



# 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 2, 2023

CERTIFIED MAIL: 7018 1830 0001 6172 7196

Airgas USA, LLC  
c/o C.T. Corporation System, Registered Agent  
780 Commercial St., SE, Suite 100  
Salem, OR 97301

Re: Notice of Civil Penalty Assessment and Order  
Case No. WQ-SW-NWR-2022-580

This letter is to inform you that the Oregon Department of Environmental Quality (DEQ) has issued Airgas USA, LLC a civil penalty of \$11,231 for failing to conduct stormwater discharge monitoring in accordance with the National Pollutant Discharge Elimination System Industrial Stormwater General Permit No. 1200-Z issued for the facility located at 3405 N. Columbia Blvd, in Portland, Oregon. In addition, DEQ cited Airgas for failing to timely submit monitoring results and changes to its Stormwater Pollution Control Plan (SWPCP).

DEQ issued this penalty because monitoring stormwater discharge is essential to determining whether the site poses a risk of harm to water quality. Monitoring may reveal the presence of harmful levels of pollutants that pose a threat to the beneficial uses of waters, including aquatic life. In addition, monitoring allows permittees and DEQ to gauge the effectiveness of stormwater controls and best management practices at reducing levels of pollutants in discharges. Furthermore, maintaining an accurate Stormwater Pollution Control Plan that reflects current site conditions and includes pollution controls that comply with the Permit is essential to reducing pollutant concentrations in stormwater discharge. By failing to monitor and timely update its SWPCP, Airgas posed a risk of harm to water quality.

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](mailto: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 Courtney Brown at 503-229-6839 or toll free in Oregon at 800-452-4011, extension 6839.

Sincerely,



Kieran O'Donnell, Manager  
Office of Compliance and Enforcement

Enclosures

cc: Angelica Greene, City of Portland, Bureau of Environmental Services,  
[Angelica.Greene@portlandoregon.gov](mailto:Angelica.Greene@portlandoregon.gov)  
Blair Edwards, DEQ  
Accounting, DEQ

1 BEFORE THE ENVIRONMENTAL QUALITY COMMISSION  
2 OF THE STATE OF OREGON

3 IN THE MATTER OF: ) NOTICE OF CIVIL PENALTY  
4 AIRGAS USA LLC, ) ASSESSMENT AND ORDER  
5 a foreign limited liability corporation )  
Respondent. ) CASE NO. WQ-SW-NWR-2022-580

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 Chapter 183, ORS Chapter 468B, and Oregon Administrative Rules (OAR) Chapter 340, Divisions  
10 011, 012, and 045.

11 II. FINDINGS OF FACT

12 1. DEQ assigned Respondent coverage under the National Pollutant Discharge Elimination  
13 System Industrial Stormwater Discharge General Permit, No. 1200-Z (the Permit) for the facility  
14 located at 3405 N. Columbia Blvd, Portland, Oregon (the Facility) on November 27, 2019. The Permit  
15 expired and was revised and reissued by DEQ; the revised permit became effective on July 1, 2021.  
16 The Permit was in effect at all material times.

17 2. Schedule B, condition 2.f. of the Permit<sup>1</sup> required permit registrants to monitor for  
18 benchmarks four times per monitoring year, with two samples taken between January 1 and June 30,  
19 and two samples between July 1 and December 31.

20 3. Schedule B, condition 8.a.i.(1) of the Permit required permittees to submit a Discharge  
21 Monitoring Report to DEQ no later than July 31<sup>st</sup> of each year.

22 4. Respondent submitted its monitoring results for the 2020-2021 monitoring year in  
23 February 2022.

24 5. Schedule A.9.b.ii of the current Permit requires permit registrants to submit Stormwater  
25 Pollution Control Plan (SWPCP) revisions to DEQ or DEQ's agent, in response to a corrective action  
26 or inspection.  
27

<sup>1</sup> In the current version of the Permit this requirement is at Schedule B, condition 7, Table 6.



1 in Section II, paragraphs 3-4. Failing to timely submit a report as required by a permit is a Class II  
2 violation pursuant to OAR 340-012-0055(2)(b). DEQ has not assessed a civil penalty for this violation.

3 2. Respondent has violated ORS 468B.025(2) and Schedule A.9.b.ii and Schedule A.9.e of  
4 the Permit by failing to submit a revised SWPCP to BES within 30 days of its request, as described in  
5 Section II, paragraphs 5-9. Failing to timely submit a report as required by a permit is a Class II violation  
6 pursuant to OAR 340-012-0055(2)(b). DEQ has not assessed a civil penalty for this violation.

7 3. Respondent has violated ORS 468B.025(2) and Schedule B, condition 7, table 6 of the  
8 Permit by failing to perform four instances of benchmark monitoring and four instances of impairment  
9 monitoring during the 2021-2022 monitoring year, as alleged in Section II, paragraphs 10-13. Specifically,  
10 Respondent's December 29, 2021, grab sample is not a "qualifying sample" because it was not taken 14  
11 days after the December 28<sup>th</sup> sample, as required by the Permit, and Respondent performed only one out of  
12 the four required impairment pollutant monitoring events during the 2021-2022 monitoring year. These  
13 are Class I violations pursuant to OAR 340-012-0055(1)(o). DEQ hereby assesses a \$11,231 civil penalty  
14 for this violation.

