



February 22, 2021

Thomas R. Wood  
760 SW Ninth Avenue, Suite 3000  
Portland, OR 97205  
D. 503.294.9396  
tom.wood@stoel.com

**BY EMAIL (DEQAPPEALS@DEQ.STATE.OR.US)**

Kieran O'Donnell  
Oregon Department of Environmental Quality  
700 NE Multnomah St.  
Portland, OR 97232

**Re: ENTEK International LLC's Request for Hearing and Answer; Civil Penalty Assessment and Order Modifying and Approving the Emissions Inventory and to Pay Civil Penalty and Program Fees; Case No. AQ/CAO-WR-2021-015**

Dear Kieran:

Enclosed please find a request for a contested case hearing in the above-named Civil Penalty Assessment and Order Modifying and Approving the Emissions Inventory and to Pay Civil Penalty and Program Fees. We also request a settlement conference with the Department to explore whether there is a pathway towards resolution short of pursuing a full contested case. As a timely contested case hearing request is being filed, the order does not, as a matter of law, become effective until completion of the contested case process. The submittals requested by the order will therefore not become due until the order is final.

Please contact me with any questions as well as to arrange for the settlement conference.

Sincerely,

A handwritten signature in blue ink, appearing to read "Tom Wood", is written over a horizontal blue line.

Thomas R. Wood

TRW/dlr  
Enclosure

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

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IN THE MATTER OF  
ENTEK INTERNATIONAL

AQ/CAO-WR-2021-015  
REQUEST FOR HEARING AND  
ANSWER

9                   REQUEST FOR HEARING

10           1.       Pursuant to ORS 183.090(3) and 468.135(1), Respondent ENTEK  
11 International LLC (“ENTEK”) hereby requests a contested case hearing before the  
12 Environmental Quality Commission on Notice of Civil Penalty Assessment and Order  
13 Modifying and Approving the Emissions Inventory and to Pay Civil Penalty and Program  
14 Fees No. AQ/CAO-WR-2021-015 (the “CPA”), dated February 3, 2021 and received by  
15 ENTEK on February 5, 2021. This request is timely as the written request is submitted to the  
16 Department of Environmental Quality within 20 days of receipt of the CPA by ENTEK.

17           2.       ENTEK is represented in this matter by:  
18                   Thomas R. Wood, OSB No. 93460  
19                   Stoel Rives LLP  
20                   760 SW Ninth Avenue  
21                   Portland, Oregon 97205  
22                   Telephone: (503) 294-9396  
23                   Facsimile: (503) 220-2480

22                   ANSWER

23           3.       ENTEK admits that trichloroethylene (“TCE”) is listed in the Toxic Air  
24 Contaminant List in OAR 340-245-8020, Table 2. ENTEK denies the remaining allegations  
25 in paragraph II.1.

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1           4.       ENTEK admits the allegations in paragraph II.2 that it manufactures battery  
2 separator material at its production facility in Lebanon, OR (the “Facility”) and that its  
3 manufacturing process results in emissions of TCE in compliance with its Title V permit.

4           5.       ENTEK admits the allegations in paragraph II.3.

5           6.       ENTEK admits that small amounts of TCE offgas from product temporarily  
6 stored in the warehouse, but denies the allegation in paragraph II.4 that those emissions are  
7 not associated with activities performed in the warehouse.

8           7.       ENTEK admits the allegations in paragraph II.5.

9           8.       ENTEK admits the allegations in paragraph II.6 that it has historically  
10 prepared a mass balance calculation to estimate TCE emissions from the Facility.

11          9.       ENTEK admits the allegations in paragraph II.7.

12          10.      ENTEK admits the allegations in paragraph II.8 that it installed a continuous  
13 emissions monitor (“CEM”) on the warehouse stack. ENTEK is without knowledge or  
14 information sufficient to form a belief as to what DEQ did with the warehouse CEM data  
15 provided to the agency and on that basis denies the allegation.

16          11.      ENTEK admits the allegations in paragraph II.9 and II.10.

17          12.      ENTEK is without knowledge or information sufficient to form a belief as to  
18 what DEQ determined and on that basis denies the allegations in paragraph II.11  
19 characterizing DEQ’s determinations or beliefs. ENTEK denies the allegations in paragraph  
20 II.11 that its June 2019 Emissions Inventory (“June 2019 EI”) was deficient because it did  
21 not characterize emissions from warehouse activities such as offgassing from product stored  
22 in the warehouse.

23          13.      To the extent that in paragraph II.12 DEQ is summarizing, characterizing,  
24 interpreting, or paraphrasing the agency’s actions, the record speaks for itself.

25          14.      ENTEK admits the allegations in paragraph II.13.

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1 15. To the extent that in paragraph II.14 DEQ is summarizing, characterizing,  
2 interpreting, or paraphrasing the agency's actions, the record speaks for itself.

3 16. To the extent that in paragraph II.15 DEQ is summarizing, characterizing,  
4 interpreting, or paraphrasing the agency's actions, the record speaks for itself.

5 17. ENTEK admits the allegations in paragraph II.16.

6 18. To the extent that in paragraph II.17 DEQ is summarizing, characterizing,  
7 interpreting, or paraphrasing the agency's actions, the record speaks for itself.

8 19. ENTEK admits the allegations in paragraph III.1.

9 20. ENTEK denies the allegations in paragraph III.2.

10 21. ENTEK denies the allegations in paragraph III.3.

11 22. ENTEK denies the allegations in paragraph III.4.

12 23. ENTEK denies the allegations in paragraph III.5.

13 24. ENTEK denies DEQ's authority to amend ENTEK's emissions inventory in  
14 violation of DEQ's regulations. To the extent that in paragraph III.6 DEQ is summarizing,  
15 characterizing, interpreting, or paraphrasing the agency's actions, the record speaks for itself.

16 25. ENTEK asserts that for each alleged violation DEQ has failed to state a claim  
17 within the scope of the agency's jurisdiction and so the agency lacks statutory authority to  
18 take enforcement against the company.

19 26. ENTEK asserts that for each alleged violation the CPA fails to identify  
20 conduct which constitutes actionable claims.

21 27. ENTEK asserts that for each alleged violation the CPA fails to state actionable  
22 claims due to the doctrine of impossibility.

23 **INFORMAL DISCUSSION**

24 11. Pursuant to part V of the CPA, ENTEK requests a contested case hearing in  
25 this matter. In addition, ENTEK requests an informal discussion with the Department  
26 concerning the CPA, including, but not limited to, revisions to the emissions inventory.

1 ENTEK further requests that the Department not schedule a hearing on this matter until the  
2 informal discussion is completed. As the order included as part of the CPA does not take  
3 final effect until this appeal is resolved, the deadlines for submittals referenced in the CPA  
4 (e.g., fees, penalties, submittals) are tolled until conclusion of the proceedings.

5 DATED: February 22, 2021

6 STOEL RIVES LLP

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Thomas R. Wood, OSB No. 93460  
10 Attorneys for Respondent  
11 ENTEK International LLC