



Oregon

Tina Kotek, Governor

Department of Environmental Quality
Office of Compliance and Enforcement
700 NE Multnomah Street, Suite 600
Portland, OR 97232-4100
(503) 229-5696
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June 1, 2023

CERTIFIED MAIL: 7016 2710 0000 4221 2717

BP Products North America Inc.
CT Corporation System, Registered Agent
780 Commercial Street SE Suite 100
Salem, OR 97301

Re: Notice of Civil Penalty Assessment and Order
Case No. AQ-CFP-HQ-2022-037

This letter is to inform you that the Oregon Department of Environmental Quality (DEQ) has issued BP Products North America Inc. (BP) a civil penalty of \$205,800 for inaccurate reporting of renewable fuel volumes to the Oregon Clean Fuels Program that generated a total of 11,821 illegitimate credits. Specifically, BP impermissibly double counted the same volumes of imported renewable fuel to both Oregon and California. In addition, BP failed to report volumes of fuel that were exported out of Oregon by barge. The Notice also cites BP, without penalty, for additional reporting violations under the Clean Fuels Program and Greenhouse Gas Reporting Program.

DEQ issued this penalty because inaccurate reporting undermines the integrity of the Oregon Clean Fuels Program, a signature component of Oregon's efforts to combat climate change by reducing greenhouse gas emissions from the transportation sector. Accurate reporting is essential to determining compliance with the program. Inaccurate reports may also impact the market for Clean Fuels Program credits since they represent the balance of credits and deficits in the program. Illegitimate credits undermine the environmental integrity of the Clean Fuels program because they do not represent real tons of carbon reduction under the program's standards. Failure to comply with the program's requirements impedes the state's progress towards reductions of greenhouse gas emissions and a cleaner transportation system.

DEQ appreciates BP's efforts to correct the violations described in the Notice by correcting its Clean Fuels Program and Greenhouse Gas Reporting Program reports. In addition, BP retired legitimate credits to replace the illegitimate credits generated by the renewable fuels reporting error described above. DEQ considered these efforts when determining the amount of civil penalty.

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

Via fax – 503-229-6762

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 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 Becka Puskas at 503-229-5058 or toll free in Oregon at 800-452-4011, extension 5058.

Sincerely,



Kieran O'Donnell, Manager
Office of Compliance and Enforcement

Enclosures

cc: Brent Pace, BP Products North America Inc. (brent.pace@bp.com)
Leanne Mello-Harkins, BP Products North America Inc. (leanne.harkins@bp.com)
Stephanie Summers, DEQ
Bill Peters, DEQ
Kiara Winans, DEQ
Cory Ann Wind, 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 BP PRODUCTS NORTH AMERICA INC.)	ASSESSMENT AND ORDER
4 a Maryland company,)	
5 Respondent.)	CASE NO. AQ-CFP-HQ-2022-037

6 I. AUTHORITY

7 The Department of Environmental Quality (DEQ) issues this Notice of Civil Penalty Assessment
8 and Order (Notice) pursuant to Oregon Revised Statutes (ORS) 468.100, ORS 468.126 through 468.140,
9 ORS 468A.265 through 468A.277, ORS 468A.280, ORS Chapter 183 and Oregon Administrative Rules
10 (OAR) Chapter 340, Divisions 011, 012, 215 and 253.

11 II. FINDINGS OF FACT

12 1. Respondent operates a business importing transportation fuels into the state of Oregon.

13 2. On May 9, 2017, DEQ approved Respondent’s registration to the Oregon Clean Fuels
14 Program (CFP), OAR Chapter 340, Division 253, as a Importer of Blendstocks.

15 Renewable diesel reporting

16 3. Respondent imports renewable diesel made at its Cherry Point Refinery in Washington state
17 to both Oregon and California.

