



Oregon

Tina Kotek, 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

June 20, 2023

CERTIFIED MAIL: 7016 2710 0000 4221 2915

Home Depot U.S.A., 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. WQ-SW-NWR-2022-553

This letter is to inform you that the Oregon Department of Environmental Quality (DEQ) has issued Home Depot U.S.A., Inc. (Home Depot) a civil penalty of \$6,218 for failing to comply with the requirements of its Water Pollution Control Facility Underground Injection Control (WPCF-UIC) permits #103136 and #103137. Specifically, Home Depot failed to submit annual reports for monitoring years 2016, 2017, and 2018.

DEQ issued this penalty because stormwater runoff has the potential to contain pollutants, and disposal of this waste into Underground Injection Controls (UICs) may adversely impact underground sources of drinking water. UICs are regulated by DEQ to ensure that groundwater quality is protected. Failing to submit annual reports poses a risk to waters of the state because it impairs DEQ's ability to mitigate and prevent pollution.

You may pay the civil penalty as follows:

Pay online with e-check (ACH) or Credit Card. Go to Your DEQ Online here: <https://ydo.oregon.gov>. Select Register Account or Login, then select Pay Invoices/Fees on your account dashboard. Enter the Invoice number and Account ID included on the attached payment slip. Note: US Bank charges a 2.3% convenience charge for credit card transactions. ACH payments have no additional charges.

Pay by check or money order: Make checks payable to "Department of Environmental Quality" and mail to the address on the enclosed payment slip. Please make sure to include the payment slip with your check or money order.

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.oregon.gov

Via fax – 503-229-6762

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.

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 portion of your 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 Emily Knobbe at 971-300-9770.

Sincerely,



Kieran O'Donnell, Manager
Office of Compliance and Enforcement

Enclosures

cc: Kevin Weberling, Northwest Region
Christine Svetkovich, DEQ
Accounting, DEQ

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

3 IN THE MATTER OF:) NOTICE OF CIVIL PENALTY
4 HOME DEPOT U.S.A., Inc.,) ASSESSMENT AND ORDER
5 Respondent.) CASE NO. WQ-SW-NWR-2022-553

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 Chapter 183 and Oregon Administrative Rules (OAR) Chapter 340, Divisions 011, 012, and 045.

10 II. FINDINGS OF FACT

11 1. Respondent is registered under the Water Pollution Control Facility Underground
12 Injection Control (WPCF-UIC) permit for facilities located in Bend, Oregon, and Portland, Oregon.

13 2. Bend facilities owned by the Respondent are subject to WPCF-UIC Permit No. 103136
14 (the Bend Permit). The Bend Permit has been in operation since June 7, 2016, and expires May 31,
15 2026.

16 3. Portland facilities owned by the Respondent are subject to WPCF-UIC Permit No.
17 103137 (the Portland Permit). The Portland Permit has been in operation since June 7, 2016, and
18 expires May 31, 2026.

19 4. Schedule B.4 of both the Bend Permit and the Portland Permit requires the permittee to
20 submit annual Underground Injection Control System Reports containing monitoring data from the
21 previous year by March 31 of each year starting in 2017.

22 5. The Respondent did not submit annual reports for monitoring years 2016, 2017, or 2018
23 for facilities subject to the Bend Permit.

24 6. The Respondent did not submit annual reports for monitoring years 2016, 2017, or 2018
25 for facilities subject to the Portland Permit.

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1 III. CONCLUSIONS

2 1. Respondent has violated ORS 468B.025(2) and Schedule B.4 of the Bend Permit by failing
3 to submit annual reports for facilities subject to the Bend Permit, as described in Section II, Paragraphs 2,
4 4, and 5 above. Specifically, Respondent failed to submit annual monitoring reports for the following
5 three years: 2016, 2017, and 2018. These are Class II violations, according to OAR 340-012-0055(2)(b).
6 DEQ hereby assesses a \$2,473 civil penalty for these violations.

7 2. Respondent has violated ORS 468B.025(2) and Schedule B.4 of the Portland Permit by
8 failing to submit annual reports for facilities subject to the the Portland Permit, as described in Section II
9 Paragraphs 3, 4, and 6 above. Specifically, Respondent failed to submit annual monitoring reports for
10 the following three years: 2016, 2017, and 2018. These are Class II violations, according to OAR 340-
11 012-0055(2)(b). DEQ hereby assesses a \$3,745 civil penalty for these violations.

12 IV. ORDER TO PAY CIVIL PENALTY

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

15 1. Pay a total civil penalty of \$6,218. The determination of the civil penalties are attached as
16 Exhibits 1 and 2 and are incorporated as part of this Notice.

