



STATE OF DELAWARE
DEPARTMENT OF NATURAL RESOURCES
AND ENVIRONMENTAL CONTROL

89 KINGS HIGHWAY
DOVER, DELAWARE 19901

OFFICE OF THE
SECRETARY

PHONE: (302) 739-9000
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**NOTICE OF ADMINISTRATIVE PENALTY ASSESSMENT
AND SECRETARY'S ORDER**

Pursuant to 7 *Del. C.* § 6005

Order No. 2010-WM-0045

*PERSONALLY SERVED BY AN ENVIRONMENTAL
ENFORCEMENT OFFICER*

Issued To:

PATS Aircraft, LLC
Attn: Mr. Ron Rocheleau
Training, Environmental Health and Safety Specialist
21652 Nanticoke Avenue
Georgetown, DE 19947

Registered Agent:

Corporation Service Company
2711 Centerville Road, Suite 400
Wilmington, Delaware 19808

Dear Mr. Rocheleau:

The Secretary of the Department of Natural Resources and Environmental Control ("Department") has found PATS Aircraft, LLC ("Respondent" or "PATS") in violation of 7 *Del. C.* Chapters 60 and 63 and 7 DE Admin. Code 1302, *Delaware Regulations Governing Hazardous Waste* or ("DRGHW") and its air permit. Accordingly, the Department is issuing this Notice of Administrative Penalty Assessment, pursuant to 7 *Del. C.* § 6005(b)(3).

BACKGROUND

Respondent, a large quantity generator of hazardous waste¹, operates an aircraft systems manufacturing facility, located in Georgetown, Delaware. Respondent is a division of DeCrane Aerospace Systems, a company that specializes in aircraft interior products, completion kits, and systems integration. Respondent markets itself as an expert in complete aircraft modification, from design and engineering to installation and certification. Operations at Respondent's facility include conducting aerospace coating. Respondent's coating operations have the potential to emit volatile organic compounds ("VOC") in quantities in excess of the major

¹ Generators of more than 1,000 kilograms (2,200 pounds) of hazardous waste in any calendar month (see *Delaware Regulations Governing Hazardous Waste* [DRGHW], 2009).

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thresholds for Sussex County thereby triggering 7 DE Admin. Code 1130 (“Regulation 1130” or “Title V”) requirements and fees. However, in the alternative, Respondent chose to take operating limitations to become a synthetic minor source. Respondent currently operates under the requirements of **Permit: APC-98/0536-OPERATION (Amendment 5)(VOC RACT)(SM)** (“synthetic minor permit”) issued April 9, 2009.

The Department’s Solid and Hazardous Waste Management Branch (“SHWMB”) conducted a DRGHW Compliance Assessment at Respondent’s facility on September 9, 2009. The assessment revealed 32 violations of the DRGHW, based upon information gathered during the assessment. The SHWMB issued Notice of Violation No. 09-HW-41, dated January 4, 2010, to Respondent on January 27, 2010 for the violations discovered during that compliance assessment.

On February 25, 2010, Respondent submitted a return-to-compliance package to the SHWMB. Respondent’s package, in addition to confirming its return to compliance, refuted four of the violations by providing supporting documentation that was not available at the time of the compliance assessment. The SHWMB, therefore, withdrew each of the four violations that were refuted by Respondent and independently withdrew one additional violation which, after careful review, the SHWMB determined did not warrant enforcement action. Twenty-seven violations remain as a result of the compliance inspection on September 9, 2009.

After consultation with representatives of the Division of Air Quality (“DAQ”)², it was determined that some of the violations discovered during the September 9, 2009, SHWMB compliance assessment were also violations of Respondent’s synthetic minor permit issued by the DAQ on April 9, 2009.