18 4. On December 31, 2019, DEQ approved Respondent’s renewable diesel pathway no.
19 RND002B00180100 for the Cherry Point Refinery. The DEQ approval includes the following
20 condition: “Multiple Jurisdiction Condition: For facilities that produce fuel under multiple fuel pathway
21 codes and that maintain active FPCs [fuel pathway codes] in multiple LCFS [low carbon fuel standard]
22 jurisdictions, each gallon attributable to a single fuel pathway must only be claimed in a single
23 jurisdiction.”

24 5. In the fourth quarter of 2019 (Q4 2019) and the first quarter of 2020 (Q1 2020), Respondent
25 calculated and reported the volumes of renewable diesel imported to Oregon from the Cherry Point
26 Refinery by using a mass balancing method based on carbon-14 dating of the fuel. Respondent used
27 Carbon-14 dating to determine the split of fossil diesel (produced from crude oil) versus renewable

diesel (produced from tallow and crop-based fats and oils) because both fossil and renewable feedstocks are being coprocessed in the same unit at the same time. Respondent's method of determining the amount of renewable diesel imported to Oregon involved subtracting the amount of renewable diesel already imported into California from the total volume produced. Because the carbon-14 dating for some of the California volumes had not yet been certified at the time of Respondent's calculations, volumes of fuel that should have been subtracted from the Oregon amounts were not subtracted, resulting in an over-reporting of renewable diesel imported into Oregon.

6. As a result of the miscalculation described in Section II, paragraph 5, above, in Q4 2019 and Q1 2020, Respondent reported in the Oregon Fuels Reporting System (OFRS) volumes of renewable diesel that should have been reported as fossil diesel, with a different fuel pathway code, as described in Table 1 below. The over-reporting generated illegitimate credits, which are also described in Table 1.

7. In addition, Table 1 describes an under-reporting of renewable diesel in Q2 2020 due to an error in the in the categorization of a shipment type. This reporting generated no illegitimate credits.

8. Finally, Table 1 describes an error in Q3 2020, in which Respondent erroneously reported sending approximately 179,685 gallons of renewable diesel to Oregon due to a manual calculation error.

Table 1. Over-reporting of renewable diesel

Quarter	Gallons of fuel reported as renewable diesel in Oregon that should have been reported as fossil diesel	Illegitimate credits generated by over-reporting
Q4 2019	452,461	4,127
2019 Total	452,461	4,127
Q1 2020	687,097	6,178
Q2 2020	-1,600	0
Q3 2020	179,685	1,616
2020 Total	865,182	7,794
2019-2020 Total		11,821

9. In Q4 2019 through Q3 2020, the gallons of renewable diesel described in Table 1 above were also reported in California.

10. In July 2021, Respondent notified DEQ that it had detected and was investigating a reporting issue. From August 2021 through March 2022, Respondent continued to investigate the issues

1 described in Section II, paragraphs 3-9 above, and on March 21, 2022, Respondent submitted a request
2 to DEQ to reopen and correct the issues in the quarterly reports described in Table 1, above.

3 11. On April 5-7, 2022, Respondent corrected its quarterly reports to address the issues
4 described in Table 1, above. In addition, Respondent retired legitimate credits to replace the illegitimate
5 credits described in Table 1, above.

6 Fuel exports by barge

7 12. Respondent reported in the OFRS volumes of fuel (comprised of gasoline, diesel and B5
8 diesel) that were imported to Oregon, but failed to report that the same fuel was later exported out of
9 Oregon by barge as described in Table 2 below. This inaccurate reporting led to the generation of
10 deficits that should have been removed from Respondent's OFRS ledger when the fuel was exported.
11 These deficits are also described in Table 2.

12 **Table 2. Barge exports not reported**

Quarter	Barge exports not reported (gallons)	Deficits generated by inaccurate reporting
Q3 2020	18,907,723	10,295
Q4 2020	8,677,121	4,678
2020 Total	27,584,844	14,973
Q1 2021	7,473,706	4,552
2021 Total	7,473,706	4,552

17 13. Respondent held title to the volumes of fuel described in Table 2 above, at the time they
18 were exported out of Oregon.

