



STATE OF DELAWARE
DEPARTMENT OF NATURAL RESOURCES
AND ENVIRONMENTAL CONTROL

OFFICE OF THE
SECRETARY

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

Pursuant to 7 Del. C. § 6005

Order No. 2015-A-0029

*PERSONALLY SERVED BY AN
ENVIRONMENTAL PROTECTION OFFICER*

Issued To:

Delaware State University
Attn: Teresa Hardee, EdD, CPA,
Vice President for Finance
1200 N. DuPont Highway
Dover, Delaware 19901

Registered Agent:

Thomas Preston, Esquire
General Counsel
1200 N. DuPont Highway
Dover, Delaware 19901

Dear Ms. Hardee:

This is to notify Delaware State University ("Respondent") that the Secretary of the Department of Natural Resources and Environmental Control ("Department") has found Respondent in violation of state air regulations and its permit and many of the violations are continuing. Accordingly, the Department is issuing this Notice of Administrative Penalty Assessment pursuant to 7 Del. C. § 6005(b)(3).

BACKGROUND

Delaware State University is an institution for higher learning including undergraduate and postgraduate education whose main campus is located in Dover, Delaware ("Facility"). The campus has numerous boilers to provide heating and emergency generators that are utilized for backup power in the event of power loss. Operation of this equipment has the potential to emit nitrogen oxides ("NO_x") and sulfur dioxides ("SO₂") in excess of major thresholds for Kent County, thereby triggering 7 DE Admin. Code 1130, Delaware's Title V State Operating Permit Program ("Regulation 1130" or "Title V") requirements and fees. The Department issued **Permit: AQM-001/00066 (Renewal-2)** to Respondent with an effective date of December 6, 2007 and an expiration date of December 5, 2012 ("Title V Permit-R2"). The Department issued **Permit: AQM-001/00066 (Renewal-3)** ("Title V Permit-R3") to Respondent with an effective date of December 6, 2012.

The Department conducted a full compliance evaluation ("FCE") of Respondent's facility on March 27, 2013, and found numerous recordkeeping and operating violations. At the time of this inspection, the time period of records reviewed was governed by Respondent's Title V Permit-R2.

An on-site partial compliance evaluation ("PCE") conducted on April 2, 2014, resulted in the discovery of additional violations of some of the same recordkeeping requirements. At the time of this PCE, the time period of records reviewed was governed by Respondent's Title V Permit-R3.

Delaware's Good Nature depends on you!

This is the second set of violations identified at the facility since 2011 when similar problems were found as part of a records review by the Department. The violations resulted in a Notice of Violation but no penalty.

The Department has identified similar problems in the past during compliance monitoring activities associated with Respondent and its facility. A Notice of Violation was issued July 11, 2011, for violations discovered during a review of records conducted on April 5 and April 6, 2011. The violations included operation of the emergency generators prior to 5 p.m. on ozone action days and conducting visible emissions testing of the emergency generators during non-daylight hours. An April 4, 2012, FCE resulted in the discovery of numerous recordkeeping deficiencies, boiler records showing a combustion efficiency less than the minimum required by its permit, and Respondent hadn't submitted its Title V Annual Compliance Certification ("TVACC"). A Notice of Violation was issued April 25, 2012, for the failure to submit the TVACC which was subsequently submitted by Respondent on May 5, 2012.

A description of the violations discovered during each evaluation (inspection) is set forth below:

March 27, 2013 Full Compliance Evaluation

Boiler Combustion Efficiency

Several records reviewed showed boiler efficiencies that were less than 70% for Boiler 24-1. During the inspection the boiler was tested and found to be operating at a combustion efficiency of 64.7% at 430°F and 71.2% at 668°F.

Emergency Generators

The records reviewed during this FCE showed Respondent was not maintaining complete emergency generator records. In addition, Respondent had not monitored visible emissions for each generator on a monthly basis during daylight hours, or maintained generator usage data as required and Generator 9 was observed to have a faulty hour meter. In addition, Respondent operated a generator in the "Administration and Student Services Building" for testing and maintenance purposes on July 5, 2012, which was a Code Orange Ozone Action day.

Emission Inventory Submittal

During the course of finalizing the FCE report and drafting a Notice of Violation for the violations discovered during the FCE, it was further discovered that Respondent had failed to submit its annual emissions inventory statement for calendar year 2012 that was due by April 30, 2013.

A Notice of Violation was issued to Respondent on June 21, 2013, for the violations associated with the March 27, 2013, FCE and included a July 8, 2013, deadline for corrective actions to be undertaken by Respondent.

April 2, 2014 Partial Compliance Evaluation

During the April 2, 2014, PCE, while Respondent indicated to the Department that it has been performing maintenance tests during daylight hours and not before 5 p.m., its records do

not identify the start-up and end time of the maintenance tests. The Department discovered Respondent continues to not maintain visible emissions records for each generator on a monthly basis and generator fuel usage data as required.

A Notice of Violation dated July 14, 2014, was issued to Respondent on July 16, 2014, for the violations associated with the April 2, 2014, PCE.