FINDINGS OF VIOLATIONS INCLUDING REGULATORY REQUIREMENTS FOR SHWMB

1. Section 262.12(d) of the DRGHW states:

“(d) A generator must submit a subsequent “RCRA Subtitle C Site Identification Form”, EPA Form 8700-12 whenever there is a change in name, mailing address, contact person, contact address, telephone number, ownership, type of regulated waste activity, or changes in description of regulated wastes managed or permanently ceases the regulated waste activity. This subsequent notification must be submitted to the Secretary no less than 10 days prior to implementation of the change(s).”

On April 21, 2004, Respondent submitted a subsequent notification to the Department to change its regulated status from Conditionally Exempt Small Quantity Generator (“CESQG”) to Small Quantity Generator (“SQG”). However, Respondent failed to

² Effective July 1, 2010, the Delaware General Assembly passed into law a reorganization for the Department that resulted in splitting the Division of Air and Waste Management into two distinct Divisions. The former “Air Quality Management Section” is now the Division of Air Quality (“DAQ”); the SHWMB remains a “branch” under a separate and newly designated division, the Division of Waste and Hazardous Substances (“WHS”).

submit a subsequent notification to the Department when Respondent changed its regulated status from SQG to Large Quantity Generator (“LQG”); a violation of §262.12(d).

2. Section 265.17(a) of the DRGHW states in part:

“(a) No smoking” signs must be conspicuously placed wherever there is a hazard from ignitable or reactive waste.”

On September 9, 2009, Department representatives observed that a “No Smoking” sign was not posted at the main hazardous waste drop-off location (outside, about 60 yards southwest of the main facility); a violation of §265.17(a).

3. Section 265.17(a) of the DRGHW states in part:

“(a) No smoking” signs must be conspicuously placed wherever there is a hazard from ignitable or reactive waste.”

On September 9, 2009, Department representatives observed that a “No Smoking” sign was not posted at any of the three 90-day hazardous waste accumulation areas within the hangars; a violation of §265.17(a).

4. Section 279.22(b)(3) of the DRGHW states in part:

“(b) Condition of units. Containers and aboveground tanks used to store used oil at generator facilities must be:

(3) Closed during storage, except when it is necessary to add or remove oil.”

On September 9, 2009, Department representatives observed six 55-gallon drums in the three 90-day hazardous waste accumulation areas (2 at each area) within the hangars which were labeled for the collection of waste hydraulic fluid and waste engine oil. Five out of the six containers were not closed; a violation of §279.22(b)(3).

5. Section 279.22(c)(1) of the DRGHW states in part:

“(c) Labels.

(1) Containers and aboveground tanks used to store used oil at generator facilities must be labeled or marked clearly with the words “Used Oil”.”

On September 9, 2009, Department representatives observed six 55-gallon drums in the three 90-day hazardous waste accumulation areas (2 at each area) within the hangars which were being used for the collection of waste hydraulic fluid and waste engine oil. None of the six containers were labeled as required; a violation of §279.22(c)(1).

6. Section 262.34 (c)(1)(ii) of the DRGHW states in part:

“(c)(1) A generator may accumulate as much as 55 gallons of hazardous waste... in containers at or near any point of generation where wastes initially accumulate, which is under the control of the operator of the process generating

the waste, without a permit or interim status and without complying with paragraph (a) of this section provided he:

(ii) Marks his containers either with the words "Hazardous Waste" or with other words that identify the contents of the containers."

On September 9, 2009, the Department determined that 8 out of the 24 hazardous waste satellite accumulation containers within Respondent's hangars were not labeled; a violation of § 262.34 (c)(1)(ii) of the DRGHW.

7. Section 265.173(a) of the DRGHW states:

"(a) A container holding hazardous waste must always be closed during storage, except when it is necessary to add or remove waste."

On September 9, 2009, Department representatives observed that none of the 12 used sealant buckets being stored in the Tank Shop were closed; a violation of §265.173(a).

8. Section 265.17(a) of the DRGHW states in part:

"(a) No smoking" signs must be conspicuously placed wherever there is a hazard from ignitable or reactive waste."

