



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. 2026-A-0035

Issued To:

Company

Via Personal Service:

River Asphalt, LLC

30548 Thorogoods Road

Dagsboro, DE 19939

Company

Via Certified Mail:

Mr. Scott Taylor

Air Quality Permit Manager

River Asphalt, LLC, Engineering & Environmental

Services P.O. Box 196

Skippack, PA 19474

Company

Via Personal Service:

River Asphalt, LLC

By Serving the Registered Agent:

The Corporation Trust Company

Corporation Trust Center

1209 Orange Street

Wilmington, DE 19801

This Assessment and Secretary's Order serves to notify River Asphalt, LLC dba River Asphalt ("Respondent") that the Secretary of the Department of Natural Resources and Environmental Control ("Department") has found Respondent in violation of its permit. Accordingly, the Department is issuing this Notice of Administrative Penalty Assessment and Secretary's Order ("Order") pursuant to 7 Del. C. § 6005(b)(3).

BACKGROUND

Respondent owns and operates a hot mix asphalt ("HMA") plant located at 30548 Thorogoods Road, Dagsboro, Delaware ("facility") that consists of a 400 TPH Astec double drum dryer and asphalt mixer with a 100 MMBTU/hr dryer burner, a five bin virgin aggregate cold feed system, a single bin recycled asphalt pavement ("RAP") material feed system, a RAP crusher system with baghouse, one 19,000-gallon propane storage tank, three 20,000-gallon liquid asphalt storage tanks, one 0.8 MMBTU/hr natural gas-fired asphalt heater, one 60-ton dust storage silo, three 200-ton HMA storage silos, a rotary (drum) dryer baghouse, a process control system, and appurtenances. Respondent is rated as a 314 ton per hour ("tph") asphalt production facility. Respondent operates under the requirements of a natural minor operating Permit: APC-2006/0134-OPERATION (Amendment 5)(NSPS) issued May 1, 2014 (hereafter, "Permit: APC-2006/0134"), pursuant to 7 DE Admin. Code 1102 ("Regulation 1102").

The Environmental Protection Agency's ("EPA") Region 3 emailed the Department on May 31, 2024, to relay a May 20, 2024, complaint it had received. As a result of the complaint, the Department conducted an unannounced partial compliance evaluation ("PCE") at the facility on June 13, 2024. Upon arrival at the facility, the Department observed the rotary (drum) dryer baghouse exhaust stack exceeding the 20% opacity limit. The exhaust gas from the stack was estimated to have a white smoke opacity of 50%. Odors could be detected directly near the stack, however, could not

be detected further down the road. The Department observed significant dust issues from the road that were not being mitigated through employment of dust control measures. Before the inspection concluded, the Department observed that Respondent had deployed a water truck to address the excess dust emissions.

The inspection then continued to the operators' room. The Department requested to see records but was told that there were no records available onsite for review. Respondent indicated records are obtained daily and sent offsite to its Air Quality Permit Manager. The magnehelic gauge in the control room indicated a differential pressure of 2.5 inches of water column at the baghouse. The operating permit requires the pressure drop across the baghouse to be maintained between three and six inches of water column whenever the rotary dryer is in operation.

A follow-up email was sent to Respondent on June 17, 2024, requesting the following information: the date of plant startup; the dates of the burner tune-ups; all pressure drop and maintenance logs for 2024; RAP purchase records for the past three years, covering the period from July 1, 2021, to June 30, 2024; and a description of the corporate structure of H&K Group, Inc. In email responses dated June 17, 2024, and June 21, 2024, Respondent provided all of the requested information.

In the June 17, 2024, email response, Respondent indicated that 23 damaged bags in the rotary dryer baghouse were replaced on June 15, 2024, after which 0% opacity was observed. In the documents provided in the June 21, 2024, email, Respondent provided a schematic of the bags replaced as well as a copy of the visible emissions observer's evaluation certification, which was valid from April 16, 2024, to October 16, 2024.

