



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(b)(2) and (b)(3)

Order No. 2023-WH-0030

VIA CERTIFIED MAIL, RETURN RECEIPT

Issued To:

Robert R. Shinholt
S&E Compliance Manager
PATS Aircraft, LLC
21652 Nanticoke Ave.
Georgetown, DE 19947

Registered Agent:

Corporate Service Company
251 Little Falls Drive
Wilmington, DE 19808

Dear Mr. Shinholt:

The Secretary of the Department of Natural Resources and Environmental Control (“Department”) has found PATS Aircraft, LLC (“Respondent” or “PATS Aircraft”) in violation of 7 *Del. C.* Chapters 60 and 63, and 7 DE Admin. Code § 1302, Delaware’s *Regulations Governing Hazardous Waste* (“DRGHW”). Accordingly, the Department is issuing this Notice of Administrative Penalty Assessment and Secretary’s Order (“Secretary’s Order”), pursuant to 7 *Del. C.* § 6005.

BACKGROUND

PATS Aircraft operates an aircraft maintenance, aircraft customization, and auxiliary aircraft fuel tank manufacturing facility located at 21652 Nanticoke Ave., Georgetown, Delaware 19947 (“Facility”). During the operation of its Facility, Respondent generates hazardous waste. As such, Respondent is subject to compliance inspections conducted by the Department’s Compliance and Permitting Section (“CAPS”), pursuant to 7 DE Admin. Code § 1302.

On June 9, 2023, the Department conducted a compliance inspection at the Facility. At the time of the inspection at the Facility, Respondent was classified as a large quantity generator ("LQG")¹ of hazardous waste. The Facility is assigned EPA ID number DER000001909. Based on the information gathered during and subsequent to the inspection, the Department found Respondent to be in violation of applicable state statutes and regulations governing the generation and management of hazardous waste.

The Department notified Respondent of the violations identified during the June 9, 2023 inspection by issuing Notice of Violation 23-HW-21 ("NOV"), dated July 11, 2023. The NOV documented nine violations of DRGHW and was received by Respondent on July 14, 2023.

Respondent corrected four of the nine violations during the June 9, 2023 inspection. Respondent submitted documentation on June 13, June 17, and June 23, 2023, correcting the remaining five violations.

FINDINGS OF FACT AND VIOLATION INCLUDING REGULATORY REQUIREMENTS

1. DRGHW Section 262.15(a)(5)(i) states:

"(a) A generator may accumulate as much as 55 gallons of non-acute hazardous waste and/or either one quart of liquid acute hazardous waste listed in §261.31 or §261.33(e) of these regulations or 1 kilogram (≈2.2 pounds) of solid acute hazardous waste listed in §261.31 or §261.33(e) of these regulations in containers at or near any point of generation where wastes initially accumulate which is under the control of the operator(s) of the process generating the waste, without a permit or interim status and without complying with the requirements of Parts 124, 264 through 266, and 122 of these regulations, provided that all of the conditions for exemption in this section are met. A generator may comply with the conditions for exemption in this section instead of complying with the conditions for exemption in §262.16(b) or §262.17(a), except as required in §262.15(a)(7) and (8). The conditions for exemption for satellite accumulation are: ...

(5) A generator must mark or label its container with the following:

(i) The words 'Hazardous Waste' ..."

¹ Generators of more than 1000 kilograms (2200 pounds) of hazardous waste in any calendar month are large quantity generators. Delaware's *Regulations Governing Hazardous Waste* § 260.10 (2021) ("Large Quantity Generator").

On June 9, 2023, Department representatives observed one closed 5-gallon container in a satellite accumulation area workstation of the Tanks Shop that was being used to accumulate hazardous waste. The container was not labeled with the words "Hazardous Waste." Failure to label a container accumulating hazardous waste in a satellite accumulation area with the words "Hazardous Waste" is a violation of DRGHW Section 262.15(a)(5)(i).

During the June 9, 2023, inspection, Respondent corrected this violation to the Department's satisfaction.

