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

OFFICE OF THE
SECRETARY

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AMENDED NOTICE OF ADMINISTRATIVE PENALTY ASSESSMENT AND SECRETARY'S ORDER

Pursuant to 7 *Del. C.* § 6005

Order No. 2010-AW-0031

PERSONALLY SERVED BY AN ENVIRONMENTAL ENFORCEMENT OFFICER

Issued To:
Dassault Falcon Jet – Wilmington Corp.
Attn: Mr. Kevin Malutinok
Senior Vice President
191 N DuPont Highway
New Castle, DE 19720

Registered Agent:
Corporation Service Company
2711 Centerville Road, Suite 400
Wilmington, DE 19808

Dear Mr. Malutinok:

The Secretary of the Department of Natural Resources and Environmental Control ("Department") issued to Dassault Falcon Jet – Wilmington Corp. ("Respondent"), Notice of Administrative Penalty Assessment and Secretary's Order No. 2009-A-0041, dated November 17, 2009. That Order notified Respondent that the Department found Respondent in violation of 7 *Del. C.* Chapter 60. The Department is issuing this Amended Notice of Administrative Penalty Assessment, pursuant to 7 *Del. C.* § 6005(b)(3), in order to incorporate and address four additional violations, discovered during a subsequent compliance assessment, just prior to issuance of Order No. 2009-A-0041.

When this Order becomes final (either upon signature of the Waiver portion of this Amended Assessment and Order and payment of the penalty assessed herein or upon expiration of the time to request a hearing without one being requested), this Order will supersede and withdraw Notice of Administrative Penalty Assessment and Secretary's Order No. 2009-A-0041, dated November 17, 2009 and issued to Respondent on November 19. 2009.

BACKGROUND

Respondent owns and operates a full service aircraft facility in New Castle, Delaware ("facility"), specializing in maintenance and refurbishing services including stripping and painting of aircraft. The paints and solvents used at Respondent's facility have the potential to emit hazardous air pollutants ("HAP") and volatile organic compounds ("VOC") at levels that subject Respondent to 7 DE Admin. Code 1130, also known as the Title V State Operating Permit Program. Respondent's facility operations have been governed by a Title V permit since 1998 and is currently operating under its second Title V permit renewal. The Department's Division of Air Quality[1] ("DAQ") issued Respondent **Permit: AQM-003/00365-Renewal 2** on June 19, 2006 ("Title V Permit" or "Permit"). The Title V Permit requires Respondent to submit an Annual Compliance Certification and Semi-Annual Reports to the AQMS detailing its compliance status for each of its Permit conditions.

The paints and solvents used at Respondent's facility also have the potential to generate hazardous waste. As a generator of hazardous waste, Respondent is subject to compliance inspections, by the Solid and Hazardous Waste Management Branch ("SHWMB"), pursuant to 7 DE Admin. Code 1302, *Delaware Regulations Governing Hazardous Waste* or ("DRGHW").

FINDINGS OF ALLEGED VIOLATIONS INCLUDING STATUTORY AND REGULATORY REQUIREMENTS

Air Quality

The DAQ conducted a full compliance inspection at Respondent's facility in March 2007. During the inspection, it was determined that due to spreadsheet errors, Respondent had not been properly calculating VOC and HAP emissions at its Facility. Respondent reviewed and corrected its calculations and resubmitted the corrected data. The DAQ also discovered during the March 2007 inspection, that Respondent had failed to calculate some data, such as particulate matter emissions and the monthly average VOC content of all its coatings, as required by its permit. As a result of this inspection, the DAQ issued Respondent a Notice of Violation in May 2007. Respondent submitted follow up reports by July 2007.

In August 2007, the DAQ received Respondent's Semi-Annual Report for the first half of 2007. Respondent had failed to report the violations discovered during the March 2007 inspection. In September 2007, Respondent submitted a corrected Semi-Annual Report for the first half of 2007. During this time frame, Respondent made management changes at its Facility and employed a new consultant to oversee and review its environmental compliance. While

[1] Effective July 1, 2010, the Delaware General Assembly passed into law a reorganization for the Department that resulted in splitting the Division of Air and Waste Management into two distinct Divisions. The former "Air Quality Management Section" is now the Division of Air Quality ("DAQ"); the SHWMB remains a "branch" under a separate and newly designated division, the Division of Waste Management.

compiling data for its 2007 Annual Compliance Certification, Respondent discovered an error in the method used to account for hand-wipe solvent use in its daily operations as well as a problem with its stores tracking system not accounting for all materials containing VOC and HAP. Due to these errors, Respondent had underreported its monthly VOC and HAP emissions and its hand-wipe solvent usage beginning as far back as June 2006. In addition, Respondent discovered it had failed to document operating data and conduct tests and maintenance as required by its permit. In January 2008, Respondent informed the DAQ it would be reporting these recently discovered deviations and violations in its 2007 Annual Compliance Certification and its Semi-Annual report for the second half of 2007.

The DAQ met with Respondent in March and April of 2008 to monitor the progress of Respondent's internal audit and review the findings. During that time and since, Respondent has taken the steps necessary to correct these violations. Respondent updated its stores database to accurately reflect all items used at its facility and revised its spreadsheets by correcting formulas to insure accurate calculation of emissions.

