



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

February 27, 2024

CERTIFIED MAIL: 9859 0710 5270 0688 6529 01

IXS Coatings
1155 Richard Petty Way
Lebanon TN 37090

Re: Notice of Civil Penalty Assessment and Order
Case No. LQ-HW-WR-2023-623

This letter is to inform you that the Oregon Department of Environmental Quality (DEQ) has issued you a civil penalty of \$4,800 for failing to provide information about hazardous substances to DEQ. The waste in question was illegally dumped by a third party along Highway 164.

DEQ issued this penalty because in order to effectively investigate and mitigate risks to public health and the environment, prompt disclosure of information following a release of hazardous substances is critical. Because DEQ did not receive any requested information from you until five months after the initial request, DEQ's investigation into the responsible party was hindered and delayed. DEQ initially requested information from IXS on April 28, 2023, after DEQ staff responded to an illegal dump of wastes. DEQ then followed up in May and June by issuing IXS additional requests for the information, and a Warning Letter with Opportunity to Correct on August 2, 2023. When your company did not provide the information, DEQ sent a Pre-Enforcement Notice on September 7, 2023.

DEQ appreciates your efforts to minimize the impacts of the violation by eventually forwarding DEQ's request to a representative of LINE-X who responded to DEQ with some information on September 19, 2023. DEQ considered these efforts when determining the amount of civil penalty. As of the date of this Notice, DEQ has not been able to determine who is responsible for the illegal dumping, and DEQ's investigation is ongoing.

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.

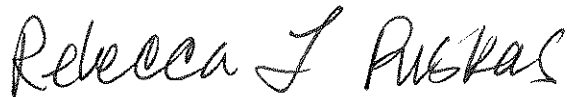
The attached Notice further details DEQ's reasons for issuing the penalty and provides further instructions for appealing the penalty. Please review and refer to it when discussing this case with DEQ.

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 Sarah Wheeler at 971-301-0622.

Sincerely,



Becca Puskas, Interim Manager
Office of Compliance and Enforcement

Enclosures

cc: Chris Bayham, DEQ
Chuck Davis, cwdavis@ixscoatings.com
Chris Lunsford, clunsford@ixscoatings.com

1 BEFORE THE ENVIRONMENTAL QUALITY COMMISSION

2 OF THE STATE OF OREGON

3 IN THE MATTER OF:
4 IXS COATINGS,

Respondent.) NOTICE OF CIVIL PENALTY
) ASSESSMENT AND ORDER
) CASE NO. LQ-HW-WR-2023-623

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 465.900, ORS Chapter 183 and Oregon Administrative Rules (OAR) Chapter 340, Divisions 011 and
10 012.

11 II. FINDINGS OF FACT

12 1. On April 27, 2023, DEQ investigated six abandoned containers along Oregon Highway
13 164 near the overpass of Interstate Highway 5 (dump site). The contents of some of the containers were
14 released onto the soil at the dump site. Two of the containers were 55-gallon drums marked "LINE-X."

15 2. Respondent is the parent company and owner of the brand name LINE-X.

16 3. Samples of the released materials and soil at the dump site detected lead, cadmium,
17 chromium, benzene, perchloroethylene, and creosols.

18 4. On April 28, 2023, Respondent's representative told DEQ staff that Respondent had
19 records identifying the LINE-X franchisee that received the drums found at the dump site.

20 5. On April 28, 2023, DEQ staff requested from Respondent, in a telephone call and in an
21 email, information on the origin of the 55-gallon drums labeled LINE-X. In the email, DEQ provided
22 photographs of the drum labeling information, including lot number, manufacture date, and product
23 number.

24 6. On May 5, 2023, DEQ staff emailed Respondent a second request for the information,
25 specifically for the contact information of the franchise business that received the drums in the
26 photographs and referencing ORS 465.250(1) as authority.

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1 7. On June 14, 2023, DEQ staff emailed Respondent, again requesting information on the
2 identity of the person or business potentially responsible for the drums at the dump site.

