



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) 229-5787
TTY 711

January 9, 2025

CERTIFIED MAIL No. 9589 0710 5270 0688 6501 05

Stack Infrastructure, Inc.
c/o Corporation Service Company, Registered Agent
1127 Broadway St NE Ste 310
Salem, OR 97301

Re: Notice of Civil Penalty Assessment and Order
Case No. AQ/ACDP-NWR-2024-122

This letter is to inform you that DEQ has issued you a civil penalty of \$2,800 for operating emergency generators at your data center at 8135 NE Evergreen Parkway without an Air Contaminant Discharge Permit. The violation occurred when the previous Permit, ACDP 34-0183-SI-01, expired, and you failed to timely submit an application for a new permit.

DEQ issued this penalty because operating your generators without an ACDP is a serious violation of Oregon law. ACDPs include emissions limits, monitoring and reporting requirements to ensure that emissions generating equipment do not emit air contaminants at levels that may harm public health and the environment. Diesel generators emit relatively high levels of nitrogen oxides, carbon monoxide, particulate matter and sulfur, all air pollutants that, when emitted in excess, can negatively impact public health and the environment.

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 – 503-229-5100

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 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 Tori Heroux at 971-808-7046 or Tori.Heroux@deq.oregon.gov.

Sincerely,

A handwritten signature in black ink that reads "Becka Puskas". The signature is written in a cursive, slightly slanted style.

Becka Puskas, Interim Manager
Office of Compliance and Enforcement

Enclosures

cc: Louis Bivins, Northwest Region Office, DEQ
Lisa Ball, Northwest Region Office, DEQ
Accounting, DEQ

BEFORE THE ENVIRONMENTAL QUALITY COMMISSION
OF THE STATE OF OREGON

IN THE MATTER OF:)	NOTICE OF CIVIL PENALTY
STACK INFRASTRUCTURE, Inc.,)	ASSESSMENT AND ORDER
an Oregon limited liability company,)	
)	NO. AQ/ACDP-NWR-2024-122
Respondent.)	

I. AUTHORITY

1. The Department of Environmental Quality (DEQ) issues this Notice of Civil Penalty Assessment and Order pursuant to Oregon Revised Statutes (ORS) 468.100 and 468.126 through 468.140, ORS Chapters 183 and 468A and Oregon Administrative Rules (OAR) Chapter 340, Divisions 011, 012, 200, 214 and 216.

2. In accordance with OAR 340-216-0020(3), no person may construct, install, establish, develop or operate any air contaminant source listed in OAR 340-216-8010 without first obtaining an Air Contaminant Discharge Permit (ACDP) from DEQ. Category 87(a) of Table 1 of OAR 340-216-8010, Part A, Item 1 requires a Standard ACDP for all facilities utilizing emergency power generators with an aggregate engine horsepower rating of more than 30,000 horsepower.

II. FINDINGS OF FACT

1. Respondent operates a data center at 8135 NE Evergreen Parkway in Hillsboro, Oregon (the Facility).

2. Pursuant to Table 1, Item 87(a) in OAR 340-216-8010 Part B, all facilities utilizing emergency power generators with an aggregate engine horsepower rating of more than 30,000 horsepower require an Air Contaminant Discharge Permit (ACDP).

3. On February 15, 2018, the Department of Environmental Quality (DEQ) assigned Respondent to Simple ACDP 34-0183-SI-01 (Permit). The Permit was in effect until its expiration on February 1, 2023.

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4. Condition 8.1 of the Permit and OAR 340-216-0040(2)(b)(B) require that the permitted source submit a renewal application at least 120 days prior to the expiration of the ACDP. If a permitted source does not meet that deadline, the permit is terminated as per OAR 340-216-0082(2)(c).

5. In Warning Letter with Opportunity to Correct 2022-7840, dated November 22, 2022, DEQ requested that Respondent submit a completed application to renew their ACDP and demonstrate compliance to DEQ by December 22, 2022.

6. On February 1, 2023, the Permit expired.

7. On February 1, 2023, Respondent submitted a completed application for a new Standard ACDP.

8. On December 4, 2024, DEQ issued Respondent a new Standard ACDP 34-0183-SI-01.

III. CONCLUSION

1. As described in Section II above, Respondent has violated ORS 468A.045(1)(b) and OAR 340-216-0020(3) by operating an air contaminant source listed in Table 1 of OAR 340-216-8010, Part B, source category #87(a) (emergency power generators with aggregate horsepower >30,000) without first obtaining an ACDP from DEQ. Specifically, Respondent violated OAR 340-216-0020(3) by operating without an ACDP from February 1, 2023 until December 4, 2024. ACDP 34-0183-SI-01 expired on February 1, 2023, and Respondent failed to apply to DEQ for a new ACDP to operate the generators at least 120 days prior to the expiration of the permit. DEQ issued Respondent a new ACDP on December 4, 2024. This is a Class II violation according to OAR 340-012-0054(2)(a). DEQ hereby assesses a \$2,800 civil penalty for this violation.