During its audit, Respondent also identified another large source of VOC and HAP at its facility, an aerosol degreaser and has since changed to one that contains only exempt volatile chemicals. Respondent also switched its hand-wipe solvent from one containing ethylene glycol, a VOC and HAP, to one containing tertiary butyl acetate ("TBA"). TBA is a substance recently excluded from the definition of a VOC by the EPA and is currently in the process of being delisted from the State of Delaware's list of VOCs. Because the previous hand-wipe solvent contained a HAP, Respondent's permit set forth a rolling 12-month limit on the quantity that could be used at its facility. That limit was based solely on using the hand-wipe solvent to clean approximately 40 aircraft per year. It did not take into account that the hand-wipe solvent is used throughout the facility for numerous tasks in addition to cleaning the aircraft. Because of this, it was determined there was no way possible for Respondent to comply with the limit set forth in the permit issued June 19, 2006. However, due to Respondent switching to a hand-wipe solvent no longer containing HAPs, it was no longer necessary to impose a limit on its use which was incorporated into a revision to Respondent's permit issued November 18, 2008.

The new hand-wipe solvent and degreaser will result in a reduction of 16 tons per year ("tpy") of VOC emissions and its HAP emissions will be reduced to approximately 2.2 tpy. Respondent was able to return to compliance with its permitted rolling 12-month VOC emission limit in September 2008 and its permitted rolling 12-month HAP emission limit in December 2008. Respondent has also submitted data it was able to compile as well as revised Annual Compliance Certifications for 2006 and 2007 and Semi-Annual Reports for the second half of 2006 and all of 2007 to reflect the violations. Spreadsheet and procedure revisions address any potential to repeat these same recordkeeping violations in the future.

A Notice of Violation was issued May 8, 2008, for the violations discovered after July 2007 as a result of reporting requirements and subsequent meetings with the Department.

AIR QUALITY VIOLATIONS

1. Condition 3 – Table 1(a)(1)(i)(A) of **Permit: AQM-003/00365-Renewal 2** states:

   "Emissions of Volatile Organic Compounds (VOC's) from the facility shall not exceed 4.5 tons per month or 20.34 tons per any twelve consecutive month period."

   Respondent violated this facility-wide VOC emission limit of 20.34 tons per rolling 12-month period in May 2007, June 2007 and September 2007 through August 2008.

2. Condition 3 – Table 1(a)(1)(i)(B) of **Permit: AQM-003/00365-Renewal 2** states:

   "Emissions of Hazardous Air Pollutants (HAPs) shall not exceed 2.44 tons per any twelve consecutive month period."

   Respondent's violated this facility-wide HAP emissions limit of 2.44 tons per rolling 12-month period continuously from September 2006 through November 2008.

3. Condition 3 – Table 1(b)(i)(B) of **Permit: AQM-003/00365-Renewal 2** states:

   "The Company shall not use greater than 1,400 gallons of hand-wipe cleaning solvent in any 12 consecutive month period."

   Respondent violated this limit every month from issuance of the permit in June 2006 through issuance of the revised permit in November 2008 that removed the limit.

4. Condition 3 – Table 1(d)(1)(iii) of **Permit: AQM-003/00365-Renewal 2** states:

   "The Company shall determine, based on coating usage, the average monthly VOC content, as applied, for all topcoats used at the facility during the previous month. This value shall be calculated within 15 days from the end of each calendar month and shall be compared to the alllowable VOC content of 4.5 pounds of VOC per gallon of coating as applied (less water and exempt compounds)."

   Respondent violated this permit condition by not properly recorded coating usage and VOC content since issuance of its permit in June 2006.

5. Condition 3 – Table 1(d)(1)(v)(D) of **Permit: AQM-003/00365-Renewal 2** states:

   "The Company shall submit an annual report to the Department no later than February 1 of each year that includes the following information:

   (1) Each exceedence of the VOC content level.

   (2) Identification of new primers, topcoats, and maskants used at the facility in the previous year."

Respondent violated this permit condition in 2006 because it did not submit this report by February 2007.

6. Condition 3 – Table 1(a)(1)(iv) of **Permit: AQM-003/00365-Renewal 2** states:

> *"The Company shall determine, based on central storeroom records and production records, the VOC and HAP emissions from the facility on a rolling twelve consecutive month basis. The VOC and HAP emission rates shall be determined within 15 days from the end of each calendar month."*

Respondent violated this permit condition because it did not properly calculate the VOC and HAP emissions within the 15 days allotted from the end of each calendar month.

7. Condition 3 – Table 1(a)(1)(v) (C) of **Permit: AQM-003/00365-Renewal 2** states:

> *"The Company shall keep up to date, manufacturer MSD sheets for every coating, stripper, and solvent used at the facility."*

Respondent violated this permit condition because it did not maintain manufacturer material safety data ("MSD") sheets for all coatings, strippers and solvents used at its facility.

8. Condition 3 – Table 1(b)(iii)(A) of **Permit: AQM-003/00365-Renewal 2** states:

> *"The Company shall record the name, VOC content, composite vapor pressure, and monthly volume purchased of each cleaning solvent, and all supporting documentation, including any test reports and calculations."*

Respondent violated this permit condition because it had not recorded the use of all cleaning solvents.

9. Condition 3 – Table 1(c)(1)(iii)(A) of **Permit: AQM-003/00365-Renewal 2** states:

> *"The Company shall record the name and VOC content, composite vapor pressure, and monthly volume purchased of each stripper, and all supporting documentation, including any test reports and calculations."*

Respondent violated this permit condition because it had not maintained the paint stripper records as required for 2007.

