



STATE OF DELAWARE
**DEPARTMENT OF NATURAL RESOURCES
AND ENVIRONMENTAL CONTROL**
89 KINGS HIGHWAY
DOVER, DELAWARE 19901

Office of the
Secretary

Phone: (302) 739-9000
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**NOTICE OF ADMINISTRATIVE PENALTY ASSESSMENT
AND SECRETARY'S ORDER**

Pursuant to 7 *Del. C.* § 6005

Order No. 2018-A-0011

*PERSONALLY SERVED BY AN ENVIRONMENTAL
PROTECTION OFFICER*

Issued To:

Pure Green Industries, Inc./Refined Products, Inc.
Attn: Richard Piendak, President
9 Bellecor Drive
New Castle, DE 19720

Registered Agent:

Corporation & Companies, Inc.
910 Foulk Road, Suite 201
Wilmington, DE 19803

Dear Mr. Piendak:

This Assessment and Order serves to notify Pure Green Industries, Inc./Refined Products, Inc. ("Respondent") that the Secretary of the Department of Natural Resources and Environmental Control ("Department") has found Respondent in violation of 7 *Del. C.* Chapter 60 state air regulations and its permit. Accordingly, the Department is issuing this Notice of Administrative Penalty Assessment and Secretary's Order pursuant to 7 *Del. C.* §6005(b)(3).

BACKGROUND

Pure Green Industries, Inc./Refined Products Company, Inc. operates a batch hot mix asphalt plant and a concrete/asphalt crusher at 1620 Bowers Street in Wilmington, Delaware ("Facility"). Operations at the Facility have the potential to emit nitrogen oxides ("NO_x") in excess of 25 tons per year, the New Castle County threshold for Title V major source applicability under the state's Title V Operating Permit Program. By accepting operating limitations such as the amount of asphalt produced annually; quantity of fuel used in both the plant and crusher; and hours of operation for the equipment; Respondent is considered a Synthetic Minor source. The Facility also has pollution abatement equipment consisting of a baghouse in the asphalt plant and dust suppression spray bars on the crusher. Respondent currently operates under **Permit: APC-2005/0147-OPERATION(NSPS)(SM)(Amendment 5)** issued March 23, 2015 ("SM Permit - Amendment 5"). Respondent's previous SM Permit, Amendment 4, ("SM Permit - Amendment 4") was issued August 14, 2014.

During a full compliance evaluation (“FCE”) on April 23, 2014, the Department identified several recordkeeping violations including the failure to record baghouse pressure drops. Recording baghouse pressure drops is an important method of determining problems with the baghouse that, absent correction, negatively impacts its pollution abatement capabilities. Though a Notice of Violation was not issued for the violations discovered during the April 2014 FCE, the Department did set forth the findings in a letter to Respondent dated October 2, 2014.

The Department conducted another FCE at the Facility on June 4, 2015, and discovered that Respondent was again, out of compliance with its SM Permit requirement to record baghouse pressure drops. A Notice of Violation dated December 7, 2015¹ was issued to Respondent on December 9, 2015.

Both Respondent’s SM Permits, Amendment 4 and Amendment 5, include conditions related to performance testing, also known as stack testing. Stack testing is one of the ways Respondent demonstrates compliance with emission limitations set forth in its permit. The condition requires performance testing be conducted by October 31, 2014, and every five years after that. This due date was a typographical error, as it would not have been feasible for Respondent to complete the stack testing within two months of receiving SM Permit – Amendment 4. The correct date should have been October 31, 2015, and this date was understood by Respondent to be the deadline.

Respondent submitted the stack test protocol, dated September 29, 2015, to the DAQ on October 2, 2015. The stack test protocol outlines the manner in which the stack testing will be conducted that has to be approved by Air Surveillance group within the DAQ. The protocol was distributed by administrative staff to the assigned staff person within the Engineering and Compliance branch (“E&C”) of the DAQ, but was not distributed to the Air Surveillance group. Respondent contacted the E&C staff member on December 11, 2015, to inquire about the status of the approval of the protocol. It was at this time that the oversight of the Air Surveillance group never receiving the protocol was discovered. Since the understood deadline of October 31, 2015, had passed and it was winter, a time period that Respondent’s operations essentially cease, Respondent requested an extension of the October 31, 2015, due date which was granted with a new deadline of April 12, 2016. Respondent’s performance testing was conducted on April 14, 2016. The results of the testing were provided to the Department in a report dated May 31, 2016. Testing found that Particulate Matter (“PM”) emissions exceeded both the federal regulation and its SM Permit limits of 0.04 grains per dry standard cubic foot (“gr/dscf”) and 0.44 pounds per hour (“lb/hr”). Three testing runs showed the following (Run 1) 0.088 gr/dscf and 5.44 lb/hr; (Run 2) 0.118 gr/dscf and 8.30 lb/hr; (Run 3) 0.154 gr/dscf and 8.40 lb/hr. A Notice of Violation dated July 29, 2016, was issued to Respondent on August 1, 2016.

