



STATE OF DELAWARE
DEPARTMENT OF NATURAL RESOURCES
AND ENVIRONMENTAL CONTROL

OFFICE OF THE
SECRETARY

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

Pursuant to 7 Del. C. § 6005

Order No. 2011-WH-0049

*PERSONALLY SERVED BY AN ENVIRONMENTAL
ENFORCEMENT OFFICER*

Issued To:

Attn: Mr. Lance Charen,
Regional/Branch Manager
International Petroleum Corporation of Delaware
505 South Market Street
Wilmington, Delaware 19801

Registered Agent:

Corporation Trust Center
1209 Orange Street
Wilmington, Delaware 19801

Dear Mr. Charen:

The Secretary of the Department of Natural Resources and Environmental Control ("Department") has found International Petroleum Corporation of Delaware ("Respondent" or "IPC") in violation of 7 Del. C. Chapters 60 and 63, 7 DE Admin. Code 1302, Delaware's *Regulations Governing Hazardous Waste* ("DRGHW") and Regulation 1102 permit **APC-92/0432-OPERATION(AMENDMENT 6)(SM)-H-503** dated July 7, 2006 ("DAQ Permit")¹, issued by the Department's Division of Air Quality ("DAQ")². Accordingly, the Department is issuing this Notice of Administrative Penalty Assessment, pursuant to 7 Del. C. § 6005(b)(3).

¹ Respondent's DAQ Permit is an "air" permit, issued by the Department's Division of Air Quality ("DAQ") on July 7, 2006. At the time of issuance, the Department determined that Respondent's solid waste resource recovery permit requirements were best suited to be incorporated into the air permit.

² Effective July 1, 2010, the Delaware General Assembly passed into law a re-organization for the Department that resulted in splitting the Division of Air and Waste Management into two distinct Divisions. The former "Air Quality Management Section" became the Division of Air Quality ("DAQ"). The "Waste" segment of the former Division of Air and Waste Management became a newly designated division known as the Division of Waste and Hazardous Substances ("WHS").

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BACKGROUND

Respondent is a large quantity generator of hazardous waste³ and is owned by FCC Environmental. Respondent operates a used oil recycling services facility ("facility") in Wilmington, Delaware. The facility is permitted to accept various types of used or unused petroleum based oils, from various sources, within explicitly prescribed regulatory parameters. Respondent processes those and produces marketable fuel oil products.

Respondent's facility is regulated by Part 279 of DRGHW. Respondent occasionally receives contaminated loads that contain greater than or equal to 1,000 ppm total halogens. Part 279 of DRGHW requires these loads to be managed as hazardous waste, unless Respondent can rebut the presumption of hazardous waste found in Section 279.53 of DRGHW. Accordingly, Respondent is regulated by and subject to the requirements of DRGHW.

The Department's Solid and Hazardous Waste Management Section ("SHWMS")⁴ conducted a compliance assessment at Respondent's facility on April 4, 2011. SHWMS representatives returned to the facility on April 8, 2011, for a follow-up assessment to obtain samples of waste observed during the compliance assessment conducted on April 4th. Information obtained during each of the two assessments revealed 32 violations of Respondent's permit and DRGHW.

The Department issued Notice of Violation No. 11-HW-19, dated June 1, 2011, which was received by Respondent on June 16, 2011, for the violations discovered on April 4 and April 8, 2011. The Department required Respondent to immediately achieve compliance and submit documentation demonstrating compliance to the Department within 30 days of receipt of the NOV. Although the Department required Respondent to submit a written response to the NOV by July 18, 2011, Respondent missed that deadline. On August 19, 2011, Respondent submitted to the Department, a written response to the NOV, which was dated August 17, 2011. The Department does not agree with Respondent's responses, as explained below.

After receiving Respondent's response, on August 22, 2011, the Department conducted a follow-up assessment at Respondent's facility. The assessment revealed 10 continuing violations and 7 additional new violations of Respondent's DAQ permit and DRGHW.

Similar violations, to those which are the subject of this order, were discovered during previous compliance assessments on July 23, 2009, August 7, 2007 and March 28, 2006. The 2009 compliance assessment violations resulted in a penalty issued to Respondent by the United States Environmental Protection Agency. The 2007 and 2006 compliance assessments resulted in Notices of Violation issued to Respondent, by the Department, on October 22, 2007 and April 26, 2006, respectively.

³ Generators of more than 1,000 kilograms (2,200 pounds) of hazardous waste in any calendar month are large quantity generators (Delaware's *Regulations Governing Hazardous Waste*, 2010).

⁴ Effective July 1, 2011, the SHWMS (formerly "SHWMB") became a "section" under the separate and newly designated Division of Waste and Hazardous Substances ("WHS").

***FINDINGS OF VIOLATIONS INCLUDING
REGULATORY REQUIREMENTS FOR SHWMS AND PERMIT
REQUIREMENTS FOR DAQ***

1. Section 279.52(a)(1) of DRGHW states:

“(a) Preparedness and prevention. Owners and operators of used oil processing and re-refining facilities must comply with the following requirements:

(1) Maintenance and operation of facility. Facilities must be maintained and operated to minimize the possibility of a fire, explosion, or any unplanned sudden or non-sudden release of used oil to air, soil, or surface water which could threaten human health or the environment.”

