



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. 9589 0710 5270 0688 6527 34

TM Companies, LLC
c/o TT Administrative Services, LLC, Registered Agent
1600 Pioneer Tower
888 SW Fifth Avenue
Portland, OR 97204

Re: Notice of Civil Penalty Assessment and Order
Case No. AQ/ACDP-NWR-2023-117

This letter is to inform you that DEQ has issued you a civil penalty of \$1,500 for failing to submit a complete 2022 annual report to DEQ, by February 15, 2023, for your auto body repair and paint facility at 10213 NE Marx Street, Portland, 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 report you submitted on March 1, 2023, did not include required information regarding compliance status of the facility with the general permit, facility changes, information on hazardous air pollutants in seven of your coatings, paint stripper usage and information on whether you exceeded the presumed compliance threshold in Condition 7.3a of the Permit.

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,



Becca 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
Mark Goulding, TM Companies LLC, 10213 NE Marx St., Portland, OR 97220

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

3 IN THE MATTER OF:)
4 TM COMPANIES, LLC,)
 an Oregon limited liability company,)
5)
) NO. AQ/ACDP-NWR-2023-117
) ASSESSMENT AND ORDER

6 I. AUTHORITY

7 The Department of Environmental Quality (DEQ) issues this Notice of Civil Penalty
8 Assessment and Order pursuant to Oregon Revised Statutes (ORS) 468.100 and 468.126 through
9 468.140, ORS Chapters 183 and 468A and Oregon Administrative Rules (OAR) Chapter 340,
10 Divisions 011, 012, 200, 214 and 216.

11 II. FINDINGS OF FACT

12 1. Respondent operates an auto body repair and paint facility at 10213 NE Marx
13 Street, Portland, OR as “MAACO Center #12772” (the Facility).

14 2. On January 28, 2022, the Department of Environmental Quality (DEQ) assigned
15 Respondent to General Air Contaminant Discharge Permit AQGP-027 (Permit) as source
16 number 26-0281. The Permit was in effect at all material times.

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

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

24 A. A statement of whether the source has complied with all the applicable
25 standards and other requirements of the Permit, an explanation of any noncompliance and a
26 description of corrective actions being taken or that were taken to achieve compliance;

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1 B. Notification of any changes to the information submitted in an Initial
2 (NESHAP) Notification or Notification of Compliance Status, including:

- 3 i. Number and type of spray booths at the location;
- 4 ii. Number of preparation stations or types of items sprayed at the
5 location;
- 6 iii. Method(s) of paint stripping employed on site or types of substrates
7 stripped; and
- 8 iv. Whether methylene chloride (MeCl) is used on site.

9 C. For each spray-applied coating:

- 10 iii. The coating density in pounds per gallon; and
- 11 iv. All metal hazardous air pollutants (HAPs) in the coating and the
12 percent weight content of each HAP present.

13 D. For each paint stripper used:

- 14 i. The manufacturer;
- 15 ii. The product number or identification;
- 16 iii. The product density in pounds per gallon;
- 17 iv. The VOC content of each paint stripper in pounds per gallon;
- 18 v. The MeCl content of each paint stripper in percent by weight; and
- 19 vi. The amount of each paint stripper used, in gallons.

20 E. If the permittee has exceeded the presumed compliance threshold in
21 Condition 7.3a (of the Permit), the monthly and calendar year total VOC and HAP emissions.

22 5. On or about March 1, 2023, Respondent submitted a 2022 annual report to DEQ
23 for the Facility. The report was incomplete because it was missing information required by the
24 Permit. Specifically, Respondent's March 1, 2023, report did not include:

- 25 A. A statement of whether the source has complied with all the applicable
26 standards and other requirements of the Permit or an explanation of any noncompliance;

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1 B. Notification of changes to the Facility since Respondent first submitted its
2 Initial (NESHAP) Notification or Notification of Compliance Status;

3 C. Information on all metal HAPs in each coating and the percent weight
4 content of each HAP present. Respondent's supplemental information submitted with the March
5 1, 2023, report indicated there are metal HAPs in Respondent's Sherwin Williams coatings PT8,
6 PT10, PT11, PT14, PT19, PT25 and PT27, but Respondent did not report what the specific metal
7 HAPs are or what the percent weight content is in each coating;

8 D. Respondent did not include information on paint strippers or whether any
9 paint stripper contained MeCl; and

10 E. Information on whether Respondent exceeded the presumed compliance
11 threshold in Condition 7.3a of the Permit.

12 6. To date, Respondent has not submitted a complete 2022 annual report that
13 includes the missing information identified in Paragraphs 5.A through 5.E above.

