



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. 2008-A-0008

*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. The Department issued Respondent a Synthetic Minor Permit **APC-2003/0728-OPERATION (Amendment 4)(NSPS)(SM)** ("permit") dated February 2, 2006. The permit includes operating conditions that would limit the amount of SO_x and CO emitted.

On March 27, 2007, the Department conducted an annual inspection at Respondent's Facility. During a records review, the Department discovered that Respondent failed to conduct

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an annual EPA Method 9 visible emissions test for calendar year 2006 as required by Condition 4.2 of its permit.

The Department issued a Notice of Violation ("NOV") dated May 30, 2007 which required Respondent conduct the EPA Method 9 visible emissions test within 30 days of receipt of the NOV and immediately forward the results to the Department. The test was conducted on May 25, 2007 and the results were submitted to the Department on July 5, 2007.

Previously, the Department had issued Notice of Administrative Penalty and Secretary's Order 2006-A-0028 dated June 15, 2006 to Respondent for violations of its permit including failure to conduct an annual EPA Method 9 visible emissions test for calendar year 2004.

FINDINGS OF FACT

1. Respondent did not conduct an annual EPA Method 9 visible emissions test for calendar year 2006.

PERMIT REQUIREMENTS

1. Condition No. 4.2 of permit **APC-2003/0728-OPERATION (Amendment 4) (NSPS)(SM)** states:

"The Company shall conduct annual opacity observations to establish compliance with the visible emissions standard of Conditions [*sic*] 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), shall record the opacity of emissions, and shall maintain records of these tests with proof of current visible emissions observer certification."

CONCLUSIONS

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

1. Respondent violated Condition No. 4.2 of Permit **APC-2003/0728-OPERATION (Amendment 4)(NSPS)(SM)** by failing to conduct an annual EPA Method 9 visible emissions test for calendar year 2006.

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 \$4,000 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 \$4,000 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 \$4,000 and the Department's estimated costs in the amount of \$600 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.

3/17/08

Date



John A. Hughes, Secretary

cc: James D. Werner, Director
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
Jenny Bothell, Enforcement Coordinator
Valerie S. Csizmadia, Deputy Attorney General
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 \$4,000 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-3rd Floor, Dover, DE 19904; and

2. **P&A LLC (Maryland)** will reimburse the Department in the amount of \$600, 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-3rd Floor, Dover, DE 19904.

P&A LLC (Maryland)

Date: _____

By: _____

Title: _____