



Attachment A

Response to Comments

Northwest Region
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Summary and Response to Comments to Public Notice for the Proposed new Solid Waste Disposal Site Permit Number 1591 for EcoLube Recovery LLC dba American Petroleum Environmental Services, Inc.

DEQ issued a public notice on May 19, 2017 requesting public comment on the draft DEQ solid waste permit for the American Petroleum Environmental services transfer station and material recovery facility. DEQ mailed the notice to property owners within at least one mile of the facility, and included additional zip codes and neighborhood associations where DEQ anticipated there would be interest. DEQ also provided public notice through email. Subscribers of DEQ's email notification list received a message about the proposed permit issuance and the chance to comment. The comment period closed at 5 p.m. on July 3, 2017.

DEQ received comments on the draft solid waste permit that were forwarded from Metro who received the comments during their public notice period. DEQ received comments on the draft solid waste permit from five additional people: Jeff Geisler, Judy Chapman, Ineke Deruyter, Janet Roxburgh, and Michael Mazza. The comments are summarized below, followed by DEQ's response. All comments regarding the draft air quality permit will be responded to separately by the DEQ Air Quality program.

1. PCB storage

Comments received from the Metro submittal:

- *The [Metro] permit states there are no pending land use violations. The Willamette Superfund Site is dealing with corporate malfeasance relating to the illegal disposal of PCBs. Taxpayers will share in the Billion dollar cost of remedy. APES currently has several storage tanks of oils contaminated with PCBs. There are no containment berms. The tanks are in an earthquake liquefaction zone. Directives to dispose of the PCBs to a regulated facility have been violated. There is no oversight as to proper handling and accounting. Dirty oil is used as an energy source on site. Over time, is the volume of these PCBs being reduced in this incineration? Without regular monitoring how can anyone know? We do know of adverse health impacts on the neighbors.*
- *APES also stored PCB-oil illegally on the property without a permit, and it is believed that APES was burning PCB-oil in order to dispose of it. The PCB-oil had benzene in it – another hazard. It is believed that APES diluted the hazardous waste PCB-oil with water.*
- *I was under the impression that Metro deals with hazardous, solid waste and that PCBs are hazardous waste. Illegal PCBs are being stored in tank(s) without containment berms.*
- *...is ORRCO responsible for the illegal PCBs leftover at APES facility that were not properly disposed of last fall? Our understanding is that the PCBs are still there.*

DEQ response:

APES has one tank, Tank 12, that contains PCB contaminated oil. APES, not ORRCO is responsible for the disposal of the PCB containing oil in Tank 12. PCBs are regulated under the Toxic Substances Control Act (TSCA) by EPA.

DEQ does not have evidence that APES has burned PCB containing oil in any of its processes. EPA has informed DEQ that APES is sending the PCB contaminated oil from Tank 12 to a TSCA permitted incinerator in Utah for disposal. APES has also informed DEQ that this activity is occurring. APES has indicated that Tank 12 and the vehicle used to transport the PCB containing oil will be decontaminated when Tank 12 is empty. DEQ will continue to monitor and verify with EPA that this disposal continues and that Tank 12 and the transport truck are properly cleaned when this transfer is complete.

DEQ has observed concrete containment berms around all tanks onsite. The facility has a Spill Prevention, Control, and Countermeasure Plan (SPCC) that details the facility and measures in place to prevent a release of oil. The SPCC was prepared in accordance with Title 40, Code of Federal Regulations (CFR), Part 112.

2. Expansion of the site

Comments received from Janet Roxburgh and the Metro submittal:

- *It is with shock and great concern that I read about the application from APES to Metro for a new license to consolidate and reload oily cleanup material such as oily rags, booms, absorbents, etc. I understand that their current operations would not change under the proposed renewal.*
- *For the record, I don't want ANY expansion at ORRCO or APES. They didn't comply with regulations in the past and are not to be trusted. Metro solid and hazardous waste is intertwined with air quality, so until THAT is fixed, NO expansion should be allowed!*
- *Allow no expansion, sulfonation, oil polishing, wastewater treatment, solid waste or hazardous waste incineration until it's proven to be safe for the public and the environment and full stack monitoring.*

DEQ response:

The oily solids management is an existing activity at the APES facility. DEQ recently reviewed the used oil rules and concluded that sites managing these oily solids require a DEQ solid waste permit. The activities regulated under the DEQ solid waste disposal site permit do not constitute an expansion to the site.

