



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

OFFICE OF THE  
SECRETARY

PHONE: (302) 739-9000  
FAX: (302) 739-6242

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

Pursuant to 7 *Del. C.* § 6005

**Order No. 2008-A-0027**

*PERSONALLY SERVED BY ENVIRONMENTAL  
ENFORCEMENT OFFICER*

**Issued To:**

Hanover Foods Corporation  
Attn: William D. Simpson, Plant Manager  
Rt. 6 and Duck Creek Road  
P.O. Box 1150  
Clayton, DE 19938

**Registered Agent:**

Harvard Business Services, Inc.  
16192 Coastal Highway  
Lewes, DE 19958

Dear Mr. Simpson:

This is to notify Hanover Foods Corporation ("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. Accordingly, the Department is issuing this Notice of Administrative Penalty Assessment and Secretary Order ("Assessment and Order") pursuant to 7 *Del. C.* § 6005(b)(3).

***BACKGROUND***

Respondent owns and operates a frozen food processing plant located on Route 6 and Duck Creek Road in Clayton, Delaware ("Facility"). The Facility processes various types of vegetables for sale and distribution.

Respondent currently operates the Facility under Regulation No. 30 Operating Permit "(Title V permit)" **AQM-001/00024 (Renewal 2)** dated January 25, 2008, which governs the operation of its boilers, degreasers and a storage tank. This latest permit replaces the previous Title V permit **AQM-001/00024 (Renewal 1)** dated August 21, 2003. The violations set out herein relate to the previous Title V permit **AQM-001/00024 (Renewal 1)**. Respondent is

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subject to Regulation No. 30 due to the Facility's potential to emit Nitrogen Oxides ("NO<sub>x</sub>") and Sulfur Oxides ("SO<sub>x</sub>") in excess of 25 and 100 tons per year, respectively.

Respondent submitted its 2006 annual compliance and semi-annual reports on January 31, 2007. A review of the reports showed that Respondent reported a failure to conduct the annual Modified Reference Method 9 visible emissions tests ("visible emissions tests") on its boilers, emission units 001 and 002 ("boilers" or "units 001 and 002") for the year 2006 as required by its permit. The Department conducted an annual inspection at Respondent's Facility on May 4, 2007, and discovered that Respondent had also failed to perform annual tune ups for its boilers for the year 2006 as required by its permit. In addition, this was not reported by Respondent, as required, in the reports received January 31, 2007. The annual tune ups establish the annual NO<sub>x</sub> emission limits for the boilers. A Notice of Violation was issued to Respondent on November 15, 2007.

Respondent has previously failed to conduct, to adequately conduct and/or to document that it conducted visible emissions tests on its boilers. This is also not the first time that Respondent has failed to perform annual tune ups for its boilers. The requirements to conduct visible emissions testing and annual tune ups on its boilers and reporting requirements have been conditions of Respondent's Title V permit since its initial issuance on September 20, 1998, and subsequent renewals.

Violations of these conditions were discovered on January 23, 2004, when the Department conducted a Federal Fiscal Year 2004 annual inspection at Respondent's Facility which included a records review. Respondent was unable to produce records demonstrating it had conducted an annual visible emissions test for year 2003 on either of its boilers. A Notice of Violation was issued to Respondent on March 4, 2004. On March 18, 2005, the Department conducted a Federal Fiscal Year 2005 annual inspection at the Facility. It was discovered that even though the Respondent conducted the annual visible emissions tests on its boilers for year 2004, the duration of the visible emissions observation for each boiler was 30 minutes instead of a minimum of 1 hour as required by Regulation No. 20, Section 1.5(c). A Notice of Violation was issued April 15, 2005. On May 17, 2006, the Department issued an Amended Administrative Penalty Assessment and Secretary's Order No. 2006-A-0023 to Respondent to resolve the previously issued Administrative Penalty Assessment and Secretary's Order No. 2006-A-0018. These Orders addressed violations associated with visible emissions tests for years 2003 and 2004.

