



STATE OF DELAWARE
DEPARTMENT OF NATURAL RESOURCES
AND ENVIRONMENTAL CONTROL

OFFICE OF THE
SECRETARY

89 KINGS HIGHWAY
DOVER, DELAWARE 19901

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

Pursuant to 7 Del. C. § 6005

Order No. 2015-A-0031

*PERSONALLY SERVED BY AN ENVIRONMENTAL
PROTECTION OFFICER*

Issued To:

Schiff Farms, Inc.
Attn: Mr. T.J. Schiff
President
16054 S. DuPont Highway
Harrington, DE 19952

Registered Agent:

Schiff Farms, Inc.
Attn: Mr. T.J. Schiff
President
16054 S. DuPont Highway
Harrington, DE 19952

Dear Mr. Schiff:

This letter is to notify Schiff Farms, Inc. ("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 7 DE Admin. Code 1100. Accordingly, the Department is issuing this Notice of Administrative Penalty Assessment, pursuant to 7 Del. C. § 6005(b)(3).

BACKGROUND

Schiff Farms, Inc. owns the property located at 16054 S. DuPont Highway in Harrington, Delaware ("Facility") that is its corporate headquarters and where it also processes grain, corn and soybeans both to feed its own livestock as well as to sell to other farms in the region. The Department issued 7 DE Admin. Code 1102 ("Regulation 1102") permits to Respondent for equipment located at its facility. Among them, Permit: **APC-80/1285-Operation (Amendment 2)** and Permit: **APC-95/0428-Operation (Amendment 2)** both issued March 7, 2011, that govern the operation of a Grain Dryer ("Old Grain Dryer") and a Grain Pit ("Old Grain Pit") respectively. A third Regulation 1102 permit, Permit: **APC-80/1286-Operation (Amendment 2)** was issued for a second grain dryer and Respondent has another grain pit of a size that does not require a permit.

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The Department conducted a full compliance evaluation of Respondent's facility on September 30, 2013, where it discovered that Respondent had installed and was operating an additional Grain Dryer ("New Grain Dryer") and Grain Pit ("New Grain Pit"), without having obtained permits from the Department. Respondent indicated that it had installed the new grain dryer and new grain pit between late July and early August of 2013. It began operating them on September 18, 2013 as a result of an electric pole falling and rendering the old grain dryer and old grain pit inoperable on September 17, 2013.

A Notice of Violation (NOV) dated December 9, 2013, was issued to Respondent on December 12, 2013, that included a 30 day deadline to submit a complete permit application. Respondent submitted the application on December 23, 2013. The Department issued Permit: **APC-2014/0052-Construction/Operation** for the new grain dryer and Permit: **APC-2014/0053-Construction/Operation** for the new grain pit on March 14, 2014. In addition, Respondent made repairs to the old grain dryer and old grain pit making both operable again. Respondent also chose to remove the oldest grain dryer, governed by Permit: **APC-80/1286-Operation (Amendment 2)**, and requested cancelation of that permit in a letter dated December 5, 2013.

FINDINGS OF FACT

1. Respondent's corporate headquarters located at 16054 S. DuPont Highway in Harrington, Delaware also includes equipment that it uses to process grain, corn and soybeans.
2. Permit: **APC-80/1285-Operation (Amendment 2)** issued March 7, 2011, governs operation of a Grain Dryer ("Old Grain Dryer"). Permit: **APC-95/0428-Operation (Amendment 2)** issued March 7, 2011, governs the operation of a Grain Pit ("Old Grain Pit"). Respondent also has a smaller grain pit that did not require a permit.
3. The Department inspected Respondent's facility on September 30, 2013, and discovered a new grain dryer and new grain pit had been installed and was being operated.
4. Respondent had not applied for a construction permit to install the new equipment which it indicated had been done between late July and early August 2013.
5. Respondent began operating the new grain dryer and new grain pit on September 18, 2013, following an incident on September 17, 2013, where a telephone pole fell onto, and rendered inoperable, the old grain dryer and old grain pit.
6. A Notice of Violation was issued December 9, 2013, for the violations associated with the installation and operation of the new grain dryer and new grain pit without obtain approval from the Department in the form of a permit.
7. The NOV gave Respondent 30 days to submit an application for the new grain dryer and new grain pit which Respondent did on December 23, 2013.

