



STATE OF DELAWARE  
**DEPARTMENT OF NATURAL RESOURCES  
AND ENVIRONMENTAL CONTROL**

OFFICE OF THE  
SECRETARY

89 KINGS HIGHWAY  
DOVER, DELAWARE 19901

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**SECRETARY'S ORDER**

Pursuant to 7 Del. C. § 6005

**Order No. 2016-A-40**

*PERSONALLY SERVED BY AN ENVIRONMENTAL  
PROTECTION OFFICER*

**Issued To:**

Nemours Foundation, Inc., and  
Alfred I. duPont Hospital for Children  
Attn: Mr. Paul D. Kempinski  
Chief Operating Officer  
1600 Rockland Road  
Wilmington, DE 19803

Dear Mr. Kempinski:

This Order serves to notify Nemours Foundation, Inc. and Alfred I. duPont Hospital for Children (collectively, "Respondent") that the Secretary of the Department of Natural Resources and Environmental Control ("Department") has found Respondent in violation of 7 DE Admin. Code 1100 ("Air Quality Regulations") and its permits. Accordingly, the Department is issuing this Secretary's Order pursuant to 7 Del. C. § 6005(b)(3).

***BACKGROUND***

The Nemours Foundation, Inc. owns and operates the Alfred I. duPont Hospital for Children located at 1600 Rockland Road in Wilmington, Delaware ("Facility"). The Facility is a general medical and surgical hospital that has four natural gas and No. 2 fuel oil fired boilers, ten emergency generators, and three cold solvent degreasers. Operation of this equipment results in the emission of air contaminants, including but not limited to, nitrogen oxides ("NO<sub>x</sub>") and sulfur oxides ("SO<sub>x</sub>"). Some of these emission units are individually permitted by the Department's Division of Air Quality ("DAQ") pursuant to 7 DE Admin. Code 1102 ("Regulation 1102"). However, because all of its emission units collectively have the potential to emit NO<sub>x</sub> and SO<sub>x</sub> at levels that subject Respondent to 7 DE Admin. Code 1130, also known

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as the Title V State Operating Permit Program, Respondent's Facility operations have been governed by a Title V permit since 1998. It is currently operating under its third Title V permit renewal, **Permit: AQM-003/00131-Renewal (3)** issued October 10, 2011 ("TV Permit R3"). The Title V permit does not replace or cancel the Regulation 1102 permits, which remain in effect.

The Department issued Respondent **Permit: APC-2012/0014-OPERATION(NSPS)** for operation of Boiler No. 3 on May 11, 2012 ("Regulation 1102 Boiler No. 3 Permit"). Issuance of this permit followed an enforcement action taken by the Department in 2012 for Respondent's installation and operation of Boiler No. 3 prior to applying for and receiving a Regulation 1102 permit to do so. The violations associated with the 2012 enforcement action were resolved by Respondent's payment of the assessed penalty as well as issuance of the operating permit on May 11, 2012.

One of the conditions of the Regulation 1102 Boiler No. 3 Permit required Respondent to apply for a significant permit modification for its TV Permit R3 within 12 months of the startup date of Boiler No. 3. That boiler was started up on March 1, 2012, and, therefore, Respondent's application for a significant permit modification to incorporate the Regulation 1102 permit conditions for Boiler No. 3 into its TV Permit R3 was due to the Department by March 1, 2013.

Despite being reminded by the Department numerous times in meetings and teleconferences that the significant permit modification application was due, Respondent did not submit the application by March 1, 2013. A Notice of Violation ("NOV") was issued to Respondent on June 27, 2013, that included a deadline to submit the significant modification application to the Department by September 2, 2013, which it also failed to do. Respondent's administratively complete significant permit modification application was received by the Department on May 23, 2014.

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

1. Equipment at Respondent's Facility have the potential to emit NO<sub>x</sub> and SO<sub>x</sub> in quantities that subject it to the Title V State Operating Permit Program and operation of said equipment is currently governed by a Title V permit, **Permit: AQM-003/00131-Renewal (3)** ("TV Permit R3").
2. Pursuant to 7 DE Admin. Code 1102, the Department issued **Permit: APC-2012/0014-OPERATION(NSPS)** dated May 11, 2012, for operation of natural gas and No. 2 fuel oil-fired Boiler No. 3 ("Regulation 1102 Boiler No. 3 Permit").
3. Regulation 1102 Boiler No. 3 Permit includes a condition that Respondent submit a significant permit modification application to the Department within 12 months of Boiler No. 3 startup, to incorporate the Regulation 1102 Boiler No. 3 Permit requirements into its TV Permit R3.
4. Respondent started up Boiler No. 3 on March 1, 2012, therefore the significant permit modification application was due to the Department no later than March 1, 2013.