10. Condition 3 – Table 1(c)(1)(v) of **Permit: AQM-003/00365-Renewal 2** states:

> *"In addition to that required by Conditions 2(a)(2) and 3(c)(2) of this permit, the Company shall submit an annual report to the Department no later than February 1 of each year that includes the following information:*
>
> *(A) Names, compositions, and vapor pressures of new or reformulated strippers used for depainting operations in the previous year.*

(B) Names of previously reported strippers that are no longer in use at the facility.

(C) A description of any new non-chemical depainting techniques used in the previous year.

(D) A description of all malfunctions of non-chemical depainting operations, including dates and alternative depainting methods used in the previous year.

(E) A list of any new parts, assemblies, or subassemblies normally removed during depainting operations from the previous year."

Respondent violated this permit condition because it did not submit to the Department the annual report for 2006 by February 1, 2007.

11. Condition 3 – Table 1(c)(1)(vi) of **Permit: AQM-003/00365-Renewal 2** states:

"In addition to that required by Condition 3(c)(3) of this permit, the Company shall supply notification of compliance status annually on a calendar-year basis to the Department and shall include the following information:

(A) The name and VOC content of each stripper used at the facility to depaint aerospace vehicles.

(B) The vapor pressure test results of each stripper.

(C) A description of all non-chemical depainting methods.

(D) A description of all depainting methods to be used during periods of malfunction of non-chemical depainting methods.

Respondent violated this permit condition because it did not submit to the Department, the annual notification for 2006.

12. Condition 3 – Table 1(a)(3)(ii)(D) of **Permit: AQM-003/00365-Renewal 2** states in part:

"The facility shall conduct an annual performance evaluation to include inspection of fans, fan belts and filter units shall be conducted [sic] for Hangar Bays 1 & 2 (stripping and priming hangar bays), Hangar Bay 3 (painting hangar bay) and Wood Finishing Booth and the Small Parts Paint Booth."

Respondent violated this permit condition because it had not conducted annual performance evaluations of the filter units (specifically the filter pressure differential gauges) pursuant to the manufacturer's specifications to insure proper operation.

13. Condition 3 – Table 1(a)(3)(v)(B) of **Permit: AQM-003/00365-Renewal 2** states:

"A log shall be maintained documenting the monthly and rolling 12 month total particulate matter emissions from stripping, priming and coating operations."

Respondent violated this permit condition by not having calculated or documented particulate matter emissions for three months in 2007. (Respondent has since performed the calculations for the missing months).

14. Condition 3 – Table 1(a)(3)(v) of **Permit: AQM-003/00365-Renewal 2** states in part:

> *"(D) A log of the date filters are changed and the differential pressure reading before changing shall be maintained at the particulate filter systems in Hangar Bays 1 & 2 (stripping and priming hangar bays), Hangar Bay 3 (painting hangar bay), the Wood Finishing Booth and the Small Parts Paint Booth.*
>
> *(F) The Company shall log routine and non-routine maintenance performed on filter systems."*

Respondent violated this permit condition because it had not recorded filter change-outs and maintenance work on the filter systems for 2007.

15. Condition 3 – Table 1(a)(4)(iv)(A) of **Permit: AQM-003/00365-Renewal 2** states:

> *"The Company shall conduct visible observations during daylight hours for each emission unit at least once per month. The observations will detect the presence of visible emissions (excluding condensible vapor)."*

Respondent violated this permit condition because it had not conducted visible emissions observations for September and October 2007.

16. Condition 3 – Table 1(a)(4)(iv)(D) of **Permit: AQM-003/00365-Renewal 2** states:

> *"An annual performance evaluation shall be conducted on each emission unit."*

Respondent violated this permit condition because it had not conducted performance evaluations for 2007.

17. Condition 3 – Table 1(a)(2)(i)(A)(1) of **Permit: AQM-003/00365-Renewal 2** states:

> *"The Company shall use good housekeeping measures for all cleaning operations at the facility. These measures include the following practices:*
>
> > *Placing solvent laden cloths or papers in closed containers immediately after use."*

Respondent violated this permit condition because it reported it had stored VOC-impregnated material in open containers.

18. Condition 3 – Table 1(a)(5)(iv) of **Permit: AQM-003/00365-Renewal 2** states:

> *"The Company shall keep a record of postings and employee training related to these work practice standards and storage, use and disposal of VOCs for five years and shall make these records available to the Department upon request."*

Respondent violated this permit condition in that during the March 2007 inspection, the DAQ found Respondent's employee training records for handling and disposal of VOCs were not complete.

19. Condition 3 – Table 1(e)(2)(v)(A) of **Permit: AQM-003/00365-Renewal 2** states:

> *"The facility shall collect and record all of the following information each day and maintain this information at the facility for a period of five years and shall make these records available to the Department upon request:*
>
> > *(1) The name and identification of each coating, as applied in the Wood Finishing Spray Booth.*
> >
> > *(2) The mass of VOC and HAP per volume (excluding water and exempt compounds) and the volume of each coating (excluding water and exempt compounds), as applied, each day in the Wood Finishing Spray Booth."*

Respondent violated this permit condition by not properly recording Wood Finishing Spray Booth coating data for 2007.

20. Condition 3 – Table 1(g)(2)(iii)(B) of **Permit: AQM-003/00365-Renewal 2** states:

> *"The Company shall tune up the Make-Up Air Heaters annually."*

Respondent violated this permit condition because it had not performed annual tune ups of the Make-Up Air Heaters in 2007.

