



STATE OF DELAWARE
**DEPARTMENT OF NATURAL RESOURCES AND
ENVIRONMENTAL CONTROL**

OFFICE OF THE
SECRETARY

RICHARDSON & ROBBINS BUILDING
89 KINGS HIGHWAY
DOVER, DELAWARE 19901

PHONE
(302) 739-9000

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

Pursuant to 7 *Del. C.* § 6005

Order No. 2022-A-0001

*PERSONALLY SERVED BY AN ENVIRONMENTAL
PROTECTION OFFICER*

Issued To:

Justin Tanks, LLC
Attn: Edward Short, President
21413 Cedar Creek Avenue
Georgetown, DE 19947

Registered Agent:

Justin Tanks, LLC
21413 Cedar Creek Avenue
Georgetown, DE 19947

This Assessment and Order serves to notify Justin Tanks, LLC, ("Respondent") that the Secretary of the Department of Natural Resources and Environmental Control ("Department" or "DNREC") has found Respondent in violation of 7 *Del. C.* Chapter 60, state and federal air regulations, and its permit. Accordingly, the Department is issuing this Notice of Administrative Penalty Assessment and Secretary's Order pursuant to 7 *Del. C.* §6005(b)(3).

BACKGROUND

Justin Tanks, LLC, owns and operates a facility located at 21413 Cedar Creek Avenue in Georgetown, Delaware ("Facility"). The Facility includes six vertical molds, two horizontal molds, hand lay-up areas, a final assembly area, one 5.25 mmBtu/hr Cleaver Brooks boiler fired on No. 2 fuel oil and one 8,200 gallon No. 2 fuel oil storage tank. Respondent manufactures fiberglass reinforced plastic tanks used in Water and Wastewater Treatment; Pulp and Paper;

Chemical and Food Processing; and Pharmaceutical Industries. The tanks are manufactured on the vertical and horizontal molds using contact and filament winding processes. The cross-linking resins used typically contain styrene, either by itself or in combination with other monomers or solvents such as methyl methacrylate monomer. Styrene and methyl methacrylate monomer are both hazardous air pollutants (“HAPs”). Respondent’s operations have the potential to emit HAPs in excess of the threshold for Title V major source classification under the State’s Title V Operating Permit Program. The violations set forth in this Order occurred over a time period when Respondent’s operations were governed by two Title V Permit versions: Title V Permit: **AQM-005/00066 (Renewal 3)** dated July 1, 2013, (“TV Permit Renewal 3”) and Title V Permit: **AQM-005/00066 (Renewal 4)** dated October 5, 2018, (“TV Permit Renewal 4”), collectively “TV Permits.”

The EPA amended 40 CFR Part 63, Subpart DDDDD (“Subpart DDDDD”) in 2011 and 2013. Pursuant to Subpart DDDDD, Respondent’s boiler is classified as an existing boiler that is less than 10 mmBtu/hr. Subpart DDDDD requires that boilers less than 10 mmBtu/hr demonstrate compliance initially by performing a boiler tune-up and a one-time energy assessment (“actions”). For existing boilers, these actions were required to be completed by January 31, 2016. A Notification of Compliance Status that included, among other requirements, information on the boiler tune-up and one-time energy assessment, was required to be submitted to EPA, using its Compliance and Emissions Data Reporting Interface (“CEDRI”) no later than March 31, 2016 (60 days after January 31, 2016). Subsequent boiler tune-ups must be performed no later than 25 months after the previous tune-up. These requirements were incorporated into Respondent’s TV Permits.

The Department conducted an on-site inspection at Respondent’s facility on August 29, 2017, where it discovered that Respondent had not completed the one-time energy assessment and tune-up of its boiler, and the related reporting requirements. Respondent completed the boiler tune-up on January 18, 2018. A Notice of Violation (“NOV”) was issued to Respondent on July 19, 2018, that acknowledged Respondent had completed the required boiler tune-up on January 18, 2018. The NOV further noted that the one-time energy assessment still had not been

done, and instructed Respondent to complete the assessment within 60 days of receipt of the NOV. The NOV also reminded Respondent that it was responsible for complying with all the related reporting requirements and instructed Respondent to complete the reporting of the Notification of Compliance Status to the Department and electronically to EPA's Compliance and Emissions Data Reporting Interface ("CEDRI") within 60 days of its completion. The Department later learned through an October 31, 2018, email, that Respondent completed the one-time energy assessment on August 20, 2018.

