

**BEFORE THE ENVIRONMENTAL APPEALS BOARD
FOR THE STATE OF DELAWARE**

In the Matter of)
)
NOTICE OF CONCILIATION) **EAB No. 2025-**
AND SECRETARY’S ORDER)
No. 2025-A-0038)

STATEMENT OF APPEAL BY DELAWARE CITY REFINING COMPANY LLC

Delaware City Refining Company LLC (“DCRC”), by and through its counsel, submits the instant appeal of an action of the Secretary of the Delaware Department of Natural Resources and Environmental Control (“DNREC”). In support of this appeal and stay request, DCRC avers as follows:

I. BACKGROUND TO APPEAL

1. This appeal (“Appeal”) is taken from issuance by the Secretary of DNREC of the Notice of Conciliation and Secretary’s Order No. 2025-A-0038 dated December 12, 2025 (the “Order”). DCRC received service of the Order on December 12, 2025. The Order alleges that DCRC acted in noncompliance with 7 *Del. C.* Ch. 60, state air regulations, and its Title V Permit. A copy of the Order is attached hereto as Exhibit A.

2. DCRC operates a petroleum refinery located at 4550 Wrangle Hill Road, Delaware City (the “Refinery”). DCRC operates certain regulated emission sources at the Refinery, and such sources, as appropriate, are governed by air quality permits issued by DNREC pursuant to its Title V regulations 7 *Del. Admin. C.* § 1130 (referred to collectively herein as the “Title V Permit”). The Title V permit includes and imposes certain emission limitations and operating requirements on the Refinery.

3. The Order addresses a single release from DCRC’s Ether Plant (the “Ether Plant”) that occurred at the Refinery between the evening of November 26, 2025 through the afternoon of November 27, 2025—Thanksgiving Day (the “Release”). The Release was an isolated, single-occurrence event that resulted in unpermitted emissions including butane and butane compounds. The Release involved the escape of emissions from the Ether Plant cooling tower, an air emission source authorized by the Refinery’s Title V Permit. However, because the Release resulted from an unanticipated and anomalous equipment malfunction, the emissions themselves are not authorized by the Title V Permit or otherwise. In responding to the Release, DCRC personnel acted reasonably to locate the source of the leak and to stop the leak promptly.

4. The Release was attributable to a power interruption at the Refinery caused by service work being performed by Delmarva outside the Refinery. The technical details explaining why the Release occurred, the Refinery’s response thereto, and the planned corrective actions are presented in the Refinery’s written 30-day notification, submitted to DNREC on December 24, 2025 pursuant to Regulation 1203 (7 Del. Admin. C. § 1203-2.0). A copy of the Refinery’s 30-day notification is attached hereto as Exhibit B and incorporated herein in its entirety.

5. DCRC reported the Release pursuant to Section 2.5 of Regulation 1203 “Reporting of a Discharge of a Pollutant or Air Contaminant.” Reporting in accordance with Regulation 1203 is expressly limited to “Environmental Releases,” which are defined in the same regulation as “any spillage, leakage, emission, discharge, or delivery into the air or waters or on or into the lands of this State, of any sewage of 10,000 gallons

or more, oil, industrial waste, liquid waste, hydrocarbon chemical, hazardous substance, hazardous waste, restricted chemical material, vessel discharge, air contaminant, pollutant, regulated biological substance or other wastes reportable pursuant to the Comprehensive Environmental Response, Compensation and Liability Act of 1980 as amended, or this Regulation.” Because Environmental Releases reportable under Regulation 1203 are by definition unauthorized releases, the Refinery did not – nor was it required to – report the Release in accordance with the Title V Permit.

6. The Refinery was served with a copy of the Order on December 12, 2025 and filed this Statement of Appeal on December 31, 2025, fewer than 20 days later. Accordingly, this Statement of Appeal is timely filed in accordance with 7 *Del. C.* § 6008(a) and Section 1.1 of the Regulations of the Environmental Appeals Board (the “Board”). *See* 7 *Del. Admin. C.* § 105-1.1.

