



# 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

January 23, 2024

CERTIFIED MAIL: 9589 0710 5270 0688 6538 09

Wireless Structures Consulting, Inc.  
dba Western Utility Telecom, Inc.  
c/o Adrian McJunkin, Registered Agent  
2409 Crestmont Cir S  
Salem OR 97302

Re: Notice of Civil Penalty Assessment and Order  
Case No. LQ-HW-WR-2022-646

This letter is to inform you that the Oregon Department of Environmental Quality (DEQ) has issued Wireless Structures Consulting, Inc. dba Western Utility Telecom, Inc. a civil penalty of \$16,400 for failing to determine whether its wastes were hazardous and for shipping hazardous wastes off-site without a manifest, at its facility in Salem. In the enclosed Notice, DEQ also cited you without penalty for failing to label a tank of used oil.

DEQ issued this penalty because determining whether all the wastes you generate (such as ignitable and toxic solvents) are hazardous is the cornerstone to ensuring they are managed safely and legally, including storage on site, as well as transportation and disposal off-site. Additionally, DEQ is concerned that coverage under the 1200-Z general industrial stormwater permit may be required for your Facility, as explained in the Pre-Enforcement Notice DEQ sent to you.

Included in Section IV is an order requiring you to evaluate the Facility's potential to discharge stormwater to waters of the state and submit documentation of that evaluation to DEQ.

DEQ appreciates your efforts to address the other violations and 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.

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.

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 Sarah Wheeler at 971-301-0622.

Sincerely,



Kieran O'Donnell, Manager  
Office of Compliance and Enforcement

Enclosures

cc: Aubree Minten, DEQ  
Kathy Jacobsen, DEQ  
Accounting, DEQ  
Wireless Structures Consulting, Inc., dba Western Utility Telecom, Inc., 5032 Salem Dallas Hwy  
NW, Salem OR 97304  
Jesse Lavalley, [JesseL@westernutilitytelecom.com](mailto:JesseL@westernutilitytelecom.com)

1 BEFORE THE ENVIRONMENTAL QUALITY COMMISSION

2 OF THE STATE OF OREGON

3 IN THE MATTER OF: ) NOTICE OF CIVIL PENALTY  
4 WIRELESS STRUCTURES ) ASSESSMENT AND ORDER  
5 CONSULTING, INC., dba )  
WESTERN UTILITY TELECOM, INC., ) CASE NO. LQ-HW-NWR-2022-646  
Respondent. )

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 466.990 ORS Chapters 183 and 468B, and Oregon Administrative Rules (OAR) Chapter 340,  
10 Divisions 011, 012, 045, and 100-102.

11 II. FINDINGS OF FACT

12 1. Respondent operates a business producing steel poles, structures, and related products  
13 for the telecommunications and utility industries at 5032 Salem-Dallas Highway NW in Salem, Oregon  
14 (the Facility).

15 2. On August 24, 2022, and October 13, 2022, DEQ staff inspected the Facility. At the  
16 time of the inspection, Respondent had generated at least 220 pounds of hazardous waste in one month  
17 at the Facility.

18 3. On and before August 24, 2022, Respondent generated and stored the following wastes  
19 at the Facility:.

20 a. Two full 55-gallon containers (917 pounds) storing a liquid and solid mixture of  
21 chemicals;

22 b. One full 55-gallon container of liquid (459 pounds);

23 c. One 55-gallon container approximately one-third full of liquid (153 pounds);

24 d. One five-gallon bucket half-full of a liquid and solid mixture (21 pounds);

25 e. Two full 55-gallon containers of unknown ignitable liquid (917 pounds);

26 f. One full 55-gallon container of unknown liquid mixed with solids (459 pounds);

27 g. Used, waste rags with residue of methyl ethyl ketone (MEK) disposed of in the

Facility's general trash;

- 1 h. Aerosol cans containing residues of waste solvents and paints disposed of in the
- 2 Facility's general trash;
- 3 i. Spent blast media;
- 4 j. Dried Corrocoat;
- 5 k. Expired liquid Corrocote A; and
- 6 l. Expired liquid Corrocote B.

7 4. At the time of generation of the wastes listed in Section II, Paragraph 3 above, and as of  
8 August 24, 2022, Respondent was unaware of what the wastes were or whether they were hazardous  
9 waste.