The Department conducted another on-site inspection at Respondent's facility on August 14, 2019. The Department learned that Respondent had not submitted to EPA, via CEDRI, the Notification of Compliance Status, that included information regarding the January 18, 2018, boiler tune-up and August 20, 2018, one-time energy assessment. An inspection findings letter dated September 27, 2019, was sent to Respondent requiring, among other actions, the submittal of the Notification of Compliance Status using the CEDRI system if the appropriate XML is present.

The Department received Respondent's 2019 Annual Compliance Certification and 2nd Half 2019, Semi-Annual report ("2019 reports") on February 3, 2020, and they were found to be deficient. The Department sent a letter to Respondent dated March 16, 2020, that required Respondent to submit revisions to correct the deficiencies in the 2019 reports to the Department. In addition, the letter required Respondent submit to EPA and the Department the Notification of Compliance Status; and because the due date for the next biennial tune-up was February 18, 2020, the letter requested documentation of its latest boiler tune-up. On April 16, 2020, the Department received revisions to the 2019 reports as well as a response to the March 16, 2020 letter. The revised reports and response indicated that Respondent had still not completed the reporting requirements for the Notification of Compliance Status and had not yet completed the boiler tune-up that was due February 18, 2020.

A NOV dated May 22, 2020, was issued to Respondent on May 26, 2020. It required Respondent to conduct the biennial tune-up of the boiler that was due by February 18, 2020,

within 30 days of receipt of the NOV or by the end of the COVID-19 Public Health State of Emergency, whichever is later. The May 2020 NOV also required Respondent to submit the Notification of Compliance Status to the Department and EPA within 30 days of receipt of the NOV.

On July 1, 2020, the Department received documentation of the biennial tune-up of the boiler that was conducted on May 29, 2020, and a copy of the Notification of Compliance Status, which was submitted to EPA via CEDRI on January 2, 2020.

FINDINGS OF FACT

1. Respondent is the owner and operator of a facility located at 21413 Cedar Creek Avenue in Georgetown, Delaware, (“Facility”) that manufactures fiberglass reinforced plastic tanks.
2. Respondent’s operations have the potential to emit HAPs in excess of the threshold for Title V major source classification under the State’s Title V Operating Permit Program and is currently operating under the requirements of Title V Permit: **AQM-005/00066 (Renewal 4)** dated October 5, 2018, (“Title V Permit”).
3. Respondent was required both by federal regulation and its Title V Permit to conduct a one-time energy assessment and a tune-up of its boiler no later than January 31, 2016.
4. Upon completion of the two actions in Item 3 above, Respondent was then required to submit a Notification of Compliance Status to the EPA via the CEDRI system, within 60 days of January 31, 2016, which was due March 31, 2016.

5. Following the initial boiler tune-up, Respondent was required to conduct biennial tune-ups of its boiler each within 25 months of the previous one.
6. The Department conducted an on-site inspection at Respondent's facility on August 29, 2017, and discovered that Respondent had not completed the one-time energy assessment, tune-up of its boiler, and reporting of the Notification of Compliance Status to EPA via CEDRI.
7. Respondent conducted the tune-up of the boiler on January 18, 2018.
8. A NOV was issued to Respondent on July 19, 2018, that required completion of the one-time energy assessment within 60 days of receipt of the NOV and submission of the Notification of Compliance Status to EPA via CEDRI within 60 days of completion of the energy assessment.
9. In an October 31, 2018, email, Respondent informed the Department it had completed the one-time energy assessment on August 20, 2018.
10. On August 14, 2019, the Department conducted an on-site inspection at Respondent's facility where it discovered that Respondent had not submitted the Notification of Compliance Status to EPA via CEDRI.
11. An inspection findings letter dated September 27, 2019, was sent to Respondent requiring, among other actions, the submittal to EPA of the Notification of Compliance Status via CEDRI.
12. On February 3, 2020, the Department received Respondent's 2019 Annual Compliance Certification and 2nd Half 2019 Semi-Annual Report ("2019 Reports") dated January 30, 2020. The Department found these items to be deficient.

