



# 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 2947

Univar USA Inc.  
c/o Corporation Service Company, Registered Agent  
1127 Broadway Street NE Suite 310  
Salem, OR 97301

Re: Notice of Civil Penalty Assessment and Order  
Case No. LQ/HW-NWR-2018-181

This letter is to inform you that the Oregon Department of Environmental Quality (DEQ) has issued you a Notice of Civil Penalty Assessment and Order (Notice), including a \$60,948 civil penalty for violations of Oregon's hazardous waste and solid waste rules. Specifically, between July 2015 and July 2017, you accepted fourteen shipments of chlorinated solvent waste, a listed hazardous waste, from a generator for transport without a uniform hazardous waste manifest. You transported the shipments of chlorinated solvent waste to a treatment, storage and disposal facility in Idaho, where it was improperly disposed. In addition, the Notice cites you for operating a solid waste transfer facility without a DEQ-issued permit. At your facility located at 3950 NW Yeon Avenue in Portland, you accept shipments of both solid and hazardous waste, which you manage on-site during the course of transport and ship on to treatment, storage and disposal facilities.

DEQ's rules establish strict requirements for the accumulation, storage, handling and disposal of hazardous waste to ensure the protection of public health and the environment. Your failure to comply with hazardous waste rules posed a risk to human health and the environment. More specifically, the improper management and transport for disposal of fourteen shipments of chlorinated solvent waste—which contained dichloromethane (also known as methylene chloride) and methanol—posed a risk to human health and the environment especially to personnel that may have come into contact with methylene chloride and methanol vapors. DEQ appreciates your efforts to prevent the violation from being repeated by working with the generator in November 2017 to prepare a revised waste profile and a sample uniform hazardous waste form to be used by the generator for the chlorinated solvent waste. DEQ considered these efforts when determining the amount of civil penalty.

Operating without a solid waste transfer facility permit also presents a risk to the environment because without a permit and associated design and construction plan and operations plan, DEQ cannot ensure that you have adequate protections in place.

Included in Section IV of the Notice is an order requiring you to submit a solid waste transfer station permit application to DEQ within 30 days of the order becoming final by operation of law or on appeal. If you have any questions about the application requirements, please contact Heather Kuoppamaki in DEQ's Materials Management program at (503) 229-5125.

\$21,348 of the civil penalty represents the economic benefit you gained by avoiding the fees and other costs associated with obtaining the solid waste transfer facility permit. If you complete these requirements, DEQ will consider recalculating the costs as delayed rather than avoided and will reduce the civil penalty accordingly.

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 – 503-229-5100

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

Sincerely,



Kieran O'Donnell, Manager  
Office of Compliance and Enforcement

Enclosures

Univar USA Inc.

Case No. LQ/HW-NWR-2018-181

Page 3

cc: Jack Spicuzza, Senior Director, Environmental and Product Compliance, Univar USA Inc., 3075 Highland Parkway, Suite 200, Downers Grove, IL 60515  
Erik Otto, ChemCare Regulatory Manager, Univar USA Inc., 5 Steel Road, Morrisville, PA 19067  
Curt Ohlsen, Hazardous Waste Compliance Manager, Idaho Department of Environmental Quality, 1410 N. Hilton, Boise, ID 83706  
Rebecca Hogaboam, Environmental Compliance Manager, U.S. Ecology, 2400 Lemley Road, Grand View, ID 83624  
Jay Collins, DEQ  
Heather Kuoppamaki, DEQ  
Brian Allen, DEQ

1 BEFORE THE ENVIRONMENTAL QUALITY COMMISSION

2 OF THE STATE OF OREGON

3	IN THE MATTER OF:	)	
4	UNIVAR USA INC., d/b/a CHEMCARE	)	NOTICE OF CIVIL PENALTY
4	a Washington corporation,	)	ASSESSMENT AND ORDER
5	Respondent.	)	CASE NO. LQ/HW-NWR-2018-181

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 459.995, ORS 466.990, ORS Chapters 183, 459, and 466 and Oregon Administrative Rules (OAR)  
10 Chapter 340, Divisions 011, 012, 093, 096, 100, 101 and 102.

