Oregon

Kate Brown, Governor

Department of Environmental Quality
Office of Compliance and Enforcement
700 NE Multnomah Street, Suite 600
Portland, OR 97232-4100
(503) 229-5696
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TTY 711

November 22, 2019

CERTIFIED MAIL: 7016 3010 0000 6028 8620

Oregon School for the Deaf
Sharla Jones, Director
999 Locust Street NE
Salem OR 97301

Re: Notice of Civil Penalty Assessment and Order
Case No. LQ/HW-WR-2019-185

This letter is to inform you that DEQ has issued you a civil penalty of $11,500 for storing hazardous waste without a permit and failing to immediately clean up a spill or release of oil. You were also cited, without penalty, for failing to make a hazardous waste determination and storing used oil without proper labeling.

DEQ issued this penalty because improper management of hazardous waste threatens public health and the environment. To protect public health and the environment, the legislature has enacted statutes and the Environmental Quality Commission has adopted rules establishing strict requirements for the accumulation, storage, handling, and disposal of hazardous waste. Your failure to comply with hazardous waste rules increases the risk that the public or the environment could be harmed by mismanagement of hazardous waste.

DEQ appreciates your efforts to correct the violations by transporting for disposal the hazardous waste and removing the oil contaminated soil. DEQ considered these efforts when determining the amount of the civil penalty. However, DEQ has not received documentation that you have properly disposed of the contaminated soil. Therefore, included in Section IV of the attached Notice is an order requiring you to submit documentation of the disposal of the contaminated soil to DEQ within 30 days.

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 Susan Elworth at 503-229-5152 or toll free in Oregon at 800-452-4011, extension 5152.

Sincerely,

Rebecca J Puskas for

Kieran O'Donnell, Manager
Office of Compliance and Enforcement

Enclosures

cc: Dan Lobato, Eugene office, DEQ

EXHIBIT 1

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

VIOLATION 1: Storing hazardous waste without a permit, in violation of ORS 466.095(1)(a).

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

MAGNITUDE: The magnitude of the violation is major pursuant to OAR 340-012-0135(4)(b)(A)(i) because Respondent stored more than 55 gallons of hazardous waste.

CIVIL PENALTY FORMULA: The formula for determining the amount of penalty of each violation is: BP + [(0.1 x BP) x (P + H + O + M + C)] + EB

"BP" is the base penalty, which is $8,000 for a Class I, major magnitude violation in the matrix listed in OAR 340-012-0140(3)(b)(A)(i) and applicable pursuant to OAR 340-012-0140(3)(a)(J). Respondent violated a hazardous waste management statute and is a small quantity generator of hazardous waste as Respondent generated approximately 1100 pounds of hazardous waste.

"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 there were more than 28 occurrences of the violation. Each day of violation constitutes a separate occurrence. Although it is unknown for exactly how long Respondent stored the hazardous waste, it stored the waste for several years prior to June 26, 2019 when Respondent had the waste transported for disposal. Therefore the violation continued for more than 28 days.

"M" is the mental state of the Respondent, and receives a value of 0 according to OAR 340-012-0145(5)(a) because there is insufficient information on which to base a finding under paragraphs (5)(b) through (5)(d).

"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 efforts to correct the violation. Respondent had all of the waste transported for disposal on June 26, 2019.

"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 although Respondent delayed spending $2,861 from at least May 10, 2019 until June 29, 2019, to transport and dispose of the hazardous waste, the value of "EB," when calculated pursuant to OAR 340-012-0150(1) using the U.S. Environmental Protection Agency's BEN computer model, is de minimis.

PENALTY CALCULATION: Penalty = BP + [(0.1 x BP) x (P + H + O + M + C)] + EB
= $8,000 + [(0.1 x $8,000) x (0 + 0 + 4 + 0 - 3)] + $0
= $8,000 + ($800 x 1) + $0
= $8,000 + $800 + $0
= $8,800

EXHIBIT 2

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

VIOLATION 3 — Failing to immediately clean up a spill or release of oil, in violation of ORS 466.645.

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 x BP) x (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). Respondent violated an oil spill and release statute and no other matrix is applicable.

"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 there were more than 28 occurrences of the violation. Each day of violation constitutes a separate occurrence. Although Respondent informed DEQ that it had excavated the soil in August 2019, Respondent still has not provided DEQ with documentation to confirm that it has removed and disposed of the contaminated soil. It is unknown for how long the spill was present at Respondent's property prior to DEQ's inspection on May 10, 2019 but the violation has been on-going since at least DEQ's inspection in May 2019.

"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. Negligence means Respondent failed to take reasonable care to avoid a foreseeable risk of conduct constituting or resulting in a violation. Although Respondent could not dispose of the soil until it was tested for contamination, once that testing was completed, Respondent failed to dispose of the

contaminated soil. By failing to dispose of the soil after testing, Respondent failed to take reasonable care to avoid the continuing violation.

"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). Although Respondent informed DEQ that it had removed the contaminated soil and stockpiled it in another location, Respondent has not submitted documentation to DEQ showing that it has disposed of the contaminated soil.

"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 is unable to make an estimate of any costs delayed or avoided as a result of this violation.

