



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. 2010-A-0036

*PERSONALLY SERVED BY AN ENVIRONMENTAL
ENFORCEMENT OFFICER*

Issued To:

Southgate Concrete Company
Attn: Robert Mraz
Acting General Manager
1526 Matassino Road
New Castle, DE 19720

Registered Agent:

Southgate Concrete Company
1526 Matassino Road
New Castle, DE 19720

Dear Mr. Mraz:

This letter is to notify Southgate Concrete 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, pursuant to 7 Del. C. § 6005(b)(3).

BACKGROUND

Southgate Concrete Company owns and operates a concrete mix batch plant located at 1526 Matassino Road in New Castle, Delaware ("Facility"). The Facility consists of two sections. One section is referred to as the "Old Plant" and the other as the "New Plant." The New Plant has two cement silos, Silo No. 1 and Silo No. 2, each having a baghouse on top to control particulate matter emissions in the form of cement dust. Operation of the facility requires permits pursuant to 7 DE Admin. Code 1102 ("Regulation 1102"). Previously, the two silos and their respective baghouses were governed by one permit, APC-1997/0482-OPERATION which

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was issued on February 18, 1997. However, when Respondent applied for a construction permit in 2008 to construct new baghouses on the silos, the Department's Division of Air Quality ("DAQ")¹ permitted each silo and its respective baghouse individually. Therefore, Permit: **APC-2008/0105-OPERATION**, governing Silo No. 1 and its baghouse and Permit: **APC-2008/0106-OPERATION**, governing Silo No. 2 and its baghouse, were issued March 12, 2008. The permit conditions for both are the same.

On September 15, 2006, the DAQ conducted a compliance inspection at Respondent's facility ("2006 inspection"). At that time, several violations were found including a record keeping violation for failing to log the differential pressure drops across the baghouses for Silos No. 1 and No. 2. The Department issued a Notice of Violation on January 19, 2007, for these violations. The DAQ personnel worked closely with Respondent explaining the requirements of its permits including how to properly maintain its records. Follow up inspections conducted on October 19, 2006 and May 16, 2007, found that Respondent had corrected the violations. At that time, the Department decided not to pursue further enforcement action for these violations.

The Department conducted an unannounced compliance inspection on May 20, 2010. Several violations were discovered, including a violation of the same permit condition violated in the 2006 inspection. Specifically, Respondent failed to produce records demonstrating it had conducted visible emission observations for all of calendar year 2009 and from January to April 2010; failed to record the cement loading rate to each silo for all of 2009 and from January to May 20, 2010; failed to record the differential pressure drops from August 2009 through May 20, 2010; failed to record the monthly and rolling 12-month concrete production rates for April 2010 and failed to initial the data recorded for March 2010; and failed to record fugitive dust control measures taken for all of calendar year 2009 and from January to May 20, 2010. A Notice of Violation was issued to Respondent on July 7, 2010.

FINDINGS OF FACT

1. Respondent owns and operates a concrete mix batch plant located at 1526 Matassino Road in New Castle, Delaware ("Facility").
2. Respondent's Facility has two cement silos, Silo No. 1 and Silo No. 2, each with its own baghouse located on top to control particulate matter emissions in the form of cement dust.
3. When the Department conducted a compliance inspection on September 15, 2006 ("2006 inspection"), both silos and their respective baghouses were governed by one Regulation 1102 Permit: **APC-1997/0482-OPERATION**.

¹ The Department has recently undergone a reorganization effective July 1, 2010. Previously the Air Quality Management Section was part of the Department's Division of Air and Waste Management. As of July 1, 2010, the Division of Air and Waste Management was split into two distinct Divisions: the Division of Air Quality ("DAQ") and the Division of Waste Management ("DWM").

4. Several violations, including a violation of a permit condition requiring Respondent to record the differential pressure drops across the baghouses for Silos No. 1 and No. 2, were discovered during the 2006 inspection.
5. A Notice of Violation was issued on January 19, 2007.
6. Following the 2006 inspection, the Department worked with Respondent to insure it understood the permit conditions.
7. Follow up inspections conducted on October 19, 2006 and May 16, 2007, showed Respondent had corrected the violations.
8. The Department decided at that time not to pursue further enforcement action with respect to the violations discovered during the 2006 inspection.
9. The Department issued Permit: APC-2008/0105-OPERATION for operation of cement Silo No. 1 and a new baghouse on March 12, 2008.
10. The Department issued Permit: APC-2008/0106-OPERATION for operation of cement Silo No. 2 and a new baghouse on March 12, 2008.
11. The Department conducted an unannounced inspection on May 20, 2010.
12. The Department found numerous record keeping violations, one of which was the same record keeping violation found during the 2006 inspection.
13. A Notice of Violation was issued to Respondent on July 7, 2010.