11 II. FINDINGS OF FACT

12 1. At all relevant times, Respondent operated a waste collection and transportation business in  
13 Oregon, doing business as “ChemCare”.

14 2. Respondent is a registered hazardous waste transporter assigned United States  
15 Environmental Protection Agency (EPA) identification numbers ORD009227398 and ORD000711617.

16 3. OAR 340-100-0002(1) states that “the [Environmental Quality] Commission adopts by  
17 reference, and requires every person subject to ORSS 466.005 to 466.080 and 466.090 to 466.215, to  
18 comply with the rules and regulations governing the management of hazardous waste, including its  
19 generation, transportation, treatment, storage, recycling and disposal, as the United States  
20 Environmental Protection Agency prescribes in 40 [Code of Federal Regulations (CFR)] Parts 260 to  
21 268, 270, 273 and Subpart A and Subpart B of Part 124, as enacted through June 30, 2015,” except as  
22 specifically modified by or excluded from the rule.

23 4. According to 40 C.F.R. §261.31(a) (part of Subpart D of 40 C.F.R. Part 261), certain spent  
24 halogenated solvents, including methylene chloride, and all spent solvent mixtures/blends containing,  
25 before use, a total of ten percent or more (by volume) methylene chloride are F002 listed hazardous  
26 wastes unless they are excluded under §§260.20 and 260.22 and listed in appendix IX.

27 \\\

1           5. According to 40 C.F.R. §261.31(a) (part of Subpart D of 40 C.F.R. Part 261), certain spent  
2 non-halogenated solvents, including methanol, and all spent solvent mixtures/blends containing, before  
3 use, methanol, and a total of ten percent or more (by volume) of one or more of those solvents listed in  
4 F002, including methylene chloride, are F003 listed hazardous wastes unless they are excluded under  
5 §§260.20 and 260.22 and listed in appendix IX.

6           6. 40 C.F.R. §263.20(a)(1) states that a transporter may not accept hazardous waste from a  
7 generator unless the transporter is also provided with a uniform hazardous waste manifest.

8           7. Beginning in 2014, one of Respondent's customers was Patheon Development Services,  
9 Inc., formerly known as Agere Pharmaceuticals, Inc., a pharmaceutical development and manufacturing  
10 business located in Bend, Oregon ("Patheon"). Patheon is a registered hazardous waste generator  
11 assigned U.S. EPA generator identification number ORQ000031134.

12           8. Generators that generate more than 220 but less than 2,200 pounds of hazardous waste per  
13 month are categorized by EPA and DEQ as "Small Quantity Generators".

14           9. Patheon reported to DEQ as a Small Quantity Generator of hazardous waste for calendar  
15 years 2014, 2015, 2016 and 2017.

16           10. According to Waste Profile No. 37285-0 dated June 25, 2015, as part of its pharmaceutical  
17 development and manufacturing process, Patheon uses a solvent (the "Chlorinated Solvent") that  
18 contains, before use, 65-75% methylene chloride (also known as dichloromethane), 10-20% methanol,  
19 10-20% water and 0-10% acetonitrile.

20           11. Patheon uses the Chlorinated Solvent for its solvent properties, to dissolve or mobilize other  
21 constituents in the pharmaceutical development and manufacturing process. The Chlorinated Solvent is  
22 not a precursor chemical and does not chemically react and as such contribute to the formation of the  
23 pharmaceutical produced.

24 \\\

25 \\\

26 \\\

27 \\\

1 12. Patheon's use of the solvent described in Paragraphs 10 and 11, above, generates a spent  
 2 solvent waste stream that is not reused by Patheon (hereinafter the "Chlorinated Solvent Waste").  
 3 Patheon collects the Chlorinated Solvent Waste from the end of its process and, as described below in  
 4 Paragraphs 14-15, sends the Chlorinated Solvent Waste via a third party waste hauler for offsite  
 5 disposal.

6 13. The Chlorinated Solvent Waste is not excluded under §§260.20 and 260.22 and listed in  
 7 appendix IX.

8 14. Between July 17, 2015 and July 21, 2017, Respondent accepted 14 shipments of Chlorinated  
 9 Solvent Waste from Patheon without a uniform hazardous waste manifest. These shipments are  
 10 described in Table 1, below.

