



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

October 24, 2023

CERTIFIED MAIL: 7016 2710 0000 4221 4278

Bushnell's Warehousing and Trucking Corp.
c/o Richard Dale Bushnell, Registered Agent
5617 N. Basin Ave.
Portland, OR 97217

Re: Notice of Civil Penalty Assessment and Order
Case No. LQ/HW-NWR-2023-536

This letter is to inform you that the Oregon Department of Environmental Quality (DEQ) has issued Bushnell's Warehousing and Trucking Corp. a civil penalty of \$3,300 for hazardous waste violations at its facility in Portland. You failed to determine whether a drum of waste generated at the facility was hazardous. DEQ also cited you, without penalty, for the following violations of hazardous waste requirements: failing to mark a hazardous waste container with an indication of hazard or an accumulation start date, failing to keep a hazardous waste container closed, storing hazardous waste past the time allowed, failing to amend the facility's contingency plan, and failing to timely submit to DEQ an accurate annual hazardous waste generator report.

DEQ issued this penalty because determining whether wastes you generate are hazardous is the cornerstone of safe management and disposal. 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, 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.

DEQ appreciates your efforts to address the violations, including hiring a contractor to characterize and properly dispose of the hazardous waste. DEQ considered these efforts when determining the amount of civil penalty.

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 and note the case number on your check.

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 – 503-229-5100

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 Esther Westbrook at 503-229-5374 or toll free in Oregon at 800-452-4011, extension 5374.

Sincerely,



Kieran O'Donnell, Manager
Office of Compliance and Enforcement

Enclosures

cc: Michelle Olson, Northwest Region Office, DEQ
Audrey O'Brien, Northwest Region Office, DEQ
Accounting, DEQ

1 BEFORE THE ENVIRONMENTAL QUALITY COMMISSION

2 OF THE STATE OF OREGON

3	IN THE MATTER OF:)	
4	BUSHNELL'S WAREHOUSING,)	NOTICE OF CIVIL PENALTY
4	AND TRUCKING CORP.,)	ASSESSMENT AND ORDER
5	an Oregon corporation,)	
5	Respondent.)	CASE NO. LQ/HW-NWR-2023-536

6
7 I. AUTHORITY

8 The Department of Environmental Quality (DEQ) issues this Notice of Civil Penalty Assessment
9 and Order (Notice) pursuant to Oregon Revised Statutes (ORS) 468.100, ORS 468.126 through 468.140,
10 ORS 465.900, ORS 466.990, ORS Chapter 183 and Oregon Administrative Rules (OAR) Chapter 340,
11 Divisions 011, 012, and 100-102.

12 II. FINDINGS OF FACT

13 1. At all material times, Respondent operated a warehousing and trucking facility at 5617
14 N. Basin Avenue in Portland, Multnomah County, Oregon (the Facility).

15 2. Respondent is registered with DEQ as a hazardous waste generator under U.S.
16 Environmental Protection Agency (EPA) Identification Number ORQ000023630.

17 3. On January 26, 2023, DEQ inspected the Facility.

18 4. On January 26, 2023, Respondent stored a 55-gallon steel drum in the 90-day hazardous
19 waste accumulation area. The drum was not labeled. The drum contained an unknown liquid. The drum
20 was rusted and damaged and had puncture holes on the top.

21 5. As of January 26, 2023, Respondent had not performed a hazardous waste determination
22 on the residue described in Paragraph 4 above.

23 6. The drum described in Paragraph 4 above had used pH strips on top of the drum. The pH
24 strips showed a pH of 1-2, indicating that the contents of the drum were acidic and corrosive. The drum
25 did not have any indication of hazard marked on it.

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1 7. On January 26, 2023, the Facility's contingency plan listed its address as 2720 NW 35th
2 Avenue in Portland, which was its previous location. The map in the contingency plan represented the
3 building at the previous location as well.

4 8. On February 6, 2023, DEQ reviewed Respondent's records at the Facility. There were
5 hazardous waste manifests from December 2022 showing that Respondent disposed of 7,146 pounds of
6 D001 and D002 hazardous wastes during December 2022.

