



STATE OF DELAWARE
**DEPARTMENT OF NATURAL RESOURCES AND
ENVIRONMENTAL CONTROL**
RICHARDSON & ROBBINS BUILDING
89 KINGS HIGHWAY
DOVER, DELAWARE 19901

OFFICE OF THE
SECRETARY

PHONE
(302) 739-9000

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

Pursuant to *7 Del. C. § 6005*

Order No. 2022-A-0014

*PERSONALLY SERVED BY AN ENVIRONMENTAL
PROTECTION OFFICER*

Issued To:

United Cocoa Processor, Inc.
Attn: Jonathan Liu
President
701 Pencader Drive, Suite F
Newark, DE, 19702

Registered Agent:

United Cocoa Processor, Inc.
701 Pencader Drive, Suite F
Newark, DE 19702

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

BACKGROUND

Respondent owns and operates a facility located at 701 Pencader Drive in Newark, Delaware, ("Facility") where it manufactures customized, high-quality cocoa products including cocoa liquor, cocoa butter and cocoa powders that are distributed both nationally and internationally to confectionary industries. The operation starts with raw cocoa beans that are

roasted and then processed according to the product type. Respondent's operations were brought to the attention of the Department in 2018 as a result of a noise complaint. The Department observed equipment in operation that it subsequently determined required air quality permits pursuant to 7 DE Admin. Code 1102 ("Regulation 1102"). The equipment included one Bean Roaster with Cyclone; one Nib Pneumatic Conveyor; one Nib Roaster and Cyclone, one Nib Cooler; five Nib Grinders; two Cake Grinders and Baghouses and two Boilers, all collectively referred to as the "existing line". Respondent submitted Regulation 1102 applications for the equipment dated June 28, 2018. Processing of the application was delayed due to the unavailability of emission factors for cocoa roasting which resulted in Respondent undertaking stack testing to collect actual emissions data. The Department issued a Notice of Violation ("NOV") dated October 29, 2018, to Respondent on November 2, 2018, for the violations associated with the construction and operation of the existing line without the required permits. On November 13, 2020, five Regulation 1102 construction/operation permits and one Regulation 1102 registration were issued to Respondent for the existing line equipment. Those permits were:

Permit: APC-2019/0002-CONSTRUCTION/OPERATION

Permit: APC-2021/0016-CONSTRUCTION/OPERATION(VOC RACT)

Permit: APC-2021/0017-CONSTRUCTION/OPERATION

Permit: APC-2021/0018-CONSTRUCTION/OPERATION

Permit: APC-2021/0019-CONSTRUCTION/OPERATION

Permit: APC-2021/0020-Registration

While the permitting process was ongoing for the existing line, Respondent informed the Department that it had signed a contract with a new customer that would require an increase in production that could only be met through the purchase and installation of another production line. During a meeting on November 13, 2020, Respondent revealed that they had purchased the equipment for the second production line and initiated construction on November 2, 2020. The Department had not received an application and had therefore not given approval for the construction, in the form of a construction permit. The Department reminded Respondent that constructing without a permit was a violation and Respondent immediately ceased construction.

Respondent submitted Regulation 1102 construction permit applications for the equipment that comprised the second production line on November 17, 2020.

Because the potential to emit volatile organic compounds (“VOCs”) from the two production lines would exceed the major source threshold for New Castle County, Respondent’s operations would require a permit pursuant to the State of Delaware’s Title V Operating Permit Program. However, Respondent had also purchased a control device, a regenerative thermal oxidizer, to reduce VOC emissions from both production lines to below major source threshold to become a Synthetic Minor source. The Regulation 1102 construction permits, **Permit: APC-2021/0056-CONSTRUCTION**; **Permit: APC-2021/0057-CONSTRUCTION**; **Permit: APC-2021/0058-CONSTRUCTION**; **Permit: APC-2021/0059-CONSTRUCTION**, for the second line were issued on January 11, 2021. The Synthetic Minor construction permit for the entire facility, **Permit: APC-2021/0048-CONSTRUCTION (MNSR)(SM)**, was issued on February 2, 2021. A NOV dated September 16, 2021¹, for the violations associated with the construction of the second production line without a permit was issued to Respondent on September 21, 2021.

Respondent completed constructing the second process line at the end of November 2021. The Department completed a construction to operation inspection on December 7, 2021, confirming the equipment was installed and operated as described in the application before issuing **Permit: APC-2021/0056-OPERATION**, **Permit: APC-2021/0057-OPERATION**, **Permit: APC-2021/0058-OPERATION**, (“collectively, Regulation 1102 operating permits”) and **Permit: APC-2021/0048-OPERATION (MNSR)(SM)** (“SM Permit”) on January 11, 2022. During construction, Respondent determined a vent was not necessary for the raw nib silos C and D, and therefore **Permit: APC-2021/0059-CONSTRUCTION** for the raw nib silos was not issued an operating permit because it no longer has the ability to vent to atmosphere. Within one year of issuing the operating permits, Respondent is required to submit a significant permit modification request to incorporate the above referenced Regulation 1102 operating permits into its SM Permit.

¹ This was a replacement NOV. The original NOV dated August 19, 2021, was never delivered by USPS as indicated via their tracking system and was confirmed to have not been received by the facility.