Respondent had prior permit violations in 2000 and 2001. Respondent failed to conduct annual visible emissions tests on its boilers for years 2000 and 2001. Respondent also failed to conduct an annual tune up on one of its boilers for year 2000 and on both of its boilers for year 2001. On March 1, 2002, the Department issued Administrative Penalty Assessment and Secretary's Order No. 2002-A-0014 to Respondent to resolve the previously issued Administrative Penalty Assessment and Secretary's Order No. 2001-A-0019 as well as address three additional violations.

### ***FINDINGS OF FACT***

- 1) Respondent failed to conduct an annual Modified Reference Method 9 visible emissions test on both of its boilers, units 001 and 002, for year 2006.
- 2) Respondent failed to perform annual tune ups on both of its boilers, units 001 and 002, for year 2006.
- 3) Respondent failed to report in its 2006 annual compliance certification and semi-annual report that it did not perform the annual tune ups on its boilers, units 001 and 002.

### ***PERMIT REQUIREMENTS***

- 1) Condition No. 3(c)(2)(i) of Permit **AQM-001/00024(Renewal 1)** states:  
“The Company shall submit to the Department a report of any required monitoring not later than the first day of August (covering the period from January 1 through June 30) and the first day of February (covering the period July 1 through December 31) of each calendar year. Each report shall identify any deviation(s) from permit requirements since the previous report...”
- 2) Condition No. 3(c)(3)(i) of Permit **AQM-001/00024(Renewal 1)** states:  
“Compliance with terms and conditions detailed in Condition 3 – Table 1 of this permit shall be certified to the Department...”
- 3) Condition No. 3-Table 1(e)(2)(iii) of Permit **AQM-001/00024(Renewal 1)** states:  
“At a minimum, for emission units 001 and 002, the Company shall monitor visible emissions once each calendar year.”
- 4) Condition No. 3-Table 1(e)(2)(iv) of Permit **AQM-001/00024(Renewal 1)** states:  
“In addition to that required by Condition 3(b)(1)(ii) of this permit, the Company shall conduct an annual Modified Reference Method 9 visible emissions test on emission units 001 and 002 in accordance with Regulation No. 20, Section 1.5(c).”
- 5) Condition No. 3-Table 1(e)(2)(vii) of Permit **AQM-001/00024(Renewal 1)** states:  
“The Company shall certify at least once each calendar year that compliance with Condition 3 – Table 1(e)(3) demonstrates compliance with Condition 3 – Table 1(e)(2)(i) by conducting a Modified Reference Method 9 visible emissions test on emission units 001 and 002 in accordance with Condition 3 – Table 1(e)(2)(iv).”

- 6) Condition No. 3-Table 1(a)(4)(i) of Permit AQM-001/00024(Renewal 1) states that for Emission Unit 001:

“Nitrogen Oxide emissions shall not exceed those achieved through an annual tune up performed by qualified personnel.”

- 7) Condition No. 3-Table 1(a)(4)(ii) of Permit AQM-001/00024(Renewal 1) states:

“The Company shall have qualified personnel perform tune ups for emission unit 001.”

- 8) Condition No. 3-Table 1(b)(4)(i) of Permit AQM-001/00024(Renewal 1) states that for Emission Unit 002:

“Nitrogen Oxide emissions shall not exceed those achieved through an annual tune up performed by qualified personnel.”

- 9) Condition No. 3-Table 1(b)(4)(ii) of Permit AQM-001/00024(Renewal 1) states:

“The Company shall have qualified personnel perform tune ups for emission unit 002.”

