



STATE OF DELAWARE
DEPARTMENT OF NATURAL RESOURCES
AND ENVIRONMENTAL CONTROL

89 KINGS HIGHWAY
DOVER, DELAWARE 19901

PHONE: (302) 739-4403
FAX: (302) 739-6242

OFFICE OF THE
SECRETARY

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

Pursuant to 7 *Del. C.* § 6005

Order No. 2007-A-0048

*PERSONALLY SERVED BY AN ENVIRONMENTAL
ENFORCEMENT OFFICER*

Issued To:

Motiva Enterprises LLC

Registered Agent:

Motiva Enterprises LLC
The Corporation Trust Company
Corporation Trust Center
1209 Orange Street
Wilmington, Delaware 19801

Dear Sir or Madam:

This letter is to notify Motiva Enterprises LLC ("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 the State of Delaware *Regulations Governing the Control of Air Pollution* ("Regulations"), and accordingly, the Department is issuing this Notice of Administrative Penalty Assessment, pursuant to 7 *Del. C.* § 6005(b)(3).

BACKGROUND

Respondent previously owned and operated a refining facility at 2000 Wrangle Hill Road, in Delaware City, Delaware ("Delaware City Refinery"). At the Delaware City Refinery, Respondent manufactured various petroleum-based products, including gasoline, diesel, and jet

Delaware's Good Nature depends on you!

fuels, and other by-products. Respondent's petroleum refining involved physical and chemical separation of crude oil into marketable petroleum products. Respondent's operation of the Delaware City Refinery was subject to Delaware Law and Regulations which was further reflected in the conditions set forth in numerous permits issued to Respondent by the Department. On or about May 1, 2004, Respondent sold the Delaware City Refinery to The Premcor Refining Group Inc.

**FINDINGS OF ALLEGED VIOLATIONS INCLUDING
STATUTORY AND REGULATORY REQUIREMENTS**

Shell Claus Offgas Treatment ("SCOT") Units I and II

Permit **APC-90/0264-OPERATION (Amendment 2)(NSPS)** dated August 5, 2002, ("Sulfur Recovery Area" or "SRA Permit"), was issued to Respondent governing the capture and routing of sulfur pit vapors from Respondent's Sulfur Recovery Area ("SRA") to SCOT Units I and II. Condition 2.1.5 of the SRA Permit contains annual limits (calculated using 12 consecutive months) for particulate matter with an aerodynamic diameter less than or equal to 10 microns ("PM₁₀"). The PM₁₀ limits in the SRA Permit for both SCOT Units combined were 0.025 lb/mmBtu and 6.8 tons PM₁₀ annually. The SRA Permit further clarified that all emissions of total suspended particulate from the SCOT Units would be measured as PM₁₀. Condition 4.2 of the SRA permit required annual stack testing of the SCOT Units to ensure compliance with the PM₁₀ and other applicable emissions limits.

On July 11, 2003, Respondent conducted the required annual stack testing of the SCOT Units to demonstrate compliance with Condition 2.1.5 of the SRA Permit. This test indicated that the average PM₁₀ emission rate for the SCOT Units I and II combined was 0.090 lb/mmBtu and 15.57 tons per year ("tpy") which constituted a violation of Condition 2.1.5. of the SRA Permit.

On March 9, 2004, Respondent conducted its annual compliance stack test for the SCOT Units. Respondent failed to test sufficiently to demonstrate compliance with the PM₁₀ emissions rates, a violation of Condition 4.2 of the SRA Permit. Respondent's employee informed the Department that it did not complete the test for compliance with the PM₁₀ emissions limit because it believed the results would have indicated a failure to comply with the limit.

Based on the above, the Department believes that Respondent's actions between July 2003 and March 2004 by failing to conduct an annual compliance stack test in accordance with Condition 4.2 and by failing to demonstrate compliance by completion of an annual stack test in accordance with Condition 2.1.5 of permit **APC-90/0264-OPERATION (Amendment 2)(NSPS)**, constituted a violation of 7 Del. C. § 6003(b)(1) and its permit.