21. Condition 3(c)(2)(i) of **Permit: AQM-003/00365-Renewal 2** states:

> *"The Company shall submit to the Department a report of any required monitoring not later than the first day of August (covering period from January 1 through June 30) and the first day of February (cover the period July 1 through December 31) of each calendar year. Each report shall identify any deviation(s) from the monitoring, record keeping and reporting requirements under this permit, and the probable cause of the deviation(s) and any corrective actions or preventative measures taken. If no deviation(s) has occurred such shall be stated in the report."*

Respondent violated this permit condition by failing to identify deviations in its initial reports. The reports Respondent previously submitted for the second half of 2006 and the first and second halves of 2007 incorrectly stated that Respondent was in compliance with all of its permit conditions. Respondent has since revised those reports and submitted them to the DAQ.

22. Condition 3(c)(3)(i) of **Permit: AQM-003/00365-Renewal 2** states:

> *"Compliance with the terms and conditions of this permit shall be certified to the Department not later than the first day of February of each year unless the terms or conditions in Condition 3 – Table 1 of this permit require compliance*

certifications to be submitted more frequently. Such certification shall cover the previous calendar year and shall be submitted on Form AQM-1001BB. The Compliance Certification shall include the following information:

(A) The identification of each term or condition of the permit that is the basis of the certification.

(B) The Owner and/or Operator's current compliance status, as shown by monitoring data and other information reasonably available to the Owner and/or Operator.

(C) Such certification shall indicate whether compliance was continuous or intermittent during the covered period.

(D) The methods used for determining the compliance status of the Owner and/or Operator, currently and over the reporting period as required by the monitoring, record keeping, and reporting required under Condition 3.

(E) Such other facts as the Department may require to determine the compliance status of the source.

Respondent violated this permit condition by failing to accurately state the compliance of the facility in the annual compliance certifications. The annual certifications Respondent previously submitted for 2006 and 2007 incorrectly indicated that Respondent was in compliance with all of its permit conditions. Respondent has since revised those certifications and submitted them to the DAQ.

Hazardous Waste

The SHWMB conducted a DRGHW Compliance Assessment at Respondent's facility on August 28, 2008. The SHWMB determined that Respondent was operating as a large quantity generator of hazardous waste at the time of the assessment. The assessment revealed 30 violations[2] of the DRGHW, based upon information gathered both during and immediately following the assessment. A Notice of Violation dated November 25, 2008, was issued to Respondent for the violations discovered during the compliance assessment on August 28, 2008.

The SHWMB also conducted a compliance assessment at Respondent's facility on August 25, 2009. The SHWMB determined that Respondent was operating as a large quantity generator of hazardous waste at the time of the assessment. The assessment revealed four violations of the DRGHW, all of which, the Department observed, were recurring violations from the previous compliance assessment of August 28, 2008.

SHWMB VIOLATIONS

[2] Similar violations were observed during previous compliance assessments on September 21, 2005, (conducted by the Environmental Protection Agency) and September 28, 2001, (conducted by the SHWMB). Those violations were formalized in a Consent Agreement and Final Order dated September 28, 2007, the terms of which have since been fully satisfied by Respondent.

Compliance Assessment of August 28, 2008

1. Section 265.173(a) of the DRGHW states:

   "(a) A container holding hazardous waste must always be closed during storage, except when it is necessary to add or remove waste."

   Respondent violated this regulation. On August 28, 2008, SHWMB representatives observed a 55-gallon satellite accumulation drum of waste paint, labeled "Hazardous Waste," in the Mixing Room. The 55-gallon drum was equipped with a flip-top funnel that was not closed.

2. Section 265.35 of the DRGHW states:

   "The owner or operator must maintain aisle space to allow the unobstructed movement of personnel, fire protection equipment, spill control equipment, and decontamination equipment to any area of facility operation in an emergency, unless aisle space is not needed for any of these purposes."

   Respondent violated this regulation. On August 28, 2008, SHWMB representatives observed that the two hazardous waste storage tanks located in the Paint Hangar could only be accessed from two sides and visually inspected from three sides. The area behind the tanks, against the wall, could not be inspected or accessed. The area between the two tanks could be inspected, but not accessed. Additionally, SHWMB representatives observed that eight 55-gallon steel drums of hazardous waste, located in the 90-day Accumulation Area, were grouped together without adequate aisle space.

3. Section 279.22(c)(1) of the DRGHW states:

   "(c)(1) Containers and aboveground tanks used to store used oil at generator facilities must be labeled or marked clearly with the words "Used Oil"."

   Respondent violated this regulation. On August 28, 2008, SHWMB representatives observed one 30-gallon steel drum of used oil sludge located in the 90-day Accumulation Area, two 30-gallon T-80 used oil reservoirs located in Hangar 3B, one 30-gallon T-80 used oil reservoir located in Hangar 2B, and one 30-gallon T-80 used oil reservoir located in Hangar 2A, none of which were labeled with the words "Used Oil."

4. Section 273.15(c)(1) of the DRGHW states:

   "(c) A small quantity handler of universal waste who accumulates universal waste must be able to demonstrate the length of time that the universal waste has been accumulated from the date it becomes a waste or is received. The handler may make this demonstration by:

(1) Placing the universal waste in a container and marking or labeling the container with the earliest date that any universal waste in the container became a waste or was received;"

Respondent violated this regulation. On August 28, 2008, SHWMB representatives observed two 2.5-gallon poly buckets and one 5-gallon poly bucket of universal waste batteries in the 90-day Accumulation Area. The buckets were not marked with an accumulation start date and Respondent was unable to produce any other documentation revealing the length of universal waste accumulation time.

