



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

September 24, 2024

CERTIFIED MAIL: 9589 0710 5270 0688 6539 53

Permapost Products Co. dba Permapost Products Inc.
c/o Jayne Bond, Registered Agent
4205 Witch Hazel Rd
Hillsboro OR 97123

Re: Notice of Civil Penalty Assessment and Order
Case No. LQ-HW-NWR-2022-589

This letter is to inform you that the Oregon Department of Environmental Quality (DEQ) has issued you a civil penalty of \$51,651 for hazardous waste violations at your wood treating facility in Hillsboro.

DEQ issued this penalty because the chemicals used in wood preserving pose risk to human health and the environment, when not managed properly. In order to ensure these chemicals are not released to the environment, strict compliance with hazardous waste regulations is essential. This includes conducting complete and accurate hazardous waste determinations, assessing the integrity of the drip pad, which is intended to contain contaminated drippage from treated wood, and compliance at all stages of the collection, storage, and treatment of the liquid process waste generated at your facility.

Included in Section IV is an order requiring you to: 1) have the hydraulic conductivity of the drip pad tested and certified to meet the standard by a Professional Engineer, and 2) submit a plan to ensure the evaporator is only receiving hazardous wastewater (with minimal levels of preservative and oil), as well as documenting that the retort sumps and oil/water separator meet the requirements for hazardous waste tanks.

Approximately \$8,000 of the civil penalty reflects the economic benefit you gained by avoiding the cost of ensuring the drip pad meets hydraulic conductivity standards. If you complete these requirements, DEQ will consider recalculating the costs as delayed rather than avoided and will reduce the civil penalty accordingly. DEQ appreciates your efforts to address other violations cited in the Notice, and 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.

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: Jeremy Fleming, DEQ
Eric Kelley, DEQ
Katie Daugherty, DEQ
Laura Kerr, Stoel Rives LLP, laura.kerr@stoel.com

1 BEFORE THE ENVIRONMENTAL QUALITY COMMISSION

2 OF THE STATE OF OREGON

3 IN THE MATTER OF:) NOTICE OF CIVIL PENALTY
4 PERMAPOST PRODUCTS CO.,) ASSESSMENT AND ORDER
5 dba PERMAPOST PRODUCTS, INC.,)
Respondent.) CASE NO. LQ-HW-NWR-2022-589

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 465.260, ORS Chapter 183 and Oregon Administrative Rules (OAR) Chapter 340,
10 Divisions 011, 012, and 100-102.

11 II. FINDINGS OF FACT

12 1. At all material times, Respondent has owned and operated a wood treating business at
13 4205 SE Witch Hazel Road in Hillsboro, Oregon (the Facility).

14 2. At all material times, Respondent has generated and continues to generate more than
15 2,200 pounds of hazardous waste per month at the Facility and has annually reported to DEQ as a
16 large-quantity generator of hazardous waste since 1994.

17 3. At all material times, Respondent has operated two retorts at the Facility to pressure-
18 treat wood products with various chemicals dissolved in diesel, including chromated copper arsenate
19 (CCA) and pentachlorophenol (PCP). Each retort has a collection sump in both the front and rear,
20 which capture spent preservative and diesel spilled from the retorts and other processing activities, as
21 well as rinse water from the drip pad.

22 4. Respondent does not have a hazardous waste treatment permit for the Facility.

23 5. On July 14 and November 21, 2021, DEQ staff inspected the Facility.

24 6. Neither Respondent's annual hazardous waste generator reports submitted to DEQ, nor
25 Respondent's hazardous waste manifests in 2019-2021, or other hazardous waste determination
26 records, included spent sock filters as hazardous waste. Spent sock filters were used to treat liquid
27 process waste containing preservative, including PCP.

1 7. On July 14, 2021, a spent sock filter contaminated with wood preservative was
2 discarded on a walkway railing, not in a container, at the Facility.

