



Oregon

Tina Kotek, Governor

Department of Environmental Quality
Office of Compliance and Enforcement
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Portland, OR 97232-4100
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February 7, 2023

CERTIFIED MAIL No. 7018 1830 0001 6172 7240

SB Northwest Investments, LLC
Dbas Eagle Trailer Manufacturing
c/o Rick R. Barnes, Registered Agent
7813 SE Luther Road
Portland, OR 97206

Re: Notice of Civil Penalty Assessment and Order
Case No. AQ/ACDP-NWR-2022-005

This letter is to inform you that the Department of Environmental Quality (DEQ) has issued you a \$6,274 civil penalty for operating your trailer manufacturing facility at 7813 SE Luther Road, Portland, Oregon, without an Air Contaminant Discharge Permit (ACDP) from DEQ.

DEQ issued this penalty because operating without an ACDP is a serious violation. The Facility emits volatile organic compounds (VOCs) during the surface coating process and is located in a designated maintenance area for ozone (smog) as part of Oregon's implementation of the federal health-based National Ambient Air Quality Standards (NAAQS). Surface coating operations that have the potential to emit ten or more tons per year of VOCs in a maintenance area are subject to Reasonably Available Control Technology standards and are required to obtain an Air Contaminant Discharge Permit from DEQ. VOC emissions are a precursor to ozone and contribute to the formation of smog and degradation of the airshed. Furthermore, VOCs irritate human eyes, nose and throat, cause difficulty breathing, nausea, and can damage the human central nervous system as well as other organs. DEQ regulates these emissions through the permitting process to ensure emissions remain below levels that may negatively impact public health and the environment.

By operating without a required ACDP, you avoided regulation and gained an economic advantage over other similar sources that timely obtained their permit by avoiding the costs of complying with the law. In this case, \$3,474 of the \$6,274 civil penalty represents the economic benefit you derived by avoiding payment of the 2017 annual ACDP fee.

While you submitted your Simple ACDP application to DEQ on November 2, 2018, DEQ could not process and approve the application at the time because the City of Portland did not approve your facility's land use at the site. DEQ appreciates your effort to eventually obtain land use approval from the City in November 2021. DEQ considered this effort when determining the amount of civil penalty.

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 portion of the 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 Jenny Root at 503-229-5874.

Sincerely,



Kieran O'Donnell, Manager
Office of Compliance and Enforcement

cc: Weston Li, Northwest Region Office, DEQ
Accounting, DEQ
Brandon L. Thornburg, Attorney, Cosgrave Vergeer Kester LLP
900 SW Fifth Ave., 24th Floor, Portland, OR 97204

1 | 0160(2)(b)(A)], are subject to and must comply with the Reasonably Available Control Technology
2 | (RACT) requirements in OAR 340-232-0160(1) and (5).

3 | 5. Pursuant to Oregon Administrative Rule (OAR) 340-216-0020(3), no person may
4 | construct, install, establish, develop or operate any air contaminant source listed in OAR 340-216-8010
5 | without first obtaining an Air Contaminant Discharge Permit (ACDP) from DEQ or LRAPA.¹ Table 1,
6 | Part B, category #78 requires an ACDP for sources that conduct surface coating subject to RACT under
7 | OAR 340, division 232.

8 | 6. On November 2, 2018, Respondent submitted an application for a simple ACDP to
9 | DEQ. In accordance with OAR 340-018-0050(2)(a)(D), DEQ was unable to process the ACDP
10 | application at that time because it did not include an affirmative Land Use Compatibility Statement
11 | (LUCS) demonstrating compatibility with the City of Portland's acknowledged comprehensive land use
12 | plans as required by OAR 340-018-0050(2)(a)(A) and (B). In fact, in answer to question 2E on the
13 | LUCS submitted by Respondent, "*Is the activity or use compatible with your acknowledged*
14 | *comprehensive plan as required by OAR 660-031?*", the City of Portland checked "no."

15 | 7. On November 22, 2021, Respondent submitted an affirmative LUCS from the City of
16 | Portland to DEQ that approved the land use or activity at the Facility as a legal non-conforming use.

17 | 8. To date, DEQ has not yet issued Respondent an ACDP to operate the Facility.

18 | 9. To date, Respondent continues to operate the Facility and conduct surface coating
19 | activities at the Facility.

20 | III. CONCLUSIONS

21 | 1. VOC's are:

22 | a. "regulated pollutants" as defined by OAR 340-200-0020(134)(a)(A),

23 | b. "air contaminants" as defined by OAR 340-200-0020(8), and

24 | 2. The Facility is:

25 | a. a "source" as defined in OAR 340-200-0020(166),
26 |
27 |

¹ LRAPA issues ACDPs only for sources located in Lane County

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 2/7/2023

24 Date

25 

26 Kieran O'Donnell, Manager
27 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: Operating an air contaminant source listed in OAR 340-216-8010, Part B, source category #78 without first obtaining an ACDP from DEQ, in violation of ORS 468A.045(1)(b) and OAR 340-216-0020(3).

CLASSIFICATION: This is a Class II violation pursuant to OAR 340-012-0054(2)(a).

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 \$2,000 for a Class II, moderate magnitude violation in the matrix listed in OAR 340-012-0140(3)(b)(B)(ii) and applicable pursuant to OAR 340-012-0140(3)(a)(A) because Respondent should have had a Simple Air Contaminant Discharge Permit to operate its Facility and is not listed under another penalty matrix.

"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 Respondent, and receives a value of 0 according to OAR 340-012-0145(2)(a)(A), because there are no 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. In accordance with OAR 340-012-0145(4), each day of violation with a duration of more than one day is a separate occurrence. Respondent has operated the Facility without an ACDP from at least January 1, 2017, to present.

"M" is the mental state of the Respondent and receives a value 2 according to OAR 340-012-0145(5)(b). Since 2017, the Facility has had the potential to emit 10 or more tons of VOCs per year. Other manufacturing facilities that conduct surface coating operations in the Portland area are subject to RACT and operate under ACDPs issued by DEQ. As such, Respondent reasonably should have known of the requirement to obtain an ACDP from

DEQ once the Facility reached the “10 or more tons of VOC per year” threshold for RACT and ACDP permitting.

"C" is Respondent's efforts to correct or mitigate the violation, and receives a value of -2 according to OAR 340-012-0145(6)(d) because Respondent eventually made some efforts to correct the violation. DEQ notified Respondent on December 16, 2019, that its ACDP application could not be processed due to lack of an affirmative LUCS and that Respondent was operating its Facility without a required ACDP from DEQ. Respondent eventually submitted an affirmative LUCS to DEQ on November 22, 2021.

"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 \$3,474. This is the amount Respondent gained by avoiding spending \$4,608 for the 2017 annual permit fee. This “EB” was calculated pursuant to OAR 340-012-0150(1) using the U.S. Environmental Protection Agency's BEN computer model.

PENALTY CALCULATION: $Penalty = BP + [(0.1 \times BP) \times (P + H + O + M + C)] + EB$
 $= \$2,000 + [(0.1 \times \$2,000) \times (0 + 0 + 4 + 2 + -2)] + \$3,474$
 $= \$2,000 + (200 \times 4) + \$3,474$
 $= \$2,000 + \$800 + \$3,474$
 $= \$6,274$