On September 9, 2009, Department representatives observed that neither of the two 90-day hazardous waste accumulation areas within the Tank Shop had "No Smoking" signs posted; a violation of §265.17(a).

9. Section 262.34(a)(2) of the DRGHW states in part:

"(a) Except as provided in paragraphs (d), (e), and (f) of this section, a generator may accumulate hazardous waste on site for 90 days or less without a permit or without having interim status, provided that: ...

(2) The date upon which each period of accumulation begins is clearly marked and visible for inspection on each container;"

On September 9, 2009, Department representatives observed that neither of the two 90-day hazardous waste accumulation areas within the Tank Shop had accumulation start dates on the containers; a violation of §262.34(a)(2).

10. Section 265.174 of the DRGHW states:

"The owner or operator must inspect areas where containers are stored at least weekly, looking for leaks and for deterioration caused by corrosion or other factors. A written record of the inspections must be maintained on site for a minimum of three years."

On September 9, 2009, Respondent had not conducted weekly inspections in the two 90-day hazardous waste accumulation areas within the Tank Shop; a violation of §265.174.

11. Section 262.34(a)(3) of the DRGHW states in part:

“(a) Except as provided in paragraphs (d), (e), and (f) of this section, a generator may accumulate hazardous waste on site for 90 days or less without a permit or without having interim status, provided that: ...

(2) While being accumulated on site, each container and tank is labeled or marked clearly with the words “Hazardous Waste”; ...”

On September 9, 2009, Department representatives observed that two containers near the paint booth were labeled with the words “Hazardous Waste”, however, two containers across the shop along the southeast wall were not labeled; a violation of §262.34(a)(3).

12. Section 262.34 (c)(1)(ii) of the DRGHW states in part:

“(c)(1) A generator may accumulate as much as 55 gallons of hazardous waste... in containers at or near any point of generation where wastes initially accumulate, which is under the control of the operator of the process generating the waste, without a permit or interim status and without complying with paragraph (a) of this section provided he:

(ii) Marks his containers either with the words “Hazardous Waste” or with other words that identify the contents of the containers.”

On September 9, 2009, Department representatives observed two 15-gallon flip-top hazardous waste satellite accumulation containers within Respondent’s Interior Shop that were not labeled; a violation of § 262.34 (c)(1)(ii) of the DRGHW.

13. Section 262.34(a)(2) of the DRGHW states in part:

“(a) Except as provided in paragraphs (d), (e), and (f) of this section, a generator may accumulate hazardous waste on site for 90 days or less without a permit or without having interim status, provided that: ...

(2) The date upon which each period of accumulation begins is clearly marked and visible for inspection on each container;”

On September 9, 2009, Department representatives observed that the container in the Waste Compactor 90-day hazardous waste accumulation area did not have an accumulation start date; a violation of §262.34(a)(2).

14. Section 265.174 of the DRGHW states:

“The owner or operator must inspect areas where containers are stored at least weekly, looking for leaks and for deterioration caused by corrosion or other factors. A written record of the inspections must be maintained on site for a minimum of three years.”

On September 9, 2009, Respondent had not conducted weekly inspections in the Waste Compactor 90-day hazardous waste accumulation area; a violation of §265.174.

15. Section 262.34 (c)(1) and (c)(1)(ii) of the DRGHW states in part:

“(c)(1) A generator may accumulate as much as 55 gallons of hazardous waste... in containers at or near any point of generation where wastes initially

accumulate, which is under the control of the operator of the process generating the waste, without a permit or interim status and without complying with paragraph (a) of this section provided he:

(ii) Marks his containers either with the words "Hazardous Waste" or with other words that identify the contents of the containers."

On September 9, 2009, Department representatives observed an open, unlabeled poly bag of absorbents contaminated with jet fuel in the 2-drum jet fuel shelter nearest Hangar 3 which was not near its point of generation ; a violation of § 262.34 (c)(1)and (c)(1)(ii) of the DRGHW.

