



# Oregon

Kate Brown, Governor

## Department of Environmental Quality

Office of Compliance and Enforcement

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Portland, OR 97232-4100

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September 15, 2017

CERTIFIED MAIL No. 7014 2870 0001 3373 5821

American Petroleum Environmental Services, Inc.  
c/o Michael P. Mazza, Registered Agent  
11535 N. Force Avenue  
Portland, OR 97217

Re: Order and Demand for Payment of Stipulated Penalty  
Case No. AQ/AC-NWR-2017-175

This letter is to inform you that the Department of Environmental Quality (DEQ) has issued you an \$8,000 civil penalty in the attached Order and Demand for Payment of Stipulated Penalty (Order) for violations of the Mutual Agreement and Final Order (MAO) you signed with DEQ on December 27, 2016.

Pursuant to Paragraphs 17 and 24 of the MAO, upon receipt of a written notice from DEQ for any violation of Paragraph 16.c of the MAO, you are subject to a penalty of \$1,600 for each day of violation. This letter and the attached Order serve as notice that violations occurred because you failed to construct and install the thermal oxidizer at your facility by July 25, 2017, as required by Paragraph 16.c of the MAO. APES did not complete installation of the thermal oxidizer until August 22, 2017.

In determining the amount of penalty, DEQ carefully considered your assertion that installation of the thermal oxidizer was held up by the City of Portland's delay in issuing your building permit. However, DEQ's review of the city's records along with the permit check sheets indicate that on multiple occasions, APES did not provide Portland BDS with the requested documentation to support or clarify your permit applications in a timely fashion. Additionally, APES did not take measures to expedite the City permitting process until mid-July.

We also reviewed the additional information you submitted, at DEQ's request, to demonstrate affirmative actions you were taking to reduce emissions until the thermal oxidizer was operational. Your submittal did not include any technical or otherwise conclusive information demonstrating that affirmative emission reducing actions were utilized to mitigate for the delayed thermal oxidizer installation. For these reasons, DEQ has determined that assessing additional stipulated penalties is appropriate.

The penalty amount recognizes the week you shut down the facility, as well as recognition of your efforts to expedite installation of the thermal oxidizer, beginning in mid-July, by spending additional resources to expedite permit review and incur labor overtime costs to install the thermal oxidizer.

Please be advised that you have future obligations and deadlines under Paragraph 16 of the MAO and pending Air Contaminant Discharge Permit modification, including the requirement to conduct



a source test within 60 days of the date the modified permit is issued. Further violations of the MAO or permit are subject to additional civil penalties.

Your right to appeal the Order is outlined in the document as well as in the MAO.

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 in lieu of paying your penalty. Enclosed is more detail on how to pursue a SEP. SEP documents are available on the internet at <http://www.deq.state.or.us/programs/enforcement/SEP.htm>, or by calling the number below to request a paper copy.

If you have any questions about the attached Order, please contact Jenny Root in DEQ's Office of Compliance and Enforcement at 503-229-5874. Questions about compliance with the permit and requirements under Paragraph 16 of the MAO should be directed to Dave Kauth at 503-229-5053.

Sincerely,



Sarah G. Wheeler, Acting Manager  
Office of Compliance and Enforcement

Enclosure

Cc: Dave Kauth, Northwest Region office, DEQ  
Mike Mazza – via Email  
Joe Stanaway, Clear Lube Re-Refining LLC  
40 Lake Bellevue Dr., Suite 100, Bellevue, WA 98005  
Brien Flanagan, Schwabe, Williamson & Wyatt  
1211 SW 5<sup>th</sup> Ave., Suite 1900, Portland, OR 97204

1 BEFORE THE ENVIRONMENTAL QUALITY COMMISSION  
2 OF THE STATE OF OREGON

3 IN THE MATTER OF: ) ORDER AND DEMAND FOR PAYMENT  
4 AMERICAN PETROLEUM ) OF STIPULATED PENALTY  
5 ENVIRONMENTAL SERVICES, INC., )  
a Washington corporation, )  
6 Respondent. ) NO. AQ/AC-NWR-2017-175

7 I. FINDINGS OF FACT AND CONCLUSIONS

8 1. On December 27, 2016, Respondent and the Department of Environmental Quality  
9 (DEQ) entered into Mutual Agreement and Order (MAO) No. AQ/AC-NWR-2016-217.

