



STATE OF DELAWARE
DEPARTMENT OF NATURAL RESOURCES
AND ENVIRONMENTAL CONTROL

OFFICE OF THE
SECRETARY

89 KINGS HIGHWAY
DOVER, DELAWARE 19901

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. 2006-A-0028

*PERSONALLY SERVED BY ENVIRONMENTAL
ENFORCEMENT OFFICER*

Issued To:

P&A LLC (Maryland)
Attn: Mark Eisenhower, Partner/CEO
36393 Sussex Highway
Delmar, DE 19940

Registered Agent:

The Corporation Trust Company
Corporation Trust Center
1209 Orange Street
Wilmington, DE 19801

Dear Mr. Eisenhower:

This is to notify P&A LLC (Maryland) ("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 a Notice of Administrative Penalty Assessment and Secretary Order ("Assessment and Order") pursuant to 7 Del. C. § 6005(b)(3).

BACKGROUND

Respondent operates a facility that produces hot mix asphalt in Delmar, Sussex County, Delaware ("Facility"). Respondent has the potential to emit more than 100 tons per year each of sulfur oxides (SO_x) and carbon monoxide (CO) which, in Sussex County, would subject Respondent to Title V permit requirements. However, by accepting operating conditions that would limit the amount of SO_x and CO emitted, Respondent applied for and received a Synthetic Minor Permit APC-2003/0728-OPERATION (NSPS)(SM) dated August 13, 2003. Respondent applied for and received amended Permit, APC-2003/0728-OPERATION (Amendment 1)(NSPS)(SM) dated June 18, 2004.

On June 28, 2004, the Department conducted an annual inspection at Respondent's Facility. A review of the records required to be maintained by its permit showed that

Delaware's Good Nature depends on you!

Respondent did not conduct a burner tune-up within 3 weeks of its annual plant startup for 2004 as required by Condition 4.3 of Permit APC-2003/0728-OPERATION (NSPS)(SM). In February 2004, Respondent shut down briefly for maintenance, thereby requiring a burner tune-up be conducted by no later than the end of March 2004. As of June 28, 2004, no tune-up had been conducted. The Department informed Respondent that a burner tune-up needed to be done as soon as possible.

Respondent had a burner tune-up conducted on July 22, 2004 and the results were received by the Department on July 27, 2004. An NOV dated August 24, 2004 was issued to Respondent setting forth the violation of Condition 4.3 of Permit APC-2003/0728-OPERATION (NSPS)(SM) for the 2004 plant startup.

The Department conducted the 2005 annual inspection at Respondent's Facility on May 11, 2005. During a records review, the Department discovered that Respondent failed to conduct an annual EPA Method 9 visible emissions test for calendar year 2004 as required by Condition 4.3 of Permit APC-2003/0728-OPERATION (Amendment 1)(NSPS)(SM).

The Department set forth its inspection findings in a letter dated June 27, 2005, and also requested Respondent submit documentation by July 28, 2005, that it conducted an annual EPA Method 9 visible emissions test for calendar year 2004. In an email to the Department dated July 28, 2005, Respondent indicated the visible emissions test was not conducted for calendar year 2004.

FINDINGS OF FACT

1. Respondent shut down briefly for maintenance in February 2004, therefore a burner tune-up should have been completed no later than the end of March 2004.
2. Respondent did not conduct an annual EPA Method 9 visible emissions test for calendar year 2004.

PERMIT REQUIREMENTS

1. Condition No. 4.3 of permit APC-2003/0728-OPERATION (NSPS)(SM) states:
"The Company shall, within three (3) weeks of each annual plant startup, perform a burner tuneup utilizing portable emission monitoring equipment to assist in obtaining optimum burner performance with respect to air emissions."
2. Condition No. 4.3 of permit APC-2003/0728-OPERATION (Amendment 1) (NSPS)(SM) states:
"The Company shall conduct annual opacity observations to establish compliance with the visible emission standard of Condition 2.2 by conducting observations in accordance with Regulation No. 20, Section 1.5(c) (i.e. "modified" 40 CFR Part 60 Appendix A Reference Method 9)."

CONCLUSIONS

Based on the foregoing facts, the Department has determined that Respondent has violated its permit as follows:

1. Respondent violated Condition No. 4.3 of Permit APC-2003/0728-OPERATION (NSPS)(SM) by failing to conduct a burner tuneup within three (3) weeks of startup after shutting down in February 2004.
2. Respondent violated Condition No. 4.3 of Permit APC-2003/0728-OPERATION (Amendment 1)(NSPS)(SM) by failing to conduct an annual EPA Method 9 visible emissions test for calendar year 2004.

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 \$5,250.00 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 \$5,250.00 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, Department of Justice, Environmental Unit, 102 W. Water Street-3rd Floor, Dover, Delaware 19904.

PUBLIC HEARING

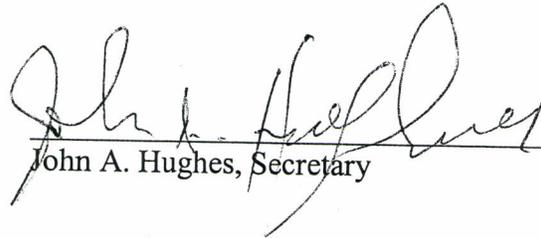
This Administrative Penalty Assessment and Order shall become effective and final unless the Department receives from Respondent, no later than 30 days from the receipt of this Notice, a written request for a public hearing on these matters as provided in 7 Del. C. § 6005(b)(3) and (c). In the event 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 \$5,250.00 and the Department's costs in the amount of \$1,803.61 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.

