



# Oregon

Kate Brown, 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

August 3, 2022

CERTIFIED MAIL No. 7018 1830 0001 5906 3770

Oregon Potato Company  
c/o Unisearch, Inc., Registered Agent  
698 12<sup>th</sup> Street SW, Suite 200  
Salem, OR 97301

Re: Notice of Civil Penalty Assessment and Order  
Case No. AQ/ACDP-ER-2021-167

This letter is to inform you that DEQ has issued you a civil penalty of \$2,800 for exceeding the nitrogen oxides (NO<sub>x</sub>) plant site emission limit (PSEL) in your Air Contaminant Discharge Permit. The violations occurred at your potato processing facility at 650 Columbia Avenue NE, Boardman, Oregon.

DEQ issued this penalty because plant site emission limits are important limits that help DEQ manage airshed capacity for pollutants and ensure a facility's emissions are limited to levels that protect public health and the environment. In this case, the emission limits are for nitrogen oxides (NO<sub>x</sub>), which is an ozone precursor and can contribute to adverse respiratory effects in humans, including lung inflammation and asthma.

DEQ appreciates your efforts to address the PSEL violations by testing your facility to verify emission factors and submitting an application to update the NO<sub>x</sub> emissions factors in your permit. DEQ considered these efforts 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](mailto: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), which 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>.

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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 or toll free in Oregon at 800-452-4011, extension 5874.

Sincerely,



Kieran O'Donnell, Manager  
Office of Compliance and Enforcement

cc: Tom Hack, Eastern Region, Pendleton Office, DEQ  
Mark Bailey, Eastern Region, Bend Office, DEQ  
Don Hendrix, AQ, HQ, DEQ  
Accounting, DEQ  
Luke Norenberg, Plant Manager, Oregon Potato Company, P.O. Box 169, Boardman, OR 97818

1                                   BEFORE THE ENVIRONMENTAL QUALITY COMMISSION

2                                                           OF THE STATE OF OREGON

3 IN THE MATTER OF:                                    )  
4 OREGON POTATO COMPANY,                        )  
   a Washington Corporation,                    )  
5                                                            )  
                                                          )        NO. AQ/ACDP-ER-2021-167  
                                                          )        Respondent.

6                                                           I. AUTHORITY

7                The Department of Environmental Quality (DEQ) issues this Notice of Civil Penalty  
8 Assessment and Order pursuant to Oregon Revised Statutes (ORS) 468.100 and 468.126 through  
9 468.140, ORS Chapters 183 and 468A and Oregon Administrative Rules (OAR) Chapter 340,  
10 Divisions 011, 012, 200, 214, 216 and 222.

11                                                           II. FINDINGS OF FACT

12                1.        Respondent owns and operates a potato processing plant at 650 Columbia Avenue  
13 NE, Boardman, Oregon (the Facility).

14                2.        On January 6, 2008, DEQ issued Respondent Simple Air Contaminant Discharge  
15 Permit No. 25-0002-SI-01 (the 2008 Permit). On July 12, 2012, and again on April 19, 2018,  
16 DEQ renewed and reissued the Permit (the 2012 and 2018 Permits, respectively). One of these  
17 Permits was in effect at all material times.

18                3.        The Permits authorize Respondent to discharge air contaminants from the Facility  
19 in conformance with the requirements, limitations and conditions set forth in the Permits.

20                4.        Condition 4.1 of the 2008 and 2012 Permits and Condition 3.1 of the 2018 Permit  
21 establishes Respondent's annual plant site emission limits (PSELs) for the Facility. These  
22 conditions limit Respondent's nitrogen oxide (NO<sub>x</sub>) emissions to 39 tons per year (NO<sub>x</sub> PSEL).

23                5.        To determine compliance with the annual NO<sub>x</sub> PSEL, Conditions 4.4 and 4.5 in the  
24 2008 Permit; Conditions 5.2 and 5.4 in the 2012 Permit; and Conditions 3.3 and 3.4 of the 2018  
25 Permit require Respondent to calculate annual NO<sub>x</sub> emissions using the Facility's monthly natural  
26 gas usage and the NO<sub>x</sub> emission factor for the boilers in Condition 10.0 (2008 and 2018 Permits)

1 and Condition 11.0 (2012 Permit), unless an alternative emission factor has been approved in  
2 writing by DEQ.

3 6. At all material times, no alternative emission factor was approved in writing by DEQ  
4 for the Facility.

5 7. At all material times, the emission factor for NO<sub>x</sub> has remained the same in each of  
6 the Permits.

