



STATE OF DELAWARE
DEPARTMENT OF NATURAL RESOURCES
AND ENVIRONMENTAL CONTROL
89 KINGS HIGHWAY
DOVER, DELAWARE 19901

Office of the
Secretary

Phone: (302) 739-9000
Fax: (302) 739-6242

**NOTICE OF ADMINISTRATIVE PENALTY ASSESSMENT
AND SECRETARY'S ORDER**

Pursuant to 7 *Del. C.* § 6005

Order No. 2017-A-0009

*PERSONALLY SERVED BY AN ENVIRONMENTAL
PROTECTION OFFICER*

Issued To:

John Deemer
Health, Safety & Environmental Manager
Delaware City Refining Company, LLC
4550 Wrangle Hill Road
Delaware City, DE 19706

Registered Agent:

The Corporation Trust Company
Corporation Trust Center
1209 Orange Street
Wilmington, DE 19801

Dear Mr. Deemer:

The Secretary of the Department of Natural Resources and Environmental Control ("Department") hereby finds Delaware City Refining Company ("Respondent" or "DCRC") to be in violation of 7 *Del.C.* Chapter 60. Accordingly, the Department is issuing this Notice of Administrative Penalty Assessment, pursuant to 7 *Del.C.* §6005(b)(3).

BACKGROUND

DCRC operates a petroleum refinery and docking facility located at 4550 Wrangle Hill Road, Delaware City. On December 15, 2016, the Department of Natural Resources and Environmental Control ("DNREC") received the Delaware City Refining Company's

(“DCRC”) letter of December 12, 2016, which contradicted DCRC’s previous representations to DNREC regarding the circumstances of a shipment of crude oil, believed to have occurred in late 2013, to a location other than the Paulsboro, New Jersey refinery (the “Shipment”). DNREC learned of the Shipment when the Delaware Department of Justice (“DDOJ”) disclosed to DNREC the receipt of an anonymous complaint that DCRC may have shipped crude oil by barge to a location other than Paulsboro, in violation of DNREC’s Secretary’s Order No. 2013-A-0200 (the “2013 Order”), and contrary to DCRC representations about the destination of crude oil shipped from its Delaware City terminal.

In response to the inquiries from DNREC and the DDOJ, DCRC representatives met with DNREC representatives on **November 20, 2015**, to discuss the circumstances of the Shipment. In that meeting, DCRC officials assured DNREC that the Shipment was a “one-time shipment to an alternative facility due to an unanticipated logistical irregularity regarding the movement of crude.”

DCRC subsequently represented, in a **February 3, 2016** letter to State Solicitor Aaron Goldstein, that a singular shipment of crude oil to a facility other than to PBF’s Paulsboro refinery was “an atypical, one-time event”. However, in the **December 12, 2016** letter, DCRC contradicted its prior verbal and written representations to DNREC and to the DDOJ. DCRC’s most recent disclosure must be considered in the context of the 2013 Order awarding the air permit for the crude oil terminal, which was issued in response to specific factual representations by DCRC, and which imposed conditions on the operation of the terminal. Specifically, issuance of the permit was conditioned upon the shipment of crude oil from the Delaware City terminal to the PBF Refinery in Paulsboro, New Jersey. The below excerpts from the 2013 Order reflect the clear intent to require DCRC to provide notice and to take additional action, upon the occurrence of any change in circumstances or operations, with respect to the crude oil terminal:

“Applicant stated on the record that the proposed use would be consistent with the past use and that the activity would be limited to the transfer of North American-produced crude oil from the Facility’s docks onto barges to be transported up the Delaware River to Applicant’s sister company refinery in Paulsboro, New Jersey, also owned by PBF Energy.” (Order No. 2013-A-0020, pg. 4.)

“The Department’s findings related to the Coastal Zone were made based upon these factors, the current use of the Facility, and the record presented. A change in these factors or the use of the Facility may result in a different determination. As such the Applicant should request a Coastal Zone Status Decision if future physical or operational changes are intended or implemented.” (Order No. 2013-A-0020, pg. 6-7.)

As DNREC indicated in its December 11, 2015 letter to DDOJ via Chief Deputy Attorney General Danielle Gibbs (on which DCRC was copied), shipment to a facility other than the Paulsboro facility would constitute a violation of the 2013 Secretary's Order. Since DCRC now acknowledges that the questioned Shipment was not a single isolated incident, and admits to at least seventeen crude oil shipments to three facilities other than the designated Paulsboro PBF Refinery in 2014, it is now appropriate for DNREC to reconsider its previous response to the Shipment. Previously, in reliance on DCRC's verbal and written representations that the Shipment was a singular, atypical shipment by marine vessel to another refinery, DNREC determined that it was within its enforcement discretion to refrain from issuing a notice of violation of the 2013 Order. That position has changed.

