



Oregon

Kate Brown, Governor

Department of Environmental Quality

Office of Compliance and Enforcement

700 NE Multnomah Street, Suite 600

Portland, OR 97232

(503) 229-5382

FAX (503) 229-5787

TTY 711

October 20, 2021

CERTIFIED MAIL No.:7017 0530 0000 7760 6438

Herbert Malarkey Roofing Company
c/o Pamela T. Blackwell, Registered Agent
3131 N. Columbia Boulevard
Portland, OR 97217

Re: Notice of Civil Penalty Assessment and Order
Case No. AQ/V-NWR-2020-159

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 DEQ has issued you a \$2,105,405 civil penalty for air quality violations at your roof products manufacturing facility at 3131 N. Columbia Boulevard, Portland, Oregon.

The enclosed Notice of Civil Penalty Assessment and Order (Notice) cites you for operating your facility without an Oregon Title V Operating Permit and failing to install a thermal oxidizer, other control device, or process modification to reduce formaldehyde emissions from your fiberglass mat drying and curing oven for approximately ten years. In 2009 you modified your facility without notifying DEQ. The modification increased the facility's potential to emit formaldehyde to ten or more tons per year and triggered requirements to obtain a Title V Permit and install controls.

DEQ issued this penalty because of the serious nature of these violations. Oregon and federal law require all facilities that emit or have the potential to emit ten or more tons of a single hazardous air pollutant (HAP) per year to obtain a Title V permit to operate. Permitting is the cornerstone of the Title V program under the federal Clean Air Act and includes additional monitoring and reporting requirements beyond most state permitting programs to ensure a facility is properly regulated and is complying with all applicable state and federal air quality regulations to protect the public's health and the environment. By operating without a Title V permit you avoided appropriate oversight and created a risk to public health and the environment.

Of greatest concern is your failure install and operate a thermal oxidizer or other pollution control equipment to minimize emissions of formaldehyde, a HAP, as required by the federal Wet Formed Fiberglass Mat Production National Emission Standards for Hazardous Air Pollutants (NESHAP)

Subpart HHHH. NESHAP Subpart HHHH was promulgated by the federal government and adopted by Oregon to ensure that emissions of HAPs from wet-formed fiberglass mat ovens are kept to minimum levels. Formaldehyde is a suspected carcinogen and can cause other serious health effects such as burning sensation in eyes, nose, and throat, nausea, and skin irritation. DEQ estimates you operated without the required thermal oxidizer or other control of the drying and curing oven's emissions for approximately ten years. By doing so, you emitted more formaldehyde than allowed by federal or state law and created a risk of harm to public health and the environment.

By operating without a Title V permit and without appropriate controls you gained a significant economic advantage over your competitors. \$2,005,381 of the total civil penalty is the amount of economic benefit you derived by failing to install, operate and monitor emissions of the thermal oxidizer as required by the Fiberglass Mat NESHAP, from 2010 to July 2020. The purpose of the economic benefit portion of the civil penalty is to ensure a "level playing field," such that a facility does not gain a competitive advantage by failing to invest in compliance with the law. By estimating the economic benefit, DEQ removes the cost savings associated with Malarkey's delayed and avoided pollution control expenditures.

DEQ cited, but did not assess penalties for, additional violations in the enclosed Notice. Those violations include failing to notify and obtain approval from DEQ in 2009 before modifying your fiberglass mat drying and curing oven and failing to submit an initial notification to DEQ of NESHAP, Subpart HHHH applicability. Compliance with DEQ's notification rules is essential. The modifications to the oven increased formaldehyde emissions from the oven and ultimately resulted in the other violations cited in the Notice. Had you informed DEQ prior to the modification, DEQ may have determined that you were subject to Title V permitting and the Fiberglass Mat NESHAP requirements, and you may have avoided these serious violations altogether.

Included in Section IV of the attached Notice is an order requiring that you, within 180 days of the order becoming final, submit a complete Oregon Title V Operating Permit application to DEQ.

DEQ appreciates your effort to correct or minimize the effects of the violation by installing a thermal oxidizer in 2020. In addition, DEQ appreciates your self-disclosure of the compliance issues cited in the attached Notice. DEQ considered your installation of the thermal oxidizer and your self-disclosure when determining the amount of the civil penalty.

