



Oregon

Tina Kotek, Governor

Department of Environmental Quality
Office of Compliance and Enforcement
700 NE Multnomah Street, Suite 600
Portland, OR 97232
(503) 229-5382
FAX (503) 229-5100
TTY 711

August 31, 2023

CERTIFIED MAIL No. 9589 0710 5270 0110 6007 84

Mazda Motor of America, Inc.
c/o 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/MISC-HQ-2023-023

This letter is to inform you that DEQ has issued Mazda Motor of America Inc. a civil penalty of \$237,600 for delivering for sale in Oregon, 44 new 2022 model year Mazda CX-5 vehicles that were not certified to the California Emission Standards as required by Oregon's Low Emission Vehicle (ORLEV) rules.

DEQ issued this penalty because the sale of non-compliant vehicles undermines the ORLEV program, an essential component of Oregon's efforts to reduce harmful emissions from the transportation sector. Oregon adopted its ORLEV requirements to ensure that emissions of harmful air pollutants from motor vehicles, including nitrous oxides, particulate matter and greenhouse gases are kept to minimum levels to protect human health and the environment. These emissions may cause respiratory illnesses on a local level and other health effects. Greenhouse gas emissions impact our climate resulting in warmer temperatures and more extreme weather events that have deleterious effects on human health, safety, infrastructure, economic growth, water supplies, and fish and wildlife populations.

You may pay the penalty by mailing a check or money order to the below address. If you wish to appeal this matter, DEQ must receive a request for a contested case hearing within 20 calendar days from your receipt of this letter. The hearing request must be in writing. Send your hearing request to DEQ Office of Compliance and Enforcement – Appeals:

Via mail – 700 NE Multnomah Street, Suite #600, Portland, Oregon 97232

Via email – 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.

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 DEQ Environmental Law Specialist Jenny Root at (503) 229-5874.

Sincerely,



Kieran O'Donnell, Manager
Office of Compliance and Enforcement

Enclosures

cc: Rachel Sakata, Transportation Strategies, AQ-HQ, DEQ
Accounting, DEQ
Donald Hendrix, AQ, DEQ
John Keenan, EPA, Region 10 keenan.john@epa.gov
David Robertson, Mazda North American Operations,
200 Spectrum Center Drive, Suite 100, Irvine, CA 92618

1 BEFORE THE ENVIRONMENTAL QUALITY COMMISSION

2 OF THE STATE OF OREGON

3	IN THE MATTER OF:)	NOTICE OF CIVIL PENALTY
4	MAZDA MOTOR OF AMERICA, INC.,)	ASSESSMENT AND ORDER
	a California corporation,)	
5	Respondent.)	CASE NO. AQ/MISC-HQ-2023-023

6 I. AUTHORITY

7 1. 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) Chapter
9 340, Divisions 011, 012, 200, and 257.

10 2. Under Section 177 of the federal Clean Air Act, Oregon, under OAR 340, division 257,
11 adopted California’s Low Emission Vehicle (LEV) III emission regulations in California Code of
12 Regulations (CCR), Title 13. Under these rules, all 2009 model year (MY) and newer passenger cars,
13 light-duty trucks and medium-duty vehicles sold or delivered for sale in Oregon must be certified to the
14 applicable California Air Resources Board (CARB) emissions standard in OAR 340-257-0050(2)
15 (California Emission Standards). To be California certified, manufacturers must apply to CARB and
16 receive a CARB Executive Order certifying compliance with the California Emission Standards in
17 accordance with California Health and Safety Code, Division 26, Part 5 Chapter 2.

18 II. FINDINGS OF FACT

19 1. Respondent is a manufacturer of motor vehicles that delivers its products for sale in
20 Oregon.

21 2. From January 2022 through August 2022, Respondent delivered for sale in Oregon, 44
22 new 2022 MY Mazda CX-5 passenger cars that were certified to the federal emission standards and not
23 to the applicable California Emission Standards in accordance with Section I, Paragraph 2 above.
24 Specifically, CARB did not issue an executive order certifying compliance with the applicable (or any
25 other) California Emission Standards for these 44 CX-5s.

26 3. The vehicles do not meet the exemptions in OAR 340-257-0060.

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1 III. CONCLUSIONS

2 1. 2022 MY Mazda CX-5s are subject to the California Exhaust Emission Standards in
3 OAR 340-257-0050(2)(f) because they are passenger cars with a MY between 2015 and 2026.