7 8. Using the NO<sub>x</sub> emission factor in the Permits and the Facility's monthly natural  
8 gas usage in the boilers, Respondent's NO<sub>x</sub> emissions for the 12-consecutive calendar month  
9 periods, were as follows:

10 a. Respondent's total NO<sub>x</sub> emissions for January 2010 through December  
11 2010 were 46 tons.

12 b. Respondent's total NO<sub>x</sub> emissions for January 2011 through December  
13 2011 were 46 tons.

14 c. Respondent's total NO<sub>x</sub> emissions for January 2012 through December  
15 2012 were 45 tons.

16 d. Respondent's total NO<sub>x</sub> emissions for January 2013 through December  
17 2013 were 43 tons.

18 e. Respondent's total NO<sub>x</sub> emissions for January 2014 through December  
19 2014 were 44 tons.

20 f. Respondent's total NO<sub>x</sub> emissions for January 2015 through December  
21 2015 were 40 tons.

22 g. Respondent's total NO<sub>x</sub> emissions for January 2016 through December  
23 2016 were 40 tons.

24 h. Respondent's total NO<sub>x</sub> emissions for January 2019 through December  
25 2019 were 44 tons.

26 i. Respondent's total NO<sub>x</sub> emissions for January 2020 through December  
27 2020 were 44 tons.



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

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

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

16  
17  
18 8/3/2022

19 Date

20 

21 Kieran O'Donnell, Manager  
22 Office of Compliance and Enforcement  
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25  
26  
27

EXHIBIT 1

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

VIOLATION: Exceeding the 39 tons per year NO<sub>x</sub> PSEL in violation of Condition 4.1 of the 2008 and 2012 Permits, Condition 3.1 of the 2018 Permit and ORS 468A.045(2).

CLASSIFICATION: These are Class I violations pursuant to OAR 340-012-0054(1)(g).

MAGNITUDE: The magnitude of the violation is minor pursuant to OAR 340-012-0135(1)(e)(C) because Respondent exceeded the annual NO<sub>x</sub> PSEL by an amount less than 50% of the annual significant emission rate (SER). The SER for NO<sub>x</sub> is 40 tons per year pursuant to OAR 340-200-0020(161)(c).

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 I, minor magnitude violation in the matrix listed in OAR 340-012-0140(3)(b)(A)(iii) and applicable pursuant to OAR 340-012-0140(3)(a)(A) because Respondent operates its facility under a Simple Air Contaminant Discharge 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 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 3 according to OAR 340-012-0145(4)(c), because there were from seven to 28 occurrences of the violation. Respondent exceeded its annual NO<sub>x</sub> PSEL for the periods of January 2010 to December 2010; January 2011 to December 2011; January 2012 to December 2012; January 2013 to December 2013; January 2014 to December 2014; January 2015 to December 2015; January 2016 to December 2016; January 2019 to December 2019; January 2020 to December 2020; and January 2021 to December 2021, for a total of ten occurrences.

"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. The NO<sub>x</sub> PSEL and the methods for calculating compliance with the PSELs are express conditions of the Permit. Respondent had the opportunity to review and provide comment on the draft Simple ACDP, each time, before it was issued in 2008, 2012 and 2018. Respondent did not question or raise objections

to the PSEL or emission factors that would be used to calculate compliance with the PSEL before the permit was issued. Therefore, by failing to take adequate measures to ensure Respondent could and would operate its Facility in a manner that maintained emissions below the PSEL limit, as calculated according to the Permit, Respondent failed to take reasonable care to avoid the foreseeable risk Respondent would violate the Permit and Oregon law.

"C" is Respondent's efforts to correct or mitigate the violation and a value of -3 according to OAR 340-012-0145(6)(c), because Respondent made reasonable efforts to correct or minimize the effects of the violation. Respondent conducted emissions testing of its boilers in February 2022, to verify emission factors in the Permit. According to the test results, the NO<sub>x</sub> emissions rates were lower than the emission factors contained in the Permit. On June 21, 2022, Respondent submitted an application to DEQ to use the lower NO<sub>x</sub> emission factors derived from the source test to demonstrate compliance with the NO<sub>x</sub> PSEL. Once approved, Respondent will be able to demonstrate compliance with the NO<sub>x</sub> PSEL going forward.

"EB" is the approximate economic benefit that an entity gained by not complying with the law. 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. is the approximate dollar value of the benefit gained and the costs avoided or delayed as a result of 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 any economic benefit derived is likely to be de minimis.

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