If you wish to appeal this matter, DEQ must receive a request for a contested case hearing within 20 calendar days from your receipt of this letter. The hearing request must be in writing. Send your hearing request to DEQ Office of Compliance and Enforcement – Appeals:

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 it 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 DEQ Environmental Law Specialist Jenny Root at (503) 229-5874.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Kieran O'Donnell', is written over a faint, larger blue ink signature that is partially obscured.

Kieran O'Donnell, Manager
Office of Compliance and Enforcement

Enclosures

cc: Brien Flanagan, Schwabe, Williamson & Wyatt PC, 1211 SW Fifth Avenue, Suite 1900,
Portland, OR 97204
Louis Bivins, Northwest Region Office, DEQ
Matt Hoffman, Northwest Region Office, DEQ
Accounting, DEQ
Donald Hendrix, AQ, DEQ

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

3 IN THE MATTER OF:)
4 HERBERT MALARKY) NOTICE OF CIVIL PENALTY
5 ROOFING COMPANY,) ASSESSMENT AND ORDER
6 an Oregon corporation,) NO. AQ/V-NWR-2020-159
7 Respondent.)

8 I. AUTHORITY

9 This Notice and Order is issued pursuant to Oregon Revised Statutes (ORS) 468.100 and
10 468.126 through 468.140, ORS Chapters 183 and 468A, and Oregon Administrative Rules (OAR)
11 Chapter 340, Divisions 011, 012, 200, 215, 218, 220, and 245 and 40 Code of Federal Regulations
(CFR), Part 63, Subparts A and HHHH, adopted and incorporated by reference in OAR 340-244-
0220(1) and (5).

12 II. FINDINGS OF FACT

13 1. Respondent owns and operates a roofing products manufacturing facility at 3131
14 North Columbia Boulevard, Portland, Oregon (the Facility). The Facility was constructed in
15 1956 and currently includes the following activities: a wet-formed fiberglass mat manufacturing
16 operation, asphalt pouring operation and a high relief shingle manufacturing operation.

17 2. Respondent's wet-formed fiberglass mat manufacturing process was added in
18 1976. In producing fiberglass mats, purchased fiberglass fibers are distributed in a water slurry
19 onto a moving screen to form a cohesive mat. A latex resin containing low urea-formaldehyde is
20 applied to the mat, and then the material travels through a heated drying and curing oven¹.
21 During the drying and curing process, the oven emits formaldehyde from the mat resin.

22 3. Formaldehyde is listed as a hazardous air pollutant under OAR 340-244-0040,
23 Table 1.

24 4. In 1995, Respondent installed the current fiberglass mat drying and curing oven
25 (drying and curing oven) at the Facility. No emission control devices were installed nor

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27 ¹ According to 40 CFR 63.3004, "drying and curing oven" means the process section of a wet-formed
fiberglass mat production facility that evaporates excess moisture from a fiberglass mat and cures the
resin that binds the fibers.

1 connected to the drying and curing oven to control or reduce formaldehyde emissions from the
2 oven.

3 5. In 1997, Respondent conducted emissions testing of the drying and curing oven.
4 At the time of the testing, the drying and curing oven included one exhaust stack. During the
5 tests, formaldehyde emissions from the drying and curing oven measured 0.113 pounds (lbs.) of
6 formaldehyde per ton of mat produced. During the testing, the total exhaust air flow from the
7 drying and curing oven measured 2,525 dry standard cubic feet per minute (dscfm).

8 6. Based on the 1997 emission test results, at that time, the drying and curing oven
9 emitted or had the potential to emit, less than ten tons per year of formaldehyde.

10 7. On August 6, 2004, the Department of Environmental Quality (DEQ) issued
11 Standard Air Contaminant Discharge Permit No. 26-1894-ST-01 (ACDP) to Respondent. On
12 June 16, 2009, DEQ renewed the ACDP. The ACDP authorizes Respondent to discharge air
13 contaminants from the Facility, including the drying and curing oven, in accordance with the
14 requirements, limitations and conditions of the Permit. The Permit was in effect at all material
15 times.

16 8. Condition 7.4.b of the ACDP (formerly Condition 5.4 of the 2004 ACDP)
17 requires that Respondent must notify DEQ in writing using a Departmental "Notice of
18 Construction Form" or "Permit Application Form" (as applicable), and obtain approval from
19 DEQ in accordance with OAR 340-210-0205 through 340-210-0250, before making any physical
20 change or change in operation of an existing stationary source that will cause an increase, on an
21 hourly basis at full production, of any regulated pollutant emissions.