PERMIT VIOLATIONS

1. Condition 4.2 of **Permits: APC-2008/0105-OPERATION** and **APC-2008/0106-OPERATION** states in part:

“Once a month the stack for silo with baghouse shall be observed for presence or absence of visible emissions (VE) for at least fifteen (15) minutes while plant is in operation or cement loading to silo is in progress. Compliance with this condition shall be demonstrated by the maintenance of a bound log of visible emissions...”
2. Condition 5.1 of **Permits: APC-2008/0105-OPERATION** and **APC-2008/0106-OPERATION** states:

“The owner or operator shall maintain all records necessary for determining compliance with this permit in a readily accessible location for five (5) years, unless specified and shall make these records available to the Department upon written or verbal request.”
3. Condition 5.2 of **Permits: APC-2008/0105-OPERATION** and **APC-2008/0106-OPERATION** states:

"Visible Emission Observations: The Company shall record, initial and maintain visible emission information outlined by Condition 4.2 in a log book."

4. Condition 5.3.1 of **Permits: APC-2008/0105-OPERATION** and **APC-2008/0106-OPERATION** states:

"The following information shall be recorded, initialed and maintained in a log book: Each cement loading rate (tons/hour) from truck to silo."

5. Condition 5.3.2 of **Permits: APC-2008/0105-OPERATION** and **APC-2008/0106-OPERATION** states:

"The following information shall be recorded, initialed and maintained in a log book: The ΔP (inch of water column) [the differential pressure drop] across the baghouse once each day during filling operations."

6. Condition 5.3.3 of **Permits: APC-2008/0105-OPERATION** and **APC-2008/0106-OPERATION** states:

"The following information shall be recorded, initialed and maintained in a log book: The monthly and yearly concrete productions (yd^3/month and $\text{yd}^3/\text{rolling 12-month period}$)."

7. Condition 5.3.5 of **Permits: APC-2008/0105-OPERATION** and **APC-2008/0106-OPERATION** states:

"The following information shall be recorded, initialed and maintained in a log book: Fugitive dust control measures as outlined by condition 3.1.7."

CONCLUSION

Based on the above, the Department has concluded that Respondent committed the following violations:

1. Respondent violated Condition 4.2 and 5.2 of **Permits: APC-2008/0105-OPERATION** and **APC-2008/0106-OPERATION** when during the May 20, 2010, inspection, it could not produce records it had conducted visible emissions observations for Silos No. 1 and No. 2 for all of calendar year 2009 and for January through April 2010.
2. Respondent violated Condition 5.1 of **Permits: APC-2008/0105-OPERATION** and **APC-2008/0106-OPERATION** when during the May 20, 2010, inspection, it could not produce the records associated with Conditions 4.2; 5.2; 5.3.1; 5.3.2; 5.3.3; and 5.3.5.
3. Respondent violated Condition 5.3.1 of **Permits: APC-2008/0105-OPERATION** and **APC-2008/0106-OPERATION** when during the May 20, 2010, inspection, it

could not produce records with the cement loading rate to each silo for all of calendar year 2009 and January through May 2010.

4. Respondent violated Condition 5.3.2 of **Permits: APC-2008/0105-OPERATION** and **APC-2008/0106-OPERATION** when during the May 20, 2010, inspection, it could not produce records of the differential pressure drops across the baghouses for Silos No. 1 and No. 2 from August 2009 through May 20, 2010.
5. Respondent violated Condition 5.3.3 of **Permits: APC-2008/0105-OPERATION** and **APC-2008/0106-OPERATION** when during the May 20, 2010, inspection, it could not produce records of the concrete production rates, both monthly and rolling 12-month, for April 2010. In addition, the data recorded for March 2010, had not been initialed as required.
6. Respondent violated Condition 5.3.5 of **Permits: APC-2008/0105-OPERATION** and **APC-2008/0106-OPERATION** when during the May 20, 2010, inspection, it could not produce records of the action taken to control fugitive dust emissions for all of calendar year 2009 and for January through May 20, 2010.

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 \$5,135 for the violation 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 \$5,135 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.

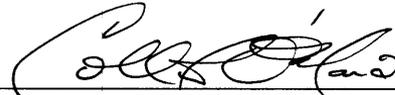
PRE-PAYMENT

Respondent may prepay the administrative penalty of \$5,135 and the Department's estimated costs in the amount of \$770 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.

8 Oct 2010

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, P.E., Managing Engineer
Shaikh Tayeb, P.E., BCEE, Engineer
Dawn Minor, Paralegal
Jenny Bothell, Enforcement Coordinator
Dover File

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WAIVER OF STATUTORY RIGHT TO A HEARING

Southgate Concrete Company hereby waives its right to a hearing and its opportunity to appeal or contest this Assessment and Order and agree to the following:

1. **Southgate Concrete Company** will pay the administrative penalty in the amount of \$5,135 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; and
2. **Southgate Concrete Company** will reimburse the Department in the amount of \$770 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.

Southgate Concrete Company

Date: _____

By: _____

Title: _____