7. The Order includes a number of injunctive relief requirements that purport to require the Refinery to install and begin operating within seventy (70) days of receipt of the Order a real-time fence line air sensor system measuring total volatile organic compounds (“VOC”) as non-methane hydrocarbons (“NMHC”) (the “Proposed Monitors”). According to the Order, the Proposed Monitors must provide real-time sensing of VOC and NMHC in both five minute and one-hour averages as well as wind speed and direction. The Proposed Monitors must include at least five sensors placed along the fence line from a selection of existing benzene monitoring locations, intended to reasonably cover 360 degrees surrounding the Refinery.

8. In accordance with Section 2.3 of the Board's Regulations, a \$50 deposit for costs accompanies this Appeal.

II. BASIS FOR APPEAL

A. The Interest Which Has Been Substantially Affected

9. DCRC's interests have been substantially affected by the issuance of the Order because DNREC's interpretations of permit-based and regulatory-based standards as applied to the Refinery, and DNREC's related effort to compel certain actions by DCRC, are inconsistent with the Refinery's Title V Permit, contrary to law and fact, and otherwise constitute an abuse of discretion for the reasons set forth below. The injunctive relief obligations purported to be imposed on DCRC by DNREC through the Order are also more stringent than required under and/or inconsistent with applicable law, unduly burdensome, inappropriate as corrective measures intended to be responsive to the circumstances of the Release, technically and practically infeasible to implement within the extremely short compliance period prescribed by the Order, and finally, unnecessary to fulfill the purposes of 7 *Del. C.* § 6001 *et seq.* (the "Delaware Environmental Control Statute") and Delaware's regulations governing the control of air pollution.

10. Additionally, DCRC's interests have been substantially affected by the issuance of the Order because, if upheld, it would require DCRC to undertake several corrective actions that are not responsive to the conditions that caused the Release and would not be effective in either assisting in preventing or mitigating a similar release in the future or alerting Refinery personnel to a similar release thereby reducing response time, and ultimately, the total quantity of constituents released. Even if the Proposed

Monitors had been installed and were operational before the Release, the circumstances characterizing the Release would have been the same insofar as the VOC concentrations present during the Release were so low, they were not even detectable at the base of the stack of the Ether Plant cooling tower – let alone at the fenceline. Indeed, it was only when Refinery personnel climbed more than halfway up the outside of the stack that handheld monitors detected elevated VOC concentrations. Moreover, the need for the installation of the Proposed Monitors is contradicted by DNREC’s own Findings of Fact contained in the Order and contrary to the plain language of applicable statutory and regulatory provisions pursuant to which the Order was issued.

B. Allegation That The Decision Is Improper

11. For the reasons set forth herein, DCRC asserts that the Order, including all actions described on pages 6–8 therein, is improper because it is not supported by substantial evidence, is contrary to law and fact, is arbitrary and capricious and constitutes an abuse of discretion.

C. Reasons Why The Decision Is Improper

12. As described below, the Order is improper, not supported by substantial evidence, is contrary to law and fact, is arbitrary and capricious and constitutes an abuse of discretion for several reasons. The absence of a specific refutation of individual allegations should not be construed as an admission by DCRC as to any fact or legal conclusion included within the Order. Instead, except as specifically stated herein, DCRC does not admit the allegations and/or legal conclusions contained within the

Order, and DCRC expressly reserves all rights and defenses relative to such allegations and/or legal conclusions.

i. **The Order’s Factual Findings Regarding the Release Contradict The Legal Basis For the Ordered Actions, Including Without Limitation, the Proposed Monitors**

13. The Order contains Background and Findings of Fact Sections upon which DNREC claims justify requiring DCRC to take certain actions, specifically installing and operating the Proposed Monitors. As recounted in the Background (and as detailed in the Refinery’s 30-day notification attached as Exhibit B), DCRC made an initial report of the Release on November 27 based on the information available to DCRC at that time. Order at 2 (“On November 27, [DCRC] notified the Department of a release of butane exceeding the reportable quantity threshold.”). After further investigation, DCRC discovered that the Release lasted for a longer period of time than initially reported and contained butane compounds in addition to butane. Order at 3. The total emissions released during the incident were approximately 108.75 tons of VOCs. *Id.*¹

14. Thereafter, the Order memorializes nine (9) Findings of Fact. Most relevant here, the Order notes that the Release was a finite event, stating that the Release “began at approximately 9:02 p.m. on November 26, 2025, and continued until approximately 3:46 p.m. on November 27, 2025.” Order at 4. Additionally, there are no Findings of Fact suggesting that the Release is likely to reoccur or that it posed any danger to human health or the environment. *See generally* Order at 4–5. In fact, DNREC issued a press release the same day it issued the Order in which DNREC stated there was

¹ DCRC subsequently provided updated information in its December 24, 2025 notification, attached hereto as Exhibit B, including updated estimates of the quantities of VOC and NMHC released.

