



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**  
WASHINGTON, D.C. 20460

OFFICE OF  
ENFORCEMENT AND  
COMPLIANCE ASSURANCE

March 14, 2022

VIA EMAIL

Combs Investment Property, LP  
2777 Allen Parkway, Suite 1185  
Houston, TX 77019  
dcook@atomiccapital.com

RE: Combs Investment Property, LP – Notice of Violation

Dear Ms. Debra Farm-Cook:

The U.S. Environmental Protection Agency (EPA) is issuing this enclosed Notice of Violation (NOV) to Combs Investment Property, LP (you). The EPA alleges that you have violated section 114 of the Clean Air Act (CAA), 42 U.S.C. § 7414, and the regulations promulgated thereunder at 40 C.F.R. Part 98, Subparts A and OO.

The EPA is issuing this NOV under Section 113(a) of the Clean Air Act (the Act or CAA), 42 U.S.C. § 7413(a), for violations 40 C.F.R. Part 98 (Subparts A and OO). The regulations require subject suppliers (which include importers and exporters) to submit an annual report if their greenhouse quantities are equivalent to 25,000 metric tons CO<sub>2</sub>e or more. *See* 40 C.F.R. § 98.2(a)(4) and 40 C.F.R. § 98.411.

Section 113(a)(3) of the Act, 42 U.S.C. § 7413(a)(3), gives the EPA several enforcement options to resolve these violations, including issuing an administrative compliance order, issuing an administrative penalty order, bringing a judicial civil action, or bringing a judicial criminal action. The EPA is issuing this NOV based on information described in detail below that represents specific violations of applicable requirements for the mandatory greenhouse gas reporting rules.

Without making a determination that your business or organization is a small business, the EPA is providing you with this Small Business Resources Information Sheet which provides important information that may assist small businesses in identifying and complying with environmental requirements: <https://www.epa.gov/compliance/small-business-resources-information-sheet>.

Please note the opportunity for Combs Investment Property, LP to request a conference with the EPA to present information on the identified violations in this NOV, efforts you have taken to comply, and the steps you will take to prevent future violations. A conference should be requested within ten (10) calendar days following receipt of this NOV. You may have counsel represent you at this conference. Please direct any request to confer within 10 calendar days to Lauren Tozzi, Attorney-Advisor, at [tozzi.lauren@epa.gov](mailto:tozzi.lauren@epa.gov) or (202) 503-8911.

Sincerely,

MARY  
GREENE

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Mary E. Greene, Director  
Air Enforcement Division  
United States Environmental Protection Agency

Enclosure

cc (by email): Kellie Ortega, HFC Program Lead (Acting)

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**  
**WASHINGTON, DC**

**IN THE MATTER OF:** )  
 )  
Combs Investment Property, LP )  
Houston, TX )  
 ) **NOTICE OF VIOLATION**  
Proceedings Pursuant to )  
Section 113(a)(3) of the Clean Air Act, )  
42 U.S.C. § 7413(a)(3) )

**NOTICE OF VIOLATION**

**Statutory and Regulatory Authority**

1. Section 114 of the Clean Air Act (CAA) provides the EPA with broad authority to require information that will inform the EPA's implementation of various CAA provisions and programs. 42 U.S.C. § 7414. Under CAA section 114(a)(1), the EPA may require emission sources, persons subject to the CAA, manufacturers of emission control or process equipment, or persons whom the EPA believes may have necessary information, to monitor and report emissions and to provide such other information as the EPA requests for the purposes of carrying out any provision of the CAA (except for a provision of title II with respect to motor vehicles).
2. Pursuant to this legal authority, the EPA established the mandatory greenhouse gas reporting requirements in 2010. 40 C.F.R. Part 98.
3. 40 C.F.R. § 98.1(a) establishes greenhouse gas reporting requirements for owners and operators of certain facilities that directly emit greenhouse gases as well as for certain suppliers. For suppliers, the greenhouse gases reported are the quantity that would be emitted from combustion or use of the products supplied.
4. 40 C.F.R. § 98.1(b) prescribes that owners, operators and suppliers subject to Part 98 must follow the requirements of subpart A and all applicable subparts, and if a conflict exists between a provision in subpart A and any other applicable subpart, the requirements of the applicable subpart shall take precedence.
5. 40 C.F.R. § 98.2(a) provides that the greenhouse gas reporting requirements and related monitoring, recordkeeping, and reporting requirements of subpart A apply to the owners and operators of any supplier that meets the requirements of paragraph (a)(4) of this section.

