

Memo



Metro

600 NE Grand Ave.
Portland, OR 97232-2736

DATE: October 10, 2017

TO: Roy W. Brower, Solid Waste Information Compliance and Cleanup Director

FROM: Hila Ritter, Solid Waste Authorization Coordinator *H*

RE: New Solid Waste Facility License No. L-175-17 for American Petroleum Environmental Services

Attached for your signature is a new Solid Waste Facility License No. L-175-17 for American Petroleum Environmental Services (APES), located at 11535 N. Force Ave. in Portland (Metro District 5). The proposed license authorizes APES to consolidate oil-contaminated solid waste (such as booms, rags, absorbents, etc.) for transfer to appropriate disposal sites. This memo provides background information on the applicant's request and recommends that Metro issue a new license to APES.



Photo 1: Aerial map of APES facility

OVERVIEW

The applicant, APES, headquartered in Puyallup, Washington, is a used oil recycling company that operates a re-refinery in Portland. APES accepts used oil, oil filters, and oily cleanup material including absorbents, booms, and oily rags from auto mechanics and other commercial customers in Washington, Oregon, Idaho, and Canada. The applicant's Portland refinery processes approximately 500,000 gallons of used oil annually and consolidates oily cleanup material for transport to energy recovery and disposal sites.¹ APES also processes used oil filters for metal recycling and captures the remaining oil for recycling.

¹ APES transports oily cleanup material to the Covanta Waste to Energy facility under Metro Non-System License No. N-175-17A

On September 6, 2017, EcoLube Recovery LLC purchased all assets of American Petroleum Environmental Services. Mike Mazza remains the land owner for the property at 11535 N Force Avenue, Portland, OR 97217. The operations and staff of the plant will remain the same, however EcoLube Recovery is now the business owner and operator.

APES is also regulated by Oregon Department of Environmental Quality (DEQ). DEQ is responsible for monitoring and enforcing used oil, universal waste, and hazardous waste requirements at the site, and issued the site's first solid waste permit² on September 27, 2017. DEQ is also responsible for monitoring and enforcing air quality requirements at the facility, which has operated under a DEQ air contaminant discharge permit since 1984. Metro staff is coordinating with DEQ to ensure that the facility is in compliance with the state's requirements. DEQ issued a modified and renewed air contaminant discharge permit on September 27, 2017.³

In September 2016, Metro discovered that APES had been accepting oily cleanup material for consolidation and transfer to disposal sites. Metro also discovered that APES had sent approximately 106 tons of cleanup material to the Covanta Waste-to-Energy Facility (Covanta) over a period of about 19 months without obtaining Metro authorization or remitting the required regional system fee and excise tax for the waste. At that time Metro informed APES that it must: 1) obtain a solid waste facility license to perform solid waste consolidation activities, 2) obtain a non-system license (NSL) to transport waste to Covanta, and 3) remit all unpaid fees and taxes for waste that it had previously transported to Covanta. APES subsequently submitted the above-mentioned license applications⁴ and remitted the outstanding fee and tax payment as required.⁵



Photo 2: APES collection truck

² Solid Waste Material Recovery Permit No. 1591

³ Standard Air Contamination Discharge Permit No. 26-3021-ST-01

⁴ APES submitted an NSL application to Metro on October 21, 2016, and a solid waste facility license application on April 7, 2017.

⁵ APES remitted a total fee and tax payment of \$3,166.74 to Metro on January 4, 2017.

Under Metro Code Section 5.01.110, the proposed license is to be approved or denied by the Chief Operating Officer (COO). On July 1, 2015, the COO delegated to the Solid Waste Compliance and Cleanup Director (SWCC Director) authority to carry out the COO's responsibilities under Metro Code Chapter 5.01 for approving or denying a solid waste facility license. As such, the SWCC Director is authorized to approve this proposed license.

PUBLIC NOTICE AND OPPORTUNITY TO COMMENT

In 2015, DEQ and the United States Environmental Protection Agency (EPA) began investigating APES as a contributing source of odors in the Portland North Harbor area based on numerous citizen complaints. In consideration of this information, Metro contacted six neighborhood associations located near APES to discuss Metro's regulatory role and licensing process before opening the public comment period for the license application.⁶ Metro staff offered to host meetings and attend neighborhood association meetings or other community events to answer questions about Metro's regulatory role at the facility. In response to this invitation, two individuals contacted Metro for more information. After learning about Metro's limited regulatory role and licensing process, both parties declined to invite Metro to their neighborhood meetings stating that their primary concerns were related to air quality in North Portland, not solid waste consolidation activities at the facility. Additionally, Metro staff attended both the public information meeting in March and public hearing in June hosted by DEQ regarding this facility.