6/15/06
Date


John A. Hughes, Secretary

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

WAIVER OF STATUTORY RIGHT TO A HEARING

P&A LLC (Maryland) hereby waives its right to a hearing and its opportunity to appeal or contest this Assessment and Order and agrees to the following:

1. **P&A LLC (Maryland)** will pay the administrative penalty in the amount of \$5,250.00 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. **P&A LLC (Maryland)** will reimburse the Department for \$1,803.61, 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.

P&A LLC (Maryland)

Date: _____

By: _____

Title: _____

PERSONALLY SERVED THIS Secretary's Order

Scott LaScala BY LEAVING IN HIS/HER HANDS

A TRUE AND CORRECT COPY, AT HIS/HER PLACE OF Business

6/16/06

Matthew H. Chamberlain 9707
DIRECTOR OF BUREAU OF ENVIRONMENTAL PROTECTION OFFICER

Matthew H. Chamberlain
DIRECTOR OF BUREAU OF ENVIRONMENTAL PROTECTION OFFICER

PERSONALLY SERVED THIS Notice UPON

Anne Marshall BY LEAVING IN HIS/HER Hand

A TRUE AND CORRECT COPY, AT HIS/HER PLACE OF Business OR

residence

M. Costello

DIRECTOR OF ORREG ENVIRONMENTAL PROTECTION DIVISION

Michael J. Costello

SETTLEMENT AGREEMENT

This Agreement is made by and between P&A LLC. ("P&A") and the State of Delaware, Department of Natural Resources and Environmental Control ("DNREC" or "Department").

WITNESSETH:

WHEREAS, DNREC has issued a Notice of Administrative Penalty Assessment and Secretary's Order No. 2006-A-0028 dated June 15, 2006 against P&A (the "Order");

WHEREAS, in the Order, DNREC alleges that P&A violated Condition 4.3 of Permit APC-2003/0728-OPERATION (NSPS)(SM) by failing to conduct a burner tune-up within three weeks of its annual plant startup for 2004 and that P&A violated Condition 4.3 of Permit APC-2003/0728-OPERATION (Amendment 1) (NSPS)(SM) by failing to conduct an annual EPA Method 9 visible emissions test for calendar year 2004 (collectively, the "Missed Testing Deadlines");

WHEREAS, P&A conducted the burner tune-up test on July 22, 2004, and its results were in compliance with applicable law;

WHEREAS, P&A and DNREC have mutually agreed that it would be in their respective best interest to resolve this matter without further proceedings; and,

WHEREAS, having amicably resolved the matter, P&A and DNREC now desire to reduce to writing the terms and conditions upon which the dispute has been resolved.

NOW, THEREFORE, in consideration of the mutual covenants and obligations hereinafter set forth, P&A and DNREC agree as follows:

1. Within 15 days of execution of this Agreement, P&A shall pay to DNREC a sum of \$7,053.61, which constitutes payment of a penalty in the amount of \$5,250.00 and DNREC costs in the amount of \$1,803.61, in the manner set out in the Order.

2. P&A does not admit any violations or wrongdoing related to the Missed Testing Deadlines or asserted in the Order. Nothing contained in this Settlement Agreement constitutes an admission of any fact or violation of any statute, regulation, permit or other law. This Agreement constitutes a full and final settlement of, and DNREC forever releases and discharges P&A LLC, and its respective parents, subsidiaries, affiliates, agents, employees, representatives, officers, and directors from any and all liability or violations of law related to or arising out of the Missed Testing Deadlines or the Order, including but not limited to all civil or administrative claims that DNREC asserted or could have asserted related to or arising out of the Missed Testing Deadlines or the Order. Nevertheless, DNREC expressly reserves the right to take into account the violations and this Order in any Chronic Violator Review of the P&A facility performed pursuant to the Delaware Chronic Violator statute and regulations. The Department and P&A further agree that this Order does not waive, limit, release or otherwise affect any position, response or defense that P & A may assert in the event the Department undertakes a Chronic Violator review of the facility and by signing the waiver, P & A expressly reserves any and all rights, positions, responses, and defenses it may have in connection with such a review or other action or proceeding.

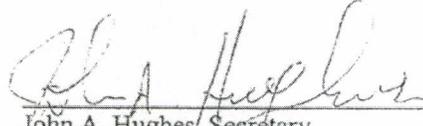
3. This Agreement may be executed in counterparts and shall constitute one final Agreement which shall be binding upon each party hereto, notwithstanding the fact that all of the signatures required to effectuate this Agreement do not appear on the same page. A telecopied signature shall have the same force and effect as an original signature.

IN WITNESS WHEREOF, the parties have executed and sealed this Settlement

Agreement on the dates noticed below.

DEPARTMENT OF NATURAL RESOURCES
AND ENVIRONMENTAL CONTROL

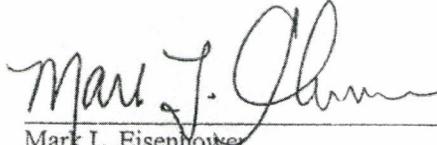
DATE:

 (SEAL)
John A. Hughes, Secretary

P&A LLC

DATE:

2/14/07

 (SEAL)
Mark L. Eisenhower