22 9. According to OAR 340-210-0225, Type 3 changes include any changes at a
23 source that would increase emissions for any new, modified or replaced device, activity or

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1 process, or a combination of these, by more than the Significant Emission Rate² (SER), but are
2 not subject to OAR 340-222-041(4)³.

3 10. According to OAR 340-210-0240(1)(c) and OAR 340-210-0250(3)(b), owners
4 and operators of a source must obtain a new or modified Standard ACDP to construct and
5 operate Type 3 changes at a source.

6 11. In 2009, Respondent modified the drying and curing oven as follows: Respondent
7 added a second exhaust stack and blower to the oven, replaced burners in the oven, and replaced
8 the control panel controlling the oven's fans and burners.

9 12. Respondent did not submit a Notice of Construction or Permit Application form
10 to DEQ nor obtain approval from DEQ before making these modifications to the drying and
11 curing oven in 2009.

12 13. Since the 2009 modifications, Respondent has not made any other modifications
13 to the drying and curing oven.

14 14. On October 25, 2018, Respondent conducted emissions testing of the drying and
15 curing oven. During the tests, formaldehyde emissions from the oven measured 2.95 lbs. of
16 formaldehyde per ton of mat produced. The total exhaust air flow from the oven measured 3,940
17 dscfm, a 56% increase of total air flow since the 1997 emissions test.

18 15. Based on the 2018 emission test results, the 2009 modifications to the drying and
19 curing oven altered the air flow within the oven, increased total exhaust air flow and resulted in
20 an increase on an hourly basis at full production, of formaldehyde emissions from the drying and
21 curing oven.

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25 ² OAR 340-200-0020(161)(v) provides that the SER for regulated pollutants not listed in subsections (a)
26 through (u) of that rule, which formaldehyde is not, is zero tons, unless DEQ determines the rate that
27 constitutes a SER for that pollutant. DEQ has not determined a different rate that constitutes a SER for
formaldehyde.

³ OAR 340-222-0041(4) does not apply because formaldehyde emissions are not subject to the New
Source Review (NSR) program rules in OAR Chapter 340, division 224.

1 16. Based on the 2018 emission test results on the drying and curing oven and past
2 production records, from 2009 until at least July 2020, Respondent's Facility emitted or had the
3 potential to emit, ten or more tons per year of formaldehyde.

4 17. According to OAR 340-218-0010(1), all sources subject to the Oregon Title V
5 Operating Permit program must obtain an Oregon Title V Operating Permit.

6 18. According to OAR 340-218-0020(1)(a) and OAR 340-200-0020(91)(b)(A)(i) and
7 OAR 340-200-0020(106), sources subject to the Title V Operating Permit program include major
8 sources of hazardous air pollutants (HAPs), i.e. those sources that emit or have the potential to
9 emit ten tons per year or more of a single HAP listed under OAR 340-244-0040 or 25 tons per
10 year or more of any combination of such HAPs.

11 19. According to OAR 340-218-0120(2)(a), no Oregon Title V Operating Permit
12 program source may operate after the time that it is required to submit a timely and complete
13 application after the effective date of the program⁴, except in compliance with a permit issued
14 under an Oregon Title V Operating Permit program.

15 20. According to OAR 340-218-0040(1)(a)(A), a timely application for a source that
16 is not subject to the Oregon Title V Operating Permit program as of the effective date of the
17 program, is one that is submitted within 12 months after the source becomes subject to the
18 Oregon Title V Permitting Program.

19 21. To date, Respondent has not submitted to DEQ an application for an Oregon Title
20 V Operating Permit.

21 22. To date, Respondent has continued to operate its Facility with actual emissions or
22 the potential to emit, ten or more tons per year of formaldehyde.

23 23. According to 40 Code of Federal Regulations (CRF), Part 63, Subpart HHHH,
24 National Emission Standards for Hazardous Air Pollutants for Wet-Formed Fiberglass Mat
25 Production, (Subpart HHHH) adopted and incorporated by reference in OAR 340-244-0220(1)
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27 ⁴ The Oregon Title V Operating Permit program became effective when it was approved by the United States Environmental Protection Agency on November 27, 1995.

1 and (5), owners or operators of drying and curing ovens (affected sources⁵) at a wet-formed
2 fiberglass mat production facility that are major sources of HAP, must comply with all Subpart
3 HHHH (40 CFR 63.2980 through 40 CFR 63.3004) requirements.

