

1 BEFORE THE ENVIRONMENTAL QUALITY COMMISSION

2 OF THE STATE OF OREGON

3
4 IN THE MATTER OF)
VIGOR INDUSTRIAL LLC,)

MUTUAL AGREEMENT
AND FINAL ORDER

5)
6 Respondent.)

CASE NO. LQ/SS-NWR-2024-058

7
8 WHEREAS:

9 1. Respondent operates a ship repair and metal fabrication facility located at 5555 N
10 Channel Avenue in Portland, Multnomah County, Oregon (Facility). As part of its ship repair
11 operations, Respondent removes ballast water and slops from vessels undergoing repair. The ballast
12 water and slops contain small amounts of oil. To manage and remove the oil from the ballast water
13 and slops, Respondent operates an oil storage and treatment system. The oil storage and treatment
14 system includes a number of storage tanks: four one million gallon tanks, Tanks 2, 3, 4, and 5, and
15 four 83,200 gallon tanks, Tanks 12, 13, 14, and 15.¹

16 2. Tanks 2 – 5 are used for initial storage of ballast water and slops and to gravity
17 separate the oil and water. The oil is then skimmed off the top of the wastewater and undergoes
18 further treatment in Tanks 12 – 14. The reclaimed oil from Tanks 12 – 14 is stored in Tank 15, until
19 it is sold and shipped off-site as an on-specification reclaimed fuel oil.

20 3. The materials stored in Tanks 2-5 and 12-15 are considered to be “oils or liquid fuel
21 products” under OAR 340-300-0002(12). Pursuant to ORS 468B.510 to 525 and Oregon’s Fuel
22 Tank Seismic Stability rules, OAR Chapter 340, Division 300, a facility that qualifies as a bulk oils

23 _____
24 ¹ These tanks are located at the Facility’s ballast water treatment plant or BWTP, which is enclosed by a
25 secondary containment system. Other tanks at the BWTP include Tanks 1, 6, 7, 8, 9 and 16. These tanks
26 store stormwater and process wastewater. Stormwater is treated in an electrocoagulation system and
27 discharged to the river, pursuant to the Facility’s stormwater permit. The process wastewater is treated in
the Facility’s “mud plant” and then discharged to the City of Portland’s sanitary sewer system, pursuant
to the Facility’s wastewater discharge permit. These tanks are not used to store “oils or liquid fuel
products,” as defined in OAR 340-300-0002(12). Tanks 10 and 11 were previously taken out of service and
dismantled.

1 or liquid fuels terminal, including one or more bulk storage tanks with a combined capacity of two
2 million gallons or more of oils or liquid fuel products, is required to submit a facility-wide Seismic
3 Vulnerability Assessment. In accordance with OAR 340-300-0003, a facility must submit the
4 Seismic Vulnerability Assessment by June 1, 2024.

5 4. Respondent is in the process of eliminating the on-site storage and processing of
6 ballast water and slops in Tanks 2 – 5. Respondent has stopped adding ballast water and slops from
7 ship repair operations to Tanks 2 – 5. As of the date of this MAO, Respondent estimates that there
8 are about 1.5 million gallons of wet oil in Tanks 2 – 5. Respondent intends to remove and treat the
9 remaining wet oil from Tanks 2 – 5 and ship it off-site for use as an on-specification reclaimed fuel
10 oil. Respondent will then take Tanks 2 – 5 out of oil storage and processing service and intends to
11 use several of these tanks for stormwater surge tanks.

12 5. While taking Tanks 2 – 5 out of oil storage and processing service, Respondent will
13 treat the wet oil from Tanks 2 – 5 in Tanks 12 and 13 and store the reclaimed oil in Tank 15, prior to
14 off-site shipment of the reclaimed oil for use as an on-specification used oil fuel. Respondent will
15 use Tank 14 to store ballast water and slops from vessels undergoing ship repair. Respondent will
16 ship the ballast water and slops stored in Tank 14 off-site for treatment and disposal. Once
17 Respondent has removed and treated the wet oil from Tanks 2 – 5, Respondent will continue to use
18 Tanks 12 – 15 in support of ship repair operations, including storing ballast water and slops with a
19 wide range of oil content prior to off-site shipment for treatment and disposal.

20 6. Based on the facility changes described in paragraphs 4 and 5 above, Respondent
21 does not intend to submit a Seismic Vulnerability Assessment to DEQ by June 1, 2024.

22 7. Removing the oils from Tanks 2, 3, 4, and 5 and taking them out of oil service will
23 result in a four-million-gallon reduction of tanks in oil storage service at the Facility. In addition,
24 Tanks 12-15 will be used for routine operations and not long-term storage of large quantities of
25 reclaimed fuel oil. These changes will minimize risk and protect public health, life safety, and
26 environmental safety against fires and release of oil or fuel products from the Facility in the event of
27 an earthquake, and thus furthers the purposes of OAR Chapter 340, Division 300.

I. AGREEMENT

Respondent and DEQ hereby agree that:

1. This Mutual Agreement and Final Order (MAO) shall be effective upon the date fully executed (MAO Effective Date).

2. DEQ alleges that on June 1, 2024, Respondent will be in violation of OAR 340-300-0003 by failing to timely submit a Seismic Vulnerability Assessment to DEQ. This is a Class I violation pursuant to OAR 340-012-0064(1)(a). DEQ has not assessed a civil penalty for this alleged violation.