6. 40 C.F.R. § 98.2(a)(4) provides that a supplier listed in Table A-5 of Part 98, subpart A, must submit an annual report that covers all applicable products for which calculation methodologies are provided in the applicable subpart and subpart A.
7. Table A-5 lists supplier categories for industrial greenhouse gas suppliers subject to subpart OO, including the supplier categories producers of industrial greenhouse gases, and importers of industrial greenhouse gases with annual bulk imports of N<sub>2</sub>O, fluorinated greenhouse gas, and CO<sub>2</sub> that in combination have greenhouse gas quantities equivalent to 25,000 metric tons CO<sub>2</sub>e or more. Table A-5 also states that suppliers are defined in each applicable subpart.
8. 40 C.F.R. § 98.418 provides that all of the terms used in subpart OO have the same meaning given in the Clean Air Act and subpart A, except the terms “isolated intermediate” and “low-concentration constituent,” which are defined in § 98.418. 40 C.F.R. § 98.418 further provides that if a conflict exists between a definition provided in subpart OO and a definition provided in subpart A, the definition in subpart OO shall take precedence for the reporting requirements in subpart OO. *Id.*
9. 40 C.F.R. § 98.6 defines “exporter” as any person, company or organization of record that transfers for sale or for other benefit, domestic products from the United States to another country or to an affiliate in another country, excluding any such transfers on behalf of the United States military or military purposes including foreign military sales under the Arms Export Control Act. An exporter is not the entity merely transporting the domestic products, rather an exporter is the entity deriving the principal benefit from the transaction.
10. 40 C.F.R. § 98.6 defines “industrial greenhouse gases” as nitrous oxide or any fluorinated greenhouse gas.
11. 40 C.F.R. § 98.6 defines “importer” as any person, company, or organization of record that for any reason brings a product into the United States from a foreign country, excluding introduction into U.S. jurisdiction exclusively for United States military purposes. An importer is the person, company, or organization primarily liable for the payment of any duties on the merchandise or an authorized agent acting on their behalf. The term includes, as appropriate: (1) the consignee, (2) the importer of record, (3) the actual owner, and (4) the transferee, if the right to draw merchandise in a bonded warehouse has been transferred.
12. 40 C.F.R. § 98.6 defines “supplier” as “a producer, importer, or exporter in any supply category included in Table A-5 to this subpart, as defined by the corresponding subpart of this part.”
13. 40 C.F.R. § 98.6 defines “operator” as any person who operates or supervises a facility or supplier.

