



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-0026

VIA CERTIFIED MAIL, RETURN RECEIPT

Issued To:

Edward B. Remster, President
SJ Transportation Co., Inc.
1176 US Route 40
PO Box 169
Woodstown, NJ 08098

Registered Agent:

Edward B. Remster
PO Box 662
Alloway, NJ 08001

Dear Mr. Remster:

The Secretary of the Department of Natural Resources and Environmental Control ("Department") has found SJ Transportation Co., Inc. ("Respondent" or "SJ Transportation") 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

SJ Transportation is based at a facility located at 1176 US Route 40, Woodstown, New Jersey 08098. SJ Transportation is identified by EPA ID number NJD071629976 and is a permitted Delaware hazardous waste transporter assigned permit number DE-HW-0057. As such, SJ Transportation is subject to the statutory and regulatory requirements of 7 *Del. C.* Chapters 60 and 63, and 7 DE Admin. Code § 1302.

DuPont Polymer Products, LLC operates two facilities in Delaware. The facilities are “DuPont Polymer Products, LLC at Experimental Station,” located at 200 Powder Mill Road, Wilmington, Delaware 19803 and “DuPont Polymer Products, LLC at Chestnut Run” located at 974 Centre Road, Wilmington, Delaware 19805. During the operation of its facilities, DuPont Polymer Products, LLC generates hazardous waste. As such, DuPont Polymer Products, LLC facilities are 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 of DuPont Polymer Products, LLC at Experimental Station. During the February 6, 2023, inspection, Department representatives learned DuPont Polymer Products, LLC at Experimental Station was managing recyclable materials that are reclaimed to recover economically significant amounts of precious metals pursuant to DRGHW Part 266 Subpart F.

Following a request by the Department for shipping documents for the precious metals recyclable materials being managed, DuPont Polymer Products, LLC submitted a bill of lading for “DuPont Polymer Products LLC Experimental Station” (Document Number 0433168) and a bill of lading for “DuPont Polymer Products, LLC at Chestnut Run.” (Document Number 0433169). Both bills of lading show precious metal recyclable materials being managed under DRGHW Part 266, Subpart F, were transported on February 9, 2023, to a metal recycler by Respondent. In a March 8, 2023, email, a representative for DuPont Polymer Products, LLC confirmed that only bills of lading, not hazardous waste manifests, were used to ship the precious metal recyclable materials to the metal recycler.

The Department notified Respondent of the violation identified during the February 6, 2023, inspection of DuPont Polymer Products, LLC at Experimental Station by issuing Respondent, Notice of Violation No. 23-HW-11 ("NOV"), dated May 8, 2023, which was received by the Respondent on May 15, 2023. On June 9, 2023, Respondent submitted documentation demonstrating correction of this violation to the Department's satisfaction.

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 263.20(a)(1) states:

"(a)

(1) Manifest requirement. A transporter may not accept hazardous waste from a generator unless the transporter is also provided with a manifest signed in accordance with the requirements of §262.23, or is provided with an electronic manifest that is obtained, completed, and transmitted in accordance with §262.20(a)(3) of these regulations, and signed with a valid and enforceable electronic signature as described in §262.25 of these regulations."

On February 9, 2023, Respondent accepted two shipments of precious metal recyclable materials being managed under DRGHW Part 266, Subpart F for transport using only bills of lading instead of hazardous waste manifests. By failing to use a hazardous waste manifest when transporting recyclable materials being managed under DRGHW Part 266, Subpart F, Respondent did not comply with the requirements of DRGHW Section 266.70(b)(2).

DRGHW Sections 263.20 and 263.21 require transporters to use a hazardous waste manifest when shipping hazardous waste. Precious metal recyclable materials being managed under DRGHW Part 266, Subpart F, are hazardous wastes. Failure to use a hazardous waste manifest when accepting hazardous waste for off-site shipment is a violation of DRGHW Section 263.20(a)(1).

On June 9, 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:

This Order identifies and describes one (1) regulatory violation. Failing to ensure compliance with the regulatory requirements for the management of recyclable materials managed under DRGHW Part 266, Subpart F, including using a hazardous waste manifest when transporting the recyclable materials, is a significant 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:

Respondent has not previously incurred hazardous waste regulatory violations in the state of Delaware, and thus this was not a factor in the administrative penalty assessment.

4. Degree of Culpability:

The degree of culpability is significant, as 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 this violation, 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 violation 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 checks shall be made payable to the "State of Delaware" and shall be directed to: Leslie Reese, 89 Kings Highway SW, Dover, DE 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.

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)).

At this time, the Department is not seeking costs from Respondent. 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) the Department reserves the right to issue a detailed billing statement of all costs incurred as a result and seek recovery of that amount. The Department will issue Respondent that detailed billing and Cost Recovery Order following exhaustion of Respondent's appeal rights.

PRE-PAYMENT

Respondent may prepay the administrative penalty of \$9,000.00 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.**

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

October 30, 2023

Date



For Shawn M. Garvin, Secretary

cc: Travis Groski Deputy Attorney General
Timothy Ratsep, Division Director

WAIVER OF STATUTORY RIGHT TO A HEARING

SJ Transportation Co., Inc. 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. **SJ Transportation Co., Inc.** 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 Highway SW, Dover, DE 19901.

SJ Transportation Co., Inc.

Date: _____

By: _____

(Signature)

Title: _____

Name: _____

(Print)