13. In a March 16, 2020, letter, the Department requested Respondent to submit revised 2019 Reports to address the deficiencies. In addition, the Department reminded Respondent to submit its Notification of Compliance Status and requested documentation of the latest biennial tune-up of its boiler, because the February 18, 2020, due date for the next biennial tune-up of its boiler had passed.
14. On April 16, 2020, Respondent submitted the revised 2019 Reports; and on April 17, 2020, Respondent submitted a response to the March 16, 2020, letter.
15. Based on the revised 2019 reports and April 17, 2020, response, Respondent had not completed the required biennial tune-up of the boiler that had been due no later than February 18, 2020.
16. A NOV dated May 22, 2020, was issued to Respondent on May 26, 2020, for the failure to conduct the biennial tune-up of the boiler and to submit the Notification of Compliance status to EPA and the Department. The NOV required Respondent to conduct the biennial tune-up of the boiler within 30 days of receipt of the NOV, or the end of the COVID-19 Public Health State of Emergency, whichever was later. It also required Respondent to submit the Notification of Compliance Status to the EPA and the Department within 30 days of receipt of the NOV.
17. On July 1, 2020, the Department received documentation that a boiler tune-up was conducted on May 29, 2020. A copy of the Notification of Compliance Status, which had been submitted to EPA via CEDRI on January 2, 2020 was also included in this submission.

STATUTORY, REGULATORY AND PERMIT PROVISIONS

1. In 40 CFR §63.7490(a), it states in pertinent part:
“(a) This subpart applies to new, reconstructed, and existing affected sources as described in paragraphs (a)(1) and (2) of this section..
(1)The affected source of this subpart is the collection at a major source of all existing industrial, commercial, and institutional boilers and process heaters within a subcategory as defined in §63.7575.”
2. In 40 CFR §63.7495(b), it states:
“If you have an existing boiler or process heater, you must comply with this subpart no later than January 31, 2016, except as provided in §63.6(i).”
3. In 40 CFR §63.7500(a), it states in relevant part:
“You must meet the requirements in paragraphs (a)(1) through (3) of this section, except as provided in paragraphs (b), through (e) of this section.
** * **
(1) You must meet each emission limit and work practice standard in Tables 1 through 3, and 11 through 13 to this subpart that applies to your boiler or process heater, for each boiler or process heater at your source, except as provided under §63.7522 ...”
4. In Table 3 to Subpart DDDDD of Part 63—Work Practice Standards, it states in relevant part:
“If your unit is ... 2. [a] new or existing boiler or process heater without a continuous oxygen trim system and with heat input capacity of less than 10 million Btu per hour in the unit designed to burn heavy liquid or unit designed to burn solid fuel subcategories; or a new or existing boiler or process heater with heat input capacity of less than 10 million Btu per hour, but great than 5 million Btu per hour, in any of the following subcategories: unit designed to burn gas 1; unit designed to burn gas 2 (other); or unit designed to burn light liquid ... [y]ou must meet the following ... [c]onduct a tune-up of the boiler or process heater biennially as specified in §63.7540.”
** * **
4. [a]n existing boiler or process heater located at a major source facility, not including limited use units ... [y]ou must meet the following ... [m]ust have a one-time energy assessment performed by a qualified energy assessor. An energy assessment completed on or after January 1, 2008, that meets or is amended to meet the energy assessment requirements in this table, satisfies the energy assessment requirement. A facility that operated under an energy management

program developed according to the ENERGY STAR guidelines for energy management or compatible with ISO 50001 for at least one year between January 1, 2008 and the compliance date specified in §63.7495 that includes the affected units also satisfies the energy assessment requirement ...”