5. Section 262.34(a)(2) of the DRGHW states:

"(a) Except as provided in paragraphs (d), (e), and (f) of this section, a generator may accumulate hazardous waste on site for 90 days or less without a permit or without having interim status, provided that:

(2) The date upon which each period of accumulation begins is clearly marked and visible for inspection on each container;"

Respondent violated this regulation. On August 28, 2008, SHWMB representatives observed one 55-gallon steel drum of hazardous waste, located in the 90-day Accumulation Area, which was not marked with an accumulation start date.

6. Section 262.34(c)(1)(ii) of the DRGHW states in part:

"(c)(1) A generator may accumulate as much as 55 gallons of hazardous waste...in containers at or near any point of generation where wastes initially accumulate, which is under the control of the operator of the process generating the waste...provided he:

(ii) Marks his containers either with the words 'Hazardous Waste' or with other words that identify the contents of the containers."

Respondent violated this regulation. On August 28, 2008, SHWMB representatives observed the following satellite accumulation containers in their respective areas that were not labeled with the words "Hazardous Waste" or other words to identify their contents: one 55-gallon steel drum, one 14-gallon poly safety can, and one 5-gallon safety can in Hangar 3A; one 14-gallon safety can in Hangar 2B; one 14-gallon safety can in Hangar 2A; two 14-gallon safety cans in the SRC- Leading Edge area; one 14-gallon safety can in the SRC-Machine Shop; one 14-gallon safety can in the SRC-Afterbody area; four 14-gallon safety cans in the SRC-Inlet; one 14-gallon safety can in the Engine Shop; and one 14-gallon safety can in the Cabinet Shop.

7. Section 262.34(c)(1) of the DRGHW states:

"(c)(1) A generator may accumulate as much as 55 gallons of hazardous waste or one quart of acutely hazardous waste listed in §261.33(e) in containers at or near any point of generation where wastes initially accumulate, which is under the

control of the operator of the process generating the waste, without a permit or interim status and without complying with paragraph (a) of this section provided he:"

Respondent violated this regulation. On August 28, 2008, SHWMB representatives observed that the volume of waste present in the accumulation areas (Hangars 3A, 2B, and 2A), which Respondent was using as satellite accumulation areas, exceeded the 55-gallon limit of hazardous waste in a satellite accumulation area.

8. Section 262.34(c)(1) of the DRGHW states:

"(c)(1) A generator may accumulate as much as 55 gallons of hazardous waste or one quart of acutely hazardous waste listed in §261.33(e) in containers at or near any point of generation where wastes initially accumulate, which is under the control of the operator of the process generating the waste, without a permit or interim status and without complying with paragraph (a) of this section provided he:"

Respondent violated this regulation. On August 28, 2008, SHWMB representatives observed one 55-gallon steel drum of waste paint and solvents located outside of the paint booth in Hangar 3A. The drum was not located at or near the point of generation and was out of the control of the operator.

9. Section 279.22(b)(3) of the DRGHW states in part:

"(b) Condition of units. Containers and aboveground tanks used to store used oil at generator facilities must...:

(3) Always be closed during storage, except when it is necessary to add or remove oil."

Respondent violated this regulation. On August 28, 2008, SHWMB representatives observed that two 30-gallon T-80 used oil reservoirs and one 55-gallon steel drum of used oil located in Hangar 3B and one 30-gallon T-80 used oil reservoir located in Hangar 2A, were not closed.

10. Section 273.13(a)(1) of the DRGHW states in part:

"(a) Universal waste batteries. A small quantity handler of universal waste must manage universal waste batteries in a way that prevents releases of any universal waste or component of a universal waste to the environment, as follows:

(1) ...The container must be closed, ..."

Respondent violated this regulation. On August 28, 2008, SHWMB representatives observed one 2-gallon poly bucket of universal waste batteries located in the Stock Room. The bucket was not closed.

11. Section 273.15(a) of the DRGHW states:

"(a) A small quantity handler of universal waste may accumulate universal waste for no longer than one year from the date the universal waste is generated, or received from another handler, unless the requirements of paragraph (b) of this section are met."

Respondent violated this regulation. On August 28, 2008, SHWMB representatives observed that the 2-gallon bucket referenced in number 10, above, was labeled with an accumulation start date of 11/16/06, which exceeds the one year accumulation limitation.

12. Section 262.40(a) of the DRGHW states:

"(a) A generator must keep a copy of each manifest signed in accordance with §262.23(a) for three years or until he receives a signed copy from the designated facility which received the waste. This signed copy must be retained as a record for at least three years from the date the waste was accepted by the initial transporter."

Respondent violated this regulation. On August 28, 2008, Respondent was unable to produce a Treatment, Storage, Disposal Facility ("TSD") signed copy of hazardous waste manifest numbers 000871649SKS and 000865736SKS.

13. Section 262.42(a) of the DRGHW states:

"(a) A generator who does not receive a copy of the manifest within thirty five (35) days of the date the waste was accepted by the initial transporter must contact the transporter and/or the owner or operator of the designated facility to determine the status of the hazardous waste, and if it has not been delivered the generator must identify the shipment and report it to the State in which the shipment originated."

