Oregon
Tina Kotek, Governor

Department of Environmental Quality
Office of Compliance and Enforcement
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May 14, 2024

CERTIFIED MAIL: 9589 0710 5270 0688 6531 20

Pembina Midstream (U.S.A.),
c/o C T Corporation System, Registered Agent
780 Commercial St SE STE 100
Salem, OR 97301-3465

Re: Notice of Civil Penalty Assessment and Order
Case No. AQ-GHG-HQ-2023-113

This letter is to inform you that the Oregon Department of Environmental Quality (DEQ) has issued you a civil penalty of $7,200 for failing to submit greenhouse gas emissions data report to DEQ for eight reporting years (2015-2022). The enclosed Notice also cites you, without penalty, for failing to ensure that a verification statement was submitted for your 2021 greenhouse gas data by the verification deadline. DEQ issued this penalty because failing to report greenhouse gas emissions data undermines the Greenhouse Gas Reporting Program, an essential component of Oregon's efforts to track greenhouse gas emissions and combat climate change. Third party verification helps ensure the accuracy of greenhouse gas data. DEQ uses this data to inform climate regulation and policy decisions.

DEQ appreciates your efforts to correct the violations by submitting all of the missing greenhouse gas reports to DEQ in July 2023 and submitting the missing verification statement in August 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 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 Tori Heroux at 971-808-7046 or toll free in Oregon at 800-452-4011, extension 2295269.

Sincerely,

Rebecca J Puskas

Becka Puskas, Interim Manager
Office of Compliance and Enforcement

Enclosures

cc: Stephanie Summers, DEQ
Colin McConnaha, DEQ
Accounting, DEQ

BEFORE THE ENVIRONMENTAL QUALITY COMMISSION

OF THE STATE OF OREGON

IN THE MATTER OF: PEMBINA MIDSTREAM (U.S.A.), INC. Respondent.	)))))	NOTICE OF CIVIL PENALTY ASSESSMENT AND ORDER CASE NO. AQ-GHG-HQ-2023-113

I. AUTHORITY

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

II. FINDINGS OF FACT

1. Respondent is a fuel supplier that imports and sells propane in Oregon.

2. According to OAR 340-215-0044(1)(c) and OAR 340-215-0030(3)(a)(D), DEQ requires all propane suppliers importing 10,500 gallons or more annually to submit an annual greenhouse gas report.

3. Respondent started importing and selling propane into the state of Oregon in 2015, and has imported more than 10,500 gallons each year since 2015.

4. According to OAR 340-215-0046(1)(c), fuel suppliers must submit annual greenhouse gas emissions data reports to DEQ by April 30 for the previous calendar year.

5. Until 2023, Respondent had not submitted any annual emissions data reports to DEQ.

6. On July 6, 2023, Respondent submitted annual greenhouse gas emissions data reports for 2018, 2019, 2020, 2021 and 2022 to DEQ.

7. On July 26, 2023, Respondent submitted annual greenhouse gas emissions data reports for 2015, 2016 and 2017 to DEQ.

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

9. Respondent had greenhouse gas emissions totaling more than 25,000 mtCO2e in 2021.

10. According to OAR 340-272-0100(2)(c) and OAR 340-272-0100(3)(a)(B), responsible entities subject to the third party verification requirements of OAR Chapter 340, Division 272 must ensure that a verification statement is submitted to DEQ from a verification body by August 31 for the previous year's emission data report (the verification deadline). According to OAR 340-272-0100(1), 2021 emissions data reports were the first year of reports subject to third party verification.

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

12. Respondent's 2021 verification statement was submitted on August 10, 2023.

III. CONCLUSIONS

1. Respondent violated OAR 215-0044(1)(c) and OAR 340-215-0046(1)(c) by failing to submit emissions data reports to DEQ by the annual reporting deadline as described in Section II, paragraphs 1-7 above. Specifically, Respondent failed to submit its 2015, 2016, 2017, 2018, 2019, 2020, 2021, and 2022 emissions data reports to DEQ until July 2023. These are Class I violations, according to OAR 340-012-0054(1)(ii). DEQ hereby assesses a $7,200 civil penalty for these violations.

