

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 10329/ March 29, 2017

SECURITIES EXCHANGE ACT OF 1934
Release No. 80333/ March 29, 2017

ADMINISTRATIVE PROCEEDING
File No. 3- 17892

In the Matter of

**Advanced Emissions Solutions,
Inc.,**

Respondent.

**ORDER INSTITUTING CEASE-AND-DESIST
PROCEEDINGS PURSUANT TO SECTION
8A OF THE SECURITIES ACT OF 1933 AND
SECTION 21C OF THE SECURITIES
EXCHANGE ACT OF 1934, MAKING
FINDINGS, AND IMPOSING A CEASE-AND-
DESIST ORDER**

I.

The Securities and Exchange Commission (“Commission”) deems it appropriate that cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 8A of the Securities Act of 1933 (“Securities Act”) and Section 21C of the Securities Exchange Act of 1934 (“Exchange Act”) against Advanced Emissions Solutions, Inc. (“Respondent” or “Advanced Emissions”).

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the “Offer”) which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission’s jurisdiction over it and the subject matter of these proceedings, which are admitted, Respondent consents to the entry of this Order Instituting Cease-and-Desist Proceedings Pursuant to Section 8A of the Securities Act of 1933 and Section 21C of the Securities Exchange Act of 1934, Making Findings, and Imposing a Cease-and-Desist Order (“Order”), as set forth below.

III.

On the basis of this Order and Respondent's Offer, the Commission finds¹ that

SUMMARY

1. This proceeding concerns reporting and internal accounting controls failures from at least 2011 through 2014 by Advanced Emissions, an environmental solutions company headquartered in Colorado. Throughout the period, Advanced Emissions' internal control over financial reporting was deficient. In addition, Advanced Emissions filed with the Commission materially misstated financial statements in annual, quarterly and current reports covering the period from at least 2011 through the third quarter of 2013. For example, Advanced Emissions (a) failed to record a large loss contingency in connection with an adverse arbitration ruling against the company; (b) prematurely recognized revenues on long-term contracts; (c) failed to properly account for warranty accruals; (d) improperly consolidated a joint venture; and (e) overstated revenues and gross profits from one of its subsidiaries.

2. In February 2016, Advanced Emissions filed restated financial statements to correct these and other errors. Indeed, its February 2016 restatement—filed after the company had not issued any periodic reports for almost two years beginning with the fourth quarter of 2013 and had its shares de-listed—restated numerous line-items in the company's financial statements from 2011 through 2013, as well as some line-items dating to 2010.

3. During the time period that Advanced Emissions reported materially misstated financial results, it raised over \$60 million in two equity offerings.

RESPONDENT

4. **Advanced Emissions** is a Delaware corporation headquartered in Colorado. Through its subsidiaries, the company provides environmental solutions to customers primarily in the power generation industry.² Advanced Emissions' shares are registered pursuant to Section 12(b) of the Exchange Act. Until its shares were de-listed on March 30, 2015, as a result of the company's failure to file current financial statements, shares of Advanced Emissions traded on the NASDAQ Capital Market. The company's shares were re-listed on the NASDAQ Global Market as of July 7, 2016.

¹ The findings herein are made pursuant to Respondent's Offer and are not binding on any other person or entity in this or any other proceeding.

² In 2013, Advanced Emissions undertook a restructuring pursuant to which Advanced Emissions Solutions, Inc. replaced ADA-ES, Inc. as the public, reporting company and ADA-ES, Inc. became a subsidiary of Advanced Emissions Solutions, Inc. As used herein, "Advanced Emissions" refers to the public reporting company (ADA-ES, Inc. prior to the 2013 restructuring and Advanced Emissions Solutions, Inc. following the restructuring).

FACTS

Background

5. Advanced Emissions had a history of material weaknesses in its internal control over financial reporting dating to at least 2006. Previously, Advanced Emissions reported in its 2006 annual report on Form 10-K a number of material weaknesses, including that it did not have a sufficient complement of personnel with training and experience in GAAP. In addition, in 2012, Advanced Emissions reported similar material weaknesses in its internal control over financial reporting and restated its 2010 and 2011 financial statements filed with the Commission to correct certain accounting errors (the “First Restatement”). The company did not adequately address these weaknesses.

