



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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TTY 711

February 8, 2024

CERTIFIED MAIL: 9589 0710 5270 0688 6528 26

Ed Staub & Sons Petroleum, Inc.
c/o David E. Staub
1301 Esplanade Ave.
Klamath Falls, OR 97061

Re: Notice of Civil Penalty Assessment and Order
Case No. AQ-CFP-HQ-2023-063

This letter is to inform you that the Oregon Department of Environmental Quality (DEQ) has issued you a civil penalty of \$89,512 for Oregon Clean Fuels Program violations. Specifically, in your 2021 Clean Fuels Program reporting, you incorrectly claimed more than 4 million gallons in exempt fuels. However, the fuels did not all qualify as exempt under the Clean Fuels Program rules, and the reporting was not supported by adequate documentation. As a result, your reporting understated your true compliance obligation by 3,088 deficits, and you failed to comply with the Oregon Clean Fuels Standards. The attached Notice of Civil Penalty Assessment and Order (the Notice) also cites you for failing to timely complete the third party verification process for both your Clean Fuels reporting and greenhouse gas report for calendar year 2021.

DEQ issued this penalty because inaccurate reporting and failure to comply with the Clean Fuels Standards 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. Inaccurate reports in and failure to comply with Clean Fuels Standards may also impact the market for Clean Fuels Program credits. Third party verification helps ensure the accuracy of Clean Fuels and greenhouse gas data. DEQ uses that data to inform climate regulation and policy decisions. Therefore, timely verification is also important to the state's efforts to combat climate change.

DEQ appreciates your efforts to correct the violations by correcting and updating your reporting and by retiring sufficient credits to come into compliance with the Clean Fuels Standards for 2021. 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 me at 503-229-5058 or becka.puskas@deq.oregon.gov.

Sincerely,



Becca Puskas, Interim Manager
Office of Compliance and Enforcement

Enclosures

cc: Kathleen Collom, Ed Staub & Sons Petroleum, Inc., P.O. Box 850, Klamath Falls, OR 97601
Bill Peters, DEQ
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 ED STAUB & SONS PETROLEUM, INC.,) ASSESSMENT AND ORDER
5 a California corporation,)
6 Respondent.) CASE NO. AQ-CFP-HQ-2023-063

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, 253¹ and 272².

11 II. FINDINGS OF FACT

- 12 1. The Oregon Clean Fuels Program, OAR Chapter 340, Division 253, seeks to reduce
13 greenhouse gas emissions by reducing the carbon intensity of transportation fuels in Oregon.
- 14 2. OAR 340-253-0100(6) requires importers and in-state producers of transportation fuels
15 to comply with the applicable Clean Fuels Standards in OAR 340-253-8010 Table 1 and Table 2.
- 16 3. According to OAR 340-253-0100(1)(a), OAR 340-253-0100(7) and (8), OAR 340-253-
17 0630 and OAR 340-253-0650, importers and in-state producers of regulated fuels listed in OAR 340-
18 253-0200 must report the fuel that they import and produce to the Oregon Fuels Reporting System
19 (OFRS). The list of regulated fuels in OAR 340-253-0200 includes diesel.
- 20 4. OAR 340-253-0250(2) identifies certain transportation fuels which are exempt from the
21 definition of regulated fuels under OAR 340-253-0200, including fuels supplied for use in:

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23
24 ¹ The Oregon Clean Fuels Program rules were last amended effective January 1, 2023 (DEQ 17-2022,
25 amend filed 9/23/2023, effective 1/1/2023). References to the Oregon Clean Fuels Program rules in this
26 Notice are to the version of the rules in effect at the time of the violations. A copy of these previous
versions of the Clean Fuels Program Rules is available on the Oregon Secretary of State website at
<https://secure.sos.state.or.us/oard/ruleSearch.action>.

27 ² The Third Party Verification rules were last amended effective November 16, 2023 (DEQ 17-2023,
amend filed 11/16/2023, effective 11/16/2023). However, there were no changes to the OAR Chapter
340, Division 272 rules cited in this Notice.

