



STATE OF DELAWARE
DEPARTMENT OF NATURAL RESOURCES
AND ENVIRONMENTAL CONTROL

OFFICE OF THE
SECRETARY

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DOVER, DELAWARE 19901

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

Pursuant to 7 Del. C. § 6005

Order No. 2012-A-0041

*PERSONALLY SERVED BY AN ENVIRONMENTAL
ENFORCEMENT OFFICER*

Issued To:

St. Francis Hospital
Attn: Brian Roberts, Facility Operations Director
701 North Clayton Street
Wilmington, DE 19805

Registered Agent:

The Corporation Trust Company
1209 Orange Street
Wilmington, DE 19801

Dear Mr. Roberts:

This is to notify St. Francis Hospital ("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, federal and state air regulations, and its permit. Accordingly, the Department is issuing this Notice of Administrative Penalty Assessment pursuant to 7 Del. C. § 6005(b)(3).

BACKGROUND

Respondent owns and operates a facility located at 701 North Clayton Street in Wilmington, Delaware, located in New Castle County ("Facility") where it provides medical services including surgery and emergency care in addition to hosting office space for several medical practices. Respondent has several sources of air contaminants located at its Facility, including two dual-fired 250 BHP boilers; two dual fuel-fired 750 BHP boilers; four diesel-fired emergency generators; and three ethylene-oxide sterilizers. The boilers have the potential to emit more than 25 tons per year of nitrogen oxides ("NO_x") thereby triggering 7 DE Admin. Code 1130, Delaware's Title V State Operating Permit Program ("Regulation 1130" or "Title V") requirements and fees. However, in the alternative, Respondent chose to take operating limitations, such as emission limits to become a synthetic minor source. Respondent currently

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operates under the requirements of synthetic minor permit **APC-97/0486-OPERATION (Amendment 2)(NO_x RACT)(SM)** (“SM Permit-A2”) issued January 23, 2009.

The Department conducted a full compliance evaluation (“FCE”) at Respondent’s Facility on February 7, 2012, and set forth its findings in a letter to Respondent dated February 15, 2012. The letter informed Respondent it was in violation of numerous permit conditions and also that the Department was unable to determine compliance with others due to a lack of records. The Department offered to work with Respondent to bring them back into compliance.

The Department met with Respondent on February 15, 2012, to provide sample daily equipment logs and emission calculation spreadsheets for compliance with recordkeeping requirements as well as demonstrating compliance with emission limits. The Department spent significant time reviewing these documents and offered additional guidance by telephone afterwards. The Department requested that Respondent provide any documents it may have to assist in determining compliance with the permit conditions it was unable to determine compliance with during the FCE. Respondent provided additional documentation on March 30, 2012; April 5, 2012; and April 13, 2012. This documentation demonstrated compliance with certain permit conditions with previously unknown compliance statuses as well as a few permit conditions originally identified as violations.

A Notice of Violation was issued to Respondent on May 2, 2012, for the violations ultimately identified following the February 7, 2012, FCE and Respondent’s submittal of additional documentation on the dates set forth above.

FINDINGS OF FACT

1. Operations at Respondent’s facility have the potential to emit more than 25 tons per year of NO_x that trigger Title V requirements and fees.
2. Respondent accepted operating limitations, such as emission limits, to become a synthetic minor source.
3. The Department issued to Respondent permit **APC-97/0486-OPERATION (Amendment 2)(NO_x RACT)(SM)** (“SM Permit-A2”) on January 23, 2009.
4. The Department conducted a FCE on February 7, 2012, where it discovered numerous permit condition violations as well as certain permit conditions that compliance status could not be determined due to lack of records.
5. Respondent submitted additional documentation on March 30, 2012; April 5, 2012; and April 13, 2012, in an effort to demonstrate compliance.
6. After reviewing the FCE results and additional documentation, the Department issued a Notice of Violation to Respondent on May 2, 2012.

FINDINGS OF ALLEGED VIOLATIONS INCLUDING REGULATORY AND PERMIT REQUIREMENTS

1. Forty C.F.R. § 63.10384 (a) states:

“Existing source. If you have an existing affected source, you must comply with applicable requirements in this subpart no later than December 29, 2008.”

Respondent meets the definition of an existing source.

