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

February 8, 2024

CERTIFIED MAIL No. 9859 0710 5270 0688 6527 10

Ace Car Reconditioning, LLC
c/o Donna Coate, Registered Agent
15785 SW 72nd Avenue
Tigard, OR 97224

Re: Notice of Civil Penalty Assessment and Order
Case No. AQ/ACDP-NWR-2023-118

This letter is to inform you that DEQ has issued you a civil penalty of $1,200 for failing to submit a complete 2022 annual report to DEQ, by February 15, 2023, for your auto body repair and paint facility at 15785 SW 72nd Avenue, Tigard, Oregon, 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 a complete 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 attached Notice is an order requiring you to submit a complete 2022 annual report to DEQ within 30 days of the order becoming final. The annual reports you submitted on February 13, 2023, and July 21, 2023, did not include required information regarding coating density, Metal HAP content of coatings, VOC content of each coating, and the amount of each coating used over the 2022 operating year. In addition, the July 21, 2023, submittal was not signed.

Please note that your **2023** annual report is due to DEQ by **February 15, 2024.**

You can pay the penalty by sending a check or money order to the above address. 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.

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 Jenny Root at 503-229-5874.

Sincerely,

Rebecca J Puskas

Becka Puskas, Interim Manager
Office of Compliance and Enforcement

Enclosures

cc: Elaine Go, Northwest Region Office, DEQ
Josh Alexander, Northwest Region Office, DEQ
Donald Hendrix, AQ, DEQ
Accounting, DEQ
Mandy Hess, Ace Car Reconditioning, LLC, 15785 SW 72nd Ave., Tigard, OR 97224

BEFORE THE ENVIRONMENTAL QUALITY COMMISSION

OF THE STATE OF OREGON

IN THE MATTER OF: ACE CAR RECONDITIONING, LLC, an Oregon limited liability company, Respondent.	NOTICE OF CIVIL PENALTY ASSESSMENT AND ORDER NO. AQ/ACDP-NWR-2023-118

I. AUTHORITY

The Department of Environmental Quality (DEQ) issues this Notice of Civil Penalty Assessment and Order pursuant to Oregon Revised Statutes (ORS) 468.100 and 468.126 through 468.140, ORS Chapters 183 and 468A and Oregon Administrative Rules (OAR) Chapter 340, Divisions 011, 012, 200, 214 and 216.

II. FINDINGS OF FACT

1. Respondent operates an auto body repair and paint facility at 15785 SW 72nd Avenue, Tigard, Oregon (the Facility).

2. On January 28, 2022, the Department of Environmental Quality (DEQ) assigned Respondent to General Air Contaminant Discharge Permit AQGP-027 (Permit) as source number 34-0124. The Permit was in effect at all material times.

3. The Permit authorizes Respondent to discharge air contaminants from processes and activities related to or associated with autobody paint stripping, refinishing and spray application of coating operations at the Facility, in accordance with the requirements, limitations and conditions in the Permit.

4. Condition 9.2 of the Permit requires Respondent to submit an annual report to DEQ by February 15th of each year that includes specific operational and emissions information including, but not limited to, the following:

A. For each spray-applied coating:

i. The coating density in pounds per gallon;

ii. All metal hazardous air pollutants (HAPs) in the coating and the percent weight content of each HAP present;

iii. The VOC content of each coating in pounds per gallon; and

iv. The amount of each coating used, in gallons.

5. On or about February 13, 2023, Respondent submitted a 2022 annual report to DEQ for the Facility. The report was incomplete.

6. On July 21, 2023, Respondent submitted an updated 2022 annual report to DEQ for the Facility. The report was also incomplete because it did not include all of the information required by the Permit. Specifically, neither the report Respondent submitted on February 13, 2023, or on July 21, 2023, included the following:

A. For each spray-applied coating:

i. The coating density in pounds per gallon;

ii. All metal hazardous air pollutants (HAPs) in the coating and the percent weight content of each HAP present;

iii. The VOC content of each coating in pounds per gallon; and

iv. The amount of each coating used, in gallons.

