



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-WHS-0020

VIA CERTIFIED MAIL, RETURN RECEIPT

Issued To:

Kyle Johnston
EHS Specialist
Dupont Polymer Products, LLC
200 Powder Mill Road
Wilmington, DE 19803

Registered Agent:

Corporate Creations Network, Inc.
3411 Silverside Road
Tatnall Building, STE 104
Wilmington, DE 19810

Dear Mr. Johnston:

The Secretary of the Department of Natural Resources and Environmental Control ("Department") has found Dupont Polymer Products, LLC ("Respondent" or "Dupont Polymer") 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

Dupont Polymer operates research and development facilities located at 200 Powder Mill Road, Wilmington, Delaware 19803 ("Dupont Polymer at the Experimental Station") and at 974 Centre Road, Wilmington, Delaware 19805 ("Dupont Polymer at Chestnut Run"; together with Dupont Polymer at the Experimental Station, the "Facilities"). During the operation of its Facilities, Dupont Polymer 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 February 6, 2023, the Department conducted a compliance inspection at the facility of Dupont Polymer at the Experimental Station. 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 DEN000505222. Based on the information gathered during the February 6 inspection and after 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 February 6, 2023 inspection by issuing to Respondent, Notice of Violation No. 23-HW-06 ("NOV"), dated March 21, 2023. Respondent received the NOV on March 27, 2023. The NOV identified four (4) violations of DRGHW.

Respondent corrected one (1) of the four (4) violations during the February 6, 2023 inspection. On March 13, 2023, Respondent submitted documentation to the Department demonstrating that it corrected another two (2) of the four (4) violations. On March 16, 2023, Respondent submitted additional documentation to the Department correcting the remaining violation cited in the NOV.

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*, 2021).

**FINDINGS OF FACT AND VIOLATION INCLUDING
REGULATORY REQUIREMENTS**

1. DRGHW Section 266.70(b)(2) states:

“(b) Persons who generate, transport, or store recyclable materials that are regulated under this subpart are subject to the following requirements: ...

(2) Subpart B of Part 262 of these regulations (for generators), §263.20 and §263.21 of these regulations (for transporters), and §265.71 and §265.72 of these regulations (for persons who store) of these regulations...”

DRGHW Section 262.20(a)(1) states:

“(a)

(1) A generator who transports, or offers for transport, a hazardous waste for off-site treatment, storage, or disposal, or a treatment, storage, and disposal facility who offers for transport a rejected hazardous waste load, must accurately prepare a Manifest (U.S. OMB Control Number 2050-0039) on EPA Form 8700-22 and, if necessary EPA Form 8700-22A.”

On February 6, 2023, Department representatives observed one closed 20-gallon metal container in the satellite accumulation area of Lab 7-1E (Liquid Viscosity Testing Lab) of Building 306, accumulating recyclable materials contaminated with precious metals. The container was labeled "This waste is being managed under Subpart F 40 CFR 266.70." Department representatives requested shipping documentation for the precious metal recyclable materials. In a February 16, 2023, email, Respondent submitted a bill of lading for "Dupont Polymer at the Experimental Station" and a bill of lading for its second location of "Dupont Polymer at Chestnut Run." Both bills of lading showed that the Facilities were managing precious metal recyclable materials pursuant to DRGHW Part 266, Subpart F, by sending them to a metal recycler. In a March 8, 2023, email, a representative for Respondent confirmed that only bills of lading, and not hazardous waste manifests, were being used for shipping the precious metal recyclable materials to the metal recycler. By failing to use a hazardous waste manifest when shipping recyclable materials as described in DRGHW Section 262.20, Respondent did not comply with the requirements of DRGHW Section 266.70(b)(2).

DRGHW Part 262, Subpart B requires generators to use the hazardous waste manifest when shipping hazardous waste. Recyclable materials being managed under DRGHW Part 266, Subpart F, are hazardous wastes. Failure to use the hazardous waste manifest to ship hazardous waste off-site is a violation of DRGHW Section 262.20(a)(1).

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

2. DRGHW Section 266.70(c) states:

“Persons who store recycled materials that are regulated under this subpart must keep the following records to document that they are not accumulating these materials speculatively (as defined in 261.1(c) of these regulations);

(1) Records showing the volume of these materials stored at the beginning of the calendar year;

(2) The amount of these materials generated or received during the calendar year; and

(3) The amount of materials remaining at the end of the calendar year.”

In a February 8, 2023, email, Respondent submitted a reclamation log² for the accumulation of recyclable materials being managed under DRGHW Part 266, Subpart F, at Dupont Polymer at the Experimental Station. The reclamation log showed the recyclable materials were prepared for shipping on December 20, 2022, December 31, 2022, and January 1, 2023. In addition, the reclamation log inventory showed that zero (0) pounds of recyclable materials were accumulating on-site. The aforementioned bills of lading showed shipping dates of February 9, 2023.

Department representatives determined the reclamation log did not accurately represent the amounts of precious metals recyclable materials that had accumulated on site at the end of the 2022 calendar year and at the beginning of the 2023 calendar year. Failure to maintain accurate records of the amount of precious metals recyclable materials at the beginning and end of the calendar year, and the amount of those recyclable materials generated during the calendar year to demonstrate that these recyclable materials are not being accumulated speculatively, is a violation of DRGHW Section 266.70(c).

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

² A reclamation log is an inventory log that documents the accumulation period.

3. DRGHW Section 262.15(a)(5)(ii) states:

“ . . .

