



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
FAX (503) 229-5100
TTY 711

August 17, 2023

CERTIFIED MAIL: 7016 2710 0000 4221 4087

Hattenhauer Distributing Co.
c/o Alex Hattenhauer, Registered Agent
201 W. 1st Street
The Dalles, OR 97058

Re: Notice of Civil Penalty Assessment and Order
Case No. AQ-GHG-HQ-2023-040

This letter is to inform you that the Oregon Department of Environmental Quality (DEQ) has issued you a civil penalty of \$12,800 for submitting an inaccurate Clean Fuels Program annual report to DEQ and failing to correct the reporting errors identified by your third party verifier by the verification deadline. The attached Notice of Civil Penalty Assessment and Order also cites you, without penalty, for an inaccurate greenhouse gas report resulting from the same reporting error. The errors resulted from reporting gross rather than net temperature-corrected gallons to the Oregon Fuels Reporting System, which impacted your Clean Fuels Program and Greenhouse Gas Reporting Program annual reports for calendar year 2021.

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 impact the market for Clean Fuels Program credits since they represent the balance of credits and deficits in the program. Failure to comply with the Program's requirements impedes the state's progress towards reductions of greenhouse gas emissions and a cleaner transportation system. Third party verification helps ensure the accuracy of your associated greenhouse gas data. DEQ uses this data to inform climate regulation and policy decisions. Once issues are identified during third party verification, regulated parties are required to fix correctable errors in the information that they have submitted to DEQ by the verification deadline.

DEQ appreciates your efforts to correct your reporting by submitting revised data on February 1, 2023. 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 becka.puskas@deq.oregon.gov.

Sincerely,



Kieran O'Donnell, Manager
Office of Compliance and Enforcement

Enclosures

cc: Margaret Macnab, Hattenhauer Distributing Co., 201 W 1st Street, The Dalles, OR 97058
Stephanie Summers, DEQ
Liz Hardee, DEQ
Elizabeth Elbel, DEQ
Colin McConnaha, 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 HATTENHAUER DISTRIBUTING CO.,) ASSESSMENT AND ORDER
an Oregon corporation,)
5 Respondent.) CASE NO. AQ-GHG-HQ-2023-040

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 Chapters 183 and 468A, and Oregon Administrative Rules (OAR) Chapter 340, Divisions 011, 012,
10 215, 253 and 272.

11 II. FINDINGS OF FACT

- 12 1. Respondent operates a business that imports fuels to Oregon.
- 13 2. On July 1, 2015, DEQ approved Respondent's registration to the Oregon Clean Fuels
14 Program, OAR Chapter 340, Division 253, as a Large Importer of Finished Fuels.
- 15 3. Respondent also reports its annual greenhouse gas emissions to DEQ pursuant to the
16 Oregon Greenhouse Gas Reporting Program, OAR Chapter 340, Division 215.
- 17 4. In order to comply with their reporting obligations under both the Clean Fuels Program
18 and Greenhouse Gas Reporting Program, fuel suppliers submit information via an online platform
19 called the Oregon Fuels Reporting System (OFRS). Data must be submitted quarterly under the Clean
20 Fuels Program, and the quarterly data rolls up into annual Clean Fuels Program reports and annual
21 Greenhouse Gas Reporting Program emissions data reports. Any additional fuels that are required to be
22 reported to the Greenhouse Gas Reporting Program but not to the Clean Fuels Program are added to the
23 Greenhouse Gas Reporting Program annual emissions data report prior to the reporting due date of
24 April 30.

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1 5. According to OAR 340-272-0120(1)(a)(A), regulated entities subject to the Oregon
2 Greenhouse Gas Reporting Program with greenhouse gas emissions that equal or exceed 25,000
3 mtCO₂e, excluding CO₂ from biomass-derived fuels, are also subject to the third party verification
4 requirements of OAR Chapter 340, Division 272.

5 6. According to OAR 340-272-0100(3)(a)(B), each responsible entity must ensure that a
6 verification statement is submitted to DEQ from a verification body by August 31 (the verification
7 deadline) for the previous year's emissions data report.