¹ Though the NOV was dated November 4, 2015, a delay resulted in a new date of December 7, 2015 that was reflected in the NOV Posting Memorandum, however the NOV itself was not updated with this date. The NOV was received by Respondent on December 9, 2015.

Respondent undertook some initial corrective actions including the cleaning of the baghouse and replacement of all the bags. However, an informal test for PM showed they were still out of compliance with the limits. Respondent hired a contractor to inspect the baghouse and it was determined that the baghouse had the wrong cages for the bags installed and there were numerous leaking seals and seams. In the meantime, Respondent had scheduled another official stack test for PM for August 1, 2016. Corrective actions could not be done before that test and they failed again. Respondent replaced the cages, insured the bags were the correct type and scheduled another stack test for PM for November 15, 2016. The test results showed Respondent was compliant with the PM limits, with an average PM emission of 0.005 gr/dscf and 0.40 lb/hr.

FINDINGS OF FACT

1. Pure Green Industries, Inc./Refined Products, Inc. (“Respondent”) operates a batch hot mix asphalt plant and a concrete/asphalt crusher at 1620 Bowers Street in Wilmington, Delaware.
2. Operations at Respondent’s facility have the potential to emit NO_x in quantities that subject it to the Title V State Operating Permit Program.
3. Respondent accepted operating limitations to be a Synthetic Minor facility and operates under **Permit: APC-2005/0147-OPERATION(NSPS)(SM)(Amendment 5)** issued March 23, 2015.
4. The Department conducted a full compliance evaluation at Respondent’s facility on April 23, 2014 and discovered several recordkeeping violations, including failure to record baghouse pressure drops.
5. Baghouse pressure drop recordings are an important method of insuring the baghouse is operating at its optimal pollution reduction efficiencies. Pressure drops are an indication that something is wrong so that corrections can be made.
6. The Department conducted another FCE on June 4, 2015, and again discovered Respondent had not been recording the baghouse pressure drops.
7. A Notice of Violation dated December 7, 2015¹, for the failure to record baghouse pressure drops discovered during the June 4, 2015, FCE, was issued to Respondent on December 9, 2015.
8. Respondent’s SM Permits, Amendment 4 and Amendment 5, require performance testing be completed by October 31, 2014², and every five years after that.
9. Respondent requested an extension when it was discovered the Department had not distributed Respondent’s stack test protocol to all applicable staff, primarily, was not distributed to the Air Surveillance group within the DAQ. Extension of April 12, 2016, was granted.
10. Respondent conducted said performance testing on April 14, 2016.

² See Background Section, actual deadline was October 31, 2015.

11. Results were provided in a May 31, 2016, report and showed that PM emissions exceeded both the Federal Regulation and its SM Permit limits.
12. Respondent undertook corrective actions but an informal retest on June 28, 2016, still showed non-compliance with PM limits.
13. A Notice of Violation dated July 29, 2016, for the violations associated with the failed stack testing, was issued to Respondent on August 1, 2016.
14. Respondent took additional corrective actions resulting from a contractor review of the baghouse but the actions could not be completed prior to a previously scheduled formal retest on August 1, 2016, which again showed non-compliance.
15. Respondent performed a final formal retest on November 15, 2016, and the results showed compliance with the PM limits, with an average PM emission of 0.005 gr/dscf and 0.40 lb/hr.

REGULATORY AND PERMT PROVISIONS

1. Forty CFR §60.92(a)(1) states:

“On and after the date on which the performance test required to be conducted by §60.8 is completed, no owner or operator subject to the provisions of this subpart shall discharge or cause the discharge into the atmosphere from any affected facility any gases which [c]ontain particulate matter in excess of 90 mg/dscm (0.04 gr/dscf).”

2. Condition 2.4 of Permit: **APC-2005/0147-OPERATION (NSPS)(SM)(Amendment 5)** states:

“Particulate Matter emissions from the asphalt plant shall not exceed 0.44 pounds per hour and 0.44 tons per year and those specified in 7 DE Admin. Code 1100.”

3. Condition 2.7 of Permit: **APC-2005/0147-OPERATION (NSPS)(SM)(Amendment 5)** states:

“The Company shall not discharge into the atmosphere any gas containing particulate matter in excess of 0.04 grains per dry standard cubic foot.”

4. Condition 5.4 of Permit: **APC-2005/0147-OPERATION (NSPS)(SM)(Amendment 5)** states:

“The Company shall maintain a maintenance/inspection log for the baghouse and associated monitoring equipment detailing all routine and non-routine maintenance performed, including dates and duration of any outages and regular records of inspections for leaks, differential pressure gauge readings and filter bag inspections.”