6. In early 2014, certain accounting and internal accounting controls problems were identified by the company. In April and August 2014, the company announced that its financial statements for 2013 and 2011-12, respectively, should not be relied upon. Advanced Emissions failed to file any periodic reports with the Commission for almost two years from the fourth quarter of 2013 until February 2016.

7. Advanced Emissions ultimately restated numerous line-items in its financial statements originally filed from 2011 through 2013, as well as some line-items dating to earlier periods, in the 2014 annual report on Form 10-K that the company filed in February 2016 (the “Second Restatement”). The Second Restatement addressed errors relating to, among other things, (a) the company’s failure to record a large loss contingency in connection with an adverse arbitration ruling against the company; (b) the premature recognition of revenues on long-term contracts; (c) the failure to properly account for warranty accruals; (d) the improper consolidation of a joint venture; and (e) the overstatement of revenues and gross profits from one of its subsidiaries. The net effect of the Second Restatement was a significant reduction in previously reported revenues and net income.

8. Advanced Emissions’ materially false and misleading financial statements were included or incorporated in: (a) annual reports on Form 10-K from at least 2011 through 2012; (b) quarterly reports on Form 10-Q from at least the first quarter of 2011 through the third quarter of 2013; (c) current reports on Form 8-K reporting Advanced Emissions’ financial results from at least the first quarter of 2011 through the third quarter of 2013; and (d) a January 28, 2011 registration statement on Form S-3.

9. During the period in which Advanced Emissions issued materially false financial statements and had pervasive internal accounting controls failures, Advanced Emissions sold stock in public offerings. Advanced Emissions raised net proceeds of approximately \$32.7 million in November 2011 and approximately \$29 million in November 2013 in offerings made pursuant to the January 28, 2011 registration statement on Form S-3.

Failure to Record Loss Contingency Relating to Adverse Ruling in Arbitration

10. In 2011, Advanced Emissions failed to record the long-term liability associated with a portion of an adverse arbitration ruling against Advanced Emissions and certain affiliated entities. The company recorded a small short-term liability associated with this portion of the ruling. The failure to record an appropriate long-term liability caused Advanced Emissions to materially under-report its expenses and long-term liabilities in 2011 and its liabilities in subsequent periods.

11. In 2008, a manufacturer with which Advanced Emissions had a prior contractual relationship filed a lawsuit against Advanced Emissions and certain Advanced Emissions affiliates, alleging misappropriation of trade secrets and breach of a non-solicitation provision of the parties' market development agreement. The dispute primarily related to the activities of a joint venture partner of Advanced Emissions that produced activated carbon (the "AC JV"). Advanced Emissions had an indemnity obligation to the AC JV and a wholly-owned subsidiary of the AC JV. The lawsuit was a significant event for the company and Advanced Emissions disclosed in filings with the Commission that the suit could have a material adverse impact on the company's business and financial condition.

12. The dispute was later brought before an arbitration panel, which issued an interim adverse ruling against Advanced Emissions on April 8, 2011. The interim adverse ruling had two components: (a) holding Advanced Emissions liable for \$37.9 million in damages for breach of the non-solicitation provision (fixed amount); and (b) holding Advanced Emissions jointly and severally liable for an amount calculated as a percentage of the gross revenues generated by the AC JV through 2018 (the "variable amount"). As a result of its contractual indemnity obligation, Advanced Emissions was obligated to pay the full variable amount.

13. Within days of the arbitration panel's adverse ruling, the then-CFO, along with other members of Advanced Emissions' management and Board of Directors, discussed how to record the adverse ruling in the upcoming quarterly report for the quarter ending March 31, 2011. Several individuals, including Advanced Emissions' then-CFO, expressed concerns regarding the impact that the accounting for the adverse ruling would have on Advanced Emissions' business prospects. For example, during an April 12, 2011 Board of Directors meeting, the attendees discussed "the importance of not putting the company in an inferior competitive position because of the way the accounting financials were portrayed [regarding the amounts due under the adverse ruling] and the importance of keeping the current liability number appropriately and accurately small until there was more clarity in terms of the final award."