10 5. On December 6, 2022, and March 20, 2023, Respondent offered the wastes listed in  
11 Paragraph 3. a-f above for transportation and disposal at a permitted hazardous waste disposal facility,  
12 without preparing or signing a hazardous waste manifest for each of these shipments.

13 6. On and before August 24, 2022, and until approximately September 15, 2022,  
14 Respondent stored used oil in an above-ground storage tank without labeling the tank as "used oil."

15 7. On and before August 24, 2022, and ongoing as of the date of this Notice, Respondent  
16 stores finished metal products, raw materials, and chemicals stored outside, and exposed to rainfall.

17 8. On and before August 24, 2022, and ongoing as of the date of this Notice, Respondent  
18 conducts metal coating and sandblasting, and stores spent sandblast grit, outside at the Facility.

### 19 III. CONCLUSIONS

20 Based upon the foregoing Findings of Fact, DEQ has determined that Respondent violated the  
21 following provisions of Oregon law, including hazardous waste and used oil laws adopted by OAR  
22 340-100-0002.

23 1. Respondent violated OAR 340-102-0011(2) by failing to completely and accurately  
24 determine if Respondent's residues (as defined in OAR 340-100-0010(2)(hh) and 40 CFR 261.2) at the  
25 Facility were hazardous wastes upon generation, as described in Section II, Paragraph 3 above. The wastes  
26 listed in Section II, Paragraph 3 above were all solid wastes according to 40 CFR 261.2(a)(1),  
27 261.2(a)(2)(i)(A), and 261.2(b)(1) and (3), because they were stored before or in lieu of disposal, and

1 Respondent ultimately disposed of them. The wastes listed in Section II, Paragraph 3. a-f above were  
2 hazardous wastes identified by EPA Hazardous Waste Numbers D001, D005, and D035, pursuant to 40  
3 CFR 261.24. These are Class I violations, according to OAR 340-012-0068(1)(a). DEQ hereby assesses a  
4 \$11,200 civil penalty for these violations.

5 2. On and about December 6, 2022 and March 20, 2023, Respondent violated 40 CFR  
6 263.20(a)(1) by offering hazardous waste for transport without a manifest, as described in Section II,  
7 Paragraphs 3-4 above. These are Class I violations according to OAR 340-012-0068(1)(e). DEQ hereby  
8 assesses a \$5,200 civil penalty for these violations.

9 3. Respondent violated 40 CFR 279.22(c)(1) by failing to label one tank of used oil with the  
10 words "used oil," as described in Section II, Paragraph 5 above. This is a Class II violation, according to  
11 OAR 340-012-0072(2)(e). DEQ has not assessed a civil penalty for this violation.

#### 12 IV. ORDER TO PAY CIVIL PENALTY AND TO COMPLY

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

15 1. Pay a total civil penalty of \$16,400. The determination of the civil penalty is attached as  
16 Exhibits 1 and 2 which 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.

27 ///

1           2. Within 30 days of this order becoming final by operation of law or on appeal, submit an  
2 evaluation of the Facility's potential to discharge stormwater to waters of the state and supporting  
3 documentation to Kathy Jacobsen, DEQ, at [Kathy.jacobsen@deq.oregon.gov](mailto:Kathy.jacobsen@deq.oregon.gov). The evaluation should  
4 specifically include, but is not limited to: maps, drawings, and/or photographs of interior and exterior  
5 piping, vaults, drains, catch basins, culverts, ditches, or other connections to Rickreall Creek that could  
6 provide a pathway for stormwater from the Facility to flow to waters of the state.

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


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

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

27    ///

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

7  
8  
9  
10 1/23/2024  
11 Date

  
11 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 residues (as defined in OAR 340-100-0010(2)(hh) and 40 CFR 261.2 as adopted by OAR 340-100-0002) were hazardous waste, in violation of OAR 340-102-0011(2).
- CLASSIFICATION: These are Class I violations pursuant to OAR 340-012-0068(1)(a).
- MAGNITUDE: The magnitude of the violations is major pursuant to OAR 340-012-0135(4)(a)(A) because Respondent failed to make a hazardous waste determination on at least five waste streams.
- 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 \$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) because at the time of the hazardous waste rule violation, Respondent was a small 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 340-012-0145(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 3 according to OAR 340-012-0145(4)(c) because there were between seven and 28 occurrences of the violation. Each repeated occurrence of the same violation is a separate occurrence when determining the O factor, according to OAR 340-012-0145(4). Respondent did not accurately characterize 13 waste streams as hazardous waste upon their generation.
- "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 as defined by OAR 340-012-0030(15). Respondent stored large amounts of wastes for years without determining whether they were hazardous wastes. Respondent received hazardous waste technical assistance from DEQ in early 2022, and Respondent's staff has taken training on hazardous waste regulations from DEQ. By failing to apply the knowledge from hazardous waste technical assistance to determine whether Respondent's wastes were hazardous, Respondent failed to take reasonable care to avoid the foreseeable risk of committing this violation.