Neither hazardous waste nor solid waste incineration is allowed at this facility. Some used oil is burned incidental to the used oil process, which is allowed under the state and federal used oil regulations.

DEQ has determined that APES can meet solid waste regulations so will proceed with issuance of a DEQ solid waste material recovery facility permit.

3. Risks from the site:

Comments received from the Metro submittal and Judy Chapman:

- *There has been no independent or even governmental scientific analysis of those emissions, or any runoff, and we don't know what the companies do with any waste or chemicals used.*

- *NE Portland is vulnerable to river flooding, and putting further toxic waste facilities near wetlands and the river is unconscionable – without at the very least an environmental impact analysis first to make the decision based on facts and real risk.*
- *I strongly suggest the following:*
 - A: No permits are issued to APES at this time, due to their past cheating and frankly criminal behavior towards regulations protecting Public Health.*
 - B: industry be monitored closely and not self-regulate or self-report, since they have been untrustworthy in the past (to say the least.) Since DEQ has allowed them to practice unsafely, I suggest*
 - C: an independent agency check out both DEQ's and APES' unsavory practices. And last but not least:*
 - D: A CEASE and DESIST order be issued by the governor, to protect Public Health.*

DEQ response:

As stated above, the site is an existing site so no new waste is being generated. The City of Portland approved the land use compatibility statement for APES so APES meets current land use requirements. In Oregon, DEQ carries out solid waste and hazardous waste regulations. APES is a conditionally exempt small quantity generator of hazardous waste, which means they

- produce less than 220 pounds of hazardous waste each month (approximately 25 gallons of liquid waste with a weight comparable to water)
- produce less than 2.2 pounds of acutely hazardous waste each month, and
- store no more than 2,200 pounds of hazardous waste on site.

APES is required to ensure proper disposal of the small amounts of hazardous waste they generate at a DEQ permitted solid or hazardous waste landfill permitted to accept conditionally exempt generated wastes. APES keeps records of waste generation and disposal. DEQ evaluates these records when conducting periodic site inspections.

Oregon does not have a state environmental policy act so does not require environmental impact statements or assessments as part of Oregon's environmental permitting programs.

As noted in the response to the comments in #2 above, DEQ is required to issue the DEQ solid waste permit to APES if APES demonstrates that the facility can meet environmental regulations. DEQ has not identified conditions that would warrant DEQ asking the Governor to issue a cease and desist order for APES.

4. Third party monitoring:

Comments received by Jeff Geisler, Ineke Deruyter, and the Metro submittal:

- *...I need to also clearly state my expectations if they are allowed to stay: Monitoring by a 3rd party of all material coming into the plant before incineration or disposal processes begin. Detailed reports of those materials must be available for public review online. We should be able to review them by date, time of disposal, materials, etc. so that at a minimum we will know what we are breathing. We have a right to know!*

DEQ response:

No wastes are incinerated onsite. The solid waste disposal activities conducted onsite consist of recovering metal and oils from used oil filters, and aggregating oily solids to be transported to an

approved final offsite disposal facility (landfill or solid waste incinerator). Small amounts of used oil may be burned during used oil processing; this is allowed per 40 CFR 279 and OAR 340-111.

DEQ will receive annual reports summarizing used oil processed and used oil filters received and processed and this information can be made available to the public through DEQ's public records request process (<http://www.oregon.gov/deq/about-us/Pages/Requesting-Public-Records-Form.aspx>).

5. Fines

Comment received from the Metro submittal:

- *For each violation (because they will have them) significant fines (\$50,000-\$100,000) should be mandatory, no excuses. They should also be required to perform some sort of community service such as major tree plantings or other restorative actions in addition to the fines. It has to be implemented in such a way that it is more cost effective to play by the rules than to scam the community and DEQ as they have in the past.*

DEQ response:

If DEQ identifies violations at a facility, DEQ follows the enforcement regulations in Oregon Administrative Rules 340 Division 12 which can be found at this link:

http://arcweb.sos.state.or.us/pages/rules/oars_300/oar_340/340_012.html

A person who receives a penalty order from DEQ may choose to complete a Supplemental Environmental Project (SEP) that must be approved by DEQ as part of the penalty process.