14. GAAP provides that a loss contingency should be recorded if the loss is probable and reasonably estimable (ASC 450-20-25).³ GAAP further states that the requirement of a reasonably estimable amount, "shall not delay accrual of a loss until only a single amount can be reasonably estimated. To the contrary, when the condition in paragraph 450-20-25-2(a) is met and

³ Effective for interim and annual periods ending after September 15, 2009, FASB codified authoritative accounting literature in the Accounting Standards Codification.

information available indicates that the estimated amount of loss is within a range of amounts, it follows that some amount of loss has occurred and can be reasonably estimated.”

15. In the days after the interim adverse ruling was issued, Advanced Emissions’ then-CFO prepared a spreadsheet with an estimate of Advanced Emissions’ indemnity obligation with regard to the variable amount for each year from 2011 through 2018. The analysis, which was circulated to other members of management and the Board of Directors, estimated an amount of over \$36 million that Advanced Emissions could potentially record as a long-term liability for its indemnity obligation with regard to the variable amount of the adverse ruling. Accordingly, under GAAP, a loss contingency in connection with the variable amount should have been reflected within the 2011 financial statements since the liability was probable and reasonably estimable.

16. Advanced Emissions subsequently entered into settlement agreements in August and November 2011 that, like the terms of the adverse ruling, obligated the company to make variable payments through 2018. The company updated its internal estimates of its indemnity obligation for the variable amount to take account of the final settlement terms. For example, in a November 2011 communication following Advanced Emissions’ entry into the settlement agreements, the then-CFO stated his estimates of the amounts that Advanced Emissions would pay annually through 2018 to satisfy its variable amount obligation. In addition, in June 2012, the then-CFO drafted a memorandum to be sent to the Division of Corporation Finance of the Commission, an early draft of which included similar estimates of annual payments that Advanced Emissions would make in connection with its variable amount obligation. An accounting consultant hired by Advanced Emissions, who reviewed a draft of the memorandum, noted that the company should be prepared to explain to the Commission why it had not recorded an expense or liability in connection with the variable amount owed by Advanced Emissions. Advanced Emissions did not re-evaluate its decision not to record any liability in connection with the variable amount in response to the question.

17. Advanced Emissions did not record a long-term liability or associated expenses in connection with the variable amount at any time prior to the Second Restatement. Instead, the company reported the expenses on a quarterly basis as they were incurred.

18. As part of the Second Restatement, Advanced Emissions recorded a long-term liability and expense of approximately \$25.9 million in 2011, resulting in a material reduction in 2011 income and material increase in long-term liabilities in 2011 and subsequent periods as compared to the amounts that had previously been reported.

Premature Recognition of Revenue on Long-Term Contracts

19. Advanced Emissions’ accounting for revenues on long-term contracts from 2007 through 2013 also did not comply with GAAP, resulting in the premature recognition of revenues in connection with the company’s emission control contracts.

20. As part of its emission control business, Advanced Emissions routinely entered into long-term contracts with customers—contracts that often took months, or even years, to complete.

Until 2006, Advanced Emissions sub-contracted with another manufacturer for the construction of emission control systems, which Advanced Emissions designed. Advanced Emissions began self-performing these contracts in 2007. Even after it began self-performing the contracts, however, Advanced Emissions lacked the capacity to build the tanks that were a significant aspect of the emission control contracts.

21. Shortly after Advanced Emissions began self-performing the contracts, it adopted the percentage-of-completion methodology to account for revenues on the emission control contracts. Under the policy, Advanced Emissions used labor hours as the method of input to determine the percent by which each project was completed (by comparing the labor hours expended to the total labor hours expected to be necessary in order to complete the contract). The policy was reviewed and approved by the company's then-CFO.