16. Section 265.173(a) of the DRGHW states:

"(a) A container holding hazardous waste must always be closed during storage, except when it is necessary to add or remove waste."

On September 9, 2009, Department representatives observed that the poly bag referenced in Violation No. 15 was open; a violation of §265.173(a).

17. Section 265.174 of the DRGHW states:

"The owner or operator must inspect areas where containers are stored at least weekly, looking for leaks and for deterioration caused by corrosion or other factors. A written record of the inspections must be maintained on site for a minimum of three years."

On September 9, 2009, Respondent had not conducted weekly inspections in the Lab Pack structure; a violation of §265.174.

18. Section 265.16(d)(1) and (2) of the DRGHW state:

"(d) The owner or operator must maintain the following documents and records at the facility:

(1) The job title for each position at the facility related to hazardous waste management, and the name of the employee filling each job;

(2) A written job description for each position listed under paragraph (d)(1) of this section. This description may be consistent in its degree of specificity with description for other similar positions in the same company location or bargaining unit, but must include the requisite skill, education, or other qualification, and duties of facility personnel assigned to each position;"

On September 9, 2009, Respondent was unable to produce and did not maintain documentation demonstrating the job title for each position at the facility related to hazardous waste, the name of the employee filling each job, a written job description for each of the job positions, nor was Respondent able to produce documentation of the requisite skill, education, or other qualifications, and duties of facility personnel assigned to each position; a violation of §265.16(d)(1) and (2).

19. Section 265.16(b) of the DRGHW states in part:

“(b) Facility personnel must successfully complete the program required in paragraph (a) of this section within six months... after the date of their employment or assignment to a facility, or to a new position at a facility, whichever is later. Employees hired... must not work in unsupervised positions until they have completed the training requirements of paragraph (a) of this section.”

Section 265.16(a)(1) and (2) of the DRGHW state:

“(a)(1) Facility personnel must successfully complete a program of classroom instruction or on-the-job training that teaches them to perform their duties in a way that ensure that facility’s compliance with the requirements of this part. The owner or operator must ensure that this program includes all the elements described in the document required under paragraph (d)(3) of this section.

(2) This program must be directed by a person trained in hazardous waste management procedures, and must include instruction which teaches facility personnel hazardous waste management procedures (including contingency plan implementation) relevant to the positions in which they are employed.”

On September 9, 2009, new employees who handle hazardous waste had not completed hazardous waste training; a violation of §265.16(b) and §265.16(a)(1) and (2).

20. Section 265.16(a)(1) and (2) of the DRGHW state:

“(a)(1) Facility personnel must successfully complete a program of classroom instruction or on-the-job training that teaches them to perform their duties in a way that ensure that facility’s compliance with the requirements of this part. The owner or operator must ensure that this program includes all the elements described in the document required under paragraph (d)(3) of this section.

(2) This program must be directed by a person trained in hazardous waste management procedures, and must include instruction which teaches facility personnel hazardous waste management procedures (including contingency plan implementation) relevant to the positions in which they are employed.”

On September 9, 2009, existing facility personnel who handle hazardous waste had not completed hazardous waste training; a violation of §265.16(a)(1) and (2).

21. Section 265.16(c) of the DRGHW states:

“(c) Facility personnel must take part in an annual review of the initial training required in paragraph (a) of this section.”

On September 9, 2009, facility personnel had not completed an annual review of their initial training; a violation of §265.16(c).

22. Section 265.174 of the DRGHW states:

“The owner or operator must inspect areas where containers are stored at least weekly, looking for leaks and for deterioration caused by corrosion or other

factors. A written record of the inspections must be maintained on site for a minimum of three years."

On September 9, 2009, Respondent was unable to produce documentation to demonstrate that weekly inspections had been conducted for the Main Hazardous Waste Storage Area and the 90-day hazardous waste accumulation areas in Hangars 1, 2, & 3, during the periods listed below; a violation of §265.174.