11 **Table 1. Shipments of Chlorinated Solvent Waste Accepted by Respondent from Patheon**  
 12 **Without a Uniform Hazardous Waste Manifest: 2015-2017**

Shipment Number	Shipment Date	Nonhazardous Waste Manifest Number	Amount of Chlorinated Solvent Waste (Pounds)
1	7/17/2015	000058806	170
2	12/4/2015	000058330	790
3	3/18/2016	000059474	250
4	4/15/2016	NHWM000059767	385
5	9/16/2016	000085088	470
6	10/7/2016	000085187	485
7	10/28/2016	000085290	965
8	1/27/2017	000093138	420
9	2/24/2017	000093209	1,270
10	3/17/2017	000093330	450
11	4/21/2017	000093499	100
12	5/5/2017	000085543	935
13	6/16/2017	000085667	530
14	7/21/2017	000085758	50
			<b>Total Pounds 7,270</b>

23  
 24 15. Respondent transported each of the shipments described in Table 1, above, to the U.S.  
 25 Ecology Inc. treatment, storage and disposal facility at 20400 Lemley Road in Grand View, Idaho,  
 26 RCRA Site ID Number IDD073114654 (the "Idaho TSDF"), where the Chlorinated Solvent Waste was  
 27 solidified with clay and disposed of in a landfill.

1 16. OAR 340-093-0050(1) states “Except as provided by Section (3) of this rule, no person may  
2 establish, operate, maintain or substantially alter, expand or improve a disposal site, and no person may  
3 change the method or type of disposal at a disposal site, until the person owning or controlling the  
4 disposal site obtains a permit therefore from the Department [DEQ].”

5 17. Respondent operates a transfer station located at 3950 NW Yeon Avenue in Portland,  
6 Oregon (the “Yeon Ave. Facility”).

7 18. In its regular course of business, Respondent processes both hazardous waste and solid  
8 waste through its Yeon Ave. Facility.

9 19. On January 23, 2018, DEQ inspected the Yeon Ave. Facility.

10 20. On January 23, 2018, DEQ inspectors observed more than a dozen drums or boxes of  
11 discarded chemicals from customer facilities stored in the 10-day transfer area at the Yeon Ave.  
12 Facility; the discarded chemicals included aqueous waste generated by Suterra, a manufacturer of pest  
13 control products in Bend, Oregon and wax removal waste generated at a manufacturing plant in Kent,  
14 Washington.

15 21. On January 23, 2018 and in subsequent review, DEQ inspectors verified that the waste  
16 profiles and attached documentation for the discarded chemicals described in Paragraph 20, above,  
17 supported a non-hazardous waste determination for each of the stored materials.

18 22. On January 23, 2018, DEQ inspectors observed universal waste lamps from customer  
19 facilities stored in hard, round, cardboard containers and universal waste batteries stored in sealed  
20 plastic buckets onsite at the Yeon Ave. Facility; DEQ verified that the Respondent was managing those  
21 containers in accordance with the universal waste exemptions under 40 C.F.R. §273.

22 23. Respondent does not have a permit for the Yeon Ave. Facility issued under ORS 466.005 to  
23 466.385 to store, treat or dispose of both hazardous waste and solid waste.

24 24. As of the date of this Notice, Respondent does not have a solid waste disposal site permit  
25 issued by DEQ for the Yeon Ave. Facility.

26 \\\

27 \\\

1 III. CONCLUSIONS

2 1. On July 17, 2015, December 4, 2015, March 18, 2016, April 15, 2016, September 16, 2016,  
3 October 7, 2016, October 28, 2016, January 27, 2017, February 24, 2017, March 17, 2017, April 21, 2017,  
4 May 5, 2017, June 16, 2017, and July 21, 2017, Respondent violated 40 CFR 263.20(a)(1), adopted by  
5 OAR 340-100-0002(1), by accepting hazardous waste from a generator for transport without a uniform  
6 hazardous waste manifest, as described in Paragraphs 1-15 of Section II, above. Specifically,  
7 Respondent accepted for transport 14 shipments of Chlorinated Solvent Waste from Patheon, a Small  
8 Quantity Generator, and transported those shipments without uniform hazardous waste manifests. The  
9 Chlorinated Solvent Waste is a (F002) hazardous waste according to 40 CFR 261.31(a) because: (1) the  
10 Chlorinated Solvent Waste is used for its solvent properties in Respondent’s manufacturing process; (2)  
11 the Chlorinated Solvent Waste is “spent” because Respondent removed it from service and disposed of  
12 it; and (3) the Chlorinated Solvent Waste is a spent solvent mixture or blend containing, before use,  
13 >65% methylene chloride by volume. The Chlorinated Solvent Waste is also a (F003) hazardous waste  
14 according to 40 CFR 261.31(a) because it contains methanol (>10%) and >65% methylene chloride.<sup>1</sup>  
15 These are Class I violations, according to OAR 340-012-0068(1)(e). DEQ hereby assesses a \$26,400  
16 civil penalty these violations.