22. A company memorandum documenting the accounting policy, which Advanced Emissions' then-CFO reviewed and approved, cited AICPA Statement of Position 81-1 (ASC 605-35) as the GAAP relevant to percentage of completion for long-term contracts. The provision states, among other things, that if a contractor uses labor hours as the input method, estimated total labor hours should include "(a) the estimated labor hours of the contractor and (b) the estimated labor hours of subcontractors engaged to perform work for the project, if labor hours of subcontractors are a significant element in the performance of the contract. . . . ***If the contractor is unable to obtain reasonably dependable estimates of subcontractors' labor hours at the beginning of the project and as work progresses, he should not use the labor-hours method.***" SOP 81-1.48, as codified in ASC 605-35-25-72 through 25-73 (emphasis added).

23. Advanced Emissions, however, failed to include the incurred or projected labor hours of the tank manufacturers—the most significant cost in most emission control contracts—in calculating the percent by which its contracts were complete for the purpose of reporting revenues. The CFO at the time and members of his team did not attempt to obtain the incurred or projected labor hours from the tank manufacturers.

24. Because the engineering labor hours of Advanced Emissions employees were typically expended earlier than the labor hours of the tank manufacturers, the failure to include the projected or incurred manufacturers' labor hours resulted in Advanced Emissions' premature recognition of revenues.

25. As part of the Second Restatement, Advanced Emissions determined that it could not make reasonably dependable estimates of labor hours and applied the completed contract methodology for recognizing long-term contracts—*i.e.*, it would only recognize revenues upon the completion of the contract. The change resulted in a reduction in previously reported revenues of more than \$24 million in the first three quarters of 2013 alone, a portion of which was recognized in later quarters.

Failure to Properly Account for Warranty Accruals

26. Advanced Emissions instituted a policy that resulted in the systematic over-accrual of warranty liabilities and, when the error was identified in early 2013, it failed to properly correct the error in its financial statements.

27. Advanced Emissions typically provided a warranty to its emission control customers that covered equipment and a separate warranty to these customers that covered contractual performance (*e.g.*, warranties concerning the level of pollutant reduction). The terms of the warranties, including the length of the warranties, were set forth in Advanced Emissions' customer contracts. Through 2012, Advanced Emissions typically reserved 1-2% of expected revenues on each project for the equipment warranty and between 2% to 5% of expected revenues for the performance warranty, depending upon the level of risk. Advanced Emissions tracked the warranty accruals on a project-by-project basis.

28. Until 2013, Advanced Emissions did not reduce the warranty liability for any given project when the warranty period had expired. Instead, reserves for expired warranties remained on the company's books and continued to be reported as "accrued warranty and other liabilities" on the balance sheet of the company's financial statements. Advanced Emissions' failure to reduce its reserve when warranties had expired caused the reserve to be overstated and not a reasonable estimate of the amount of loss incurred. GAAP requires, with respect to loss contingencies, that "[i]f some amount within a range of loss appears at the time to be a better estimate than any other amount within the range, that amount shall be accrued." *See* ASC 450-20-30-1.

29. In January 2013, at the request of Advanced Emissions' then-CFO, members of Advanced Emissions' finance department undertook an analysis to identify accrued warranty liabilities relating to warranties that had already expired, so that these liabilities could be reversed. Although the potential overstatement was identified by at least January 2013, which was before Advanced Emissions filed its 2012 annual report on Form 10-K, the CFO at the time improperly decided that any reversal of warranty liabilities would take place in 2013.

30. The finance department's analysis, which was completed in late March 2013, determined that over two-thirds of the amounts related to warranty liabilities had already expired. Rather than correct the warranty accrual at that time, however, the then-CFO instructed his team to reverse the over-accrual in equal amounts over ten months. This practice was not in accordance with GAAP, which requires that the company present its best estimate for a liability in the current reporting period. *See* ASC 450-20-30.

31. In the quarterly reports for the first three quarters of 2013, Advanced Emissions did not disclose that it had reversed previously accrued liabilities. Rather, the quarterly reports merely showed the net amount of accrued warranty liabilities (*i.e.*, the amount of new accruals for new projects net of the liabilities that it reversed for projects where the warranty obligation had expired). Advanced Emissions' failure to disclose that the accruals represented amounts for newly accrued liabilities netted against reversals of prior accruals was not in compliance with GAAP, which provides that a tabular reconciliation of changes in the guarantor's aggregate product

warranty liability for the period be presented, including the aggregate changes in the liability for preexisting warranties (including adjustments for changes in estimates). *See* ASC 460-10-50-8c. This failure also had the effect of making the company's previous error in over-accruing warranty reserves difficult to identify.