2. Forty C.F.R. § 63.10420 states:

“For each sterilization unit not equipped with an air pollution control device, you must demonstrate continuous compliance with the management practice standard in §63.10390 by recording the date and time of each sterilization cycle, whether each sterilization cycle contains a full load of items, and if not, a statement from a hospital central services staff, a hospital administrator, or a physician that it was medically necessary.”

While Respondent recorded the date and time of operation of the sterilizer, it did not indicate whether the sterilization cycle contained a full load of items and in instances where it may not have, a statement that it was medically necessary.

3. Forty C.F.R. § 63.10430(a) states:

“You must submit an Initial Notification of Compliance Status that includes the information required in paragraphs (a)(1) through (5) of this section and the applicable certification in §63.10400.

(1) The name and address of the owner or operator.

(2) The address (i.e., physical location) of the affected source.

(3) An identification of the standard and other applicable requirements in this subpart that serve as the basis of the notification and the source's compliance date.

(4) A brief description of the sterilization facility, including the number of ethylene oxide sterilizers, the size (volume) of each, the number of aeration units, if any, the amount of annual ethylene oxide usage at the facility, the control technique used for each sterilizer, and typical number of sterilization cycles per year.

(5) A statement that the affected source is an area source.”

Respondent did not submit the Initial Notification of Compliance Status which was due no later than June 27, 2009, (180 days after the December 29, 2008, compliance date for existing sources).

4. Forty C.F.R. § 63.10430(c) states:

“You must submit the Initial Notification of Compliance Status no later than 180 calendar days after your compliance date, consistent with §63.10402.”

Respondent did not submit the Initial Notification of Compliance Status which was due no later than June 27, 2009, (180 days after the December 29, 2008, compliance date for existing sources).

5. Section 6.1.1 of 7 DE Admin. Code 1144 states:

“An owner shall monitor the monthly and yearly amounts of fuel, or fuels, consumed by their generators. Yearly fuel consumption shall be calculated and recorded each calendar month by recording (for each fuel) the current calendar month's fuel consumption and adding it to those of the previous eleven consecutive months.”

Respondent did not record the monthly and yearly amounts of fuel consumed by its emergency generators.

6. Section 6.1.3 of 7 DE Admin. Code 1144 states:

“Monthly and yearly operating hours for an emergency generator. Yearly operating hours during which testing or maintenance occurred shall be calculated and recorded each calendar month by recording the current calendar month's testing or maintenance hours and adding them to those of the previous eleven consecutive months. A brief description of each testing or maintenance performed shall also be recorded.”

Respondent did not record the monthly and yearly operating hours for its emergency generators.

7. Section 6.1.4 of 7 DE Admin. Code 1144 states:

“Except as provided for in 6.1.5 of this regulation, for each shipment of liquid fuel (other than liquefied petroleum gas), received for use in a generator, a shipping receipt and certification shall be obtained from the fuel distributor which identifies:

6.1.4.1 the type of fuel delivered; and

6.1.4.2 the percentage of sulfur in the fuel (by weight dry basis), and the method used to determine the sulfur content.”

At the time of the February 7, 2012, FCE, Respondent did not have a shipping receipt and certification for the fuel oil purchased on August 11, 2011. On April 5, 2012, Respondent submitted the fuel oil certification for the August 11, 2011, fuel delivery which indicated that compliant fuel was received.

8. Permit: **APC-97/0486-Operation (Amendment 2)(NO_x RACT)(SM)**, Condition 4.3 states:

“The owner or operator shall perform visible emission testing as necessary.

4.3.1 Once a month each boiler in operation and each emergency generator shall be observed for presence or absence of visible emissions (VE) for at least 15 minutes while the equipment is operating. Compliance with this condition shall be demonstrated by the maintenance of a bound

log of visible emissions. If VE are excessive and persist, the Owner or Operator shall take actions per manufacturer's recommendations to correct the problem as soon as possible. The air permitting contact shall discuss excessive and persistent VE emission with the facility personnel. After corrective actions are taken, the emissions will again be observed when the equipment is next operated or tested. If VE still persists, these steps (observe, correct, document) shall be repeated until excessive emissions are not observed.

During the February 7, 2012, FCE, Respondent indicated that it did not conduct visible emission testing on the boilers but that it had done so for the emergency generators, however no records were maintained of said testing.