3 8. On and before July 14, 2021, and as of the date of this Notice, Respondent has not
4 conducted a complete hazardous waste determination for all applicable hazardous waste codes and
5 constituents for the spent process liquid waste received in the retort sumps, collection trenches or floor
6 drains at the drip pad, oil/water separator, or the evaporation feed tank.

7 9. On and before July 14, 2021, Respondent had not conducted a complete hazardous
8 waste determination for all applicable hazardous waste codes and constituents in the evaporator sludge,
9 retort sump sludge, spent sock filters, and filter cake. On multiple manifests, Respondent did not list the
10 United States Environmental Protection Agency (EPA) Hazardous Waste Numbers (Waste Nos.) F032 or
11 F035 for evaporator sludge, retort sump sludge, and filter cake generated at the Facility.

12 10. The drip pad at the Facility was built in 1983 and consists of a six-inch layer of
13 reinforced concrete.

14 11. The silicone-based sealant applied to the Facility's drip pad in 1993, "Professional
15 Water Sealant" manufactured by Professional Products of Kansas, has a useful life of ten years,
16 according to the manufacturer's Safety Data Sheet. Respondent has not applied a new sealant to the
17 entire drip pad since 1993.

18 12. The last time Respondent completed a hydraulic conductivity test of the drip pad was in
19 October 1995.

20 13. On at least July 14 and November 21, 2021, the drip pad at the Facility was heavily
21 worn, with exposed aggregate in several areas, as well as cracks and seams with worn and ineffective
22 repairs, that could adversely affect the pad's hydraulic conductivity.

23 14. Respondent's weekly logs of drip pad inspections from January 17, 2019, through July
24 18, 2022, do not document any maintenance or repairs to damage or cracks, or any new cracking or
25 deterioration.

26 15. Respondent does not have on file at the facility a written assessment of the drip pad,
27 reviewed and certified by a qualified Professional Engineer, that documents that the drip pad currently

1 meets a hydraulic conductivity standard of less than or equal to 1×10^{-7} centimeters per second.

2 16. On July 14 and November 21, 2021, the floor drains along the drip pad, which discharge
3 to a retort sump, were completely full of liquid process waste containing preservative, diesel, and
4 water.

5 17. Respondent operates a piping system used to transfer liquid process waste, containing
6 spent wood preservatives, from the retort sumps to the oil/water separator and then back to tank storage
7 for re-use in the retorts. The piping system is built with an air gap of several inches which allows liquid
8 process waste to spill onto the ground. On July 14 and November 21, 2021, spent wood preserving
9 chemicals pooled on the ground and underneath the retorts from spills at this air gap.

10 18. The sumps, floor drains, and oil/water separator store liquid process waste that contains
11 a substantial amount (more than a few percent) of oil (diesel) and spent preservative. When lumber is
12 removed from the retort, spent preservative and oil, containing no water, is captured and stored in the
13 retort sumps.

14 19. Respondent has not reported the disposal of filter press cake from the liquid process
15 waste treatment system to DEQ since 2020. Respondent has not reported the disposal of spent carbon
16 filter media from the liquid process waste treatment system to DEQ since 2014.

17 20. Respondent generated the following amounts of hazardous waste evaporator sludge at
18 the Facility:

2019	870 pounds
2020	9,719 pounds
2021	9,351 pounds
2022	16,873 pounds
2023	23,561 pounds

24
25 21. Respondent has never obtained a written assessment, reviewed and certified by a qualified
26 Professional Engineer, of the retort sumps and oil/water separator, attesting that they have sufficient
27 structural integrity and are acceptable for storing hazardous waste.

1 22. The retort sumps and oil/water separator are not equipped with secondary containment
2 meeting the requirements of 40 CFR 265.193.

3 23. From at least January 1, 2019, to November 29, 2021, Respondent did not document the
4 date, time, and quantity of each waste removal from the drip pad and sump or collection system at the
5 Facility.

6 24. On and about July 14, 2021, Respondent's Contingency Plan for the Facility did not
7 describe any procedure for responding to discharge of infrequent and incidental drippage from treated
8 lumber in the storage yard at the Facility.

