

July 28, 2017

CONFIDENTIAL

VIA E-MAIL (MICHAEL.ORMAN@STATE.OR.US)

Michael Orman
Air Quality Section Manager
Oregon Department of Environmental
Quality
Northwest Region
700 NE Multnomah Street, Suite 600
Portland, OR 97232

RE: Permit #26-3021-ST-01
American Petroleum Environmental Services, Inc.
Our File No.: 130587-218501

Dear Michael:

Clear Lube Re-Refining Company LLC (Clear Lube) and American Petroleum Environmental Services, Inc. (APES) have received your denial of our request for an extension under the Memorandum of Agreement and Order (MAO). We write to express our disappointment, request that DEQ reconsider its decision because DEQ has a misunderstanding of the facts leading to our need for an extension, and to describe immediate steps and actions taken and to be taken at APES to mitigate potential emissions from the facility.

Clear Lube and APES have worked tirelessly since signing the MAO in December to develop plans, proposals and applications to install the emissions mitigation technologies required by the MAO. As we discussed with you at that time, developing the facility creates efficiencies and optimizes the RTO. With the understanding of DEQ's mutual interest in optimizing the RTO, we moved forward with applications to obtain those permits and approvals from the City of Portland to complete the facility.

Despite working with experienced professionals, the project experienced repeat delays brought on by the City of Portland's ever changing requests. As outlined below, we have repeatedly worked through these issues with the City and have developed a plan to expedite installation of the RTO, although the rest of the facility will be delayed. Despite our good faith efforts and disagreement with DEQ's interpretation of the MAO, we have developed a plan to reduce emissions as detailed below.



The Project Hit Unexpected Delays Despite Repeat Assurances that the Permits Were On Track

Immediately after executing the MAO, Clear Lube and APES worked with their engineers at Design Group to develop a system that would meet their operational needs and the requirements of DEQ. On February 15, 2017, APES/CLRR met with BDS to propose adjustments to their plans previously approved by the City of Portland (permit nos. 16-213976-000-00-CO; 16-213897-000-00-MT; 16-274161-000-00-ET) to include the Thermal Oxidizer, Clay Filtration System (LPS), tank farm, and steel building. Within five weeks of those discussions, Clear Lube submitted a final set of approved drawings from the RTO manufacturer to BDS (permit no. 17-141881-000-00-CO). At that time, we requested that the City give us the same reviewer who analyzed our original permit applications to insure consistency of permit review for RTO. The city however assigned reviewers unfamiliar with the history of our applications and facility.

This resulted in delays in processing our materials and responding to the checksheets. The City did provide APES/CLRR its first checksheet response three weeks later, but we did not receive the other checksheets until months later, and some were not provided until mid-June. During this time, we repeatedly checked-in with the City and were told that responses would be forthcoming. By early June, APES/CLRR was getting concerned and asking the City for methods to expedite the permitting so that we could install the RTO by the MAO deadline. In a discussion on June 6, BDS advised us not to separate out the RTO, but to continue the permitting pathway (permit no. 17-141881-CO)—giving the impression that permits were forthcoming. On June 22, the day after receiving our electrical permit (permit no. 17-180002-000-00-ET), BDS again advised APES/CLRR not to separate the RTO from permit no. 17-141881-CO.

In early July, APES/CLRR requested meetings with City supervisors. On July 14, we met with BDS supervisors to expedite permitting and get clarity on a path forward. At this meeting, the City, for the first time, recommended separating the RTO from the remainder of permit no. 17-141881-000-00-CO. Then, in the middle of the next week, BDS informed us for the first time via email of the option to pay for BDS reviewer overtime (referred to as “APOT”). Clear Lube jumped on the opportunity.

Every action with the City involves costs. And, each of these options to expedite the RTO has large costs associated with them, as well as increasing costs for finalizing permit no. 17-141881-000-00-CO because focus is now on just the one component rather than the whole. Despite the associated costs, APES/CLRR have taken these actions to get the permits as quickly as possible. DEQ’s contention otherwise is incorrect and misguided.



