



# 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

September 19, 2023

CERTIFIED MAIL: 7016 2710 0000 4221 4216

Vigor Industrial LLC  
c/o National Registered Agents, Inc.  
780 Commercial St SE, Ste 100  
Salem, Oregon 97301

Re: Notice of Civil Penalty Assessment and Order  
Case No. AQ/V-NWR-2023-110

This letter is to inform you that the Oregon Department of Environmental Quality (DEQ) has issued Vigor Industrial LLC a civil penalty of \$15,300 for an overspray incident that occurred during ship coating operations on April 22, 2023, at Vigor Industrial LLC's facility located at 5555 N. Channel Avenue in Portland, Oregon. In addition to being a violation of Vigor Industrial LLC's Title V Operating Permit, the overspray incident caused pollution to the Willamette River.

DEQ issued this penalty because the overspray incident resulted in particulate matter becoming airborne and depositing on employees' cars as well as on the surface of the Willamette River. The product that was being applied at the time of the overspray incident is known to be hazardous to aquatic life.

DEQ appreciates Vigor's efforts to ensure the violations would not be repeated by providing refresher training to the facility's painters on proper painting techniques and controls. DEQ considered these efforts when determining the amount of the 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.oregon.gov](mailto: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. 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 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 Erin Saylor at 503-229-5422 or toll free in Oregon at 800-452-4011, extension 5422.

Sincerely,



Kieran O'Donnell, Manager  
Office of Compliance and Enforcement

Enclosures

cc: Alan Sprott (via email at [Alan.Sprott@vigor.net](mailto:Alan.Sprott@vigor.net))  
Yuki Puram, DEQ NWR  
Mike Pinney, DEQ NWR  
Accounting, DEQ

1 BEFORE THE ENVIRONMENTAL QUALITY COMMISSION

2 OF THE STATE OF OREGON

3	IN THE MATTER OF:	)	NOTICE OF CIVIL PENALTY
4	VIGOR INDUSTRIAL LLC,	)	ASSESSMENT AND ORDER
5	Respondent.	)	CASE NO. AQ-V-NWR-2023-110

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 468A, ORS 468B, ORS Chapter 183 and Oregon Administrative Rules (OAR) Chapter 340,  
10 Divisions 011, 012, 208, and 218.

11 II. FINDINGS OF FACT

12 1. Respondent operates a ship building and repair facility located at 5555 N. Channel  
13 Avenue in Portland, Oregon (the Facility).

14 2. Respondent has coverage Oregon Title V Operating Permit No. 26-3224 (the Permit).  
15 Respondent is authorized to discharge air contaminants from the processes and activities directly  
16 related to or associated with air contaminant source(s) in accordance with the requirements, limitations,  
17 and conditions of the Permit.

18 3. The Permit lists ship coating operations (COAT<sub>SHIP</sub>) as one of the emissions units  
19 regulated by the Permit. COAT<sub>SHIP</sub> refers to the painting of marine vessels and vessel parts throughout  
20 the shipyard including in dry docks, berths, and shipyard paint booths.

21 4. On April 22, 2023, Respondent conducted ship coating operations on a ship in dry dock  
22 at the Facility that resulted in overspray due to wind gusts and the pace and number of workers  
23 assigned to the job. The overspray deposited on cars in the employee parking lot and on the surface of  
24 the Willamette River.

25 5. The Willamette River is a water of the state under ORS 468B.005(10).

26 6. The product Respondent over sprayed was Hempasil Nexus. The Safety Data Sheet for  
27 Hempasil Nexus indicates that the product is “harmful to aquatic life with long lasting effects.”



1 1. Pay a total civil penalty of \$15,300. The determination of the civil penalty is attached as  
2 Exhibits 1–2 and is incorporated as part of this Notice.

