



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 CONCILIATION AND  
ADMINISTRATIVE PENALTY ASSESSMENT ORDER**

Pursuant to 7 Del. C. § 6005

**Order No. 2019-A-0004**

***PERSONALLY SERVED BY  
AN ENVIRONMENTAL CRIMES  
UNIT OFFICER***

**Issued To:**  
MEDAL Air Liquide  
Attn: Mr. William Keller  
305 Water Street  
Newport, Delaware 19804

**Registered Agent:**  
MEDAL Air Liquide  
Attn: Legal  
Capitol Services, Inc.  
1675 S State Street, Suite B  
Dover, Delaware 19901

This is to notify MEDAL Air Liquide d/b/a Air Liquide Advance Technologies U.S. LLC (“Respondent”) that the Secretary of the Department of Natural Resources and Environmental Control (“Department”) has found that Respondent has violated 7 Del. C. Chapter 60 and an Air Pollution Control Operating Permit at its Plant in Newport, Delaware, and that the violation is continuing. Accordingly, the Department is issuing this Notice of Conciliation and Administrative Penalty Assessment Order (“Notice and Order”) in an endeavor to obtain compliance with the requirements of 7 Del. C. Chapter 60.

## BACKGROUND

Respondent owns and operates a manufacturing facility in Newport, Delaware. The Newport facility produces semi-permeable hollow-fiber polymeric gas separation membranes. These membranes are used in a variety of applications including: air separation, industrial inerting, fuel tank inerting of military and commercial aircrafts, controlled atmosphere food storage, and hydrogen purification in petroleum refining enabling low sulfur fuels. The facility is a synthetic minor facility (“SM”) and operates under **Permit: APC-96/0911-OPERATION (Amendment 9)(VOC RACT)(SM)**. This SM permit allows for up to 106.6 pounds per day and 19.45 tons per twelve (12) month rolling period of volatile organic compound (VOC) emissions.

In addition to the site wide SM permit, the facility also has eight additional permits issued under 7 DE Admin. Code 1102 (Reg. 2 permits). The Reg. 2 permits have not yet been incorporated into the SM permit, however, the facility wide emission limit does apply to all permitted sources onsite. In 2018, the facility identified increased solvent use in one on the processes that vents to an existing Thermal Oxidizer. This discovery prompted the operators of the facility to refine their emissions estimates for all operations onsite including the coater operations. The Respondent operates five coatiers onsite, denoted as coater A, B, C, D and F. This equipment (referred to as “coatiers”) produces coatings for the fibers that are wound into bundles, which are used to manufacture gas separation membranes that are sold to various industries.

The Respondent discovered that it had exceeded its daily VOC emission limit on May 31, 2018, and notified the Department via phone call on June 18, 2018. Additional investigation concluded that additional exceedances occurred, and those were detailed in an August 21, 2018, letter to the Department. The letter indicates that the facility’s daily VOC emission limit was exceeded on 279 occasions between August 23, 2016, and July 31, 2018. The total emissions over the permitted limit amount to 1.74 tons of VOCs, consisting of cyclohexane and isopropanol.

Respondent has reduced production to comply with the existing permit limit since discovering the exceedances. Respondent has informed the Department that it has undertaken multiple actions and has concluded that it cannot achieve the daily VOC emission limits set forth in Condition 2.1.2.1 of its operating permit under normal operating conditions without modifying the facility, although it can comply with an annual VOC emissions limit that maintains its synthetic minor status. To address this in the long term, Respondent proposes to construct and operate a new Thermal Oxidizer, which will significantly reduce the emissions associated with the coater process and the facility wide emissions overall.

#### **FINDINGS OF FACT**

1. Respondent's Newport facility exceeded its daily VOC emissions limit on 279 days between August 23, 2016, and July 31, 2018, in the amount of 1.74 tons of emissions consisting of cyclohexane and isopropanol.
2. Respondent has undertaken multiple actions and has concluded that it cannot achieve the VOC emission limits set forth in Condition 2.1.2.1 of its operating permit under normal operating conditions without modifying the facility; however, Respondent can comply with an annual VOC emissions limit keeping the facility a synthetic minor source. Based upon its review of Respondent's actions, the Department finds that Respondent's conclusion is reasonable.
3. Until the Thermal Oxidizer is installed to treat coater emissions and an amended operating permit is issued by the Department, Respondent is expected to continue to violate Condition 2.1.2.1 of its operating permit if Respondent operates the facility under normal operating conditions. During this time, when Respondent will not meet Condition 2.1.2.1 of its operating permit, at no time will daily emissions exceed 200 pounds per day and annual emissions 23.5 tons per twelve (12) month rolling period.