Respondent also did not sign the report submitted to DEQ on July 21, 2023.

7. To date, Respondent has not submitted a complete 2022 annual report to DEQ that includes the missing information identified in 6.A.i through 6.A.iv above.

III. CONCLUSION

Respondent violated Condition 9.2 of the Permit and OAR 340-214-0114(1) and (2), adopted pursuant to ORS 468A.050(1), by failing to submit a complete 2022 annual report to DEQ by February 15, 2023, as further described in Section II, Paragraphs 4 through 7 above. Specifically, Respondent did not submit a 2022 annual report by February 15, 2023, that included all of the information required by Condition 9.2 of the Permit. This is a Class II violation according to OAR 340-012-0054(2)(f). DEQ has assessed a $1,200 civil penalty for this violation.

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IV. ORDER TO PAY CIVIL PENALTY AND COMPLY

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

1. Pay a total civil penalty of $1,200. The determination of the civil penalty is attached as Exhibit 1 and is incorporated as part of this Notice.

2. Within 30 days of this order becoming final by operation of law or on appeal, submit to DEQ, a complete 2022 annual report on DEQ Form AQGP-R027 that includes all of information required on the form and as identified in Section II, Paragraphs 6.A.i through 6.A.iii above, to: **AQ Permit Coordinator, DEQ Northwest Region, 700 NE Multnomah Street, Suite 600, Portland, Oregon 97232.**

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

V. NOTICE OF RIGHT TO REQUEST A CONTESTED CASE HEARING

You have a right to a contested case hearing on this Notice, if you request one in writing. DEQ must receive your request for hearing **within 20 calendar days** from the date you receive this Notice. If you have any affirmative defenses or wish to dispute any allegations of fact in this Notice or attached exhibit, you must do so in your request for hearing, as factual matters not denied will be considered admitted, and failure to raise a defense will be a waiver of the defense. (See OAR 340-011-0530 for further information about requests for hearing.) You must send your request to: **DEQ, Office of Compliance and Enforcement, 700 NE Multnomah Street, Suite 600, Portland, Oregon 97232**, fax it to **503-229-5100** or email it to **DEQappeals@deq.oregon.gov**. An administrative law judge employed by the Office of Administrative Hearings will conduct the hearing, according to ORS Chapter 183, OAR Chapter 340, Division 011 and OAR 137-003-0501 to 0700. You have a right to be represented by an attorney at the hearing, however you are not required to be. If you are an individual, you may represent yourself. If you are a corporation, partnership, limited liability company,

unincorporated association, trust or government body, you must be represented by an attorney or a duly authorized representative, as set forth in OAR 137-003-0555.

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

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

2/8/2024
Date

Rebecca L Puskas
Becka Puskas, Interim 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 timely submit to DEQ, a complete 2022 annual report for Respondent's facility, in violation of Condition 9.2 of AQGP-027 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 $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 0 according to OAR 340-012-0145(4)(a), because there was one occurrence of the violation. Respondent failed to timely submit one (2022) complete annual report for its Facility.

"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. According to OAR 340-012-0030(15), negligent means the respondent failed to take reasonable care to avoid a foreseeable risk of conduct constituting or resulting in a violation. Respondent's Permit expressly requires Respondent to submit an annual report to DEQ by February 15th of each year and specifically lists all of the information that Respondent must include for a complete report. By emails on March 22, 2023, April 12, 2023, and July 21, 2023, DEQ informed

Respondent that the 2022 annual report it submitted was incomplete. By failing to take adequate measures to ensure it submitted a complete 2022 annual report, after being notified by DEQ that subsequent reports were incomplete, Respondent failed to take reasonable care to avoid a foreseeable risk that Respondent would continue to violate the Permit and Oregon law.

"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 complete 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: Penalty = BP + [(0.1 x BP) x (P + H + O + M + C)] + EB
= $750 + [(0.1 x $750) x (0 + 0 + 0 + 4 + 2)] + $0
= $750 + ($75 x 6) + $0
= $750 + $450 + $0
= $1,200