9 III. CONCLUSIONS

10 Based upon the foregoing Findings of Fact, DEQ has determined that Respondent violated the
11 following provisions of Oregon law, including the hazardous waste laws in the Code of Federal
12 Regulations (CFRs) as adopted by OAR 340-100-0002¹.

13 1. Respondent violated OAR 340-102-0011(2) by failing to perform complete and accurate
14 hazardous waste determinations at the point of generation on all residues, as defined in OAR 340-100-
15 0010(2)(gg)² and 40 CFR 261.2, that Respondent generated at the Facility, as described in Paragraphs 1-9
16 of Section II above. The spent evaporator sock filters, filter cake, evaporator sludge and retort sump sludge
17 are solid waste according to 40 CFR 261.2(a)(1), (2)(i)(A) and (b)(3), and the liquid process waste in the
18 retort sumps and evaporator feed tank are solid waste according to 40 CFR 261.2(a)(1), (2)(i)(B) and
19 (c)(3). The spent evaporator sock filters, filter cake, evaporator sludge, retort sump sludge, are hazardous
20 waste as identified by United States Environmental Protection Agency (EPA) Hazardous Waste Numbers
21 (Waste Nos.) F032, F035, and K001, pursuant to 40 CFR 261.31 and 40 CFR 261.32. The liquid process
22 waste in the retort sumps, floor drains, and evaporator feed tank are hazardous waste as identified by EPA
23
24
25

26 ¹ On November 17, 2021, the Environmental Quality Commission adopted new hazardous waste regulations,
27 which became effective in Oregon as of January 1, 2022. This Notice cites the regulations that were in effect at
the time the violations occurred (2021), as enacted through June 30, 2015. *OAR 340-100-0002*. Footnotes are
provided where relevant, to cite current regulations for violations that are ongoing after January 1, 2022.

² Currently OAR 340-100-0010(2)(hh)

1 Waste Nos. F032 and F035, pursuant to 40 CFR 261.31. These are Class I violations, according to OAR
2 340-012-0068(1)(a).³ DEQ hereby assesses a \$19,200 civil penalty for these violations.

3 2. Respondent violated 40 CFR 262.34(a)(1)(iii)⁴ and 40 CFR 265.443(a)(4)(i) and (ii) by
4 failing to maintain the drip pad surface material free of cracks and gaps that could adversely affect its
5 hydraulic conductivity, and failing to ensure that the drip pad at the Facility has a hydraulic
6 conductivity of less than or equal to 1×10^{-7} centimeters per second, as described in Paragraphs 10-15
7 of Section II above. The Facility's drip pad is a hazardous waste management unit as defined in 40
8 CFR 260.10 and an "existing drip pad" pursuant to 40 CFR 265.440(a), because it was built before
9 December 6, 1990. This is a Class I violation, according to OAR 340-012-0068(1)(d). DEQ hereby
10 assesses a \$32,451 civil penalty for this violation.

11 3. Respondent violated 40 CFR 262.34(a)(1)(ii)⁵, 40 CFR 265.191 or 40 CFR 265.192, and
12 40 CFR 265.193, by accumulating hazardous waste in tanks without meeting the requirements of 40 CFR
13 265, Subpart J. Specifically, the -retort sumps and oil/water separator have not been assessed by a
14 Professional Engineer for compliance with Subpart J as required by 40 CFR 265.191 or 265.192, and they
15 do not have secondary containment meeting the requirements of 40 CFR 265.193. The liquid process
16 waste stored in the tanks is solid waste according to 40 CFR 261.2(a)(1), (2)(i)(B) and (c)(3), and
17 hazardous waste as identified by EPA Waste Nos. F032 and F035, pursuant to 40 CFR 261.31. These
18 tanks are either "existing tanks" pursuant to 40 CFR 260.10, if installed before July 14, 1986, or new tanks
19 if installed subsequently. 40 CFR 265.190(c) states that tanks, sumps, and other collection devices used in
20 conjunction with drip pads, must meet the requirements of 40 CFR 265 Subpart J. According to OAR 340-
21 012-0068(1)(d), this is a Class I violation. DEQ has not assessed a civil penalty for this violation.