- a. Motor vehicles registered as farm vehicles as provided in ORS 805.300 (OAR 340-253-0250(2)(a)(F));
- b. Farm tractors defined in ORS 801.265 (OAR 340-253-0250(2)(a)(G));
- c. Implements of husbandry defined in ORS 801.310 (OAR 340-253-0250(2)(a)(H));
and
- d. Motor trucks defined in ORS 801.355 if used primarily to transport logs (OAR 340-253-0250(2)(a)(I)).

5. To qualify for the exemptions described in Section II, paragraph 4, above, according to OAR 340-253-0250(2)(b), the regulated party must document that the fuel was supplied for use in the specified motor vehicle type. The method of documentation is subject to approval by DEQ and must:

- a. Establish that the fuel was sold through a dedicated source to use in one of the specified motor vehicles; or
- b. Be on a fuel transaction basis if the fuel is not sold through a dedicated source.

6. In addition to the exemptions described in Section II, paragraph 4, above, according to OAR 340-253-0640(6), registered parties may report “not for transportation” gallons to the OFRS. The reporting must include which stationary source, or category of stationary fuel combustion, the fuel was sold to, and the number of gallons sold.

7. OAR 340-253-0600(1) requires regulated parties to retain records for at least seven years including product transfer documents, records related to each fuel transaction, and records used for compliance.

8. Regulated parties report exempt gallons (as described in Section II, paragraphs 4-5) and “not for transportation” gallons (as described in Section II, paragraph 6) in the OFRS. However, exempt gallons and “not for transportation” gallons do not generate credits or deficits, and thus, those gallons do not count towards a regulated party’s annual compliance obligations, as described in Section II, paragraph 9, below.

9. According to OAR 340-253-0630(1), Clean Fuels Program quarterly reports are due on June 30 (Q1), September 30 (Q2), December 31 (Q3), and March 31 (Q4). When a quarterly report

1 indicates that the fuels imported or produced have a lower carbon intensity than the Clean Fuels
2 Standards (i.e., the fuels will generate fewer greenhouse gas emissions), the reporting generates credits.
3 Conversely, when the report indicates that the fuels imported or produced have a higher carbon
4 intensity than the Clean Fuels Standards (i.e., the fuels will generate more greenhouse gas emissions),
5 the reporting generates deficits. According to the definitions in ORS 468A.265 and OAR 340-253-
6 0040, each credit represents one metric ton of carbon dioxide equivalent (CO₂e) reduced against the
7 applicable Clean Fuels Standards, and each deficit represents one metric ton of CO₂e emitted in excess
8 of the applicable Clean Fuels Standards.

9 10. According to OAR 340-253-0100(6) and OAR 340-253-1030(1), following the
10 submittal of the four quarterly reports, regulated parties must demonstrate through the submittal of an
11 annual report that they either produced or imported fuel into Oregon that in the aggregate meets the
12 applicable Clean Fuels Standards, or that they obtained sufficient credits to offset the deficits incurred
13 during the annual compliance period.

14 11. For fuel suppliers who report to both the Greenhouse Gas Reporting Program and the
15 Oregon Clean Fuels Program, the OFRS serves as the reporting platform for both programs. For these
16 reporters, data must be submitted quarterly under the Clean Fuels Program, and the quarterly data rolls
17 up into Clean Fuels Program annual reports and annual Greenhouse Gas Reporting Program emissions
18 data reports. Any additional fuels that are required to be reported to the Greenhouse Gas Reporting
19 Program but not the Clean Fuels Program are added to the Greenhouse Gas Reporting Program annual
20 emissions data report prior to the reporting due date of April 30.

21 12. According to OAR 340-272-0110(3) regulated parties under the Clean Fuels Program
22 that import fuels into Oregon and generate 6,000 or more credits and deficits during a calendar year are
23 subject to the third party verification requirements of OAR Chapter 340, Division 272.

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

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

4 15. Respondent operates a business that imports fuels into Oregon.

5 16. On July 1, 2015, DEQ approved Respondent's registration to the Oregon Clean Fuels
6 Program, OAR Chapter 340, Division 253, as a Large Importer of Finished Fuels.

7 17. Respondent also reports its annual greenhouse gas emissions to DEQ pursuant to the
8 Oregon Greenhouse Gas Reporting Program, OAR Chapter 340, Division 215.

