be considered
8 admitted, and failure to raise a defense will be a waiver of the defense. (See OAR 340-011-0530 for
9 further information about requests for hearing.) You must send your request to: **DEQ, Office of**
10 **Compliance and Enforcement, 700 NE Multnomah Street, Suite 600, Portland, Oregon 97232**, fax
11 it to **503-229-5100** or email it to **DEQappeals@deq.state.or.us**. An administrative law judge
12 employed by the Office of Administrative Hearings will conduct the hearing, according to ORS
13 Chapter 183, OAR Chapter 340, Division 011 and OAR 137-003-0501 to 0700. You have a right to be
14 represented by an attorney at the hearing, however you are not required to be. If you are an individual,
15 you may represent yourself. If you are a corporation, partnership, limited liability company,
16 unincorporated association, trust or government body, you must be represented by an attorney or a duly
17 authorized representative, as set forth in OAR 137-003-0555.

18 Active duty service-members have a right to stay proceedings under the federal Service
19 Members Civil Relief Act. For more information, please call the Oregon State Bar at 1-800-
20 452-8260 or the Oregon Military Department at 1-800-452-7500. Additional information can be found
21 online at the United States Armed Forces Legal Assistance (AFLA) Legal Services Locator website
22 <http://legalassistance.law.af.mil/content/locator.php>.

23 If you fail to file a timely request for hearing, the Notice will become a final order by default
24 without further action by DEQ, as per OAR 340-011-0535(1). If you do request a hearing but later
25 withdraw your request, fail to attend the hearing or notify DEQ that you will not be attending the
26 hearing, DEQ will issue a final order by default pursuant to OAR 340-011-0535(3). DEQ designates

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1 the relevant portions of its files, including information submitted by you, as the record for purposes of
2 proving a prima facie case.

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10/19/18

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 minor pursuant to OAR 340-012-0135(4)(a)(C) because Respondent failed to make a hazardous waste determination on two waste streams (drummed hydration tank bottom sludge containing zirconium and super sacks of anhydrous MgCl₂ containing zirconium).
- 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 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 Respondent failed to accurately determine that two waste streams, generated beginning on or before March 2013 and on or before May 2016, were hazardous waste until 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 when determining the "O" factor, pursuant to OAR 340-012-0145.
- "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. By failing to accurately determine that Respondent's waste was hazardous, when Respondent had information from the seller regarding the material's ignitability and reactivity with water, and when Respondent

experienced multiple fires when handling the material, Respondent failed to take reasonable care to avoid a foreseeable risk of 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 minimize the effects of the violation by conducting accurate hazardous waste determinations after DEQ's inspection.

"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 insufficient information on which to base an estimate of more than a de minimus economic benefit for this violation.

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

$$\begin{aligned} &= \$3,000 + [(0.1 \times \$3,000) \times (0 + 0 + 2 + 4 - 3)] + \$0 \\ &= \$3,000 [\$300 \times 3] + \$0 \\ &= \$3,000 + \$900 + \$0 \\ &= \$3,900 \end{aligned}$$

EXHIBIT 2

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

- VIOLATION 2: Failing to immediately clean up releases and threatened releases of hazardous material, in violation of ORS 466.645(1) and OAR 340-142-0060(1).
- CLASSIFICATION: This is a Class I violation pursuant to OAR 340-012-0081(1)(a).
- MAGNITUDE: The magnitude of the violation is moderate pursuant to OAR 340-012-0130(1), as there is no selected magnitude specified in OAR 340-012-0135 applicable to this violation, and the information reasonably available to DEQ does not indicate a minor or major magnitude.
- 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 \$1,500 for a Class I, moderate magnitude violation in the matrix listed in OAR 340-012-0140(4)(b)(A)(ii) and applicable pursuant to OAR 340-012-0140(4)(a)(P) because Respondent violated an oil and hazardous material spill and release statute and Respondent is a person not listed under another matrix.
- "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 0 according to OAR 340-012-0145(4)(a) because there is insufficient information on which to base a finding under paragraphs (4)(b) through (4)(d).
- "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. By allowing super sacks storing hazardous waste to deteriorate, break open, and spill out onto the ground outside at the Facility without addressing these conditions, Respondent failed to take reasonable care to avoid the foreseeable risk of committing 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 took reasonable affirmative

efforts to minimize the effects of the violation by cleaning up and properly disposing of the spilled hazardous material after DEQ's inspection.