15 4. Respondent has violated ORS 468B.025(2) and Schedule B, condition 13.a.i of the  
16 Permit by failing to submit DMRs for the second, third and fourth quarters by the submission deadlines,  
17 as described in Section II, paragraphs 14-15. Failing to timely submit a report as required by a permit is a  
18 Class II violation pursuant to OAR 340-012-0055(2)(b). DEQ has not assessed a civil penalty for this  
19 violation.

#### 20 IV. ORDER TO PAY CIVIL PENALTY

21 Based upon the foregoing FINDINGS OF FACTS AND CONCLUSIONS, Respondent is  
22 hereby ORDERED TO: Pay a total civil penalty of \$11,231. The determination of the civil penalty is  
23 attached as Exhibit No.1 and is incorporated as part of this Notice.

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

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

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

#### 9 V. NOTICE OF RIGHT TO REQUEST A CONTESTED CASE HEARING

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

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1 Active duty Service members have a right to stay proceedings under the federal Service  
2 Members Civil Relief Act. For more information contact the Oregon State Bar at 1-800-  
3 452-8260, the Oregon Military Department at 503-584-3571, or the nearest United States Armed  
4 Forces Legal Assistance Office through <http://legalassistance.law.af.mil>. The Oregon Military  
5 Department does not have a toll free telephone number.

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

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15 2/2/2023  
16 Date


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16 Kieran O'Donnell, Manager  
17 Office of Compliance and Enforcement  
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EXHIBIT No.1

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

VIOLATION 1: Violating ORS 468B.025(2) by failing to monitor in accordance with Schedule B, condition 7, table 6 of the Permit during the 2021-2022 monitoring year.

CLASSIFICATION: This is a Class I violation pursuant to OAR 340-012-0055(1)(o).

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 \$4,000 for a Class I, moderate magnitude violation in the matrix listed in OAR 340-012-0140 (3)(b)(A)(ii) and applicable pursuant to OAR 340-012-0140 (3)(a)(E)(iii) because Respondent has coverage under an NPDES General Permit.

"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 an initial value of 7 according to OAR 340-012-0145(2)(a)(C),(D) because Respondent has six Class I violations and one Class II violation in case No: WQ/SW-NWR-2017-169. This value is reduced by 2 according to OAR 340-012-0145(2)(d)(A)(i) because the prior significant action was issued on 9/26/18, more than three years before the current violation occurred.

"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 insufficient information on which to base a finding under paragraphs (3)(a) or (b).

"O" is whether the violation was repeated or ongoing and receives a value of 3 according to OAR 340-012-0145(4)(c) because there were twelve occurrences of the violation. Each missed monitoring event from each outfall is a separate occurrence. Respondent failed to perform one instance of benchmark monitoring and failed to perform three instances of impairment monitoring. Respondent has three outfalls. Therefore, there are a total of 12 occurrences 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's conduct was reckless. Respondent applied for coverage under the Permit and has a copy of the Permit, which expressly requires Respondent to



perform four instances of impairment monitoring from all of its outfalls during the monitoring year. Respondent previously received an EEO and a formal enforcement action for failing to perform monitoring. By failing to perform the requirement monitoring Respondent consciously disregarded a substantial and unjustifiable risk that it would violate the Permit's requirement and Oregon law. Disregarding the risk was a gross deviation from the standard of care a reasonable person would observe.

"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.

"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 \$831. This is the amount Respondent gained by avoiding spending \$271 for analytical costs and \$125 in labor for each of the 3 sampling events during the 2021-2022 monitoring year. This "EB" was calculated pursuant to OAR 340-012-0150(1) using the U.S. Environmental Protection Agency's BEN computer model.

PENALTY CALCULATION:  $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$   
= \$4,000 + [(0.1 x \$4,000) x (5 + 0 + 3 + 8 + 0)] + \$831  
= \$4,000 + (\$400 x 16) + \$831  
= \$4,000 + \$6,400 + \$831  
= \$11,231

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)**

<b>DATE:</b>	February 2, 2023
<b>RESPONSE DATE :</b>	April 13, 2023
<b>TOTAL PENALTY:</b>	\$11,231.00

<b>Account Name:</b>	AIRGAS		
<b>Account Type:</b>	Vendor/Organization/Company	<b>Reference Number:</b>	CPGFD2300049
<b>SubSystem ID:</b>	187059	<b>FIMS Acct. ID:</b>	5648

**Penalty Summary**

Penalty Amount	Interest	Adjustment	Amount Paid	Total Penalty
\$ 11,231.00	\$ 0.00	\$ 0.00	\$ 0.00	\$ 11,231.00

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'



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 PLEASE RETURN THIS PORTION WITH YOUR PAYMENT



<b>REFERENCE NO.</b>	CPGFD2300049		
<b>PAYCODE:</b>	00401 7400 10040 74001 0500 000000 00		
<b>FEE PROGRAM ID:</b>	950	<b>RESPONSE DATE:</b>	April 13, 2023
<b>FIMS ACCT. ID:</b>	5648	<b>TOTAL PENALTY DUE:</b>	\$11231.00

**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 0095000056485CPGFD230004900011231009



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
2/1/2023	2022-580 WQ-SW-NWR-2022-580	\$11,231.00

### 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 \_\_\_\_\_