On April 4, 2011, Department representatives observed 16 drums of used oil filters and one roll-off container with drums of oil filters in the drum accumulation area that were open. On August 22, 2011 Department representatives observed 33 drums of oil filters and two (2) roll-off containers containing used oil in the drum accumulation area that were open. These are violations of § 279.52(a)(1).

2. Section 279.54(f)(1) of DRGHW states:

“(f) Labels.

(1) Containers and aboveground tanks used to store or process used oil at processing and re-refining facilities must be labeled or marked clearly with the words ‘Used Oil’.”

On April 4, 2011, Department representatives observed three drums of used oil filters in the drum accumulation area. Adjacent to the drums, Department representatives observed a 30 yd³ roll-off container that contained drums of used oil filters. Department representatives also observed ten black bins containing used oil filters that had been consolidated on-site. None of the above-referenced containers were labeled with the words “Used Oil.” These are violations of § 279.54(f)(1).

3. Section 279.52(a)(5) of DRGHW states in part:

“(a) Preparedness and prevention. Owners and operators of used oil processing and re-refining facilities must comply with the following requirements:

(5) The owner or operator must maintain aisle space to allow the unobstructed movement of personnel, fire protection equipment, spill control equipment, and decontamination equipment to any area of facility operation in an emergency...”

On April 4, 2011, Department representatives observed approximately 185 drums of used oil filters in the drum accumulation area. There was no aisle space to allow for the unobstructed movement of personnel or equipment, nor was there enough aisle space for Department representatives to conduct an inspection of the containers. Respondent submitted photographs in its August 19, 2011 NOV response demonstrating that drums had been moved and placed in rows with adequate aisle space. However, on August 22, 2011, Department representatives observed approximately 315 drums of used oil filters in the drum accumulation area with inadequate aisle space. These are violations of § 279.52(a)(5).

4. Section 279.22(b)(3) of DRGHW states:

“(b) Condition of units. Containers and aboveground tanks used to store used oil at generator facilities must be:

(3) Closed during storage, except when it is necessary to add or remove oil.”

On April 4, 2011, Department representatives observed the following:

- A 30 yd³ roll-off container that contained used oil sludge generated from the cleaning of strainers in the small collection truck unloading area. The sludge contains water, used oil and oily debris;
- A 5 gallon bucket, located next to the black bins used to consolidate used oil filters adjacent to the drum accumulation area. The bucket appeared to contain used oil and water;
- A 5 gallon bucket, located in the laboratory, containing the remains of used oil samples;
- A 5 gallon bucket of used oil sitting on a wall near the steps in the tank farm; and,
- Two 55 gallon drums of oily debris removed from the strainers in the small truck unloading area.

All of the above-referenced containers were open; violations of § 279.22(b)(3).

5. Section 262.20(a)(1) of DRGHW states:

“(a)(1) A generator who transports, or offers for transportation, hazardous waste for off site treatment, storage, or disposal, or a treatment, storage, and disposal facility who offers for transport a rejected hazardous waste load, must prepare a

Manifest (U.S. OMB Control Number 2050 0039) on EPA form 8700 22 and, if necessary EPA form 8700 22A, according to the instructions included in the appendix to this part."

On April 4, 2011, in addition to the used oil sludge referenced in the 30 yd³ roll-off container in violation number 4, above, Department representatives observed used oil filters, hoses, trash, sample containers and an aerosol can, in the roll-off container. Respondent's representative stated that the roll-off container was pending transport to Modern Landfill. Respondent's representative also stated during the inspection that IPC manages all aerosol cans as hazardous waste. However, the aerosol can was located in a roll-off container that Respondent intended for shipment to Modern Landfill, for 'non-hazardous' waste disposal. The roll-off container was not shipped to Modern Landfill using a hazardous waste manifest; a violation of § 262.20(a)(1).

6. Section 262.12(c) of DRGHW states:

"(c) A generator must not offer his hazardous waste to transporters that have not received an EPA identification number and a Delaware hazardous waste transporter permit or to treatment, storage, or disposal facilities that have not received an EPA identification number."

On April 4, 2011, Department representatives discovered hazardous waste in a roll-off container that Respondent intended for shipment to Modern Landfill, for non-hazardous waste disposal. Modern Landfill is not a RCRA Subtitle C permitted facility and, therefore, is not permitted to accept hazardous waste; a violation of § 262.12(c).

7. Section 262.11 of DRGHW states in part:

"A person who generates a solid waste, as defined in §261.2, must determine if that waste is a hazardous waste..."