9 18. Respondent submitted Clean Fuels Program quarterly reports for each calendar quarter
10 of 2021 on June 7, 2021 (Q1), September 29, 2021 (Q2), December 28, 2021 (Q3) and March 31, 2021
11 (Q4). Respondent's reports, in total, claimed exempt fuel uses as described in Table 1, below.

12 **Table 1. Exempt gallons claimed in Respondent's original 2021 reporting**

Fuel Name	Volume (gallons)	Exemption Claimed
B5 Diesel	5,755,560	Exempt fuel use - Farm vehicles, tractors, implements of husbandry
Diesel	4,345,394	Exempt fuel use - Farm vehicles, tractors, implements of husbandry
B20 Diesel	22,198	Exempt fuel use - Farm vehicles, tractors, implements of husbandry
Total	10,123,152	

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20 19. In total, Respondent's four quarterly reports for 2021 generated a total of 6,198 deficits.

21 20. On April 20, 2022, Respondent submitted its 2021 Clean Fuels Program annual report to
22 DEQ via the OFRS. The 2021 annual report showed Respondent had obtained and retired sufficient
23 credits against the 6,198 deficits described in Section II, paragraph 19, above.

24 21. On April 20, 2022, Respondent submitted its 2021 greenhouse gas emissions data report
25 to DEQ. Based on the reported gallons of fuels as described in Section II, paragraph 18 and Table 1,
26 above, Respondent reported total greenhouse gas emissions for calendar year 2021 of 150,963
27 MTCO_{2e}.

1 22. In July 2022, Respondent began working with a verification body on the verification of
2 its Clean Fuels Program and greenhouse gas reporting. In the process of verification, the verification
3 body requested that Respondent provide documentation for the exempt gallons claimed in its reporting.
4 In response, Respondent indicated that the gallons claimed as exempt were all dyed diesel, which is
5 exempt from federal fuel tax. However, Respondent did not have documentation for all of the fuel
6 volumes claimed as exempt in its initial reporting.

7 23. Respondent did not ensure that a verification statement was submitted to DEQ for either
8 its 2021 Clean Fuels Program reporting or for its 2021 greenhouse gas emissions data report by the
9 August 31, 2022, verification deadline.

10 24. On September 13, 2022, DEQ issued Warning Letters with Opportunity to Correct No.
11 2022-WLOTC-7609 and 2022-WLOTC-7611 (the Warning Letters) to Respondent, citing Respondent
12 for failing to submit a verification statement for its 2021 Clean Fuels Program reporting and 2021
13 greenhouse gas emissions data report. The Warning Letters requested that Respondent submit the
14 verification statements to DEQ by October 13, 2022.

15 25. As of October 28, 2022, DEQ had not received any verification statements regarding
16 Respondent's reports, and DEQ issued Pre-Enforcement Notice No. 2022-PEN-7797 (the Pre-
17 Enforcement Notice), citing Respondent for inaccurate reporting to the Clean Fuels Program that
18 understated Respondent's compliance obligation, violating Clean Fuels Standards, and failing to timely
19 submit a verification statement for its 2021 Clean Fuels Program reporting and 2021 greenhouse gas
20 emissions data report. The Pre-Enforcement Notice requested that Respondent take several corrective
21 actions to address these issues by November 30, 2022.

22 26. Also on October 28, 2022, Respondent's verification body submitted to DEQ a qualified
23 positive verification statement for Respondent's 2021 Clean Fuels Program reporting. The verification
24 statement stated that for imported transportation fuel transactions and exempt fuel use for diesel,
25 gasoline, B5 diesel, and E10 gasoline, values were reported as gross volumes, rather than net
26 temperature-corrected volumes, and therefore the reporting was not in conformance with OAR 340-
27 253-0640(4). On the same day, Respondent's verification body submitted to DEQ a qualified positive

1 verification statement for Respondent’s 2021 greenhouse gas emissions data report, identifying the
2 same gross vs. net issue.