On April 13, 2017, Metro issued public notice of the proposed license and provided an opportunity for the public to submit comments. The public comment period ended on May 19, 2017.

Public notice was mailed to about 4,300 addresses located within approximately a mile of the facility. Notice was also e-mailed to Metro's standard list of interested parties, the six neighborhood associations located near APES, and DEQ's list of interested parties from its APES informational meeting on March 7, 2017. In addition to the above, Metro also posted public notice information on its website.

In response to the public notice, Metro received 46 comments - including letters on behalf of the East Columbia Neighborhood Association General Membership and the students, families, and staff of Bridges Middle School. A summary of the comments that Metro received during the public notice period and staff's response to those comments are provided below. All comments that Metro received are also attached to this report. APES was provided a summary of public comments and an opportunity to respond. APES did not provide a response.

In general, the commenters primarily expressed concerns about poor air quality and malodors in North Portland and negative health impacts that they associate directly with APES' oil re-refining process. Since Metro's current scope of authority over APES is limited to the consolidation of cleanup material and oil-contaminated solid waste at the facility, Metro relies on DEQ to monitor and enforce used oil processing and air quality requirements. For this reason, Metro shared all of the public comments that it received with DEQ in a letter dated June 29, 2017. A copy of Metro's letter is attached to this report.

⁶ The Bridgeton, East Columbia, Hayden Island, Kenton, Portsmouth, St. John's Neighborhood Associations

Summary of written public comments on APES' application

Most of the comments that Metro received during the public notice period urged Metro and DEQ to deny all license and permit applications for the facility, citing ongoing distrust of regulatory oversight at the site and concerns about environmental and human health impacts caused by the facility. Several of the commenters expressed opposition to any proposed expansion of the site and cited a city of Portland resolution that opposes the expansion of fossil fuel infrastructure in the City and its adjacent waterways.⁷ Additionally, many commenters requested that APES be shut down until such time as additional safety and air monitoring controls are in place. Specifically, those commenters referenced an instance in which the facility operator had removed emissions control equipment, in 2006 without the knowledge or approval of DEQ - this particular incident is further discussed below in the "compliance history" section of this report.

Commenters described a wide range of negative health impacts associated with odors, which they believe to be highly toxic, that they attribute to the oil re-refining operations at the facility. Commenters raised concerns regarding the lack of site infrastructure to safely contain spills in the event of equipment failure or natural disaster, such as an earthquake. Commenters also expressed further concern about the storage and alleged burning of PCB-laden oil and the use of any used oil as a fuel source onsite. In addition, the commenters expressed fatigue and frustration with the government agencies that regulate APES because they believe that the regulatory oversight has been inadequate to protect the public's health. Commenters said that Metro should deny APES' solid waste facility license application because the applicant has failed to operate as a good neighbor. They also requested that Metro exercise its authority and work with other agencies to do more to protect human health and the environment.

Metro response to public comments

Although Metro has broad authority over solid waste, Metro's role for this site is limited to regulating the consolidation and transfer of cleanup material and oil-contaminated solid waste. Metro's oversight will include several unannounced inspections per year and will entail close regulatory coordination with DEQ to ensure that waste received at the site is properly managed and transferred to appropriate disposal sites. DEQ is the primary regulatory authority for this facility and is responsible for monitoring and enforcing the used oil processing, hazardous waste, and air quality requirements. While Metro does not regulate air quality requirements at the facility, Metro staff will continue to investigate odor complaints, perform routine inspections, and report any concerns or compliance issues to the appropriate regulatory agency such as DEQ.

Notwithstanding the concerns raised by the commenters, the proposed license is limited to a small aspect of APES' operations. The proposed license covers only the consolidation and transfer of solid waste – it does not address the aspects of the operation that are regulated by DEQ (such as emission control equipment, the re-refining process, overall air quality and associated human health impacts of activities at the site, spill containment, hazardous waste storage and disposal, potential site expansion, and onsite use of recycled oil as fuel source). Metro shares DEQ's interest in ensuring that facilities managing the region's waste and recyclable materials do so in ways that protect the environment and human health while minimizing impacts on the communities in which they are located. While the scope of Metro's proposed license at this site is specific to the activity of consolidating and reloading of debris,

⁷ City of Portland Resolution No. 37168 adopted on November 12, 2015

Metro will continue to work in partnership with DEQ and other agencies to ensure these goals are achieved.