32. As part of the Second Restatement, Advanced Emissions reduced its warranty accruals from the amounts it had previously reported dating to at least 2011.

Failure to Properly Evaluate Whether to Consolidate Financial Results of a Joint Venture

33. As of 2007, Advanced Emissions' joint venture, Clean Coal Solutions ("CCS"), was 50% owned by Advanced Emissions and 50% owned by another company. Advanced Emissions concluded at the time that it should consolidate the results of CCS in its financial statements pursuant to FASB Interpretation No. 46(R) ("FIN 46(R)") "Consolidation of Variable Interest Entities."

34. In June 2009, Financial Accounting Standard No. 167 ("FAS 167") was issued to amend FIN 46(R) and was effective for Advanced Emissions' fiscal year 2010.⁴ FAS 167 amended previous guidance to require that an enterprise identify which activities most significantly impact an entity's economic performance and determine whether it has the power to direct those activities. Advanced Emissions, however, did not evaluate whether it was appropriate to continue to consolidate CCS in 2010 in light of the new accounting guidance.

35. In mid-2011, Advanced Emissions sold part of its stake in CCS, resulting in Advanced Emissions and its joint venture partner each owning a 42.5% interest in CCS, with a third party owning 15%. The company concluded that it was still proper to consolidate CCS at this time, but did not perform an analysis under FAS 167 to support the conclusion.

36. Even when a consultant hired by Advanced Emissions questioned whether it was appropriate to consolidate CCS in 2012, the consolidation of CCS was not further evaluated by Advanced Emissions' then-CFO.

37. As part of the Second Restatement, Advanced Emissions determined that, under FAS 167, it was not proper to report CCS's financial results on a consolidated basis. The de-consolidation of CCS had a material impact on the presentation of Advanced Emissions' financial statements.

⁴ The guidance reflected in FAS 167 was codified as part of ASC 810 "Consolidation."

Failure to Properly Eliminate, and Overstatement of, Revenues of BCSI, LLC

38. In August 2012, Advanced Emissions through its wholly-owned subsidiary, BCSI, LLC (“BCSI”), acquired the assets of two related privately-held companies. BCSI had the capacity to construct certain types of emission control systems.

39. After the asset purchase, Advanced Emissions’ then-CFO was informed that BCSI staff had no professional accounting training. As BCSI increased its operations, Advanced Emissions identified numerous problems with the reliability of the financial data obtained from BCSI.

40. For example, after visiting BCSI headquarters in June 2013, an employee in Advanced Emissions’ finance department noted, in an email to the then-CFO, a number of problems including (a) the existence of contracts where the revenue recognized exceeded the contract value; (b) misclassification of expenses between overhead and costs of goods sold; and (c) that there were reasons to call into question the use of a 30% assumed margin in recognizing revenues and costs. Likewise, the CFO at the time noted in a June 2013 email that “[t]he flow of information from BCSI is sometimes hit or miss . . . The lack of cost accounting at BCSI is a problem . . .” In addition, a September 2013 report concerning BCSI, which was provided to the then-CFO, indicated that basic information concerning BCSI’s projects was missing from the relevant accounting system.

41. Notwithstanding these known problems, Advanced Emissions reported BCSI’s revenues using a percentage-of-completion methodology in connection with BCSI’s performance of emission control contracts (including certain contracts that BCSI performed on its own and others performed in conjunction with another Advanced Emissions subsidiary). The percentage-of-completion methodology, however, requires, among other things, the use of accurate data concerning costs and project status. Because Advanced Emissions did not have this type of accurate data from BCSI, yet continued to use the percentage-of-completion methodology, the company over-reported BCSI’s revenues and gross profits in at least the Form 10-Q for the first quarter of 2013.

