



# 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

November 14, 2023

CERTIFIED MAIL No. 7016 2710 0000 4221 4360

Oregon Department of Corrections  
Oregon State Penitentiary  
Attn: Nick Infante, Construction & Facilities Maintenance Manager, Physical Plant  
2605 State Street  
Salem, OR 97301

Re: Notice of Civil Penalty Assessment and Order  
Case No. AQ/ACDP-WR-2023-069

This letter is to inform you that DEQ has issued you a civil penalty of \$4,000 for failing to submit your 2022 annual report to DEQ, as required by your Air Contaminant Discharge Permit.

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 report, DEQ is unable to determine the compliance status of your facility to ensure emissions are within levels that do not pose harm to the public's health or the environment.

Included in Section IV of the enclosed Notice is an order requiring that you, within 30 days of the order becoming final, submit a complete 2022 annual report to DEQ.

You may pay the penalty by mailing 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.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.

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

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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 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  
Donald Hendrix, AQ, DEQ  
Accounting, DEQ  
Jef Van Valkenburgh, General Counsel, Government Services, Oregon DOJ



1 a Class II violation according to OAR 340-012-0054(2)(f). DEQ has assessed a \$4,000 civil  
2 penalty for this violation.

3 IV. ORDER TO PAY CIVIL PENALTY AND COMPLY

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

6 1. Pay a total civil penalty of \$4,000. The determination of the civil penalty, attached as  
7 Exhibit 1, is incorporated as part of this Notice.

8 2. Within 30 days of this order becoming final by operation of law or on appeal,  
9 submit to DEQ, a complete 2022 annual report to: **Peter Susi, DEQ Western Region, 4026**  
10 **Fairview Industrial Drive SE, Salem, OR 97302**. A complete annual report must include all of  
11 the information required in Condition 8.2.a through 8.2.f of the Permit.

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

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

16 You have a right to a contested case hearing on this Notice, if you request one in writing.  
17 DEQ must receive your request for hearing **within 20 calendar days** from the date you receive  
18 this Notice. If you have any affirmative defenses or wish to dispute any allegations of fact in this  
19 Notice or attached exhibit, you must do so in your request for hearing, as factual matters not  
20 denied will be considered admitted, and failure to raise a defense will be a waiver of the defense.  
21 (See OAR 340-011-0530 for further information about requests for hearing.) You must send your  
22 request to: **DEQ, Office of Compliance and Enforcement, 700 NE Multnomah Street, Suite**  
23 **600, Portland, Oregon 97232**, fax it to **503-229-6762** or email it to

24 **[DEQappeals@deq.oregon.gov](mailto:DEQappeals@deq.oregon.gov)**. An administrative law judge employed by the Office of  
25 Administrative Hearings will conduct the hearing, according to ORS Chapter 183, OAR Chapter  
26 340, Division 011 and OAR 137-003-0501 to 0700. You have a right to be represented by an  
27 attorney at the hearing, however you are not required to be. If you are an individual, you may

1 represent yourself. If you are a corporation, partnership, limited liability company,  
2 unincorporated association, trust or government body, you must be represented by an attorney or  
3 a duly authorized representative, as set forth in OAR 137-003-0555.

4 Active-duty service members have a right to stay proceedings under the federal Service  
5 Members Civil Relief Act. For more information contact the Oregon State Bar at 1-800-  
6 452-8260, the Oregon Military Department at 503-584-3571, or the nearest United States Armed  
7 Forces Legal Assistance Office through <http://legalassistance.law.af.mil>. The Oregon Military  
8 Department does not have a toll-free telephone number.

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

15  
16  
17 11/14/2023  
18 Date

17   
18 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 submit a 2022 annual report to DEQ in violation of Condition 8.2 of Respondent's Air Contaminant Discharge Permit 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 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 \$2,000 for a Class II, moderate magnitude violation in the matrix listed in OAR 340-012-0140(3)(b)(B)(ii) and applicable pursuant to OAR 340-012-0140(3)(a)(A) because Respondent operates the Facility under a Standard 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 Respondent and receives an initial value of 1 according to OAR 340-012-0145(2)(a)(B), because Respondent has one Class II violation from Case No. AQ-ACDP-ER-2019-013. The value of P is reduced to zero according to OAR 340-012-0145(2)(d)(A)(i) and OAR 340-012-0145(2)(e) because all of the FEAs in which PSAs were cited were issued more than three years before the current violation and the value of P may not be less than zero.

"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 failed to submit one (2022) annual report.

"M" is the mental state of the Respondent and receives a value of 8 pursuant 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. Condition 8.2 of Respondent's Permit expressly requires Respondent to submit an annual report by February 15<sup>th</sup> of each year. On April 22, 2020, July 14, 2021, and May 12, 2022, DEQ issued Respondent warning letters with opportunity to correct for either late or incomplete submittals of past annual reports. On April 28, 2023, DEQ issued Respondent a Pre-Enforcement Notice for failing to submit the 2022 annual report to DEQ and requested that the Respondent submit the report to DEQ by May 12, 2023. To date, Respondent has failed to submit a 2022 annual report to DEQ. By failing to take adequate measures to ensure Respondent met its obligation to submit a timely and complete 2022 annual report, Respondent consciously disregarded a substantial and unjustifiable risk that it would again violate the reporting requirements of the Permit and Oregon's air quality regulations. Given the prior communications of late or inaccurate reporting, disregarding this risk constituted 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). To date, Respondent has not submitted a 2022 annual report to DEQ.

"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 any economic benefit derived is likely to be de minimis.

PENALTY CALCULATION:  $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$   
= \$2,000 + [(0.1 x \$2,000) x (0 + 0 + 0 + 8 + 2)] + \$0  
= \$2,000 + (\$200 x 10) + \$0  
= \$2,000 + \$2,000 + \$0  
= \$4,000