17 2. On or before January 23, 2018, Respondent violated OAR 340-093-0050(1) by operating and  
18 maintaining a disposal site without obtaining a permit from DEQ, as described in Paragraphs 16-24 of  
19 Section II, above. The discarded chemicals and the universal waste described in Paragraphs 20-22 of  
20 Section II above, were “solid waste” according to OAR 340-093-0030(91) and ORS 459.005(24) because  
21 they were discarded materials not characterized as hazardous waste. The Yeon Ave. Facility is a “disposal  
22 site” according to OAR 340-093-0030(38) and ORS 459.005(8) because Respondent uses the Yeon Ave.  
23 Facility for the handling and transfer of solid wastes and because the Yeon Ave. Facility is a transfer  
24

25 <sup>1</sup> Even if the Chlorinated Solvent Waste was not F002 and F003 hazardous waste, the Chlorinated  
26 Solvent Waste would be (ORU080) Oregon “State-Only” hazardous waste according to OAR 340-101-  
27 0033(2)(a)(b) because it contains a 10 percent or greater concentration of a substance or mixture of  
substances listed in 40 CFR 261.33(f). Specifically, the Chlorinated Solvent Waste contains >65%  
dichloromethane (methylene chloride).



1 station. Respondent is not exempt from the requirement to obtain a DEQ solid waste disposal site permit  
2 under OAR 340-093-0050(3). Specifically, Respondent is not exempt from the permit requirement under  
3 OAR 340-093-0050(3)(a) because Respondent does not have a permit for the Yeon Ave. Facility issued  
4 under ORS 466.005 to 466.385 to store, treat or dispose of both hazardous waste. This is a Class I  
5 violation according to OAR 340-012-0065(1)(a). DEQ hereby assesses a \$34,548 civil penalty this  
6 violation.

#### 7 IV. ORDER TO PAY CIVIL PENALTY AND TO COMPLY

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

10 1. Pay a total civil penalty of \$60,948. The determination of the civil penalties are attached as  
11 Exhibits 1 and 2 and are incorporated as part of this Notice.

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

16 2. Within 30 days of this order becoming final by operation of law or on appeal submit a solid  
17 waste transfer station permit application to Oregon Department of Environmental Quality, Attn:  
18 Heather Kuoppamaki, 700 NE Multnomah Street, Suite 600, Portland, OR 97232.

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

20 You have a right to a contested case hearing on this Notice, if you request one in writing. DEQ  
21 must receive your request for hearing **within 20 calendar days** from the date you receive this Notice. If  
22 you have any affirmative defenses or wish to dispute any allegations of fact in this Notice or attached  
23 exhibits, you must do so in your request for hearing, as factual matters not denied will be considered  
24 admitted, and failure to raise a defense will be a waiver of the defense. (See OAR 340-011-0530 for  
25 further information about requests for hearing.) You must send your request to: **DEQ, Office of**  
26 **Compliance and Enforcement, 700 NE Multnomah Street, Suite 600, Portland, Oregon 97232**, fax  
27 it to **503-229-5100** or email it to [DEQappeals@deq.state.or.us](mailto:DEQappeals@deq.state.or.us). An administrative law judge

1 employed by the Office of Administrative Hearings will conduct the hearing, according to ORS  
2 Chapter 183, OAR Chapter 340, Division 011 and OAR 137-003-0501 to 0700. You have a right to be  
3 represented by an attorney at the hearing, however you are not required to be. If you are an individual,  
4 you may represent yourself. If you are a corporation, partnership, limited liability company,  
5 unincorporated association, trust or government body, you must be represented by an attorney or a duly  
6 authorized representative, as set forth in OAR 137-003-0555.