An inspection findings letter was issued to Respondent on August 26, 2024. Respondent submitted its response to the findings letter via email, including attachments, on September 26, 2024. In its response, Respondent indicated that “[b]ased on the 23 damaged bags replaced the 50% opacity observation certainly isn’t questioned.” Respondent acknowledged that the low pressure drop reading “...’can’ be an indicator of failed or failing bags however not exclusively.” Respondent indicated that the permitted pressure drop range for the baghouse was established during its original construction, set between three to six inches of water column. Information obtained since then supports a pressure drop below the currently permitted 3 inches water column. Respondent asked how to apply for an amendment to adjust the pressure drop range in the permit. The Department later advised Respondent that if it believes the range should be revised, it must submit a permit amendment request, with substantiation, to change it. Respondent also addressed the failure to employ measures to minimize excess dust emissions from the road. Respondent indicated that it shares a water truck with the adjacent Dagsboro Materials facility for dust control of roadways. The water truck is also used by Dagsboro Materials to maintain water supply tanks for portable crushing. Respondent indicated it was installing permanent yard hydrants, to facilitate the portable crushing needs for Dagsboro Materials, allowing the water truck to be used for roadway dust control exclusively.

A Notice of Violation dated March 11, 2025, was issued to Respondent on April 1, 2025, for the violations resulting from the June 13, 2024, PCE.

FINDINGS OF FACT

1. Respondent owns and operates a hot mix asphalt plant located at 30548 Thorogoods Road, Dagsboro, Delaware ("facility").
2. Respondent's operations at the facility are governed under a natural minor permit, issued pursuant to 7 DE Admin. Code 1102, Permit: APC-2006/0134-OPERATION (Amendment 5)(NSPS), dated May 1, 2014, (hereafter, "Permit: APC-2006/0134").
3. The Department conducted an unannounced PCE at Respondent's facility on June 13, 2024, in response to a complaint received by EPA on May 20, 2024, and relayed to the Department on May 31, 2024.
4. The Department observed the rotary dryer baghouse exhaust stack exceeding the 20% opacity limit. The exhaust gas from the stack was estimated to have a white smoke opacity of 50%.
5. The Department observed that the baghouse pressure drop was 2.5 inches of water column, which is out of the permitted range of three to six inches of water column.
6. The Department also observed significant fugitive dust emissions caused by a dry road and traffic within the facility. Respondent was not employing dust control measures, such as application of water on the road, to minimize these emissions.
7. In a June 17, 2024, email, the Department requested Respondent submit certain information, which it did via email on June 17, 2024, and June 21, 2024.

8. In its responses, Respondent addressed the corrective action taken for the excess opacity from the baghouse stack. Respondent indicated that it replaced 23 damaged bags within the baghouse and that afterwards, opacity dropped to 0% as observed by the Air Quality Permit Manager.
9. An inspection findings letter was issued to Respondent on August 26, 2024. Respondent submitted its response to the findings letter via email, including attachments, on September 26, 2024.
10. In the September 26, 2024, email Respondent indicated that to address the fugitive dust emissions, the water truck that was being shared with a facility adjacent to Respondent, would be freed up for roadway dust control exclusively by Respondent's planned installation of permanent yard hydrants.
11. A NOV dated March 11, 2025, was issued to Respondent on April 1, 2025, for the violations resulting from the June 13, 2024, PCE.

PERMIT AND REGULATORY REQUIREMENTS

1. In Section 3 of 7 DE Admin. Code 1106, it states:

"No person shall cause or allow land clearing, land grading (including grading for roads), excavation, or the use of non-paved roads on private property unless methods, as indicated in 2.2 of this regulation, are employed to control dust emissions, when the Department determines that such activities could emit dust in quantities sufficient to cause air pollution." Section 2.2 states, "Such methods may include the application of water or the use of other techniques approved by the Department."

2. In Section 2.0 of 7 DE Admin. Code 1114, it states:

“No person shall cause or allow the emission of visible air contaminants or smoke from a stationary or mobile source, the shade or appearance of which is greater than 20% opacity for an aggregate of more than three minutes in any one hour or more than 15 minutes in any 24 hour period. For guideline purposes only, Shade Number 1 of the Ringlemann Smoke Chart coincides with the regulatory limit of 20% opacity, when observing black smoke.”

