



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

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

Pursuant to 7 Del. C. § 6005

Order No. 2016-A-0024

*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 Assessment and Order serves 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. Accordingly, the Department is issuing this Amended Notice of Administrative Penalty Assessment and Secretary's Order pursuant to 7 Del. C. § 6005(b)(3). When this Order becomes final (either upon signature by Respondent of the Waiver portion of this Amended Assessment and Order or upon expiration of the time to request a hearing without one being requested), this Order will supersede and withdraw Notice of Administrative Penalty Assessment and Secretary's Order No. 2015-A-0029 issued to Respondent on August 10, 2015.

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

Delaware's Good Nature depends on you!

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.

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-3)** 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 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 \$49,500 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 \$7,425, pursuant to 7 *Del. C.* § 6005(c), which were incurred by the Department in the investigation and abatement of the noted violations.

Respondent either shall submit a check to the Department in the amount of \$49,500 for the full penalty, or submit a check for \$24,750 and implement the Environmental Improvement Project (EIP) in Attachment A. Respondent shall also submit one check in the amount of \$7,425, to pay the Department's costs, within 30 days from the receipt of this Amended Assessment and

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.

Order. The checks 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.

The Department reserves the right to take additional enforcement actions regarding these and other violations by Respondent, including but not limited to one or more of the following: an action under the authority vested in the Secretary by 7 *Del. C.* Chapter 60 and 7 DE Admin. Code 1100 to revoke Respondent's air quality permit(s) for the State of Delaware, an action under 7 *Del. C.* § 6005(b)(1) seeking penalties for past violations, an action under 7 *Del. C.* § 6005(b)(2) seeking penalties for continuing violations, an action in the Court of Chancery pursuant to 7 *Del. C.* § 6005(b)(2) seeking a temporary restraining order or an injunction, and the imposition of civil penalties and recovery of the Department's costs and attorney's fees pursuant to 7 *Del. C.* §§ 6005(b)(3) & (c)(1).

PUBLIC HEARING AND APPEAL RIGHTS

This Assessment and Order and all proposals included in this Order, shall become effective and final, unless the Department receives from Respondent, no later than thirty (30) days from the receipt of this Assessment and Order, 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. If no public hearing is requested within thirty (30) days, this Order shall become final.

If you want a hearing and opportunity to contest this Assessment and Order, you must submit your request, in writing, within 30 days of receipt of this assessment to:

Department of Natural Resources and Environmental Control
Office of the Secretary
89 Kings Highway
Dover, DE 19901
Phone: (302) 739-9000

If no hearing is requested and the order becomes final,² the administrative penalty of \$49,500 and costs in the amount of \$7,425 shall be due no later than 30 days after the expiration of the period to request a hearing before the Secretary. Respondent shall pay the penalty and costs as described in Option 1 in the attached waiver.

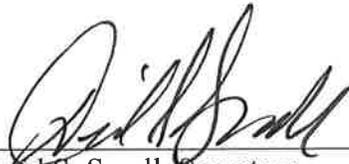
Respondent may alternatively elect Option 2 in the attached waiver, which allows Respondent to complete an EIP (as outlined in Attachment A), pay \$24,750 in an administrative penalty, and pay the Department's costs of \$7,425. Respondent shall comply with Option 2 if it elects as described in the attached waiver. Signing the waiver and/or electing Option 1 or 2 by remitting the required amount to the Department shall constitute a waiver of Respondent's right

² Once an administrative penalty assessment becomes final, it becomes an action of the Secretary, which may be appealable to the Environmental Appeals Board pursuant to 7 *Del. C.* § 6008, which sets a 20 day period for appeal. The EAB appeal fee is currently \$50.

to a hearing and the opportunity to appeal or contest this Assessment and Order, which shall become a final Order.

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

5/25/16
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

2016-9dcm

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 Amended Assessment and Order and agrees to resolve the alleged violations described above in the manner set out below:

1. Option 1: Respondent 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; *or in the alternative*
2. Option 2: The Department shall accept \$24,750 of the administrative penalty to be paid to the Department within 30 days of receipt of this Amended Assessment and Order signed by the Secretary. The penalty shall be paid by submitting a check payable to the "State of Delaware" to Valerie S. Edge, Deputy Attorney General, Department of Justice, 102 W. Water Street-3rd Floor, Dover, DE 19904.

If Respondent elects Option 2, the Department shall allow Respondent to offset the remaining \$24,750 of the administrative penalty on a minimum 2:1 basis in the form of Environmental Improvement Projects ("EIPs"). Acceptable EIPs are described in Attachment A, which is incorporated herein by reference. Respondent shall complete the EIPs as described, and by the dates specified, in Attachment A. If the Respondent fails to complete the EIPs or if the EIP completed do not constitute sufficient expenditures to offset the \$24,750 of the administrative penalty on the minimum 2:1 basis (the EIP must cost at least \$49,500), Respondent shall pay the difference, on the same 2:1 basis, as an additional administrative penalty, within 30 days of notification in writing by the Department that Respondent has failed to meet the terms associated with the EIPs.

As conditions of completing these EIPs to offset the remaining \$24,750 of the administrative penalty described above and in Attachment A, Respondent shall not use any state, federal or local funds, including but not limited to grants, to fund the EIPs. Respondent shall also not publicize the undertaking of said projects or the results thereof, without clearly stating in a prominent manner that they were undertaken as part of the settlement of an enforcement action.

3. Independent of the option Respondent chooses with respect to the administrative penalty, Respondent 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 Amended Assessment and Order signed by the Secretary. 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: _____

ATTACHMENT A

Respondent will complete one or both of the projects described below in the timeframes set forth within each project description at a sufficient cost to offset the \$24,750 penalty on a 2:1 basis (at a cost of at least \$49,500). Respondent shall comply with any applicable federal, state and local requirements pertaining to these projects.

ETV BUILDING BOILER REPLACEMENT

This building's heating system is powered by a gas boiler that appears to be original to the building that was built in 1966. This project will involve replacing the original boiler with a more efficient boiler as outlined below. This project is estimated to cost \$80,000.

- Remove existing boiler
- Purchase 1194 MBH, cast-iron, gas-fired boiler with a thermal efficiency of 81.9% ("new boiler")
- Install new boiler
- Project shall be completed by July 31, 2016
- Within 30 days of completion of project, submit a detailed accounting of all expenditures related to this project to the Department for determination that terms of the penalty offset have been met.

EDUCATION & HUMANITIES BOILER ROOM RENOVATION

This building's heating system is powered by two cast-iron boilers that appear to be original to the building that was built in 1972. This project will involve the removal of the original boilers and replacing with two, more efficient boilers as outlined below. This project is estimated to cost \$400,000.

- Remove existing boilers
- Purchase two, ultra-high efficiency gas-fired condensing boilers each with an output of 3800 MBH and a thermal efficiency of 95%.
- Install new boilers
- Project shall be completed by September 30, 2016
- Within 30 days of completion of project, submit a detailed accounting of all expenditures related to this project to the Department for determination that terms of the penalty offset have been met.