

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 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. <u>Please review and refer to it when discussing this case with DEQ.</u>

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

Oldcastle APG West, Inc. Case No. AQ/ACDP- NWR-2021-196 Page 2

of paying a portion of your penalty. Further information is available by calling the number below or at <a href="http://www.oregon.gov/deq/Regulations/Pages/SEP.aspx">http://www.oregon.gov/deq/Regulations/Pages/SEP.aspx</a>.

DEQ's rules are available at <a href="http://www.oregon.gov/deq/Regulations/Pages/Statutes.aspx">http://www.oregon.gov/deq/Regulations/Pages/Statutes.aspx</a> 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	BEFORE THE ENVIRONMENTAL QUALITY COMMISSION
2	OF THE STATE OF OREGON
3	IN THE MATTER OF: OLDCASTLE APG WEST, INC,  OLDCASTLE APG WEST, INC,
4 5	a Colorado corporation doing business as, ) SAKRETE OF THE PACIFIC ) NO. AQ/ACDP-NWR-2021-196 NORTHWEST, an assumed business name, )
6	Respondent. )
7	I. AUTHORITY
8	The Department of Environmental Quality (DEQ) issues this Notice of Civil Penalty
9	Assessment and Order pursuant to Oregon Revised Statutes (ORS) 468.100 and 468.126 through
10	468.140, ORS Chapters 183 and 468A and Oregon Administrative Rules (OAR) Chapter 340,
11	Divisions 011, 012, 200, 214, 216 and 222.
12	II. FINDINGS OF FACT
13	1. Respondent, a Colorado corporation registered to conduct business in Oregon,
14	owns and operates a stationary dry-mix concrete plant at 1402 N. River Street, Portland, Oregon
15	(the Facility).
16	2. On July 25, 2014, DEQ issued Respondent Simple Air Contaminant Discharge
17	Permit No. 26-3272-SI-01 (the Permit). The Permit was in effect at all material times.
18	3. The Permit authorizes Respondent to discharge air contaminants from the Facility
19	in conformance with the requirements, limitations and conditions set forth in the Permit.
20	4. Condition 2.1 of the Permit establishes Respondent's annual plant site emission
21	limits (PSELs) for the Facility. This condition limits Respondent's particulate matter (PM)
22	emissions to 24 tons per year (PM PSEL).
23	5. To determine compliance with the annual PM PSEL, Condition 3.1 of the Permit
24	requires Respondent to calculate annual PM emissions using the Facility's monthly process
25	production for the rotary dryer and silo baghouse and the correlating PM emission factors in
26	Condition 9.0 of the Permit.
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	Page 1 - NOTICE OF CIVIL PENALTY ASSESSMENT AND ODDED

CASE NO. AQ/ACDP-NWR-2021-196

6. Using the PM emission factors in Condition 9.0 of the Permit and the Facility's monthly rotary dryer and silo baghouse production, Respondent's total PM emissions for January 2020 through December 2020 were 25 tons.

## II. CONCLUSION

Respondent violated Condition 2.1 of the Permit by exceeding the 24 ton per year PM PSEL as further described in Section II, Paragraphs 4 through 6 above. This is a Class I violation according to OAR 340-012-0054(1)(g). DEQ hereby assesses a \$2,200 civil penalty for this violation.

## IV. ORDER TO PAY CIVIL PENALTY

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

Pay a total civil penalty of \$2,200. The determination of the civil penalty is attached as Exhibit 1 and is incorporated as part of this Notice.

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

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

You have a right to a contested case hearing on this Notice, if you request one in writing. DEQ must receive your request for hearing within 20 calendar days from the date you receive this Notice. If you have any affirmative defenses or wish to dispute any allegations of fact in this Notice or attached exhibit, you must do so in your request for hearing, as factual matters not denied will be considered admitted, and failure to raise a defense will be a waiver of the defense. (See OAR 340-011-0530 for further information about requests for hearing.) You must send your request to: DEQ, Office of Compliance and Enforcement, 700 NE Multnomah Street, Suite 600, Portland, Oregon 97232, fax it to 503-229-6762 or email it to DEQappeals@deq.oregon.gov. An administrative law judge employed by the Office of Administrative Hearings will conduct the hearing, according to ORS Chapter 183, OAR Chapter

Page 2 - NOTICE OF CIVIL PENALTY ASSESSMENT AND ORDER

CASE NO. AQ/ACDP-NWR-2021-196

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

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

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

127/2022

Kieran O'Donnell, Manager

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

<u>VIOLATION</u>: Exceeding the 24 tons per year PM PSEL in violation of Condition

2.1 of the Permit.

<u>CLASSIFICATION</u>: 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).

<u>CIVIL PENALTY FORMULA</u>: 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.

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