



# 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

September 26, 2023

CERTIFIED MAIL No. 9589 0710 5270 0110 6008 21

Sims Fiberglass Co.  
c/o Jeffery D. Curry, Registered Agent  
33986 SW Texas Street  
Albany, OR 97321

Re: Notice of Civil Penalty Assessment and Order  
Case No. AQ/ACDP-WR-2022-130

This letter is to inform you that the Department of Environmental Quality (DEQ) has issued you a civil penalty of \$1,500 for failing to provide information to DEQ regarding your fiberglass business at 33986 SW Texas Street, Albany, Oregon. The information is required to determine whether your facility needs an Air Contaminant Discharge Permit (ACDP) from DEQ or is subject to other DEQ air quality regulations.

DEQ issued this penalty because we have not received the required information from you to determine permitting applicability of your shop, despite sending letters to you in May, July and August, 2022, and an email to you in September, 2022, requesting a response. The information you did submit to DEQ in September 2022, was incomplete and insufficient for DEQ to determine the applicability of permitting and air quality requirements. Operating without a permit when one is required, and/or failing to provide required information to DEQ, are violations of Oregon's environmental regulations. Fiberglass businesses, such as yours, typically emit volatile organic compounds and hazardous air pollutants; air pollutants that are regulated by DEQ.

Included in Section IV of the enclosed Notice is an order requiring that you submit to DEQ a complete Notice of Intent to Construct form and emission inventory within 30 days of the order becoming final. A copy of this form is included with this letter.

You can pay the penalty by sending a check or money order to the address below. 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](mailto: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.

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 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 DEQ Environmental Law Specialist 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

Enclosures

cc: Peter Susi, Western Region, Salem Office, DEQ  
Zach Loboy, Western Region, Eugene Office, DEQ  
Accounting, DEQ  
Donald Hendrix, AQ, DEQ

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

3 IN THE MATTER OF:                                    )  
4 SIMS FIBERGLASS CO.,                            )  
   an Oregon Corporation                        )  
5                                   Respondent.    )  
  )       NOTICE OF CIVIL PENALTY  
  )       ASSESSMENT AND ORDER  
  )       CASE NO. AQ/ACDP-WR-2022-130

6                                   I. AUTHORITY

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

10          2.       Pursuant to OAR 340-214-0110, "All owners or operators of stationary sources must  
11 provide any and all information, including an air quality analysis of the source that DEQ reasonably  
12 requires for the purpose of regulating stationary sources. DEQ will provide the source with a written  
13 request to provide such information to DEQ by a reasonable date. Such information may be required  
14 on a one-time, periodic, or continuous basis and may include, but is not limited to, information  
15 necessary to: (1) Issue a permit and ascertain compliance or noncompliance with the permit terms  
16 and conditions; (2) Ascertain applicability of any requirement; (3) Ascertain compliance or  
17 noncompliance with any applicable requirement; (4) Determine whether a source's emissions may  
18 cause or contribute to a new exceedance of a National Air Quality Standard adopted under OAR  
19 Chapter 340, division 202, and (5) Incorporate monitoring, recordkeeping, reporting, and  
20 compliance certification requirements into a permit."

21                                   II. FINDINGS OF FACT

22          1.       Respondent operates a custom fiberglass manufacturing facility at 33986 Texas  
23 Street, Albany, Oregon, (the Facility).

24          2.       The Facility emits or may emit regulated pollutants, including volatile organic  
25 compounds and hazardous air pollutants.

26          3.       By letters dated May 25, 2022, July 20, 2022, and August 24, 2022, DEQ  
27 requested that Respondent submit a Notice of Intent to Construct form (Form AQ104) and an air

1 contaminant emission inventory for the purpose of ascertaining whether the Facility is required  
2 to obtain an Air Contaminant Discharge Permit (ACDP) from DEQ and/or to ascertain whether  
3 the Facility is subject to any other applicable air quality requirements enforceable by DEQ. The  
4 letters requested submittal of Form AQ104 by July 1, 2022 (May 25, 2022 letter), August 12,  
5 2022 (July 20, 2022 letter) and September 16, 2022 (August 24, 2022) letter.

6 4. On September 15, 2022, Respondent submitted a a partially-completed Form  
7 AQ104 and air contaminant emission inventory to DEQ. The information was incomplete and  
8 insufficient for DEQ to determine permit or other DEQ rule applicability or requirements.

9 5. On September 29, 2022, DEQ notified Respondent by email that additional  
10 information was needed. DEQ requested that Respondent submit a complete Notice of Intent to  
11 Construct form (Form AQ104); to complete the air contaminant emission inventory spreadsheet  
12 attached to the email. The email requested that Respondent submit the information to DEQ “by  
13 the end of October.”

14 6. To date, Respondent has not responded to the email nor submitted a complete  
15 Notice of Intent to Construct form AQ104, or complete air contaminant emission inventory to  
16 DEQ.

