

BEFORE THE ENVIRONMENTAL QUALITY COMMISSION
OF THE STATE OF OREGON

IN THE MATTER OF:)
GUNDERSON LLC) MUTUAL AGREEMENT
an Oregon limited liability company.) AND FINAL ORDER
) NO. AQ/V-NWR-2023-017

WHEREAS:

1. Gunderson LLC (Gunderson) owns and operates a railcar and marine barge manufacturing facility at 4350 NW Front Avenue, Portland, Oregon (the Facility).

2. In accordance with Oregon Administrative Rules (OAR) 340-218-0010(1), OAR 340-218-0020(1)(a) and OAR 340-218-0120(2)(a), the Facility is required to obtain an Oregon Title V Operating Permit to operate because the Facility is a “major source” as defined in OAR 340-200-0020(91)(b)(A)(i) and (b)(B) because it has the potential-to-emit (PTE) 100 tons per year or more of particulate matter (PM) and volatile organic compounds (VOCs), and 10 or more tons per year of a single hazardous air pollutant (HAP) or 25 tons per year or more of combined HAPs.

3. On January 4, 2018, the Department of Environmental Quality (DEQ) issued Oregon Title V Operating Permit No. 29-2644 (the 2018 Permit) to Gunderson. The 2018 Permit authorized Gunderson to discharge air contaminants from processes and activities at the Facility in accordance with the requirements, limitations and conditions of the Permit. The 2018 Permit was scheduled to expire on January 2, 2023, unless Gunderson submitted a timely and complete permit renewal application to DEQ.

4. According to OAR 340-218-0130, permit expiration of an Oregon Title V Operating Permit terminates a source’s right to operate unless the source has submitted a timely and complete renewal application to DEQ consistent with OAR 340-218-0040(1)(a)(D) and OAR 340-218-0120(2).

5. According to OAR 340-216-0040(1)(a)(D), a timely application for an Oregon Title V Permit renewal is one that is submitted to DEQ at least 12 months prior to the current

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1 permit's expiration. Therefore, Gunderson's Oregon Title V Permit renewal application was due
2 on or before January 2, 2022.

3 6. Gunderson submitted its renewal application for its Oregon Title V Permit to
4 DEQ on August 1, 2022.

5 7. To date, DEQ has not issued a renewed Oregon Title V Operating Permit to
6 Gunderson.

7 8. Therefore, on January 2, 2023, the 2018 Permit expired and as of that date,
8 Gunderson has been operating without an Oregon Title V Operating Permit from DEQ, in
9 violation of ORS 468A.045(1)(b), OAR 340-218-0010(1), and OAR 340-218-0120(2)(a). This is
10 a Class I violation according to OAR 340-012-054(1)(e).

11 9. DEQ and Gunderson recognize that Gunderson will continue to operate the Facility
12 without a required Oregon Title V Operating Permit until DEQ issues Gunderson an Oregon Title V
13 Operating Permit.

14 I. AGREEMENT

15 1. DEQ and Gunderson recognize that the Environmental Quality Commission has
16 the authority to impose civil penalties and issue abatement orders for violations of Oregon
17 environmental law. Therefore, pursuant to ORS 183.417(3)(a) and (b), DEQ and Gunderson
18 agree to settle the past violation described in Paragraph 8 above, and to resolve ongoing and
19 future violations as described in Paragraph 9 above, in advance, through this Mutual Agreement
20 and Final Order (MAO).

21 2. This MAO is not intended to limit, in any way, DEQ's right to proceed against
22 Gunderson in any forum for any past or future violations not expressly settled herein.

23 3. This MAO shall be effective upon the date fully executed (MAO Effective Date).

24 4. Gunderson shall pay a civil penalty in the amount of \$63,000 for operating the
25 Facility without an Oregon Title V Operating Permit from DEQ.

26 5. Regarding the violations set forth in Paragraphs 8 and 9 above, which are
27 expressly settled herein, Gunderson hereby waives any and all of its rights to any and all notices,

1 a contested case hearing, judicial review, and to service of a copy of the final order herein. DEQ
2 reserves the right to enforce this order through appropriate administrative and judicial
3 proceedings.

4 6. By entering into this MAO, Respondent expressly neither admits nor denies the
5 violations alleged in this MAO.

6 7. Gunderson releases and waives any and all claims of any kind, known or unknown,
7 past, or future, against the State of Oregon or its agencies, instrumentalities, employees, officers, or
8 agents, arising out of the matters and events set out in this MAO. Any and all claims includes but is
9 not limited to any claim under 42 USC § 1983 et seq., any claim under federal or state law for
10 damages, declaratory, or equitable relief, and any claim for attorney's fees or costs.