### **CONCLUSIONS**

Based on the foregoing facts, the Department has determined that Respondent has violated 7 Del. C. Chapter 60 and its permit conditions as follows:

- 1) Respondent violated Condition No. 3(c)(2)(i) of Permit AQM-001/00024-(Renewal 1) by failing to report that it had not performed an annual tune up for emission units 001 and 002 for year 2006 as required.
- 2) Respondent violated Condition No. 3(c)(3)(i) of Permit AQM-001/00024-(Renewal 1) by failing to report that it was not in compliance with the permit conditions requiring it perform an annual tune up for emission units 001 and 002 for year 2006.
- 3) Respondent violated Condition No. 3-Table 1(e)(2)(ii) of Permit AQM-001/00024-(Renewal 1) by failing to monitor visible emissions for calendar year 2006 for emission units 001 and 002.
- 4) Respondent violated Condition No. 3-Table 1(e)(2)(iv) of Permit AQM-001/00024-(Renewal 1) by failing to conduct an annual Modified Reference Method 9 visible emissions test on emission units 001 and 002 for year 2006.
- 5) Respondent violated Condition No. 3-Table 1(e)(2)(vii) of Permit AQM-001/00024-(Renewal 1) by failing to conduct an annual Modified Reference Method 9 visible emissions test on emission units 001 and 002 for calendar year 2006.

- 6) Respondent violated Condition No. 3-Table 1(a)(4)(i) of Permit **AQM-001/00024-(Renewal 1)** by failing to perform an annual tune up for emission unit 001 for year 2006 thereby not establishing the required Nitrogen Oxide emission limit.
- 7) Respondent violated Condition No. 3-Table 1(a)(4)(ii) of Permit **AQM-001/00024-(Renewal 1)** by failing to perform an annual tune up for emission unit 001 for year 2006.
- 8) Respondent violated Condition No. 3-Table 1(b)(4)(i) of Permit **AQM-001/00024-(Renewal 1)** by failing to perform an annual tune up for emission unit 002 for year 2006 thereby not establishing the required Nitrogen Oxide emission limit.
- 9) Respondent violated Condition No. 3-Table 1(b)(4)(ii) of Permit **AQM-001/00024-(Renewal 1)** by failing to perform an annual tune up for emission unit 002 for year 2006.

### ***ASSESSMENT OF PENALTY AND ORDER***

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 \$10,000 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 \$10,000 within 30 days from 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, Department of Justice, 3<sup>rd</sup> Floor, 102 W. Water Street, Dover, DE 19904.

### ***PUBLIC HEARING***

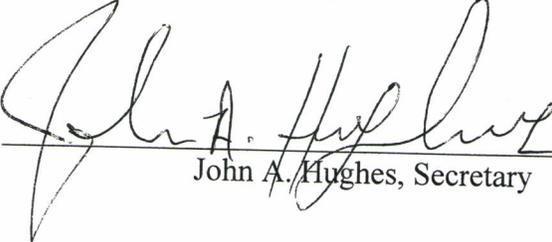
This Administrative Penalty Assessment and Order shall become effective and final unless the Department receives from Respondent, no later than 30 days from the receipt of this Notice, a written request for a public hearing on these matters as provided in 7 *Del. C.* § 6005(b)(3) and (c). In the event 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 \$10,000 and the Department's estimated costs in the amount of \$1,500 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 this Assessment which shall become a final Order.

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

6/18/08  
Date

  
John A. Hughes, Secretary

cc: Valerie S. Csizmadia, Deputy Attorney General  
James D. Werner, Director  
Ali Mirzakhali, P.E., Program Administrator  
Paul E. Foster, P.E., Program Manager  
Joanna French, P.E., Program Manager  
Phaniel C.K. Bediako, PhD, Engineer  
Dawn Minor, Paralegal  
Karen Mattio, P.E., Engineer  
Jenny Bothell, Enforcement Coordinator  
Dover File

## ***WAIVER OF STATUTORY RIGHT TO A HEARING***

**Hanover Foods Corporation** hereby waives its right to a hearing and its opportunity to appeal or contest this Assessment and Order and agrees to the following:

1. **Hanover Foods Corporation** will pay the administrative penalty in the amount of \$10,000 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-3<sup>rd</sup> Floor, Dover, DE 19904; and

2. **Hanover Foods Corporation** will reimburse the Department in the amount of \$1,500, 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 S. Csizmadia, Deputy Attorney General, Department of Justice, 102 W. Water Street-3<sup>rd</sup> Floor, Dover, DE 19904.

**Hanover Foods Corporation**

Date: \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_