



# 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

September 3, 2021

CERTIFIED MAIL No.: 7018 1830 0001 5903 8891

Ultimate RB, Inc.  
c/o United Agent Group Inc., Registered Agent  
5708 SE 136<sup>th</sup> Avenue, Suite 2  
Portland, OR 97236

Re: Notice of Civil Penalty Assessment and Order  
Case No. AQ/ACDP-WR-2020-234

*DEQ is committed to balancing its vital obligation to enforce the law and protect the environment with a consideration of the dramatic disruptions to public health and the economy caused by the COVID-19 outbreak. We understand the outbreak may impact your ability to timely appeal, pay the assessed civil penalty, or comply with this order. You may submit to DEQ documentation identifying whether COVID-19-related disruption affects your ability to comply with this order. Visit our webpage <https://www.oregon.gov/deq/Pages/covid-19.aspx> for more information about documenting specific COVID-19 disruptions your facility may be encountering and how that affects your ability to comply. DEQ will exercise reasonable discretion regarding settlement of this order.*

This letter is to inform you that the Department of Environmental Quality (DEQ) has issued you a civil penalty of \$10,811 for operating your rubber products manufacturing facility at 904 NE 10<sup>th</sup> Avenue, McMinnville, Oregon, without an Air Contaminant Discharge Permit (ACDP) from DEQ.

DEQ issued this penalty because operating without an ACDP is a serious violation. Rubber products manufacturing emissions contain particulate matter, which is a criteria pollutant. Particulate matter, when emitted in excess, can contribute to respiratory distress in members of the public. Once inhaled, particulate matter can affect the heart and lungs, causing serious health problems such as decreased lung function, irregular heartbeat and chronic bronchitis. 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 a source of particulate matter emissions without a permit you avoided regulation and gained an economic advantage over other similar facilities that timely obtained their permit by avoiding the costs of complying with the law. Of the \$10,811 penalty, \$7,611 is the economic benefit you derived by delaying payment of the ACDP initial application fee from January 2016 to June 2020, and by avoiding payment of annual permit fees from 2016 through 2019.

DEQ appreciates your effort to correct the violation by submitting a complete ACDP application on June 15, 2020. 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.state.or.us](mailto:DEQappeals@deq.state.or.us)  
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 or toll free in Oregon at 800-452-4011, extension 5874.

Sincerely,



Kieran O'Donnell, Manager  
Office of Compliance and Enforcement

cc: Brian Hall, Western Region, Salem office, DEQ  
Claudia Davis, Western Region, Salem office, DEQ  
Don Hendrix, AQ, HQ, DEQ  
Accounting, DEQ  
Aubree Minton, Environmental Health and Safety Coordinator, Ultimate RB, Inc.  
904 NE 10<sup>th</sup> Avenue, McMinnville, Oregon 97128

BEFORE THE ENVIRONMENTAL QUALITY COMMISSION  
OF THE STATE OF OREGON

IN THE MATTER OF:	)	NOTICE OF CIVIL PENALTY
ULTIMATE RB, INC.,	)	ASSESSMENT AND ORDER
a Delaware corporation,	)	
	)	NO. AQ/ACDP-WR-2020-234
Respondent.	)	

I. AUTHORITY

This Notice and Order is issued pursuant to Oregon Revised Statutes (ORS) 468.100 and 468.126 through 468.140, ORS Chapters 183 and 468A and Oregon Administrative Rules (OAR) Chapter 340, Divisions 011, 012, 200, and 216.

II. FINDINGS OF FACT

1. Since at least January 1, 2016, Respondent has owned and operated a manufacturing facility at 904 NE 10<sup>th</sup> Avenue, McMinnville, Oregon (the Facility). The Facility uses recycled tires and tire treads to make rubber products.

2. Based upon 24-hour operations 365 days per year (8,760 annual hours), the Facility would have actual emissions of approximately 45 tons per year of particulate matter (PM), if the Facility were to operate without its baghouses to control PM.

3. Pursuant to Oregon Administrative Rule (OAR) 340-216-0020(3), no person may construct, install, establish, develop or operate any air contaminant source listed in OAR 340-216-8010 without first obtaining an Air Contaminant Discharge Permit (ACDP) from DEQ or LRAPA.<sup>1</sup> Table 1 of OAR 340-216-8010, Part B, source category 85 requires an ACDP for sources that would have actual emissions, if the source were to operate uncontrolled, of ten or more tons per year of any single criteria pollutant.

4. Respondent submitted its first complete ACDP application to DEQ to operate the Facility on June 15, 2020.

5. DEQ issued Simple ACDP No. 36-0052-SI-01 to Respondent on November 9, 2020.

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<sup>1</sup> LRAPA issues ACDPs only for sources located in Lane County

### III. CONCLUSIONS

1  
2 1. PM emitted from the Facility is an "air contaminant" as defined by OAR 340-  
3 200-0020(8), and a "criteria pollutant" as defined by OAR 340-200-0020(36).

