



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. 2013-A-0052**

*PERSONALLY SERVED BY AN ENVIRONMENTAL  
PROTECTION OFFICER*

**Issued To:**

The H&K Group  
Attn: Scott B. Haines, Chief Executive Manager  
P.O. Box 196  
2052 Lucon Road  
Skippack, PA 19474

**Registered Agent:**

The Corporation Trust Company  
1209 Orange Street  
Wilmington, DE 19801

River Asphalt, LLC - Delmar  
a/k/a River Asphalt II, LLC  
Attn: John Buzzuto, Plant Operator  
36393 Sussex Highway  
Delmar, Delaware 19940

Dear Messrs. Haines & Buzzuto:

This is to notify The H&K Group and River Asphalt, LLC – Delmar, a.k.a. River Asphalt II, LLC (collectively, “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***

The H&K Group owns and operates several facilities located in Delaware, Maryland, Pennsylvania and New Jersey that provide construction materials, landscaping materials, recycling services as well as contracting and demolition services. River Asphalt, LLC – Delmar

*Delaware's Good Nature depends on you!*

is an asphalt producing facility located at 36393 Sussex Highway in Delmar, Delaware (“Facility”). The Facility consists of a 300 ton per hour (“tph”) hot mix asphalt plant including a rotary drum dryer fired on a combination of on-spec used fuel oil and No. 2 fuel oil or the recently approved, natural gas; a fabric filter baghouse; a 30,000 gallon asphalt storage tank; 15,000 gallon storage tank for No. 2 fuel oil; 20,000 gallon storage tank for on-spec used fuel oil and an asphalt heater with a rated heat capacity of 2.0 MMBTU/hr fired on No. 2 fuel oil. The natural gas is delivered to the facility via a pipeline from a provider. Operations at Respondent’s Facility have the potential to emit CO and SO<sub>x</sub> in excess of 100 tons per year each in Sussex County, 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 production rate limits and use of lower sulfur content fuels, to become a synthetic minor source.

Respondent had been operating under the requirements of synthetic minor permit **APC-2003/0728-OPERATION (Amendment 5)(NSPS)(SM)** (“SM Permit-A5”) issued October 28, 2008. Under this permit, the rotary drum dryer was permitted to operate only on the combination of on-spec used fuel oil and No. 2 fuel oil. On June 15, 2011, Respondent applied for a permit amendment to allow operation of the rotary drum dryer on natural gas in addition to the No.2 fuel oil and on-spec used fuel oil. The Department approved this request and issued Respondent synthetic minor permit **APC-2003/0728-CONSTRUCTION (Amendment 6)(NSPS)(SM)** (“SM Construction Permit-A6”) on August 11, 2011. This permit included a condition that required Respondent conduct stack testing while firing natural gas within 60 days after achieving the maximum production rate at which the facility would be operated using natural gas, but not later than 180 days after the initial startup on natural gas. This stack testing would be used to demonstrate compliance with the emission limits set forth in SM Construction Permit-A6. The permitted emission limits for particulate matter (“PM”), are measured both in grains per dry standard cubic foot (“gr/dscf”) as well as pounds per hour (“lb/hr”). The permit limit measured in gr/dscf is also found in 40 C.F.R. § 60.92(a)(1), Federal New Source Performance Standards (“NSPS”) for hot mix asphalt facilities as well as the State of Delaware’s NSPS regulation, Section 5.2.1 of 7 DE Admin. Code 1120 (“Regulation 1120”).

Respondent conducted the required stack testing on November 7, and November 8, 2011. Three runs were performed that made up the stack testing. The results showed Respondent exceeded its permitted PM emission limits measured in both lb/hr and gr/dscf as well as the corresponding Federal and State Regulation limits measured in gr/dscf. Specifically, PM emissions measured in gr/dscf for the three runs were 0.259 gr/dscf; 0.247 gr/dscf and 0.276 gr/dscf. The PM emissions measured in lb/hr for the three runs were 48.04 lb/hr; 41.17 lb/hr and 48.45 lb/hr.

A Notice of Violation was issued to Respondent on December 21, 2011, for the violations associated with the excess PM emissions resulting from the stack testing conducted on November 7, and November 8, 2011.

As a result of the failed stack test, Respondent performed a burner tune-up, changed out its baghouse filter bags and conducted follow up stack testing on March 27, and March 28, 2012.

The results of that testing demonstrated that Respondent was in compliance with its permitted limits, and therefore the federal and state regulations. The Department issued Respondent synthetic minor permit **APC-2003/0728-OPERATION (Amendment 6)(NSPS)(SM)** (“SM Permit-A6”) on December 28, 2012.

