



# 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

November 10, 2022

CERTIFIED MAIL No. 7020 2450 0000 3349 5550

Ben Balzer  
Balzer Painting, Inc.  
12171 SW Herman Road  
Tualatin, OR 97062

Re: Notice of Civil Penalty Assessment  
Case No. AQ/ACDP-NWR-2022-097

This letter is to inform you that the Department of Environmental Quality (DEQ) has issued you a civil penalty of \$1,500 for operating your surface coating operations at 12171 SW Herman Road in Tualatin (the Facility), without a Simple Air Contaminant Discharge Permit (ACDP) from DEQ. The violation occurred when the Simple ACDP you were assigned to expired without renewal and you continued operations at the Facility.

DEQ issued this penalty because your operation of the Facility without the required air quality permit coverage constitutes a significant violation of Oregon law. Operating under the terms and conditions of an ACDP helps ensure operations are protective of the environment and public health. The permit includes air emission limits on volatile organic compounds harmful to human health and the environment.

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). SEPs are environmental improvement projects that you sponsor instead of

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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 Steve Siegel at 503-229-5518.

Sincerely,



Kieran O'Donnell, Manager  
Office of Compliance and Enforcement

cc: Balzer Painting, c/o Luis Rivas, Director of Operations, [luis@balzerpainting.com](mailto:luis@balzerpainting.com)  
Blaine Mershon, Northwest Region, DEQ  
Joshua Alexander, Northwest Region, DEQ  
Don Hendrix, AQ, HQ, DEQ  
Accounting, DEQ





1 Notice or attached exhibit, you must do so in your request for hearing, as factual matters not  
2 denied will be considered admitted, and failure to raise a defense will be a waiver of the defense.  
3 (See OAR 340-011-0530 for further information about requests for hearing.) You must send your  
4 request to: **DEQ, Office of Compliance and Enforcement, 700 NE Multnomah Street, Suite**  
5 **600, Portland, Oregon 97232**, fax it to **503-229-5100** or email it to  
6 [DEQappeals@deq.oregon.gov](mailto:DEQappeals@deq.oregon.gov). An administrative law judge employed by the Office of  
7 Administrative Hearings will conduct the hearing, according to ORS Chapter 183, OAR Chapter  
8 340, Division 011 and OAR 137-003-0501 to 0700. You have a right to be represented by an  
9 attorney at the hearing, however you are not required to be. If you are an individual, you may  
10 represent yourself. If you are a corporation, partnership, limited liability company,  
11 unincorporated association, trust or government body, you must be represented by an attorney or  
12 a duly authorized representative, as set forth in OAR 137-003-0555.

13 Active duty service members have a right to stay proceedings under the federal Service  
14 Members Civil Relief Act. For more information contact the Oregon State Bar at 1-800-  
15 452-8260, the Oregon Military Department at 503-584-3571, or the nearest United States Armed  
16 Forces Legal Assistance Office through <http://legalassistance.law.af.mil>. The Oregon Military  
17 Department does not have a toll-free telephone number.

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

24  
25 11 / 10 / 2022  
26 Date

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

## EXHIBIT

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

VIOLATION: Continuing to operate an air contaminant source listed in OAR 340-216-8010 (surface coating operations with actual emissions of VOCs before add on controls of 10 or more tons/year) after the Air Contaminant Discharge Permit (ACDP) for the facility expired, in violation of 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 minor pursuant to OAR 340-012-0130(4), as the Respondent continued operating under the terms of its previous permit, the violation is not ongoing and the facility is not a major source.

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 \$1,000 for a Class II, minor magnitude violation in the matrix listed in OAR 340-012-0140(3)(b)(B)(iii) and applicable pursuant to OAR 340-012-0140(3)(a)(A) because Respondent must operate the Facility under a Simple ACDP.

"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)(c), 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 approximately May 1, 2022, to June 15, 2022, when DEQ received a late application for renewal of ACDP Permit Number 03-2505-SI-01.

"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. Permit condition 7.1, "Permit Renewal Application," requires renewal of the permit 120 days prior to permit expiration, as does OAR 340-216-0082(1)(a). The permit expiration date is also identified on each page of 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 correct the violation by submitting a permit renewal application within three months of permit expiration.

"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 \$0 because DEQ does not charge a fee to renew a Simple ACDP.

PENALTY CALCULATION:  $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$   
 $= \$1,000 + [(0.1 \times \$1,000) \times (0 + 0 + 4 + 4 - 3)] + \$0$   
 $= \$1,000 + (100 \times 5) + \$0$   
 $= \$1,000 + \$500 + \$0$   
 $= \$1,500$