14. 40 C.F.R. § 98.6 defines “owner” as any person who has legal or equitable title to, has a leasehold interest in, or control of a facility or supplier, except a person whose legal or equitable title to or leasehold interest in the facility or supplier arises solely because the person is a limited partner in a partnership that has legal or equitable title to, has a leasehold interest in, or control of the facility or supplier shall not be considered an “owner” of the facility or supplier.
15. Subpart OO applies to suppliers of industrial greenhouse gases.
16. 40 C.F.R. § 98.410 defines source categories for suppliers of industrial greenhouse gases.
17. 40 C.F.R. § 98.410(a) provides that “the industrial gas supplier source category consists of any facility that produces fluorinated greenhouse gases or nitrous oxide; any bulk importer of fluorinated greenhouse gases or nitrous oxide; and any bulk exporter of fluorinated greenhouse gases or nitrous oxide. Starting with reporting year 2018, this source category also consists of any facility that produces fluorinated HTFs; any bulk importer of fluorinated HTFs; any bulk exporter of fluorinated HTFs; and any facility that destroys fluorinated greenhouse gases or fluorinated HTFs.”
18. 40 C.F.R. § 98.411 specifies the applicable reporting threshold for subpart OO and requires any supplier of industrial greenhouse gases who meets the requirements of 40 C.F.R. § 98.410 and 40 C.F.R. § 98.2(a)(4) to report greenhouse gas emissions pursuant to subpart OO (C.F.R. § 98.410 - C.F.R. § 98.418).
19. 40 C.F.R. § 98.2(f) provides the methodology to calculate industrial greenhouse gas quantities for comparison to the 25,000 metric ton CO<sub>2e</sub> per year threshold under 40 C.F.R. § 98.2(a)(4) for importers and exporters of industrial greenhouse gases, and states that the imported quantities and the exported quantities must be compared separately to the 25,000 metric ton CO<sub>2</sub> per year threshold.
20. 40 C.F.R. § 98.2(i) provides that once a supplier is subject to the requirements of Part 98, the supplier must for each year thereafter comply with all requirements of Part 98, including the requirement to submit annual greenhouse gas reports, even if the supplier does not meet the applicability requirements in 40 C.F.R. § 98.2(a) in a future year.
21. 40 C.F.R. § 98.2(i)(1)-(3) provide limited exceptions to 40 C.F.R. § 98.2(i):
  - a. If reported quantity of greenhouse gases supplied are less than 25,000 metric tons CO<sub>2e</sub> per year for five consecutive years, then the owner or operator may discontinue reporting, provided that the owner or operator submits a notification to the EPA no later than March 31 of the year immediately following the fifth consecutive year that announces the cessation of reporting that explains the reasons for the reduction in quantity of greenhouse gases supplied and the owner or operator maintains the corresponding records required under § 98.3(g) for each of the five consecutive years prior to such notification and for three years following the year that reporting was discontinued. See 40 C.F.R.

§ 98.2(i)(1). The owner or operator must resume reporting if annual quantity of greenhouse gases supplied in any future calendar year increase to 25,000 metric tons CO<sub>2e</sub> per year or more.

- b. If reported quantity of greenhouse gases supplied are less than 15,000 metric tons CO<sub>2e</sub> per year for three consecutive years, then the owner or operator may discontinue reporting, provided that the owner or operator submits a notification to the EPA no later than March 31 of the year immediately following the third consecutive year that announces the cessation of reporting that explains the reasons for the reduction in quantity of greenhouse gases supplied and the owner or operator maintains the corresponding records required under § 98.3(g) for each of the three consecutive years prior to such notification and for three years following the year that reporting was discontinued. See 40 C.F.R. § 98.2(i)(1). The owner or operator must resume reporting if annual quantity of greenhouse gases supplied in any future calendar year increase to 25,000 metric tons CO<sub>2e</sub> per year or more. 40 C.F.R. § 98.2(i)(2).
  - c. If the operations of a supplier are changed such that all applicable processes and operations cease to operate, then the owner or operator may discontinue complying with this part for the reporting years following the year in which cessation of such operations occurs, provided that the owner or operator submits a notification to the Administrator that announces the cessation of reporting and certifies to the closure of all applicable processes and operations no later than March 31 of the year following such changes. 40 C.F.R. § 98.2(i)(3). Additional requirements apply in the event of a partial cessation of operation. *Id.*
  - d. The owner or operator must resume reporting if annual quantity of greenhouse gases supplied in any future calendar year increase to 25,000 metric tons CO<sub>2e</sub> per year or more. 40 C.F.R. § 98.2(i)(1)-(2).
22. 40 C.F.R. § 98.3(b) requires the owner or operator of suppliers subject to part 98 to submit annual reports to the EPA no later than March 31 of each calendar year for greenhouse gas emissions in the previous calendar year, with the exception of the report for calendar year 2010, which was due no later than September 30, 2011.
23. 40 C.F.R. § 98.3(c) specifies the content of each annual report, other than as provided in 40 C.F.R. § 98.3(d) for reporting year 2010, and includes any other data specified in the “Data reporting requirements” section of each applicable subpart of part 98.
24. 40 C.F.R. § 98.416 provides a list of information, in addition to the information required by § 98.3(c)(1)–(3) and (5)–(13), that must be included in each annual report.
25. 40 C.F.R. § 98.412 requires reporting of greenhouse gas emissions that would result from the release of the nitrous oxide and each fluorinated greenhouse gas that is produced, imported, exported, transformed, or destroyed during the calendar year. Starting with reporting year 2018, this section of the regulations also requires reporting of the