8 7. According to OAR 340-272-0495(5), a verification body must notify the responsible
9 entity at least 14 days prior to issuing an adverse verification statement. According to OAR 340-272-
10 0495(5) and OAR 340-272-0435(2), the responsible party, upon receiving such a notification, must fix
11 all correctable errors identified by the verification body and resubmit the emissions data report to DEQ
12 by the verification deadline to avoid an adverse verification statement.

13 8. On April 25, 2022, Respondent submitted a greenhouse gas emissions data report to
14 DEQ for its 2021 emissions (the 2021 emissions data report). The 2021 emissions data report was
15 based on the gross amount of transportation fuels that Respondent imported to Oregon in 2021, which
16 translated to greenhouse gas emissions of 99,433 mtCO₂e, excluding CO₂ from biomass-derived fuels.

17 9. Respondent did not ensure that a verification statement was submitted to DEQ for its
18 2021 emissions data report by the August 31, 2022 verification deadline.

19 10. On September 13, 2022, DEQ issued Warning Letter with Opportunity to Correct No.
20 2022-WLOTC-7624 to Respondent, citing Respondent for failing to submit a verification statement for
21 its 2021 data to DEQ by the August 31, 2022 verification deadline. The Warning Letter requested that
22 Respondent submit the verification statement to DEQ by October 13, 2022. DEQ subsequently
23 extended the deadline to December 31, 2022.

24 11. On December 16, 2022, Respondent's verifier notified Respondent and DEQ of the
25 potential for an adverse verification statement and provided Respondent with a Log of Issues that must
26 be addressed and corrected to avoid an adverse verification statement, including the need to correct
27 "gross" volumes of fuel to temperature and pressure corrected "net" volumes.

1 12. Respondent notified the verifier and DEQ via a letter submitted on December 27, 2022
2 that it would not be able to correct the gross vs. net issue in its reporting by the December 31, 2022
3 deadline, and on December 29, 2022, the verifier submitted an adverse verification statement to DEQ
4 for Respondent's 2021 data. The adverse verification statement stated:

5 Hattenhauer mis-reported the "gross" volumes instead of the temperature and pressure corrected
6 "net" volumes from the bills of lading (issues log item 2). This is a correctable error. However,
7 Hattenhauer indicated that going back to the individual paper BOLs to obtain the net volumes
8 would take significant time, and as such, it would not be able to correct, re-certify, and finish
9 verification by the due date agreed upon with Oregon DEQ of 12/31/2022.

10 13. On February 1, 2023, Respondent completed the submittal of revised 2021 data to the
11 OFRS, correcting the fuel volumes to net, temperature corrected volumes. As a result, Respondent's
12 revised 2021 emissions data report stated that Respondent's annual greenhouse gas emissions were
13 99,492 mtCO₂e (59 mtCO₂e higher than originally reported).

14 III. CONCLUSIONS

15 1. Respondent violated OAR 340-253-0650(2) by submitting an inaccurate Clean Fuels Program
16 annual report to DEQ for 2021, as described in Section II, paragraphs 8 and 12-13, above. Specifically,
17 for all four quarters of 2021, Respondent reported gross fuel volumes to the OFRS that were not
18 temperature corrected as required by OAR 340-253-0640(4). The reporting of gross fuel volumes rather
19 than temperature corrected net volumes resulted in an incorrect amount of fuel imported into the state of
20 Oregon in Respondent's quarterly reports according to OAR 340-253-0630(2)(a) and OAR 340-253-8010,
21 Table 5. Thus, Respondent's annual report violated OAR 340-253-0650(2) because it did not meet the
22 general and specific requirements for quarterly reports. This is a Class I violation according to OAR 340-
23 012-0054(1)(hh). DEQ hereby assesses a \$7,400 civil penalty for this violation.

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

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

16 Active duty Service members have a right to stay proceedings under the federal Service
17 Members Civil Relief Act. For more information contact the Oregon State Bar at 1-800-
18 452-8260, the Oregon Military Department at 503-584-3571, or the nearest United States Armed
19 Forces Legal Assistance Office through <http://legalassistance.law.af.mil>. The Oregon Military
20 Department does not have a toll free telephone number.