8. The Department issued Permit: APC-2014/0052-Construction/Operation for the new grain dryer and Permit: APC-2014/0053-Construction/Operation for the new grain pit on March 14, 2014.

STATUTORY & REGULATORY PROVISIONS

1. Seven *Del. C.* § 6003(a)(1) states:

“No person shall, without first having obtained a permit from the Secretary, undertake any activity in a way which may cause or contribute to the discharge of an air contaminant.”

2. Seven *Del. C.* § 6003(b)(1) states:

“No person shall, without first having obtained a permit from the Secretary, construct, install, replace, modify or use any equipment or device or other article which may cause or contribute to the discharge of an air contaminant.”

3. Section 2.1 of 7 DE Admin. Code states:

“Except as exempted in 2.2 of this regulation, no person shall initiate construction, install, alter or initiate operation of any equipment or facility or air contaminant control device which will emit or prevent the emission of an air contaminant prior to receiving approval of his application from the Department or, if eligible, prior to submitting to the Department a completed registration form.”

CONCLUSION

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

1. Respondent violated 7 *Del. C.* § 6003(a)(1), by undertaking an activity, operating a new grain dryer and grain pit, without first having obtained a permit from the Secretary, beginning on September 18, 2013.
2. Respondent violated 7 *Del. C.* § 6003(b)(1), by both installing a new grain dryer and new grain pit between late July and early August 2013 and then operating them beginning on September 18, 2013, without first having obtained a permit from the Secretary.
3. Respondent violated Section 2.1 of 7 DE Admin. Code 1102 by initiating both the installation of the new grain dryer and new grain pit between late July and early August 2013, and then operation of them on September 18, 2013, prior to receiving approval from the Department.

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 \$25,300 for the violations identified in this Assessment and Order and costs according to 7 Del. C. § 6005(c). Notwithstanding anything herein to the contrary, \$20,300 of the Administrative Penalty may be suspended on the condition that Respondent 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 three (3) years. If the Department determines that Respondent has committed a violation during that time period, the Department may submit a written demand for payment of this suspended \$20,300 penalty and Respondent shall pay that penalty within 30 days from issuance of that demand letter.

In addition to the penalty assessment, Respondent is hereby assessed estimated costs in the amount of \$3,795, 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 either \$25,300 or \$5,000 (if it is electing to advantage itself of the suspension option) and one check in the amount of \$3,795 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: Valerie M. Satterfield, Deputy Attorney General, Department of Justice, Environmental Unit, 102 W. Water Street-3rd Floor, Dover, Delaware 19904.

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.

PUBLIC HEARING

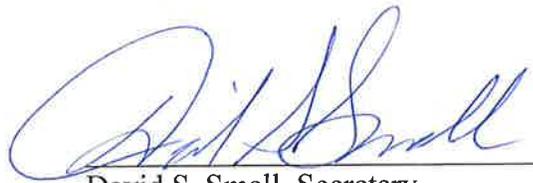
This Administrative Penalty Assessment and Order shall become effective and final unless the Department receives from Respondent, no later than 30 days from the receipt of this Notice, a written request for a public hearing on these matters as provided in 7 Del. C. § 6005(b)(3) and (c). The Department 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 \$25,300 or \$5,000 if it elects to avail itself of the suspension option and the Department's estimated costs in the amount of \$3,795 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.

8/10/15
Date



David S. Small, Secretary

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

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WAIVER OF STATUTORY RIGHT TO A HEARING

Schiff Farms, Inc. hereby waives its right to a hearing and its opportunity to appeal or contest this Assessment and Order and agree to the following:

1. **Schiff Farms, Inc.** will pay the administrative penalty in the amount of \$25,300 or \$5,000 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 S. Edge, Deputy Attorney General, Department of Justice, 102 W. Water Street-3rd Floor, Dover, DE 19904. If it elects the suspension option, **Schiff Farms** agrees by signing this waiver and submitting a check for \$5,000 (plus costs as outlined below) that it will remit the remaining \$20,300 within 30 days of demand by the Department should it trigger the payment of the suspended sum as set out hereinabove; and
2. **Schiff Farms, Inc.** will reimburse the Department in the amount of \$3,795 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.

Schiff Farms, Inc.

Date: _____

By: _____

Title: _____