### 17 III. CONCLUSION

18 Respondent violated OAR 340-214-0110 by failing to submit sufficient information to  
19 DEQ to ascertain applicability of air quality permitting or other air quality requirements for the  
20 Facility, as further described in Section II, paragraphs 1 through 6 above. This is a Class II  
21 violation according to OAR 340-012-0053(2). DEQ hereby assesses a \$1,500 civil penalty for this  
22 violation.

### 23 IV. ORDER TO PAY CIVIL PENALTY AND COMPLY

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

26 1. Pay a total civil penalty of \$1,500. The determination of the civil penalty is attached  
27 as Exhibit 1 and is incorporated as part of this Notice.

1           2.       Within 30 days of this order becoming final by operation of law or on appeal,  
2 submit to DEQ a complete Notice of Intent to Construct form (AQ104) that includes:

3                   (a) A complete air contaminant emission inventory; and

4                   (b) A Land Use Compatibility Statement (LUCS) form that has been completed  
5 by Respondent's local city or county planning/zoning department.

6           3.       Submit Form AQ104 and materials listed above to: **Peter Susi, DEQ Western**  
7 **Region, 4026 Fairview Industrial Drive SE, Salem, OR 97302.**

8           If you do not file a request for hearing as set forth in Section V below, your check or money  
9 order must be made payable to "**State Treasurer, State of Oregon**" and sent to the **DEQ, Business**  
10 **Office, 700 NE Multnomah Street, Suite 600, Portland, Oregon 97232.** Once you pay the  
11 penalty, the Findings of Fact, Conclusions and Order become final.


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

13           You have a right to a contested case hearing on this Notice, if you request one in writing.  
14 DEQ must receive your request for hearing **within 20 calendar days** from the date you receive  
15 this Notice. If you have any affirmative defenses or wish to dispute any allegations of fact in this  
16 Notice or attached exhibit, you must do so in your request for hearing, as factual matters not  
17 denied will be considered admitted, and failure to raise a defense will be a waiver of the defense.  
18 (See OAR 340-011-0530 for further information about requests for hearing.) You must send your  
19 request to: **DEQ, Office of Compliance and Enforcement, 700 NE Multnomah Street, Suite**  
20 **600, Portland, Oregon 97232**, fax it to **503-229-6762** or email it to  
21 **[DEQappeals@deq.oregon.gov](mailto:DEQappeals@deq.oregon.gov)**. An administrative law judge employed by the Office of  
22 Administrative Hearings will conduct the hearing, according to ORS Chapter 183, OAR Chapter  
23 340, Division 011 and OAR 137-003-0501 to 0700. You have a right to be represented by an  
24 attorney at the hearing, however you are not required to be. If you are an individual, you may  
25 represent yourself. If you are a corporation, partnership, limited liability company,  
26 unincorporated association, trust or government body, you must be represented by an attorney or  
27 a duly authorized representative, as set forth in OAR 137-003-0555.

1 Active-duty service members have a right to stay proceedings under the federal Service  
2 Members Civil Relief Act. For more information contact the Oregon State Bar at 1-800-  
3 452-8260, the Oregon Military Department at 503-584-3571, or the nearest United States Armed  
4 Forces Legal Assistance Office through <http://legalassistance.law.af.mil>. The Oregon Military  
5 Department does not have a toll-free telephone number.

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

12  
13 9/26/2023  
14 Date

13   
14 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: Failing to provide information required by DEQ to determine the applicability of permitting or other air quality regulations by failing submit a Notice to Construct form to DEQ, when requested, in violation of OAR 340-214-0110.

CLASSIFICATION: This is a Class II violation pursuant to OAR 340-012-0053(2).

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).

"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 0 according to OAR 340-012-0145(4)(a) because there was only one occurrence of the violation. Respondent failed to submit a complete Notice of Intent to Construct form and emission inventory.

"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. According to OAR 340-012-0030(20), reckless means the respondent consciously disregarded a substantial and unjustifiable risk that the result would occur or that the circumstance existed. The risk must be of such a nature and degree that disregarding that risk constituted a gross deviation from the standard of care a reasonable person would observe in that situation. Respondent was

notified in writing by DEQ in letters dated March 25, 2022; July 20, 2022; in a Pre-Enforcement Notice (letter) dated August 24, 2022; and in an email dated September 27, 2022, that DEQ needed operational and emission information from Respondent to determine whether Respondent's facility is required to obtain an air quality permit from DEQ or whether the Facility is subject to other air quality regulations. By failing to submit the requested information to DEQ after numerous written attempts by DEQ to obtain it, Respondent has consciously disregarded a substantial and unjustifiable risk that Respondent would fail to comply with an information request (as authorized by OAR 340-214-0110), in violation of Oregon 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 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:  $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$

$$\begin{aligned} &= \$750 + [(0.1 \times \$750) \times (0 + 0 + 0 + 8 + 2)] + \$0 \\ &= \$750 + (75 \times 10) + \$0 \\ &= \$750 + \$750 + \$0 \\ &= \$1,500 \end{aligned}$$