4 24. 40 CFR 63.2985(c)(2) requires that for any facility that is an area source⁶ and that
5 does not include a “new affected source” or a “new reconstructed affected source” as those terms
6 are defined in 40 CFR 63.2, that increases its emissions or its potential to emit such that it
7 becomes a major source of HAP, must be in compliance with all Subpart HHHH requirements
8 within one year after becoming a major source of HAP or by April 11, 2005, whichever is later.

9 25. 40 CFR 63.2986 requires, in part, that all affected sources subject to Subpart
10 HHHH must meet the following requirements:

11 (a) Install, maintain and operate a thermal oxidizer, other control device, or
12 implement a process modification that reduces formaldehyde emissions from each drying and
13 curing oven to the emission limits specified in 40 CFR 63.2983. 40 CFR 63.2983 requires
14 affected sources to limit formaldehyde emissions from each drying and curing oven to either
15 0.05 pounds per ton of fiberglass mat produced or to reduce uncontrolled formaldehyde
16 emissions by 96 percent or more;

17 (b) Comply with the operating limits specified in 40 CFR 63.2984. 40 CFR
18 63.2984 requires, in part, that affected sources maintain operating parameters of process or
19 control devices in accordance with an operation, maintenance and monitoring plan (OMM Plan)
20 as specified in 40 CFR 63.2987, use a resin with a free-formaldehyde content greater than that of
21 the resin used during the performance test and specified in the OMM Plan, and initiate corrective
22 actions for deviations of established operating parameters and maintain and inspect control
23 devices according to the procedures specified in the OMM Plan;

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26 ⁵ For the purposes of subpart HHHH, an “affected source” is each wet-formed fiberglass mat drying and
27 curing oven at a wet-formed fiberglass mat production facility. (40 CFR 63.2982(a))

⁶ An area source is any stationary source of HAP that is not a major source (emits 10 or more tons per
year of a single HAP or 25 or more tons per year of any combination of HAP). 40 CFR 63.2.

1 (c) Conduct a performance test according to 40 CFR 63.2291 through 40 CFR
2 63.2292 to demonstrate the drying and curing oven complies with the emission limits in 40 CFR
3 63.2984 and to establish operating limits or ranges for process or control device parameters;

4 (d) Install, calibrate, maintain and operate devices that monitor the parameters
5 specified in the OMM Plan in accordance with the plan; and

6 (e) Comply with the monitoring, recordkeeping, notification and reporting
7 requirements in 40 CFR 63.2996 through 40 CFR 63.3000.

8 26. Respondent did not install a thermal oxidizer or other control device, nor
9 implement a process modification to reduce formaldehyde emissions from the drying and curing
10 oven by 2010. Because Respondent failed to install or implement control of its formaldehyde
11 emissions from the drying and curing oven in 2010, Respondent also failed to limit its
12 formaldehyde emissions to the limits in 40 CFR 63.2983; failed to conduct a performance test of
13 the drying and curing oven emissions to demonstrate compliance with the emission limits in 40
14 CFR 63.2983, and failed to comply with the other Subpart HHHH requirements in 40 CFR
15 63.2986, on or before 2010.

16 27. 40 CFR 63.3000(a) and 40 CFR 63.9(b)(2) require that the owner or operator of
17 an affected source must notify DEQ in writing by submitting an "initial notification" that the
18 source is subject to a relevant (40 CFR Part 63) standard within 120 calendar days after the
19 source becomes subject to the relevant standard by providing: the name of the owner or operator,
20 the address of the source, identification of the relevant standard that is the basis of the
21 notification, the source's compliance date, and a brief description of the nature, size, design and
22 method of operation of the source, an identification of the types of emission points within the
23 affected source subject to the relevant standard, a statement of whether the source is an area
24 source or major source (as those terms are defined in 40 CFR 63.2) and the types of HAPs
25 emitted.

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28. Respondent did not submit an initial notification to DEQ that 40 CFR, Part 63, Subpart HHHH requirement were applicable its drying and curing oven, within 120 days of becoming subject to those requirements.

III. CONCLUSIONS

1. Formaldehyde emitted from the Facility is an “air contaminant” as defined by OAR 340-200-0020(8), and is a “regulated pollutant” as defined by OAR 340-200-0020(134)(a)(E).

2. The Facility is a “source” as defined in OAR 340-200-0020(166).

3. The drying and curing oven at the Facility is a “stationary source” as defined in OAR 340-200-0020(173) and is an “affected source” in accordance with 40 CFR 63.2982(a).