FINDINGS OF FACT

1. Operation of the boilers and emergency generators at Respondent's campus in Dover has the potential to emit nitrogen oxides ("NO_x") and sulfur dioxides ("SO₂") in excess of major thresholds for Kent County that trigger Title V requirements and fees.
2. The Department issued Title V **Permit: AQM-001/00066 (Renewal-2)** to Respondent with an effective date of December 6, 2007 and an expiration date of December 5, 2012 ("Title V Permit-R2").
3. The Department issued Title V **Permit: AQM-001/00066 (Renewal-2)** to Respondent with an effective date of December 6, 2012 ("Title V Permit-R3").
4. A full compliance evaluation was conducted by the Department on March 27, 2013, which included a review of records during a time period governed by Title V Permit-R2.
5. Numerous recordkeeping and operating violations were discovered during the March 27, 2013, FCE.
6. During finalization of the FCE report and drafting a Notice of Violation, the Department discovered that Respondent had also not yet submitted its annual emissions inventory statement that is due by April 30 each year.
7. The Department issued a Notice of Violation to Respondent on June 21, 2013, for the violations associated with the March 27, 2013, FCE.
8. The Department conducted a PCE on April 2, 2014, and discovered recordkeeping violations similar to those discovered during the March 27, 2013, FCE.
9. At the time of the April 2, 2014, PCE, the records reviewed were from a time period governed by Respondent's Title V Permit-R3.
10. The Department issued a Notice of Violation dated July 14, 2014, to Respondent on July 16, 2014, for the violations associated with the April 2, 2014, PCE.
11. Respondent has had similar violations in the past, as described above in the Background Section of this Order.

FINDINGS OF VIOLATIONS INCLUDING REGULATORY AND PERMIT REQUIREMENTS

March 27, 2013 Full Compliance Evaluation

Boiler Combustion Efficiency

1. Condition 3 - Table 1(a)(2)(ii) of **Permit: AQM-001/00066 (Renewal-2)** states:

“During all periods of operation, the boilers shall be operated at the highest practical combustion efficiency, but at no time shall the combustion efficiency be less than 70%.”

Several records reviewed during the March 27, 2013, FCE showed boiler efficiencies that were less than 70% for Boiler 24-1. In addition during the inspection, the boiler, which was being operated at 430°F, was tested and found to be operating at a combustion efficiency of 64.7%. After increasing the temperature to 668°F, the efficiency increased to a compliant level at 71.2%.

Emergency Generators

2. Section 4.4 of 7 DE Admin. Code 1144 states:

“No emergency or distributed generator shall be used during testing or for maintenance purposes before 5 p.m. on a day which has a Ground Level Ozone Pollution Forecast or Particle Pollution Forecast of “Code Red” or “Code Orange” as announced by the Department.”

3. Condition 3 – Table 1(c)(1)(ii)(H) of **Permit: AQM-001/00066 (Renewal-2)** states in part:

“The emergency generator shall not be operated for testing or maintenance purposes before 5 p.m. on any day which has a Ground Level Ozone Pollution Forecast or Particulate Forecast of “Code Purple,” “Code Red,” or “Code Orange” as announced by the Department.”

A records review during the March 27, 2013, FCE showed Respondent operated a generator in the “Administration and Student Services Building” for testing and maintenance purposes on July 5, 2012, which was a Code Orange Ozone Action day.

4. Condition 3 – Table 1(c)(1)(ii)(K) of **Permit: AQM-001/00066 (Renewal-2)** states:

“The emergency generator shall be equipped with a properly functioning non-resettable hour metering device.”

During the March 27, 2013, FCE the Department observed that Generator 9 had a faulty hour meter.

5. Condition 3 - Table 1(c)(1)(v)(A) of **Permit: AQM-001/00066 (Renewal-2)** states:

"In addition to the requirements of Conditions 3(b)(1)(ii) and 3(b)(2) of this permit, the Company shall maintain records of the following: 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."

6. Condition 3 - Table 1(c)(1)(v)(B) of **Permit: AQM-001/00066 (Renewal-2)** states:

"In addition to the requirements of Conditions 3(b)(1)(ii) and 3(b)(2) of this permit, the Company shall maintain records of the following: The total hours of operation for each month and the cumulative twelve (12) month rolling period shall be calculated and recorded within fifteen (15) days of the end of each calendar month."

7. Condition 3 – Table 1(c)(1)(v)(C) of **Permit: AQM-001/00066 (Renewal-2)** states:

"In addition to the requirements of Conditions 3(b)(1)(ii) and 3(b)(2) of this permit, the Company shall maintain records of the following: The total fuel usage for each month and the cumulative twelve (12) month rolling period shall be calculated and recorded within fifteen (15) days of the end of each calendar month."

8. Condition 3 – Table 1(c)(1)(v)(G) of **Permit: AQM-001/00066 (Renewal-2)** states:

"In addition to the requirements of Conditions 3(b)(1)(ii) and 3(b)(2) of this permit, the Company shall maintain records of the following: The results of the monthly visible emissions survey conducted pursuant to Condition 3 – Table 1(c)(1)(iii)(C) including whether visible emissions were observed any corrective actions taken."