3. In Section 1.5.5 of 7 DE Admin. Code 1120, it states:

“At all times, including periods of startup, shutdown, and malfunction, owners and operators shall, to the extent practicable, maintain and operate any applicable source including associated air pollution control equipment in a manner consistent with good air pollution control practice for minimizing emissions. Determination of whether acceptable operating and maintenance procedures are being used will be based on information available to the Secretary which may include, but is not limited to, monitoring results, opacity observations, review of operating and maintenance procedures, and inspection of the source.”

4. In Condition 2.2 of Permit: APC-2006/0134, it states:

“The Company shall not discharge or cause the discharge into the atmosphere from the heating, drying, and mixing operations any gases which exhibit twenty percent (20%) opacity, or greater. For all other sources, the emission of visible air contaminants shall not exceed twenty percent (20%) opacity for an aggregate of more than three (3) minutes in any one (1) hour period or, more than fifteen

(15) minutes in any twenty-four (24) hour period for all other operations at the facility.”

5. In Condition 3.1.8, of Permit: APC-2006/0134, it states:

“The baghouses for the rotary dryer and RAP crusher shall be operating properly whenever the respective equipment is in operation. The baghouses shall be operated with functional pressure drop gauges during all periods of operation.”

6. In Condition 3.1.9, of Permit: APC-2006/0134, it states:

“The pressure drop across the baghouse shall be maintained between three (3) and six (6) inches of water column whenever the rotary dryer is in operation.”

7. In Condition 3.1.11, of Permit: APC-2006/0134, it states:

“No person shall cause or allow land clearing, land grading (including grading for roads), excavation, or use of non-paved roads on private property unless methods, such as the application of water or the use of other techniques approved by the Department, are employed to control dust emission.”

8. In Condition 3.2 of Permit: APC-2006/0134, it states:

“At all times, including periods of start-up, shutdown, and malfunction, the owner or operator shall, to the extent practicable, maintain and operate the facility including associated air pollution control equipment in a manner consistent with good air pollution control practice for minimizing emissions. Determination of whether acceptable operating procedures are being used will be based on

information available to the Department which may include, but is not limited to, monitoring results, opacity observations, review of operating and maintenance procedures, and inspection of the source.”

CONCLUSIONS

1. Respondent violated Section 2.0 of 7 DE Admin. Code 1114 and Conditions 2.2 and 3.1.8 of Permit: APC-2006/0134, when the Department observed opacity of 50% from the rotary dryer baghouse stack on June 13, 2024. The excess opacity was a result of Respondent's improper operation of the baghouse that contained 23 damaged bags.
2. Respondent violated Condition 3.1.9 of Permit: APC-2006/0134, when on June 13, 2024, the Department observed the magnehelic gauge in the control room showing a differential pressure of 2.5 inches of water column at the baghouse which is below the minimum of 3 inches of water column required by the permit.
3. Respondent violated Section 3 of 7 DE Admin. Code 1106 and Condition 3.1.11 of Permit: APC-2006/0134, when on June 13, 2024, the Department observed excess fugitive dust emissions from the road while no methods to control them, such as application of water, were employed.
4. Respondent violated Section 1.5.5 of 7 DE Admin. Code 1120 and Condition 3.2 of Permit: APC-2006/0134 by not operating its facility including associated air pollution control equipment in a manner consistent with good air pollution control practice for minimizing emissions when it operated the rotary dryer baghouse with damaged bags that resulted in excess opacity and failing to

implement measures, such as application of water, to control excess fugitive dust emissions as observed by the Department on June 13, 2024.

ASSESSMENT OF PENALTY

Pursuant to 7 Del. C. § 6005(b)(3), the Secretary may impose an administrative penalty of not more than \$10,000¹ 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 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, the Secretary is assessing an administrative penalty of \$5,510.00 for the violations identified in this Assessment and Order.

