



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

December 27, 2021

CERTIFIED MAIL No. 7018 1830 0001 5906 3152

Jodi Anne Bittick
Blue Sky Martinizing
1250 Biddle Road, Suite G
Medford, OR 97504

Re: Notice of Civil Penalty Assessment and Order
Case No. AQ/ACDP-WR-2021-094

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 \$1,800 for operating your perc dry cleaning facility at 1250 Biddle Road, Suite G, Medford, Oregon, without an Air Contaminant Discharge Permit (ACDP) from DEQ. The violation occurred when the previous General ACDP you were assigned to expired and you failed to apply for reassignment to the ACDP once it was renewed and reissued.

Dry cleaning facilities that use perchloroethylene (perc) as their cleaning solvent are subject to permitting because perc is a known or suspected carcinogen that, if inhaled or otherwise ingested, is highly toxic and can cause other serious health effects. Permits require that perc dry cleaning facilities inspect for vapor leaks and monitor condensers to ensure that perc is not spilled or released to the environment to protect public health.

Included in Section IV of the attached Notice is an order requiring that you, within 30 days of the order becoming final, either submit a complete assignment application for an ACDP to DEQ, or cease using perc at the facility.

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

Sincerely,



Kieran O'Donnell, Manager
Office of Compliance and Enforcement

cc: Wayne Kauzlarich, Western Region, Medford Office, DEQ
Claudia Davis, Western Region, Salem Office, DEQ
Don Hendrix, AQ, HQ, DEQ
Accounting, DEQ

1 BEFORE THE ENVIRONMENTAL QUALITY COMMISSION
2 OF THE STATE OF OREGON

3 IN THE MATTER OF:) NOTICE OF CIVIL PENALTY
4 JODI ANNE BITTICK,) ASSESSMENT AND ORDER
5 an individual also known as)
6 BLUE SKY MARTINIZING,) NO. AQ/ACDP-WR-2021-094
7 Respondent.)

8 I. AUTHORITY

9 This Notice and Order is issued pursuant to Oregon Revised Statutes (ORS) 468.100 and
10 468.126 through 468.140, ORS Chapters 183 and 468A and Oregon Administrative Rules (OAR)
11 Chapter 340, Divisions 011, 012, 200, 216 and 244.

12 II. FINDINGS OF FACT

13 1. Respondent owns and operates a dry cleaning business at 1250 Biddle Road, Suite
14 G, Medford, Oregon (the Facility). Respondent operates the Facility as “Blue Sky Martinizing”
15 as of May 2020, and formerly as “Blue Sky One Hour Martinizing.”

16 2. At all material times, Respondent used perchloroethylene (also known as perc)
17 solvent to dry clean clothes at the Facility.

18 3. Pursuant to OAR 340-216-0020(3), no person may construct, install, establish,
19 develop or operate any air contaminant source listed in OAR 340-216-8010 without first
20 obtaining an Air Contaminant Discharge Permit (ACDP) from the Oregon Department of
21 Environmental Quality (DEQ) (except for operations in Lane County) or Lane Regional Air
22 Protection Agency (LRAPA) (operations in Lane County). No person may continue to operate an
23 air contaminant source if the ACDP expires, or is terminated, denied, or revoked; except as
24 provided in OAR 340-216-0082, which requires that the owner or operator submit either a timely
25 and complete permit application for renewal or an application for a different type of permit that
26 authorizes operation of the air contaminant source.

27 ////

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1 4. Table 1 of OAR 340-216-8010, Part B, Category 62 requires an ACDP to operate
2 perc dry cleaning operations subject to an area source¹ National Emission Standard for Hazardous
3 Air Pollutants (NESHAP) under OAR 340 division 244, excluding perc dry cleaning operations
4 registered pursuant to OAR 340-210-0100(2).

5 5. The Facility is not registered pursuant to OAR 340-210-0100(2).

6 6. On March 1, 2010, the Department of Environmental Quality (DEQ) issued
7 General ACDP AQGP-006 (2010 Permit) for dry cleaning facilities that use perc. On November
8 10, 2010, DEQ assigned the Facility to the 2010 Permit as source number: 15-9601-06-01. The
9 Permit expired on March 1, 2020.

10 7. According to OAR 340-216-0040(2)(c), DEQ must receive an application for
11 reassignment to a General ACDP within 30 days prior to expiration of the General ACDP.

12 8. On April 16, 2020, DEQ renewed and reissued General ACDP AQGP-006 (2020
13 Permit).

14 9. To date, Respondent has not submitted a complete application to DEQ for
15 assignment to the 2020 Permit or any other ACDP application to operate the Facility.

16 10. Respondent has continued to operate the Facility using perc.

