



# Oregon

Kate Brown, Governor

Department of Environmental Quality  
Office of Compliance and Enforcement  
700 NE Multnomah Street, Suite 600  
Portland, OR 97232-4100  
(503) 229-5696  
FAX (503) 229-5100  
TTY 711

November 10, 2022

CERTIFIED MAIL No. 7020 2450 0000 3349 5598  
Stack Infrastructure  
3145 NE Brookwood Parkway  
Hillsboro, OR 97124

CERTIFIED MAIL No. 7020 2450 0000 3349 5581  
Stack Infrastructure  
1600 Broadway, Suite 1320  
Denver, CO 97124

Re: Notice of Civil Penalty Assessment  
Case No. AQ/ACDP-NWR-2022-117

This letter is to inform you that the Department of Environmental Quality (DEQ) has issued you a civil penalty of \$1,500 for operating your data processing services facility at 3145 NE Brookwood Parkway in Hillsboro (the Facility) without a Simple Air Contaminant Discharge Permit (ACDP) from DEQ. The violation occurred when the Simple ACDP you were assigned to expired without renewal and you continued operations at the Facility.

DEQ issued this penalty because your operation of the Facility without the required air quality permit coverage constitutes a significant violation of Oregon law. Operating under the terms and conditions of an ACDP helps ensure operations are protective of the environment and public health. The permit includes air emission limits on particulate matter, volatile organic compounds, and other contaminants harmful to human health and the environment.

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](mailto: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. Alternatively, you can pay the penalty by sending a check or money order to the above address.

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 your 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 Steve Siegel at 503-229-5518.

Sincerely,



Kieran O'Donnell, Manager  
Office of Compliance and Enforcement

cc: mgoetz@stackinfra.com  
Louis Bivins, Northwest Region, DEQ  
Joshua Alexander, Northwest Region, DEQ  
Don Hendrix, AQ, HQ, 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 STACK INFRASTRUCTURE, INC.                    )       ASSESSMENT AND ORDER  
  )         
5                   Respondent.                     )       NO. AQ/ACDP-NWR-2022-117

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, 216 and 244.

10    II. FINDINGS OF FACT

11                   1.       Respondent owns and operates a data processing facility which would have actual  
12 emissions, if the source were to operate uncontrolled, of 5 or more tons per year of direct PM2.5  
13 or PM10 if located in a PM2.5 or PM10 nonattainment or maintenance area, or 10 or more tons  
14 per year of any single criteria pollutant if located in any part of the state, at 3145 NE Brookwood  
15 Parkway, Hillsboro, Oregon (the Facility).

16                   2.       Facilities which would have actual emissions, if the source were to operate  
17 uncontrolled, of 5 or more tons per year of direct PM2.5 or PM10 if located in a PM2.5 or PM10  
18 nonattainment or maintenance area, or 10 or more tons per year of any single criteria pollutant if  
19 located in any part of the state, are air contaminant sources listed in OAR 340-216-8010 Table 1,  
20 Part B, at category 85.

21                   3.       Pursuant to OAR 340-216-0020(3), no person may construct, install, establish,  
22 develop, or operate any air contaminant source listed in OAR 340-216-8010 without first  
23 obtaining an Air Contaminant Discharge Permit (ACDP) from the Oregon Department of  
24 Environmental Quality (DEQ) or Lane Regional Air Protection Agency (operations in Lane  
25 County). No person may continue to operate an air contaminant source if the ACDP expires, or is  
26 terminated, denied, or revoked, except as provided in OAR 340-216-0082, which requires that  
27

1 the owner or operator submit either a timely and complete permit application for renewal or an  
2 application for a different type of permit that authorizes operation of the air contaminant source.

3 4. On February 6, 2015, DEQ issued to Respondent Simple ACDP Permit No. 34-  
4 0157-SI-01 (the Permit) for data processing services which would have actual emissions, if the  
5 source were to operate uncontrolled, of 5 or more tons per year of direct PM2.5 or PM10 if  
6 located in a PM2.5 or PM10 nonattainment or maintenance area, or 10 or more tons per year of  
7 any single criteria pollutant if located in any part of the state. The Permit expired on February 1,  
8 2020.