<http://www.oregon.gov/deq/Regulations/Pages/SEP.aspx>

6. Portland City Council Resolution No. 37168

Comment received from the Metro submittal:

- *Granting APES a license to expand their operation goes counter to Portland Oregon City Council's resolution No. 37168, passed in UNANIMOUS vote, which opposed the expansion of fossil fuel infrastructure in the city and its adjacent waterways. As a Hayden Island resident I adamantly oppose APES expansion as do thousands of other Portland residents. I also oppose the renewal of ORRCO permits to continue on their operation. These two companies must have up to date emissions monitoring equipment, 24 hr 7 days a week 365 days a year stack monitoring (if you cannot do this then shut them down), containment berms around all holding tanks and list both companies as Title V polluters so they may be regulated with a fine tooth comb.*

DEQ response:

In response to receiving this comment, DEQ contacted the City of Portland. The resolution resulted to amendments to the City of Portland Zoning code. These amendments are presented in the City of Portland report available here: <https://www.portlandoregon.gov/bps/article/621438>

According to city personnel, the resolution and subsequent zoning amendment do not apply to either APES or ORRCO because the sites are not increasing the onsite storage capacity. Further, the sites likely do not meet the definition of a "bulk fossil fuel terminal". Neither APES nor ORRCO are listed as existing Bulk Fossil Fuel Terminals.

As stated above, the facility maintains berms around all the used oil tanks onsite.

7. Site Operations

Comment received from the Metro submittal:

- *While odor management is not a key concern of the pending permit, the falsification materially discredits other claims which are key concerns. If APES is willing to forgo their own fairly simple procedure regarding odors, which is quite evident to the public, what security does Metro have that less evident procedures claimed will be followed. Indeed, will APES really reject barrels of rags contaminated with hazardous substances as claimed, or will the motivation of profit encourage overlooking this claimed practice as it does other claimed practices? Will this new endeavor really be as innocuous as described, or something more toxic and profitable?*

DEQ response:

The solid waste material recovery and transfer activities are not new activities for this site. DEQ recently determined that these activities would require a DEQ solid waste permit. One condition of the DEQ solid waste permit will be for APES to update an Operations Plan that describes how they will verify they are not accepting hazardous waste and how they will operate the facility in accordance with the permit. Once approved, this Operations Plan becomes part of the permit and any violation of the Operations Plan could be considered a violation of the permit. DEQ regularly conducts unannounced inspections of the facility and can request facility records to verify they are in compliance with their permit.

8. Section 1.1 – used oil and spent antifreeze

Comment received from Michael Mazza:

Used oil and spent antifreeze for recycling are already regulated under the EPA process, and supported by DEQ OAR's. They are clearly not regulated as a solid waste unless they are going to a land fill disposal option. You could resolve the issue by applying verbiage to this section that directly reflects the purpose of the permit. Here is an example of what would resolve the first bullet point.

- *"Used oil as defined in OAR 340-111 that is going for waste disposal (off-specification used oil), and not be recycled (OAR/RCRA 279 On-specification used oil)".*

By adding the "that is going for waste disposal, and not be recycled", this would could resolve the issue of regulating used oil as a solid waste. Basically if it is being properly recycled under OAR 340, then it is exempt from solid waste rules. If not the new added solid waste rules should and would apply.

This same concept for spent antifreeze should also be applied.

I have to say remember that solid waste applies to just that solids, and not liquids as long as the liquids are not being put in the ground. This language solves all the problems with the permit 1.1. It adds clarity to sections 2.2, 2.3, 5, 6.1, 6.3.

If this isn't changed in some similar fashion, sections 2.2, 2.3, 5, 6.1, 6.3, APES will have to address, and resolve this issue. The simplest fix is to remove used oil and spent antifreeze.

DEQ Response:

Used oil and spent antifreeze meet the definition of solid waste in Oregon [OAR 340-093-0030(91)]. DEQ verified with its attorney that used oil and spent antifreeze meet the Oregon definition of solid waste. The APES facility provides material recovery and transfer of these solid wastes. The definition of solid waste in Oregon is not limited to just solid materials. Liquid wastes are also solid wastes.

The solid waste permit does not add any additional requirements to the used oil management to those established in 40 CFR 279 and OAR 340-111. Used oil is not subject to hazardous waste determinations as long as it is not being disposed. DEQ will add clarification to the permit that the used oil management must be done in accordance with 40 CFR 279 and OAR 340-111.

Permit condition 1.1 now reads:

1.1 Waste authorized for receipt

*This permit authorizes American Petroleum Environmental Services, Inc. (APES) to accept the following **non-hazardous** solid wastes for recycling, material recovery, and/or transfer, unless specifically prohibited in Section 2, if the materials are handled in accordance with this permit, air quality requirements and all local, state and federal regulations. The permittee must have characterization documentation that these waste materials are not hazardous waste.*

Used oil as defined in OAR 340-111 that does not contain PCBs above 2 ppm may be collected for storage, management and recycling

Non terne-plated used oil filters that are not mixed with a listed hazardous waste (40 CFR 261 Subpart D).