17 III. CONCLUSION

18 1. According to 40 CFR 63.320(a), adopted and incorporated by reference in OAR
19 340-244-0220(3), the Facility is subject to the requirements of area source NESHAP, 40 CFR,
20 Part 63, Subpart M, because it is a dry cleaning facility that uses perc.

21 2. From on or about March 2, 2020, until present, Respondent has violated ORS
22 468A.045(1)(b) and OAR 340-216-0020(3), adopted pursuant to ORS 468A.040, by operating an
23 air contaminant source listed in OAR 340-216-8010 (perc dry cleaning operation subject to an area
24 source NESHAP), without first obtaining an ACDP from DEQ. Specifically, General ACDP
25

26 ¹ An area source is any stationary source of hazardous air pollutants (HAP) that is not a major source
27 (emits 10 or more tons per year of a single HAP or 25 or more tons per year of any combination of HAP).
40 CFR 63.2.

1 AQGP-006, (issued in 2010), expired on March 1, 2020. By failing to submit an application for
2 reassignment to General ACDP AQGP-006 (issued in 2020), from March 2, 2020 until present,
3 Respondent has not had a valid permit assignment to General ACDP AQGP-006 and has,
4 therefore, operated the Facility without an ACDP from DEQ. This is a Class II violation
5 according to OAR 340-012-054(2)(a). DEQ hereby assesses a \$1,800 civil penalty for this
6 violation.

7 IV. ORDER TO PAY CIVIL PENALTY AND COMPLY

8 Based upon the foregoing FINDINGS OF FACTS AND CONCLUSION, Respondent is
9 hereby ORDERED TO:

10 1. Pay a total civil penalty of \$1,800. The determination of the civil penalty is attached
11 as Exhibit 1 and is incorporated as part of this Notice.

12 2. Within 30 days of this order becoming final by operation of law or on appeal, do
13 one of the following:

14 a. Submit a complete application for assignment to the 2020 Permit (AQGP-
15 006) to DEQ. Submit the application to: **Permit Coordinator, DEQ Western Region, 4026**
16 **Fairview Industrial Drive SE, Salem, OR 97302**; or

17 b. Cease using perc at the Facility unless or until DEQ issues an assignment
18 to the 2020 Permit to operate the Facility using perc.

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

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

23 You have a right to a contested case hearing on this Notice, if you request one in writing.
24 DEQ must receive your request for hearing **within 20 calendar days** from the date you receive
25 this Notice. If you have any affirmative defenses or wish to dispute any allegations of fact in this
26 Notice or attached exhibit, you must do so in your request for hearing, as factual matters not
27 denied will be considered admitted, and failure to raise a defense will be a waiver of the defense.

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

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

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

22
23
24 12 / 27 / 2021
Date


24 
Kieran O'Donnell, Manager
Office of Compliance and Enforcement

EXHIBIT NO. 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 (perc dry cleaning operation subject to an area source NESHAP) 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 \$750 for a Class II, moderate magnitude violation in the matrix listed in OAR 340-012-0140(4)(b)(B)(ii) and applicable pursuant to OAR 340-012-0140(4)(a)(C) because Respondent must operate the Facility under a General Air Contaminant Discharge Permit only because the Facility is subject to Area Source NESHAP regulations.

"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 has operated the Facility without an ACDP from approximately March 2, 2020, to present.

"M" is the mental state of the Respondent and receives a value of 8 according to OAR 340-012-0145(5)(d), because Respondent's conduct was reckless. Respondent was notified by DEQ in a February 9, 2020, letter; by email and a phone call on January 28, 2021; and in a Pre-Enforcement Notice on March 8, 2021, that she needed to complete forms to re-apply for assignment to the General ACDP. In addition, DEQ provided Respondent with an ACDP

renewal application on multiple occasions. By continuing to fail to apply for assignment to the renewed General ACDP, Respondent has consciously disregarded a substantial and unjustifiable risk that Respondent would continue, after being notified of the violation, to operate the Facility without an ACDP and in violation of the law. Disregarding this risk constitutes a gross deviation from the standard of care a reasonable person would observe in this situation.

"C" is Respondent's efforts to correct or mitigate the violation and receives a value of 2, according to OAR 340-012-0145(6)(g), because Respondent did not address the violation as described in paragraphs (6)(a) through (6)(e) and the facts do not support a finding under paragraph (6)(f).

"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 assignment to a General ACDP.

PENALTY CALCULATION: $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$
= $\$750 + [(0.1 \times \$750) \times (0 + 0 + 4 + 8 + 2)] + \0
= $\$750 + (75 \times 14) + \0
= $\$750 + \$1,050 + \$0$
= $\$1,800$