9. Condition 3 – Table 1(c)(1)(v)(J) of **Permit: AQM-001/00066 (Renewal-2)** states:

"In addition to the requirements of Conditions 3(b)(1)(ii) and 3(b)(2) of this permit, the Company shall maintain records of the following: A copy of the emergency generator's manufacturer's maintenance and operating recommendations at the facility."

A review of records from the date of the last inspection to the March 27, 2013, FCE showed Respondent is not maintaining complete emergency generator records.

Facility Wide

10. Condition 3 – Table 1(e)(3)(ii) of **Permit: AQM-001/00066 (Renewal-2)** states:

"All structural and mechanical components of the equipment covered by this permit shall be maintained in proper operating condition and such equipment shall be operated at all times in a manner consistent with good air pollution control practice."

11. Condition 3 – Table 1(e)(3)(iii) of **Permit: AQM-001/00066 (Renewal-2)** states:

"Each month, the Company shall monitor the operational limitations of Condition 3 - Table 1(e)(3)(ii), monitor all of the maintenance performed on equipment covered by this permit, and update records as needed."

Emission Inventory Submittal

12. Section 7.3 of 7 DE Admin. Code 1117 states:

"Annual emissions statements are due on April 30 for the preceding calendar year beginning with April 30, 1993 for calendar year 1992."

13. Condition 3(c)(2)(iv) of Permit: **AQM-001/00066 (Renewal-2)** states:

"The Company shall submit to the Department an annual emissions statement in accordance with Regulation No. 17 Section 7 not later than April 30 of each year, or other date as established by the Department, unless an extension by the Department is granted. Such emissions statement shall cover the preceding calendar year."

April 2, 2014 Partial Compliance Evaluation

Emergency Generators & Facility Wide

14. Condition 3 – Table 1(c)(1)(x)(A) of Permit: **AQM-001/00066 (Renewal-3)** states:

"In addition to the requirements of Conditions 3(b)(1)(ii) and 3(b)(2) of this permit, the Company shall maintain records of the following: 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."

15. Condition 3 – Table 1(c)(1)(x)(B) of Permit: **AQM-001/00066 (Renewal-3)** states:

"In addition to the requirements of Conditions 3(b)(1)(ii) and 3(b)(2) of this permit, the Company shall maintain records of the following: The total hours of operation for each month and the cumulative twelve (12) month rolling period shall be calculated and recorded within fifteen (15) days of the end of each calendar month."

16. Condition 3 – Table 1(c)(1)(x)(C) of Permit: **AQM-001/00066 (Renewal-3)** states:

"In addition to the requirements of Conditions 3(b)(1)(ii) and 3(b)(2) of this permit, the Company shall maintain records of the following: The total fuel usage for each month and the cumulative twelve (12) month rolling period shall be calculated and recorded within fifteen (15) days of the end of each calendar month."

17. Condition 3 – Table 1(c)(1)(x)(G) of Permit: **AQM-001/00066 (Renewal-3)** states:

"In addition to the requirements of Conditions 3(b)(1)(ii) and 3(b)(2) of this permit, the Company shall maintain records of the following: The results of the monthly visible emissions survey conducted pursuant to Condition 3 – Table 1(c)(1)(vi)(C) including whether visible emissions were observed any correction actions taken."

18. Condition 3 – Table 1(f)(2)(ix) of **Permit: AQM-001/00066 (Renewal-3)** states:

“In addition to the requirements of Conditions 3(b)(1)(ii) and 3(b)(2) of this permit, the Company shall maintain records of the information monitored in accordance with Condition 3 – Table 1(e)(3)(iii).”¹

A review of records during the April 2, 2014, PCE showed Respondent is not maintaining complete emergency generator records.

CONCLUSIONS

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

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 \$49,500 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 \$49,500 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-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 \$49,500 and the Department's estimated costs in the amount of \$7,425 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 this Assessment which shall become a final Order.

If you have any questions, please contact Paul Foster at (302) 323-4542.

¹ The reference to Condition 3 – Table 1(e)(3)(iii) within this Condition is incorrect. It should be Condition 3 – Table 1(f)(2)(vi). This will be corrected the next time the TV Permit-R3 is amended or revised.

PRE-PAYMENT

Respondent may prepay the administrative penalty of \$49,500 and the Department's estimated costs in the amount of \$7,425 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 this Assessment which shall become a final Order.

If you have any questions, please contact Paul Foster at (302) 323-4542.

8/3/15
Date


David S. Small, Secretary

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

2014-3dcm

WAIVER OF STATUTORY RIGHT TO A HEARING

Delaware State University hereby waives its right to a hearing and its opportunity to appeal or contest this Assessment and Order and agrees to the following:

1. **Delaware State University** will pay the administrative penalty in the amount of \$49,500 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-3rd Floor, Dover, DE 19904; and
2. **Delaware State University** will reimburse the Department in the amount of \$7,425 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-3rd Floor, Dover, DE 19904.

Delaware State University

Date: _____

By: _____

Title: _____