22 4. Respondent violated 40 CFR 262.34(a)(1)(i) by storing hazardous waste outside of a tank
23 or container. Specifically, on July 14, 2021, Respondent stored a spent sock filter, used to filter liquid
24 process waste at the evaporator feed tank, outside of a container on the walkway railing. The spent sock
25 filter is solid waste according to 40 CFR 261.2(a)(1), (2)(i)(A) and (b)(3), and hazardous waste as

26 _____
27 ³ Pursuant to OAR 340-012-0028, the applicable enforcement rules of OAR Chapter 340, Division 12, are those
in effect at the time of issuance of this Notice.

⁴ Currently 40 CFR 262.17(a)(3)(i)

⁵ Currently 40 CFR 262.17(a)(2)

1 identified by EPA Waste Nos. F032, F035, and K001, pursuant to 40 CFR 261.31 and 40 CFR 261.32.

2 This is a Class II violation, according to OAR 340-012-0053(2). DEQ has not assessed a civil penalty for
3 this violation.

4 5. Respondent violated 40 CFR 262.34(a)(1)(iii)(B)⁶ by failing to document the date, time,
5 and quantity of each waste removal from the drip pad and sump or collection system. According to OAR
6 340-012-0068(2)(r), this is a Class II violation. DEQ has not assessed a civil penalty for this violation.

7 6. Respondent violated 40 CFR 262.34(1)(iii)⁷ and 40 CFR 265.440(c) by failing to include in
8 the Facility's Contingency Plan a procedure for responding to discharge of infrequent and incidental
9 drippage from treated lumber in the storage yard. According to OAR 340-012-0068(2)(r), this is a Class II
10 violation. DEQ has not assessed a civil penalty for this violation.

11 IV. ORDER TO PAY CIVIL PENALTY AND TO COMPLY

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

14 1. Pay a total civil penalty of \$51,651. The determination of the civil penalty is attached as
15 Exhibits 1 and 2, which are incorporated as part of this Notice.

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

18 Pay online with e-check (ACH) or Credit Card. Go to Your DEQ Online here:

19 <https://ydo.oregon.gov>. Select Register Account or Login, then select Pay Invoices/Fees on your account
20 dashboard. Enter the Reference Number and FIMS Account ID included on the attached payment slip.

21 Note: US Bank charges a 2.3% convenience charge for credit card transactions. ACH payments have no
22 additional charges.

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

26
27 _____
⁶ Currently 40 CFR 262.17(a)(3)(iii)(B)

⁷ Currently 40 CFR 262.17(a)(3)(i)

1 2. Within 60 days of this order becoming final by operation of law or on appeal, submit the
2 following to Jeremy Fleming, DEQ, Jeremy.fleming@deq.oregon.gov or at 700 NE Multnomah St, Ste
3 600, Portland OR 97232:

4 a. Provide an evaluation to DEQ, reviewed and certified by a professional engineer, of the
5 hydraulic conductivity of the drip pad, including whether it meets the requirement of less than or equal
6 to 1×10^{-7} centimeters per second. The evaluation must include analysis of core samples from the drip
7 pad, including representative samples from the most worn areas of the pad as well as at joints, cracks,
8 and other penetrations in the pad.

9 b. Submit a hazardous waste determination of the liquid process waste in the evaporator
10 feed tank, including percentages of water, oil, and percentage and types of preservative chemicals.

11 c. Submit a plan to DEQ to for ensuring the evaporator is only receiving hazardous
12 wastewater, primarily aqueous and containing only a few percent of emulsified oil/preservative mix.
13 The plan must include, at a minimum, addressing spillage of liquid process waste through the air gap in
14 the oil/water separator system, an evaluation of the use of additional treatment, e.g. using carbon filters
15 to treat every batch of liquid process waste, maintaining and replacing carbon filters on a regular basis
16 to ensure filtration is effective, using the flocculation tank and filter press to treat liquid hazardous
17 waste, and installation of a tray above the sumps, or other mechanism, to capture concentrated
18 preservative to directly route it back to the storage tanks for reuse in the retort before it reaches the
19 sump.

