



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

OFFICE OF THE
SECRETARY

PHONE: (302) 739-4403
FAX: (302) 739-6242

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

Pursuant to 7 Del. C. § 6005

Order No. 2005-A-0041

*PERSONALLY SERVED BY AN ENVIRONMENTAL
ENFORCEMENT OFFICER*

Issued to:

Eastern Shore Natural Gas Company
Attn.: Stephen C. Thompson, President
P.O. Box 1769
350 South Queen Street
Dover, Delaware 19904

Registered Agent:

The Corporation Trust Co.
Corporation Trust Center
1209 Orange Street
Wilmington, Delaware 19801

Dear Mr. Thompson:

This is to notify Eastern Shore Natural Gas Company ("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 accordingly, the Department is issuing this Notice of Administrative Penalty Assessment ("Assessment and Order") pursuant to 7 Del. C. § 6005(b)(3).

BACKGROUND

Respondent is a subsidiary of Chesapeake Utilities Corporation, a utility company engaged in natural gas distribution and transmission, propane distribution and advanced information services. Respondent owns and operates an interstate pipeline that transports natural gas to customers throughout Delaware and Maryland's Eastern Shore. Respondent also owns and operates compressor stations in several locations throughout Delaware, which are used to increase pressures as necessary to meet system demands. One of these compressor stations is located in Sussex County, in Bridgeville, Delaware ("Bridgeville Facility").

In December 1991, Respondent requested a Regulation No. 2 Registration for the compressor station at the Bridgeville Facility, which the Department issued on February 3, 1992.

Delaware's Good Nature depends on you!

On December 4, 1995, EPA published in the Federal Register at Page 62032-62034 notice that it had approved Delaware's Title V Clean Air Act Operating permit program as implemented by Delaware statutory authority and Regulation No. 30. According to the notice, the effective date of EPA's approval was January 3, 1996. DNREC's Regulations Governing the Control of Air Pollution, Regulation No. 30 (Title V State Operating Permit Program) Section 1 indicates that Regulation No. 30 takes effect upon approval by EPA (which was effective on January 3, 1996). Regulation No. 30, Section 5(a)(1)(i)(B) requires sources such as the Respondent's Bridgeville Facility to complete a timely application for a permit within 12 months of the effective date of the Regulation (within 12 months of January 3, 1996).

During a June 2004 internal review of its records for the Bridgeville Facility, the Department determined that Respondent's potential to emit ("PTE") Nitrogen Oxide ("NO_x") was 275.34 tons per year which exceeded the 100 tons per year threshold in Sussex County to trigger the applicability of Regulation No. 30. The PTE related to use at the Bridgeville Facility of two Caterpillar G399NA natural gas fired internal combustion engines each rated at 600 horsepower and one Onan 60 En natural gas fired emergency generator rated at 85 horsepower. This equipment is used to increase the pressure and flow in the natural gas pipeline to make natural gas deliveries to users of natural gas in the region. Exceeding the PTE threshold subjected Respondent to the requirements of Regulation No. 30. As such, Respondent should have either applied for a Title V permit or a Regulation No. 2 permit with limitations, commonly known as a Synthetic Minor permit, which would have reduced the potential to emit NO_x from the Bridgeville Facility to below the 100 tons per year threshold. This should have been done by January 3, 1997, pursuant to the Regulation 30(a)(1)(i)(B) requirement to submit a timely application for a permit within 12 months after January 3, 1996. Respondent did not satisfy this requirement to apply for the appropriate permit for the Bridgeville Facility until September 29, 2004, when it submitted a permit application for a Synthetic Minor permit.

FINDINGS OF FACT

1. Regulation No. 30 became effective on January 3, 1996, upon approval by EPA of the Regulation.
2. Respondent did not apply for the appropriate permit according to Regulation No. 30(a)(1)(i)(B) for the Bridgeville Facility until September 29, 2004.

STATUTORY AND REGULATORY PROVISIONS

1. 7 Del. C. § 6005(b)(3) states:

"Whoever violates this chapter or any rule or regulation duly promulgated thereunder, or any condition of a permit issued pursuant to § 6003 of this title, or any order of the Secretary, shall be punishable...an administrative penalty of not more than \$10,000 for each day of violation."

2. Regulation No. 30, Sec. 5 states in pertinent part:

(a) Duty to Apply

(1) Timely Application

(i) The owners or operators of covered sources, as of the date the program is approved by EPA and becomes effective (the "effective date"), shall file applications on the following schedule:

(A) Sources that have the *potential to emit* in the aggregate 150 tons per year or less of *regulated air pollutants* shall file complete applications within six (6) months of the effective date, provided that, upon request and for good cause shown, the Department may allow a source additional time up to twelve (12) months from the effective date; and

(B) All other sources shall file complete applications within twelve (12) months of the effective date;

(emphasis added)

CONCLUSION

1. Respondent is subject to 7 Del. C. § 6005(b)(3) by violating Regulation No. 30 when it failed to apply for the appropriate permit for its Bridgeville facility by January 3, 1997.
2. Respondent violated Regulation No. 30 by failing to apply for the appropriate permit for its Bridgeville facility by January 3, 1997.

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 \$8,500.00 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 \$8,500.00 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 S. Csizmadia, Deputy Attorney General, Delaware Department of Justice, Civil Division/Environmental Unit, 3rd Floor, 102 W. Water Street, Dover, Delaware 19904.

PUBLIC HEARING

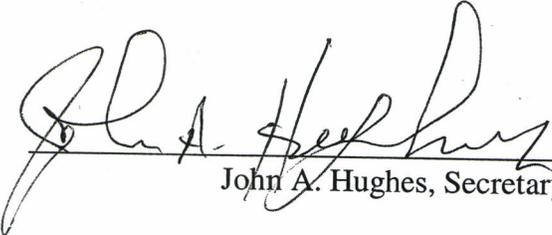
This Assessment and Order shall become effective and final unless the Department receives from Respondent, no later than 30 days from the receipt of this Notice, a written request for a public hearing on these matters as provided in 7 Del. C. § 6005(b)(3) and (c). In the event Respondent requests a hearing, 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 pursuant to 7 Del. C. § 6005. The Department otherwise does not 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 \$8,500.00 and the Department's costs in the amount of \$1,044.08 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 Joanna French at (302) 739-9402.

9-23-05
Date


John A. Hughes, Secretary

cc: James D. Werner, Director
Valerie S. Csizmadia, Deputy Attorney General
Ali Mirzakhali, P.E., Administrator
Paul Foster, P.E., Program Manager
Joanna French, Program Manager
Stephen Ours, P.E., Environmental Engineer
Jennifer Bothell, Enforcement Coordinator
Dawn Minor, Paralegal
Dover File

WAIVER OF STATUTORY RIGHT TO A HEARING

Eastern Shore Natural Gas Company hereby waives its right to a hearing and its opportunity to appeal or contest this Assessment and Order and agrees to the following:

1. **Eastern Shore Natural Gas Company** will pay the administrative penalty in the amount of \$8,500.00 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 Valerie S. Csizmadia, Deputy Attorney General, Department of Justice, 102 W. Water Street-3rd Floor, Dover, DE 19904; and

2. **Eastern Shore Natural Gas Company** will reimburse the Department for \$1,044.08, which represents its recoverable costs pursuant to 7 Del. C. § 6005(c). 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 S. Csizmadia, Deputy Attorney General, Department of Justice, 102 W. Water Street-3rd Floor, Dover, DE 19904.

Eastern Shore Natural Gas Company

Date: _____

By: _____

Title: _____