



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

August 8, 2024

CERTIFIED MAIL: 9589 0710 5270 0688 6525 98

Lowe's Home Centers, LLC
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. LQ/HW-WR-2024-524

This letter is to inform you that the Oregon Department of Environmental Quality (DEQ) has issued you a civil penalty of \$22,666 for hazardous waste violations at your facility in Lebanon. You failed to determine whether wastes generated at the facility were hazardous over a period of almost three years. DEQ also cited you, without penalty, for failing to maintain adequate aisle space in the hazardous waste storage area.

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.

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,

A handwritten signature in black ink that reads "Becca Puskas". The signature is fluid and cursive, with the first name "Becca" and last name "Puskas" clearly legible.

Becka Puskas, Interim Manager
Office of Compliance and Enforcement

Enclosures

cc: Bryan Gadberry, Lowe's Regional Environmental Compliance Coordinator:
bryan.gadberry@lowes.com
Robert Gass, Lowes's Director of Hazardous Materials & Environmental Compliance:
robert.a.gass@lowes.com
Killian Condon, Eugene Office, Western Region, DEQ
Becky Williams, Eugene Office, Western Region, DEQ
Accounting, DEQ

BEFORE THE ENVIRONMENTAL QUALITY COMMISSION
OF THE STATE OF OREGON

IN THE MATTER OF:)	
LOWE'S HOME CENTERS, LLC,)	NOTICE OF CIVIL PENALTY
a North Carolina limited liability company,)	ASSESSMENT AND ORDER
)	
Respondent.)	CASE NO. LQ/HW-WR-2024-524

I. AUTHORITY

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

II. FINDINGS OF FACT

1. At all material times, Respondent operated a warehouse and distribution center for its retail home improvement stores (Lowe's RDC #1436) located at 1001 Reeves Parkway in Lebanon, Linn County, Oregon (the Facility).

2. At all material times, Respondent generated more than 2,200 pounds of hazardous waste in a calendar month at the Facility. Respondent is a large quantity generator registered under RCRA ID #ORQ000026886.

3. On December 9, 2021, DEQ inspected the Facility. DEQ conducted a follow-up inspection and records review on August 24, 2022, and conducted further records review on December 7, 2022.

4. There have been numerous spills of products at the Facility, including cleaning products, fertilizers, pesticides, paint, and solvents. After Respondent cleaned up the spills, the remaining product and the supplies used to clean up the spill, such as absorbent materials and gloves, became solid waste under 40 CFR 261.2(a)(1) because they were discarded material, and residues under OAR 340-100-0010(2)(hh). Respondent designated these residues as "unknown" prior to disposing of them.

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5. Between January 2020 and November 2022, Respondent generated and disposed of approximately ninety (90) containers of “unknown” residues, totaling approximately 656.4 pounds.

6. Waste pesticides are pesticide residue according to OAR 340-100-0010(3)(j), and Oregon-only hazardous waste according to OAR 340-101-0033(6).

7. Respondent disposed of approximately 18 containers of pesticide residues totaling approximately 3,205 pounds, on the following dates: February 3, 2022, February 23, 2022, March 14, 2022, April 12, 2022, May 18, 2022, August 8, 2022, and October 19, 2022.

8. Respondent did not perform hazardous waste determinations on the residues described in Paragraphs 4 - 7 above prior to disposing of them.

9. On December 9, 2021, there were two 55-gallon drums of corrosive hazardous waste, labeled as such, stored in the 90-day central accumulation area at the Facility, which were inaccessible due to inadequate aisle space.

III. CONCLUSIONS

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

1. Between January 2020 and November 2022, Respondent violated OAR 340-102-0011(2) by failing to completely and accurately determine if residues, as defined in OAR 340-100-0010(2)(hh) and 40 CFR 261.2, generated at the Facility were hazardous waste upon generation. Specifically, Respondent failed to conduct hazardous waste determinations on approximately 90 containers of spill residue and 18 containers of pesticide residue, as described in Section II, Paragraphs 1 - 8 above. This is a Class I violation according to OAR 340-012-0068(1)(a). DEQ hereby assesses a \$22,666 civil penalty for this violation.

2. On December 9, 2021, Respondent failed to maintain aisle space to allow the unobstructed movement of personnel, fire protection equipment, spill control equipment, and decontamination equipment to any area of facility operation in an emergency, in violation of 40 CFR 262.255, as described
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1 in Section II, Paragraph 9 above. This is a Class II violation according to OAR 340-012-0068(2)(k). DEQ
2 has not assessed a civil penalty for this violation.