IV. ORDER TO PAY CIVIL PENALTY AND COMPLY

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

1 1. Pay a total civil penalty of \$2,800. The determination of the civil penalty is attached
2 as Exhibit 1 and is incorporated as part of this Notice.

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

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

7 You have a right to a contested case hearing on this Notice, if you request one in writing.
8 DEQ must receive your request for hearing **within 20 calendar days** from the date you receive
9 this Notice. If you have any affirmative defenses or wish to dispute any allegations of fact in this
10 Notice or attached exhibit, you must do so in your request for hearing, as factual matters not
11 denied will be considered admitted, and failure to raise a defense will be a waiver of the defense.
12 (See OAR 340-011-0530 for further information about requests for hearing.) You must send your
13 request to: **DEQ, Office of Compliance and Enforcement, 700 NE Multnomah Street, Suite**
14 **600, Portland, Oregon 97232**, fax it to **503-229-5100** or email it to
15 **DEQappeals@deq.oregon.gov**. An administrative law judge employed by the Office of
16 Administrative Hearings will conduct the hearing, according to ORS Chapter 183, OAR Chapter
17 340, Division 011 and OAR 137-003-0501 to 0700. You have a right to be represented by an
18 attorney at the hearing, however you are not required to be. If you are an individual, you may
19 represent yourself. If you are a corporation, partnership, limited liability company,
20 unincorporated association, trust or government body, you must be represented by an attorney or
21 a duly authorized representative, as set forth in OAR 137-003-0555.

22 Active-duty service members have a right to stay proceedings under the federal Service
23 Members Civil Relief Act. For more information contact the Oregon State Bar at 1-800-
24 452-8260, the Oregon Military Department at 503-584-3571, or the nearest United States Armed
25 Forces Legal Assistance Office through <http://legalassistance.law.af.mil>. The Oregon Military
26 Department does not have a toll-free telephone number.

1 If you fail to file a timely request for hearing, the Notice will become a final order by
2 default without further action by DEQ, as per OAR 340-011-0535(1). If you do request a hearing
3 but later withdraw your request, fail to attend the hearing or notify DEQ that you will not be
4 attending the hearing, DEQ will issue a final order by default pursuant to OAR 340-011-0535(3).
5 DEQ designates the relevant portions of its files, including information submitted by you, as the
6 record for purposes of proving a prima facie case.
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9 1/9/2025
10 Date

11 Rebecca J Puskas
12 Becka Puskas, Interim 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: Operating an air contaminant source listed in OAR 340-216-8010, Part B, Source Category #87(a) without first obtaining an ACDP from DEQ, in violation of ORS 468A.045(1)(b) and OAR 340-216-0020(3).

CLASSIFICATION: This is a Class II violation pursuant to OAR 340-012-0054(2)(a).

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 \$2,000 for a Class II, moderate magnitude violation in the matrix listed in OAR 340-012-0140(3)(b)(B)(ii) and applicable pursuant to OAR 340-012-0140(3)(a)(A) because Respondent should have been operating the generators under a Standard Air Contaminant Discharge Permit and is not listed under another penalty matrix.

"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 4 according to OAR 340-012-0145(4)(d), because there were more than 28 occurrences of the violation. Each day is a separate occurrence. The violation began on February 2, 2023, and continued until December 4, 2024.

"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. Condition 8.1 of Respondent's Permit stated that a permit renewal application must be submitted within 120 days prior to the expiration of the Permit. Therefore, Respondent had constructive knowledge of what was required to prevent a violation.

"C" is Respondent's efforts to correct or mitigate the violation and receives a value of -2 according to OAR 340-012-0145(6)(d), because Respondent did eventually make some effort to address the violation. Respondent submitted a new ACDP application to DEQ on February 1, 2023, the date the ACDP expired.

"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 any economic benefit derived is likely to be de minimis.

PENALTY CALCULATION: $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$
= \$2,000 + [(0.1 x \$2,000) x (0 + 0 + 4 + 2 - 2)] + \$0
= \$2,000 + (200 x 4) + \$0
= \$2,000 + \$800 + \$0
= \$2,800

CERTIFICATE OF MAILING

I hereby certify that I served DEQ Case No. AQ-ADP-NWR-2024-122 upon:

9589 0710 5270 0648 6501 05

U.S. Postal Service™ CERTIFIED MAIL® RECEIPT <i>Domestic Mail Only</i>	
For delivery information, visit our website at www.usps.com ®.	
OFFICIAL USE	
Certified Mail Fee	
Stack Infrastructure, Inc. c/o Corporation Service Company, Registered Agent 1127 Broadway St NE Ste 310 Salem, OR 97301	
\$	
Sent To	
Street and Apt. No., or PO Box No.	
City, State, ZIP+4®	
PS Form 3800, January 2023 PSN 7530-02-000-9047 See Reverse for Instructions	

by mailing a true copy of the above by placing it in a sealed envelope. with postage prepaid, at the DEQ/DAS mail services in Portland, Oregon, on 1/9/2025

Cesaac epifite

Office of Compliance and Enforcement
Department of Environmental Quality