7 Active duty service-members have a right to stay proceedings under the federal Service  
8 Members Civil Relief Act. For more information, please call the Oregon State Bar at 1-800-  
9 452-8260 or the Oregon Military Department at 1-800-452-7500. Additional information can be found  
10 online at the United States Armed Forces Legal Assistance (AFLA) Legal Services Locator website  
11 <http://legalassistance.law.af.mil/content/locator.php>.

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

18  
19  
20  
21 10/19/18

22 Date

23  
24  
25  
26  
27 

28 Kieran O'Donnell, Manager  
29 Office of Compliance and Enforcement

EXHIBIT 1

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

VIOLATION No. 1: Accepting hazardous waste from a generator for transport without a uniform hazardous waste manifest, in violation of 40 CFR 263.20(a)(1), adopted by OAR 340-100-0002(1).

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 Respondent accepted 7,270 pounds of hazardous waste for transport without a uniform hazardous waste manifest.

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 hazardous waste transporter.

"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 3 according to OAR 340-012-0145(2)(a)(C) and (D), because Respondent has 2 Class I violations in Case No. LQ/HW-NWR-2013-104.

"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 cited as prior significant actions in case no. LQ/HW-NWR-2013-104 were uncorrectable and Respondent took reasonable affirmative efforts to minimize the effects of the violations.

"O" is whether the violation was repeated or ongoing, and receives a value of 3 according to OAR 340-012-0145(4)(c) because there were from seven to 28 occurrences of the violation. There were at least fourteen occurrences of the violation, on July 17, 2015, December 4, 2015, March 18, 2016, April 15, 2016, September 16, 2016, October 7, 2016, October 28, 2016, January 27, 2017, February 24, 2017, March 17, 2017, April 21, 2017, May 5, 2017, June 16, 2017, and July 21, 2017.

"M" is the mental state of the Respondent, and receives a value of 8 according to OAR 340-012-0145(5)(d) because Respondent's conduct was reckless. Reckless means that the respondent consciously disregarded a substantial and unjustifiable risk that the result would occur or that the circumstance existed. The risk must be of such a nature and degree that disregarding that risk constituted a gross deviation from the standard of care a reasonable person would observe in that situation. Respondent has been registered hazardous waste transporter assigned U.S. EPA identification numbers ORD009227398 and ORD000711617 since at least 1991, the year DEQ took over recordkeeping from EPA for registrants in Oregon. Univar operates ChemCare, a business arm specializing in hazardous waste management, and has operated across the U.S. as a commercial hazardous waste transporter for over 25 years. Thus, Respondent is familiar with the requirement that a transporter may not accept hazardous waste from a generator unless the transporter is also provided with a uniform hazardous waste manifest. On June 25, 2015, Patheon sent Respondent a copy of Waste Profile No. 460195-01, which was used by Patheon for a previous shipment of Chlorinated Solvent Waste with another waste hauler. Waste Profile No. 460195-01 states in the "Special Handling Information" that the Chlorinated Solvent Waste "designates as F002, F003". Based on this information and Respondent's substantial experience in the industry characterizing hazardous waste, Respondent should have known that the Chlorinated Solvent Waste is F002 and F003 listed hazardous waste. In addition, Respondent knew that Patheon was a Small Quantity Generator (SQG), because on June 25, 2015, Respondent helped Patheon set up Waste Profile No. 37285-01, which identifies Patheon as a SQG. All 14 shipments of Chlorinated Solvent Waste between July 17, 2015 and July 21, 2017 were subsequently transported by Respondent under Waste Profile No. 37285-01. Moreover, Respondent should have been alerted to Patheon's SQG status due to the volumes of hazardous waste that Respondent transported for Patheon, which were well above the 220 pounds per month threshold to make Patheon a SQG. Based on Patheon's annual reports to DEQ, Respondent transported the following volumes of hazardous waste for Patheon: 5,045 pounds, between July and December 2014 (902 pounds / month average); 14,225 pounds in 2015 (1,185 pounds / month average); 20,583 pounds in 2016 (1,715 pounds / month average); and 18,395 pounds in 2017 (1,532 pounds / month average). By transporting 14 shipments of Chlorinated Solvent Waste over two years without a uniform hazardous waste manifest—despite the information available to Respondent that the Chlorinated Solvent Waste was F002 and F003 listed hazardous waste and that Patheon was a SQG—Respondent consciously disregarded a substantial and unjustifiable risk of transporting hazardous waste without a uniform hazardous waste manifest. Disregarding that risk constituted a gross deviation from the standard of care a reasonable person would observe in that situation, because the transport of the Chlorinated Solvent Waste without a manifest posed risks to human health and the environment, including the risk of improper disposal at the Idaho TSDF.

