



STATE OF DELAWARE
DEPARTMENT OF NATURAL RESOURCES
AND ENVIRONMENTAL CONTROL

OFFICE OF THE
SECRETARY

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DOVER, DELAWARE 19901

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**NOTICE OF ADMINISTRATIVE PENALTY ASSESSMENT
AND SECRETARY'S ORDER**

Pursuant to 7 Del. C. § 6005 (b)(3)

Order No. 2010-A-0026

*PERSONALLY SERVED BY AN ENVIRONMENTAL
ENFORCEMENT OFFICER AND CERTIFIED MAIL*

Issued To:

IKO Production Wilmington, Inc.
Attn: Mr. Henry Fear, V.P. Manufacturing
120 Hay Road
Wilmington, Delaware 19809

Registered Agent:

Michael X. Pinder
c/o IKO Production, Inc.
120 Hay Road
Wilmington, Delaware 19801

Dear Mr. Fear:

This is to notify IKO Production Wilmington, 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 and its permit, and accordingly, the Department is issuing this Notice of Administrative Penalty Assessment, pursuant to 7 Del. C. § 6005(b)(3).

BACKGROUND

Respondent owns and operates an asphalt roofing plant at 120 Hay Road in Wilmington, Delaware ("facility") that manufactures roofing shingles. Equipment at Respondent's facility includes, but is not limited to, a coating heater, boilers and an emergency generator. Operation of the equipment at Respondent's facility has the potential to emit nitrogen oxides ("NO_x") and sulfur oxides ("SO_x") in excess of the major source thresholds for New Castle County thereby triggering 7 DE Admin. Code 1130 ("Regulation 1130" or "Title V") requirements and fees. However, in the alternative, Respondent chose to take operating limitations, such as emission limits to become a synthetic minor source. Respondent currently operates under the requirements of synthetic minor permit APC-97/00567-OPERATION(AMENDMENT 3)(SM) ("SM Permit-A3") issued November 16, 2007, as well as several permits issued pursuant to

Delaware's Good Nature depends on you!

7 DE Admin. Code 1102¹ (“Regulation 1102”). One of those permits is **APC-93/0319-CONSTRUCTION/OPERATION** (“Regulation 1102 permit”) that governs operation of a bag filter on the filler heater that is used to collect limestone particulate.

The violations identified in this Order were discovered during inspections conducted over a two year period and consequently some violations occurred while synthetic minor permit **APC-97/00567-OPERATION(Amendment 2)(SM)** (“SM Permit-A2”) issued January 11, 2006, was in place and others while SM Permit-A3 was active. Hereinafter, reference to “synthetic minor permit” shall mean whichever of SM Permit-A2 or SM Permit-A3 was in effect at that time.

Respondent has two No. 2 fuel oil storage tanks, a 1,000 gallon tank that supplies fuel oil to the emergency generator and a 4,000 gallon tank that supplies fuel oil to the coating heater. In order to comply with its permitted emission limits, Respondent’s fuel usage is limited in both quantity and sulfur content. Not only does the sulfur content limit facilitate Respondent’s compliance with emission limits, it is also required by 7 DE Admin. Code 1144 (“Regulation 1144”), for the fuel used in the emergency generator. Respondent’s SM Permit A2 included a condition that set a sulfur content limit of 0.3% for the fuel *used* in the emergency generator until April 11, 2006. In accordance with Section 5.1 of Regulation 1144, Respondent’s permit condition further required that the sulfur content in fuel delivered for use in the emergency generator on or after April 11, 2006, was required to be at or below 0.05%. By specifying *fuel oil received* instead of *fuel oil used*, it allowed for a transition period for the regulated community to lower the sulfur content of the fuel used in emergency generators. Respondent’s synthetic minor permit requires it maintain fuel supplier certifications which are to include the sulfur content of the fuel being delivered and are therefore vital in determining compliance with its permit and Delaware law.

April 18, 2007 Inspection (“2007 inspection”)

On April 18, 2007, the Department conducted a full compliance inspection at Respondent’s facility which included a records review and a fuel sample from the 1,000 gallon tank. Respondent was unable to produce records of fuel supplier certifications during the inspection. On May 7, 2007, Respondent submitted to the Department, the purchase records for fuel oil for the two tanks since issuance of its synthetic minor permit on January 11, 2006. Respondent received deliveries to the 4,000 gallon tank on January 24, 2006; April 20, 2006; December 11, 2006; February 2, 2007; February 23, 2007 and March 22, 2007. Of those six deliveries, no fuel supplier certifications were maintained. Respondent received deliveries to the 1,000 gallon tank on April 28, 2006; October 2, 2006 and April 27, 2007. Of those three deliveries, Respondent had only one fuel supplier certification for the April 27, 2007 delivery, which was after the date of the 2007 inspection.

