



Oregon

Tina Kotek, Governor

Department of Environmental Quality
Office of Compliance and Enforcement
700 NE Multnomah Street, Suite 600
Portland, OR 97232
(503) 229-5382
FAX (503) 229-5787
TTY 711

July 18, 2023

CERTIFIED MAIL No. 9589 0710 5270 0110 6008 45

Lee Powell, Jr., Registered Agent
Powell Distributing Company, Inc.
9125 N. Burrage Avenue
Portland, OR 97217

Re: Notice of Civil Penalty Assessment and Order
Case No. AQ/ACDP-NWR-2023-084

This letter is to inform you that DEQ has issued you a civil penalty of \$1,237.50 for failing to timely submit your 2022 annual reports to DEQ as required by your Air Contaminant Discharge Permit Number AQGP-022, Source Numbers 26-9661-22-01, 26-9662-22-01, and 26-9663-22-01.

DEQ issued this penalty because annual reports are an important mechanism for DEQ to determine whether sources of air contaminants are operating within the conditions and limits of permits. Without the reports, DEQ is unable to determine the compliance status of your facilities or ensure emissions are within levels that do not pose harm to public health or 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.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 Steve Siegel at (503) 229-5518.

Sincerely,

A handwritten signature in black ink, appearing to read "Kieran O'Donnell", with a long horizontal flourish extending to the right.

Kieran O'Donnell, Manager
Office of Compliance and Enforcement

Enclosures

cc: Jason Powell at jason@powelloil.com
Joseph Contreras, Northwest Region, DEQ
Joshua Alexander, Northwest Region, DEQ
Donald Hendrix, AQ, 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 POWELL DISTRIBUTING COMPANY INC.,) ASSESSMENT AND ORDER
5 Respondent.) NO. AQ/ACDP-NWR-2023-084

6 I. AUTHORITY

7 This Notice and Order is issued pursuant to Oregon Revised Statutes (ORS) 468.100 and
8 468.126 through 468.140, ORS Chapters 183 and 468A and Oregon Administrative Rules (OAR)
9 Chapter 340, Divisions 011, 012, 200, 214 and 216.

10 II. FINDINGS OF FACT

11 1. Respondent operates boilers at 9125 NE MLK Blvd., Portland, Oregon; 734 SE
12 Morrison Street, Portland, Oregon; and 6021 NE Portland Highway, Portland, Oregon (the
13 Facilities).

14 2. On December 10, 2020, the Department of Environmental Quality (DEQ)
15 assigned Respondent's Facilities to General Air Contaminant Discharge Permit Number AQGP-
16 022 as source numbers 26-9661-22-01, 26-9662-22-01, and 26-9663-22-01. The Permits were in
17 effect at all material times.

18 3. The Permits authorize Respondent to discharge air contaminants from activities
19 and processes at the Facilities in accordance with the requirements, limitations, and conditions in
20 the Permits.

21 4. Condition 11.4 of the Permits require Respondent to submit an annual report to
22 DEQ by February 15th of each year that includes specific information for the previous calendar
23 year of operation at the Facilities.

24 5. Respondent received warning letters in April 2022 notifying Respondent of the
25 requirement to submit annual reports for the Facilities for the previous calendar year to DEQ by
26 February 15th of each year.

27 6. Respondent did not submit 2022 Annual Reports to DEQ by February 15, 2023.

1 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 7/18/2023
21 Date


20 
21 Kieran O'Donnell, Manager
22 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: Failing to timely submit a 2022 annual report to DEQ in violation of Condition 11.4 of Respondent's Air Contaminant Discharge Permit number 26-9661-22-01 and OAR 340-214-0114(1) and (2).

CLASSIFICATION: This is a Class II violation pursuant to OAR 340-012-0054(2)(f).