Respondent violated this regulation. On August 28, 2008, Respondent was unable to produce a Treatment, Storage, Disposal Facility ("TSD") signed copy of hazardous waste manifest numbers 000871649SKS (waste accepted by the initial transporter on August 20, 2007) and 000865736SKS (waste accepted by the initial transporter on September 18, 2007). SHWMB representatives determined, therefore, that Respondent had not received a TSD signed copy of the above-referenced manifests, within 35 days from the date the waste was accepted by the initial transporter and failed both to determine the status of the waste and to make the required notification(s) as a result.

14. Section 262.42(b) of the DRGHW states in part:

"(b) A generator must submit an Exception Report to the DNREC if he has not received a copy of the manifest/shipping paper with the hand written signature of the owner or operator of the designated facility within 45 days of the date the waste was accepted by the initial transporter and the generator must also notify the State in which the manifest designated facility is located and the State to which the shipment may have been delivered."

Respondent violated this regulation. On August 28, 2008, Respondent was unable to produce a Treatment, Storage, Disposal Facility ("TSD") signed copy of hazardous waste manifest numbers 000871649SKS (waste accepted by the initial transporter on August 20, 2007) and 000865736SKS (waste accepted by the initial transporter on September 18, 2007). SHWMB representatives determined, therefore, that Respondent had not received a copy of the above-referenced manifests/shipping papers with the hand written signature of the owner or operator of the designated facility within 45 days from the date the waste was accepted by the initial transporter and had failed both to submit an Exception Report to the DNREC and to make the required notifications as a result.

15. Section 262.40(b) of the DRGHW states:

> *"(b) A generator must keep a copy of each Annual Report and Exception Report for a period of at least three years from the due date of the report (March 1)."*

Respondent violated this regulation. On August 28, 2008, Respondent was unable to produce an Exception Report, as required, for waste manifest numbers 000871649SKS and 000865736SKS.

16. Section 265.16(b) of the DRGHW states:

> *"(b) Facility personnel must successfully complete the program required in paragraph (a) of this section within six months after the effective date of these regulations or six months after the date of their employment or assignment to a facility, or to a new position at a facility, whichever is later. Employees hired after the effective date of these regulations must not work in unsupervised positions until they have completed the training requirements of paragraph (a) of this section."*

Respondent violated this regulation. On August 28, 2008, Respondent was unable to produce documentation to confirm that employees who handle hazardous waste had received hazardous waste training.

17. Section 265.16(d)(2) of the DRGHW states:

> *"(d) The owner or operator must maintain the following documents and records at the facility:*
>
> > *(2) A written job description for each position listed under paragraph (d)(1) of this section. This description may be consistent in its degree of specificity with description for other similar positions in the same company location or bargaining unit, but must include the requisite skill, education, or other qualification, and duties of facility personnel assigned to each position;"*

Respondent violated this regulation by failing to maintain the required written job description for each employee. On August 28, 2008, Respondent provided a job description, entitled "*Lead Facility Services,*" to SHWMB representatives, which it

claimed covered the employees responsible for handling hazardous waste. The job description, however, did not include duties related to hazardous waste.

18. Section 265.195(a) of the DRGHW states:

> *"(a) The owner or operator must inspect, where present, at least once each operating day:"*

Respondent violated this regulation. On August 28, 2008, SHWMB representatives, after reviewing daily tank inspections, determined that Respondent did not conduct inspections on weekends and holidays, even though Respondent's facility is open 24 hours per day, seven days a week, and 365 days a year.

19. Section 265.195(a)(2) of the DRGHW states:

> *"(a) The owner or operator must inspect, where present, at least once each operating day:*
>
> > *(2) The aboveground portions of the tank system, if any, to detect corrosion or releases of waste;"*

Respondent violated this regulation. On August 28, 2008, SHWMB representatives, after reviewing the daily inspection sheet, determined that Respondent's daily inspections did not include an inspection of the aboveground portions of the tanks for corrosion or releases of waste.

20. Section 265.195(a)(4) of the DRGHW states:

> *"(a) The owner or operator must inspect, where present, at least once each operating day:*
>
> > *(4) The construction materials and the area immediately surrounding the externally accessible portion of the tank system including secondary containment structures (e.g., dikes) to detect erosion or signs of releases of hazardous waste (e.g., wet spots, dead vegetation);"*

Respondent violated this regulation. On August 28, 2008, SHWMB representatives, after reviewing the daily inspection sheet, determined that Respondent's daily inspections did not include an inspection of the area immediately surrounding the externally accessible portion of the tanks, nor did they include an inspection of the secondary containment system, for signs of erosion or releases of hazardous waste.

21. Section 265.192(a) of the DRGHW states:

> *"(a) Owners or operators of new tank systems or components must ensure that the foundation, structural support, seams, connections, and pressure controls (if applicable) are adequately designed and that the tank system has sufficient structural strength, compatibility with the waste(s) to be stored or treated, and corrosion protection so that it will not collapse, rupture, or fail. The owner or*

operator must obtain a written assessment reviewed and certified by an independent, qualified, registered professional engineer in accordance with §122.11(d) attesting that the system has sufficient structural integrity and is acceptable for the storing and treating of hazardous waste. This assessment must include, at a minimum, the following information:"

Respondent violated this regulation. On August 28, 2008, Respondent was unable to produce a written assessment of the hazardous waste storage tank design by an independent, qualified, registered professional attesting that the system has sufficient structural integrity and is acceptable for the storage/treatment of hazardous waste.