The analysis of the No. 2 fuel oil sample obtained from the 1,000 gallon tank during the 2007 inspection showed the sulfur content of the fuel was 0.1% which would be possible due to the aforementioned transition period. However, because Respondent failed to maintain fuel

¹ Formerly Regulation No. 2 of Delaware’s *Regulations Governing the Control of Air Pollution*. The Registrar of Regulations has implemented a revised citation and numbering system for Delaware regulations.

of April 11, 2006, fuel oil received for use in the emergency generator was compliant with Respondent's permit or Regulation 1144.

During the 2007 inspection, the Department observed that the bag filter on the filler heater was not operating properly as evidenced by intermittent excessive visible emissions of limestone particulate. Pursuant to its Regulation 1102 permit, pneumatic transfer of the limestone should have ceased which did not occur until the Department reminded Respondent of the requirement. Respondent followed up with the Department in an email dated April 20, 2007, that indicated the cause of the excess visible emissions was that the bag filter pulse pressure was erroneously set at its maximum setting of 115 pound-force per square inch gauge ("psig") as opposed to its minimum setting of 15 psig.

A Notice of Violation ("NOV") for the violations discovered during the 2007 inspection was issued July 6, 2007.

July 31, 2008 Inspection ("2008 inspection")

On July 31, 2008, the Department conducted an inspection of Respondent's facility and discovered additional violations. The Department noticed that Respondent had replaced a UIP coating pre-heater with a used heater from one of its manufacturing facilities, without submitting an application and receiving approval, as required by both its permit and Delaware law.

In addition, Respondent's synthetic minor permit requires an annual Reference Method 9 Visible Emissions test ("VE test") be conducted. During the 2008 inspection, it was found that Respondent had not conducted the required VE test for calendar year 2007 nor had it conducted a VE test for calendar year 2008 as of the date of the 2008 inspection. A later review of records confirmed that Respondent had not conducted the VE test for calendar year 2008 in the time remaining after the 2008 inspection (August 1, 2008 through December 31, 2008).

Respondent was unable to produce numerous records during the 2008 inspection. While they were provided to the Department on various dates the following month, Respondent's synthetic minor permit requires they be maintained in a readily accessible location and be made available to the Department upon verbal or written request. Respondent had been advised prior to the inspection a records review would be conducted, therefore all records required by the permit should have been available to the Department at the time of the inspection.

Among the records not available at the time of the inspection were the combined monthly and cumulative rolling 12-month totals for: No. 2 fuel oil, No. 6 fuel oil and natural gas usage; hours of operation and fuel usage for the emergency generator; and nitrogen oxide ("NO_x") emissions from all combustion sources and the emergency generator. These records are used to demonstrate compliance with the permitted emission limits. Respondent was also unable to provide fuel oil supplier certifications for No. 2 fuel oil at the time of the inspection. On August 5, 2008, Respondent provided all of the missing records with the exception of those related to the emergency generator which were provided on August 13, 2008.

FINDINGS OF FACT

1. Respondent has two storage tanks for No. 2 fuel oil, a 1,000 gallon tank that supplies fuel to the emergency generator and a 4,000 gallon tank that supplies fuel to the UIP coating heater.
2. Respondent's synthetic minor permit requires it to keep and maintain fuel supplier certifications for shipments of No. 2 and No. 6 fuel oil delivered to the company. These certifications are vital to demonstrate compliance with its permitted sulfur content limits.
3. Respondent's synthetic minor permit requires it maintain fuel usage records which are in turn used to demonstrate compliance with its permitted emission limits.
4. Respondent's synthetic minor permit also specifically requires records of NO_x emissions be maintained.
5. Respondent's synthetic minor permit requires it maintain all necessary records to demonstrate compliance with its permit in a readily accessible location and make them available to the Department upon written or verbal request.
6. The Department informed Respondent prior to each inspection that a records review would be conducted as part of the inspection; therefore Respondent was responsible for having records demonstrating compliance with its permit available to the Department for each inspection.
7. The Department inspected Respondent's facility on April 18, 2007, which included, but was not limited to, a records review and obtaining a sample of the No. 2 fuel oil from the 1,000 gallon tank.
8. Respondent was unable to produce records related to the No. 2 fuel oil shipments to the 1,000 gallon and 4,000 gallon tanks at the time of the inspection. It provided purchase records to the Department on May 7, 2007. Of those records, only one fuel supplier certification was maintained, for an April 27, 2007 delivery to the 1,000 gallon tank.
9. Respondent's permit for the bag filter on the filler heater prohibits the pneumatic transfer of limestone if the bag filter is not operating properly.
10. During the 2007 inspection, the Department observed intermittent excessive visible emissions of limestone particulate from the bag filter on the filler heater which indicated that the bag filter was not operating properly and therefore, Respondent should not have continued the pneumatic transfer of limestone.
11. Respondent followed up with the Department in an email dated April 20, 2007, and indicated that the bag filter pulse pressure had erroneously been set to the maximum setting.
12. The Department inspected Respondent's facility on July 31, 2008 and discovered Respondent had replaced the UIP coating pre-heater with a used heater without submitting an application and receiving approval from the Department to do so.