17 If you do not file a request for hearing as set forth in Section V below, please pay the penalty as
18 follows:

19 Pay online with e-check (ACH) or Credit Card. Go to Your DEQ Online here:
20 <https://ydo.oregon.gov>. Select Register Account or Login, then select Pay Invoices/Fees on your account
21 dashboard. Enter the Invoice number and Account ID included on the attached payment slip. Note: US
22 Bank charges a 2.3% convenience charge for credit card transactions. ACH payments have no additional
23 charges.

24 Pay by check or money order: Make checks payable to "Department of Environmental
25 Quality" and mail to the address on the enclosed payment slip. Please make sure to include the payment
26 slip with your check or money order.

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

2 You have a right to a contested case hearing on this Notice, if you request one in writing. DEQ
3 must receive your request for hearing **within 20 calendar days** from the date you receive this Notice. If
4 you have any affirmative defenses or wish to dispute any allegations of fact in this Notice or attached
5 exhibit(s), you must do so in your request for hearing, as factual matters not denied will be considered
6 admitted, and failure to raise a defense will be a waiver of the defense. (See OAR 340-011-0530 for
7 further information about requests for hearing.) You must send your request to: **DEQ, Office of**
8 **Compliance and Enforcement, 700 NE Multnomah Street, Suite 600, Portland, Oregon 97232**, fax
9 it to **503-229-6762** or email it to DEQappeals@deq.oregon.gov. An administrative law judge
10 employed by the Office of Administrative Hearings will conduct the hearing, according to ORS
11 Chapter 183, OAR Chapter 340, Division 011 and OAR 137-003-0501 to 0700. You have a right to be
12 represented by an attorney at the hearing, however you are not required to be. If you are an individual,
13 you may represent yourself. If you are a corporation, partnership, limited liability company,
14 unincorporated association, trust or government body, you must be represented by an attorney or a duly
15 authorized representative, as set forth in OAR 137-003-0555.

16 Active duty Service members have a right to stay proceedings under the federal Service
17 Members Civil Relief Act. For more information contact the Oregon State Bar at 1-800-
18 452-8260, the Oregon Military Department at 503-584-3571, or the nearest United States Armed
19 Forces Legal Assistance Office through <http://legalassistance.law.af.mil>. The Oregon Military
20 Department does not have a toll free telephone number.

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

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

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6/20/2023

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 NO. 1 Violated ORS 468B.025(2) by violating the conditions of a UIC WPCF Permit by failing to submit annual reports for the Bend facilities in 2016, 2017, and 2018.
- CLASSIFICATION: These are Class II violations pursuant to OAR 340-012-0055(2)(b).
- 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 \$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)(F)(vi).
- "P" is whether Respondent has any prior significant actions, as defined in OAR 340-012-0030(19), in the same media as the violation at issue that occurred at a facility owned or operated by the same Respondent, and receives a value of 0 according to OAR 340-012-0145(2)(a)(A), because there are no prior significant actions.
- "H" is Respondent's history of correcting prior significant actions, and receives a value of 0 according to OAR 340-012-0145(3)(c) because there is no prior history.
- "O" is whether the violation was repeated or ongoing, and receives a value of 2 according to OAR 340-012-0145(4)(b) because there was more than one but less than seven occurrences of the violation. Respondent failed to submit annual reports three times in 2017, 2018, and 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. According to OAR 340-012-0030(15), negligent means the respondent failed to take reasonable care to avoid a foreseeable risk of conduct constituting or resulting in a violation. Respondent owns more than 2,300 facilities nationwide and is therefore accustomed to complying with permit requirements. Therefore the Respondent failed to take reasonable care to adhere to the requirements of the Permit, which led to the foreseeable risk of missing reporting deadlines.

"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 the violation or the effects of the violation could not be corrected or minimized. As of the date of this order, the missing annual reports are still missing. The violation cannot be mitigated because the reports were due in 2017, 2018, and 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 \$1,273. This is the amount Respondent gained by avoiding spending \$1,800 for sampling and laboratory testing costs for creation of the annual reports. This "EB" was calculated pursuant to OAR 340-012-0150(1) using the U.S. Environmental Protection Agency's BEN computer model.

PENALTY CALCULATION: $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$
 $= \$750 + [(0.1 \times \$750) \times (0 + 0 + 2 + 4 + 0)] + \$1,273$
 $= \$750 + (\$75 \times 6) + \$1,273$
 $= \$750 + \$450 + \$1,273$
 $= \$2,473$

EXHIBIT 2

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

VIOLATION NO. 2 Violated ORS 468B.025(2) by violating the conditions of a UIC WPCF Permit by failing to submit annual reports for the Portland facilities in 2016, 2017, and 2018.

