



# Oregon

Kate Brown, Governor

## Department of Environmental Quality

Office of Compliance and Enforcement

700 NE Multnomah St Ste 600

Portland, OR 97232-4100

(503) 229-5696

FAX (503) 229-5100

TTY: 711

August 4, 2017

CERTIFIED MAIL No. 7014 2870 0001 3373 5814

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-2017-161

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

In a July 14, 2017 letter, your business partner Clear Lube Re-Refining LLC (CLRR) informed DEQ that the thermal oxidizer at your facility would not be installed by the July 25, 2017 deadline, as required by Condition 16.c of the MAO. On July 28, 2017, you and CLRR submitted a letter to DEQ that describes circumstances leading to the delays to install the thermal oxidizer. According to your letter, installation of the thermal oxidizer has been held up due to the City of Portland's delay in issuing your building permit. Your letter states you met with the city in early July to inquire why the permit had not been issued. This meeting occurred less than three weeks before the MAO deadline to complete the thermal oxidizer installation. Further, DEQ's review of the city's records along with the permit check sheets you included with your letter, indicate that on multiple occasions, APES failed to provide Portland BDS with the requested documentation to support or clarify your permit applications in a timely fashion. You did not include any additional documentation with the July 28<sup>th</sup> letter to support your assertion that the permit delay was beyond your reasonable control, or despite due diligence on your part. You also did not provide a new timeline to DEQ for when you will complete the project, despite the fact the city issued your permit on July 26, 2017, two days before you sent the letter.

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 required to pay \$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. The current penalty for the violation is \$4,800 and is due now.

Please be advised that DEQ may assess additional daily penalties for your ongoing noncompliance with Paragraph 16.c of the MAO. Also, DEQ may assess additional civil penalties if additional violations of Paragraph 16 occur.

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



While DEQ has made its determination on the enclosed stipulated penalties, DEQ is willing to meet with you to discuss a new timeline for installation of the thermal oxidizer and possible mitigation of future penalties for mutually agreed upon steps you take to adjust your operations to minimize emissions (such as limiting operations to 8:00 am to 5:00 pm, Monday through Friday) or other reasonable operational adjustments for reductions. If you wish to do so, 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  
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

BEFORE THE ENVIRONMENTAL QUALITY COMMISSION  
OF THE STATE OF OREGON

IN THE MATTER OF: ) ORDER AND DEMAND FOR PAYMENT  
AMERICAN PETROLEUM ) OF STIPULATED PENALTY  
ENVIRONMENTAL SERVICES, INC., )  
a Washington corporation, )  
Respondent. ) NO. AQ/AC-NWR-2017-161

I. FINDINGS OF FACT AND CONCLUSIONS

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

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

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

4. To date, Respondent has not completed construction and installation of the thermal oxidizer.

5. Therefore, since at least July 26, 2017, Respondent has violated paragraph 16.c of the MAO because it has not completed construction and installation of the thermal oxidizer within 180 days of submitting its facility upgrade selection to DEQ.

6. Pursuant to Paragraph 17.a of the MAO, Respondent is required to pay \$1,600 for each day of violation of Paragraph 16.c of the MAO.

7. DEQ is now hereby assessing a \$1,600 per day penalty to Respondent for July 26, 2017, July 27, 2017 and July 28, 2017, for failing to complete construction and installation of the thermal oxidizer by July 25, 2017, in violation of Paragraph 16.c of the MAO.

8. The total penalty for Respondent's current violation is \$4,800.

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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 \$4,800.

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 August 4, 2017  
26 \_\_\_\_\_  
Date

25 Sarah Wheeler  
26 \_\_\_\_\_  
Sarah G. Wheeler, Acting Manager  
Office of Compliance and Enforcement