2. DRGHW Section 262.17(a)(5)(i)(C) states:

"(a) Accumulation. A large quantity generator accumulates hazardous waste on site for no more than 90 days, unless in compliance with the accumulation time limit extension or F006 accumulation conditions for exemption in paragraphs (b) through (e) of this section. The following accumulation conditions also apply: ...

(5) Labeling and marking of containers and tanks

(i) Containers. A large quantity generator must mark or label its containers with the following: . . .

(C) The date upon which each period of accumulation begins clearly visible for inspection on each container."

On June 9, 2023, Department representatives observed three closed containers in the Facility's central accumulation area² of Hangar 1 accumulating hazardous waste. None of the containers were marked with an accumulation start date. On June 9th, Department representatives also observed one closed container in the Facility's central accumulation area of Hangar 2 accumulating hazardous waste with an accumulation start date of *July 8, 2023*. Despite being dated, the date was inaccurate, as it identified a date 30-days in the future. Failure to label a container accumulating hazardous waste in a central accumulation area with an accurate accumulation start date is a violation of DRGHW Section 262.17(a)(5)(i)(C).

² "Central accumulation area" means any on-site hazardous waste accumulation area with hazardous waste accumulating in units subject to either §262.16 (for small quantity generators) or §262.17 (for large quantity generators) of these regulations." Delaware's *Regulations Governing Hazardous Waste* § 260.10 (2021) ("Central Accumulation Area").

During the June 9, 2023, inspection, Respondent properly labeled, to the Department's satisfaction, one of the containers in the Facility's central accumulation area of Hangar 1 as well as the incorrectly dated container in the Facility's central accumulation area of Hangar 2.

On June 13, 2023, Respondent submitted, to the Department's satisfaction, documentation demonstrating correction of this violation for the remaining two containers in the Facility's central accumulation area of Hangar 1.

3. DRGHW Section 262.17(a)(5)(i)(A) states:

“(a) Accumulation. A large quantity generator accumulates hazardous waste on site for no more than 90 days, unless in compliance with the accumulation time limit extension or F006 accumulation conditions for exemption in paragraphs (b) through (e) of this section. The following accumulation conditions also apply: ...

(5) Labeling and marking of containers and tanks

(i) Containers. A large quantity generator must mark or label its containers with the following:

(A) The words ‘Hazardous Waste’;”

On June 9, 2023, Department representatives observed one closed 55-gallon container in the Facility's central accumulation area of Hangar 1, accumulating hazardous waste, and one closed 55-gallon container in the Facility's central accumulation area of Hangar 2, also accumulating hazardous waste. Neither container was marked with the words “Hazardous Waste.” Failure to mark a hazardous waste container with the words “Hazardous Waste” is a violation of DRGHW Section 262.17(a)(5)(i)(A).

During the June 9, 2023, inspection, Respondent corrected this violation to the Department's satisfaction.

4. DRGHW Section 262.17(a)(5)(i)(B) states:

“(a) Accumulation. A large quantity generator accumulates hazardous waste on site for no more than 90 days, unless in compliance with the accumulation time limit extension or F006 accumulation conditions for exemption in paragraphs (b) through (e) of this section. The following accumulation conditions also apply: ...

(i) Containers. A large quantity generator must mark or label its containers with the following: ...

(B) An indication of the hazards of the contents (examples include, but are not limited to, the applicable hazardous waste characteristic(s) (i.e., ignitable, corrosive, reactive, toxic); hazard communication consistent with the Department of Transportation requirements at 49 CFR Part 172 Subpart E (labeling) or Subpart F (placarding); a hazard statement or pictogram consistent with the Occupational Safety and Health Administration Hazard Communication Standard at 29 CFR 1910.1200; or a chemical hazard label consistent with the National Fire Protection Association code 704); ...”

On June 9, 2023, Department representatives observed one closed 55-gallon container in the Facility's central accumulation area of Hangar 1 accumulating hazardous waste. The container was not labeled with an indication of the hazards of the contents. Failure to label a hazardous waste container with an indication of the hazards of the container's contents is a violation of DRGHW Section 262.17(a)(5)(i)(B).