FINDINGS OF FACT

1. Respondent owns and operates a facility located at 701 Pencader Drive in Newark, Delaware, (“Facility”) where it manufactures customized, high-quality cocoa products including cocoa liquor, cocoa butter and cocoa powders that are distributed both nationally and internationally to confectionary industries.
2. Respondent’s unpermitted operations were first discovered by the Department in 2018 following an onsite visit resulting from a noise complaint.
3. Subsequent investigation revealed the equipment that comprised the production line (“existing line”) were subject to permitting requirements pursuant to 7 DE Admin. Code 1102 and Respondent had never applied for and received the required permits.
4. A Notice of Violation (“NOV”) dated October 29, 2018, was issued to Respondent on November 2, 2018, for the violations associated with both the construction and operation of equipment without a permit.
5. Respondent submitted Regulation 1102 permit applications for the existing line and the Department ultimately issued five Regulation 1102 construction/operation permits and one registration on November 13, 2020.
6. During the process of permitting the existing line, Respondent informed the Department that due to a new customer contract, an additional production line would need to be purchased and constructed to meet demand.
7. On November 13, 2020, Respondent revealed to the Department it had purchased the equipment for the second production line and had initiated construction on November 2, 2020, before submitting any required Regulation 1102 construction permit applications.

8. The Department informed Respondent that the unpermitted construction of the second line was a violation and Respondent immediately ceased construction.
9. The required Regulation 1102 construction permit application was received by the Department on November 17, 2020.
10. The potential to emit VOC from both production lines exceeded major source threshold and subjected Respondent to the State of Delaware's Title V Operating Permit Program. However, Respondent's purchase of a regenerative thermal oxidizer, a control device, reduced the emissions of VOC to below the major source threshold, thereby making Respondent a Synthetic Minor source.
11. On January 11, 2021, the Department issued Regulation 1102 construction permits for the second production line and on February 2, 2021, issued a Synthetic Minor construction permit for the entire facility.
12. A NOV dated September 16, 2021², for the violations associated with the construction of the second production line without a permit was issued to Respondent on September 21, 2021.
13. Respondent completed construction of the second production line at the end of November 2021 and the Department conducted its construction to operation inspection on December 7, 2021.
14. The operating permits for both the second production line and the facility wide Synthetic Minor permit were issued January 11, 2022.

² This was a replacement NOV. The original NOV dated August 19, 2021, was never delivered by USPS as indicated via their tracking system and was confirmed to have not been received by the facility.

STATUTORY, REGULATORY AND PERMIT PROVISIONS

1. In 7 *Del. C.* § 6003(b)(1), it states:

“No person shall, without first having obtained a permit from the Secretary, construct, install, replace, modify or use any equipment or device or other article which may cause or contribute to the discharge of an air contaminant.”

2. In Section 2.1 of 7 DE Admin. Code 1102, it states:

“Except as exempted in 2.2 of this regulation, no person shall initiate construction, install, alter or initiate operation of any equipment or facility or air contaminant control device which will emit or prevent the emission of an air contaminant prior to receiving approval of his application from the Department or, if eligible, prior to submitting to the Department a completed registration form.”

CONCLUSION

Based on the above, the Department has concluded that Respondent committed the following violations with respect to the unpermitted construction of the second production line:

1. Respondent is found to be in violation of 7 *Del. C.* § 6003(b)(1) and Section 2.1 of 7 DE Admin. Code 1102 for initiating the construction of its second production line on November 2, 2020, until November 13, 2020, prior to submitting a permit application and receiving approval via a construction permit.

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, an administrative penalty of \$16,520 is assessed for the violations identified in this Order.

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

The nature, circumstances, extent and gravity of the violations are moderate.

Respondent started construction prior to submitting an application or receiving a construction permit. After learning they were in violation, Respondent ceased construction. Though they are located in a non-attainment area, no equipment for the second process line was operated without a permit, and therefore, there were no emissions released.

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 indicate 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 started operating in 1999, however the Department only became aware of Respondent's operations in 2018. Respondent was issued a Notice of Violation in 2018 for the construction and operation of the original production line without a permit. Initiating construction of a second production line without a permit is a repeat violation and therefore was a factor in the penalty assessment.

4. Degree of Culpability:

The degree of culpability is significant as Respondent had received a Notice of Violation in 2018 for both the construction and operation of the original production line without a permit and should have therefore been aware that a permit was needed before constructing the second production line.

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

An application, advertisement, and construction fee were still paid with the submittal of the application for the second product line. The second production line was not operated without a permit. Therefore, there was no economic benefit from the violation and therefore this was not a factor in the 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 \$16,520 for the violations identified in this Assessment and Order.

Respondent shall submit a check to the Department in the amount of \$16,520 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 \$16,520 is not paid within the time frame above, DNREC may immediately take action to collect the above amount.

Date

8/2/22


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

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

2022-5dcm United Cocoa Processor Inc. Order.doc

WAIVER OF STATUTORY RIGHT TO A HEARING

United Cocoa Processor, Inc. hereby waives its right to a hearing and its opportunity to appeal or contest this Assessment and Order and agrees to the following:

United Cocoa Processor, Inc. will pay the administrative penalty in the amount of \$16,520 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; and

United Cocoa Processor, Inc.

Date: _____

By: _____

Title: _____