



# 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

March 12, 2024

CERTIFIED MAIL No. 7017 1450 0000 8310 3077

Express Auto Body, Inc.  
c/o Daniel Paul, Registered Agent  
801 N. Lombard Street  
Portland, OR 97217

Re: Notice of Civil Penalty Assessment and Order  
Case No. AQ/ACDP-NWR-2023-125

This letter is to inform you that DEQ has issued you a civil penalty of \$450 for failing to timely submit a complete 2022 annual report to DEQ, which was due on February 15, 2023, for your auto body and paint shop at 801 N. Lombard 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 the permit, and to ensure emissions are within levels that do not pose harm to the public's health or the environment. Auto body paint and cleaning solvents may contain volatile organic compounds (VOCs) that can irritate human eyes, nose and throat, cause difficulty breathing, nausea, and can damage the central nervous system as well as other organs. VOCs also contribute to the formation of smog and degradation of the airshed.

DEQ appreciates your effort to eventually correct the violation by submitting your complete 2022 annual report to DEQ on July 18, 2023. DEQ considered this effort when determining the amount of civil penalty.

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 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 DEQ Environmental Law Specialist Jenny Root at 503-229-5874.

Sincerely,



Becca Puskas, Interim Manager  
Office of Compliance and Enforcement

Enclosures

cc: Stephen Wozab, Northwest Region, DEQ  
Josh 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 EXPRESS AUTO BODY, INC., ) ASSESSMENT AND ORDER  
5 an Oregon corporation, )  
6 Respondent. ) NO. AQ/ACDP-NWR-2023-125

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 801 N. Lombard  
13 Street, Portland, Oregon (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 26-0205. 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 15<sup>th</sup> of each year that includes specific operational and emissions information  
23 from the previous calendar year of operation of the Facility including, but not limited to, the  
24 volatile organic compound (VOC) content of each spray coating applied and paint stripper used  
25 in pounds per gallon.

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1 request to: **DEQ, Office of Compliance and Enforcement, 700 NE Multnomah Street, Suite**  
2 **600, Portland, Oregon 97232**, fax it to **503-229-5100** or email it to  
3 **DEQappeals@deq.oregon.gov**. An administrative law judge employed by the Office of  
4 Administrative Hearings will conduct the hearing, according to ORS Chapter 183, OAR Chapter  
5 340, Division 011 and OAR 137-003-0501 to 0700. You have a right to be represented by an  
6 attorney at the hearing, however you are not required to be. If you are an individual, you may  
7 represent yourself. If you are a corporation, partnership, limited liability company,  
8 unincorporated association, trust or government body, you must be represented by an attorney or  
9 a duly authorized representative, as set forth in OAR 137-003-0555.

10 Active-duty service members have a right to stay proceedings under the federal Service  
11 Members Civil Relief Act. For more information contact the Oregon State Bar at 1-800-  
12 452-8260, the Oregon Military Department at 503-584-3571, or the nearest United States Armed  
13 Forces Legal Assistance Office through <http://legalassistance.law.af.mil>. The Oregon Military  
14 Department does not have a toll-free telephone number.

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

21  
22  
23 3/12/2024  
24 Date

23 Rebecca Z Puskas  
24 Becca Puskas, Interim Manager  
25 Office of Compliance and Enforcement  
26  
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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 submit a complete 2022 annual report to DEQ by February 15, 2023, 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 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 DEQ finds that the violation, by itself, had no more than a de minimis adverse impact on human health or the environment, and posed no more than a de minimis threat to human health or the environment. In making this finding, DEQ considered the following reasonably available information: once Respondent submitted the annual report, DEQ was able to determine Respondent operated in compliance with its permit limits during the 2022 operating year.

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 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 was late submitting one (2022) complete annual report to DEQ.

"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 to DEQ by February 15th of each year and specifically lists all of the information that Respondent must include for a complete report. On May 1, 2023, DEQ issued Respondent a Warning Letter with Opportunity to Correct for failing to submit a corrected and complete 2022 annual report to DEQ by the February 15, 2023, due date. On July 11, 2023, DEQ issued Respondent a Pre-Enforcement Notice when Respondent still had not submitted a complete 2022 annual report to DEQ. By failing to take adequate measures to submit a complete 2022 annual report after being notified by DEQ that it was past due, 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)(d) because Respondent eventually made some efforts to correct the violation by submitting a complete 2022 annual report to DEQ on July 18, 2023.

"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:  $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$   
=  $\$375 + [(0.1 \times \$375) \times (0 + 0 + 0 + 4 - 2)] + \$0$   
=  $\$375 + (37.50 \times 2) + \$0$   
=  $\$375 + \$75 + \$0$   
=  $\$450$