During the June 9, 2023, inspection, Respondent corrected this violation to the Department's satisfaction.

5. DRGHW Section 273.14(f) states:

“A small quantity handler of universal waste must label or mark the universal waste to identify the type of universal waste as specified below: ...

(f) Universal waste aerosol cans (i.e., each aerosol can), or a container in which the aerosol cans are contained, must be labeled or marked clearly with any of the following phrases: ‘Universal Waste – Aerosol Can(s),’ ‘Waste Aerosol Can(s),’ or ‘Used Aerosol Can(s).’”

On June 9, 2023, Department representatives observed three 10-gallon containers that were being used to accumulate aerosol cans universal waste. One of the containers was located in Hangar 1, one of the containers was located in Hangar 2, and the remaining container was located in Hangar 4. None of the containers were labeled in accordance with the labeling requirements of DRGHW Section 273.17(f), which is a violation.

During the June 9, 2023, inspection, Respondent corrected this violation to the Department's satisfaction.

6. DRGHW Section 262.17(a) states:

“(a) Accumulation. A large quantity generator accumulates hazardous waste on site for no more than 90 days, unless in compliance with the accumulation time limit extension or F006 accumulation conditions for exemption in paragraphs (b) through (e) of this section. The following accumulation conditions also apply: . . .”

DRGHW Section 122.1(c) states:

“(c) Scope of the hazardous waste permit requirement. DNREC requires a permit for the ‘treatment’, ‘storage’, and ‘disposal’ of any ‘hazardous waste’ as identified or listed in Part 261. The terms ‘treatment’, ‘storage’, ‘disposal’, and ‘hazardous waste’ are defined in Section 122.2.”

On June 9, 2023, Department representatives observed one 55-gallon container accumulating hazardous waste in the central accumulation area that Respondent referred to as the Hazardous Waste Storage Area. The container had an accumulation start date of March 9, 2023, which was 93 days *prior* to the date of inspection. Accumulating hazardous waste for longer than the 90-day accumulation time limit afforded LQG's is a violation of DRGHW Section 262.17(a).

Because Respondent did not comply with the conditions for exemption in DRGHW Section 262.17(a) which allow accumulation of a hazardous waste for no more than 90 days, Respondent was not exempt from the permitting requirements of DRGHW Part 122. Accordingly, the Department determined that Respondent was operating a hazardous waste storage facility without a permit. Operating a hazardous waste storage facility without a permit is a violation of DRGHW Section 122.1(c).

On June 13, 2023, Respondent submitted documentation demonstrating correction of this violation to the Department's satisfaction.

7. DRGHW Section 262.40(a) states:

“(a) A generator must keep a copy of each manifest signed in accordance with §262.23(a) for three years or until he receives a signed copy from the designated facility which received the waste. This signed copy must be retained as a record for at least three years from the date the waste was accepted by the initial transporter.”

On June 9, 2023, Department representatives identified that Respondent had not retained signed copies from the designated facilities for the following manifests:

Manifest Tracking Number	Shipped Date
016273883FLE	September 16, 2022
016274290FLE	April 14, 2022
017252028FLE	January 16, 2023
017742208FLE	February 20, 2023
017735611FLE	April 3, 2023

Failure to maintain designated facility-signed copies of manifests is a violation of DRGHW Section 262.40(a).

On June 13, 2023, Respondent submitted documentation demonstrating correction of this violation to the Department's satisfaction.

8. DRGHW Section 262.42(b) states:

“(b) A generator must submit an Exception Report to the DNREC within 5 calendar days if he has not received a copy of the manifest/shipping paper with the handwritten signature of the owner or operator of the designated facility within 45 days of the date the waste was accepted by the initial transporter. The generator must also notify the State in which the manifest designated facility is located and the State to which the shipment may have been delivered. The Exception Report must include:

(1) A legible copy of the manifest for which the generator does not have confirmation of delivery;

(2) A cover letter signed by the generator or his authorized representative explaining the efforts taken to locate the hazardous waste and the results of those efforts."