13. The 2008 inspection also revealed that Respondent had not conducted a Reference Method 9 visible emissions test for calendar year 2007 and had not, to date, conducted one for 2008. A later review of records showed that following the date of that inspection and through the end of calendar year 2008, Respondent did not conduct the required VE test.
14. During the 2008 inspection, Respondent was unable to produce records for the combined monthly and cumulative rolling 12-month totals for: No. 2 fuel oil, No. 6 fuel oil and natural gas usage; NO_x emissions for all combustion sources and the emergency generator; and hours of operation and fuel usage for the emergency generator as required by its permit.
15. During the 2008 inspection, Respondent was unable to produce fuel oil supplier certifications for No. 2 fuel oil.
16. Respondent provided the Department all the missing records on August 5, 2008 and August 13, 2008.

REGULATORY AND PERMIT REQUIREMENTS

1. Seven *Del. C.* § 6003(b)(1) states:

“No person shall, without first having obtained a permit from the Secretary, construct, install, replace, modify or use any equipment or device or other article which may cause or contribute to the discharge of an air contaminant...”
2. Section 2.1 of 7 DE Admin. Code 1102 states:

“Except as exempted in 2.2 of this regulation, no person shall initiate construction, install, alter or initiate operation of any equipment or facility or air contaminant control device which will emit or prevent the emission of an air contaminant prior to receiving approval of his application from the Department...”
3. Condition 4.2 of Permit **APC-97/0567-OPERATION(Amendment 2)(SM)** states:

“The Company shall conduct an annual modified Reference Method 9 visible emissions test for Emission Units Asphalt Oxidizer, UIP Boiler No. 1, and UIP Boiler No. 2, in accordance with Regulation No. 20, Section 1.5(c), while these emission units are combusting No. 6 fuel oil.”
4. Condition 5.1 of Permit **APC-97/0567-OPERATION(Amendment 2)(SM)** states:

“The owner or operator shall maintain all records necessary for determining compliance with this permit in a readily accessible location for five (5) years and shall make these records available to the Department upon written or verbal request.”
5. Condition 5.2 of Permit **APC-97/0567-OPERATION(Amendment 2)(SM)** states:

“For each shipment of No. 2 or No. 6 fuel oil delivered to the Company, the owner or operator shall keep and maintain records of fuel supplier certification (as described in Condition 3.1.12 and 3.1.13).”

6. Condition 6 of Permit **APC-93/0319-CONSTRUCTION/OPERATION** states:
“The limestone shall not be pneumatically transferred unless the bag filter is operating properly.”
7. Condition 1.3 of Permit **APC-97/0567-OPERATION(Amendment 3)(SM)** states:
“The owner or operator shall not initiate construction, install, or alter any equipment or facility or air contaminant control device which will emit or prevent the emission of an air contaminant prior to submitting an application to the Department under Regulation No. 2, and, when applicable, Regulation No. 25, and receiving approval of such application from the Department...”
8. Condition 4.2 of Permit **APC-97/0567-OPERATION(Amendment 3)(SM)** states:
“The Company shall conduct an annual modified Reference Method 9 visible emissions test for Emission Units Asphalt Oxidizer, UIP Boiler No. 1, and UIP Boiler No. 2, in accordance with Regulation No. 20, Section 1.5(c), while these emission units are combusting No. 6 fuel oil.”
9. Condition 5.1 of Permit **APC-97/0567-OPERATION(Amendment 3)(SM)** states:
“The owner or operator shall maintain all records necessary for determining compliance with this permit in a readily accessible location for five (5) years and shall make these records available to the Department upon written or verbal request.”