20 d. Submit documentation that either: 1) the sumps and oil/water separator meet the
21 standards of 40 CFR Subpart J for hazardous waste tanks, or 2) that they are only receiving hazardous
22 wastewater (primarily aqueous and containing only a few percent of emulsified oil/preservative mix).

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

24 You have a right to a contested case hearing on this Notice, if you request one in writing. DEQ
25 must receive your request for hearing **within 20 calendar days** from the date you receive this Notice. If
26 you have any affirmative defenses or wish to dispute any allegations of fact in this Notice or attached
27 exhibits, you must do so in your request for hearing, as factual matters not denied will be considered

1 admitted, and failure to raise a defense will be a waiver of the defense. (See OAR 340-011-0530 for
2 further information about requests for hearing.) You must send your request to: **DEQ, Office of**
3 **Compliance and Enforcement, 700 NE Multnomah Street, Suite 600, Portland, Oregon 97232**, fax
4 it to **503-229-6762** or email it to DEQappeals@deq.oregon.gov. An administrative law judge
5 employed by the Office of Administrative Hearings will conduct the hearing, according to ORS
6 Chapter 183, OAR Chapter 340, Division 011 and OAR 137-003-0501 to 0700. You have a right to be
7 represented by an attorney at the hearing, however you are not required to be. If you are an individual,
8 you may represent yourself. If you are a corporation, partnership, limited liability company,
9 unincorporated association, trust or government body, you must be represented by an attorney or a duly
10 authorized representative, as set forth in OAR 137-003-0555.

11 Active duty Service members have a right to stay proceedings under the federal Service
12 Members Civil Relief Act. For more information contact the Oregon State Bar at 1-800-
13 452-8260, the Oregon Military Department at 503-584-3571, or the nearest United States Armed
14 Forces Legal Assistance Office through <http://legalassistance.law.af.mil>. The Oregon Military
15 Department does not have a toll free telephone number.

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

22
23
24 9/24/2024
Date

24 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 completely and accurately determine if Respondent's residues (as defined in OAR 340-100-0010(2)(gg) and 40 CFR 261.2) 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 six waste streams (spent evaporator sock filters, process liquid waste generated in the retort sumps and in the evaporation feed tank, evaporator sludge, retort sump sludge, and filter cake).
- 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 Respondent is a large quantity generator of hazardous waste and violated a hazardous waste rule.
- "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, and receives a value of 0 according to OAR 340-012-0145(2)(a)(A), because Respondent does not have any prior significant actions in the same media within the past 10 years.
- "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 no prior history is cited.
- "O" is whether the violation was repeated or ongoing and receives a value of 2 according to OAR 340-012-0145(4)(b), because Respondent failed to completely and accurately make hazardous waste determinations of six waste streams (spent evaporator sock filters, process liquid waste generated in the retort sumps and in the evaporation feed tank, evaporator sludge, retort sump sludge, and filter cake). Each repeated occurrence of a violation and each day of a violation with a duration of more than one day is a separate occurrence when determining the O factor, according to OAR 340-012-0145(4).
- "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 is a highly-regulated large quantity generator of hazardous waste and reports to DEQ annually on the hazardous wastes generated at the Facility. By failing to accurately characterize multiple hazardous wastes generated at the Facility, Respondent failed to take reasonable care to avoid the foreseeable risk of committing these violations.

"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 there is insufficient information on which to make a finding under paragraphs (6)(a) through (6)(e) or (6)(g). Respondent provided partial characterization on the waste streams but not complete and accurate characterizations, in particular on the liquid process waste.

"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 DEQ has insufficient information on which to base an estimate of more than a de minimis economic benefit for this violation.