14 III. CONCLUSION

15 Respondent violated Condition 9.2 of the Permit and OAR 340-214-0114(1) and (2),
16 adopted pursuant to ORS 468A.050(1), by failing to submit a timely and complete 2022 annual
17 report to DEQ by February 15, 2023, as further described in Section II, Paragraphs 4 through 6
18 above. Specifically, Respondent did not submit a 2022 annual report to DEQ until March 1,
19 2023, and the report did not include all of the information required by Condition 9.2 of the
20 Permit. This is a Class II violation according to OAR 340-012-0054(2)(f). DEQ has assessed a
21 \$1,500 civil penalty for this violation.

22 IV. ORDER TO PAY CIVIL PENALTY AND COMPLY

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

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

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1 2. Within 30 days of this order becoming final by operation of law or on appeal,
2 submit to DEQ, a complete 2022 annual report on DEQ Form AQGP-R027 that includes all
3 information required on the form and as identified in Section II, Paragraphs 5.A through 5.E above.
4 Submit the form and all other required information to: **AQ Permit Coordinator, DEQ Northwest**
5 **Region, 700 NE Multnomah Street, Suite 600, Portland, Oregon 97232.**

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

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

10 You have a right to a contested case hearing on this Notice, if you request one in writing.
11 DEQ must receive your request for hearing **within 20 calendar days** from the date you receive
12 this Notice. If you have any affirmative defenses or wish to dispute any allegations of fact in this
13 Notice or attached exhibit, you must do so in your request for hearing, as factual matters not
14 denied will be considered admitted, and failure to raise a defense will be a waiver of the defense.
15 (See OAR 340-011-0530 for further information about requests for hearing.) You must send your
16 request to: **DEQ, Office of Compliance and Enforcement, 700 NE Multnomah Street, Suite**
17 **600, Portland, Oregon 97232**, fax it to **503-229-5100** or email it to
18 **DEQappeals@deq.oregon.gov**. An administrative law judge employed by the Office of
19 Administrative Hearings will conduct the hearing, according to ORS Chapter 183, OAR Chapter
20 340, Division 011 and OAR 137-003-0501 to 0700. You have a right to be represented by an
21 attorney at the hearing, however you are not required to be. If you are an individual, you may
22 represent yourself. If you are a corporation, partnership, limited liability company,
23 unincorporated association, trust or government body, you must be represented by an attorney or
24 a duly authorized representative, as set forth in OAR 137-003-0555.

25 Active-duty service members have a right to stay proceedings under the federal Service
26 Members Civil Relief Act. For more information contact the Oregon State Bar at 1-800-452-
27 8260, the Oregon Military Department at 503-584-3571, or the nearest United States Armed

1 Forces Legal Assistance Office through <http://legalassistance.law.af.mil>. The Oregon Military
2 Department does not have a toll-free telephone number.

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

9
10 2/8/2024

11 Date

Rebecca T. Puskas

12 Becca Puskas, Interim Manager
13 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 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 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.

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 18, 2023, and May 1, 2023, and in a Pre-Enforcement Notice (PEN) on July 11, 2023, DEQ informed Respondent that the 2022 annual report it submitted was incomplete. The emails included a link to fill out a new report form. The PEN requested that Respondent submit a complete 2022 annual report by July 21, 2023. By failing to submit a complete 2022 annual report to DEQ after repeatedly being asked to do so, Respondent has consciously disregarded a substantial and unjustifiable risk that it would continue to violate the reporting requirements of the Permit and Oregon's air quality regulations. Given DEQ's ongoing communication with Respondent regarding the incomplete 2022 annual report, continuing to disregard 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). 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: $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$
= $\$750 + [(0.1 \times \$750) \times (0 + 0 + 0 + 8 + 2)] + \0
= $\$750 + (\$75 \times 10) + \$0$
= $\$750 + \$750 + \$0$
= $\$1,500$