



# Oregon

Kate Brown, 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

June 14, 2022

CERTIFIED MAIL No.: 7018 1830 0001 6172 5864

Rogue Valley Stations, Inc.  
c/o Carol Adler, Registered Agent  
PO Box 8350  
Medford, OR 97504

Re: Notice of Civil Penalty Assessment and Order  
Case No. AQ/ACDP-WR-2022-035

This letter is to inform you that DEQ has issued you a civil penalty of \$4,725 for violating an Environmental Quality Commission final order to submit your 2020 annual report to DEQ, and for failing to submit your 2021 annual report to DEQ that was due February 15, 2022, for your gasoline dispensing facility at 461 Valley View Road, Ashland, Oregon. Annual reports are 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 the report, DEQ is unable to determine the compliance status of your gasoline dispensing 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 your 2020 and 2021 annual reports within 30 days of the order becoming final.

You may pay the penalty by sending a check or money order payable to "Oregon Department of Environmental Quality" and sent to: DEQ Financial Services Office, 700 NE Multnomah Street, Suite 600, Portland, Oregon 97232.

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 Jenny Root at 503-229-5874 or toll free in Oregon at 800-452-4011, extension 5874.

Sincerely,



Kieran O'Donnell, Manager  
Office of Compliance and Enforcement

Enclosures

cc: Jennifer Horton, Western Region, Medford Office, DEQ  
Claudia Davis, Western Region, Salem Office, DEQ  
Donald Hendrix, AQ, DEQ  
Accounting, DEQ





1           2.     Within 30 days of this order becoming final by operation of law or on appeal,  
2 submit to DEQ, complete 2020 and 2021 annual reports for the GDF to: **Permit Coordinator,**  
3 **DEQ Western Region, 4026 Fairview Industrial Drive SE, Salem, OR 97302.**

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

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

8           You have a right to a contested case hearing on this Notice, if you request one in writing.  
9 DEQ must receive your request for hearing **within 20 calendar days** from the date you receive  
10 this Notice. If you have any affirmative defenses or wish to dispute any allegations of fact in this  
11 Notice or attached exhibits, you must do so in your request for hearing, as factual matters not  
12 denied will be considered admitted, and failure to raise a defense will be a waiver of the defense.  
13 (See OAR 340-011-0530 for further information about requests for hearing.) You must send your  
14 request to: **DEQ, Office of Compliance and Enforcement, 700 NE Multnomah Street, Suite**  
15 **600, Portland, Oregon 97232**, fax it to **503-229-5100** or email it to

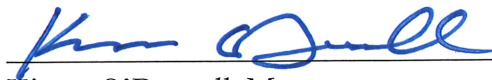
16 [DEQappeals@deq.state.or.us](mailto:DEQappeals@deq.state.or.us). An administrative law judge employed by the Office of  
17 Administrative Hearings will conduct the hearing, according to ORS Chapter 183, OAR Chapter  
18 340, Division 011 and OAR 137-003-0501 to 0700. You have a right to be represented by an  
19 attorney at the hearing, however you are not required to be. If you are an individual, you may  
20 represent yourself. If you are a corporation, partnership, limited liability company,  
21 unincorporated association, trust or government body, you must be represented by an attorney or  
22 a duly authorized representative, as set forth in OAR 137-003-0555.

23           Active-duty service members have a right to stay proceedings under the federal Service  
24 Members Civil Relief Act. For more information contact the Oregon State Bar at 1-800-  
25 452-8260, the Oregon Military Department at 503-584-3571, or the nearest United States Armed  
26 Forces Legal Assistance Office through <http://legalassistance.law.af.mil>. The Oregon Military  
27 Department does not have a toll-free telephone number.