Fluid Catalytic Cracking Unit ("FCCU") Carbon Monoxide ("CO") Boiler

The Clean Air Act ("CAA") requires the Environmental Protection Agency ("EPA") to establish two sets of NAAQS: primary standards, designed to protect the public health, and secondary standards, designed to protect the public welfare. In turn, each state must develop a SIP for the implementation, maintenance, and enforcement of each NAAQS in that particular state. The SIP must also contain a program for the "regulation of the modification and construction of any stationary source," including specialized permit programs for areas still experiencing NAAQS violations (non-attainment areas) and for the prevention of significant deterioration ("PSD") in clean air areas. These specialized permit programs are known as new source review ("NSR") programs. Delaware addresses NSR by virtue of Regulation No. 25 of the *Delaware Regulations Governing the Control of Air Pollution*. It requires sources to determine in advance whether a new or modified source will cause an exceedance of the applicable NAAQS or will cause a significant incremental deterioration of air quality and those sources that will undergo a major modification must install best achievable control technology ("BACT") In addition, new or modified sources in Delaware emitting non-attainment pollutants or certain precursors to non-attainment pollutants must install and operate equipment to achieve the lowest achievable emission rate ("LAER") to control air pollution and provide appropriate offsets. Finally, new or modified sources may only operate their devices while also operating the applicable pollution control equipment (BACT or LAER depending on the attainment or non-attainment status for individual pollutants in the area in which the source is located).

The Delaware City Refinery is located in New Castle County, a region designated "severe" non-attainment with the 1-hour NAAQS for ground-level ozone. Nitrogen Oxides ("NO_x") is a precursor chemical to the formation of ground-level ozone and NO_x is a regulated pollutant for ground-level ozone attainment/non-attainment. The significance level (or level of emissions increase necessary to trigger the installation of LAER controls in New Castle County) for NO_x is 25 tpy.

On or between September 12, 2001, and October 15, 2001, Respondent began operating the FCCU CO Boiler at the Delaware City Refinery in an attempt to reduce CO emissions pursuant to a federal Consent Decree lodged in the U.S. District Court for the Southern District of Texas. The actions taken by Motiva either in physically changing the FCCU CO Boiler or other process unit or by modification of its operation of the CO Boiler caused an increase in emissions of NO_x by approximately 600 tpy. Respondent did not apply for a Delaware Regulation No. 2 permit to allow it to make modifications to the FCCU CO Boiler, nor did it acquire a permit to increase its emissions of NO_x from the FCCU.

Based on the above, the Department believes that Respondent's actions on or between September 12, 2001, and October 15, 2001, and its continued operation of the FCCU CO Boiler thereafter until April 30, 2004, when it sold the Delaware City Refinery to The Premcor Refining Group Inc. constituted a violation of 7 *Del. C.* § 6003(b)(1), Delaware Air Regulation No. 2, and the CAA New Source Review Requirements as they are set out in Delaware Air Regulation No. 25.

Crude Unit Overhead Atmospheric Column

On or between September 12, 2001, and October 15, 2001, Respondent modified the overhead heat exchangers of the Crude Unit Atmospheric Column at the Delaware City Refinery by reducing the overhead line diameter and replacing the overhead heat exchanger tube bundles with new titanium fabrications, during a scheduled turnaround prior to obtaining a construction permit from the Department. Data indicates that the modifications to the Crude Unit Atmospheric Column resulted in increases of approximately 49.5 tpy of NO_x from the process heaters and boilers and approximately 20.7 tpy of NO_x from the crude unit heaters. In addition, Volatile Organic Compounds ("VOC") emissions increased by approximately 2.1 tpy after the modifications.

Based on the above, the Department believes that Respondent's actions on or between September 12, 2001, and October 15, 2001 and its continued operation of the Crude Unit Atmospheric Column thereafter until April 30, 2004, when it sold the Delaware City Refinery to The Premcor Refining Group Inc. constituted a violation of 7 *Del. C.* § 6003(b)(1), Delaware Air Regulation No. 2 and the CAA New Source Review Requirements as they are set out in Delaware Air Regulation No. 25.