9. Permit: **APC-97/0486-Operation (Amendment 2)(NO_x RACT)(SM)**, Condition 4.7 states:

"The owner or operator shall monitor the following information:

4.7.1 The date and hours of operation of each boiler and the fuel burned in that boiler;

4.7.2 The date, time, duration, and reason for each emergency generator startup; and

4.7.3 The date and time of each sterilization cycle, whether each sterilization cycle contains a full load of items, and if not, a statement from a hospital central services staff, a hospital administrator, or a physician that it was medically necessary."

Respondent did not monitor any of the information required for the boilers in Condition 4.7.1. Respondent monitored the date, time, and duration for monthly testing of the emergency generators. However, it did not monitor that information for other emergency generator startups required by Condition 4.7.2. While Respondent recorded the date and time of operation of the sterilizers per Condition 4.7.3, it did not indicate whether the sterilization cycle contained a full load of items and in instances where it may not have, a statement that it was medically necessary.

10. Permit: **APC-97/0486-Operation (Amendment 2)(NO_x RACT)(SM)**, Condition 5.2.1 states:

"The following boiler information shall be recorded, initialed and maintained in a log each month:

5.2.1.1 Total natural gas and No. 2 fuel oil consumed by each boiler.

5.2.1.2 Total boiler emissions of nitrogen oxides, sulfur oxides, carbon monoxide, volatile organic compounds, and particulate matter.

5.2.1.3 Hours of operation of each boiler.

5.2.1.4 Visible emission records in accordance with Condition 4.2.

Respondent did not record any of the monthly information required by Condition 5.2.1. However, documentation provided by Respondent on April 5, 2012, allowed for calculations to at least determine yearly amounts for the fuel usage and emissions.

11. Permit: **APC-97/0486-Operation (Amendment 2)(NO_x RACT)(SM)**, Condition 5.3.1 states:

“The following emergency generator information shall be recorded, initialed and maintained in a log each month:

5.3.1.1 The date, time, duration, and reason for each start-up of the emergency generator. The log shall include the dates and descriptions of inspections, testing, operator training, and maintenance performed;

5.3.1.2 The total hours of operation for each month and the cumulative 12 month rolling period shall be calculated and recorded within 15 days of the end of each calendar month;

5.3.1.3 The total fuel usage for each month and the cumulative 12 month rolling period shall be calculated and recorded within 15 days of the end of each calendar month;

5.3.1.4 The total emergency generator emissions of nitrogen oxides, sulfur oxides, carbon monoxide, volatile organic compounds, and particulate matter.

5.3.1.5 Visible emission records in accordance with Condition 4.2.

With regard to Condition 5.3.1.1, Respondent recorded the date, time, and duration of each emergency generator monthly test, but did not record the same information for other emergency generator start-ups. The information required for Conditions 5.3.1.2; 5.3.1.3; and 5.3.1.4 were not recorded. While Respondent indicated that monthly visible emission testing was conducted for the emergency generators, no records were maintained for said testing as required by Condition 5.3.1.5.

12. Permit: **APC-97/0486-Operation (Amendment 2)(NO_x RACT)(SM)**, Condition 5.3.2 states:

“The owner or operator shall maintain a copy of the fuel oil certification.”

At the time of the February 7, 2012, FCE, Respondent did not have a copy of the certification for the fuel oil purchased on August 11, 2011. On April 5, 2012, Respondent submitted the fuel oil certification for the August 11, 2011, fuel delivery which indicated that compliant fuel was received.

13. Permit: **APC-97/0486-Operation (Amendment 2)(NO_x RACT)(SM)**, Condition 5.4.1 states:

“The following ethylene oxide sterilizer information shall be recorded, initialed and maintained in a log each month:

5.4.1.1 The mass of each ethylene oxide bottle and percent ethylene oxide of each bottle used in the sterilizers.

5.4.1.2 The daily mass of ethylene oxide used in the sterilizers with cumulative monthly and calendar totals.

5.4.1.3 The daily hours of operation of the sterilizers with cumulative monthly and calendar totals.

5.4.1.4 The date and time of each sterilization cycle, whether each sterilization cycle contains a full load of items, and if not, a statement from a hospital central services staff, a hospital administrator, or a physician that it was medically necessary.

While Respondent recorded the date and time of operation of the sterilizers, none of the other information required by Condition 5.4.1 was recorded and maintained.

14. Permit: **APC-97/0486-Operation (Amendment 2)(NO_x RACT)(SM)**, Condition 5.4.2 states:

“The facility shall maintain a copy of the Initial Notifications of Compliance.”