4 2. The Facility is a "source" as defined in OAR 340-200-0020(166).

5 3. From at least January 1, 2016 until November 9, 2020, Respondent violated ORS  
6 468A.045(1)(b) and OAR 340-216-0020(3), adopted pursuant to ORS 468A.040, by operating an  
7 air contaminant source listed in OAR 340-216-8010, Part B, source category 85 without first  
8 obtaining an ACDP from DEQ as further described in Section II, Paragraphs 2 through 5 above.  
9 This is a Class II violation according to OAR 340-012-054(2)(a). DEQ hereby assesses a \$10,811  
10 civil penalty for this violation.

### IV. ORDER TO PAY CIVIL PENALTY

11  
12 Based upon the foregoing FINDINGS OF FACTS AND CONCLUSIONS, Respondent is  
13 hereby ORDERED TO:

14 Pay a total civil penalty of \$10,811. The determination of the civil penalty is attached as  
15 Exhibit 1 and is incorporated as part of this Notice.

16 If you do not file a request for hearing as set forth in Section V below, your check or money  
17 order must be made payable to "State Treasurer, State of Oregon" and sent to the **DEQ,**  
18 **Business Office, 700 NE Multnomah Street, Suite 600, Portland, Oregon 97232.**

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

19  
20 You have a right to a contested case hearing on this Notice, if you request one in writing.  
21 DEQ must receive your request for hearing **within 20 calendar days** from the date you receive  
22 this Notice. If you have any affirmative defenses or wish to dispute any allegations of fact in this  
23 Notice or attached exhibit, you must do so in your request for hearing, as factual matters not  
24 denied will be considered admitted, and failure to raise a defense will be a waiver of the defense.  
25 (See OAR 340-011-0530 for further information about requests for hearing.) You must send your  
26 request to: **DEQ, Office of Compliance and Enforcement, 700 NE Multnomah Street, Suite**  
27 **600, Portland, Oregon 97232**, fax it to **503-229-5100** or email it to




1 [DEQappeals@deq.state.or.us](mailto:DEQappeals@deq.state.or.us). An administrative law judge employed by the Office of  
2 Administrative Hearings will conduct the hearing, according to ORS Chapter 183, OAR Chapter  
3 340, Division 011 and OAR 137-003-0501 to 0700. You have a right to be represented by an  
4 attorney at the hearing, however you are not required to be. If you are an individual, you may  
5 represent yourself. If you are a corporation, partnership, limited liability company,  
6 unincorporated association, trust or government body, you must be represented by an attorney or  
7 a duly authorized representative, as set forth in OAR 137-003-0555.

8 Active duty Service members have a right to stay proceedings under the federal Service  
9 Members Civil Relief Act. For more information contact the Oregon State Bar at 1-800-  
10 452-8260, the Oregon Military Department at 503-584-3571, or the nearest United States Armed  
11 Forces Legal Assistance Office through <http://legalassistance.law.af.mil>. The Oregon Military  
12 Department does not have a toll-free telephone number.

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

19  
20  
21 9/13/2021  
22 Date

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22 Kieran O'Donnell, Manager  
23 Office of Compliance and Enforcement  
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## 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 85 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 operated the Facility without an ACDP from at least January 1, 2016 to November 9, 2020.
- "M" is the mental state of the Respondent and receives a value of 4 pursuant to OAR 340-012-0145(5)(c) because Respondent's conduct was negligent. Respondent has another facility in Portland that operates under an ACDP. As such, Respondent is familiar with air permitting requirements and reasonably should have known that its McMinnville facility also required an ACDP to operate. By failing to inquire with DEQ or take other measures to determine

ACDP applicability for the McMinnville facility, Respondent failed to take reasonable care to avoid the foreseeable risk it may operate its facility without a required ACDP in violation of Oregon law.

"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 March 17, 2020, of the requirement to submit an ACDP application. Respondent submitted a complete ACDP application to DEQ on June 15, 2020.

"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 \$7,611. This is the amount Respondent gained by delaying spending \$7,200 from approximately January 1, 2016 to April 23, 2020, for the initial permit application fee, and for avoiding spending \$2,304 each year in annual permit fees for operating years 2016 through 2019. This "EB" was calculated pursuant to OAR 340-012-0150(1) using the U.S. Environmental Protection Agency's BEN computer model.

PENALTY CALCULATION:  $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$   
 $= \$2,000 + [(0.1 \times \$2,000) \times (0 + 0 + 4 + 4 + -2)] + \$7,611$   
 $= \$2,000 + (200 \times 6) + \$7,611$   
 $= \$2,000 + \$1,200 + \$7,611$   
 $= \$10,811$