We Request that DEQ Reconsider its Denial of an Extension.

Under the MAO, an extension is appropriate where “delay in DEQ approval of documents or required approvals from other governmental agencies despite good faith efforts of APES’ or CLRR’s” causes APES/CLRR to be unable to meet deadlines under the MAO. At the heart of the duty of good faith is “each party’s obligation to perform the contract, including exercising any discretion that the contract provides, in a way that will effectuate the objectively reasonable contractual expectations of the parties.” *Pollock v. DR Horton, Inc. – Portland*, 190 Or App 1, 11 (2003) (*Hampton Tree Farms, Inc. v. Jewett*, 320 Or 599, 615-16 (1995); *Best v. U.S. National Bank*, 303 Or 557, 563 (1987)). The focus of this inquiry is on the parties’ agreed common purpose and justified expectations, both of which are closely related to the express provisions of the contract. In short, “the fundamental requirement of good faith is to perform the contract in a way that will carry out the purposes of the parties in entering into it.” *Id.* at 13. As demonstrated by our actions described above, APES/CLRR have taken no actions to thwart the purpose of the MAO, and have consistently worked to meet the deadlines and purpose of the MAO, including expediting the RTO delivery, preparing the plant for installation of the RTO and sulfonation plant, taking actions to reduce emissions such as turning off the front plant, and working diligently (while admittedly unsuccessfully) with the City to obtain approvals in a timely manner. DEQ’s finding that APES/CLRR did not meet this good faith standard is wrong. We request that DEQ reconsider its position based on the terms of the MAO, the law of Oregon, and the facts described in this letter and the attached report showing updates and progress for permit approval.

Efforts to Minimize Emissions

Although we disagree with DEQ’s characterization of the circumstances leading to the delay, APES/CLRR are committed to reducing emissions and demonstrating to DEQ and the community that we are a responsible operator and member of the community. APES/CLRR decided, voluntarily, to shut down the front plant ahead of the MAO deadlines. Additionally, without the front plant cooking process, the operating capacity was slowed by 20%. This action reduced emissions from the facility starting back in February.

Now, APES/CLRR propose to increase the temperature in the working burner to above 1500 degrees operating temperature in the combustion chamber and increase the effluent residence time in the burner. This action should effectively destroy pollutants similar to a thermal oxidizer. We have already implemented this by increasing the temperature in the burner, and we will be investigating additional efficiencies and confirming temperature and residence times while conducting plant maintenance next week.

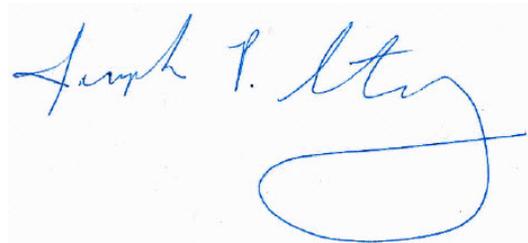


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Michael, we believe that DEQ and APES/CLRR have been working openly together. Our concerns about delays, both with the RTO (which ended up working out because of our diligence and payment of additional money to expedite shipping) and with the City, have been discussed with DEQ in May and in June. We have been forthright and attempted to keep DEQ aware of changing circumstances. We wish to resolve this issue amicably and are committed to acting responsibly, but again do not believe we have violated the letter or spirit of the MAO. We request a meeting with DEQ at your earliest convenience to discuss these issues.

Sincerely,

**CLEAR LUBE RE-REFINING
COMPANY LLC**



Joseph P. Stanaway
Chief Executive Officer

**AMERICAN PETROLEUM
ENVIRONMENTAL SERVICES, INC.**



Mike Mazza
President/Founder

cc: Jenny Root, Oregon DEQ
Compliance and Enforcement
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