5. In 40 CFR §63.7510(e), it states in relevant part:
“For existing affected sources (as defined in §63.7490)... [y]ou must complete an initial tune-up by following the procedures described in §63.7540(a)(10)(i) through (vi) no later than the compliance date specified in §63.7495, except as specified in paragraph (j) of this section. You must complete the one-time energy assessment specified in Table 3 to this subpart no later than the compliance date specified in §63.7495.”
6. In 40 CFR §63.7515(d), it states in relevant part:
“...Each biennial tune-up specified in §63.7540(a)(11) must be conducted no more than 25 months after the previous tune-up.”
7. In 40 CFR §63.7540(a)(11) it states:
“If your boiler or process heater has a heat input capacity of less than 10 million Btu per hour (except as specified in paragraph (a)(12) of this section), you must conduct a biennial tune-up of the boiler or process heater as specified in paragraphs (a)(10)(i) through (vi) of this section to demonstrate continuous compliance.”
8. In 40 CFR §63.7545(e), it states in relevant part:
*“If you are not required to conduct an initial compliance demonstration as specified in §63.7530(a), the Notification of Compliance Status must only contain the information specified in paragraphs (e)(1) and (8) of this section and must be submitted within 60 days of the compliance date specified at §63.7495(b).
(1) A description of the affected unit(s) including identification of which subcategories the unit is in, the design heat input capacity of the unit, a description of the add-on controls used on the unit to comply with this subpart, description of the fuel(s) burned, including whether the fuel(s) were a secondary material determined by you or the EPA through a petition process to be a non-waste under §241.3 of this chapter, whether the fuel(s) were a secondary material processed from discarded non-hazardous secondary materials within the meaning of §241.3 of this chapter, and justification for the selection of fuel(s) burned during the compliance demonstration.*

(8) In addition to the information required in §63.9(h)(2), your notification of compliance status must include the following certification(s) of compliance, as applicable, and signed by a responsible official:

(i) This facility completed the required initial tune-up for all of the boilers and process heaters covered by 40 CFR part 63 subpart DDDDD at this site according to the procedures in §63.7540(a)(10)(i) through (vi).

(ii) This facility has had an energy assessment performed according to §63.7530(e).

(iii) Except for units that burn only natural gas, refinery gas, or other gas 1 fuel, or units that qualify for a statutory exemption as provided in section 129(g)(1) of the Clean Air Act, include the following: ‘No secondary materials that are solid waste were combusted in any affected unit.’”

9. In Condition 3 – Table 1(b)(3)(i)(A) of **Permit: AQM-005/00066 (Renewal 4)** it states:

“Conduct a tune-up of the boiler biennially as specified in 40 CFR 63.7540.”

10. In Condition 3 – Table 1(b)(3)(vi)(C) of **Permit: AQM-005/00066 (Renewal 4)** it states:

“If you are required to meet an applicable tune-up work practice standard, you must conduct a biennial performance tune-up according to 40 CFR 63.7540(a)(11). Each biennial tune-up specified in 40 CFR 63.7540(a)(11) must be conducted no more than 25 months after the previous tune-up.”

CONCLUSION

Based on the above, the Department has concluded that Respondent committed the following violations:

1. Respondent violated 40 CFR §63.7495(b), for the late completion of the initial boiler tune-up and the one-time energy assessment required by 40 CFR §63.7500(a)(1) and 40 CFR §63.7510(e). These were required to be completed by January 31, 2016. The boiler tune-up was not completed until January 18, 2018, and the one-time energy assessment was not completed until August 20, 2018.

2. Respondent violated 40 CFR §63.7545(e), when the Notification of Compliance Status to EPA that was due March 31, 2016, was not completed until January 2, 2020.
3. Respondent violated 40 CFR §63.7540(a)(11); 40 CFR §63.7515(d); Condition 3 – Table 1(b)(3)(i)(A) and Condition 3 – Table 1(b)(3)(vi)(C) of **Permit: AQM-005/00066 (Renewal 4)** when the biennial tune-up of the boiler that was due by February 18, 2020 (within 25 months of the previous one performed January 18, 2018), was not completed until May 29, 2020.

ASSESSMENT OF PENALTY

Pursuant to 7 *Del. C.* § 6005(b)(3), the Secretary may impose an administrative penalty of not more than \$10,000 for each day of violation detailed in this Order. In assessing the administrative penalty, 7 *Del. C.* § 6005(b)(3) instructs the Secretary to consider the following factors: (1) the nature, circumstances, extent, and gravity of each violation of the violation, or violations; (2) the ability of the violator to pay; (3) any prior history of such violations; (4) the degree of culpability; (5) the economic benefit or savings (if any) resulting from each violation; and (6) such other matters as justice may require. A brief discussion of these factors is set out below.

Having considered these factors as discussed below, an administrative penalty of \$5,770 is assessed for the violations identified in this Order.

1. The Nature, Circumstances, Extent and Gravity of the Violation, or Violations:

While the nature and circumstances of the violations are significant, the extent and gravity of the violations are not significant. Failing to perform the biennial tune-up is a violation of a federally enforceable work practice covered by a National Emission Standards for Hazardous Air Pollutants (“NESHAP”), rising to the level of High Priority Violation. However, neither violation directly created excess emissions or violated

permit or regulatory emission limits, and thus a higher penalty assessment was not warranted.