11/21/08 to 12/05/08

06/06/08 to 06/20/08

05/23/08 to 06/06/08

23. Section 262.41(a) of the DRGHW states in part:

"(a) A generator must prepare and submit a single copy of an Annual Report to the State of Delaware, Department of Natural Resources and Environmental Control by no later than March 1 for the preceding calendar year. The Annual Report must be submitted on a form prescribed by the Department according to the instructions on the form and must cover generator activities during the previous year."

On September 9, 2009, Department representatives determined that Respondent had not submitted Annual Reports to the Department for calendar years 2007 and 2008; a violation of §262.41(a).

24. Section 265.52(d) of the DRGHW states:

"(d) The plan must list names, addresses (office and home), and phone numbers (office and home) of all persons qualified to act as emergency coordinator (see §265.55), and this list must be kept up to date. Where more than one person is listed, one must be named as primary emergency coordinator and others must be listed in the order in which they will assume responsibility as alternates."

On September 9, 2009, Respondent's Contingency Plan did not list home and office phone numbers for Emergency Coordinators; a violation of §265.52(d).

25. Section 265.52(e) of the DRGHW states:

"(e) The plan must include a list of all emergency equipment at the facility (such as fire extinguishing systems, spill control equipment, communications and alarm systems (internal and external), and decontamination equipment), where this equipment is required. This list must be kept up to date. In addition, the plan must include the location and a physical description of each item on the list and a brief outline of its capabilities."

On September 9, 2009, Respondent's Contingency Plan did not include a list of emergency equipment; a violation of §265.52(e).

26. Section 265.53(b) of the DRGHW states:

"A printed copy of the contingency plan and all provisions to the plan must be:

(b) Submitted to all local police departments, fire departments, hospitals, and State and local emergency response teams that may be called upon to provide emergency services. Documentation of written submission and receipt must be maintained at the facility."

On September 9, 2009, Department representatives determined that Respondent's Contingency Plan had not been submitted to the local police, fire department, and hospital; a violation of §265.53(b).

27. Section 122.1(c) of the DRGHW states in part:

"(c) DNREC requires a permit for the 'treatment', 'storage', and 'disposal' of any 'hazardous waste' as identified or listed in Part 261."

Section 260.10 of the DRGHW states in part:

"Facility" or Hazardous Waste Management (HWM) Facility" means:

1. All contiguous land, and structures, other appurtenances, and improvements on the land, used for treating, storing, or disposing of hazardous waste. A facility may consist of several treatment, storage, or disposal operational units..."

On September 9, 2009, Department representatives discovered that hazardous wastes from Respondent's Baltimore Avenue Manufacturing Plant, a non-contiguous auxiliary facility that lies within the same industrial park, are taken to the main facility at 21652 Nanticoke Avenue and are generally comingled with identical wastes; a violation of § 122.1(c) of the DRGHW.

FINDINGS OF PERMIT VIOLATIONS FOR DAQ

1. Condition 3.11.3 of Permit: APC-98/0536-OPERATION (Amendment 5)(VOC RACT)(SM) states:

"The Company shall not use open containers for the storage or disposal of cloth or paper impregnated with VOCs that are used for surface preparation, cleanup, or coating removal. Containers for the storage or disposal of cloth or paper impregnated with VOCs shall be kept closed, except when adding or removing material."

Condition 3.11.4 of Permit: APC-98/0536-OPERATION (Amendment 5)(VOC RACT)(SM) states:

"The Company shall not store spent or fresh VOCs to be used for surface preparation, cleanup or coating removal in open containers. Containers for the storage of spent or fresh VOCs shall be kept closed, except when adding or removing material."