42. Advanced Emissions also failed to properly eliminate inter-company revenues in connection with certain BCSI projects. There were several projects in 2013 where both BCSI and another subsidiary of Advanced Emissions performed work. BCSI recorded revenues that it expected to receive from the other subsidiary. Advanced Emissions, however, failed to eliminate these revenues when reporting its consolidated results; the company eliminated only the gross profits on those projects. This error resulted in double-counting certain revenues in Advanced Emissions’ financial statements for the first three quarters of 2013.⁵

⁵ Because Advanced Emissions applied the completed contract methodology to recognize revenues for emission control contracts in connection with its Second Restatement, it did not recognize any revenues for BCSI for the first three quarters of 2013 in the restatement as no BCSI projects were completed during that time period.

Advanced Emissions Reveals the Extent of the Material Weaknesses in Its Internal Control Over Financial Reporting

43. In its Second Restatement, Advanced Emissions concluded that its internal control over financial reporting was not effective. The Second Restatement detailed 15 material weaknesses that fell into the following three categories:

- Ineffective risk assessment, control environment and monitoring to support the financial reporting process
- Insufficient technical accounting expertise, inadequate policies and procedures related to accounting, human resources and vendor management matters, and inadequate management review in the financial reporting process
- Ineffective information technology (IT) general controls. Ineffective process to manage change or appropriately restrict access to the information technology environment and critical financial applications

44. Advanced Emissions further concluded that it had “insufficient qualified personnel with appropriate expertise to perform accounting functions necessary to ensure preparation of financial statements in accordance with generally accepted accounting principles” and that it did not “have sufficient technical accounting expertise, to address both routine and complex accounting matters.” Nearly identical controls weaknesses had been identified in previous years, but were not adequately addressed. These extensive accounting control failures led to the significant, material misstatements in the company’s financial statements dating back to at least 2011.

45. Following the events described above, Advanced Emissions experienced significant leadership changes. In addition to replacing its then-CFO, the company subsequently retained a new senior management team, new finance and accounting personnel, and a new director who assumed the role of Audit Committee Chair.

VIOLATIONS

46. As a result of the conduct described above, Advanced Emissions violated Sections 17(a)(2) and 17(a)(3) of the Securities Act [15 U.S.C. §§ 77q(a)(2) & (3)], which make it unlawful for any person in the offer or sale of any securities by the use of any means or instruments of transportation or communication in interstate commerce or by use of the mails, directly or indirectly, to obtain money or property by means of any untrue statement of a material fact or any omission to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; or to engage in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon the purchaser. Negligence is sufficient to establish violations of Sections 17(a)(2) and 17(a)(3) of the Securities Act. *See Aaron v. SEC*, 446 U.S. 680, 697, 701-02 (1980).

47. As a result of the conduct described above, Advanced Emissions violated Section 13(a) of the Exchange Act [15 U.S.C. § 78m(a)], and Rules 12b-20, 13a-1, 13a-11 and 13a-13 thereunder [17 C.F.R. §§ 240.12b-20, 240.13a-1, 240.13a-11 and 240.13a-13], which require every issuer of a security registered pursuant to Section 12 of the Exchange Act to file with the Commission information, documents, and annual, quarterly and current reports as the Commission may require, and mandate that periodic reports contain such further material information as may be necessary to make the required statements not misleading.

48. As a result of the conduct described above, Advanced Emissions violated Section 13(b)(2)(A) of the Exchange Act [15 U.S.C. § 78m(b)(2)(A)], which requires reporting companies to make and keep books, records, and accounts, which, in reasonable detail, accurately and fairly reflect their transactions and dispositions of their assets.

49. As a result of the conduct described above, Advanced Emissions also violated Section 13(b)(2)(B) of the Exchange Act [15 U.S.C. § 78m(b)(2)(B)], which requires all reporting companies to devise and maintain a system of internal accounting controls sufficient to provide reasonable assurances that transactions are recorded as necessary to permit preparation of financial statements in accordance with generally accepted accounting principles.

ADVANCED EMISSIONS' COOPERATION

In determining to accept the Offer, the Commission considered the Respondent's cooperation afforded the Commission staff.

IV.