11 8. DEQ and Gunderson may amend the terms of this MAO by mutual written
12 agreement.

13 9. Gunderson agrees that this MAO is binding on Gunderson and its respective
14 successors, agents, and assigns. The undersigned representative of Gunderson certifies that they are
15 fully authorized to execute and bind Gunderson to this MAO.

16 10. Verifiable electronic, facsimile, or scanned signatures on this MAO shall be treated
17 the same as original signatures.

18 11. If Gunderson violates a condition of the 2018 Permit, upon receipt of a written
19 Penalty Demand Notice from DEQ, Respondent shall pay the following stipulated civil penalties:

20 A. \$250 for each day that Gunderson is late in providing a report to DEQ,
21 except for semi-annual compliance reports and certifications or the annual report required by
22 Condition 65 of the 2018 Permit;

23 B. \$1,200 for each day or each occurrence that Gunderson violates any other
24 condition, limitation or requirement of the 2018 Permit that would be a Class II violation
25 according to OAR 340-012-0054 for a Title V permitted source; and

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1 C. \$2,400 for each day or each occurrence, that Gunderson violates any other
2 condition, limitation or requirement of the 2018 Permit that would be a Class I violation
3 according to OAR 340-012-0054 for a Title V permitted source.

4 12. Within 20 days of receipt of a Penalty Demand Notice from DEQ, Respondent may
5 contest the Penalty Demand Notice. Respondent agrees that the issue shall be limited to
6 Respondent's compliance or noncompliance with this MAO. The amount of the stipulated civil
7 penalty is established in advance by this MAO and is not a contestable issue.

8 13. Gunderson acknowledges that it has actual notice of the contents and
9 requirements of this MAO and that failure to fulfill any of the requirements hereof will constitute
10 a violation of this MAO and will subject Gunderson to payment of civil penalties.

11 14. DEQ may amend the conditions in this MAO upon finding that such modification
12 is necessary because of changed circumstances or to protect public health and the environment.
13 DEQ must provide Gunderson a minimum of 30 days written notice prior to issuing an amended
14 order modifying any conditions. If Gunderson contests the amended order, the applicable
15 procedures for conduct of contested cases in such matters will apply.

16 15. This MAO will terminate at the time DEQ issues Gunderson an Oregon Title V
17 Operating Permit and Gunderson fully pays all penalties required by Section I. Paragraphs 4 and
18 11 above.

19 II. FINAL ORDER

20 The EQC hereby enters a final order:

21 1. Imposing upon Gunderson a total civil penalty of \$63,000 for the violations alleged
22 in this MAO, due within 20 days of the MAO Effective Date. Payment must be made by check or
23 money order made payable to "Department of Environmental Quality" and mailed to: DEQ,
24 Financial Services, 700 NE Multnomah Street, Suite 600, Portland, Oregon 97232.

25 2. Within one year of the MAO Effective Date or within 60 days of sale of the
26 Facility, whichever occurs sooner, in accordance with OAR 340-214-0110 and OAR 340-218-
27 0040(3)(c)(C), submit to DEQ updated facility-wide PTE calculations for all pollutants and

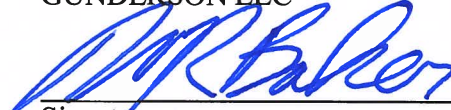
1 provide justification for any limitations and constraints. Submit the updated PTE calculations to:
2 George Yun at Oregon DEQ, 700 NE Mulnomah Street, Suite 600, Portland, OR 97232 or
3 George.Yun@deq.oregon.gov with a copy to Jenny Root at Jenny.Root@deq.oregon.gov.

4 3. Requiring that Gunderson operate the Facility in compliance with all of the
5 conditions, requirements and limitations of the 2018 Permit and any applicable modifications or
6 addendums, attached hereto as Attachments A – C and incorporated herein by reference,
7 including the requirement in General Condition G13 to pay annual base and emission fees to
8 DEQ within 30 days of the date DEQ mails the fees invoice to Gunderson, or by August 1 of the
9 year following the calendar year for which emission fees are paid, whichever is later.

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13 22 MARCH 2023

14 Date

GUNDERSON LLC



Signature

MARTIN R. BAKER

Name (print)

SENIOR V.P.

Title (print)

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18 DEPARTMENT OF ENVIRONMENTAL QUALITY and
19 ENVIRONMENTAL QUALITY COMMISSION

20
21 3/22/2023

22 Date

By:

Kieran O'Donnell, Manager
Office of Compliance and Enforcement
on behalf of DEQ pursuant to OAR 340-012-0170
on behalf of the EQC pursuant to OAR 340-011-0505