



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

December 11, 2018

CERTIFIED MAIL: 7016 0750 0000 3470 3067

Owens-Brockway Glass Container, Inc.
c/o CT Corporation System, Registered Agent
780 Commercial St SE Ste 100
Salem, OR 97301

Re: Notice of Civil Penalty Assessment and Order
Case No. LQ/HW-NWR-2018-122

This letter is to inform you that the Oregon Department of Environmental Quality (DEQ) has issued you a civil penalty of \$12,900 for the following violations: storing hazardous waste more than 90 days without a permit, failing to label containers and a tank of used oil, shipping hazardous waste off-site without a manifest, failing to ensure your employees were effectively trained in hazardous waste management regulations, and failing to store used oil in tanks or containers.

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.

DEQ issued this penalty because Owens-Brockway has been cited for hazardous waste violations in the past, and because improper storage and 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.

Included in the attached Notice is an Order requiring you to provide documentation to DEQ demonstrating that you have evaluated the integrity of the basement floor and completed any necessary repairs to ensure it functions effectively as secondary containment.

DEQ appreciates your efforts to address the violations by training your plant manager, cleaning up the used oil, 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

Electronic cc: Karen Terry, DEQ NWR
Ashleigh Henry, EHS Manager, Owens-Brockway, ashleigh.henry@o-i.com

1 BEFORE THE ENVIRONMENTAL QUALITY COMMISSION

2 OF THE STATE OF OREGON

3 IN THE MATTER OF:) NOTICE OF CIVIL PENALTY
4 OWENS-BROCKWAY) ASSESSMENT AND ORDER
5 GLASS CONTAINER, INC.,)
Respondent.) CASE NO. LQ/HW-NWR-2018-122

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, 111, and 142.

11 II. FINDINGS OF FACT

12 1. Respondent operates a glass bottle manufacturing business at 9710 NE Glass Plant
13 Road, in Portland, Oregon (the Facility).

14 2. Respondent is registered with DEQ as a hazardous waste generator under U.S.
15 Environmental Protection Agency (EPA) Identification Number ORD009026618.

16 3. Each year since 1991, Respondent has reported annually to DEQ on Respondent's
17 hazardous waste generation activities at the Facility. Since 2015, Respondent has annually reported to
18 DEQ that Respondent was a large quantity generator of hazardous waste, generating in excess of 2,200
19 pounds of hazardous waste on a monthly basis and/or storing large quantity generator amounts of
20 hazardous waste.

21 4. DEQ inspected the Facility on August 18, 2017 and September 25, 2017, and at those
22 times, Respondent was a large quantity generator of hazardous waste, generating in excess of 2,200
23 pounds of hazardous waste in a calendar month during a cleanout at the Facility.

24 5. Respondent does not have a permit to store hazardous waste.

25 6. On August 18, 2017 and September 25, 2017, Respondent stored waste personal protective
26 equipment (PPE) and clean-up debris contaminated with chromium, lead, and cadmium, in one 55-gallon
27 drum labeled with an accumulation start date of November 11, 2016. Respondent stored the drum at the

1 Facility until January 30, 2018.

2 7. On August 18, 2017, two containers of fan blade waste contaminated with chromium,
3 lead, and cadmium generated during November 2016 were not labeled with the date Respondent first
4 began accumulating the waste in the containers.

5 8. On January 30, 2018, Respondent offered the waste described in paragraphs 6 and 7
6 above for off-site shipment without a hazardous waste manifest.

7 9. On or before August 18, 2017, and ongoing until at least September 25, 2018,
8 Respondent stored used oil in containers and a tank that were not labeled as “used oil.”

9 10. On or before August 18, 2017 and ongoing until approximately June of 2018,
10 Respondent stored used oil in three open buckets and directly on the basement floor of the Facility.
11 During DEQ’s inspections, the basement floor of the Facility was wet and had an oily sheen near the
12 open containers of used oil, and oil that had been spilled to the floor under and near Respondent’s
13 5,000-gallon used oil tank had not been cleaned up.

14 11. On or before August 18, 2017, and ongoing until May 31, 2018, Respondent had not
15 sent a contingency plan to or otherwise made arrangements for emergency planning with local
16 emergency response authorities.

17 12. On or before August 18, 2017, and ongoing until approximately June 8, 2018,
18 Respondent’s environmental manager of the Facility, and other employees with job duties related to
19 hazardous waste management, were not sufficiently trained in hazardous waste regulations to perform
20 their job duties in compliance with the regulations, as described in paragraphs 6-11 above. At the time
21 of DEQ’s inspection, Respondent did not have written documentation of the job title and job
22 description for each position at the Facility related to hazardous waste management, and the name of
23 each employee in each position. Further, Respondent did not have a written description of the type and
24 amount of hazardous waste training given to employees in these positions.