## STATUTORY AND PERMIT REQUIREMENTS

1. 7 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. Condition 2.1.2.1 of Permit: APC-96/0911-OPERATION (Amendment 9)(VOC RACT)(SM) states:

*“Facility wide VOC emissions shall not exceed 106.6 pounds per day and 19.45 tons per twelve (12) month rolling period.”*

## CONCLUSIONS

Based on the foregoing facts, the Department has determined that Respondent has violated and will continue to violate 7 Del. C. Chapter 60 and its permit conditions as follows:

1. Respondent violated 7 Del. C. § 6003(a)(1) by exceeding the emission limit of 106.6 lbs/day of VOC for the facility according to information submitted by the company in the December 6, 2018, submittal. The facility self-disclosed these violations and undertook restricted operating scenarios between the initial discovery and the issuance of this Order to ensure compliance with all permit conditions.
2. The Department believes that Respondent’s violations of 7 Del. C. § 6003(a)(1) and Condition 2.1.2.1. of Permit APC-96/0911-OPERATION (Amendment 9)(VOC RACT)(SM) will continue until such time as the facility is modified and an amended operating permit is issued to reflect limits that are achievable.

### **NOTICE OF CONCILIATION AND ORDER**

It is the intent of the Department for Respondent to correct the current violations related to VOC emissions at its facility, and to operate the facility with specific conditions for a defined period until compliance can be achieved. Therefore, in consideration of the foregoing findings, notice is hereby given that it is proposed, pursuant to 7 Del. C. § 6005(b)(2), that Respondent achieve compliance by installing a control device for the coater operations. Therefore, Respondent is hereby ordered as follows:

1. Respondent shall as soon as practical apply for, construct, and operate a new Thermal Oxidizer, to significantly reduce VOC emissions associated with the coater process and facility wide.
2. Respondent shall submit a completed application to construct and operate the Thermal Oxidizer to the Department no later than March 1, 2019.
3. Respondent's completed application shall request that the VOC emission limits set forth in Condition 2.1.2.1 be changed from 106.6 pounds per day and 19.45 tons per twelve (12) month rolling period to reduced amounts that reflect controlled emissions from the new Thermal Oxidizer.
4. From the issuance of this Order to the commencement of operation of the new Thermal Oxidizer, the Respondent shall emit no more than 200 pounds per day VOC emissions and no more than 23.5 tons per twelve (12) month rolling period.
5. Respondent shall commence operating the permitted Thermal Oxidizer no later than October 10, 2019, (or shall comply with the original daily emission permit limits or comply with the stipulated penalty provisions below).

The Department further recognizes that Respondent will continue to violate Condition 2.1.2.1 of its operating permit until such time as the Thermal Oxidizer is installed and permitted to operate by the Department. Consequently, in addition to requiring Respondent to take this corrective action, the Department is also requiring Respondent to pay an administrative penalty related to the past and ongoing violations of the present permit, until it is amended. The administrative penalty is further discussed and assessed in the Section entitled "Assessment of Penalty and Costs" below.

### **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 \$80,000 for the violations identified in this Notice and Order.

In addition to the penalty assessment, Respondent is hereby assessed costs in the amount of \$4,000, pursuant to 7 Del. C. § 6005(c), which were incurred by the Department in the investigation and abatement of the noted violations.

Respondent shall submit one check to the Department in the amount of \$80,000 to pay the penalty and one check in the amount of \$4,000, to pay the Department's costs within 30 days from the receipt of this Notice and Order. The check(s) shall be made payable to the "State of Delaware" and shall be directed to Valerie S. Edge, Deputy Attorney General, c/o Emily Gabriellini, 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).