22. Section 265.192(b) of the DRGHW states:

"(b) The owner or operator of a new tank system must ensure that proper handling procedures are adhered to in order to prevent damage to the system during installation. Prior to covering, enclosing, or placing a new tank system or component in use, an independent, qualified installation inspector or an independent, qualified, registered professional engineer, either of whom is trained and experienced in the proper installation of tank systems must inspect the system or component for the presence of any of the following items:"

Respondent violated this regulation. On August 28, 2008, Respondent was unable to produce documentation to confirm that the hazardous waste storage tank was properly inspected, as required, to ensure that the tank was properly installed/constructed.

23. Section 265.52(d) of the DRGHW states:

"(d) The plan must list names, addresses, and phone numbers (office and home) of all persons qualified to act as emergency coordinator (see §265.55), and this list must be kept up to date. Where more than one person is listed, one must be named as primary emergency coordinator and others must be listed in the order in which they will assume responsibility as alternates."

Respondent violated this regulation. On August 28, 2008, Respondent's Contingency Plan did not contain the home address for the alternate emergency coordinator as required.

24. Section 265.52(e) of the DRGHW states:

"(e) The plan must include a list of all emergency equipment at the facility (such as fire extinguishing systems, spill control equipment, communications and alarm systems (internal and external), and decontamination equipment), where this equipment is required. This list must be kept up to date. In addition, the plan must include the location and a physical description of each item on the list and a brief outline of its capabilities."

Respondent violated this regulation. On August 28, 2008, Respondent's Contingency Plan contained a list of emergency equipment but did not include a brief outline of its capabilities.

25. Section 265.56(c) of the DRGHW states in part:

> *"(c) ..., the emergency coordinator must assess possible hazards to human health or the environment that may result from the release, fire, or explosion. This assessment must consider both direct and indirect effects of the release, fire, or explosion (e.g., the effects of any toxic, irritating, or asphyxiation gases that are generated, or the effects of any hazardous surface water run-offs from water or chemical agents used to control fire and heat-induced explosions)."*

Section 265.16(d)(4) of the DRGHW states:

> *"(d) The owner or operator must maintain the following documents and records at the facility:*
>
> > *(4) Records that document that the training or job experience required under paragraphs (a), (b), and (c) of this section has been given to, and completed by, facility personnel.*

Respondent violated this regulation. On August 28, 2008, Respondent was unable to produce documentation demonstrating that the alternate emergency coordinators had received training to assess the possible hazards of a release.

26. Section 265.53(b) of the DRGHW states:

> *"A printed copy of the contingency plan and all provisions to the plan must be:*
>
> > *(b) Submitted to all local police departments, fire departments, hospitals, and State and local emergency response teams that may be called upon to provide emergency services. Documentation of written submission and receipt must be maintained at the facility."*

Respondent violated this regulation. On August 28, 2008, Respondent was unable to produce documentation indicating that the Contingency Plan had been shared with local police, fire departments and hospitals.

27. Section 265.1083(c)(1) of the DRGHW states:

> *"(c) A tank, surface impoundment, or container is exempt from standards specified in §265.1085 through §265.1088 of this subpart, as applicable, provided that the waste management unit is one of the following:*
>
> > *(1) A tank, surface impoundment, or container for which all hazardous waste entering the unit has an average VO concentration at the point of waste origination of less than 500 parts per million by weight (ppmw). The average VO concentration shall be determined using the procedures specified in §265.1084(a) of this subpart. The owner or operator shall review and update, as necessary, this determination at least once every 12*

months following the date of the initial determination for the hazardous waste streams entering the unit."

Respondent violated this regulation. On August 28, 2008, Respondent was unable to produce documentation indicating that the hazardous waste accumulated within each tank maintains an average VO (volatile organic) concentration of less than 500 ppmw.

28. Section 122.1(c) of the DRGHW states in part:

"(c) DNREC requires a permit for the 'treatment', 'storage', and 'disposal' of any 'hazardous waste' as identified or listed in Part 261."

Section 262.34(a)(1-4) of the DRGHW states in part:

"(a) Except as provided in paragraphs (d), (e), and (f) of this section, a generator may accumulate hazardous waste on site for 90 days or less without a permit or without having interim status, provided that:

(1) The waste is placed:

(i) In containers and the generator complies with the applicable requirements of Subparts I, AA, BB, and CC of Part 265; and/or...

(2) The date upon which each period of accumulation begins is clearly marked and visible for inspection on each container;

(3) While being accumulated on site, each container and tank is labeled or marked clearly with the words Hazardous Waste"; and

(4) The generator complies with the requirements for owners or operators in Subparts C and D in Part 265, with § 265.16, and with 268.7(a)(5)."

Respondent violated this regulation. On August 28, 2008, the Department determined that by failing to comply with the hazardous waste regulatory requirements illustrated in numbers 1, 5 and 16 through 27, above, Respondent failed to meet the conditions for exclusion from the 90 days or less accumulation requirement, set forth in § 262.34(a) of the DRGHW.

29. Section 262.34 (c)(1)(i) and (ii) of the DRGHW states in part:

"(c)(1) A generator may accumulate as much as 55 gallons of hazardous waste... in containers at or near any point of generation where wastes initially accumulate, which is under the control of the operator of the process generating the waste, without a permit or interim status and without complying with paragraph (a) of this section provided he:

(i) Complies with §§265.171, 265.172, and 265.173(a) of these regulations; and

(ii) Marks his containers either with the words "Hazardous Waste" or with other words that identify the contents of the containers."