PENALTY CALCULATION: $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$
= \$12,000 + [(0.1 x \$12,000) x (0 + 0 + 2 + 4 + 0)] + \$0
= \$12,000 + [\$1,200 x (6)] + \$0
= \$12,000 + \$7,200 + \$0
= \$19,200

EXHIBIT 2

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

VIOLATION 2: Failing to maintain the drip pad surface material free of cracks and gaps that could adversely affect its hydraulic conductivity, and failing to ensure that the drip pad at the Facility has a hydraulic conductivity of less than or equal to 1×10^{-7} centimeters per second, in violation of 40 CFR 262.34(a)(1)(iii) and 265.443(a)(4)(i) and (ii).

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

MAGNITUDE: The magnitude of the violations is major pursuant to OAR 340-012-0135(4)(c)(A) because the violation involves more than 1,000 gallons or 6,000 pounds of hazardous waste. Respondent generated over 6,000 gallons of hazardous waste on the drip pad in the period between November 2021 and June 2022 alone.

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 Respondent is a large quantity generator of hazardous waste and violated a hazardous waste rule.

"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, and receives a value of 0 according to OAR 340-012-0145(2)(a)(A), because Respondent does not have any prior significant actions in the same media within the past 10 years.

"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 no prior history is cited.

"O" is whether the violation was repeated or ongoing and receives a value of 4 according to OAR 340-012-0145(4)(d), because the violation has been going on since at least July 14, 2021, the date of DEQ's inspection. Furthermore, the drip pad had exposed aggregate and cracking as identified in DEQ's 2018 inspection report and noted as a concern for Respondent to address in the November 13, 2018, Warning Letter DEQ issued to Respondent. Pursuant to OAR 340-012-0145(4), each day of a violation with a duration of more than one day is a separate occurrence when determining the "O" factor.

"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 is a highly-regulated large quantity generator of hazardous waste and reports to DEQ annually on the hazardous wastes generated at the Facility. The sealant Respondent applied in 1995 had a 10-year life, and Respondent has not had an engineer review hydraulic conductivity testing since 2018. By failing to take steps to address the expired useful life of the sealant and ensure the drip pad meets hydraulic conductivity standards since at least 2018, when DEQ identified risks and requested Respondent take action, 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 2 according to OAR 340-012-0145(6)(g), because Respondent has not addressed the violation as described in paragraphs (6)(a) through (6)(e) or (6)(g). Respondent has not conducted a current evaluation of whether the drip pad meets the conductivity standard since DEQ's inspection.

"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 \$8,451. This is the amount Respondent gained by avoiding spending \$10,000 since November 13, 2018, to conduct an evaluation of the hydraulic conductivity of the drip pad at the Facility. This "EB" was calculated pursuant to OAR 340-012-0150(1) using the U.S. Environmental Protection Agency's BEN computer model.

PENALTY CALCULATION: $Penalty = BP + [(0.1 \times BP) \times (P + H + O + M + C)] + EB$
= $\$12,000 + [(0.1 \times \$12,000) \times (0 + 0 + 4 + 4 + 2)] + \$8,451$
= $\$12,000 [\$1,200 \times (10)] + \$8,451$
= $\$12,000 + \$12,000 + \$8,451$
= $\$32,451$

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:	September 24, 2024
RESPONSE DATE :	December 3, 2024
TOTAL PENALTY:	\$51,651.00

Account Name:	PERMAPOST PRODUCTS COMPANY INC		
Account Type:	Vendor/Organization/Company	Reference Number:	CPGFD2500012
SubSystem ID:	201993	FIMS Acct. ID:	527

Penalty Summary

Penalty Amount	Interest	Adjustment	Amount Paid	Total Penalty
\$ 51,651.00	\$ 0.00	\$ 0.00	\$ 0.00	\$ 51,651.00

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.	CPGFD2500012		
PAYCODE:	00401 7400 10040 74001 0500 000000 00		
FEE PROGRAM ID:	950	RESPONSE DATE:	December 3, 2024
FIMS ACCT. ID:	527	TOTAL PENALTY DUE:	\$51651.00

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 0095000005278CPGF250001200051651005



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
9/23/2024	2022-589 LQ-HW-NWR-2022-589	\$51,651.00

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 _____