3 27. On November 4, 2022, DEQ sent Respondent a letter notifying Respondent that both the
4 Clean Fuels and greenhouse gas verification statements were rejected by DEQ and that Respondent
5 must fix the correctable errors (temperature corrected gallons) in its reporting such that a verification
6 statement could be resubmitted by the November 30, 2022 deadline in the Pre-Enforcement Notice.
7 DEQ subsequently extended the deadline for the corrective actions in the Pre-Enforcement Notice to
8 December 31, 2022, and notified Respondent that DEQ intended to review and comment on
9 Respondent’s exempt volume claims and the documentation required to support them.

10 28. On November 30, 2022, DEQ provided Respondent with a first round of comments
11 regarding its exemption claims.

12 29. On December 21, 2022, DEQ provided Respondent with a second round of comments
13 regarding its exemption claims.

14 30. On December 29, 2022, Respondent submitted updated Clean Fuels Program quarterly
15 reports for 2021. Respondent’s updated reports, in total, claimed exempt gallons and “not for
16 transportation” gallons as described in Table 2, below.

17 **Table 2. Exempt gallons and “not for transportation” gallons claimed in Respondent’s**
18 **updated 2021 reporting**

Fuel Name	Volume (gallons)	Exemption Claimed
Diesel	482,297	Exempt fuel use - Farm vehicles, tractors, implements of husbandry
Diesel	178,796	Exempt fuel use - Motor trucks primary used to transport logs
B5 Diesel	2,760,095	Exempt fuel use - Farm vehicles, tractors, implements of husbandry
B5 Diesel	804,335	Exempt fuel use - Motor trucks primary used to transport logs
Diesel	173,664	Not used for transportation
B5 Diesel	1,354,410	Not used for transportation
B20 Diesel	9,297	Not used for transportation

<i>Total</i>	5,762,894	
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31. Respondent's updated 2021 Clean Fuels Program reporting also included temperature corrected gallons.

32. On December 29, 2022, Respondent also submitted an updated 2021 Clean Fuels Program annual report and an updated 2021 greenhouse gas emissions data report, reflecting the changes described in Section II, paragraphs 30-31 above.

33. Respondent's updated reporting, described in Section II, paragraphs 30-31, above, shows Respondent generated a total of 9,286 Clean Fuels Program deficits (3,088 more than the original reporting described in Section II, paragraphs 18-20, above).

34. In Respondent's updated 2021 greenhouse gas emissions data report, Respondent reported total greenhouse gas emissions for calendar year 2021 of 149,789 MTCO_{2e} (1,174 MTCO_{2e} less than originally reported).

35. On December 30, 2022, Respondent's third party verifier submitted a positive verification statement for Respondent's 2021 Clean Fuels Program reporting and Respondent's 2021 greenhouse emissions data report.

36. On January 10, 2023, Respondent purchased and retired 3,088 credits to account for the difference in reporting described in Section II, paragraph 33, above, and to come into compliance with the Clean Fuels Standards.

III. CONCLUSIONS

1. Respondent violated OAR 340-253-0630(2) and OAR 340-253-0640(4) by submitting inaccurate Clean Fuels Program quarterly reports, as described in Section II, paragraphs 1-33, above. Specifically, Respondent's 2021 Clean Fuels Program quarterly reports claimed a total of 10,123,152 gallons of fuels as exempt under OAR 340-253-0250(2)(a)(F), (G) and (H); however, Respondent did not document that the fuel was supplied for use in farm vehicles, farm tractors or implements of husbandry as required to claim those exemptions according to OAR 340-253-0250(2)(b). In addition, Respondent's reporting was in gross gallons that had not been temperature corrected as required according to OAR 340-253-0640(4). As a result, Respondent's original reporting generated 6,198

1 deficits. Respondent's corrected reporting, which is supported by documentation as required under
2 OAR 340-253-0250(2)(b) and OAR 340-253-0600(1), claimed a total of 5,762,894 gallons of fuels as
3 exempt under OAR 340-253-0250(2)(a)(F), (G), (H) and (I) or "not for transportation" under OAR
4 340-253-0600(1). In addition, Respondent's updated reporting used net, temperature-corrected gallons.
5 This updated reporting generated 9,286 deficits. Thus, Respondent's original 2021 Clean Fuels
6 Program quarterly reporting understated Respondent's compliance obligation by 3,088 deficits. These
7 are Class I violations according to OAR 340-012-0054(1)(ff). DEQ hereby assesses a \$15,600 civil
8 penalty for these violations.