Based on the representations in DCRC's December 12, 2016 letter, DNREC, on December 23, 2016, issued a Notice of Violation (NOV) regarding the additional shipments identified in the December 12, 2016 letter. In addition, in order to more fully investigate the facts and circumstances of all shipments of crude to a location other than Paulsboro, including DCRC's previous disclosures, DNREC made an investigative demand, pursuant to the Agency's administrative authority set forth in 7 *Del.C.* Chapter 60¹, requiring a response on January 23, 2017. DCRC requested an extension until February 7, 2017 and DNREC granted the request. DCRC provided the requested information on February 6, 2017, including the summary sheet attached hereto indicating the dates of shipment of crude from May 31, 2013 to December 31, 2016. In particular, the belated DCRC disclosure reflects 17 shipments of crude oil from the Delaware City terminal during 2014 to three facilities other than Paulsboro. Thus, the representations made by DCRC in November 2015 and February 2016 were demonstrably false.

FINDINGS OF FACT AND VIOLATION

DCRC violated Secretary's Order #2013-A-0020 and other pertinent provisions of Title 7, Chapter 60, by shipping crude oil from its Delaware City terminal to at least three locations not disclosed in its permit application, on 17 occasions, involving more than 850,000 barrels (more than 35,700,000 gallons) of oil, and/or by making false statements and representations to DNREC, and/or by falsifying or concealing material facts regarding the Order and permit.

The air permit was awarded, contingent on representations made on the record by DCRC, that the crude oil transferred from the rail loop at Delaware City to tanks and then onto barges at the Delaware City docks would be shipped only to the PBF refinery in Paulsboro, New Jersey. Secretary's Order No. 2013-A-0020, dated May 31, 2013, states at page four as follows:

¹ In particular 7 *Del.C.* §6016, regarding Departmental investigations, witnesses, oaths and attendance, and other relevant authority.

Applicant stated on the record that the proposed use would be consistent with the past use and that the activity would be limited to the transfer of North-American produced crude oil from the Facility's docks onto barges to be transported up the Delaware River to Applicant's sister company refinery in Paulsboro, New Jersey, also owned by PBF Energy. [emphasis added]

The aforementioned Order did not require that DCRC seek a status determination or a Coastal Zone permit for the oil terminal. The Order responds to public comment seeking CZA review, by finding that the docks are an existing nonconforming use (either as heavy industry or a bulk product transfer facility), and thus exempt from CZA regulation. The proposed use of the bulk product transfer facility, to transfer crude oil from rail cars to tanks to barges for transportation upriver, was found to not be a change of use from the previous use of the docks, to transfer crude oil from ships to the Refinery. However, the Order goes on to warn that:

“[t]his determination may be subject to change should the Department determine that the proposed usage has changed or that the information in this record is inaccurate or incomplete.” Order at 5. [emphasis added]

The Order found that the proposed activity was allowable and did not require a CZA permit (or a status decision) because of 3 factors: [1] the characterization of the proposed use as an “existing non-conforming use”; [2] the lack of any physical expansion of the existing non-conforming use facility (other than the 2011 expansion of the rail facility); and [3] the lack of expansion of the existing non-conforming heavy industry use (the Refinery). The Order then stated:

The Department's findings related to the Coastal Zone were made based upon these factors, the current use of the Facility, and the record presented. A change in these factors or the use of the Facility may result in a different determination. As such, the Applicant should request a Coastal Zone Status Decision if future physical or operational changes are intended or implemented. Order at 6-7. [emphasis added]

CONCLUSIONS

Based on the foregoing, the Department has concluded that Respondent violated the above cited Secretary's Order, by shipping crude oil from the Delaware City terminal to locations other than the PBF Paulsboro, New Jersey Refinery, on fifteen days in 2014, a total of 17 separate barge shipments, each of approximately 50,000 barrels of crude oil. Contrary to the terms of the Order, DCRC did not disclose such shipments to DNREC, and did not seek a status determination regarding the change in operations or a modification of the terms of the Order. Further, DCRC

concealed the illegal shipments and misrepresented to DNREC the nature and extent of any shipments to facilities other than Paulsboro, New Jersey.

REQUEST FOR COASTAL ZONE ACT STATUS DECISION

DCRC is prohibited by the 2013 Secretary's Order from shipping crude oil from its Delaware City Terminal to facilities other than the PBF Refinery in Paulsboro, New Jersey as such activities may be prohibited by Delaware's Coastal Zone Act, may be permissible only via permit or may not be regulated. If DCRC seeks to undertake crude oil shipments from its Delaware City terminal to facilities other than the Paulsboro Refinery, DCRC must first submit a request for status decision to DNREC, pursuant to Rule 7.0 of the Regulations Governing Delaware's Coastal Zone. Likewise, if DCRC continues to represent to investors, shareholders, and potential customers that it has the capacity to ship crude oil from its Delaware City terminal to destinations other than the PBF Paulsboro, New Jersey Refinery, DCRC should do so based on an affirmative determination by the Department either through a status and/or permitting decision. Such future shipments and such representations are governed by Rule 7.5, which provides in pertinent part:

The Secretary may, if he has cause to suspect an activity within the confines of the Coastal Zone is prohibited or should receive a permit under these regulations, request of the person undertaking that activity to apply for a status decision as described in this section. Failure of the person to respond to the Secretary's request shall subject said person to enforcement procedures as contained in the Act and/or Section 18.0 of these regulations.

