



REGION 9

SAN FRANCISCO, CA 94105

June 26, 2024

VIA EMAIL:

Robert Davies
Chief Executive Officer
APS BioGroup, Inc.
2235 South Central Avenue
Phoenix, AZ 85004
bob@apsbiogroup.com

RE: Notice of Proposed Assessment of a Clean Water Act Administrative Civil Penalty
In the Matter of APS BioGroup, Inc.

Dear Robert Davies:

The United States Environmental Protection Agency, Region 9 (EPA) has evidence indicating that APS BioGroup, Inc. (APS) violated section 307(a) of the Clean Water Act (CWA), 33 U.S.C. § 1317(a). This violation occurred through its bypass of its pretreatment system and discharging of process wastewater to the ground and to the stormwater drainage channel at its facility (Facility) located at 2235 South Central Avenue, Phoenix, Arizona. EPA also identified effluent limit violations of the Facility's Class A Wastewater Discharge Permit issued by the City of Phoenix. On August 23, 2022, EPA conducted a multimedia inspection of the Facility. In follow up to this inspection, on October 20, 2022, EPA issued an inspection report to the Facility which documented violations from October 12, 2019, to May 24, 2022.

EPA now writes to inform APS that it is prepared to initiate an administrative civil enforcement action for violations of section 307(a) of the CWA and to offer you the opportunity to discuss this matter with EPA. Prior to the filing of an administrative complaint for civil administrative penalties pursuant to EPA's Consolidated Rules of Practice at 40 C.F.R. Part 22. Section 309(g) of the CWA, 33 U.S.C. § 1319(g), authorizes EPA to assess administrative penalties for violations of the CWA of up to \$333,552, and Section 309(d) authorizes EPA to bring a civil action in federal district court seeking civil penalties of up to \$66,712 per day of violation for each violation. Under the terms of Section 309, EPA must consider the following factors in determining the amount of penalty it will seek: the seriousness of the violation(s), the economic benefit (if any) resulting from the violation, any history of such violations, any good-faith efforts to comply with the applicable requirements, the economic impact of the penalty on the violator, and other matters as justice may require.

EPA offers the opportunity to settle cases out of court to avoid the time and expense of litigation. If we are able to reach a settlement, we would enter into the Administrative Consent Agreement and Final Order to resolve the penalty aspect of this matter, which would make it unnecessary for EPA to file a complaint.

If the respective parties and EPA are unable to reach a settlement within a reasonable amount of time of initiating negotiations, EPA may initiate formal administrative penalty proceedings. The civil penalty proceedings will either be filed in a case before an administrative law judge or referred to the Department of Justice for filing in federal district court. EPA specifically reserves the right to use any and all enforcement tools at its disposal to address these violations by APS regardless of any future discussions in response to this letter.

EPA has not determined whether APS, either acting alone or in concert with another entity, constitutes a "small business" under the Small Business Regulatory Enforcement and Fairness Act (SBREFA). Information on compliance assistance or contacting the SBREFA Ombudsman to comment on federal enforcement and compliance activities may be found at <https://www.epa.gov/sies/production/files/2017-06/documents/smallbusinessinfo.pdf>. Any decision to communicate with the SBREFA Ombudsman or to otherwise seek compliance assistance through this program does not relieve you of your obligation to respond in a timely manner to this letter, any EPA information request or any enforcement action, and does not create any new rights or defenses under law.

Please consider the settlement negotiation opportunities being made available through this letter. To reach a settlement, we will need to begin pre-filing negotiations as soon as possible. If you wish to set up an initial meeting to discuss this matter, please contact Jim Polek at (415) 972-3185 or polek.jim@epa.gov or have your attorney contact Julia Jackson in the Office of Regional Counsel at (415) 972-3948 or jackson.julia@epa.gov within **fourteen (14) days** of receipt of this letter. Thank you for your prompt attention to this important matter.

Sincerely,

Roberto Rodriguez, Assistant Director
Enforcement and Compliance Assurance Division

CC Via Email:

Jorge Blanco, APS Production Manager, jorge.blanco@pantheryx.com

Enclosure – October 20, 2022 EPA Inspection Report