3 If you do not file a request for hearing as set forth in Section V below, your check or money  
4 order must be made payable to "**Department of Environmental Quality**" and sent to the **DEQ,**  
5 **Business Office, 700 NE Multnomah Street, Suite 600, Portland, Oregon 97232.**

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

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


21 Active duty Service members have a right to stay proceedings under the federal Service  
22 Members Civil Relief Act. For more information contact the Oregon State Bar at 1-800-  
23 452-8260, the Oregon Military Department at 503-584-3571, or the nearest United States Armed  
24 Forces Legal Assistance Office through <http://legalassistance.law.af.mil>. The Oregon Military  
25 Department does not have a toll free telephone number.

26 If you fail to file a timely request for hearing, the Notice will become a final order by default  
27 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

1 hearing, DEQ will issue a final order by default pursuant to OAR 340-011-0535(3). DEQ designates  
2 the relevant portions of its files, including information submitted by you, as the record for purposes of  
3 proving a prima facie case.

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9/19/2023  
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: Respondent violated OAR 340-208-0210(1) and Condition 4 of the Permit by failing to install adequate containment during ship coating operations to prevent overspray from becoming airborne.

CLASSIFICATION: This is a Class II violation pursuant to OAR 340-012-0054(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 \$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)(A) because Respondent has a Title V permit.

"P" is whether Respondent has any prior significant actions (PSAs), 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) because Respondent has had no prior air quality violations in the preceding ten years.

"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 only one occurrence of the violation. The violation occurred on April 22, 2023.

"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's Title V permit clearly requires Respondent to take reasonable precautions to prevent particulate matter from becoming airborne and Respondent previously received a warning letter related to overspray.

"C" is Respondent's efforts to correct or mitigate the violation and receives a value of -1 according to OAR 340-012-0145(6)(e) because Respondent made reasonable efforts to

ensure the violation would not be repeated by providing refresher training on painting techniques and controls to all its painters.

"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 according to OAR 340-012-0150(4) because there is insufficient information on which to make an estimate under the rule.

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

$$\begin{aligned} &= \$3,000 + [(0.1 \times \$3,000) \times (0 + 0 + 0 + 4 + -1)] + \$0 \\ &= \$3,000 + (\$300 \times 3) + \$0 \\ &= \$3,000 + \$900 + \$0 \\ &= \$3,900 \end{aligned}$$



EXHIBIT 2

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

VIOLATION: Respondent violated ORS 468B.025(1)(a) by causing pollution to waters of the state by discharging ship coating overspray to the Willamette River.

CLASSIFICATION: This is a Class I violation pursuant to OAR 340-012-0055(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:  $BP + [(0.1 \times BP) \times (P + H + O + M + C)] + EB$

"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)(D) because Respondent violated ORS 468B.025(1)(a).

"P" is whether Respondent has any prior significant actions (PSAs), 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 an initial value of 12 according to OAR 340-012-0145(2) because Respondent had two Class I violations in Case No. WQ/I-NWR-15-078, eight Class I violations and one Class II violation in Case No. WQ/SW-NWR-15-109, and two Class II violations in Case No. WQ/SW-NWR-2017-194. According to OAR 340-012-0145(2)(b), this amount is reduced to ten because the value of "P" will not exceed ten. According to OAR 340-012-0145(2)(d)(A)(ii), the value of "P" is further reduced by four because all of the FEAs in which PSAs were cited were issued more than five years before the date the current violation occurred. This makes the final value of "P" six.

"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 insufficient information on which to base a finding under paragraphs (3)(a) or (3)(b).

"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 only one occurrence of the violation. The violation occurred on April 22, 2023.

"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. By failing to ensure that overspray

did not fall into the water, Respondent failed to take reasonable care to avoid a foreseeable risk that a violation would occur.

"C" is Respondent's efforts to correct or mitigate the violation and receives a value of -1 according to OAR 340-012-0145(6)(e) because Respondent made reasonable efforts to ensure the violation would not be repeated by providing refresher training on painting techniques and controls to all its painters.

"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 according to OAR 340-012-0150(4) because there is insufficient information on which to make an estimate under the rule.

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 (6 + 0 + 0 + 4 + -1)] + \$0  
= \$6,000 + (\$600 x 9) + \$0  
= \$6,000 + \$5,400 + \$0  
= \$11,400