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

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10 8/17/2023

11 Date

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12 Kieran O'Donnell, Manager
13 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 an inaccurate Clean Fuels Program annual report, in violation of OAR 340-253-0650(2).
- CLASSIFICATION: This is a Class I violation pursuant to OAR 340-012-0054(1)(hh).
- MAGNITUDE: The magnitude of the violation is major pursuant to OAR 340-012-0135(1)(l)(C) because Respondent failed to submit an accurate Clean Fuels Program annual report.
- 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 \$8,000 for a Class I, major magnitude violation in the matrix listed in OAR 340-012-0140(3)(b)(A)(i) and applicable pursuant to OAR 340-012-0140(3)(a)(L).
- "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) and OAR 340-012-0145(2)(f), because there are no prior significant actions within the last ten years.
- "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 0 according to OAR 340-012-0145(4)(a) because there was only one occurrence of the violation. Respondent submitted an inaccurate Clean Fuels Program annual report for 2021.
- "M" is the mental state of the Respondent, and receives a value of 2 according to OAR 340-012-0145(5)(b) because Respondent had constructive knowledge (reasonably should have known) of the requirement. As a Clean Fuels Program registrant subject to the reporting requirements of OAR Chapter 340, Division 253, Respondent reasonably should have known of the requirement to report net, temperature-corrected gallons rather than gross gallons.
- "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 February 1, 2023, Respondent completed the submittal of revised 2021 data to the OFRS, correcting the fuel volumes to net, temperature corrected volumes.

"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 has insufficient information to calculate an economic benefit for this violation.

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

$$\begin{aligned} &= \$8,000 + [(0.1 \times \$8,000) \times (0 + 0 + 0 + 2 + -3)] + \$0 \\ &= \$8,000 + (\$600 \times -1) + \$0 \\ &= \$8,000 + -\$600 + \$0 \\ &= \$7,400 \end{aligned}$$

EXHIBIT 2

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

VIOLATION NO. 2 Failing to submit a revised emissions data report to DEQ by the verification deadline, in violation of OAR 340-272-0435(2) and OAR 340-272-0495(5).

CLASSIFICATION: This is a Class I violation pursuant to OAR 340-012-0054(1)(II).

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 \$6,000 for a Class I, moderate magnitude violation in the matrix listed in OAR 340-012-0140(2)(b)(A)(ii) and applicable pursuant to OAR 340-012-0140(2)(a)(U).

"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) and OAR 340-012-0145(2)(f), because there are no prior significant actions within the last ten years.

"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 0 according to OAR 340-012-0145(4)(a) because there was only one occurrence of the violation. Respondent failed to submit a revised 2021 emissions data report to DEQ by the verification deadline.

"M" is the mental state of the Respondent, and receives a value of 2 according to OAR 340-012-0145(5)(b) because Respondent had constructive knowledge (reasonably should have known) of the requirement. As a responsible entity subject to third party verification requirements, Respondent reasonably should have known of the requirement to correct its 2021 emissions data report by the verification deadline. Respondent was notified of this requirement by the verifier and by DEQ on or about December 16, 2022. Respondent indicated, in response, that it intended to correct its 2021 data as soon as possible but would not be able to do so in time to meet the verification deadline. Respondent corrected its Q1 ad

Q2 reports prior the December 31, 2022 deadline and the Q3 and Q4 reports after the deadline.

"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 February 1, 2023, Respondent completed the submittal of revised 2021 data to the OFRS, correcting the fuel volumes to net, temperature corrected volumes.

"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 has insufficient information to calculate an economic benefit for this violation.

PENALTY CALCULATION: $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$
= \$6,000 + [(0.1 x \$6,000) x (0 + 0 + 0 + 2 + -3)] + \$0
= \$6,000 + (\$600 x -1) + \$0
= \$6,000 + -\$600 + \$0
= \$5,400