Secondary TSP AAQS Violations from Coke Handling and Storage Operation

The Department adopted Regulation No. 3 of the *Delaware Regulations Governing the Control of Air Pollution* on February 1, 1981. Regulation No. 3 established both primary and secondary ambient air quality standards ("AAQS") for total suspended particulates ("TSP"). Specifically, Section 3.1(b) of Regulation No. 3 states: "[t]he Primary Ambient Air Quality Standards for Particulate Matter are a value of 260 micrograms per cubic meter not to be exceeded more than once per year, based upon twenty-four hour average concentrations." Regulation No. 3.2(b) states: "[t]he Secondary Ambient Air Quality Standards for Particulate Matter are a value of 150 micrograms per cubic meter not to be exceeded more than once per year, based upon twenty-four hour average concentrations."

In the process of obtaining a permit for the Repowering Project, it was discovered that the potential to violate the NAAQS and Delaware's TSP AAQS existed. The permit was developed to include a 12-month monitoring study to evaluate operations in place at the time prior to allowing on-site handling and storage of coke. The results showed 5 exceedances of the TSP AAQS from February 2002 to May 2002. As Regulation No. 3 allows for one exceedance per year, 4 of the 5 exceedances were considered violations. The Department issued Notice of Conciliation and Secretary's Order No. 2002-A-0063 addressing these violations. Respondent appealed the Order and to date there has been no resolution of those violations. From November 2002 and the sale of the Refinery on May 1, 2004, there were an additional 15 violations of the TSP AAQS. The total 19 violations are detailed as follows:

1. On February 25, 2002, the monitored particulate matter 24-hour average was 218 micrograms per cubic meter.
2. March 9, 2002, the monitored particulate matter 24-hour average was 224 micrograms per cubic meter.

3. On March 15, 2002, the monitored particulate matter 24-hour average was 168 micrograms per cubic meter.
4. On April 2, 2002, the monitored particulate matter 24-hour average was 206 micrograms per cubic meter.
5. On May 8, 2002, the monitored particulate matter 24-hour average was 226 micrograms per cubic meter.
6. On November 10, 2002, the monitored particulate matter 24-hour average was 168 micrograms per cubic meter.
7. On May 12, 2003, the monitored particulate matter 24-hour average was 181 micrograms per cubic meter.
8. On July 27, 2003, the monitored particulate matter 24-hour average was 216 micrograms per cubic meter.
9. On September 22, 2003, the monitored particulate matter 24-hour average was 232 micrograms per cubic meter.
10. On September 27, 2003, the monitored particulate matter 24-hour average was 201 micrograms per cubic meter.
11. On October 14, 2003, the monitored particulate matter 24-hour average was 159 micrograms per cubic meter.
12. On December 16, 2003, the monitored particulate matter 24-hour average was 160 micrograms per cubic meter.
13. On December 23, 2003, the monitored particulate matter 24-hour average was 190 micrograms per cubic meter.
14. On March 5, 2004, the monitored particulate matter 24-hour average was 202 micrograms per cubic meter.
15. On March 14, 2004, the monitored particulate matter 24-hour average was 180 micrograms per cubic meter.
16. On March 23, 2004, the monitored particulate matter 24-hour average was 214 micrograms per cubic meter.
17. On March 24, 2004, the monitored particulate matter 24-hour average was 252 micrograms per cubic meter.
18. On March 26, 2004, the monitored particulate matter 24-hour average was 188 micrograms per cubic meter.
19. On April 19, 2004, the monitored particulate matter 24-hour average was 160 micrograms per cubic meter.
20. On April 21, 2004, the monitored particulate matter 24-hour average was 219 micrograms per cubic meter.

Accordingly, the Department does not consider the first itemized exceedence listed above a violation of Delaware Air Regulation No. 3. Nonetheless, the Department believes that

Respondent's operations at the Delaware City Refinery between February 2002, and April 30, 2004, resulted in violations of Delaware Air Regulation No. 3.

CONCLUSION

Based on the foregoing, the Department has concluded that Respondent violated the above cited statutes, 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 \$850,000 for the violations identified in this Assessment and Order.