19 14. In December 2021, Respondent notified DEQ that it had identified the reporting issues
20 described in Section II, paragraphs 12-13, above.

21 15. On April 5-7, 2022, Respondent corrected its quarterly reports to address the issues
22 described in Section II, paragraphs 12-13, above.

23 16. When Respondent corrected its quarterly reports as described in Section II, paragraph 15,
24 above, those corrections were also reflected in its 2020 and 2021 Clean Fuels Program annual reports
25 (which are a compilation of the four quarterly reports). Since Respondent had already submitted the
26 2020 annual report in the spring of 2021, the correction to the 2020 annual report resulted in the return
27 to Respondent's OFRS account of 14,973 credits that had been retired due to Respondent's inaccurate

1 reporting, as shown in Table 2, above. Respondent corrected and submitted the 2021 annual report prior
2 to April 30, 2022 annual reporting deadline, so there were no credits returned to Respondent's OFRS
3 account for the 2021 reporting errors.

4 Inaccurate Clean Fuels Program annual reports

5 17. Due to the quarterly reporting errors described in Section II, paragraphs 3-16, above,
6 Respondent submitted inaccurate Clean Fuels Program annual reports in 2019 and 2020.

7 Greenhouse gas reporting

8 18. In Q1 2020 through Q3 2020, Respondent failed to report position holder sales of renewable
9 diesel in the OFRS as described in Table 3 below. Respondent allocated the gallons described in Table
10 3 below to fossil diesel rather than renewable diesel.

11 19. The quarterly reporting in the OFRS described in Section II, paragraph 18, above is also
12 used for purposes of reporting each calendar year to DEQ's Greenhouse Gas Reporting Program. The
13 inaccurate reporting of renewable fuel volumes resulted in an over-reporting of greenhouse gas
14 emissions to DEQ, which is also described in Table 3, below.

15 **Table 3. Under-reporting of renewable diesel**

16 Quarter	17 Position holder sales of renewable diesel that were reported as fossil diesel (gallons)	18 Over-reporting of greenhouse gas emissions (carbon dioxide equivalent or CO2e)
19 Q1 2020	6,992,714	5,128
20 Q2 2020	4,655,515	3,414
21 Q3 2020	157,521	116
22 Total	11,805,750	

23 20. In June 2021, DEQ conducted a review of position holder sales reporting in the OFRS. On
24 June 29, 2021, DEQ discovered the errors described in Table 3, above and notified Respondent that it
25 was required to report these position holder sales as renewable diesel. On April 5-7, 2022, Respondent
26 corrected its OFRS quarterly reports for this error.

27 21. On March 21, 2023, Respondent submitted a revised 2020 Greenhouse Gas Reporting
Program emissions data report to DEQ, correcting the reporting described in Table 3 above.

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1 III. CONCLUSIONS

2 1. Respondent submitted inaccurate quarterly reports that generated a total of 11,821 illegitimate
3 credits in violation of OAR 340-253-0630(2)(a) and OAR 340-253-1005(7)(a), as described in Section II,
4 paragraphs 3-11, above. According to OAR 340-253-0630(2)(a) and OAR 340-253-8010, Table 5,
5 quarterly reports must include the correct fuel pathway code. As described in Table 1 above, Respondent
6 inaccurately reported a renewable diesel fuel pathway code for fuel gallons imported to Oregon during Q4
7 2019 through Q3 2020. Respondent reported the same gallons of renewable diesel in California, in
8 violation of the Multiple Jurisdiction Condition of approval of Respondent's renewable diesel pathway
9 code RND002B00180100. Therefore, the gallons reported in Oregon should have been reported as
10 fossil diesel. The inaccurate reporting resulted in the generation of illegitimate credits according to OAR
11 340-253-1005(7)(a) as described in Table 1. These are Class I violations, according to OAR 340-012-
12 0054(1)(ff). DEQ hereby assesses a \$198,000 civil penalty for these violations.