Respondent violated this regulation. On August 28, 2008, the Department determined that by failing to comply with the hazardous waste regulatory requirements illustrated in numbers 2 and 6 through 8, above, Respondent failed to meet the conditions for exclusion from accumulating as much as 55 gallons of hazardous waste in containers at or near any point of generation, set forth in § 262.34(c)(1) of the DRGHW.

30. Section 122.1(c) of the DRGHW states in part:

"(c) DNREC requires a permit for the 'treatment', 'storage', and 'disposal' of any 'hazardous waste' as identified or listed in Part 261."

Respondent violated this regulation. On August 28, 2008, the Department determined that as a result of failing to meet the conditions for exclusion from the 90 days or less accumulation requirement, set forth in § 262.34(a) of the DRGHW, referenced in number 28, above and by failing to meet the conditions for exclusion from accumulating as much as 55 gallons of hazardous waste in containers at or near any point of generation, set forth in § 262.34(c)(1) of the DRGHW referenced in number 29, above, Respondent was required to obtain a permit to operate a hazardous waste storage facility and did not.

Compliance Assessment of August 25, 2009

1. Section 262.34(a)(2) of the DRGHW states:

"(a) Except as provided in paragraphs (d), (e), and (f) of this section, a generator may accumulate hazardous waste on site for 90 days or less without a permit or without having interim status, provided that:

(2) The date upon which each period of accumulation begins is clearly marked and visible for inspection on each container;"

Respondent violated this regulation. On August 25, 2009, SHWMB representatives observed one 55-gallon drum of waste solid paints, located in the Paint Bay of the Paint Hangar, which was not marked with an accumulation start date.

2. Section 279.22(b)(3) of the DRGHW states in part:

"(b) Condition of units. Containers and aboveground tanks used to store used oil at generator facilities must...:

(3) Always be closed during storage, except when it is necessary to add or remove oil."

Respondent violated this regulation. On August 25, 2009, SHWMB representatives observed two 30-gallon T-80 used oil reservoirs located in Hangars 3B and 2A that were not closed.

3. Section 265.173(a) of the DRGHW states:

> *"(a) A container holding hazardous waste must always be closed during storage, except when it is necessary to add or remove waste."*

Respondent violated this regulation. On August 25, 2009, SHWMB representatives observed six 55-gallon steel drums of empty aerosol cans, located in Hangars 3A, 3B, and 2A, as well as in the SRC-Machine Shop, and the Engine Shop, that were not closed.

4. Section 262.34 (c)(1)(i) and (ii) of the DRGHW states in part:

> *"(c)(1) A generator may accumulate as much as 55 gallons of hazardous waste... in containers at or near any point of generation where wastes initially accumulate, which is under the control of the operator of the process generating the waste, without a permit or interim status and without complying with paragraph (a) of this section provided he:*
>
> > *(i) Complies with §§265.171, 265.172, and 265.173(a) of these regulations; and*
> >
> > *(ii) Marks his containers either with the words "Hazardous Waste" or with other words that identify the contents of the containers."*

Respondent violated this regulation. On August 25, 2009, SHWMB representatives observed one 55-gallon steel drum of empty aerosol cans, located in the Engine Shop, which was not labeled as required.

CONCLUSIONS

Based on the foregoing, the Department has concluded that Dassault Falcon Jet, Inc. has violated the above cited statutes and regulatory provisions.

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 $30,000.00 for the violations identified in this Amended Assessment and Order.

In addition to the penalty assessment, Respondent is hereby assessed estimated costs in the amount of $4,500.00, pursuant to 7 *Del. C.* § 6005(c), which were incurred by the Department in the investigation of the noted violations.

Respondent shall submit one check to the Department in the amount of $30,000.00 to pay the penalty and one check to the Department in the amount of $4,500.00 to pay the estimated costs within 30 days from the receipt of this Amended Assessment and Order. The checks 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 Amended 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 Amended 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 $30,000 and the Department's estimated costs in the amount of $4,500 in the manner described in the assessment section above. 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.

Please contact Paul Foster at (302) 323-4542 for Air Quality related questions or concerns and Karen J'Anthony at (302) 739-9403 for Solid and Hazardous Waste Management related questions or concerns.

4 Dec 2010
Date

Collin P. O'Mara, Secretary

cc: Valerie M. Satterfield, Deputy Attorney General
Marjorie A. Crofts, DWM Director
Ali Mirzakhalili, P.E., DAQ Director
Paul Foster, P.E., Program Manager
Nancy Marker, Program Manager
Karen J'Anthony, Program Manager
Everett DeWhitt, Program Manager
Amy Mann, Engineer
Nicole E. Hill, Environmental Scientist
Jenny Bothell, Enforcement Coordinator
Dawn Minor, Paralegal
Susan Baker, Paralegal
Dover File
SHWMB File

88-56amended.ssb(3)

WAIVER OF STATUTORY RIGHT TO A HEARING

Dassault Falcon Jet – Wilmington Corp. hereby waives its right to a hearing and its opportunity to appeal or contest this Assessment and Order and agrees to the following:

1. **Dassault Falcon Jet – Wilmington Corp.** will pay the administrative penalty in the amount of $30,000 by sending a check payable to the "State of Delaware" within 30 days of receipt of this Amended 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. **Dassault Falcon Jet – Wilmington Corp.** will reimburse the Department in the amount of $4,500 which represents the Department's estimated costs. The reimbursement shall be paid within 30 days of receipt of this Amended 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.

Dassault Falcon Jet – Wilmington Corp.

Date: _____ By: _____

Title: _____