“no threat to public health when the release occurred and no long-term concern.”² In the same press release, DNREC noted that the Release resulted in butane concentrations “at the property line and beyond [that] were below occupational health exposure standards, suggesting a low risk to ambient air quality standards in the Delaware City Area.” *Id.*

15. Nevertheless, the Order states that “in consideration of the foregoing findings, notice is hereby given that pursuant to 7 *Del. C.* § 6005(b)(2), [DCRC] is ordered to undertake the following actions to address the immediate concern for public and facility safety.” Order at 6. In fact, DNREC’s “foregoing findings” as well as DNREC’s own press statements confirm that there was no concern for public or facility safety, let alone one that would be addressed by the ordered actions.

16. First, 7 *Del. C.* § 6005(b)(2) may only be invoked for *continuing violations*. 7 *Del. C.* § 6005(b)(2) (“Whoever violates this chapter or any rule or regulation duly promulgated thereunder, or any condition of permit issued . . . shall be punishable as follows: If the violation is continuing, the Secretary may seek . . . a temporary restraining order or permanent injunction.”). DNREC has not put forth any findings that the violation is continuing, instead finding that the violation was complete on November 27, 2025. There is no factual or legal basis for invoking 7 *Del. C.* § 6005(b)(2).

17. On the other hand, 7 *Del. C.* § 6005(b)(1) relates to completed violations and authorizes the Secretary to take one action with respect to such completed violations:

² DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL, AIR QUALITY DIVISION, *DNREC Demands Delaware City Refinery Install New Fenceline Air Sensors After Volatile Compound Release* (Dec. 12, 2025), <https://news.delaware.gov/2025/12/12/dnrec-demands-delaware-city-refinery-install-new-fenceline-air-sensors-after-volatile-compound-release> (last visited December 23, 2025).

issue a civil penalty. *See 7 Del. C. § 6005(b)(1)* (“Whoever violates this chapter or any rule or regulation duly promulgated thereunder, or any condition a of permit issued . . . shall be punishable as follows: If the violation has been completed, by a civil penalty.”). To the extent that any enforcement by DNREC is justified in this case, it must therefore be limited to issuance of a civil penalty. However, the Order contains no such penalty.

18. DNREC may also seek additional relief under *7 Del. C. § 6005(b)(1)* for completed violations for which “there is a substantial likelihood that it will reoccur.” DNREC made no factual findings that indicate there is any likelihood of reoccurrence, let alone that there is a substantial likelihood of reoccurrence. As DCRC detailed in its 30-day notification of the Release, the tube leak from which the VOC and NMHC compounds were released was the result of a combination of anomalous conditions that were initiated by utility work being performed outside the Refinery. Following the Release and completion of the Refinery’s root cause investigation, the Refinery determined to make certain changes to the mechanical plug (material and insertion) in the E103 tube, which was determined to be the source of the Release when a power surge dislodged the mechanical plug from an ether unit exchanger. Furthermore, the Refinery has restored the LEL monitor in the Cooling Tower to full service and is committed to installing an additional LEL monitor in another Cooling Tower as well. These changes will exceed industry standards for such equipment. Accordingly, to the extent it is even possible to evaluate the likelihood of recurrence of a set of conditions caused by a power interruption external to the Refinery, the likelihood of a similar release in the future is less now – with the Refinery’s plan to enhance the mechanical plug components – than it

was before the Release occurred in November. Without such findings, DNREC cannot lawfully order DCRC to take any action with respect to this completed violation.

ii. **The Findings and Conclusions Regarding the Release as A Title V Permit Violation Are Inconsistent with Applicable Authority**

19. The Order takes the position DCRC has violated its Title V Permit because the VOCs that were accidentally emitted during the Release exceed the annual VOC limit of 5.5 TPY for Ether Plant Cooling Tower. *See* Title V Permit Condition 3 – Table 1.g.1.i. There is no factual, legal, or technical support for the Secretary’s position.