13 2. Respondent submitted inaccurate quarterly reports in violation of OAR 340-253-0630(2)(a)
14 and OAR 340-253-1010(4)(a), as described in Section II, paragraphs 12-16, above. Specifically, in Q3
15 2020 through Q1 2021, Respondent, as a title holder of the fuel at the time of export, failed to report
16 volumes of fuel that were exported out of Oregon by barge. This resulted in an over-reporting of fuel
17 volumes on those quarterly reports. These are Class II violations according to OAR 340-012-
18 0054(2)(u). DEQ hereby assesses a \$7,800 civil penalty for these violations.

19 3. Respondent submitted inaccurate Clean Fuels Program annual reports in 2019 and 2020, in
20 violation of OAR 340-253-0650(2), as described in Section II, paragraphs 3-17, above. These are Class I
21 violations according to OAR 340-012-0054(1)(hh). DEQ has not assessed a civil penalty for these
22 violations.

23 4. Respondent submitted an inaccurate emissions data report for calendar year 2020, in violation
24 of OAR 340-215-0110(3)(b), as described in Section II, paragraphs 18-21, above. Specifically, the 2020
25 report did not include the renewable diesel position holder sales described in Table 3. This is a Class I
26 violation according to OAR 340-012-0054(1)(ii). DEQ has not assessed a civil penalty for this violation.

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1 IV. ORDER TO PAY CIVIL PENALTY

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

4 1. Pay a total civil penalty of \$205,800. The determination of the civil penalties are attached as
5 Exhibits 1 and 2 and are incorporated as part of this Notice.

6 If you do not file a request for hearing as set forth in Section V below, your check or money
7 order must be made payable to "**Department of Environmental Quality**" and sent to the **DEQ,**
8 **Business Office, 700 NE Multnomah Street, Suite 600, 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. DEQ
11 must receive your request for hearing **within 20 calendar days** from the date you receive this Notice. If
12 you have any affirmative defenses or wish to dispute any allegations of fact in this Notice or attached
13 exhibits, you must do so in your request for hearing, as factual matters not denied will be considered
14 admitted, and failure to raise a defense will be a waiver of the defense. (See OAR 340-011-0530 for
15 further information about requests for hearing.) You must send your request to: **DEQ, Office of**
16 **Compliance and Enforcement, 700 NE Multnomah Street, Suite 600, Portland, Oregon 97232**, fax
17 it to **503-229-6762** or email it to DEQappeals@deq.oregon.gov. An administrative law judge
18 employed by the Office of Administrative Hearings will conduct the hearing, according to ORS
19 Chapter 183, OAR Chapter 340, Division 011 and OAR 137-003-0501 to 0700. You have a right to be
20 represented by an attorney at the hearing, however you are not required to be. If you are an individual,
21 you may represent yourself. If you are a corporation, partnership, limited liability company,
22 unincorporated association, trust or government body, you must be represented by an attorney or a duly
23 authorized representative, as set forth in OAR 137-003-0555.

24 Active duty Service members have a right to stay proceedings under the federal Service
25 Members Civil Relief Act. For more information contact the Oregon State Bar at 1-800-
26 452-8260, the Oregon Military Department at 503-584-3571, or the nearest United States Armed
27 Forces Legal Assistance Office through <http://legalassistance.law.af.mil>. The Oregon Military

1 Department does not have a toll free telephone number.

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


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6/1/2023
Date


Kieran O'Donnell, Manager
Office of Compliance and Enforcement

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EXHIBIT 1

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

VIOLATION NO. 1 Submitting inaccurate quarterly reports that generated a total of 11,821 illegitimate credits, in violation of OAR 340-253-0630(2)(a) and OAR 340-253-1005(7)(a).

CLASSIFICATION: These are Class I violations pursuant to OAR 340-012-0054(1)(ff).

MAGNITUDE: The magnitude of the violations is major pursuant to OAR 340-012-0135(1)(1)(D).

