



# 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

April 4, 2024

CERTIFIED MAIL No. 9589 0710 5270 0688 6529 94

Portland Specialty Baking LLC  
c/o Heidi Kelley-Schoebel, Registered Agent  
3423 NE 172<sup>nd</sup> Place  
Portland, OR 97230

Re: Notice of Civil Penalty Assessment and Order  
Case No. AQ/ACDP-NWR-2023-124

This letter is to inform you that DEQ has issued you a civil penalty of \$1,100 for failing to timely submit a complete 2022 annual report to DEQ, which was due on February 15, 2023, for your specialty baking facility at 3423 NE 172<sup>nd</sup> Place, 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 to ensure emissions are within levels that do not pose harm to the public's health or the environment. Bakeries emit volatile organic compounds (VOCs) during the industrial baking process which can irritate human eyes, nose and throat, cause difficulty breathing, nausea, and can damage the human central nervous system as well as other organs. VOCs also contribute to the formation of smog and degradation of the airshed.

DEQ appreciates your efforts to correct the violation by submitting your complete 2022 annual report to DEQ on July 14, 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: Elaine Go, 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 PORTLAND SPECIALTY BAKING LLC ) ASSESSMENT AND ORDER  
5 an Oregon limited liability company, )  
6 Respondent. ) NO. AQ/ACDP-NWR-2023-124

6 I. AUTHORITY

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

10 II. FINDINGS OF FACT

11 1. Respondent operates a specialty baking facility at 3423 NE 172<sup>nd</sup> Place, Portland,  
12 Oregon (the Facility).

13 2. On December 22, 2017, the Department of Environmental Quality (DEQ) issued  
14 Respondent Air Contaminant Discharge Permit No. 26-0289-SI-01 (the Permit). The Permit  
15 authorizes Respondent to discharge air contaminants from the Facility in conformance with the  
16 requirements, limitations and conditions set forth in the Permit. The Permit was in effect at all  
17 material times.

18 3. Condition 5.2 of the Permit requires Respondent to submit an annual report to  
19 DEQ by February 15<sup>th</sup> of each year that includes specific information on amount of dough  
20 product produced, natural gas usage, annual pollutant emissions, excess emissions, complaints  
21 maintenance, changes made to the Facility and list of all new or changed bread dough formulas  
22 and corresponding emission factors for the previous calendar year of operation of the Facility.

23 4. On February 15, 2023, and May 15, 2023, Respondent submitted incorrect or  
24 incomplete versions of its 2022 annual report. The February report was for operations during the  
25 2021 calendar year and the May report did not include all of the required emission factor and  
26 annual pollutant information for the 2022 operating year as required by Condition 5.2 of the  
27 Permit.



1 Administrative Hearings will conduct the hearing, according to ORS Chapter 183, OAR Chapter  
2 340, Division 011 and OAR 137-003-0501 to 0700. You have a right to be represented by an  
3 attorney at the hearing, however you are not required to be. If you are an individual, you may  
4 represent yourself. If you are a corporation, partnership, limited liability company,  
5 unincorporated association, trust or government body, you must be represented by an attorney or  
6 a duly authorized representative, as set forth in OAR 137-003-0555.

7 Active-duty service members have a right to stay proceedings under the federal Service  
8 Members Civil Relief Act. For more information contact the Oregon State Bar at 1-800-  
9 452-8260, the Oregon Military Department at 503-584-3571, or the nearest United States Armed  
10 Forces Legal Assistance Office through <http://legalassistance.law.af.mil>. The Oregon Military  
11 Department does not have a toll-free telephone number.

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

18  
19 4/4/2024  
20 Date

21 Rebecca J Puskas  
22 Becca Puskas, Interim Manager  
23 Office of Compliance and Enforcement  
24  
25  
26  
27

## 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 5.2 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 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 \$1,000 for a Class II, minor magnitude violation in the matrix listed in OAR 340-012-0140(3)(b)(B)(iii) and applicable pursuant to OAR 340-012-0140(3)(a)(A) because Respondent operates the Facility under a Simple 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 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 24, 2023, DEQ issued Respondent a Warning Letter with Opportunity to Correct notifying Respondent that its 2022 report was incomplete and required corrections. On July 11, 2023, DEQ issued Respondent a Pre-Enforcement Notice when Respondent still had not submitted a corrected and complete 2022 annual report. By failing to take adequate measures to submit a corrected and complete 2022 annual report after being notified by DEQ that a complete and corrected report 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 -3 according to OAR 340-012-0145(6)(c) because Respondent made reasonable efforts to correct the violation by submitting a complete 2022 annual report to DEQ on July 14, 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:  $Penalty = BP + [(0.1 \times BP) \times (P + H + O + M + C)] + EB$   
= \$1,000 + [(0.1 x \$1,000) x (0 + 0 + 0 + 4 + -3)] + \$0  
= \$1,000 + (100 x 1) + \$0  
= \$1,000 + \$100 + \$0  
= \$1,100