



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-0035

VIA CERTIFIED MAIL, RETURN RECEIPT

Issued To:

Antonio D. Haigler
EHS & Chemical Specialist
University of Delaware
222 South Chapel Street
Room 132
Newark, DE 19716-5699

Legal Representative:

Office of General Counsel
University of Delaware
112 Hullihen Hall
Newark, DE 19716

Dear Mr. Hailger:

The Secretary of the Department of Natural Resources and Environmental Control (“Department”) has found University of Delaware (“Respondent”) 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

The University of Delaware is a public university with its main campus in Newark, Delaware. Through its operations, Respondent generates hazardous waste and is classified as a large quantity generator (“LQG”)¹ assigned EPA ID number DED000820704. As such, Respondent is subject to the regulatory requirements of 7 DE Admin. Code § 1302.

On June 8, 2023, the Department received a request from Respondent for an extension to the 90-day hazardous waste accumulation time limit for LQGs. While obtaining additional information related to the requested extension, the Department found Respondent to be in violation of applicable state statutes and regulations governing the generation and management of hazardous waste.

The Department spoke with the Respondent about the violation on June 14, 2023. During the conversation, Respondent acknowledged the violation and agreed to achieve compliance.

FINDINGS OF FACT AND VIOLATION INCLUDING REGULATORY REQUIREMENTS

1. DRGHW Section 262.17(a) states:

“A large quantity generator may accumulate hazardous waste on site without a permit or interim status, and without complying with the requirements of Parts 124, 264 through 266, and 122 of these regulations, or the notification requirements of 7 Del.C. §6304(a), provided that all of the following conditions for exemption are met:

(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...”

¹ Generators of more than 1,000 kilograms (2,200 pounds) of hazardous waste in any calendar month are large quantity generators (Delaware’s *Regulations Governing Hazardous Waste*, Section 260.10, 2021).

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.”

On June 8, 2023, the Department received from Respondent an email requesting an extension of the 90-day accumulation limit afforded to an LQG of hazardous waste. In addition to the email request, Respondent included a packing slip which described the hazardous waste the Respondent wanted covered by the requested extension. The packing slip identified an accumulation start date of February 15, 2023. Based on the February 15, 2023, accumulation start date, the Department determined that on the date of the extension request, the hazardous waste had already been accumulated by Respondent for 114 days, 24 days past the 90-day accumulation limit afforded to an LQG.

On June 12, 2023, the Department emailed Respondent to confirm that the accumulation start date of February 15, 2023, reflected on the packing slip was correct.

On June 13, 2023, Respondent requested to speak to the Department to discuss the accumulated hazardous waste.

On June 14, 2023, the Department and Respondent spoke via telephone. During the telephone conversation, Respondent stated that the accumulation start date on the packing slip was incorrect. Respondent shared that the correct accumulation start date was in fact February 16, 2023. Based on the February 16, 2023, accumulation start date, the Department determined that the hazardous waste had accumulated for 113 days at the time Respondent requested an extension of the 90-day accumulation limit from the Department. The Department explained to Respondent that because the hazardous waste accumulated by Respondent had exceeded the 90-day accumulation limit, the hazardous waste regulations no longer afforded Respondent the ability to secure an extension to the 90-day accumulation limit from the Department. Further, the Department explained that by exceeding the 90-day accumulation limit, Respondent failed to comply with the conditions of exclusion in DRGHW Section 262.17(a) which only allow accumulation of a hazardous waste for 90 days or less without a permit. Therefore, 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 July 14, 2023, Respondent submitted the generator copy of manifest 001170176WAS, dated July 13, 2023, demonstrating the stored hazardous waste was properly shipped off-site. On August 10, 2023, Respondent submitted the designated facility copy of manifest 001170176WAS, dated August 8, 2023, demonstrating the waste was received by the designated disposal facility. Respondent's July 13, 2023, shipment of the stored hazardous waste and its August 8, 2023 receipt by the designated disposal facility corrected the 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 violation 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 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 forth below.

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

Failing to ensure compliance with the regulatory requirements for the management of hazardous waste, including failing to abide by accumulation time limits and operating without the required permit is a deviation 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:

On August 14, 2012, Notice of Administrative Penalty Assessment and Secretary's Order 2012-WH-0032 was issued to Respondent for operating a hazardous waste storage facility without a permit after Respondent had accumulated hazardous waste onsite for longer than 90 days. Notwithstanding this fact, Respondent's prior 2012 violation history was not a factor in this administrative penalty assessment.

4. Degree of Culpability:

The degree of culpability is significant. Had Respondent employed reasonable oversight measures as DRGHW require, this violation 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 \$9,000.00 is assessed for the violation identified in this Order.

Respondent shall submit one check to the Department in the amount of \$9,000.00 to pay the administrative 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: Leslie Reese, 89 Kings Hwy SW, Dover, Delaware 19901.

PUBLIC HEARING AND APPEAL RIGHTS

This Assessment and 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 Order. In the alternative, Respondent may, pursuant to *7 Del. C. § 6005(b)(3)*, request a public hearing on the Assessment and Order within **30 days** of receipt of the Assessment and 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 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)).

Respondent is liable for \$1,022.86 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 \$1022.86 within 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 \$9,000.00 and the Department's costs in the amount of \$1,022.86 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 Deputy Attorney General, Travis Groski at (302) 395-2500.

December 21, 2023

Date



For Shawn M. Garvin, Secretary

cc. Travis Groski, Esq., Deputy Attorney General
Timothy Ratsep, Division Director

WAIVER OF STATUTORY RIGHT TO A HEARING

University of Delaware hereby waives its right to a public hearing and its opportunity to appeal or contest this Assessment and Order, and agree to the following:

1. **University of Delaware** will pay the administrative penalty in the amount of \$9,000.00 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.
2. **University of Delaware** will pay the Department's Costs in the amount of \$1022.86 by sending a check payable to the State of Delaware within 30 days of receipt of this Assessment and Order. The check shall be made payable to the "State of Delaware" and be directed to Leslie Reese, 89 Kings Hwy SW, Dover, Delaware 19901.

University of Delaware

Date: _____

By: _____

(Signature)

Title: _____

Name: _____

(Print)