3. DEQ alleges that until Respondent submits a Seismic Vulnerability Assessment, Respondent will continue to violate the rule cited in Paragraph 2 above.

4. Respondent agrees to sell or dispose of the oil and water removed from Tanks 2-5 and any materials removed from Tanks 12-15 in compliance with all applicable Federal and Oregon laws and regulations, including OAR Chapter 340, Division 111 (Used Oil Management).

5. DEQ and Respondent recognize that DEQ has the authority to impose civil penalties and issue compliance orders for violations of DEQ statutes and rules, and to settle such matters through informal disposition, with or without penalty. Therefore, pursuant to ORS 183.417(3), DEQ and Respondent settle the alleged violation described in Section I, Paragraphs 2 and 3 above.

6. By entering into this MAO, Respondent is not admitting to any of DEQ's allegations of non-compliance.

7. Pursuant to OAR 340-012-0030(19) and OAR 340-012-0145(2), the violation alleged in Paragraph 2 of this MAO will be treated as a prior significant action in the event a future violation occurs.

8. This MAO resolves all civil claims of DEQ, based upon the facts alleged, for the violations expressly alleged in this MAO. This MAO is not intended to limit, in any way, DEQ's right to proceed against Respondent in any forum for any past or future violations not expressly settled herein.

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1 9. Respondent releases and waives any and all claims of any kind, known or unknown,
2 past or future, against the State of Oregon or its agencies, instrumentalities, employees, officers, or
3 agents, arising out of the matters and events set out in this MAO. Any and all claims includes but is
4 not limited to any claim under 42 USC § 1983 et seq., any claim under federal or state law for
5 damages, declaratory, or equitable relief, and any claim for attorney's fees or costs.

6 10. This MAO shall be binding on Respondent and its respective successors, agents, and
7 assigns. The undersigned representative of Respondent certifies that he is fully authorized to execute
8 and bind Respondent to this MAO. No change in ownership, corporate or partnership status of
9 Respondent, or change in the ownership of the properties or businesses affected by this MAO shall
10 in any way alter Respondent's obligation under this MAO, unless otherwise approved in writing by
11 DEQ through an amendment to this MAO.

12 11. Verifiable electronic, facsimile, or scanned signatures on this MAO shall be treated
13 the same as original signatures.

14 12. If Respondent fails to satisfactorily complete any of the requirements in Section II,
15 Paragraph 2, upon receipt of a written Penalty Demand Notice from DEQ, Respondent shall pay a
16 civil penalty of \$2,400 for each day of each violation of this MAO until such violation is corrected.

17 13. Within twenty (20) days of receipt of a Penalty Demand Notice from DEQ,
18 Respondent may contest the Penalty Demand Notice. Respondent agrees that the issue shall be
19 limited to Respondent's compliance or noncompliance with this MAO. The amount of the stipulated
20 civil penalty is established in advance by this MAO and is not a contestable issue.

21 II. FINAL ORDER

22 The Environmental Quality Commission hereby enters a final order:

23 1. Settling the alleged violation described in Section I, Paragraphs 2 and 3 above,
24 without penalty.

25 2. Requiring Respondent to comply with the following schedule and conditions:

26 a. After the MAO Effective Date, Respondent must not add ballast water and
27 slops from its ship repair operations to Tanks 2 – 5;

1 b. By June 1, 2026, remove all wet oil from Tanks 2, 3, 4, and 5 and manage
2 the tank contents in compliance with all applicable Federal and Oregon laws and regulations,
3 including OAR Chapter 340, Division 111. Provide documentation to DEQ by July 1, 2026
4 demonstrating that the wet oil has been removed from Tanks 2, 3, 4, and 5;

5 c. By June 1, 2028, ensure Tanks 2, 3, 4, and 5 are empty of liquids, free of
6 gas, and cleaned. Within 30 days of completing this work, obtain a gas-free certificate from a
7 marine chemist and provide a copy to DEQ along with documentation of the tank cleaning; and

8 d. By July 1, 2028, remove Tanks 2, 3, 4, and 5 from oil service by
9 disconnecting all pipes and manifolds from the truck rack sump and provide documentation
10 including photographs to DEQ.

11 e. Beginning June 1, 2028, Respondent shall not speculatively accumulate
12 reclaimed fuel oil and shall not simultaneously use more than two of the tanks designated Tanks 12
13 – 15 for the storage of reclaimed fuel oil.

14 f. Maintain “caretaker status” for the Facility as defined in 33 CFR §154.105.

15 g. Provide a written status report to DEQ on the first business day of every
16 other month, beginning on July 1, 2024, until the conditions in subparagraphs b through d above are
17 satisfied.

18 h. Documentation of compliance with the subparagraphs b through d above and
19 bi-monthly status reports must be sent to William Johnson via email at
20 William.Johnson@deq.oregon.gov.

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VIGOR INDUSTRIAL LLC

5/30/2024
Date

T. Alan Spcott
Signature
T. Alan Spcott
Name (print)
VP
Title (print)

DEPARTMENT OF ENVIRONMENTAL QUALITY and
ENVIRONMENTAL QUALITY COMMISSION

5/31/2024
Date

Becka Puskas, Interim Manager
Office of Compliance and Enforcement
on behalf of DEQ pursuant to OAR 340-012-0170
on behalf of the EQC pursuant to OAR 340-011-0505