CONCLUSION

Based on the above, the Department has concluded that Respondent committed the following violations:

1. Respondent violated Condition 5.4 of **Permit: APC-2005/0147-OPERATION (NSPS)(SM)(Amendment 5)** when, during a June 4, 2015, full compliance evaluation, the Department discovered baghouse pressure drops were not being recorded.
2. Respondent violated 40 CFR §60.92(a)(1) and Condition 2.7 of **Permit: APC-2005/0147-OPERATION (NSPS)(SM)(Amendment 5)** when results of performance testing conducted on April 14, 2016, showed PM emissions in excess of 0.04 gr/dscf. Specifically, the results for each run were (Run 1) 0.088 gr/dscf; (Run 2) 0.118 gr/dscf; and (Run 3) 0.154 gr/dscf.
3. Respondent violated Condition 2.4 of **Permit: APC-2005/0147-OPERATION (NSPS)(SM)(Amendment 5)** when results of performance testing conducted on April 14, 2016, showed PM emissions in excess of 0.44 lb/hr. Specifically, the results for each run were (Run 1) 5.44 lbs/hr; (Run 2) 8.30 lb/hr; and (Run 3) 8.4 lb/hr.

ASSESSMENT OF PENALTY AND COSTS

Pursuant to the provisions of 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 \$22,450 for the violations identified in this Assessment and Order.

In addition to the penalty assessment, Respondent is hereby assessed costs in the amount of \$7,950.14, pursuant to 7 *Del. C.* §6005(c), which were incurred by the Department in the investigation and abatement of the noted violations.

Respondent shall submit one check to the Department in the amount of \$22,450 to pay the penalty and one check in the amount of \$7,950.14, to pay the Department's costs within 30 days from the receipt of this Assessment and Order. The check(s) shall be made payable to the "State of Delaware" and shall be directed to: Valerie S. Edge, Deputy Attorney General, Department of Justice, Environmental Unit, 102 W. Water Street-3rd Floor, Dover, Delaware 19904.

The Department 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 the authority vested in the Secretary by 7 *Del. C.* Chapter 60 and 7 DE Admin. Code 1100 to revoke Respondent's air quality permit(s) for the State of Delaware, 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).

PUBLIC HEARING AND APPEAL RIGHTS

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

To submit an appeal to the Environmental Appeals Board, there is a \$50.00 filing fee, with a check made payable to the: "Environmental Appeals Board" and sent 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

If you want a hearing and opportunity to contest this Assessment and Order, you must submit your request, in writing, within 30 days of receipt of this Assessment and Order to:

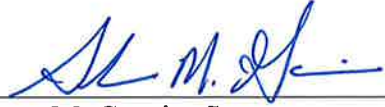
Department of Natural Resources and Environmental Control
Office of the Secretary
89 Kings Highway
Dover, DE 19901
Phone: (302) 739-9000

Respondent may waive its right to request a hearing or to file an appeal by signing the waiver attached herein and prepaying the penalty. If no hearing is requested or appeal filed as described above and the administrative penalty of \$22,450 and costs in the amount of \$7,950.14 are not paid within the time frame above, DNREC may immediately take action to collect the above amounts.

If you have any questions, please contact Angela Marconi at (302) 323-4542.

Date

2/18/18



Shawn M. Garvin, Secretary
Department of Natural Resources
and Environmental Control

cc: Valerie S. Edge, Deputy Attorney General
Ali Mirzakhali, P.E., Director
Joanna French, Managing Engineer
Dawn Minor, Paralegal
Susan Baker, Enforcement Coordinator

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WAIVER OF STATUTORY RIGHT TO A HEARING

Pure Green Industries, Inc./Refined Products, Inc. hereby waives its right to a hearing and its opportunity to appeal or contest this Assessment and Order and agrees to the following:

1. **Pure Green Industries, Inc./Refined Products, Inc.** will pay the administrative penalty in the amount of \$22,450 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 Valerie S. Edge, Deputy Attorney General, Department of Justice, 102 W. Water Street-3rd Floor, Dover, DE 19904; and
2. **Pure Green Industries, Inc./Refined Products, Inc.** will reimburse the Department in the amount of \$7,950.14, which represents the Department’s estimated costs. The reimbursement shall be paid within 30 days of receipt of this Assessment and Order. The separate check shall be made payable to the “State of Delaware” and be directed to Valerie S. Edge, Deputy Attorney General, Department of Justice, 102 W. Water Street-3rd Floor, Dover, DE 19904.

Pure Green Industries, Inc./Refined Products, Inc.

Date: _____

By: _____

Title: _____