On June 9, 2023, Department representatives identified that Respondent did not have a designated facility signed copy of Manifest Number 017742208FLE. The waste shipment was first accepted for transport on April 3, 2023, which was 63 days *prior* to the inspection. Despite having not received a signed copy of the manifest from the designated facility within 45 days of the date the waste was accepted by the initial transporter, Respondent failed to submit an exception report to the Department. Failure to submit the required exception report is a violation of DRGHW Section 262.42(b).

On June 23, 2023, Respondent submitted documentation demonstrating correction of this violation to the Department's satisfaction.

9. DRGHW Section 262.263(d) states:

"The contingency plan must be reviewed, and immediately amended, if necessary, whenever: ...

The list of emergency coordinators changes; or"

On June 9, 2023, Department representatives reviewed Respondent's most recent revision of the Facility's contingency plan. One of the listed emergency coordinators was no longer employed by Respondent. Failure to immediately amend the contingency plan when a change in emergency coordinator occurs is a violation of DRGHW Section 262.263(d).

On June 17, 2023, Respondent submitted documentation demonstrating correction of this violation to the Department's satisfaction.

CONCLUSIONS

Based on the foregoing, the Department has concluded that Respondent has violated the above-cited statutory and regulatory provisions.

ASSESSMENT OF PENALTY

Pursuant to 7 *Del. C.* § 6005(b)(3), the Secretary may impose an administrative penalty of not more than \$10,000.00 for each day of violation detailed in this Order. This Order is written notice to Respondent, that, based upon its findings, the Department is assessing Respondent an administrative penalty for the violations identified in this Assessment and 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 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 forth below.

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

The nature, circumstances, extent, and gravity of the violations are significant. This Secretary's Order identifies and describes nine separate regulatory violations. Failing to ensure compliance with the regulatory requirements, including operating a hazardous waste storage facility without a permit, resulted in significant deviations from the statutory and regulatory requirements cited herein.

2. **Respondents' Ability to Pay:**

The record contains no information that Respondent lacks the ability to pay the administrative penalty assessed.

3. **Prior History of Violations:**

While Respondent had the same or similar violations in 2010 and 2017, these prior violations were not a factor in the administrative penalty assessment.

4. **Degree of Culpability:**

The degree of culpability is significant. Had Respondent employed reasonable oversight measures as DRGHW require, these violations would not have occurred.

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

With respect to the economic benefit, the record contains no information that Respondent incurred any meaningful economic benefit from these violations, and thus, this was not a factor 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 cited herein and has been calculated to deter Respondent, and those similarly situated, from engaging in future violations.

Pursuant to *7 Del. C. § 6005(b)(3)*, this is written notice to Respondent that on the basis of the above findings and factors, an administrative penalty of \$10,000.00 is assessed for the violations identified in this Secretary's Order.

Respondent shall submit one check to the Department in the amount of \$10,000.00 to pay the administrative penalty within 30 days from the receipt of this Assessment and Secretary's Order. The check shall be made payable to the "State of Delaware" and shall be directed to: Leslie Reese, 89 Kings Hwy SW, Dover, Delaware 19901.

PUBLIC HEARING AND APPEAL RIGHTS

This Secretary's Order affects Respondent's legal rights and is effective and final upon receipt by Respondent. Pursuant to Section 6008 of Title 7 of the Delaware Code, 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 Secretary's Order. In the alternative, Respondent may, pursuant to *7 Del. C. § 6005(b)(3)*, request a public hearing on the Assessment and Secretary's Order within **30 days** of receipt of the Assessment and Secretary's Order. A public hearing pursuant to *7 Del. C. § 6005(b)(3)* 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.

Respondent is further advised that the above assessed administrative penalty shall be due and owing within 30 days of Respondent's receipt of this Assessment and Secretary's Order. In the event of nonpayment of the administrative penalty assessed above, and after Respondent has exhausted all legal appeals, if any, a civil action may be brought by the Secretary in Superior Court for collection of the administrative penalty, including interest, attorneys' fees and costs, and the validity, amount and appropriateness of such administrative penalty and/or costs shall **not** be subject to review pursuant to *7 Del. C. §§ 6005(b)(3) and (c)*.