- *Non terne used oil filters may be gravity hot-drained and crushed in accordance with 40 CFR 261.4(b)(13) and managed as scrap metal or as nonhazardous waste.*
- *Oil contaminated media and debris may be accepted for accumulation and transfer to a final disposal site. Material will be shipped to an approved landfill or permitted off-site solid waste incinerator.*
- *Spent antifreeze, ethylene glycol, or propylene glycol managed separately from used oil exclusively for off-site reclamation for re-use as antifreeze.*

Reference: OAR 340-93-0030, OAR 340-111-0020, OAR 340-102-0011, 40 CFR Part 261 and Part 279.10, ORS 466.005, OAR 340-101, 40 CFR 258.20(b)

Used oil must be managed in accordance with 40 CFR 279 and OAR 340-111.

Solid Waste is defined in ORS 459.005

Spent antifreeze which is recycled and properly managed using specific best management practices generally will not exhibit hazardous waste characteristics. This does not limit DEQ's oversight of the material as a solid waste.

9. Section 6.3- records retention

Comment received from Michael Mazza:

Now on to another fix that is needed. Section 6.3 needs to be amended to exclude retain samples. It isn't practical that anyone would keep retain samples for 5 years. Especially for Used oil filters and Oily debris. Used oil alone would encompass large foot print for storage. This over regulates the bulk of what we do, and adds additional data support, that isn't currently in place.

In fact this type of language in the permit is why I have issues. It just isn't practical to conceive how to maintain records on the permit as written. This would be like asking a land fill to require a home owner to provide SDS's on the garbage they get rid of every week. (M. Mazza)

DEQ Response:

Section 6.3 specifically refers to retaining *written documentation* for five years. APES is required to maintain records regarding the retains, not the retains themselves since retains are not considered to be written documentation. DEQ will remove the word "retain" from the bulleted list of examples to avoid this confusion since the requirement for written documents regarding the retains is provided for in other examples.

APES is required to maintain records for the oily solids and used oil filters for 5 years, these records can be maintained electronically. Used oil has specific requirements to ensure proper processing (40 CFR 279 and OAR 340-111), that must also be maintained at the APES facility.
Permit condition 5.5 Records reads:

The permittee must keep copies of all records and reports relating to the used oil filters, oily solids, and spent antifreeze for five years from the date created. Records requirements for the used oil are established in OAR 340-111 and 40 CFR 279.

Reference: OAR 340-096- 0040(4)(e)

Permit condition 6.3 Waste acceptance and management procedures now reads:

The permittee must employ waste acceptance procedures to ensure prohibited wastes are not accepted and retain written documentation for five years. Documentation must include the following:

- o Hazardous waste determination (i.e., the waste is corrosive, ignitable, toxic or reactive)
- o If by knowledge of process, obtain detailed written process knowledge from generator including a description of the generating process and SDS for all process constituents
- o Analytical results from the processing of representative samples
- o Material safety data sheets
- o Waste profile sheets signed by the generator
- o Facility inspection logs
- o Daily operations logs
- o Waste acceptance includes verifying hazardous waste determinations from generators, ensuring appropriate lab analyses are performed, and maintaining required documentation.

10. General

Comment received from Michael Mazza:

I have to say I am extremely frustrated at this process. When we spoke in person at the begging of this process. I clearly asked you what DEQ's intent was. You said, "to regulate used oil filter, and oily debris under the solid waste rules". I asked you again "just used oil filters and oily debris" you said yes that is all. Yesterday when we talked you now are saying you want to regulate Used oil under the solid waste. I want you to know I feel lied to, and miss informed. My trust in DEQ has gone done. Furthermore, I feel like DEQ is rushing this process. This is due to your comments about piggy backing this permit with my air permit, to save money for OR. This short sided money saving attitude is what is causing problem throughout all of DEQ. I personally feel it is better to make sure we do it right the first time then have to re-due it.

Hopefully we can resolve this issue. Trust is the most important thing to me the world. I take it extremely serious. If I can trust DEQ, and DEQ can't trust me it will result in both of wasting time.

DEQ Response:

DEQ acknowledges this comment and respectfully disagrees with the characterization.