In the event that Respondent signs the Waiver herein and agrees to settle the above alleged violations through this Assessment and Order, the Department shall accept \$650,000 of the penalty to be paid to the Department in cash, with the balance of \$200,000 being offset in the form of a Supplemental Environmental Project ("SEP") to be used to fund a reimbursement program for diesel retrofit projects that will be implemented by the Department. In the event Respondent signs the Waiver and agrees to this Assessment and Order, Respondent shall submit one check in the amount of \$650,000 for the cash penalty and a separate check in the amount of \$200,000 as a SEP within 30 days from receipt of this Assessment and Order. Each check shall be made payable to the "State of Delaware" and shall be directed to Valerie S. Csizmadia, Deputy Attorney General, Delaware Department of Justice, Environmental Unit, 3rd Floor, 102 W. Water Street, Dover, DE 19904.

In any other event, Respondent shall pay the \$850,000 penalty within 45 days of receipt of this Assessment and Order.

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.

SETTLEMENT

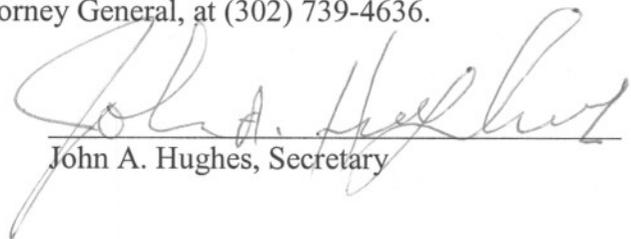
Respondent's signing of the Waiver and complying with the conditions of this Order constitutes a full and final settlement of, and the Department forever releases and discharges, Motiva, Shell Oil Co., and Saudi Refining Inc., and their respective parents, subsidiaries, affiliates, agents, employees, representatives, officers and directors from, any and all civil and

administrative liability for claims the Department could initiate, arising from or relating to the alleged violations set out hereinabove. By signing this Waiver, Respondent agrees to resolve the alleged violations without further litigation. The Department further agrees that any actions taken by Respondent pursuant to this Order shall not constitute an admission of liability by Respondent and the Department and Respondent agree that signing of the Waiver does not constitute an admission of Respondent of any liability or wrongdoing. Nevertheless, the Department reserves the right to take into account the violations and this Order in any Chronic Violator Review of Respondent's Delaware City facility performed pursuant to the Delaware Chronic Violator statute. The Department and Respondent further agree that this Order does not waive, limit, release or otherwise affect any position, response or defense that Respondent may assert in the event the Department undertakes a Chronic Violator review of the Respondent's facility and by signing the waiver, Respondent expressly reserves any and all rights, positions, responses, and defenses it may have in connection with such a review or other action or proceeding.

If Respondent waives its right to a hearing, it should return the signed Waiver with enclosed checks in the amount of \$650,000 for the cash portion of the penalty and \$200,000 for the SEP portion of the penalty.

If you have any questions regarding this Administrative Penalty Assessment and Order, please contact Valerie S. Csizmadia, Deputy Attorney General, at (302) 739-4636.

11-06-2007
Date


John A. Hughes, Secretary

xc: Valerie S. Csizmadia, Deputy Attorney General
James D. Werner, Director
Ali Mirzakhali, P.E., Program Administrator
Paul Foster, P.E., Program Manager
Bruce Steltzer, Engineer
Ravi Rangan, P.E., Engineer
Dawn Minor, Paralegal
Stephen S. Ours, P.E., Engineer
Jenny Bothell, Enforcement Coordinator
Dover File

**WAIVER OF STATUTORY RIGHT TO A HEARING
FOR NOTICE OF ADMINISTRATIVE PENALTY ASSESSMENT
AND SECRETARY'S ORDER NO. 2007-A-00__**

Motiva Enterprises LLC hereby waives its right to a hearing and its opportunity to appeal or contest this Assessment and Order, agrees to its terms including the settlement of the violations contained in it and agrees to pay the \$850,000 by forwarding to the Department two checks payable to the State of Delaware, in the amount of \$650,000 as a cash penalty and \$200,000 as a Supplemental Environmental Project within 30 days after issuance of this Order.

Motiva Enterprises LLC

Date: _____

By: _____

Name: Nora Brooks

Title: General Counsel