9 2. Respondent submitted an inaccurate 2021 Clean Fuels Program annual report, in violation of
10 OAR 340-253-0650(2), as described above in Section II, paragraphs 1-31. This is a Class I violation
11 according to OAR 340-253-0054(1)(hh). DEQ has not assessed a civil penalty for this violation.

12 3. Respondent violated OAR 340-253-0100(6) by failing to comply with the applicable Clean
13 Fuels Standards in OAR 340-253-8010 Table 1 and Table 2, as described in Section II, paragraphs 1-33,
14 above. Specifically, Respondent did not retire sufficient credits at the time of the 2021 annual report
15 submittal to cover Respondent's true compliance obligation for 2021. Respondent should have retired an
16 additional 3,088 credits to cover its deficits for 2021. These are Class I violations according to OAR 340-
17 012-0054(1)(dd). DEQ hereby assesses a \$63,112 civil penalty for these violations.

18 4. Respondent submitted an inaccurate 2021 greenhouse gas emissions data report, in violation of
19 OAR 340-215-0040(3) and OAR 340-215-0110(4), as described above in Section II, paragraphs 1-21 and
20 34. This is a Class I violation according to OAR 340-253-0054(1)(ii). DEQ has not assessed a civil penalty
21 for this violation.

22 5. Respondent violated OAR 340-272-0100(3)(a)(A) by failing to timely submit a verification
23 statement for its 2021 Clean Fuels reporting as described in Section II, paragraphs 22-35, above.
24 Respondent's 2021 Clean Fuels reporting is subject to the third party verification requirements in OAR
25 Chapter 340, Division 272 because Respondent is a regulated party that imports fuels into Oregon and
26 Respondent generated 6,000 or more deficits during 2021. OAR 340-272-0110(3). Respondent violated
27 340-272-0100(3)(a)(A) by failing to ensure that a verification statement for its 2021 Clean Fuels

1 reporting was submitted to DEQ by the August 31, 2022 verification deadline. This is a Class I
2 violation according to OAR 340-012-0054(1)(kk). DEQ hereby assesses a \$5,400 civil penalty for this
3 violation.

4 6. Respondent violated OAR 340-272-0100(3)(a)(B) by failing to timely submit a verification
5 statement for its 2021 greenhouse gas emissions data report as described in Section II, paragraphs 22-
6 35, above. Respondent's 2021 greenhouse gas emissions data report is subject to the third party
7 verification requirements in OAR Chapter 340, Division 272 because Respondent submitted an
8 emissions data report to DEQ indicating that Respondent's greenhouse gas emissions exceeded 25,000
9 MTCO_{2e}. OAR 340-272-0120(1)(a)(A). Respondent violated 340-272-0100(3)(a)(B) by failing to
10 ensure that a verification statement for its 2021 greenhouse gas emissions data report was submitted to
11 DEQ by the August 31, 2022 verification deadline. This is a Class I violation according to OAR 340-
12 012-0054(1)(kk). DEQ hereby assesses a \$5,400 civil penalty for this violation.

13 IV. ORDER TO PAY CIVIL PENALTY

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

16 1. Pay a total civil penalty of \$89,512. The determination of the civil penalties are attached as
17 Exhibits 1-4 and are incorporated as part of this Notice.

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

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

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

1 **Compliance and Enforcement, 700 NE Multnomah Street, Suite 600, Portland, Oregon 97232**, fax
2 it to **503-229-6762** or email it to **DEQappeals@deq.oregon.gov**. An administrative law judge
3 employed by the Office of Administrative Hearings will conduct the hearing, according to ORS
4 Chapter 183, OAR Chapter 340, Division 011 and OAR 137-003-0501 to 0700. You have a right to be
5 represented by an attorney at the hearing, however you are not required to be. If you are an individual,
6 you may represent yourself. If you are a corporation, partnership, limited liability company,
7 unincorporated association, trust or government body, you must be represented by an attorney or a duly
8 authorized representative, as set forth in OAR 137-003-0555.