"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 minimize the effects of the violation by conducting hazardous waste determinations on all of the waste streams and properly disposing of the wastes following DEQ's inspections.

"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 Respondent gained by delaying the costs of compliance are de minimis, as calculated using the U.S. Environmental Protection Agency's BEN computer model, pursuant to OAR 340-012-0150(1).

PENALTY CALCULATION:  $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$   
= \$8,000 + [(0.1 x \$8,000) x (0 + 0 + 3 + 4 + (-3))] + \$0  
= \$8,000 + (\$800 x 4) + \$0  
= \$8,000 + \$3,200 + \$0  
= \$11,200

EXHIBIT NO. 2

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

VIOLATION 2: Offering hazardous waste for transport without a uniform hazardous waste manifest, in violation of 40 CFR 262.20(a)(1).

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

MAGNITUDE: The magnitude of the violation is moderate pursuant to OAR 340-012-0135(4)(c)(B)(i) because Respondent offered 2,926 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 \$4,000 for a Class I, moderate magnitude violation in the matrix listed in OAR 340-012-0140(3)(b)(A)(ii) and applicable pursuant to OAR 340-012-0140(3)(a)(J) because at the time of the hazardous waste rule violation, Respondent was a small 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 within the past 10 years per OAR 340-012-0145(2)(d)(B), 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 were two occurrences of the violation. Respondent offered two shipments of hazardous waste without a manifest, one on December 6, 2022, and again on March 20, 2023.

"M" is the mental state of the Respondent and receives a value of 2 according to OAR 340-012-0145(5)(b) because Respondent reasonably should have known of the requirement to ship hazardous waste offsite on a hazardous waste manifest, given Respondent's experience and training with hazardous waste regulations. Prior to the December 2022 shipment, Respondent identified itself as a small quantity generator to Respondent's transporter, and prior to the March 2023 shipment, Respondent specifically requested that the transporter use a hazardous waste manifest. However, Respondent ultimately offered both shipments without preparing or signing a hazardous waste manifest.

"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 that the violation would not be repeated. Respondent shipped hazardous waste off site in April 2023 with a hazardous waste manifest.

"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 there is insufficient information to make an estimate of the economic benefit, if any, received by Respondent from this violation.

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

$$\begin{aligned} &= \$4,000 + [(0.1 \times \$4,000) \times (0 + 0 + 2 + 2 + (-1))] + \$0 \\ &= \$4,000 + [\$400 \times 3] + \$0 \\ &= \$4,000 + \$1,200 + \$0 \\ &= \$5,200 \end{aligned}$$

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)**

<b>DATE:</b>	January 23, 2024
<b>RESPONSE DATE :</b>	April 2, 2024
<b>TOTAL PENALTY:</b>	\$16,400.00

<b>Account Name:</b>	WESTERN UTILITY TELECOM		
<b>Account Type:</b>	Vendor/Organization/Company	<b>Reference Number:</b>	CPGFD2400036
<b>SubSystem ID:</b>	204794	<b>FIMS Acct. ID:</b>	6297

**Penalty Summary**

Penalty Amount	Interest	Adjustment	Amount Paid	Total Penalty
\$ 16,400.00	\$ 0.00	\$ 0.00	\$ 0.00	\$ 16,400.00

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'



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 PLEASE RETURN THIS PORTION WITH YOUR PAYMENT



<b>REFERENCE NO.</b>	CPGFD2400036		
<b>PAYCODE:</b>	00401 7400 10040 74001 0500 000000 00		
<b>FEE PROGRAM ID:</b>	950	<b>RESPONSE DATE:</b>	April 2, 2024
<b>FIMS ACCT. ID:</b>	6297	<b>TOTAL PENALTY DUE:</b>	\$16400.00

**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 00950000062970(CPGFD)240003600016400000



Slate 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
1/22/2024	2022-646 LQ-HW-WR-2022-646	\$16,400.00

### 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 \_\_\_\_\_