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

. . .

(ii) 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 February 6, 2023, Department representatives observed one (1) closed 30-gallon cardboard container in the satellite accumulation area of Lab 4130 of Building 402, accumulating hazardous lab waste. The container was not marked with an indication of the hazards of the contents. Failure to mark a hazardous waste container with an indication of the hazards of the contents is a violation of DRGHW Section 262.15(a)(5)(ii).

During the February 6, 2023, inspection, Respondent corrected this violation to the Department's satisfaction.

4. DRGHW Section 268.7(a) states:

“Requirements for generators and reverse distributors:

(1) A generator of hazardous waste must determine if the waste has to be treated before it can be land disposed. This is done by determining if the hazardous waste meets the treatment standards in §268.40, 268.45, or §268.49. This determination can be made concurrently with the hazardous waste determination required in §262.11 of these regulations, in either of two ways: testing the waste or using knowledge of the waste. If the generator tests the waste, testing would normally determine the total concentration of hazardous constituents, or the concentration of hazardous constituents in an extract of the waste obtained using test method 1311 in ‘Test Methods of Evaluating Solid Waste, Physical/Chemical Methods,’ EPA Publication SW-846, (incorporated by reference, see §260.11 of these regulations), depending on whether the treatment standard for the waste is expressed as a total concentration or concentration of hazardous constituent in the waste's extract. (Alternatively, the generator must send the waste to a RCRA-permitted hazardous waste treatment facility, where the waste treatment facility must comply with the requirements of §264.13 of these regulations and paragraph (b) of this section.) In addition, some hazardous wastes must be treated by particular treatment methods before they can be land disposed and some soils are contaminated by such hazardous wastes. These treatment standards are also found in §268.40, and are described in detail in §268.42, Table 1. These wastes, and soils contaminated with such wastes, do not need to be tested (however, if they are in a waste mixture, other wastes with concentration level treatment standards would have to be tested). If a generator determines they are managing a waste or soil contaminated with a waste, that displays a hazardous characteristic of ignitability, corrosivity, reactivity, or toxicity, they must comply with the special requirements of §268.9 of this part in addition to any applicable requirements in this section.

(2) If the waste or contaminated soil does not meet the treatment standards, or if the generator chooses not to make the determination of whether his waste must be treated, with the initial shipment of waste to each treatment or storage facility, the generator must send a one-time written notice to each treatment or storage facility receiving the waste and place a copy in the file. The notice must include the information in column '268.7(a)(2)' of the Generator Paperwork Requirements Table in paragraph (a)(4) of this section. (Alternatively, if the generator chooses not to make the determination of whether the waste must be treated, the notification must include the EPA Hazardous Waste Numbers and Manifest Number of the first shipment and must state 'This hazardous waste may or may not be subject to the LDR treatment standards. The treatment facility must make the determination.') No further notification is necessary until such time that the waste or facility change, in which case a new notification must be sent and a copy placed in the generator's file.

(3) If the waste or contaminated soil meets the treatment standard at the original point of generation:

(i) With the initial shipment of waste to each treatment, storage, or disposal facility, the generator must send a one-time written notice to each treatment, storage, or disposal facility receiving the waste, and place a copy in the file. The notice must include the information indicated in column '268.7(a)(3)' of the Generator Paperwork Requirements Table in §268.7(a)(4) and the following certification statement, signed by an authorized representative:

I certify under penalty of law that I personally have examined and am familiar with the waste through analysis and testing or through knowledge of the waste to support this certification that the waste complies with the treatment standards specified in Part 268 Subpart D. I believe that the information I submitted is true, accurate, and complete. I am aware that there are significant penalties for submitting a false certification, including the possibility of a fine and imprisonment."

On February 16, 2023, Department representatives reviewed the aforementioned bills of lading and did not observe attached Land Disposal Restriction ("LDR") determinations/notifications. Failure to make a LDR determination and submit the required notification to the treatment, storage, or disposal facility is a violation of DRGHW Section 268.7(a).

On March 16, 2023, Respondent submitted documentation to the Department 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 Order identifies and describes four (4) separate regulatory violations. Failing to ensure compliance with the regulatory requirements for the management of recyclable materials managed under DRGHW Part 266, Subpart F, including keeping accurate accumulation records, using a manifest when shipping recyclable materials, and making LDR determinations for waste shipments are 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:

The Respondent first notified the Department that it was a hazardous waste generator on September 20, 2022. It has not undergone a prior hazardous waste compliance inspection by the Department, and thus, this was 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 Order. The check shall be made payable to the "State of Delaware" and shall be directed to: Leslie Reece, 89 Kings Hwy SW, Dover, DE 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 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 \$3,239.88 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 \$3,239.88 within thirty (30) days of receipt of this Secretary's Order, to Leslie Reece, 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 \$3,239.88 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, Deputy Attorney General, at (302) 395-2600.

August 28, 2023

Date



For Shawn M. Garvin, Secretary

WAIVER OF STATUTORY RIGHT TO A HEARING

Dupont Polymer Products, 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:

1. **Dupont Polymer Products, 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 Reece, 89 Kings Hwy SW, Dover, Delaware 19901.
2. **Dupont Polymer Products, LLC** will pay the Department's Costs in the amount of \$3,239.88 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 Reece, 89 Kings Hwy SW, Dover, Delaware 19901.

Dupont Polymer Products, LLC

Date: _____

By: _____

(Signature)

Title: _____

Name: _____

(Print)