ASSESSMENT OF PENALTY

Pursuant to the provisions of 7 *Del.C.* §6005(b)(3), this is written notice to Respondent that on the basis of its findings, the Department is assessing Respondent an administrative penalty of **\$150,000.00** for the violations identified in this Assessment and Order.

Respondent shall submit a check to the Department in the amount of **\$150,000.00** to pay the penalty within 30 days from the receipt of this Assessment and Order. The checks shall be made payable to the "State of Delaware" and shall be directed to: Devera B. Scott, Deputy Attorney General, Department of Justice, Environmental Unit, 102 W. Water Street-3rd Floor, Dover, Delaware 19904.

The Department reserves the right to take additional enforcement actions regarding these and other violations incurred by DCRC, including but not limited to one or more of the following: an

action under 7 *Del.C.* §6005(b)(1) seeking penalties for past violations; an action under 7 *Del.C.* §6005(b)(2) seeking penalties for continuing violations; an action in the Court of Chancery pursuant to 7 *Del.C.* §6005(b)(2) seeking a temporary restraining order or an injunction; an action pursuant to 7 *Del.C.* §6013(b)(1) for intentionally, knowingly, or recklessly making a false statement or representation under any permit or order issued under the authority of the Secretary; and the imposition of civil penalties and recovery of the Department's costs and attorney's fees pursuant to 7 *Del.C.* §§6005(b)(3) & (c)(1).

PUBLIC HEARING AND APPEAL RIGHTS

This Notice of Administrative Penalty Assessment and Order shall become effective and final unless the Department receives from Respondent, no later than **30 days** from the receipt of this Notice, a written request for a public hearing on these matters as provided in 7 *Del.C.* §6005(b)(3) and (c). The Department does not otherwise intend to convene a public hearing on these matters, but reserves the right to do so at its discretion. If no public hearing is requested within thirty days, this Order shall become final.

Any person whose interest is substantially affected by an action of the Secretary may appeal to the Environmental Appeals Board, pursuant to 7 *Del. C.* § 6008(a), within **twenty (20) days** of the receipt or publication of the Secretary's final order.

If no hearing is requested and no appeal is filed, the administrative penalty of \$150,000.00 shall be due and owing. In the alternative, Respondent may pay the penalty and costs within thirty (30) days of receipt of this Notice as delineated in the Assessment Section above by executing the attached waiver form and remitting a check payable to the State of Delaware in the amounts of \$150,000.00 and mail to: Devera B. Scott, Deputy Attorney General, Department of Justice, Environmental Unit, 102 W. Water Street-3rd Floor, Dover, Delaware 19904. By doing so, Respondent waives its right to a hearing and the opportunity to appeal or contest this Assessment and Order, which shall become a final Order.

To request a hearing, please submit your request, in writing, to:

Department of Natural Resources and Environmental Control
Office of the Secretary
89 Kings Highway
Dover, DE 19901
Ph: (302) 739-9000

To submit an appeal to the Environmental Appeals Board, there is a \$50.00 filing fee, with a check made payable to the: "Environmental Appeals Board" and sent to:

Department of Natural Resources and Environmental Control
Office of the Secretary
Attn: Assistant to the Environmental Appeals Board
89 Kings Highway
Dover, DE 19901
Ph: (302) 739-9000

If you have any questions, please contact Susan Love at (302) 735-3488.

March 9, 2017
Date



David S. Small, Secretary

cc: Ralph (Dirk) Durstein, Deputy Attorney General
Ali Mirzakhali, Division of Air Quality, Director
Susan Love, Energy & Climate Division, Director
Susan S. Baker, Enforcement Coordinator

WAIVER OF STATUTORY RIGHT TO A HEARING

Delaware City Refining Company hereby waives its right to a hearing and its opportunity to appeal or contest this Assessment and Order and agrees to the following:

1. **Delaware City Refining Company** will pay the administrative penalty in the amount of \$150,000.00 by sending a check payable to the "State of Delaware" within 30 days of receipt of this Assessment and Order. The check shall be directed to Devera B. Scott, Deputy Attorney General, Department of Justice, Environmental Unit, 102 W. Water Street-3rd Floor, Dover, Delaware 19904; and

Delaware City Refining Company

Date: _____

By: _____

Title: _____