CLASSIFICATION: These are Class II violations pursuant to OAR 340-012-0055(2)(b).

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 \$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)(F)(vi).

"P" is whether Respondent has any prior significant actions, as defined in OAR 340-012-0030(19), in the same media as the violation at issue that occurred at a facility owned or operated by the same Respondent, and receives a value of 0 according to OAR 340-012-0145(2)(a)(A), because there are no prior significant actions.

"H" is Respondent's history of correcting prior significant actions, and receives a value of 0 according to OAR 340-012-0145(3)(c) because there is no prior history.

"O" is whether the violation was repeated or ongoing, and receives a value of 2 according to OAR 340-012-0145(4)(b) because there was more than one but less than seven occurrences of the violation. Respondent failed to submit annual reports three times in 2017, 2018, and 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. According to OAR 340-012-0030(15), negligent means the respondent failed to take reasonable care to avoid a foreseeable risk of conduct constituting or resulting in a violation. Respondent owns more than 2,300 facilities nationwide and is therefore accustomed to complying with permit requirements. Therefore the Respondent failed to take reasonable care to adhere to the requirements of the Permit, which led to the foreseeable risk of missing reporting deadlines.

"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 the violation or the effects of the violation could not be corrected or minimized. As of the date of this order, the missing annual reports are still missing. The violation cannot be mitigated because the reports were due in 2017, 2018, and 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 \$2,545. This is the amount Respondent gained by avoiding spending \$3,600 for sampling and laboratory testing costs for creation of the annual reports. This "EB" was calculated pursuant to OAR 340-012-0150(1) using the U.S. Environmental Protection Agency's BEN computer model.

PENALTY CALCULATION: $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$
 $= \$750 + [(0.1 \times \$750) \times (0 + 0 + 2 + 4 + 0)] + \$2,545$
 $= \$750 + (\$75 \times 6) + \$2,545$
 $= \$750 + \$450 + \$2,545$
 $= \$3,745$

Oregon Department of Environmental Quality
 700 NE Multnomah Street, Suite 600
 Portland, OR 97232-4100



State of Oregon
Department of Environmental Quality

Phone: 503-229-5437
 Fax: 503-229-5850

CIVIL PENALTY - ORS 468.135(2)

DATE:	June 20, 2023
RESPONSE DATE :	August 29, 2023
TOTAL PENALTY:	\$6,218.00

Account Name:	HOME DEPOT USA INC. <HOME DEPOT BEND> <124616>		
Account Type:	Vendor/Organization/Company	Reference Number:	CPGFD2300081
SubSystem ID:	190599	FIMS Acct. ID:	5368

Penalty Summary

Penalty Amount	Interest	Adjustment	Amount Paid	Total Penalty
\$ 6,218.00	\$ 0.00	\$ 0.00	\$ 0.00	\$ 6,218.00

Payment of this penalty is subject to the exercise of your options or right to appeal as described in the enclosed enforcement documents.

To Pay Online with ACH or Credit Card Visit <https://ydo.oregon.gov> and select 'Register Account'



 PLEASE RETURN THIS PORTION WITH YOUR PAYMENT



REFERENCE NO.	CPGFD2300081		
PAYCODE:	00401 7400 10040 74001 0500 000000 00		
FEE PROGRAM ID:	950	RESPONSE DATE:	August 29, 2023
FIMS ACCT. ID:	5368	TOTAL PENALTY DUE:	\$6218.00

AMOUNT ENCLOSED:

MAKE CHECK PAYABLE TO: Department of Environmental Quality

DEQ FINANCIAL SERVICES - LBX4244
 PO BOX 4244
 PORTLAND OR 97208-4244

Check this box if updated address information has been provided on the back of the form.

00401 7400 10040 74001 0500 000000 0095000053687CPGFD230008100006218007



State of Oregon
Department of
Environmental
Quality

State of Oregon Department of Environmental Quality

CIVIL PENALTY - ORS 468.135(2)

700 NE Multnomah Street, Suite 600
Portland, OR 97232-4100
Phone: 503-229-5437
Fax: 503-229-5850

Penalty Detail

Transaction Date	Description	Amount
6/16/2023	2022-553 WQ-UIC-NWR-2022-553	\$6,218.00

SFMS Agencies Use:

Trans Code	Treasury Fund	SFMS	Index	PCA (5)	Agency Object	Project #	Phase
723	00401	7400	10040	74001	0500	00000	00

Address Changes

Please visit <https://ydo.oregon.gov> to update your mailing address online or provide the following information:

Name _____
Address _____
City, State, Zip _____