10 2. Paragraph 16.c of the MAO required Respondent to complete construction and  
11 installation of a new thermal oxidizer at its facility, within 180 days of submitting its selection of  
12 facility upgrades to DEQ, as further described in Paragraph 6 of the MAO.

13 3. Respondent submitted its selection and technical documentation for the facility  
14 upgrades to DEQ on January 26, 2017. Therefore, Respondent was required to complete  
15 construction and installation of the new thermal oxidizer no later than July 25, 2017.

16 4. Respondent completed construction and installation of the thermal oxidizer on  
17 August 22, 2017.

18 5. Therefore, from July 26, 2017 to August 21, 2017, Respondent was in violation of  
19 Paragraph 16.c of the MAO.

20 6. Pursuant to Paragraph 17.a of the MAO, Respondent is subject to a penalty of  
21 \$1,600 for each day of violation of Paragraph 16.c of the MAO.

22 7. In accordance with Paragraph 17.a of the MAO, on August 4, 2017, DEQ assessed  
23 Respondent a \$4,800 stipulated penalty for failing to timely complete construction and installation  
24 of the thermal oxidizer, covering the violations on July 26, 2017, July 27, 2017 and July 28, 2017.

25 8. DEQ is now hereby assessing a \$1,600 per day penalty for five additional days of  
26 violation between July 29, 2017 and August 21, 2017.

27 9. The total penalty for Respondent's current violation is \$8,000.

1 II. ORDER TO PAY CIVIL PENALTY

2 Based upon the foregoing FINDINGS OF FACT and CONCLUSIONS, Respondent is  
3 hereby ORDERED TO: Pay a total civil penalty of \$8,000.

4 If you do not file a request for hearing as set forth in Section III below, your check or money  
5 order must be made payable to "**State Treasurer, State of Oregon**" and sent to the **DEQ,**  
6 **Business Office, 700 NE Multnomah Street, Suite #600, Portland, Oregon 97232.** Once you  
7 pay the penalty, this Order becomes final.

8 III. NOTICE OF RIGHT TO REQUEST A CONTESTED CASE HEARING

9 You have a right to a contested case hearing on this Order. **As described in paragraph**  
10 **24 of the MAO, the issue shall be limited to APES' compliance or non-compliance with the**  
11 **MAO.** DEQ must receive the written request for hearing **within 20 calendar days** from the date  
12 you receive this Order and Demand for Payment of Stipulated Penalty. The request should  
13 include any affirmative defenses and either admit or deny each allegation of fact in this Order.  
14 (See OAR 340-011-0530.) You must mail the request for hearing to: **DEQ, Office of**  
15 **Compliance and Enforcement - Appeals, 700 NE Multnomah Street, Suite #600, Portland,**  
16 **Oregon 97232** or fax to **503-229-5100.** An administrative law judge employed by the Office of  
17 Administrative Hearings will conduct the hearing, according to ORS Chapter 183, OAR Chapter  
18 340, Division 011 and OAR 137-003-0501 to 0700. You have a right to be represented by an  
19 attorney at the hearing or you may represent yourself unless you are a corporation, agency or  
20 association.

21 If you fail to file a request for hearing in writing within 20 calendar days of receipt of the  
22 Order, the Order will become a final order by default without further action by DEQ as per OAR  
23 340-011-0535(5). DEQ designates the relevant portions of its files, including information  
24 submitted by you, as the record for purposes of proving a prima facie case.

25  
26 September 15, 2017

27 Date

Sarah G. Wheeler

Sarah G. Wheeler, Acting Manager  
Office of Compliance and Enforcement