"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. On or before November 3, 2017, Respondent worked with Patheon to prepare Waste Profile No 17100252 for the Chlorinated Solvent Waste and a "Sample Uniform Hazardous Waste Manifest for Chlorinated Waste", both of which describe the Chlorinated Solvent Waste as F002 and F003 listed 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 because any economic benefit gained by Respondent as a result of these violations is de minimis.

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

$$\begin{aligned} &= \$12,000 + [(0.1 \times \$12,000) \times (3 + -1 + 3 + 8 + -1)] + \$0 \\ &= \$12,000 + (\$1,200 \times 12) + \$0 \\ &= \$12,000 + \$14,400 + \$0 \\ &= \$26,400 \end{aligned}$$

## EXHIBIT 2

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

- VIOLATION No. 2: Operating and maintaining a disposal site without obtaining a permit from DEQ, in violation of OAR 340-093-0050(1).
- CLASSIFICATION: This is a Class I violation pursuant to OAR 340-012-0065(1)(a).
- MAGNITUDE: The magnitude of the violation is moderate pursuant to OAR 340-012-0130(1), as the information reasonably available to DEQ does not support any of the selected magnitudes specified in OAR 340-012-0135 applicable to this violation and does not otherwise 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 \$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)(a)(Q)(i) because Respondent should have a solid waste disposal 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 3 according to OAR 340-012-0145(2)(a)(C) and (D), because Respondent has 2 Class I violations in Case No. LQ/HW-NWR-2013-104.
- "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 cited as prior significant actions in Case No. LQ/HW-NWR-2013-104 were uncorrectable and Respondent took reasonable affirmative efforts to minimize the effects of the violations.
- "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. Each day is a separate occurrence of the violation. On the date of DEQ's inspection on January 23, 2018, Respondent did not have a solid waste disposal permit for the Yeon Ave. Facility. As of the date of this Notice, Respondent does not have a solid waste disposal site permit issued by DEQ for the Yeon Ave. Facility. Therefore, there were more than 28 occurrences 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. Negligent means the respondent failed to take reasonable care to avoid a foreseeable risk of conduct constituting or resulting in a violation. Respondent was notified of the violation in Pre-Enforcement Notice No.

2018-PEN-3462, dated April 26, 2018, which requested that Respondent submit a solid waste transfer station permit application to DEQ by June 1, 2018. As of the date of this Notice, Respondent has not submitted a solid waste transfer station permit application to DEQ. Therefore, Respondent failed to take reasonable care to avoid a foreseeable risk of conduct constituting or resulting in a violation.

"C" is Respondent's efforts to correct or mitigate the violation, and receives a value of 2 according to OAR 340-012-0145(6)(g) because Respondent did not address the violation as described in paragraphs (6)(a) through (6)(e) and the facts do not support a finding under paragraph (6)(f).

"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 \$21,348. This is the amount Respondent gained by avoiding spending \$100 in DEQ permit fees and \$25,498 in costs associated with obtaining a Land Use Compatibility Statement (LUCS) from the City of Portland. This "EB" was calculated pursuant to OAR 340-012-0150(1) using the U.S. Environmental Protection Agency's BEN computer model.

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

$$\begin{aligned} &= \$6,000 + [(0.1 \times \$6,000) \times (3 + -1 + 4 + 4 + 2)] + \$21,348 \\ &= \$6,000 + (\$600 \times 12) + \$21,348 \\ &= \$6,000 + \$7,200 + \$21,348 \\ &= \$34,548 \end{aligned}$$