2. Respondent's Ability to Pay:

The record contains no information that the respondent does not have the ability to pay the administrative penalty assessed. Furthermore, the size and nature of Respondent's operations indicates Respondent has the ability to pay the administrative penalty imposed and that the penalty is sufficient to deter Respondent from future violations.

3. Prior History of Violations:

Respondent has had prior violations of these specific permit and regulatory requirements; however, due to the nature of the violations, the Department did not believe a higher penalty assessment was warranted.

4. Degree of Culpability:

Through the permit and previous communications with the Department, Respondent was aware of the deadlines involved with violations presented, and knowingly allowed those deadlines to pass without action. This suggests to the Department that the violations could have been avoided or their duration lessened. Nonetheless, given the circumstances, the Department believes the penalty amount is appropriate.

5. Economic Benefit or Savings Resulting from the Violation(s):

With respects to the economic benefit, the Secretary did find that Respondent incurred a small economic benefit from the avoidance of the biennial tune-up, and this was factored in the administrative penalty assessment.

6. Such Other Matters as Justice May Require:

Lastly, considering such other matters as justice may require, the Secretary has determined that the penalty assessed is proportional to the violations and calculated so as to deter Respondent and those similarly situated from engaging in future violations.

Therefore, 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 \$5,770 for the violations identified in this Assessment and Order.

Respondent shall submit a check to the Department in the amount of \$5,770 to pay the penalty within 30 days from the receipt of this Assessment and Order. The check shall be made payable to the “State of Delaware” and shall be directed to Valerie S. Edge, Deputy Attorney General, Department of Justice, Environmental Unit, 102 W. Water Street, Dover, Delaware 19904.

The Department reserves the right to take additional enforcement actions regarding these and other violations by Respondent, including but not limited to one or more of the following: an action under the authority vested in the Secretary by 7 *Del. C.* Chapter 60 and 7 DE Admin. Code 1100 to revoke Respondent’s air quality permit(s) for the State of Delaware, 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, 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 Assessment and Order is effective and final upon receipt by Respondent. Pursuant to 7 *Del. C.* §6008, any person whose interest is substantially affected by this action of the Secretary may appeal to the Environmental Appeals Board within 20 days of the receipt of the Assessment and Order. In the alternative, Respondent may, pursuant to 7 *Del. C.* §6005(b)(3), request a public hearing on the penalty assessment and Order, within 30 days of receipt of the Assessment and Order. A hearing would be conducted pursuant to 7 *Del. C.* §6006, and the

Secretary's Order following the hearing would be subject to appeal, pursuant to 7 *Del. C.* §6008, by any person substantially affected.

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:

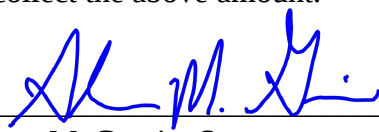
Department of Natural Resources and Environmental Control
Office of the Secretary
Attn: Assistant to the Environmental Appeals Board
89 Kings Highway
Dover, DE 19901
Phone: (302) 739-9000

If you want a hearing and opportunity to contest this Assessment and Order, you must submit your request, in writing, within 30 days of receipt of this Assessment and Order to:

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

Respondent may waive its right to request a hearing or to file an appeal by signing the Waiver attached herein and prepaying the penalty. If no hearing is requested or appeal filed as described above and the administrative penalty of \$5,770 is not paid within the time frame above, the Department may immediately take action to collect the above amount.

3/18/22
Date


Shawn M. Garvin, Secretary
Department of Natural Resources
and Environmental Control

cc: Valerie S. Edge, Deputy Attorney General
Angela Marconi, P.E., Director

WAIVER OF STATUTORY RIGHT TO A HEARING

Justin Tanks LLC hereby waives its right to a hearing and its opportunity to appeal or contest this Assessment and Order and agrees to the following:

Justin Tanks LLC will pay the administrative penalty in the amount of \$5,770 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 Valerie S. Edge, Deputy Attorney General, Department of Justice, 102 W. Water Street, Dover, DE 19904; or in the alternative

Justin Tanks LLC

Date: _____

By: _____

Title: _____