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

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

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23 2/8/2024
24 Date

Rebecca J Puskas
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Becka Puskas, Manager
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 NO. 1 Submitting inaccurate Clean Fuels Program quarterly reports, in violation of OAR 340-253-0630(2) and OAR 340-253-0640(4).
- CLASSIFICATION: This is a Class I violation pursuant to OAR 340-012-0054(ff).
- MAGNITUDE: The magnitude of the violation is major pursuant to OAR 340-012-0135(1)(I)(C).
- 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 violation 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 2 according to OAR 340-012-0145(4)(b) because there was more than one but less than seven occurrences of the violation. Respondent submitted inaccurate quarterly reports for all four calendar quarters of 2021. Therefore, there were four 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's original Clean Fuels Program reporting for 2021 claimed 10,123,152 gallons of fuel as exempt because the fuel was dyed diesel. However, DEQ had communicated to Respondent multiple times prior to the submittal of the 2021 quarterly reports that the standard for claiming exempt fuels under the Clean Fuels Program is based on the exemptions in OAR 340-253-0250(2) and OAR 340-253-0640(6), and is not based on whether the fuel is dyed to indicate that it is exempt from taxation. For example, DEQ met with Respondent on February 14, 2017 and discussed exemptions under the Clean Fuels Program, and also sent a list of exempt fuel uses from OAR 340-253-0250(2). Later, DEQ reviewed the exemptions with Respondent on September 14, 2018, including a discussion of dyed fuel, and emailed a

copy of OAR 340-253-0250 on that same day. Therefore, by claiming all of its dyed diesel as exempt under the Clean Fuels Program, Respondent failed to take reasonable care to avoid a foreseeable risk of conduct constituting or resulting in a 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 December 29, 2022, Respondent submitted updated 2021 Clean Fuels Program quarterly reports that corrected the reporting errors.

"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: $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$
= $\$12,000 + [(0.1 \times \$12,000) \times (0 + 0 + 2 + 4 + -3)] + \0
= $\$12,000 + (\$1,200 \times 3) + \$0$
= $\$12,000 + \$3,600 + \$0$
= $\$15,600$

EXHIBIT 2

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

VIOLATION NO. 3 Failing to comply with the applicable Clean Fuels Standards in OAR 340-253-8010 Table 1 and Table 2, in violation of OAR 340-253-0100(6).

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

MAGNITUDE: The magnitude of the violation is major pursuant to OAR 340-012-0135(1)(l)(A).

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 violation 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(2), each deficit that a registered party does not retire a credit against under OAR 340-253-1030 to demonstrate compliance with any of the Clean Fuel Standards in OAR 340-253-0100(6) and Tables 1 and 2 of OAR 340-253-8010 constitutes a separate violation of OAR Chapter 340, Division 253 unless that registered party participate in the Credit Clearance Market as required under OAR 340-253-1040. Respondent did not retire a credit against 3,088 deficits in its account, and Respondent did not participate in the Credit Clearance Market. As discussed below, DEQ is using its enforcement discretion to assess a separate civil penalty for each group of approximately 1,000 deficits that Respondent did not retire a credit against. Therefore, each separate penalty represents more than 28 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's original Clean Fuels Program reporting for 2021 claimed 10,123,152 gallons of fuel as exempt because the fuel was dyed diesel. However, DEQ had communicated to Respondent multiple times prior to the submittal of the 2021 quarterly reports that the standard for claiming exempt fuels under the Clean Fuels Program is based on the exemptions in OAR 340-253-0250(2) and OAR 340-253-0640(6), and is not based on whether the fuel is dyed to indicate that it is exempt from taxation. For example, DEQ met with Respondent on February 14, 2017 and discussed exemptions under the Clean Fuels Program, and also sent a list of exempt fuel uses from OAR 340-253-0250(2). Later, DEQ reviewed the exemptions with Respondent on September 14, 2018, including a discussion of dyed fuel, and emailed a copy of OAR 340-253-0250 on that same day. Therefore, by claiming all of its dyed diesel as exempt under the Clean Fuels Program, Respondent failed to take reasonable care to avoid a foreseeable risk of conduct constituting or resulting in a 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 January 10, 2023, Respondent purchased and retired 3,088 credits.