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 \$12,000 for a Class I, major magnitude violations in the matrix listed in OAR 340-012-0140(2)(b)(A)(i) and applicable pursuant to OAR 340-012-0140(2)(a)(S).

"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 the same 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)(d) because there were more than 28 occurrences of the violation. According to OAR 340-253-0680(1), each illegitimate credit generated constitutes a separate violation of the Oregon Clean Fuels Program rules. In this case, Respondent generated a total of 11,821 illegitimate credits. As discussed below, DEQ is using its enforcement discretion to assess 11 separate penalties, one for each group of approximately 1,000 illegitimate credits. Therefore, each separate penalty represents approximately 1,000 occurrences of the violation.

"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. According to OAR 340-012-0030(15), negligent means the respondent failed to take reasonable care to avoid a foreseeable risk of conduct constituting or resulting in a violation. Respondent elected to report volumes of renewable diesel imported to Oregon using a mass balancing method based on carbon-14 testing of the fuel. However, Respondent failed to ensure that the volumes of fuel used in its calculations were carbon-14 certified at the time of the

calculation. Thus, Respondent failed to take reasonable care to avoid a foreseeable risk of conduct constituting or resulting in an inaccurate reporting violation.

"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. In April 2022, Respondent corrected its quarterly reports to address the issues described in Table 1 of the Notice.

"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 Respondent did not realize an economic benefit as a result of the violation.

PENALTY CALCULATION: $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$
= \$12,000 + [(0.1 x \$12,000) x (0 + 0 + 4 + 4 + -3)]
= \$12,000 + (\$1,200 x 5)
= \$12,000 + \$6,000
= \$18,000

According to OAR 340-253-0680(1), each illegitimate credit generated constitutes a separate violation of the Oregon Clean Fuels Program rules. In this case, Respondent generated 11,821 illegitimate credits. DEQ is using its enforcement discretion to assess a separate penalty for each group of approximately 1,000 illegitimate credits generated by Respondent. Thus, DEQ is assessing 11 separate penalties in the amount of \$18,000 for each penalty, for a total civil penalty of \$198,000.

EXHIBIT 2

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

VIOLATION NO. 2 Submitting inaccurate quarterly reports, in violation of OAR 340-253-0630(2)(a) and OAR 340-253-1010(4)(a).

CLASSIFICATION: These are Class II violations pursuant to OAR 340-012-0054(2)(u).

MAGNITUDE: The magnitude of the violations is major pursuant to OAR 340-012-0135(1)(I)(D).

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 \$6,000 for a Class II, major magnitude violations in the matrix listed in OAR 340-012-0140(2)(b)(B)(i) and applicable pursuant to OAR 340-012-0140(2)(a)(R) because Respondent is registered with the Clean Fuels Program as an importer of blendstocks.

"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 the same 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 2 according to OAR 340-012-0145(4)(b) because there was more than one but less than seven occurrences of the violation. Respondent failed to report volumes of fuel that were exported out of Oregon by barge in three quarterly reports: Q3 2020, Q4 2020 and Q1 2021.

"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. According to OAR 340-012-0030(15), negligent means the respondent failed to take reasonable care to avoid a foreseeable risk of conduct constituting or resulting in a violation. Respondent keeps records of fuel exports by barge from Oregon but failed to consider this information in three quarterly reports to DEQ. Thus, Respondent failed to take reasonable care to avoid a foreseeable risk of conduct constituting or resulting in an inaccurate reporting violation.

"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. On April 5-7, 2022, Respondent corrected the reporting issues in the quarterly reports described in Table 2 of the Notice.

"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 Respondent did not realize an economic benefit as a result of the violation.

PENALTY CALCULATION: $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$

$$\begin{aligned} &= \$6,000 + [(0.1 \times \$6,000) \times (0 + 0 + 2 + 4 + -3)] + \$0 \\ &= \$6,000 + (\$600 \times 3) + \$0 \\ &= \$6,000 + \$1,800 + \$0 \\ &= \$7,800 \end{aligned}$$