3 8. On August 2, 2023, DEQ sent Respondent a Warning Letter with Opportunity to
4 Correct, notifying Respondent of the violation of ORS 456.250(1) and again requesting the
5 information.

6 9. On September 7, 2023, DEQ sent Respondent a Pre-Enforcement Notice, again
7 notifying Respondent of the violation of ORS 465.250(1) and requesting the information.

8 10. On September 19, 2023, a LINE-X representative provided some information responsive
9 to DEQ's request.

10 III. CONCLUSIONS

11 Respondent violated ORS 465.250(1) by failing to provide information about hazardous
12 substances to DEQ upon request, as described in Section II above. This is a Class II violation, according
13 to OAR 340-012-0073(2)(a). DEQ hereby assesses a \$4,800 civil penalty for this violation.

14 IV. ORDER TO PAY CIVIL PENALTY

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

17 Pay a total civil penalty of \$4,800. The determination of the civil penalty is attached as Exhibit 1
18 and is incorporated as part of this Notice.

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

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

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

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

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

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

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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.

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8
9 2/27/2024
10

11 Date

Rebecca L Puskas
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Becka Puskas, Interim 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 Failing to provide required information about hazardous substances upon request, in violation of ORS 465.250(1).

CLASSIFICATION: This is a Class II violation pursuant to OAR 340-012-0073(2)(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 \$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)(P), because Respondent violated ORS Chapter 465.

"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 0 according to OAR 340-012-0145(4)(a) because there was only one occurrence of the violation.

"M" is the mental state of the Respondent, and receives a value of 8 according to OAR 340-012-0145(5)(d) because Respondent failed to act intentionally with actual knowledge of the requirement. DEQ first requested the information on April 28, 2023, and did not receive any information in response until September 19, 2023, after DEQ sent multiple follow-up email requests, a Warning Letter with Opportunity to Correct, and a Pre-Enforcement Notice. As early as May 5, 2023, DEQ notified Respondent in writing that ORS 465.250(1) requires any person who has or may have information relevant to the release of hazardous substances or to the potentially responsible person must provide that information to DEQ upon request.

"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 some efforts to minimize the effects of the violation. On May 22, 2023, Respondent replied to DEQ that they were looking into the request. On September 19, 2023, DEQ received some information from LINE-X in response to the request.

"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 any economic benefit gained as a result of this violation is de minimis.

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

$$\begin{aligned} &= \$3,000 + [(0.1 \times \$3,000) \times (0 + 0 + 0 + 8 + (-2))] + \$0 \\ &= \$3,000 + (\$300 \times 6) + \$0 \\ &= \$3,000 + \$1,800 + \$0 \\ &= \$4,800 \end{aligned}$$

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: | February 27, 2024 |
| RESPONSE DATE : | May 7, 2024 |
| TOTAL PENALTY: | \$4,800.00 |

| | | | |
|----------------------|-----------------------------|--------------------------|--------------|
| Account Name: | IXS COATINGS | | |
| Account Type: | Vendor/Organization/Company | Reference Number: | CPGFD2400044 |
| SubSystem ID: | 214633 | FIMS Acct. ID: | 15342 |

Penalty Summary

| Penalty Amount | Interest | Adjustment | Amount Paid | Total Penalty |
|----------------|----------|------------|-------------|---------------|
| \$ 4,800.00 | \$ 0.00 | \$ 0.00 | \$ 0.00 | \$ 4,800.00 |

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.: | CPGFD2400044 | | |
| PAYCODE: | 00401 7400 10040 74001 0500 000000 00 | | |
| FEE PROGRAM ID: | 950 | RESPONSE DATE: | May 7, 2024 |
| FIMS ACCT. ID: | 15342 | TOTAL PENALTY DUE: | \$4800.00 |

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 0095000153425CPGFD240004400004800007



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 |
|------------------|----------------------------|------------|
| 2/26/2024 | 2023-623 LQ-HW-WR-2023-623 | \$4,800.00 |

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://vdo.oregon.gov> to update your mailing address online or provide the following information:

Name _____
Address _____
City, State, Zip _____