"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 insufficient information on which to estimate any economic benefit Respondent gained from this violation.

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

$$\begin{aligned} &= \$1,500 + [(0.1 \times \$1,500) \times (0 + 0 + 0 + 4 - 3)] + \$0 \\ &= \$1,500 + (\$150 \times 1) + \$0 \\ &= \$1,500 + \$150 + \$0 \\ &= \$1,650 \end{aligned}$$

EXHIBIT 3

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

- VIOLATION 3: Storing hazardous waste more than 90 days without a permit, in violation of ORS 466.095(1)(a) and 40 CFR 262.34(a), adopted pursuant to OAR 340-100-0002(1).
- CLASSIFICATION: This is a Class II violation pursuant to OAR 340-012-0068(2)(d).
- MAGNITUDE: The magnitude of the violation is major pursuant to OAR 340-012-0135(4)(c)(A)(i) because Respondent stored more than 1,000 gallons or 6,000 pounds of hazardous waste more than 90 days without a permit.
- 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 statute.
- "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 the violation continued for more than 28 days. Respondent should have disposed of the waste within 90 days of accumulation, on or before September 1, 2016. Respondent stored hazardous waste until February and August 2018.
- "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. By storing large quantities of ignitable and reactive hazardous waste at its unpermitted facility for approximately a year and a half beyond the allowable time, Respondent failed to take reasonable care to avoid a foreseeable risk of 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 mitigate the effects of the violation by disposing of the hazardous waste at a permitted facility after DEQ's inspection.

"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 the benefit Respondent gained by delaying compliance costs is de minimis as calculated pursuant to OAR 340-012-0150(1) using the U.S. Environmental Protection Agency's BEN computer model.

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

$$\begin{aligned} &= \$6,000 + [(0.1 \times \$6,000) \times (0 + 0 + 4 + 4 - 3)] + \$0 \\ &= \$6,000 [\$600 \times 5] + \$0 \\ &= \$6,000 + \$3,000 + \$0 \\ &= \$9,000 \end{aligned}$$

EXHIBIT 4

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

VIOLATION 4: Establishing and operating a hazardous waste treatment site without a hazardous waste treatment site permit, in violation of ORS 466.095(1)(c).

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 Respondent treated more than 55 gallons or 330 pounds of hazardous waste without a permit.

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)(i) because Respondent is a large quantity generator of hazardous waste and violated a hazardous waste statute.

"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 Respondent treated hazardous waste in the concrete structure, without a permit, for at least three months in 2012. Respondent also treated hazardous waste in drums from 2016-2018. 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 when determining the "O" factor, pursuant to OAR 340-012-0145.

"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. By treating hazardous waste in an unpermitted concrete in-ground structure and open drums with knowledge of the material's ignitability and reactivity with water, and when Respondent experienced multiple fires when handling the material, Respondent failed to take reasonable care to avoid a foreseeable risk of committing a violation.

"C" is Respondent's efforts to correct or mitigate the violation and receives a value of

-1 according to OAR 340-012-0145(6)(e), because Respondent made reasonable efforts to ensure the violation would not be repeated by ceasing use of the in-ground structure for treatment and disposing of the drums as hazardous waste, and by recently changing the type of magnesium chloride Respondent uses to a type without zirconium fines.

"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 insufficient information on which to base a finding of the economic benefit Respondent gained through 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 \$12,000) x (0 + 0 + 4 + 4 - 1)] + \$0
= \$12,000 [\$1,200 x 7] + \$0
= \$12,000 + \$8,400 + \$0
= \$20,400