CONCLUSIONS

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

April 18, 2007 Inspection

1. Respondent violated Condition 5.1 of Permit **APC-97/0567-OPERATION (Amendment 2)(SM)** by not making fuel oil supplier certifications available to the Department at the time of the inspection.
2. Respondent violated Condition 5.2 of Permit **APC-97/0567-OPERATION(Amendment 2)(SM)** by failing to keep and maintain the fuel supplier certifications for each shipment of No. 2 fuel oil delivered to the 1,000 gallon and 4,000 gallon tanks at its facility.
3. Respondent violated Condition 6 of Permit **APC-93/0319-CONSTRUCTION/OPERATION** by pneumatically transferring limestone when the bag filter was not operating properly as evidenced by the intermittent excessive visible emissions of limestone particulate due to the pulse pressure being erroneously set at the maximum pressure.

July 31, 2008 Inspection

1. Respondent violated 7 *Del. C.* 6003(b)(1); Section 2.1 of 7 DE Admin. Code 1102; and Condition 1.3 of Permit **APC-97/0567-OPERATION(Amendment 3)(SM)** by replacing the UIP coating pre-heater with a used heater prior to submitting an application and obtaining the Department's approval.
2. Respondent violated Condition 4.2 of Permit **APC-97/0567-OPERATION(Amendment 2)(SM)** and Condition 4.2 of Permit **APC-97/0567-OPERATION(Amendment 3)(SM)** by failing to conduct an annual modified Reference Method 9 visible emissions test for calendar years 2007 and 2008.
3. Respondent violated Condition 5.1 of Permit **APC-97/0567-OPERATION(Amendment 3)(SM)** by failing to make available to the Department during the inspection: No. 2 fuel oil supplier certifications; and the combined monthly and cumulative rolling 12 month totals for:
 - a. No. 2 fuel oil usage for the UIP coating heater
 - b. No. 6 fuel oil usage for the asphalt oxidizer, UIP Boiler No. 1 and UIP Boiler No. 2
 - c. Natural gas usage for all combustion sources
 - d. Hours of operation and fuel usage for the emergency generator
 - e. NO_x emissions for all combustion sources and the emergency generator

ASSESSMENT OF PENALTY

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 \$9,900 for the violations identified in this Assessment and Order and costs according to 7 *Del. C.* § 6005(c). Respondent shall submit a check to the Department in the amount of \$9,900 within 30 days from the receipt of this Assessment and Order for the aforementioned penalty. The check shall be made payable to the "State of Delaware" and shall be directed to: Valerie M. Satterfield, Deputy Attorney General, Department of Justice, Environmental Unit, 102 W. Water Street-3rd Floor, Dover, Delaware 19904.

PUBLIC HEARING

This Administrative Penalty Assessment and Order shall become effective and final unless the Department receives from Respondent, no later than 30 days from the receipt of this Notice, a written request for a public hearing on these matters as provided in 7 *Del. C.* § 6005(b)(3) and (c). In the event Respondent requests a hearing, the Department reserves the right to withdraw this Assessment and Order and take additional enforcement actions regarding these and other violations at Respondent's facility, including but not limited to, the imposition of civil penalties and recovery of the Department's costs and attorney's fees. The Department does not otherwise intend to convene a public hearing on these matters, but reserves the right to do so at its discretion.

PRE-PAYMENT

Respondent may prepay the administrative penalty of \$9,900 and the Department's estimated costs in the amount of \$1,485 in the manner described in the attached waiver. By doing so, Respondent waives its right to a hearing and the opportunity to appeal or contest the Assessment which shall become a final Order.

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

21 Aug 2010

Date



Collin P. O'Mara, Secretary

cc: Valerie M. Satterfield, Deputy Attorney General
Ali Mirzakhali, P.E., Division of Air Quality Director
Paul Foster, P.E., Program Manager
Tammy Henry, Engineer
Kathy Pirestani, Ph.D., Engineer
Jennifer Bothell, Enforcement Coordinator
Dawn Minor, Paralegal
Dover File

WAIVER OF STATUTORY RIGHT TO A HEARING

IKO Production Wilmington, 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. **IKO Production Wilmington, Inc.** will pay the administrative penalty in the amount of \$9,900 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 M. Satterfield, Deputy Attorney General, Department of Justice, 102 W. Water Street-3rd Floor, Dover, DE 19904; and

2. **IKO Production Wilmington, Inc.** will reimburse the Department in the amount of \$1,485, which represents the Department's estimated costs. The reimbursement shall be paid 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 Valerie M. Satterfield, Deputy Attorney General, Department of Justice, 102 W. Water Street-3rd Floor, Dover, DE 19904.

IKO Production Wilmington, Inc.

Date: _____

By: _____

Title: _____