GRAVITY-BASED PENALTY CALCULATION:

$$\begin{aligned} \text{Penalty} &= \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] \\ &= \$12,000 + [(0.1 \times \$12,000) \times (0 + 0 + 4 + 4 + -3)] \\ &= \$12,000 + (\$1,200 \times 5) \\ &= \$12,000 + \$6,000 \\ &= \$18,000 \end{aligned}$$

According to OAR 340-253-0680(2), each deficit that a registered party does not retire a credit against under OAR 340-253-1030 to demonstrate compliance with any of the clean fuel standards in OAR 340-253-0100(6) and Tables 1 and 2 of OAR 340-253-8010 constitutes a separate violation of OAR Chapter 340, Division 253 unless that registered party participate in the Credit Clearance Market as required under OAR 340-253-1040. Respondent did not retire a credit against 3,088 deficits in its account, and Respondent did not participate in the Credit Clearance Market. DEQ is using its enforcement discretion to assess a separate civil penalty for each group of approximately 1,000 deficits that Respondent did not retire a credit against (rounded to the nearest thousand). Thus, DEQ is assessing three separate penalties in the amount of \$18,000 per penalty. Thus, the gravity based penalty is \$54,000.

ECONOMIC BENEFIT

"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 \$9,112. This is the amount that Respondent gained by purchasing 3,088 credits in January 2023 rather than in the spring of 2022. In order to comply with the Clean Fuels Standards, Respondent should have purchased the credits during the three-month time period prior to April 30, 2022, when the average price of credits purchased in the Clean Fuels Program market as published by DEQ was \$123.95/credit. Respondent actually purchased the 3,088 credits for \$121.00/credit on January 10, 2023. Thus, Respondent gained \$9,112 by purchasing the 3,008 credits at a lower price on a later date. This "EB" was calculated pursuant to OAR 340-012-0150(3).

TOTAL PENALTY

According to OAR 340-012-0045, the total civil penalty is the gravity based penalty described above plus the economic benefit.

Total penalty = \$54,000 + \$9,112 = \$63,112

EXHIBIT 3

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

VIOLATION NO. 5 Failing to timely submit a verification statement for Clean Fuels reporting, in violation of OAR 340-272-0100(3)(a)(A).

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

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), 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 according to OAR 340-012-0145(4)(a) because there was only one occurrence of the violation. Respondent failed to ensure that its verification statement was timely submitted for its 2021 Clean Fuels reporting.

"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 regulated party under the Oregon Clean Fuels Program, Respondent reasonably should have known of the requirement to timely submit a verification statement for its 2021 reporting by August 31, 2022.

"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. October 28, 2022, Respondent's verification body submitted to DEQ a qualified positive verification statement for Respondent's 2021 Clean Fuels Program

reporting, and after Respondent updated its Clean Fuels reporting, Respondent's verification body submitted a positive verification statement on December 30, 2022.

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

$$\begin{aligned} &= \$6,000 + [(0.1 \times \$6,000) \times (0 + 0 + 0 + 2 + -3)] + \$0 \\ &= \$6,000 + (\$600 \times -1) + \$0 \\ &= \$6,000 + -\$600 + \$0 \\ &= \$5,400 \end{aligned}$$

EXHIBIT 4

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

VIOLATION NO. 6 Failing to timely submit a verification statement for a greenhouse gas emissions data report, in violation of OAR 340-272-0100(3)(a)(B).

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

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), 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 according to OAR 340-012-0145(4)(a) because there was only one occurrence of the violation. Respondent failed to ensure that its verification statement was timely submitted for its 2021 greenhouse gas emissions data report.

"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 regulated entity under the Oregon Greenhouse Gas Reporting Program, Respondent reasonably should have known of the requirement to timely submit a verification statement for its 2021 reporting by August 31, 2022.

"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. October 28, 2022, Respondent's verification body submitted to DEQ

a qualified positive verification statement for Respondent's 2021 greenhouse gas emissions data report, and after Respondent updated its reporting, Respondent's verification body submitted a positive verification statement on December 30, 2022.

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

$$\begin{aligned} &= \$6,000 + [(0.1 \times \$6,000) \times (0 + 0 + 0 + 2 + -3)] + \$0 \\ &= \$6,000 + (\$600 \times -1) + \$0 \\ &= \$6,000 + -\$600 + \$0 \\ &= \$5,400 \end{aligned}$$