9 5. Respondent continued operating the Facility after expiration of the Permit without  
10 submitting a timely and complete permit application for renewal or an application for a different  
11 type of permit that authorizes operation of an air contaminant source.

12 6. DEQ received an application for renewal of the Permit dated July 22, 2020.  
13 According to OAR 340-216-0040(2)(b)(B), the owner or operator must apply for renewal of an  
14 existing Simple ACDP no later than 120 days prior to the expiration of the Simple ACDP.

15 7. Respondent operated the Facility without a permit between on or about February  
16 1, 2020, and July 21, 2020.

### 17 III. CONCLUSION

18 From on or about February 1, 2020, until July 21, 2020, Respondent violated OAR 340-  
19 216-0020(3) by continuing to operate an air contaminant source listed in OAR 340-216-8010  
20 (data processing services which would have actual emissions, if the source were to operate  
21 uncontrolled, of 5 or more tons per year of direct PM2.5 or PM10 if located in a PM2.5 or PM10  
22 nonattainment or maintenance area, or 10 or more tons per year of any single criteria pollutant if  
23 located in any part of the state) after the Permit expired. This is a Class II violation according to  
24 OAR 340-012-054(2)(a). DEQ hereby assesses a \$1,500 civil penalty for this violation.

25 ///

26 ///

27 ///

1 IV. ORDER TO PAY CIVIL PENALTY

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

4 Pay a total civil penalty of \$1,500. The determination of the civil penalty is attached as an  
5 exhibit and is incorporated as part of this Notice. If you do not file a request for hearing as set forth  
6 in Section V below, your check or money order must be made payable to "**State Treasurer, State**  
7 **of Oregon**" and sent to the **DEQ, Business Office, 700 NE Multnomah Street, Suite 600,**  
8 **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](mailto: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-

1 452-8260, the Oregon Military Department at 503-584-3571, or the nearest United States Armed  
2 Forces Legal Assistance Office through <http://legalassistance.law.af.mil>. The Oregon Military  
3 Department does not have a toll-free telephone number.

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

10  
11 11 / 10 / 2022  
12 Date

11   
12 Kieran O'Donnell, Manager  
13 Office of Compliance and Enforcement  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27

EXHIBIT

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

VIOLATION: Continuing to operate an air contaminant source listed in OAR 340-216-8010 (data processing services) after the Air Contaminant Discharge Permit (ACDP) for the facility expired, in violation of OAR 340-216-0020(3).

CLASSIFICATION: This is a Class II violation pursuant to OAR 340-012-0054(2)(a).

MAGNITUDE: The magnitude of the violation is minor pursuant to OAR 340-012-0130(4), as the Respondent continued operating under the terms of its previous permit, the violation is not ongoing and the facility is not a major source.

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 must operate the Facility under a Simple ACDP.

"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 of 4 according to OAR 340-012-0145(4)(c), because there were more than 28 occurrences of the violation. In accordance with OAR 340-012-0145(4), each day of violation with a duration of more than one day is a separate occurrence. Respondent operated the Facility without an ACDP from approximately February 1, 2020, to July 21, 2020, when DEQ received a late application for renewal of ACDP Permit Number 34-0157-SI-01.

"M" is the mental state of the Respondent and receives a value of 4 according to OAR 340-012-0145(5)(c), because Respondent's conduct was negligent. Permit condition 8.1, "Permit Renewal Application," requires the permittee to submit a completed application for renewal of the permit 60 days prior to permit expiration. Respondent's permit expired February 1, 2020, and Respondent did not submit a renewal application until July 21, 2020, in violation of permit condition 8.1 and OAR 340-216-0082(1)(a). The permit expiration date is identified on each page of the permit.

"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 permit renewal application within six months of permit expiration.

"EB" is the approximate dollar value of the benefit gained and the costs avoided or delayed as a result of the 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 because DEQ does not charge a fee to renew a Simple ACDP.

PENALTY CALCULATION:  $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$   
= \$1,000 + [(0.1 x \$1,000) x (0 + 0 + 4 + 4 - 3)] + \$0  
= \$1,000 + (100 x 5) + \$0  
= \$1,000 + \$500 + \$0  
= \$1,500