#### **STIPLULATED PENALTIES**

1. Respondent shall pay a stipulated penalty in the amount of \$500.00 for every week the Respondent fails to meet the application submission deadline set out in paragraph 2 above. After four weeks the stipulated penalty amount shall increase to \$1,000.00 a week.
2. Respondent shall pay a stipulated penalty in the amount of \$1,000.00 for every occurrence they exceed the daily limit of 200 pounds per day set forth above. If the daily limit is exceeded on more than 10 incidents, the amount due will increase to \$2,000.00 for each occurrence.
3. Respondent shall pay a stipulated penalty in the amount of \$500.00 for every week that the Respondent fails to meet the requirement to begin operation of the Thermal Oxidizer.

4. If Respondent fails to commence operation of the Thermal Oxidizer by November, 12, 2019, Respondent's permission to exceed its permitted limits described herein shall terminate and Respondent shall comply with the permitted emissions set forth in Conditions 2.1.2.1. of Permit APC-96/0911-OPERATION (Amendment 9)(VOC RACT)(SM). Compliance with the daily limit will be required as of November 12, 2019. Respondent shall also comply with the 12 month rolling average as of November 12, 2019; however, DNREC shall forgo taking enforcement action for any violations of the 12 month rolling limit caused solely by Respondent's compliance with the higher daily limit provided for herein, as long as Respondent complies with the applicable daily limits.
  
5. Payment of stipulated penalties will be requested via certified letter from the Department and must be paid within 30 days of the receipt of the certified letter.

#### **PUBLIC HEARING AND APPEAL RIGHTS**

This Assessment and Order is effective and final upon receipt by Respondent. Pursuant to 7 Del. C. §6008, any person whose interest is substantially affected by this action of the Secretary may appeal to the Environmental Appeals Board within 20 days of the receipt of the Assessment and Order. In the alternative, Respondent may, pursuant to 7 Del. C. §6005(b)(3), request a public hearing on the penalty assessment and Order, within 30 days of receipt of the Assessment and Order. A hearing would be conducted pursuant to 7 Del. C. §6006, and the Secretary's Order following the hearing would be subject to appeal, pursuant to 7 Del. C. §6008, by any person substantially affected.

To submit an appeal to the Environmental Appeals Board, there is a \$50.00 filing fee, with a check made payable to the: "Environmental Appeals Board" and sent to:

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

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 and Order to:

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

Respondent may waive its right to request a hearing or to file an appeal by signing the waiver attached herein and prepaying the penalty. If no hearing is requested or appeal filed as described above and the administrative penalty of \$80,000 and costs in the amount of \$4,000 are not paid within the time frame above, DNREC may immediately take action to collect the above amounts.

If you have any questions, please contact Angela Marconi, P.E., BCEE at (302) 323-4542.

Date

1/10/19



Shawn M. Garvin, Secretary  
Department of Natural Resources and  
Environmental Control

cc: Valerie S. Edge, Deputy Attorney General  
David Fees, P.E., Division Director

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

**Air Liquide Advance Technologies U.S. LLC** hereby waives its right to a hearing and its opportunity to appeal or contest this Assessment and Order and agrees to the following:

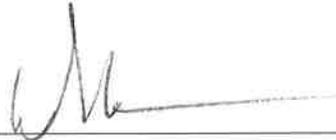
1. **Air Liquide Advance Technologies U.S. LLC** will pay the administrative penalty in the amount of \$80,000 by sending a check payable to the "State of Delaware" within 30 days of receipt of this Assessment and Order. The check shall be directed to Valerie S. Edge, Deputy Attorney General, c/o Emily Gabriellini, Department of Justice, 102 W. Water Street-3<sup>rd</sup> Floor, Dover, DE 19904; and
2. **Air Liquide Advance Technologies U.S. LLC** will reimburse the Department in the amount of \$4,000 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, c/o Emily Gabriellini, Department of Justice, 102 W. Water Street-3<sup>rd</sup> Floor, Dover, DE 19904.
3. **Air Liquide Advance Technologies U.S. LLC** further agrees to abide by all of the terms and conditions set out in this Notice, Order and Assessment.

**Air Liquide Advance Technologies U.S. LLC**

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

1/11/19

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



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

VP ALA S

a division of Air Liquide  
Advanced Technologies US LLC