emissions that would result from the release of each fluorinated HTF that is not also a fluorinated greenhouse gas and produced, imported, exported, transformed, or destroyed during the calendar year.

26. Except for certain special exceptions for reporting year 2010, 40 C.F.R. § 98.3(e) requires use of the calculation methodologies specified in the relevant subparts, in preparing the annual report. “For each source category, you must use the same calculation methodology throughout a reporting period unless you provide a written explanation of why a change in methodology was required.” 40 C.F.R. § 98.3(e).
27. 40 C.F.R. § 98.413 prescribes the methodology to calculate the industrial greenhouse gas emissions set forth in 40 C.F.R. § 98.412.
28. 40 C.F.R. § 98.5 requires each annual report to be submitted electronically through the “Electronic Greenhouse Gas Reporting Tool” (e-GGRT). Each report must be submitted by a designated representative. *See* 40 C.F.R. § 98.4.
29. Any violation of 40 C.F.R. Part 98 is a violation of the CAA, including section 114, 42 U.S.C. § 7414. A violation includes but is not limited to failure to report greenhouse gas emissions, failure to collect data needed to calculate greenhouse gas emissions, failure to continuously monitor and test, failure to retain records needed to verify the amount of greenhouse gas emissions, and failure to calculate greenhouse gas emissions following the methodologies specified in this part. Each day of a violation constitutes a separate violation. 40 C.F.R. § 98.8. *See also* 74 FR 56395.

#### **Factual Background**

30. Combs Investment Property, LP did not submit annual reports of its greenhouse gas quantities to the EPA by March 31 of 2017-2020 for greenhouse gas emissions in calendar years 2016-2019.
31. On March 26, 2021, Combs Investment Property, LP submitted reports for calendar year 2016, which stated quantities of greenhouse gases of 25,000 metric tons CO<sub>2</sub>e per year or more. On March 30, 2021, Combs Investment Property, LP submitted reports for calendar years 2017-2019, which did not state quantities of greenhouse gases.

#### **Alleged Violation**

32. Combs Investment Property, LP is a supplier subject to the mandatory greenhouse gas reporting requirements.
33. Combs Investment Property, LP greenhouse gas quantities exceeded the mandatory greenhouse gas reporting threshold of 25,000 metric tons CO<sub>2</sub>e per year or more in one or more calendar years from 2016 to 2019.

34. Combs Investment Property, LP did not timely report to the EPA its greenhouse gas quantities for at least calendar years 2016-2019, in violation of 40 C.F.R. Part 98, Subparts A and OO.

### **Enforcement**

The EPA's investigation into this matter is continuing. The above information represents specific violations that EPA believes, at this point, are sufficiently supported by evidence to warrant the allegations in this NOV. The EPA may find additional violations as the investigation continues.

Section 113(a)(3) of the Act, 42 U.S.C § 7413(a)(3), provides the Administrator with several enforcement options to resolve these violations, including issuing an administrative compliance order, issuing an administrative penalty order, bringing a judicial civil action, and bringing a judicial criminal action.

### **Effective Date**

This Notice shall become effective immediately upon issuance.

MARY  
GREENE

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Mary E. Greene, Director  
Air Enforcement Division  
United States Environmental Protection Agency