COMPLIANCE HISTORY

In December 2016, DEQ entered into a Mutual Agreement and Order⁸ (MAO) with APES to install emission control equipment (thermal oxidizers) at the facility to reduce odors and volatile organic compound emissions. In 2006, the site's previous owner removed the facility's thermal oxidizer, an air pollution control device, and failed to notify DEQ as required. DEQ did not discover that the equipment had been illegally removed until an inspection in 2011, and it did not issue enforcement action because it was determined it would not be fair to penalize APES for a violation committed by the previous owner. The MAO required that APES install a thermal oxidizer by July 25, 2017. However, it failed to do so until August 22. DEQ subsequently issued APES a \$12,800 civil penalty⁹ for failing to meet the required deadline. APES has appealed the penalty and a final decision on that action is pending.

Notwithstanding the above-mentioned enforcement action, APES has complied with all of Metro requirements as directed and submitted a timely solid waste facility license application, non-system license application, and remitted outstanding fees and taxes to Metro.

METRO CODE REQUIREMENTS

Metro Code states that an applicant seeking to obtain a solid waste facility license must participate in a pre-application conference with Metro before submitting an application. APES participated in a pre-application conference with Metro on September 29, 2016. APES subsequently submitted to Metro a license application and the appropriate application fee of \$300 on April 7, 2017.

The application was initially incomplete due to the applicant providing insufficient details in its "Standard Operating Procedure – Used Absorbents/Oily Debris" document and other required documents. APES subsequently provided additional information as requested by Metro and the application was deemed complete on July 3, 2017. Although the revised operating plan that APES submitted to Metro was sufficient for purposes of determining whether to grant a new license, staff finds the revised plan does not fully address all of the proposed license requirements. APES hosted a meeting on September 19 with DEQ and Metro staff to seek clarification on required application revisions, and incorporated the additional details into a revised SOP that was submitted to Metro on October 10 and is under review. As such, staff recommend including a condition in the license that requires APES to maintain an approved operating plan (see section 6.1 of the proposed license for this additional condition).

5.01.070 Applications for Licenses

A license application must also include the following information:

- 1) *Proof that the applicant can obtain the types of insurance specified by the Chief Operating Officer during the license term;*

⁸ Mutual Agreement and Final Order No. AQ/AC-NWR-2016-217

⁹ Order and Demand for Payment of Stipulated Penalty Case No AQ/AC-NWR-2017-175- \$4,800 on 8/4/17 and \$8,000 on 9/15/17

APES has provided documentation demonstrating that it has met Metro's insurance requirements.

- 2) *A copy of all applications for necessary DEQ permits, any other information required by or submitted to DEQ, and a copy of any DEQ permits;*

APES has provided copies of all necessary information and permits required by the DEQ.

- 3) *A copy of any closure plan that DEQ requires, including documents demonstrating financial assurance for the costs of closure. If DEQ does not require a closure plan, the applicant must provide a closure document describing closure protocol for the solid waste facility at any point in its active life;*

APES has provided the necessary closure plan. DEQ does not require finance assurance for this facility.

- 4) *Signed consent by the property owner(s) agreeing to the proposed property use. The consent must also disclose the applicant's property interest and the duration of that interest. The consent must include a statement that the property owner(s) have read and agree to be bound by the provisions of Section 5.01.320(f) if Metro revokes the license or refuses any license renewal;*

Michael Mazza, is the property owner and has submitted a property use consent form.

- 5) *Proof that the applicant has received proper land use approval; or, if the applicant has not obtained land use approval, then a written recommendation of the planning director of the local governmental unit having land use jurisdiction regarding new or existing disposal sites, or alterations, expansions, improvements or changes in the method or type of disposal at new or existing disposal sites. The recommendation may include, but is not limited to, a statement of compatibility of the site, the solid waste disposal facility located thereon and the proposed operation with the acknowledged local comprehensive plan and zoning requirements or with the statewide planning goals of the Land Conservation and development Commission;*

APES has provided the necessary Land Use Compatibility Statement from the city of Portland, Oregon.

- 6) *Any current permit and a list of anticipated permits that a governmental agency may require. If the applicant has previously applied for a permit, the applicant must provide a copy of that permit application and any permit that any other government agency granted.*

APES has provided copies of all necessary permits.¹⁰

¹⁰ City of Portland Land Use Compatibility Statement 12/13/93, DEQ Standard Air Contamination Discharge Permit No. 26-3021-ST-01, City of Portland NPDES 1200-COLS Industrial Stormwater Discharge Permit File No. 100707 which will be superseded by NPDES 1200-Z.

STAFF RECOMMENDATION

Staff recommends the approval and issuance of Solid Waste Facility License No. L-175-17 to authorize APES to consolidate and transfer cleanup material and oil-contaminated waste for disposal. The proposed license commences immediately upon issuance and expires on June 30, 2022. A copy of the license is attached for your signature.

Attachment

HR
Queue