4. In 2009, Respondent violated Condition 7.4 of the ACDP, OAR 340-210-0240(1)(c) and OAR 340-210-0250(3)(b) by making a physical change or change in operation of an existing stationary source at the Facility that caused an increase, on an hourly basis at full production, of a regulated pollutant emission without first notifying DEQ in writing using a Permit Application Form and obtaining approval from DEQ in accordance with OAR 340-210-0205 through 340-210-0250. Specifically, as further described in Section II, Paragraphs 6, 8 through 12, 14 and 15, Respondent made physical changes to its drying and curing oven by adding a second exhaust stack and blower, and by replacing burners and the oven control panel. These changes resulted in an increase on an hourly basis at full production, of formaldehyde emissions. These changes were Type 3 changes, in accordance with OAR 340-210-0225, because the changes resulted in an increase to formaldehyde about the SER. As a Type 3 change, Respondent was required to apply for and obtain either a new or modified Standard ACDP before constructing or operating the changes. This is a Class II violation according to OAR 340-012-0054(2)(c). DEQ has not assessed a penalty for this violation.

5. Since 2010, Respondent has violated ORS 468A.045(1)(b), OAR 340-218-0010(1) and OAR 340-218-0120(2)(a) by operating the Facility without an Oregon Title V Operating Permit, as further described in Section II, Paragraphs 16 through 22 above. Respondent's Facility

1 became an Oregon Title V Operating Permit program source according to OAR 340-218-
2 0020(1)(a), OAR 340-200-0020(91)(b)(A)(i) and OAR 340-200-0020(106) because it emits or
3 has the potential to emit 10 or more tons per year of formaldehyde, a HAP listed under OAR
4 340-244-0040, Table 1. As described in Section II, Paragraph 19 above, to continue operating the
5 Facility at this level, Respondent was required to submit an application for an Oregon Title V
6 Operating Permit within one year of becoming subject to the Title V permitting program.
7 Respondent became a Title V permit program source in 2009 when it modified the drying and
8 curing oven which resulted in an increase in the oven's potential to emit formaldehyde to ten or
9 more tons per year. Therefore, Respondent should have submitted an application for an Oregon
10 Title V Operating Permit in 2010. This is a Class I violation, according to OAR 340-012-
11 0054(1)(e). DEQ hereby assesses a \$90,424 civil penalty for this violation.

12 6. From 2010 to August 2020, Respondent violated 40 CFR 63.2983 and 40 CFR
13 63.2986, adopted and incorporated by reference in OAR 340-244-0220(1) and (5), by failing to
14 install, maintain and operate a thermal oxidizer, other control device, or to implement a process
15 modification that reduced formaldehyde emissions from the Facility's drying and curing oven to
16 the emission limits specified in 40 CFR 63.2983; to conduct a performance test to demonstrate
17 the oven's compliance with the emission limits in 40 CFR 63.2983, and to meet the other
18 operating limitations and requirements in that rule as further described in Section II, Paragraphs
19 24 through 26 above. Specifically, Respondent's Facility was an area source that, in 2009,
20 became a major source of HAP and whose "affected source" was not a "new affected source" or
21 a "new reconstructed affected source" as those terms are defined in 40 CFR 63.2. Therefore, in
22 accordance with 63.2985(c)(2), Respondent had one year to comply with the requirements of 40
23 CFR, Subpart HHHH, including the requirements of 40 CFR 63.2986. These are Class I
24 violations according to OAR 340-012-0054(1)(i). DEQ hereby assesses a \$2,014,981 civil
25 penalty for these violations.

26 7. Respondent violated 40 CFR 63.3000(a) and 40 CFR 63.9(b)(2) by failing to
27 submit an initial notification to DEQ within 120 days of becoming subject to a 40 CFR Part 63

1 standard, that Respondent's drying and curing oven was subject to 40 CFR Part 63, Subpart
2 HHHH requirements, as further described in Section II, Paragraphs 27 and 28 above. This is a
3 Class II violation according to OAR 340-012-0053(2). DEQ has not assessed a civil penalty for
4 this violation.

5 IV. ORDER TO PAY CIVIL PENALTY AND COMPLY

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

8 1. Pay a total civil penalty of \$2,105,405. The determination of the civil penalty is
9 attached as Exhibits 1 and 2 and is incorporated as part of this Notice.