25 ///

26 ///

27 ///

1 III. CONCLUSIONS

2 1. Respondent violated ORS 466.095(1)(a) by storing hazardous waste without a permit. As a
3 large quantity generator of hazardous waste, Respondent is allowed to store hazardous waste at the Facility
4 without a permit for 90 days or less, pursuant to 40 CFR 262.34, as adopted by OAR 340-100-0002. On
5 August 18, 2017 and September 25, 2017, Respondent stored waste personal protective equipment (PPE)
6 and clean-up debris contaminated with chromium, lead, and cadmium, in a drum labeled with an
7 accumulation start date of November 11, 2016. Respondent stored the drum at the Facility until January
8 30, 2018. Additionally, Respondent stored two containers of fan blade waste from November 2016 to
9 January 30, 2018. The PPE, clean-up debris, and fan blade waste is hazardous waste pursuant to 40 CFR
10 261.24, as adopted by OAR 340-100-0002, and identified as U.S. Environmental Protection Agency
11 (EPA) Hazardous Waste Numbers D006, D007, and D008. This is a Class II violation, according to OAR
12 340-012-0068(2)(d). DEQ hereby assesses a \$2,400 civil penalty for this violation.

13 2. Respondent violated 40 CFR 279.22(c)(1), as adopted by OAR 340-100-0002, by failing to
14 label a tank and containers storing used oil with the words “used oil.” These are Class II violations,
15 according to OAR 340-012-0072(2)(e). DEQ hereby assesses a \$2,400 civil penalty for these violations.

16 3. Respondent violated 40 CFR 265.16(a), (d) and (e), as adopted by OAR 340-100-0002, by
17 failing to train employees in the proper management of hazardous waste and to respond effectively to
18 emergencies, and by failing to properly document and maintain training records. This is a Class II
19 violation, according to OAR 340-012-0068(2)(l). DEQ hereby assesses a \$3,600 civil penalty for this
20 violation.

21 4. Respondent violated 40 CFR 262.20(a)(1), as adopted by OAR 340-100-0002, by offering
22 three containers of hazardous waste for transport without a uniform hazardous waste manifest, on January
23 30, 2018. This is a Class I violation, according to OAR 340-012-0068(1)(e). DEQ hereby assesses a
24 \$3,600 civil penalty for this violation.

25 5. Respondent violated 40 CFR 279.22(a), as adopted by OAR 340-100-0002, by storing used oil
26 on the floor of the Facility, rather than in tanks or containers. This is a Class II violation, according to OAR
27 340-012-0053(2). DEQ has hereby assesses a \$900 civil penalty for this violation.

1 6. Respondent violated 40 CFR 262.34(a)(2), as adopted by OAR 340-100-0002, by failing to
2 label hazardous waste storage containers with the date upon which each period of accumulation began.
3 The two containers of fan blade waste stored without an accumulation start date are hazardous waste
4 pursuant to 40 CFR 261.24, as adopted by OAR 340-100-0002, and identified as EPA Hazardous Waste
5 Numbers D006, D007, and D008. This is a Class II violation, according to OAR 340-012-0068(2)(a).
6 DEQ has not assessed a civil penalty for this violation.

7 7. Respondent violated 40 CFR 265.37(a) as referred to by 40 CFR 262.34(a)(4), both as adopted
8 by OAR 340-100-0002, by failing to make arrangements with local emergency response authorities. This
9 is a Class II violation, according to OAR 340-012-0068(2)(o). DEQ has not assessed a civil penalty for this
10 violation.

11 IV. ORDER TO PAY CIVIL PENALTY AND TO COMPLY

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

14 1. Pay a total civil penalty of \$12,900. The determination of the civil penalty is attached as
15 Exhibits 1-5 which are incorporated as part of this Notice.

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

20 2. Within 60 days of this order becoming final by operation of law or on appeal, submit
21 documentation to DEQ that you have thoroughly assessed the integrity of the basement floor at the
22 Facility, and conducted any repairs or sealing necessary to ensure that it functions effectively as secondary
23 containment. Submit documentation to Karen Terry, DEQ, 700 NE Multnomah Street, Portland, Oregon
24 97232.