7 9. On February 6, 2023, the drum described in Paragraph 4 above was labeled as required,
8 except that it did not state the accumulation start date.

9 10. On or about March 1, 2023, Respondent submitted to DEQ a photo showing an updated
10 label indicating an accumulation start date of June 15, 2022.

11 11. On or about May 25, 2023, Respondent disposed of the waste described in Paragraph 4
12 above.

13 12. On or about February 14, 2023, Respondent submitted an annual hazardous waste
14 generator report to DEQ for 2022. The report indicated that Respondent generated 5 pounds of D001
15 waste in 2022.

16 13. On or about April 19, 2023, Respondent submitted a revised annual hazardous waste
17 generator report to DEQ for 2022. The report indicated that Respondent generated 5 pounds of D001
18 waste in 2022.

19 14. On or about June 9, 2023, Respondent submitted an accurate annual hazardous waste
20 generator report to DEQ for 2022.

21 III. CONCLUSIONS

22 Based upon the foregoing Findings of Fact, DEQ has determined that Respondent violated the
23 following provisions of Oregon law, including the hazardous waste laws in the Code of Federal
24 Regulations (CFRs) as adopted by OAR 340-100-0002.

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1 1. Respondent violated OAR 340-102-0011(2) by failing to completely and accurately determine
2 if residue, as defined in OAR 340-100-0010(2)(hh) and 40 CFR 261.2, generated at the Facility was
3 hazardous waste upon generation, as described in Section II above. The waste in the drum described in
4 Section II, Paragraph 4 above was solid waste according to 40 CFR 261.2(b)(3) because it was
5 accumulated or stored before or in lieu of being disposed of. The waste was corrosive hazardous waste
6 pursuant to 40 CFR 261.22(a)(1) because it was aqueous and had a pH of less than or equal to 2. This
7 waste is identified by EPA Hazardous Waste Number D002 according to 40 CFR 261.22(b). This is a
8 Class I violation according to OAR 340-012-0068(1)(a). DEQ hereby assesses a \$3,300 civil penalty for
9 this violation.

10 2. Respondent failed to mark a hazardous waste container with an indication of hazard
11 indicating that it was corrosive in violation of 40 CFR 262.17(a)(5)(i)(B), as described in Section II,
12 Paragraph 6 above. This is a class II violation according to OAR 340-012-0068(2)(b). DEQ has not
13 assessed a civil penalty for this violation.

14 3. Respondent failed to keep a hazardous waste container closed in violation of 40 CFR
15 262.17(a)(1)(iv), as described in Section II, Paragraph 4 above. This is a class II violation according to
16 OAR 340-012-0068(2)(m). DEQ has not assessed a civil penalty for this violation.

17 4. Respondent failed to mark a hazardous waste container with the accumulation start date, as
18 described in Section II, Paragraphs 4, 9 and 10 above, in violation of 40 CFR 262.17(a)(5)(i)(C). This is a
19 class II violation according to OAR 340-012-0068(2)(a). DEQ has not assessed a civil penalty for this
20 violation.

21 5. Respondent stored hazardous waste past ninety (90) days in violation of 40 CFR 262.17(a).
22 Specifically, Respondent stored hazardous waste from on or about June 15, 2022 to on or about May 25,
23 2023. This is a class II violation according to OAR 340-012-0068(2)(d). DEQ has not assessed a civil
24 penalty for this violation.

25 6. Respondent failed to amend its contingency plan after relocating to a new facility, in violation
26 of 40 CFR 262.263(c), as described in Section II, Paragraph 7 above. This is a class II violation according
27 to OAR 340-012-0068(2)(o). DEQ has not assessed a civil penalty for this violation.

1 7. Respondent failed to timely submit to DEQ an accurate annual hazardous waste generator
2 report as required for a large quantity generator of hazardous waste for 2022, in violation of OAR 340-
3 102-0041(2), as described in Section II, Paragraphs 8 and 12 – 14 above. This is a Class II violation
4 according to OAR 340-012-0053(2). DEQ has not assessed a civil penalty for this violation.

