



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

May 21, 2024

CERTIFIED MAIL: 9589 0710 5270 0688 6531 68

Home Depot U.S.A., Inc
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-2023-580

This letter is to inform you that the Oregon Department of Environmental Quality (DEQ) has issued you a total civil penalty of \$25,973 for hazardous waste violations at your facility in Salem. You failed to determine whether wastes generated at the facility were hazardous over a period of three years. DEQ also cited you, without penalty, for failing to properly label one container of hazardous waste and offering hazardous waste for disposal on an inaccurate manifest.

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 ensure that the violation would not be repeated by working with your waste disposal contractors to improve the process for handling unknown wastes, and improving your internal process to include Oregon-only pesticide residues. 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,



Becka Puskas, Interim Manager
Office of Compliance and Enforcement

Enclosures

cc: Alexis Randall, Home Depot U.S.A., Inc: Alexis_Randall@homedepot.com
Michael Sheehan, Home Depot U.S.A., Inc: Michael_R_Sheehan@homedepot.com
Aubree Kerr, Salem Office, Western Region, DEQ
Becky Williams, Eugene Office, Western Region, DEQ
Accounting, DEQ

1 BEFORE THE ENVIRONMENTAL QUALITY COMMISSION

2 OF THE STATE OF OREGON

3	IN THE MATTER OF:)	
4	HOME DEPOT U.S.A., INC,)	NOTICE OF CIVIL PENALTY
	a Delaware corporation,)	ASSESSMENT AND ORDER
5)	
	Respondent.)	CASE NO. LQ/HW-WR-2023-580

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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 warehouse and distribution center for its
14 retail home improvement stores (Home Depot DC #5639) located at 4999 Depot Court SE in Salem,
15 Marion County, Oregon (the Facility).

16 2. At all material times, Respondent generated more than 2,200 pounds of hazardous waste
17 in a calendar month at the Facility. Respondent is a large quantity generator registered under RCRA ID
18 #ORQ000029405.

19 3. On November 14, 2022, DEQ inspected the Facility. On February 27, 2023, DEQ
20 reviewed the Facility’s records.

21 4. On November 14, 2022, there was a 50-gallon container of waste Preen Garden Weed
22 Preventer Plus Plant Food stored in the 90-day hazardous waste accumulation area at the Facility. The
23 container was staged for disposal in the “Non-RCRA” lane.

24 5. Waste Preen Garden Weed Preventer Plus Plant Food is a pesticide residue according to
25 OAR 340-100-0010(3)(j), and is an Oregon-only hazardous waste according to OAR 340-101-0033(6).

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27 ///

1 6. The container described in Paragraph 4 above was not labeled with the words
2 “hazardous waste” and did not include the applicable waste code, X001, which applies to Oregon-only
3 pesticide residues.

4 7. On or about November 14, 2022, Respondent offered the hazardous waste described in
5 Paragraph 4 above for disposal on Manifest #200303958CLE. The manifest did not include the correct
6 waste code for the hazardous waste offered for disposal, which was X001.

7 8. From on or about December 21, 2019, through December 13, 2022, Respondent
8 accumulated approximately 534 containers of unknown wastes at the Facility.

9 9. As of February 27, 2023, Respondent had not performed hazardous waste
10 determinations on the residues described in Paragraphs 4-5 and 8 above.

11 III. CONCLUSIONS

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

15 1. On or before January 11, 2023, Respondent failed to mark one hazardous waste container
16 with the words “Hazardous Waste,” in violation of 40 CFR 262.17(a)(5)(i)(A), as described in Section
17 II, Paragraph 6 above. This is a Class II violation according to OAR 340-012-0068(2)(b). DEQ has not
18 assessed a civil penalty for this violation.

19 2. On or about November 30, 2022, Respondent violated 40 CFR 262.20(a)(1) by offering
20 hazardous waste for offsite treatment, storage or disposal using an inaccurate hazardous waste manifest, by
21 failing to include an applicable waste code for hazardous pesticide residue (X001), as described in Section
22 II, Paragraph 7 above. This is a Class II violation according to OAR 340-012-0068(2)(f). DEQ has not
23 assessed a civil penalty for this violation.

24 3. From on or about December 21, 2019, through December 13, 2022, Respondent violated
25 OAR 340-102-0011(2) by failing to completely and accurately determine if residues, as defined in OAR
26 340-100-0010(2)(hh) and 40 CFR 261.2, generated at the Facility were hazardous waste upon generation.
27 Specifically, Respondent failed to conduct hazardous waste determinations on approximately 534

1 containers of waste and pesticide residue, as described in Section II above. This is a Class I violation
2 according to OAR 340-012-0068(1)(a). DEQ hereby assesses a \$25,973 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 \$25,973. 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 exhibits, 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

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

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

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

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5/21/2024
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 3: 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 535 waste streams, including approximately 534 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 535 waste streams from on or about December 21, 2019, through December 13, 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 RCRA requirements. Respondent had environmental compliance staff, environmental contractors, and procedures for managing unknown waste streams, which it failed to follow. By failing to perform hazardous waste determinations on approximately 535 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 -1 according to OAR 340-012-0145(6)(e) because Respondent made reasonable efforts to ensure the violation would not be repeated. After DEQ issued the Pre-Enforcement Notice, Respondent worked with its waste disposal contractors to improve their process to ensure that unknown wastes are properly characterized, and improved its internal process to include Oregon-only pesticide residues.

"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 \$5,573. This is the amount Respondent gained by avoiding spending an estimated \$8,000 to hire an environmental contractor to visit the facility and assess the 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: $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$
= \$12,000 + [(0.1 x \$12,000) x (0 + 0 + 4 + 4 - 1)] + \$5,573
= \$12,000 + (\$1,200 x 7) + \$5,573
= \$12,000 + \$8,400 + \$5,573
= \$25,973

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:	May 21, 2024
RESPONSE DATE :	July 30, 2024
TOTAL PENALTY:	\$25,973.00

Account Name:	HOME DEPOT USA HD5639		
Account Type:	Vendor/Organization/Company	Reference Number:	CPGFD2400065
SubSystem ID:	198762	FIMS Acct. ID:	1283

Penalty Summary

Penalty Amount	Interest	Adjustment	Amount Paid	Total Penalty
\$ 25,973.00	\$ 0.00	\$ 0.00	\$ 0.00	\$ 25,973.00

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.	CPGFD2400065		
PAYCODE:	00401 7400 10040 74001 0500 000000 00		
FEE PROGRAM ID:	950	RESPONSE DATE:	July 30, 2024
FIMS ACCT. ID:	1283	TOTAL PENALTY DUE:	\$25973.00

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 0095000012830CPGFD240006500025973004



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
5/20/2024	2023-580 LQ-HW-WR-2023-580	\$25,973.00

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 _____