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

7  
8 6 / 14 / 2022

9 Date



Kieran O'Donnell, Manager  
Office of Compliance and Enforcement

EXHIBIT 2

FINDINGS AND DETERMINATION OF RESPONDENT'S CIVIL PENALTY PURSUANT TO OREGON ADMINISTRATIVE RULE (OAR) 340-012-0045

VIOLATION: Failing to submit to DEQ, the 2021 annual report for Respondent's GDF, in violation of Condition 11.4 of AQGP-008 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 GDF under a General Air Contaminant Discharge Permit only because the GDF 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 1 according to OAR 340-012-0145(2)(a)(B), because Respondent has one Class II violation in Notice of Civil Penalty Assessment and Order No. AQ/ACDP-WR-2021-097 issued December 2, 2021.

"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 insufficient information on which to base a finding under paragraphs (3)(a) or (b).

"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 submit one (2021) annual report for the GDF.

"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. Respondent's Permit expressly requires Respondent to submit an annual report by February 15<sup>th</sup> of each year. On December 2, 2021, DEQ issued a Notice of Civil Penalty Assessment and Final Order to Respondent for failing to submit its 2020 annual report to DEQ by February 15, 2021. On March 25, 2022, DEQ issued a Pre-Enforcement Notice to Respondent for failing to submit its 2021

annual report to DEQ by February 15, 2022. In a May 11, 2022, phone call to Respondent, DEQ reminded Respondent that the 2021 annual report was past due and needed to be submitted. To date, Respondent still has not submitted a 2021 annual report to DEQ. By failing to submit the 2021 annual report to DEQ after being reminded to do so and repeatedly asked and then ordered to submit its 2020 annual report, 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 missing 2020 and 2021 annual reports, 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).

"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:  $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$   
 $= \$750 + [(0.1 \times \$750) \times (1 + 0 + 0 + 8 + 2)] + \$0$   
 $= \$750 + (75 \times 11) + \$0$   
 $= \$750 + \$825 + \$0$   
 $= \$1,575$



EXHIBIT 1

FINDINGS AND DETERMINATION OF RESPONDENT'S CIVIL PENALTY PURSUANT TO OREGON ADMINISTRATIVE RULE (OAR) 340-012-0045

VIOLATION: Failing to submit a 2020 annual report to DEQ in violation of Section IV, Paragraph 2 of Notice of Civil Penalty Assessment and Order No. AQ/ACDP-WR-2021-097 (Order).

CLASSIFICATION: This is a Class I violation pursuant to OAR 340-012-0053(1)(a).

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 \$1,500 for a Class I, moderate magnitude violation in the matrix listed in OAR 340-012-0140(4)(b)(A)(ii) and applicable pursuant to OAR 340-012-0140(4)(a)(C) because Respondent must operate the GDF under a General Air Contaminant Discharge Permit only because the GDF 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 1 according to OAR 340-012-0145(2)(a)(B), because Respondent has one Class II violation in Notice of Civil Penalty Assessment and Order No. AQ/ACDP-WR-2021-097 issued December 2, 2021.

"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 insufficient information on which to base a finding under paragraphs (3)(a) or (b).

"O" is whether the violation was repeated or ongoing and receives a value of 0 according to OAR 340-012-0145(4)(a), because there was only one occurrence of the violation. Respondent violated the Order by failing to submit one report (2020 annual report).

"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. Respondent's Permit expressly requires Respondent to submit an annual report by February 15<sup>th</sup> of each year. On April 8, 2021, DEQ issued Respondent a Warning Letter with Opportunity to Correct for failing to submit a 2020 annual report to DEQ by the February 15, 2021, due date. On May 19, 2021, DEQ sent an email and made a phone call to Respondent to remind Respondent that the

2020 annual report was past due and needed to be submitted. On December 2, 2021, DEQ issued a Notice of Civil Penalty Assessment and Final Order, penalized Respondent for failing to submit the report and ordering Respondent to do so within 30 days. To date, Respondent still has not submitted a 2020 annual report. By failing to submit the 2020 annual report to DEQ after repeatedly being asked and then ordered 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 missing 2020 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).

"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:  $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$   
 $= \$1,500 + [(0.1 \times \$1,500) \times (1 + 0 + 0 + 8 + 2)] + \$0$   
 $= \$1,500 + (150 \times 11) + \$0$   
 $= \$1,500 + \$1,650 + \$0$   
 $= \$3,150$