4 2. 2022 MY Mazda CX-5s are subject to the California Greenhouse Gas Emission
5 Standards in OAR 340-257-0050(2)(g) because they are passenger cars with a MY between 2017 or
6 newer passenger cars.

7 3. Respondent violated OAR 340-257-0040(1), as further described in Section II,
8 Paragraph 2 above, by delivering for sale in Oregon, 44 new 2022 MY Mazda CX-5 vehicles that were
9 not certified by CARB to the applicable California Emission Standards in OAR 340-257-0050(2)(f) and
10 (g). These are Class I violations according to OAR 340-012-0054(1)(y). DEQ hereby assesses a
11 \$237,600 for these violations.

12 IV. ORDER TO PAY CIVIL PENALTY

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

15 Pay a total civil penalty of \$237,600. The determination of the civil penalty is attached as Exhibit 1
16 and is incorporated as part of this Notice.

17 If you do not file a request for hearing as set forth in Section V below, your check or money order
18 must be made payable to "**State Treasurer, State of Oregon**" and sent to the **DEQ, Business Office,**
19 **700 NE Multnomah Street, Suite 600, Portland, Oregon 97232.**

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

21 You have a right to a contested case hearing on this Notice, if you request one in writing. DEQ
22 must receive your request for hearing **within 20 calendar days** from the date you receive this Notice. If
23 you have any affirmative defenses or wish to dispute any allegations of fact in this Notice or attached
24 exhibit, you must do so in your request for hearing, as factual matters not denied will be considered.
25 admitted, and failure to raise a defense will be a waiver of the defense. (See OAR 340-011-0530 for
26 further information about requests for hearing.) You must send your request to: **DEQ, Office of**
27 **Compliance and Enforcement, 700 NE Multnomah Street, Suite 600, Portland, Oregon 97232,** fax

1 it to 503-229-6762 or email it to DEQappeals@deq.state.or.us. An administrative law judge
2 employed by the Office of Administrative Hearings will conduct the hearing, according to ORS
3 Chapter 183, OAR Chapter 340, Division 011 and OAR 137-003-0501 to 0700. You have a right to be
4 represented by an attorney at the hearing, however you are not required to be. If you are an individual,
5 you may represent yourself. If you are a corporation, partnership, limited liability company,
6 unincorporated association, trust or government body, you must be represented by an attorney or a duly
7 authorized representative, as set forth in OAR 137-003-0555.

8 Active-duty service members have a right to stay proceedings under the federal Service
9 Members Civil Relief Act. For more information contact the Oregon State Bar at 1-800-
10 452-8260, the Oregon Military Department at 503-584-3571, or the nearest United States Armed
11 Forces Legal Assistance Office through <http://legalassistance.law.af.mil>. The Oregon Military
12 Department does not have a toll-free telephone number.

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

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21 8/31/2023

22 Date

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22 Kieran O'Donnell, Manager
23 Office of Compliance and Enforcement

EXHIBIT 1

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

VIOLATION: Delivering for sale in Oregon, 44 new 2022 model year Mazda CX-5 vehicles that were not certified to the applicable California Emission Standards in OAR 340-257-0050(2), in violation of OAR 340-257-0040(1).

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

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)(C) because Respondent is a vehicle manufacturer.

"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 0 pursuant to OAR 340-012-0145(4)(e), because DEQ is assessing a separate penalty for each occurrence of the violation.

"M" is the mental state of the Respondent and receives a value of 0 according to OAR 340-012-0145(5)(a) because there is insufficient information on which to base a finding under paragraphs (5)(b) through (5)(e).

"C" is Respondent's efforts to correct or mitigate the violation and receives a value of -1 according to OAR 340-012-0145(6)(e) because Respondent made reasonable efforts to ensure the violation would not be repeated. Respondent has added additional checks to its

computer distribution system to ensure that only appropriately certified cars are sent to each state.

"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 there is insufficient information on which to base a finding.

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 \times \$6,000) \times (0 + 0 + 0 + 0 + -1)] + \0
 $= \$6,000 + (600 \times -1) + \0
 $= \$6,000 - \$600 + \$0$
 $= \$5,400 \text{ per violation}$

Respondent sold 44 non-California Emission Standard certified vehicles in Oregon and therefore had 44 Class I, moderate magnitude violations. \$5,400 per violation x 44 violations = a total civil penalty of \$237,600 for these violations.