



# 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 27, 2022

CERTIFIED MAIL No. 7020 2450 0000 3349 5253

Oldcastle APG West, Inc.  
dba Sakrete of the Pacific Northwest  
c/o Corporation Service Company, Registered Agent  
1127 Broadway Street NE, Suite 310  
Salem, OR 97301

Re: Notice of Civil Penalty Assessment and Order  
Case No. AQ/ACDP-NWR-2021-196

This letter is to inform you that DEQ has issued you a civil penalty of \$2,200 for exceeding the particulate matter (PM) plant site emission limit (PSEL) in your Air Contaminant Discharge Permit. The violations occurred at your stationary dry-mix concrete plant at 1402 N. River Street, Portland, 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 particulate matter, which, when emitted in excess, can contribute to respiratory distress in individuals. 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 appreciates your efforts to minimize the impacts of the violation by reducing production and testing your facility to verify and update the PM 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

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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 Jenny Root at 503-229-5874.

Sincerely,



Kieran O'Donnell, Manager  
Office of Compliance and Enforcement

cc: Josh Alexander, Northwest Region, DEQ  
Don Hendrix, AQ, HQ, DEQ  
Accounting, DEQ  
Bill Meadows, Site Manager, Oldcastle APG West, Inc. dba Sakrete of the Pacific Northwest  
1402 N. River Street, Portland, OR 97227





1 340, Division 011 and OAR 137-003-0501 to 0700. You have a right to be represented by an  
2 attorney at the hearing, however you are not required to be. If you are an individual, you may  
3 represent yourself. If you are a corporation, partnership, limited liability company,  
4 unincorporated association, trust or government body, you must be represented by an attorney or  
5 a duly authorized representative, as set forth in OAR 137-003-0555.

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

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

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19 9/27/2022

20 Date

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Kieran O'Donnell, 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: Exceeding the 24 tons per year PM PSEL in violation of Condition 2.1 of the Permit.

CLASSIFICATION: This is a Class I violation 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 PM PSEL by an amount less than 50% of the annual significant emission rate (SER). The SER for PM is 25 tons per year pursuant to OAR 340-200-0020(161)(d).

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 0 according to OAR 340-012-0145(4)(a) because there was only one occurrence of the violation. Respondent exceeded the PM PSEL during one 12-consecutive calendar month period (January 2020 to December 2020).

"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. According to OAR 340-012-0030(15), negligent means the respondent failed to take reasonable care to avoid a foreseeable risk of conduct constituting or resulting in a violation. The PM PSEL and the methods for calculating compliance with the PSELs are express conditions of the Permit. In 2019, Respondent made changes to its baghouse that increased the flow rate. In 2020, Respondent increased production levels that together with the baghouse changes, resulted in PM emissions that exceeded the PSEL. 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.

"C" is Respondent's efforts to correct or mitigate the violation and receives a value of -3 according to OAR 340-012-0145(6)(c), because Respondent made reasonable efforts to minimize the effects of the violation. Respondent reduced production shortly after the PSEL exceedance which reduced the PM emissions below the PSEL. In addition, Respondent conducted emissions testing of its rotary dryer in October 2021, to verify emission factors for the upcoming Permit's renewal. According to the test results, the PM emissions rates were lower than the emission factor contained in the Permit. On February 25, 2022, DEQ issued Respondent its renewed Permit which incorporates the lower PM emission factor derived from the source test. Going forward, with the new emission factor, Respondent will be able to demonstrate compliance with the PM PSEL, even if Respondent increases production to the 2020 levels.

"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:  $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$   
 $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$   
 $= \$2,000 + [(0.1 \times \$2,000) \times (0 + 0 + 0 + 4 + -3)] + \$0$   
 $= \$2,000 + (\$200 \times 1) + \$0$   
 $= \$2,000 + \$200 + \$0$   
 $= \$2,200$