5 IV. ORDER TO PAY CIVIL PENALTY

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

8 Pay a civil penalty of \$3,300. The determination of the civil penalty is attached as Exhibit No.
9 1, which is incorporated as part of this Notice.

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

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

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

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

21 You have a right to a contested case hearing on this Notice, if you request one in writing. DEQ
22 must receive your request for hearing **within 20 calendar days** from the date you receive this Notice. If
23 you have any affirmative defenses or wish to dispute any allegations of fact in this Notice or attached
24 exhibit, you must do so in your request for hearing, as factual matters not denied will be considered
25 admitted, and failure to raise a defense will be a waiver of the defense. (See OAR 340-011-0530 for
26 further information about requests for hearing.) You must send your request to: **DEQ, Office of**
27 **Compliance and Enforcement, 700 NE Multnomah Street, Suite 600, Portland, Oregon 97232, fax**

1 it to 503-229-6762 or email it to DEQappeals@deq.oregon.gov. An administrative law judge
2 employed by the Office of Administrative Hearings will conduct the hearing, according to ORS
3 Chapter 183, OAR Chapter 340, Division 011, and OAR 137-003-0501 to 0700. You have a right to be
4 represented by an attorney at the hearing, however you are not required to be. If you are an individual,
5 you may represent yourself. If you are a corporation, partnership, limited liability company,
6 unincorporated association, trust, or government body, you must be represented by an attorney or a
7 duly authorized representative, as set forth in OAR 137-003-0555.

8 Active-duty Service members have a right to stay proceedings under the federal Service
9 Members Civil Relief Act. For more information contact the Oregon State Bar at 1-800-
10 452-8260, the Oregon Military Department at 503-584-3571, or the nearest United States Armed
11 Forces Legal Assistance Office through <http://legalassistance.law.af.mil>. The Oregon Military
12 Department does not have a toll-free telephone number.

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

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21 10/24/2023
22 Date



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27 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: Failing to accurately determine if Respondent's residue (as defined in OAR 340-100-0010(2)(hh) and 40 CFR 261.2 as adopted by OAR 340-100-0002) was hazardous waste, in violation of OAR 340-102-0011(2).

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

MAGNITUDE: The magnitude of the violation is minor pursuant to OAR 340-012-0135(4)(a)(C) because Respondent failed to make a hazardous waste determination on one waste stream.

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 at the time of the hazardous waste rule violation, Respondent was a large quantity generator 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 340-012-0030(2)(a)(A), because Respondent does not have any 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 0 according to OAR 340-012-0145(4)(a) because there was only one occurrence of the violation. Respondent failed to characterize one waste stream.

"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 accumulated and stored one barrel of waste with unknown contents. The barrel was corroded and had openings on the top, which presented a risk of exposure to employees at the facility. By failing to timely perform a hazardous waste determination, Respondent failed to take reasonable care to avoid a foreseeable risk that it would violate Oregon law.

"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 made reasonable efforts to correct the violation by hiring a contractor to characterize and properly dispose of the hazardous waste.

"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 the economic benefit received from delaying characterizing the waste, if any, was de minimis.

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

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

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:	October 24, 2023
RESPONSE DATE :	January 2, 2024
TOTAL PENALTY:	\$3,300.00

Account Name:	BUSHNELL'S WAREHOUSING AND TRUCKING		
Account Type:	Vendor/Organization/Company	Reference Number:	CPGFD2400014
SubSystem ID:	186135	FIMS Acct. ID:	8944

Penalty Summary

Penalty Amount	Interest	Adjustment	Amount Paid	Total Penalty
\$ 3,300.00	\$ 0.00	\$ 0.00	\$ 0.00	\$ 3,300.00

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.	CPGFD2400014		
PAYCODE:	00401 7400 10040 74001 0500 000000 00		
FEE PROGRAM ID:	950	RESPONSE DATE:	January 2, 2024
FIMS ACCT. ID:	8944	TOTAL PENALTY DUE:	\$3300.00

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 0095000089449CPGFD24000140000330000?



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
10/23/2023	2023-536 LQ-HW-NWR-2023-536	\$3,300.00

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 _____