Respondent did not submit the Initial Notification of Compliance Status which was due no later than June 27, 2009, (180 days after the December 29, 2008, compliance date for existing sources), and, therefore, did not maintain a copy per this permit condition.

15. Permit: **APC-97/0486-Operation (Amendment 2)(NO_x RACT)(SM)**, Condition 5.5 states:

“The rolling 12 month total facility-wide emissions shall be calculated and recorded each month in a log for each of the following pollutants:

5.5.1 Volatile Organic Compound (VOC) Emissions

5.5.2 Nitrogen Oxide (NO_x) Emissions

5.5.3 Particulate Matter (PM) Emissions

5.5.4 Sulfur Oxides (SO_x) Emissions

5.5.5 Carbon Monoxide (CO) Emissions

5.5.6 Ethylene Oxide (EO) Emissions”

Respondent did not calculate and record the rolling 12 month total facility-wide emissions for any of the pollutants listed in Condition 5.5.

16. Permit: **APC-97/0486-Operation (Amendment 2)(NO_x RACT)(SM)**, Condition 5.6 states:

“Maintenance of the boilers, emergency generators, and sterilizers and tune-up records for the boilers and emergency generators shall be recorded in a log and made available to the Department upon request.”

Respondent did not maintain records for the maintenance of the boilers or sterilizers.

17. Permit: APC-97/0486-Operation (Amendment 2)(NO_x RACT)(SM), Condition 6.1 states:

“No later than June 27, 2009 the owner or operator shall demonstrate initial compliance with paragraph 3.3 of this permit by submitting an initial notification of compliance status certifying that the owner or operator is sterilizing full loads of items having a common aeration time, except under medically necessary circumstances, and is in compliance with all other applicable requirements in paragraph 3.3 of this permit.”

Respondent did not submit the Initial Notification of Compliance Status which was due no later than June 27, 2009, (180 days after the December 29, 2008, compliance date for existing sources).

CONCLUSION

Based on the foregoing, the Department has concluded that Respondent has violated the above cited regulatory and permit provisions.

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 \$21,860 for the violation identified in this Assessment and Order and costs according to 7 Del. C. § 6005(c). Notwithstanding anything herein to the contrary, \$10,000 of the Administrative Penalty may be suspended on the condition that Respondent comply with the terms and conditions of this Conciliation Order, and that Respondent otherwise engage in no future violations of Delaware or federal environmental laws not implicated by the terms and conditions hereof. The term of this condition shall extend from the date of this Order for a period of one year. If DNREC determines that Respondent has committed a violation during that time period, DNREC may submit a written demand for payment of this suspended \$10,000 penalty and Respondent shall pay that penalty within 30 days from issuance of that demand letter.

Respondent shall submit a check to the Department in the amount of either \$21,860 or \$11,860 (if it is electing to advantage itself of the suspension option) 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 M. Satterfield, 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 \$21,860 or \$11,860 if it elects to avail itself of the suspension option and the Department's estimated costs in the amount of \$3,279 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.

11/20/12
Date _____


Collin P. O'Mara, Secretary

cc: Valerie M. Satterfield, Deputy Attorney General
Ali Mirzakhali, P.E., Director
Paul Foster, P.E., Program Manager
Tammy Henry, Managing Engineer
Amy Mann, Engineer
Dawn Minor, Paralegal
Jenny Bothell, Enforcement Coordinator
Dover File

WAIVER OF STATUTORY RIGHT TO A HEARING

St. Francis Hospital hereby waives its right to a hearing and its opportunity to appeal or contest this Assessment and Order and agree to the following:

1. **St. Francis Hospital** will pay the administrative penalty in the amount of \$21,860 or \$11,860 if it elects to avail itself of the suspension option 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 M. Satterfield, Deputy Attorney General, Department of Justice, 102 W. Water Street-3rd Floor, Dover, DE 19904. If it elects the suspension option, **St. Francis Hospital** agrees that by signing this waiver and submitting a check for \$11,860 (plus costs) that it will remit the remaining \$10,000 within 30 days of demand by DNREC should it trigger the payment of the suspended sum as set out hereinabove; and
2. **St. Francis Hospital** will reimburse the Department in the amount of \$3,279 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 M. Satterfield, Deputy Attorney General, Department of Justice, 102 W. Water Street-3rd Floor, Dover, DE 19904.

St. Francis Hospital

Date: _____

By: _____

Title: _____