### ***FINDINGS OF FACT***

1. Operations at Respondent’s facility have the potential to emit more than 100 tons per year each of CO and SO<sub>x</sub> that trigger Title V requirements and fees.
2. Respondent accepted operating limitations, such as production rate limits and use of lower sulfur content fuels, to become a synthetic minor source.
3. Respondent was operating under the requirements of synthetic minor permit **APC-2003/0728-OPERATION (Amendment 5)(NSPS)(SM)** (“SM Permit-A5”) issued October 28, 2008, which permitted Respondent to operate the rotary drum dryer only on the combination of on-spec used fuel oil and No. 2 fuel oil
4. On June 15, 2011, Respondent applied for a permit amendment to allow operation of the rotary drum dryer on natural gas in addition to the combination of No.2 fuel oil and on-spec used fuel oil.
5. The Department approved this request and issued synthetic minor permit **APC-2003/0728-CONSTRUCTION (Amendment 6)(NSPS)(SM)** (“SM Construction Permit-A6”) on August 11, 2011.
6. SM Construction Permit-A6 included a condition that required Respondent conduct stack testing within a certain timeframe of initiating use of natural gas to demonstrate compliance with permitted emission limits.
7. Respondent conducted the stack testing on November 7, and November 8, 2011, that consisted of three runs and the results showed it had exceeded its permitted PM emission limits measured in lb/hr and gr/dscf and the corresponding Federal and State NSPS regulations for hot mix asphalt facilities.
8. The Department issued a Notice of Violation to Respondent on December 21, 2011, for the violations associated with the failed stack testing on November 7, and November 8, 2011.
9. Respondent performed maintenance activities such as a burner tune-up and baghouse filter change outs and then conducted follow up testing on March 27, and March 28, 2012, and was able to demonstrate compliance.

### ***REGULATORY AND PERMIT REQUIREMENTS***

1. Forty C.F.R. § 60.92 (a)(1) states:  
*“On and after the date on which the performance test required to be conducted by § 60.8 is completed, no owner or operator subject to the provisions of this subpart shall discharge or cause the discharge into the atmosphere from any affected*

*facility any gases which contain particulate matter in excess of 90 mg/dscm (0.04 gr/dscf).”*

2. Section 5.2.1 of 7 DE Admin. Code 1120 states:

*“Standard for Particulate Matter. On and after the date on which the initial performance test is completed no person subject to the provisions of 5.0 of this regulation shall discharge or cause the discharge into the atmosphere from any applicable source any such gases which [c]ontain particulate matter in excess of 0.04 grain per dry standard cubic foot.”*

3. Permit: **APC-2003/0728-CONSTRUCTION (Amendment 6)(NSPS)(SM)**,  
Condition 2.1.5.1 states:

*“PM emissions shall not exceed 9.91 pounds per hour and 5.00 tons per twelve (12) month rolling period.”*

4. Permit: **APC-2003/0728-CONSTRUCTION (Amendment 6)(NSPS)(SM)**,  
Condition 2.1.5.2 states:

*“PM emissions shall not exceed 0.04 grains per dry standard cubic foot of exhaust air from the baghouse.”*

### **CONCLUSION**

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

1. Respondent violated 40 C.F.R. § 60.92 (a)(1); Section 5.2.1 of 7 DE Admin. Code 1120 and Condition 2.1.5.2 of Permit: **APC-2003/0728-CONSTRUCTION (Amendment 6)(NSPS)(SM)** when the results of the three runs of the November 7, and November 8, 2011, stack testing of the rotary drum dryer while firing natural gas resulted in PM emissions of 0.259 gr/dscf, 0.247 gr/dscf and 0.276 gr/dscf.
2. Respondent violated Condition 2.1.5.1 of Permit: **APC-2003/0728-CONSTRUCTION (Amendment 6)(NSPS)(SM)** when the results of the three runs of the November 7, and November 8, 2011, stack testing of the rotary drum dryer while firing natural gas resulted in PM emissions of 48.04 lb/hr; 41.17 lb/hr and 48.45 lb/hr.

### **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 \$13,680 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 \$13,680 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. Edge, Deputy Attorney General, Department of Justice, Environmental Unit, 102 W. Water Street-3<sup>rd</sup> 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 \$13,680 and the Department's estimated costs in the amount of \$2,052 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.

11/20/13  
Date

  
Collin P. O'Mara, Secretary

cc: Valerie S. Edge, Deputy Attorney General  
Ali Mirzakhali, P.E., Director  
Paul Foster, P.E., Program Manager  
Joanna French, Managing Engineer  
Karen Mattio, Engineer  
Dawn Minor, Paralegal  
Jenny Bothell, Enforcement Coordinator  
Dover File

## ***WAIVER OF STATUTORY RIGHT TO A HEARING***

**The H&K Group and River Asphalt, LLC – Delmar, (a.k.a. River Asphalt II, LLC)** hereby waive their right to a hearing and their opportunity to appeal or contest this Assessment and Order and agree to the following:

1. **The H&K Group and River Asphalt, LLC – Delmar, (a.k.a. River Asphalt II, LLC)** will pay the administrative penalty in the amount of \$13,680 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. Edge, Deputy Attorney General, Department of Justice, 102 W. Water Street-3<sup>rd</sup> Floor, Dover, DE 19904; and
2. **The H&K Group and River Asphalt, LLC – Delmar, (a.k.a. River Asphalt II, LLC)** will reimburse the Department in the amount of \$2,052 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. Edge, Deputy Attorney General, Department of Justice, 102 W. Water Street-3<sup>rd</sup> Floor, Dover, DE 19904.

**The H&K Group and River Asphalt, LLC – Delmar, (a.k.a. River Asphalt II, LLC)**

Date: \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_