To request a public hearing pursuant to *7 Del. C. § 6005(b)(3)*, please submit your request, in writing, to:

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

To submit an appeal to the Environmental Appeals Board pursuant to *7 Del. C. § 6008*, you must file your written statement of appeal and submit a check, made payable to: "Environmental Appeals Board," for the \$50.00 filing fee, 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
Telephone: (302) 739-9000

For additional information on filing an appeal with the Environmental Appeals Board and what information you must include in your written statement of appeal, please refer to the Environmental Appeals Board Regulations, codified at *7 DE Admin. Code § 105*.

The Department, to the extent necessary, 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 *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)*. Nothing in this document shall be deemed to estop, or in any way preclude any additional enforcement action for these or any other violations, including administrative and civil penalties for each day of violation, or an action for the recovery of Department costs expended in abating these violations.

SECRETARY'S ORDER FOR COST RECOVERY

Pursuant to *7 Del. C. § 6005(c)*, Respondent is liable for all expenses incurred by the Department in abating the violations detailed in this Secretary's Order. "Such expenses shall include, but not be limited to, the costs of investigation, legal fees and assistance, public hearings, materials, equipment, human resources, contractual assistance and appropriate salary and overtime pay for all state employees involved in the effort notwithstanding merit system laws, regulations or rules to the contrary." (*7 Del. C. § 6005(c)(1)*).

1. Respondent is liable for \$1,612.87 in costs, which costs the Department has incurred to date in abating the violations detailed in this Secretary's Order. The Department has attached to this Secretary's Order a detailed billing of expenses detailing these costs. Respondent shall remit a check payable to the State of Delaware in the amount of \$1,612.87 within thirty (30) days of receipt of this Secretary's Order, to Leslie Reese, 89 Kings Hwy SW, Dover, Delaware 19901.

In the event that Respondent appeals this Secretary's Order pursuant to *7 Del. C. § 6008* or requests a public hearing pursuant to *7 Del. C. § 6005(b)(3)*, or in the event Respondent fails to comply with this Secretary's Order, the Department will rescind the detailed billing attached to this Secretary's Order. The Department will issue Respondent a new detailed billing and Cost Recovery Order following exhaustion of Respondent's appeal rights that will include all

additional recoverable costs incurred by the Department. Respondent is further advised that Respondent may challenge the Department's final detailed billing in accordance with 7 *Del. C.* § 6005(c)(2).

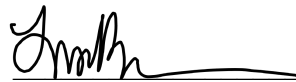
PRE-PAYMENT

Respondent may prepay the administrative penalty of \$10,000.00 and the Department's costs in the amount of \$1,612.87 in the manner described in the attached "**Waiver of Statutory Right to A Hearing.**" **By doing so, Respondent waives its right to a hearing and the opportunity to appeal or contest this Secretary's Order and the Department's Cost Recovery.**

If you have any questions, please contact, or have your attorney contact, Sawyer Traver, Esq., Deputy Attorney General, at (302) 395-2600.

11/30/2023

Date



For Shawn M. Garvin, Secretary

Cc: Timothy Ratsep, Division Director
Sawyer Traver, Deputy Attorney General

WAIVER OF STATUTORY RIGHT TO A HEARING

PATS Aircraft, LLC hereby waives its right to a public hearing and its opportunity to appeal or contest this Assessment and Order, and agrees to the following:

2. **PATS Aircraft, LLC** will pay the administrative penalty in the amount of \$10,000.00 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 Leslie Reese, 89 Kings Hwy SW, Dover, Delaware 19901.

3. **PATS Aircraft, LLC** will pay the Department's Costs in the amount of \$1,612.87 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 Leslie Reese, 89 Kings Hwy SW, Dover, Delaware 19901.

PATS Aircraft, LLC

Date: _____

By: _____

(Signature)

Title: _____

Name: _____

(Print)