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

26 You have a right to a contested case hearing on this Notice, if you request one in writing. DEQ
27 must receive your request for hearing **within 20 calendar days** from the date you receive this Notice. If

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

13 Active duty service-members have a right to stay proceedings under the federal Service
14 Members Civil Relief Act. For more information, please call the Oregon State Bar at 1-800-
15 452-8260 or the Oregon Military Department at 1-800-452-7500. Additional information can be found
16 online at the United States Armed Forces Legal Assistance (AFLA) Legal Services Locator website
17 <http://legalassistance.law.af.mil/content/locator.php>.

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

24
25
26 12/11/18
27 Date

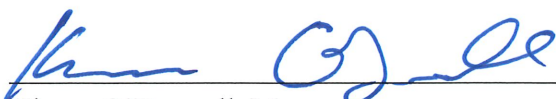

Kieran O'Donnell, Manager
Office of Compliance and Enforcement

EXHIBIT 1

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

VIOLATION 1: Storing hazardous waste more than 90 days without a permit, in violation of ORS 466.095(1)(a).

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

MAGNITUDE: The magnitude of the violation is minor pursuant to OAR 340-012-0135(4)(c)(C)(i) because the violation involved less than 1,500 pounds of hazardous waste and no acutely hazardous waste. Respondent stored 154 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 \$1,500 for a Class II, minor magnitude violation in the matrix listed in OAR 340-012-0140(2)(b)(B)(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 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 in the same media as the current violation.

"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 approximately February 9, 2017. Respondent stored hazardous waste until January 30, 2018, almost one year beyond the allowed time limit.

"M" is the mental state of the Respondent and receives a value of 4 according to OAR 340-012-0145(5)(c), because Respondent's conduct was negligent. Respondent is a highly-regulated business that operates pursuant to water quality permits, a Title V air quality permit, and as a large-quantity generator of hazardous waste that reports annually to DEQ on its waste management activities. Respondent received warning letters from DEQ in 2009 and 2014 for hazardous waste management violations. By storing hazardous waste at its unpermitted

facility for approximately a year 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 -2 according to OAR 340-012-0145(6)(d), because Respondent eventually made efforts to minimize the effects of the violation by disposing of the hazardous waste at a permitted facility on January 30, 2018, five months after DEQ notified Respondent of the violation.

"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: $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$
= \$1,500 + [(0.1 x \$1,500) x (0 + 0 + 4 + 4 - 2)] + \$0
= \$1,500 [\$150 x 6] + \$0
= \$1,500 + \$900 + \$0
= \$2,400

EXHIBIT 2

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

VIOLATION 2: Failing to label a used oil tank and containers with the words "used oil," in violation of 40 CFR 279.22(c)(1), as adopted by OAR 340-100-0002.

CLASSIFICATION: These are Class II violations pursuant to OAR 340-012-0072(2)(e).

MAGNITUDE: The magnitude of the violation is major pursuant to OAR 340-012-0135(5)(a)(A) because the violation involved more than 1,000 gallons of used oil. Respondent failed to label a 5,000-gallon tank of used oil as well as multiple containers.

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 II, major magnitude violation in the matrix listed in OAR 340-012-0140(4)(b)(B)(i) and applicable pursuant to OAR 340-012-0140(4)(a)(J) because Respondent is a used oil generator and violated a used oil 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 in the same media as the current violation.

"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 had not labeled the tank and containers storing used oil on or before August 18 2017, and the violation was ongoing as of at least September 25, 2017.

"M" is the mental state of the Respondent and receives a value of 4 according to OAR 340-012-0145(5)(c), because Respondent's conduct was negligent. Respondent is a highly-regulated business that operates pursuant to water quality permits, a Title V air quality permit, and as a large-quantity generator of hazardous waste that reports annually to DEQ on its waste management activities. DEQ issued Respondent a warning letter in 2014 for failing to label used oil containers, among other violations. By again failing to properly label multiple containers and a large tank of used oil for a long period of 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 -2 according to OAR 340-012-0145(6)(d), because Respondent eventually made efforts to minimize the effects of the violation by properly labeling the tank and containers.

"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 determined that any economic benefit associated with this violation is de minimis.

PENALTY CALCULATION: $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$
 $= \$1,500 + [(0.1 \times \$1,500) \times (0 + 0 + 4 + 4 - 2)] + \0
 $= \$1,500 [\$150 \times 6] + \$0$
 $= \$1,500 + \$900 + \$0$
 $= \$2,400$

EXHIBIT 3

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

VIOLATION 3: Failing to train employees in proper management of hazardous waste and to respond effectively to emergencies, in violation of 40 CFR 265.16(a), (d) and (e), as adopted by OAR 340-100-0002.