On September 9, 2009, Department representatives observed an open, unlabeled poly bag of absorbents contaminated with jet fuel in the 2-drum jet fuel shelter nearest Hangar 3. Storage of these contaminated absorbents in an open container is in violation of Conditions 3.11.3 and 3.11.4 of Respondent's synthetic minor permit.

2. **Condition 3.20 of Permit: APC-98/0536-OPERATION (Amendment 5)(VOC RACT)(SM)** states:

“At all times, including periods of startup, shutdown, and malfunction, the owner or operator shall, to the extent practicable, maintain and operate the facility including associated air pollution control equipment in a manner consistent with good air pollution control practice for minimizing emissions. Determination of whether acceptable operating procedures are being used will be based on information available to the Department which may include, but is not limited to, monitoring results, opacity observations, review of operating and maintenance procedures, and inspection of the source.”

On September 9, 2009, Department representatives observed six 55-gallon drums in the three 90-day hazardous waste accumulation areas (2 at each area) within the hangars which were labeled for the collection of waste hydraulic fluid and waste engine oil. Five out of the six containers were not closed. In addition, Department representatives observed that none of the 12 used sealant buckets being stored in the Tank Shop were closed. By leaving the drums and buckets open, Respondent allowed fugitive emissions to enter the work areas. This represents a failure by Respondent to maintain and operate its facility in a manner consistent with good air pollution control practice for minimizing emissions which is a violation of Condition 3.20 of Respondent’s synthetic minor permit.

CONCLUSIONS

Based on the foregoing, the Department has concluded that PATS Aircraft, LLC has violated the above cited regulatory provisions and permit conditions.

ASSESSMENT OF PENALTY AND COSTS

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 \$20,000.00 for the violations identified in this Assessment and Order.

In addition to the penalty assessment, Respondent is hereby assessed estimated costs in the amount of \$3,000.00, pursuant to 7 Del. C. § 6005(c), which were incurred by the Department in the investigation of the noted violations.

Respondent shall submit one check to the Department in the amount of \$20,000.00 to pay the penalty and one check to the Department in the amount of \$3,000.00 to pay the estimated costs within 30 days from the receipt of this Assessment and Order. The checks shall be made payable to the “State of Delaware” and shall be directed to: *Robert F. Phillips*, 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 \$20,000 and the Department's estimated costs in the amount of \$3,000 in the manner described in the assessment section above. 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 Karen J'Anthony at (302) 739-9403 (for SHWMB) or Paul Foster at (302) 323-4542 (for DAQ).

1-11-11
Date


Collin P. O'Mara, Secretary

cc: Robert F. Phillips, Deputy Attorney General
Marjorie A. Crofts, Division of Waste and Hazardous Substances Director
Ali Mirzakhali, P.E., Division of Air Quality Director
Nancy Marker, SHWMB Program Manager
Paul Foster, P.E., DAQ Program Manager
Karen J'Anthony, SHWMB Program Manager
Joanna French, P.E., DAQ Managing Engineer
Bill Davis, SHWMB Environmental Scientist
Karen Mattio, P.E., DAQ Engineer
Jenny Bothell, Enforcement Coordinator
Susan Baker, Paralegal
Dawn Minor, Paralegal
SHWMB File
DAQ Dover File

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WAIVER OF STATUTORY RIGHT TO A HEARING

PATS Aircraft, LLC hereby waives its right to a hearing and its opportunity to appeal or contest this Assessment and Order and agrees to the following:

1. **PATS Aircraft, LLC** will pay the administrative penalty in the amount of \$20,000.00 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 *Robert F. Phillips*, Deputy Attorney General, Department of Justice, 102 W. Water Street-3rd Floor, Dover, DE 19904; and
2. **PATS Aircraft, LLC** will reimburse the Department in the amount of \$3,000.00 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 *Robert F. Phillips*, Deputy Attorney General, Department of Justice, 102 W. Water Street-3rd Floor, Dover, DE 19904.

PATS Aircraft, LLC

Date: _____

By: _____

Title: _____