In view of the foregoing, the Commission deems it appropriate to impose the sanctions agreed to in Respondent Advanced Emissions' Offer.

Accordingly, it is hereby ORDERED that:

A. Pursuant to Section 8A of the Securities Act, and Section 21C of the Exchange Act, Respondent Advanced Emissions cease and desist from committing or causing any violations and any future violations of Section 17(a)(2) and (3) of the Securities Act, Sections 13(a), 13(b)(2)(A) and 13(b)(2)(B) of the Exchange Act and Rules 12b-20, 13a-1, 13a-11, and 13a-13 thereunder.

B. Respondent shall, within 14 days of the entry of this Order, pay a civil money penalty in the amount of \$500,000 to the Securities and Exchange Commission. The Commission may distribute civil money penalties collected in this proceeding if, in its discretion, the Commission orders the establishment of a Fair Fund pursuant to 15 U.S.C. § 7246, Section 308(a) of the Sarbanes-Oxley Act of 2002, as amended. The Commission will hold funds paid pursuant to this paragraph in an account at the United States Treasury pending a decision whether the Commission, in its discretion, will seek to distribute funds or, subject to Exchange Act Section 21F(g)(3), transfer them to the general fund of the United States Treasury. If timely payment is not made, additional interest shall accrue pursuant to 31 U.S.C. §3717.

Payment must be made in one of the following ways:

- (1) Respondent may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;
- (2) Respondent may make direct payment from a bank account via Pay.gov through the SEC website at <http://www.sec.gov/about/offices/ofm.htm>; or
- (3) Respondent may pay by certified check, bank cashier's check, or United States postal money order, made payable to the Securities and Exchange Commission and hand-delivered or mailed to:

Enterprise Services Center
Accounts Receivable Branch
HQ Bldg., Room 181, AMZ-341
6500 South MacArthur Boulevard
Oklahoma City, OK 73169

Payments by check or money order must be accompanied by a cover letter identifying Advanced Emissions Solutions, Inc. as a Respondent in these proceedings, and the file number of these proceedings; a copy of the cover letter and check or money order must be sent to Antonia Chion, Division of Enforcement, Securities and Exchange Commission, 100 F St., NE, Washington, DC 20549-5720.

C. Regardless of whether the Commission in its discretion orders the creation of a Fair Fund for the penalties ordered in this proceeding, amounts ordered to be paid as civil money penalties pursuant to this Order shall be treated as penalties paid to the government for all purposes, including all tax purposes. To preserve the deterrent effect of the civil penalty, Respondent agrees that in any Related Investor Action, it shall not argue that it is entitled to, nor shall it benefit by, offset or reduction of any award of compensatory damages by the amount of any part of Respondent's payment of a civil penalty in this action ("Penalty Offset"). If the court in any Related Investor Action grants such a Penalty Offset, Respondent agrees that it shall, within 30 days after entry of a final order granting the Penalty Offset, notify the Commission's counsel in this action and pay the amount of the Penalty Offset to the Securities and Exchange Commission. Such a payment shall not be deemed an additional civil penalty and shall not be deemed to change the amount of the civil penalty imposed in this proceeding. For purposes of this paragraph, a "Related Investor Action" means a private damages action brought against Respondent by or on behalf of one or more investors based on substantially the same facts as alleged in the Order instituted by the Commission in this proceeding.

D. Respondent acknowledges that the Commission is not imposing a civil penalty in excess of \$500,000 based upon its cooperation in a Commission investigation. If at any time following the entry of the Order, the Division of Enforcement (“Division”) obtains information indicating that Respondent knowingly provided materially false or misleading information or materials to the Commission, or in a related proceeding, the Division may, at its sole discretion and with prior notice to the Respondent, petition the Commission to reopen this matter and seek an order directing that the Respondent pay an additional civil penalty. Respondent may contest by way of defense in any resulting administrative proceeding whether it knowingly provided materially false or misleading information, but may not: (1) contest the findings in the Order; or (2) assert any defense to liability or remedy, including, but not limited to, any statute of limitations defense.

By the Commission.

Brent J. Fields
Secretary