10 2. Within 180 days upon this order becoming final by operation or law or on appeal,
11 submit a complete application for an Oregon Title V Operating Permit.

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,**
14 **Business Office, 700 NE Multnomah Street, Suite 600, Portland, Oregon 97232.**

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

16 You have a right to a contested case hearing on this Notice, if you request one in writing.
17 DEQ must receive your request for hearing **within 20 calendar days** from the date you receive
18 this Notice. If you have any affirmative defenses or wish to dispute any allegations of fact in this
19 Notice or attached exhibit, you must do so in your request for hearing, as factual matters not
20 denied will be considered admitted, and failure to raise a defense will be a waiver of the defense.
21 (See OAR 340-011-0530 for further information about requests for hearing.) You must send your
22 request to: **DEQ, Office of Compliance and Enforcement, 700 NE Multnomah Street, Suite**
23 **600, Portland, Oregon 97232**, fax it to **503-229-5100** or email it to
24 **DEQappeals@deq.state.or.us**. An administrative law judge employed by the Office of
25 Administrative Hearings will conduct the hearing, according to ORS Chapter 183, OAR Chapter
26 340, Division 011 and OAR 137-003-0501 to 0700. You have a right to be represented by an
27 attorney at the hearing, however you are not required to be. If you are an individual, you may

1 represent yourself. If you are a corporation, partnership, limited liability company,
2 unincorporated association, trust or government body, you must be represented by an attorney or
3 a duly authorized representative, as set forth in OAR 137-003-0555.

4 Active duty Service members have a right to stay proceedings under the federal Service
5 Members Civil Relief Act. For more information contact the Oregon State Bar at 1-800-
6 452-8260, the Oregon Military Department at 503-584-3571, or the nearest United States Armed
7 Forces Legal Assistance Office through <http://legalassistance.law.af.mil>. The Oregon Military
8 Department does not have a toll-free telephone number.

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

15
16
17 10 / 20 / 2021
18 Date

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18 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 No. 2: Operating the Facility without an Oregon Title V Permit, in violation of ORS 468A.045(1)(b), 340-218-0010(1) and OAR 340-218-0120(2)(a).

CLASSIFICATION: This is a Class I violation pursuant to OAR 340-012-0054(1)(e).

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 \$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)(A) because Respondent should have been operating the Facility under an Oregon Title V Operating 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 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 pursuant to OAR 340-012-0145(4)(d), because there were more than 28 occurrences of the violation. Respondent operated the Facility without a Title V Permit for more than 28 days out of each year that DEQ is assessing a penalty for.

"M" is the mental state of Respondent and receives a value of 4 according to OAR 340-012-0145(5)(c), because Respondent was negligent. Respondent has dedicated environmental compliance staff and has operated under a DEQ air quality permit for many years. As such, the company is familiar with air quality permitting regulations. When Respondent made modifications to its drying and curing oven in 2009, Respondent should have conferred with a consultant or other air quality professional to determine whether the modifications would have the potential to increase formaldehyde emissions and require a different permit from DEQ. By failing to take reasonable care to do so, Respondent failed to take reasonable care

to avoid a foreseeable risk that it would operate the Facility without the correct air quality permit from DEQ.

"C" is Respondent's efforts to correct or mitigate the violation and receives a value of 0 according to OAR 340-012-0145(6)(f) because there is insufficient information to make a finding under paragraphs (6)(a) through (6)(e), or (6)(g).

"EB" is the approximate dollar value of the benefit gained and the costs avoided or delayed as a result of 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 \$31,024. This is the amount of economic benefit Respondent gained by avoiding paying \$5,000 for preparation and consultant's review of a Title V permit application, and by avoiding paying the cost difference of \$23,215 for Oregon Title V base and emission fees from 2010 through 2019 versus the annual fees Respondent paid under its current Standard ACDP; \$4,864 for Title V Greenhouse Gas fees from 2010 through 2019 versus Greenhouse Gas fees Respondent paid under its current Standard ACDP; and \$1,854 in Title V Cleaner Air Oregon fees for operating years 2018 and 2019 versus the Cleaner Air Oregon fees Respondent paid under its current Standard ACDP. This "EB" was calculated pursuant to OAR 340-012-0150(1) using the U.S. Environmental Protection Agency's BEN computer model.