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

MAGNITUDE: The magnitude of the violation is moderate pursuant to OAR 340-012-0130(1), as there is no selected magnitude in OAR 340-012-0135 applicable to this violation.

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 II, moderate magnitude violation in the matrix listed in OAR 340-012-0140(2)(b)(B)(ii) 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 in the same media as the current violation.

"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. Respondent is a highly-regulated business that operates pursuant to water quality permits, a Title V air quality permit, and as a large-quantity generator of hazardous waste that reports annually to DEQ on its waste management activities. Respondent received warning letters from DEQ in 2009 and 2014 for hazardous waste management violations, and a failure to train employees in universal waste management. By failing to ensure that Respondent's employees were effectively and adequately trained, 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 -2 according to OAR 340-012-0145(6)(d), because Respondent eventually made efforts to minimize the effects of the violation by providing training and updating documentation in June of 2018, approximately ten months after DEQ notified Respondent of the violation.

"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 the economic benefit Respondent gained, if any, from this violation.

PENALTY CALCULATION: $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$
 $= \$3,000 + [(0.1 \times \$3,000) \times (0 + 0 + 0 + 4 - 2)] + \0
 $= \$3,000 [\$300 \times 2] + \$0$
 $= \$3,000 + \$600 + \$0$
 $= \$3,600$

EXHIBIT 4

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

VIOLATION 4: Offering hazardous waste for transport without a uniform hazardous waste manifest, in violation of 40 CFR 262.20(a)(1), as adopted by OAR 340-100-0002.

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

MAGNITUDE: The magnitude of the violation is minor pursuant to OAR 340-012-0135(4)(c)(C)(i) because the violation involved less than 1,500 pounds of hazardous waste and no acutely hazardous waste. Respondent offered 154 pounds of hazardous waste for transport without a 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 \$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 in the same media as the current violation.

"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 was one occurrence of the violation, on January 30, 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. Respondent is a highly-regulated business that operates pursuant to water quality permits, a Title V air quality permit, and as a large-quantity generator of hazardous waste that reports annually to DEQ on its waste management activities. Respondent was aware that the waste sent for transport was hazardous waste, because Respondent performed a hazardous waste determination on the waste. Respondent is also aware of the manifest requirement, because Respondent has been a regulated hazardous waste generator for many years, and has completed manifests for

other shipments of hazardous waste. By failing to prepare a manifest or ensure that one was prepared for this hazardous waste, 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 -2 according to OAR 340-012-0145(6)(d), because Respondent eventually made efforts to minimize the effects of the violation by contacting the transporter and completing a manifest, after DEQ notified Respondent of the violation.

"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 the economic benefit Respondent gained, if any, from this violation.

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

$$\begin{aligned} &= \$3,000 + [(0.1 \times \$3,000) \times (0 + 0 + 0 + 4 - 2)] + \$0 \\ &= \$3,000 [\$300 \times 2] + \$0 \\ &= \$3,000 + \$600 + \$0 \\ &= \$3,600 \end{aligned}$$

EXHIBIT 5

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

VIOLATION 5: Failing to store used oil in containers or tanks, in violation of 40 CFR 279.22(a), as adopted by OAR 340-100-0002.

CLASSIFICATION: This is a Class II violation pursuant to OAR 340-012-0053(2).

MAGNITUDE: The magnitude of the violation is moderate pursuant to OAR 340-012-0130(1), as there is no selected magnitude in OAR 340-012-0135 applicable to this violation.

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 \$750 for a Class II, moderate magnitude violation in the matrix listed in OAR 340-012-0140(4)(b)(B)(ii) and applicable pursuant to OAR 340-012-0140(4)(a)(J) because Respondent is a used oil generator and violated a used oil 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 in the same media as the current violation.

"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. Respondent is a highly-regulated business that operates pursuant to water quality permits, a Title V air quality permit, and as a large-quantity generator of hazardous waste that reports annually to DEQ on its waste management activities. Respondent received warning letters from DEQ in 2009 and 2014 that referenced used oil management violations. By allowing used oil and oily wastewater to pool and accumulate on the Facility floor, 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

-2 according to OAR 340-012-0145(6)(d), because Respondent eventually made efforts to minimize the effects of the violation by providing documentation to DEQ that Respondent cleaned up the oil on the floor of the Facility.

"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 the economic benefit Respondent gained, if any, from this violation.

PENALTY CALCULATION: $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$
 $= \$750 + [(0.1 \times \$750) \times (0 + 0 + 0 + 4 - 2)] + \0
 $= \$750 [\$75 \times 2] + \$0$
 $= \$750 + \$150 + \$0$
 $= \$900$