2. Respondent violated 340-272-0120(1)(c), OAR 340-272-0100(2)(c), and OAR 340-272-0100(3)(a)(B) by failing to ensure that a verification statement for its 2021 greenhouse gas emissions data report was submitted to DEQ by the August 31, 2022 verification deadline as described in Section II, paragraphs 8-12 above. This is a Class I violation according to OAR 340-012-0054(1)(kk). DEQ has not assessed a civil penalty for this violation.

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IV. ORDER TO PAY CIVIL PENALTY AND TO COMPLY

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

1. Pay a total civil penalty of $7,200. The determination of the civil penalty is attached as Exhibit 1 and is incorporated as part of this Notice.

If you do not file a request for hearing as set forth in Section V below, please pay the penalty as follows:

Pay online with e-check (ACH) or Credit Card. Go to Your DEQ Online here: https://ydo.oregon.gov. Select Register Account or Login, then select Pay Invoices/Fees on your account dashboard. Enter the Reference Number and FIMS Account ID included on the attached payment slip. Note: US Bank charges a 2.3% convenience charge for credit card transactions. ACH payments have no additional charges. OR

Pay by check or money order: Make checks payable to "Department of Environmental Quality" and mail to the address on the enclosed payment slip. Please make sure to include the payment slip with your check or money order.

V. NOTICE OF RIGHT TO REQUEST A CONTESTED CASE HEARING

You have a right to a contested case hearing on this Notice, if you request one in writing. DEQ must receive your request for hearing **within 20 calendar days** from the date you receive this Notice. If you have any affirmative defenses or wish to dispute any allegations of fact in this Notice or attached exhibit, you must do so in your request for hearing, as factual matters not denied will be considered admitted, and failure to raise a defense will be a waiver of the defense. (See OAR 340-011-0530 for further information about requests for hearing.) You must send your request to: **DEQ, Office of Compliance and Enforcement, 700 NE Multnomah Street, Suite 600, Portland, Oregon 97232**, fax it to **503-229-6762** or email it to **DEQappeals@deq.oregon.gov**. An administrative law judge employed by the Office of Administrative Hearings will conduct the hearing, according to ORS Chapter 183, OAR Chapter 340, Division 011 and OAR 137-003-0501 to 0700. You have a right to be represented by an attorney at the hearing, however you are not required to be. If you are an individual,

you may represent yourself. If you are a corporation, partnership, limited liability company, unincorporated association, trust or government body, you must be represented by an attorney or a duly authorized representative, as set forth in OAR 137-003-0555.

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

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

5/14/2024
Date

Rebecca L Puskas
Becka Puskas, Interim 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 — Failure to submit an emissions data report by the reporting deadline, in violation of OAR 215-0044(1)(c) and OAR 340-215-0046(1)(c).

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)(T) because this is a greenhouse gas reporting program violation by a person with greenhouse gas emissions more than 25,000 metric tons per year.

"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 Respondent has no prior violations in the same media.

"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 Respondent did not have any prior violations cited as prior significant actions.

"O" is whether the violation was repeated or ongoing and receives a value of 3 according to OAR 340-012-0145(4)(c) because there are from seven to 28 occurrences of the violation. Respondent failed to submit a timely emissions data report to DEQ for 2015, 2016, 2017, 2018, 2019, 2020, 2021, and 2022. Therefore, there were eight occurrences of the violation.

"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. Respondent is a fuel supplier that has been operating in Oregon since 2015, and it is reasonable to expect that such a business would be familiar with statewide requirements for greenhouse gas reporting. Thus, Respondent failed to take reasonable care to avoid a foreseeable risk of conduct constituting or resulting in a greenhouse gas 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. Respondent submitted emissions data reports for all 8 years after being notified of the greenhouse gas emissions reporting requirements and acted promptly to submit the required reports to DEQ.

"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: Penalty = BP + [(0.1 x BP) x (P + H + O + M + C)] + EB
= $6,000 + [(0.1 x $6,000) x (0 + 0 + 3 + 2 + -3)] + $0
= $6,000 + ($600 x 2) + $0
= $6,000 + $1,200 + $0
= $7,200