5. A Notice of Violation was issued to Respondent on June 27, 2013, for the violations associated with the failure to submit a significant permit modification application. The NOV included a September 2, 2013, deadline to submit the significant permit modification application, which Respondent failed to do.
6. Respondent's administratively complete significant permit modification application was received by the Department on May 23, 2014.

### **REGULATORY & PERMIT PROVISIONS**

1. Section 5.1.1.4 of 7 DE Admin. Code 1130 states:

*"A source that is required to meet the requirements under section 112(g) of the Act, or to have a permit under a preconstruction review program under Title I of the Act, shall file a complete application to obtain an operating permit or permit amendment or modification within 12 months of commencing operation, provided that, a source that is required to obtain a preconstruction permit may submit an application for an operating permit or permit modification for concurrent processing. An operating permit application submitted for concurrent processing shall be submitted with the source's preconstruction review application or at such later time as the Department may allow. Where an existing Part 70 permit would prohibit such construction or change in operation, the source must obtain a permit revision before commencing operation."*

2. Condition 2(m)(4) of **Permit: AQM-003/00131 (Renewal 3)** states:

*"'Significant Permit Modification.' When required, the Owner and/or Operator shall submit to the Department an application for a significant permit modification in accordance with 7 DE Admin. Code 1130 Section 7.5.3."*

3. Condition 1.5 of **Permit: APC-2012/0014-OPERATION(NSPS)** states:

*"The owner or operator shall submit a complete application for a significant permit modification to **Permit: AQM-003/00131 (Renewal 3)** pursuant to 7 DE Admin. Code 1130 Section 7.5.3 by March 1, 2013. The application shall address all applicable requirements including those of 40 CFR Part 64 (Compliance Assurance Monitoring) if applicable."*

## ***CONCLUSION***

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

1. Respondent violated Section 5.1.1.4 of 7 DE Admin. Code 1130; Condition 2(m)(4) of **Permit: AQM-003/00131 (Renewal 3)**; and Condition 1.5 of **Permit: APC-2012/0014-OPERATION(NSPS)** by failing to submit a significant permit modification application by March 1, 2013, to incorporate the Regulation 1102 Boiler No. 3 Permit requirements into its TV Permit R3.

## ***ORDER***

To resolve the violations set forth in this Order, Respondent is hereby ordered to undertake the following actions by the dates set out below:

1. By March 31, 2017, replace an original 30+ year old hot deck/cold deck air handler at the Facility. This project involves installing a new custom air handler and new VAVs with a reheat loop. Additionally, Respondent will replace the existing pneumatic control system with an upgraded direct digital control system. All motors will be higher efficiency and have variable frequency drives. It is estimated these actions will result in the reduction of 1,432,295 lb/yr of CO<sub>2</sub>; 174.3 lb/yr of NO<sub>x</sub> and 643.9 lb/yr of SO<sub>2</sub> in addition to energy savings. The cost of this project is anticipated to be \$1.8 million.
2. Respondent shall submit progress reports to the Department on a quarterly basis.
3. Within 30 days of completion of the project, Respondent shall submit a detailed accounting of all expenditures related to this project to the Department for determination that \$1.8 million was spent in completion of the project. Should Respondent fail to complete the project by the date set out above, or fail to achieve pollution reductions specified above, Respondent shall pay a stipulated penalty of \$48,000 to the Department. Respondent shall submit the stipulated penalty within 30 days of receipt of a demand letter from the Department, which the Department may send if it finds Respondent, in the Department's sole discretion, substantially failed to meet its obligations under this Order. By signing the waiver included herein, or by failing to request a hearing on this Order, Respondent expressly agrees to the imposition of the stipulated penalty of \$48,000 as being fair and adequate for failure to comply with the requirements of this Order.
4. Respondent shall submit one check to the Department in the amount of \$7,200, to pay the Department's costs within 30 days from the receipt of this Order. 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 AND APPEAL RIGHTS***

This Order, shall become effective and final, unless the Department receives from Respondent, no later than thirty (30) days from the receipt of this 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 Order, you must submit your request, in writing, within 30 days of receipt of this Order 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, this order will become final,<sup>1</sup> and performance of the actions under the Order section must be completed by the timelines set forth herein.

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

Date

9/19/14

David Small, Secretary



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

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<sup>1</sup>Although actions of the Secretary, are appealable to the Environmental Appeals Board pursuant to 7 *Del. C.* § 6008, which sets a 20 day period for appeal, failure to request a hearing before the Secretary may be considered a failure to exhaust administrative remedies, which may preclude a review by the EAB of the final Order.