PENALTY CALCULATION: $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$
= \$6,000 + [(0.1 x \$6,000) x (0 + 0 + 4 + 4 + 0)] + \$31,024
= \$6,000 + (600 x 8) = \$31,024
= \$6,000 + \$4,800 + \$31,024
= \$10,800 + \$31,024

In accordance with ORS 468.140(2), each day of violation constitutes a separate offense and is subject to a civil penalty up to \$25,000 per day. Respondent has operated without a Title V Permit from 2010 until present. DEQ is assessing a separate civil penalty for each year from 2010 through 2020 that Respondent operated without an Oregon Title V Permit.

In recognition of Respondent's self-disclosure of the violation, DEQ is electing to reduce the gravity portion of the civil penalty by 50%. $\$10,800 \times .5 = \$5,400$.

$\$5,400 \text{ per year} \times 11 \text{ years} = \$59,400$. $\$59,400 + \$31,024$ economic benefit equals a total civil penalty of \$90,424 for this violation.

EXHIBIT 2

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

VIOLATION No. 3: Failing to meet the NESHAP Subpart HHHH requirements by failing to install, maintain and operate a thermal oxidizer, other control device or to implement a process modification to meet the NESHAP Subpart HHHH emission limit of 0.05 pounds of formaldehyde per ton of fiberglass mat produced or to reduce uncontrolled formaldehyde emissions by 96 percent or more, in violation of 40 CFR 63.2986 and 40 CFR 63.2983, adopted and incorporated by reference in OAR 340-244-0220(1) and (5).

CLASSIFICATION: These are Class I violations pursuant to OAR 340-012-0054(1)(i).

MAGNITUDE: The magnitude of the violation is major pursuant to OAR 340-012-0135(d), because the Respondent exceeded the Maximum Achievable Control Technology standard emission limit in 40 CFR 63.2983 for a directly-measured (via emissions testing) hazardous air pollutant (formaldehyde).

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)(A) because Respondent violated an air quality rule and should have been operating under an Oregon Title V Operating 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 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 pursuant to OAR 340-012-0145(4)(d), because there were more than 28 occurrences of the violation. In accordance with OAR 340-012-0145(4), each day of violation with a duration of more than one day is a separate occurrence. Respondent operated without a thermal oxidizer or other control from 2010 until July 2020 and by doing so, failed to meet the formaldehyde emission limit in 40 CFR 63.2983.

"M" is the mental state of Respondent and receives a value of 4 according to OAR 340-012-0145(5)(c), because Respondent was negligent. Respondent has dedicated environmental

compliance staff and has operated under a DEQ air quality permit for many years. As such, the company is familiar with air quality permitting regulations. When Respondent made modifications to its drying and curing oven in 2009, Respondent should have conferred with a consultant or other air quality professional to determine whether the modifications would have the potential to increase formaldehyde emissions, subjecting Respondent to additional regulations including the federal subpart HHHH NESHP that required Respondent to install a thermal oxidizer or other control to reduce its formaldehyde emissions and meet the emission limit in subpart HHHH. By failing to take reasonable care to do so, Respondent failed to take reasonable care to avoid a foreseeable risk that it would operate the Facility in violation of state and federal air quality regulations.

"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 efforts to correct or minimize the effects of the violation. In July 2020, Respondent installed a regenerative thermal oxidizer to control its formaldehyde emissions and conducted a performance test that demonstrated compliance with the formaldehyde emission limit in 40 CFR 63.2983.

"EB" is the approximate dollar value of the benefit gained and the costs avoided or delayed as a result of 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 \$2,005,381. This is the amount of economic benefit Respondent gained by delaying spending approximately \$675,725 from 2010 to July 2020 to purchase and install a thermal oxidizer and avoiding approximately \$156,469 each year from 2010 to July 2020 to operate and maintain the thermal oxidizer. This "EB" was calculated pursuant to OAR 340-012-0150(1) using the U.S. Environmental Protection Agency's BEN computer model.

PENALTY CALCULATION: $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$
 $= \$12,000 + [(0.1 \times \$12,000) \times (0 + 0 + 4 + 4 + -2)] + \$2,005,381$
 $= \$12,000 + (1,200 \times 6) = \$2,005,381$
 $= \$12,000 + \$7,200 + \$2,005,381$
 $= \$19,200 + \$2,005,381$

In recognition of Respondent's self-disclosure of the violation, DEQ is electing to reduce the gravity based portion of the civil penalty by 50%. $\$19,200 \times .5 = \$9,600$

$= \$9,600 + \$2,005,381$
 $= \$2,014,981$