20. The annual limit of 5.5 TPY applies to *permitted* emissions during normal operating conditions from the Ether Plant Cooling Tower. This is the only operating scenario contemplated by the underlying permit application giving rise to the relevant Title V Permit condition, and thus the only operating scenario that can be authorized by the Title V Permit as a legal matter in accordance with the federal Clean Air Act Title V program, as implemented by DNREC, and DNREC’s own environmental control statutory and regulatory authority. By contrast, the VOCs emitted during the Release were not during normal operations nor were they permitted emissions. Rather, the unpermitted emissions were caused when Delmarva’s service of electricity to the Refinery was interrupted at approximately 8:57pm on November 26, 2025. The power disruption caused unit pumps within the Ether Plant Cooling Tower to shut off. When power was restored, there was a power surge that dislodged a mechanical plug from an ether unit exchanger, 43-E-103A/B, which returns cooling water to the cooling tower. The dislodging of the mechanical plug created a tube leak (shell side to tube side leak)

within that exchanger, ultimately causing the Release. A Title V Permit cannot preauthorize an accidental release caused by an unexpected power interruption.

21. DCRC agrees with DNREC's interpretation of the Title V Permit that this annual limit applies under standard operating conditions at the Ether Plant Cooling Tower. But there is no support for DNREC's interpretation that the same annual limit applies to both standard operating conditions *and* to unpermitted releases. Simply put, the annual TPY limit cannot be applied to the standard operating configuration and also to multiple alternative operating configurations, including, without limitation, to the one at issue here: an unpermitted Release caused by a Delmarva power failure.

D. Reasons Why Timeframes for Compliance With The Order Should Be Extended

22. As detailed above, the Order was issued without sufficient factual support, is not supported by the cited authority relied upon by DNREC – which is expressly limited to continuing violations – and advances an unjustified interpretation of the relevant Title V Permit requirements. The Order was also prematurely issued before DNREC had the benefit of the additional information presented in DCRC's 30-day Incident Report regarding the Release, which was developed following an in-depth root cause investigation. See Exhibit B.

23. In the 30-day notification, DCRC details the corrective actions necessary to prevent an incident like the Release from recurring. Notably, the LEL warning system installed at the Ether Plant Cooling Tower that was not functional at the time of the Release is up and running. Restoration of that LEL alarm and elevating it as a Highly Managed Alarm all but ensures an event like the Release will not reoccur. Additionally,

the remaining corrective actions identified by DCRC as protecting against recurrence of the root causes identified are scheduled to be completed as promptly as possible.

24. By contrast, none of the hasty and unsupported actions required by the Order would provide *any* safeguard if an event like the Release were to reoccur. Said differently, the ordered “actions to address the immediate concern for public and facility safety” do not in any way address either of these concerns (nor are those concerns supported by the Factual Findings in the Order). Because full compliance with the Order is nearly impossible in the given timeframe, and because it unnecessarily diverts critical resources DCRC needs to implement the identified corrective actions, DCRC requests that the Order’s required actions be extended. Notably, the Order allows only a total of seventy (70) days for the Refinery to select, contract for, commission, install, and begin operating the Proposed Monitors. The 70-day clock began the same day that the Refinery received the Order. The Refinery has therefore had to rush to evaluate potential monitoring systems, relevant costs, and siting factors all while preparing this Appeal of the Order. At the time of filing this Appeal, there are fewer than 45 days remaining for the Refinery to complete the lofty injunctive relief obligations in the Order or risk additional noncompliance and potential enforcement. DCRC estimates that it will take at least one hundred eighty (180) days to identify, acquire, install, test, and commence operation of a suitable monitoring system.

E. Reservation of Rights, Counsel, and Estimate of the Number of Witnesses and Time for Hearing

25. DCRC reserves the right to assert additional grounds for appeal and reserves the right to amend this Statement of Appeal.

26. DCRC has authorized the following attorney to represent it in this matter before the Environmental Appeals Board:

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Relative to the hearing of this matter before the Board, DCRC estimates that it will call four witnesses and that the presentation of its testimony and other evidence will require one to two days of hearing, not including any time DNREC needs to have its case heard.

Dated: December 31, 2025

Respectfully Submitted,

/s/Michael W Teichman

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