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

The nature, circumstances, extent, and gravity of the violations are moderately significant. Respondent is required to maintain and operate the facility including associated air pollution control equipment in a manner consistent with good air pollution control practice for minimizing emissions. Respondent's violation for excess opacity (visible emissions) due to damaged drum dryer

¹ The statutory administrative penalty limit of \$10,000 for each day of violation applies to the violations detailed in this Order because they all occurred before July 15, 2025, when the statutory limit was increased to \$40,000 for each day of violation.

baghouse bags indicated that the equipment was not being maintained in proper operating condition. The failure to control dust emissions is not consistent with good air pollution control practice.

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.

3. Prior History of Violations:

Prior to these violations, Respondent had no prior AQ violations on record.

4. Degree of Culpability:

The degree of culpability is moderately significant. Respondent is responsible for reading and understanding its permit requirements and operating within those limitations. Respondent did not immediately cease operations due to the damaged bags and opacity exceedance. The damaged bags were replaced within two days of the Department's visit. Respondent did apply dust control measures once requested by the Department. Thus, the Secretary considers the penalty amount assessed appropriate in the view of Respondent's culpability for these violations.

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

Respondent incurred some economic benefit from these violations, including the costs associated with replacing the damaged bags in the baghouse, which were considered 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 and calculated so as to deter Respondent and those similarly situated from engaging in future violations.

SECRETARY'S ORDER ASSESSING ADMINISTRATIVE PENALTY

Pursuant to 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 \$5,510.00 for the violations identified in this Secretary's Order.

Respondent shall submit a check to the payable to the "State of Delaware" in the amount of \$5,510.00 within thirty (30) days of receipt of this Secretary's Order directed to: Department of Natural Resources and Environmental Control, Office of the Secretary Enforcement Processing, 89 Kings Highway, 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 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 Secretary's Order. In the alternative, Respondent may, pursuant to 7 *Del. C.* § 6005(b)(3), request a public hearing on the Secretary's Order, within 30 days of receipt of the 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).

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
Phone: (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
Phone: (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 and 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)).

Respondent is liable for \$5,136.15 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 \$5,136.15 within thirty (30) days of receipt of this Secretary's Order, directed to: Department of Natural Resources and Environmental Control, Office of the Secretary Enforcement Processing, 89 Kings Highway, 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

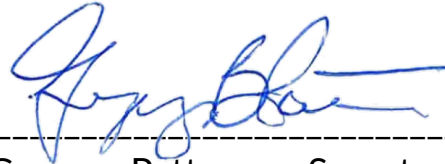
Respondent may prepay the administrative penalty of \$5,510.00 and the Department's costs in the amount of \$5,136.15, in the manner described in the attached "Waiver of Statutory Right to a Hearing." By doing so, Respondent waives its right to a hearing and the opportunity to appeal or contest this Secretary's Order and the Department's Cost Recovery.

River Asphalt, LLC dba River Asphalt
Administrative Penalty Order
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If you have any questions, please contact, or have your attorney contact, Valerie S. Edge, Deputy Attorney General, at (302) 739-4636.

October 4, 2026

Date



Gregory Patterson, Secretary
Department of Natural Resources
and Environmental Control

cc: Valerie S. Edge, Deputy Attorney General
Angela Marconi, P.E., Director
Amy Mann, P.E., Section Administrator
Jordan Matthews, P.E., Program Manager
Kevin Njoroge, Engineer
Dawn Minor, Paralegal

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WAIVER OF STATUTORY RIGHT TO A HEARING

River Asphalt, LLC dba River Asphalt hereby waives its right to a hearing and its opportunity to appeal or contest this Assessment and Order and agrees to the following:

1. **River Asphalt, LLC dba River Asphalt** will pay the administrative penalty in the amount of \$5,510.00 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 Department of Natural Resources and Environmental Control, Office of the Secretary Enforcement Processing, 89 Kings Highway, Dover, Delaware 19901; and
2. **River Asphalt, LLC dba River Asphalt** will pay the Department's Costs in the amount of \$5,136.15 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 Department of Natural Resources and Environmental Control, Office of the Secretary Enforcement Processing, 89 Kings Highway, Dover, Delaware 19901.

River Asphalt, LLC dba River Asphalt

Date: _____

By: _____

Title: _____