<u>PENALTY CALCULATION</u>: Penalty = BP + [(0.1 x BP) x (P + H + O + M + C)] + EB
= $1,500 + [(0.1 x $BP) x (0 + 0 + 4 + 4 + 0)] + $0
= $1,500 + ($150 x 8) + $0
= $1,500 + $1,200 + $0
= $2,700

BEFORE THE ENVIRONMENTAL QUALITY COMMISSION

OF THE STATE OF OREGON

IN THE MATTER OF: OREGON SCHOOL FOR THE DEAF, Respondent.	)))	NOTICE OF CIVIL PENALTY ASSESSMENT AND ORDER CASE NO. LQ/HW-WR-2019-18

I. AUTHORITY

DEQ issues this Notice of Civil Penalty Assessment and Order (Notice) pursuant to Oregon Revised Statutes (ORS) 468.100, ORS 468.126 to 468.140, ORS 466.990, 466.075 and 466.645, ORS Chapter 183 and Oregon Administrative Rules (OAR) Chapter 340, Divisions 011, 012, 100, 102 and 142.

II. FINDINGS OF FACT

1. On May 10, 2019, DEQ conducted an inspection of a shed located at the Oregon School for the Deaf, located at 999 Locust Street NE in Salem, OR.

2. At the time of the inspection, Respondent was storing three 55-gallon, four 30-gallon, one 15-gallon, four 5-gallon and ten 2.5-gallon containers of chemicals and pesticides, along with three 55-gallon and one 15-gallon containers of used oil in the shed.

3. At the time of the inspection, Respondent had not used either the chemicals or pesticides in several years.

4. At all relevant times Respondent has not held a permit to treat or store hazardous waste.

5. On June 27, 2019, Respondent submitted to DEQ documentation that the containers in the shed contained the following waste which had been transported for disposal on June 26, 2019:

Manifest #	Waste Description	EPA Hazardous Waste No(s).	Quantity
012839877	Paint related waste	D001 (40 CFR 261.21)	30 gallons
	Pesticides	D001 (40 CFR 261.21)	15 gallons
	Sodium Hydroxide	D002 (40 CFR 261.22)	35 gallons
	Sodium Hydroxide	D002 (40 CFR 261.22)	150 pounds
012839879	Disulfoton	P039 (40 CFR 261.33)	30 pounds

6. At the time of the inspection, the oil containers were not labeled with the words "used oil."

7. At the time of the inspection, the gravel floor of the shed immediately adjacent to the oil containers was visibly stained with oil residue.

III. CONCLUSIONS

1. Respondent violated ORS 466.095(1)(a) by storing hazardous waste without a permit, as described in Section II, paragraphs 1- 5 above. Specifically, Respondent stored the hazardous wastes described in Section II, paragraph 5 in the shed for several years after they became solid wastes (as that term is defined in 40 CFR 261.2(a)(1)(A)). The chemicals and pesticides became solid waste when Respondent accumulated and stored (in lieu of disposal) the chemicals and pesticides. Respondent is the generator (as that term is defined in OAR 340-101-0010(5)) because it owned the chemicals and pesticides when they became solid waste. Pursuant to 40 CFR 262.34(f), as a small quantity generator, Respondent was allowed to store the wastes for 180 days only without a permit. This is a Class I violation, according to OAR 340-012-0068(1)(c). DEQ assesses an $8,800 civil penalty for this violation.

2. Sometime prior to June 27, 2019, Respondent violated OAR 340-102-0011(2) by failing to determine if residues (as defined in OAR 340-100-0010(2)(ee)) generated by Respondent were hazardous waste, as described in Section II, paragraphs 1-5 above. Respondent is the generator, as that term is defined in OAR 340-101-0010(5) because it owned the chemicals and pesticides when they became solid waste. This is Class I violation pursuant to OAR 340-012-0068(1)(a). DEQ did not assesse a civil penalty for this violation.

3. Respondent failed to immediately clean up a spill or release of oil as required by ORS 466.645, as described in Section II, paragraph 7. Specifically, Respondent failed to clean up spilled oil from at least May 10, 2019, until the date of this Notice. Respondent has not provided DEQ with documentation that the contaminated soil was properly disposed. This is a Class I violation pursuant to OAR 340-012-0081(1)(a). DEQ assesses a $2,700 civil penalty for this violation.

4. Respondent violated 40 CFR 279.22(c), as adopted by OAR 340-100-0002, by failing to label used oil containers with the words "used oil." Specifically, on May 10, 2019, Respondent failed to label three 55-gallon and one 15-gallon containers with the words "used oil." These are Class II violations pursuant to OAR 340-012-0072(2)(e). DEQ did not assess a civil penalty for these violations.

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IV. ORDER TO PAY CIVIL PENALTY AND TO COMPLY

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

1. Pay a total civil penalty of $11,500. The determination of the civil penalties are attached as Exhibits 1 and 2 and are incorporated as part of this Notice. If you do not file a request for hearing as set forth in Section V below, your check or money order must be made payable to "**State Treasurer, State of Oregon**" and sent to the **DEQ, 700 NE Multnomah Street, Suite 600, Portland, OR 97232**.

2. Within 30 days of this order becoming final by operation of law or on appeal, submit written documentation of the proper disposal of the contaminated soil to: Dan Lobato, DEQ, 165 East 7th Avenue, Suite 100, Eugene OR 97401.

V. NOTICE OF RIGHT TO REQUEST A CONTESTED CASE HEARING

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

Active duty Service members have a right to stay proceedings under the federal Service Members Civil Relief Act. For more information contact the Oregon State Bar at 1-800-

452-8260, the Oregon Military Department at 503-584-3571, or the nearest United States Armed Forces Legal Assistance Office through http://legalassistance.law.af.mil. The Oregon Military Department does not have a toll free telephone number.

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

11/22/19
Date

Rebecca J Paskus for
Kieran O'Donnell, Manager
Office of Compliance and Enforcement