3 IV. ORDER TO PAY CIVIL PENALTY

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

6 Pay a civil penalty of \$22,666. The determination of the civil penalty is attached as Exhibit No.
7 1, which is incorporated as part of this Notice.

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

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

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

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

19 You have a right to a contested case hearing on this Notice, if you request one in writing. DEQ
20 must receive your request for hearing **within 20 calendar days** from the date you receive this Notice. If
21 you have any affirmative defenses or wish to dispute any allegations of fact in this Notice or attached
22 exhibit, you must do so in your request for hearing, as factual matters not denied will be considered
23 admitted, and failure to raise a defense will be a waiver of the defense. (See OAR 340-011-0530 for
24 further information about requests for hearing.) You must send your request to: **DEQ, Office of**
25 **Compliance and Enforcement, 700 NE Multnomah Street, Suite 600, Portland, Oregon 97232**, fax
26 it to **503-229-6762** or email it to **DEQappeals@deq.oregon.gov**. An administrative law judge
27 employed by the Office of Administrative Hearings will conduct the hearing, according to ORS

Chapter 183, OAR Chapter 340, Division 011, and OAR 137-003-0501 to 0700. You have a right to be represented by an attorney at the hearing, however you are not required to be. If you are an individual, you may represent yourself. If you are a corporation, partnership, limited liability company, unincorporated association, trust, or government body, you must be represented by an attorney or a duly authorized representative, as set forth in OAR 137-003-0555.

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

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

8/8/2024
Date

Rebecca J Puskas
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 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: This is a Class I violation pursuant to OAR 340-012-0068(1)(a).
- MAGNITUDE: The magnitude of the violation is major pursuant to OAR 340-012-0135(4)(a)(C) because Respondent failed to make hazardous waste determinations on approximately 91 waste streams, including approximately 90 unknown wastes and pesticide residue.
- 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 \$12,000 for a Class I, major magnitude violation in the matrix listed in OAR 340-012-0140(2)(b)(A)(i) 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 4 according to OAR 340-012-0145(4)(d) because there were more than 28 occurrences of the violation. Respondent failed to characterize approximately 91 waste streams from January 2020 through November 2022. Each waste stream is a separate occurrence of the violation.
- "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 is a large quantity generator of hazardous waste with knowledge of RCRA requirements. Respondent had environmental compliance staff and an environmental contractor, and should have had procedures in place for managing unknown waste streams and properly categorizing pesticide waste. By failing to perform hazardous waste determinations on approximately 91 residues generated over almost three years, 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 0 according to OAR 340-012-0145(6)(f) because the violation or the effects of the violation could not be corrected or minimized. At the time of DEQ's inspection, the waste had already been disposed.

"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 \$1,066. This is the amount Respondent gained by avoiding spending an estimated \$1,350 for an employee to perform hazardous waste determinations for the 90 unknown wastes. This "EB" was calculated pursuant to OAR 340-012-0150(1) using the U.S. Environmental Protection Agency's BEN computer model.

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

$$\begin{aligned} &= \$12,000 + [(0.1 \times \$12,000) \times (0 + 0 + 4 + 4 + 0)] + \$1,066 \\ &= \$12,000 + (\$1,200 \times 8) + \$1,066 \\ &= \$12,000 + \$9,600 + \$1,066 \\ &= \$22,666 \end{aligned}$$

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:	August 8, 2024
RESPONSE DATE :	October 17, 2024
TOTAL PENALTY:	\$22,666.00

Account Name:	LOWE'S LEBANON, OR RDC #1436		
Account Type:	Vendor/Organization/Company	Reference Number:	CPGFD2500009
SubSystem ID:	198222	FIMS Acct. ID:	1226

Penalty Summary

Penalty Amount	Interest	Adjustment	Amount Paid	Total Penalty
\$ 22,666.00	\$ 0.00	\$ 0.00	\$ 0.00	\$ 22,666.00

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.	CPGFD2500009		
PAYCODE:	00401 7400 10040 74001 0500 000000 00		
FEE PROGRAM ID:	950	RESPONSE DATE:	October 17, 2024
FIMS ACCT. ID:	1226	TOTAL PENALTY DUE:	\$22666.00

AMOUNT ENCLOSED:

MAKE CHECK PAYABLE TO: Department of Environmental Quality

☐

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

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

00401 7400 10040 74001 0500 000000 0095000012263CPGFD250000900022666008



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
8/7/2024	2024-524 LQ-HW-WR-2023-524	\$22,666.00

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 _____