MAGNITUDE: The magnitude of the violation is minor pursuant to OAR 340-012-0130(4), as there is no selected magnitude specified in OAR 340-012-0135 applicable to this violation, and the information reasonably available to DEQ indicates no more than a de minimis adverse impact to human health or the environment, and posed no more than a de minimis threat to human health or the environment. Respondent's annual report indicates it operated within permit emission limits and Respondent submitted its report within 60 days of the due date.

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 \$375 for a Class II, minor magnitude violation in the matrix listed in OAR 340-012-0140(4)(b)(B)(iii) and applicable pursuant to OAR 340-012-0140(4)(a)(C) because Respondent operates the Facility under applicable pursuant to OAR 340-012-0140(4)(a)(C) because Respondent operates the Facility under an Air Contaminant Discharge Permit because it 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 0 according to OAR 340-012-0145(4)(a), because there was one occurrence of the violation. Respondent was late submitting one (2022) annual report.

"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's Permit expressly requires Respondent to submit an annual report by February 15th of each year. Respondent

was reminded of permit requirements to submit an annual report through a warning letter in April 2022. Respondent submitted its 2022 annual report only after DEQ issued Respondent a Pre-Enforcement Notice on March 15, 2023. By failing to timely submit the 2022 annual report to DEQ, Respondent failed to take reasonable care to avoid a foreseeable risk of conduct constituting or resulting in a violation.

"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 the annual report within the timeframe identified in the March 15, 2023, Pre-Enforcement Notice.

"EB" 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 there is insufficient information on which to base a finding.

PENALTY CALCULATION: $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$
 $= \$375 + [(0.1 \times \$375) \times (0 + 0 + 0 + 4 + (-3))] + \0
 $= \$375 + (\$37.50 \times 1) + \$0$
 $= \$375 + \$37.50 + \$0$
 $= \$412.50$

EXHIBIT 2

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

VIOLATION: Failing to timely submit a 2022 annual report to DEQ in violation of Condition 11.4 of Respondent's Air Contaminant Discharge Permit number 26-9662-22-01 and OAR 340-214-0114(1) and (2).

CLASSIFICATION: This is a Class II violation pursuant to OAR 340-012-0054(2)(f).

MAGNITUDE: The magnitude of the violation is minor pursuant to OAR 340-012-0130(4), as there is no selected magnitude specified in OAR 340-012-0135 applicable to this violation, and the information reasonably available to DEQ indicates no more than a de minimis adverse impact to human health or the environment, and posed no more than a de minimis threat to human health or the environment. Respondent's annual report indicates it operated within permit emission limits and Respondent submitted its report within 60 days of the due date.

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 \$375 for a Class II, minor magnitude violation in the matrix listed in OAR 340-012-0140(4)(b)(B)(iii) and applicable pursuant to OAR 340-012-0140(4)(a)(C) because Respondent operates the Facility under applicable pursuant to OAR 340-012-0140(4)(a)(C) because Respondent operates the Facility under an Air Contaminant Discharge Permit because it 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.

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"O" is whether the violation was repeated or ongoing and receives a value 0 according to OAR 340-012-0145(4)(a), because there was one occurrence of the violation. Respondent was late submitting one (2022) annual report.

"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's Permit expressly requires Respondent to submit an annual report by February 15th of each year. Respondent

was reminded of permit requirements to submit an annual report through a warning letter in April 2022. Respondent submitted its 2022 annual report only after DEQ issued Respondent a Pre-Enforcement Notice on March 15, 2023. By failing to timely submit the 2022 annual report to DEQ, Respondent failed to take reasonable care to avoid a foreseeable risk of conduct constituting or resulting in a violation.

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EXHIBIT 3

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

VIOLATION: Failing to timely submit a 2022 annual report to DEQ in violation of Condition 11.4 of Respondent's Air Contaminant Discharge Permit number 26-9663-22-01 and OAR 340-214-0114(1) and (2).

CLASSIFICATION: This is a Class II violation pursuant to OAR 340-012-0054(2)(f).

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