On April 4, 2011, Department representatives observed a 30 yd³ roll-off container that contained "dewatered sludge" that, according to Respondent's representative, was intended for shipment to Modern Landfill, for non-hazardous waste disposal. Respondent's representative stated that Respondent pumps all free-flowing used oil out of the roll-off container ("dewatering") prior to shipment off-site). Respondent's representative further stated to Department representatives that following the dewatering process, the waste remaining in the roll-off container is managed as used oil. However, the preamble to the final rule on used oil management, 57 Fed Reg. 41566 (10 September 1992) states as follows:

"After separating used oils from other materials or solid wastes, the remaining materials or solid waste must be managed in accordance with any and all applicable RCRA requirements. The generator must determine whether or not the materials that previously contained used oil exhibit a characteristic of hazardous

waste...and, if so, manage them in accordance with RCRA controls. If the material does not exhibit a hazardous characteristic (and is not mixed with a listed hazardous waste) then the material can be managed as a solid waste."

Therefore, once the used oil has been separated from the remaining solid waste, the waste in the roll-off container no longer meets the definition of used oil⁵ and is subject to RCRA regulation. Respondent did not make a hazardous waste determination on the remaining waste; a violation of § 262.11.

On April 4, 2011 and August 22, 2011, Department representatives observed a 5 gallon red, poly safety can in the on-site laboratory, containing waste from the analytical method used to quantify the water fraction in used oil samples. According to information supplied by Respondent's representative, the process involves first mixing oil with IsoPar E Fluid and then the mixture is distilled. According to the Material Safety Data Sheet ("MSDS") supplied by Respondent's representative, IsoPar E Fluid has a flashpoint of 45°F. Because the flashpoint is less than 140°F, demonstrating ignitability characteristics, the IsoPar E and water coming off the top of the distillation unit is a hazardous waste, with the waste code D001. Mixing a hazardous waste with used oil renders the entire mixture a hazardous waste per § 279.10(b)(2) of DRGHW. Respondent failed to make a hazardous waste determination on this waste stream; a violation of § 262.11.

On April 4, 2011 and August 22, 2011, Department representatives observed two 40 gallon drums of light end distillates and oily water located in the small truck unloading area. On April 4, one of the drums of light end distillates was labeled "Used Oil" and the other drum was not labeled. On August 22, neither of the drums was labeled. Respondent's representative stated that the facility manages the contents of the light end distillate drums as used oil on-site. Respondent's response to the NOV confirms this statement. However, EPA guidance (RO 14090) states as follows:

"Petroleum-based solvents are not considered to be used oil because the solvent use does not meet the use-based criterion. Petroleum-based solvent used for its solvent properties, that is to solubilize (dissolve) or mobilize other constituents, is not use as a lubricant, heat transfer fluid, hydraulic fluid or similar use, 57 Fed Reg. 41566, 41575 (10 September 1992)."

The waste in the light end distillate drums is a solid waste requiring a hazardous waste determination. Respondent failed to make a hazardous waste determination on this waste stream; a violation of § 262.11.

8. Section 279.22(c)(1) of DRGHW states:

⁵ Used oil means any oil that has been refined from crude oil, or any synthetic oil, that has been used and as a result of such use is contaminated by physical or chemical impurities (Section 279.1 of Delaware's *Regulations Governing Hazardous Waste*, 2010).

“(c) Labels.

(1) Containers and aboveground tanks used to store used oil at generator facilities must be labeled or marked clearly with the words ‘Used Oil.’”

On April 4, 2011, Department representatives observed one 5 gallon bucket of what appeared to be used oil and rainwater (referenced in violation #4, above) next to the black consolidation bins adjacent to the drum accumulation area. Respondent’s representative stated that the facility places the tubes used to pump free-flowing used oil out of the bins in this bucket to drain. The bucket was not labeled with the words “Used Oil;” a violation of § 279.22(c)(1).

On April 4, 2011, Department representatives observed one 5 gallon bucket of used oil sitting on a wall near the steps in the tank farm area. The bucket was not labeled with the words “Used Oil;” a violation of § 279.22(c)(1).

On April 4, 2011, Department representatives observed two 55 gallon drums of oily debris, in the small truck unloading area, that had been removed from the strainers. These containers were not labeled with the words “Used Oil;” a violation of § 279.22(c)(1).

9. Section 279.22(d) of DRGHW states:

*“(d) Response to releases. Upon detection of a release of used oil to the environment that is not subject to the requirements of the **Delaware Regulations Governing Underground Storage Tanks (UST)** and which has occurred after the effective date of Delaware’s recycled used oil management program, a generator must perform the following cleanup steps:*

- (1) Stop the release;*
- (2) Contain the released used oil;*
- (3) Clean up and manage properly the released used oil and other materials;*
- (4) If necessary, repair or replace any leaking used oil storage containers or tanks prior to returning them to service.”*

On April 4, 2011, Department representatives observed an accumulation of used oil on the asphalt adjacent to the drum accumulation area underneath the fill tubes used to pump used oil out of the black consolidation bins. On August 22, 2011, Department representatives observed an accumulation of used oil on the asphalt in the drum accumulation area. Later during the assessment, Department representatives observed Respondent’s employee transferring drums of used oil filters into a large black consolidation bin. The equipment operator emptied the contents of the drum and began to

back away from the consolidation bin while the drum was still upside-down, allowing used oil to spill on the ground. Failure to clean up a spill of used oil is a violation of § 279.22(d).

10. Conditions 3.7 through 3.7.7 of Permit: APC-92/0432-OPERATION(Amendment 6)(SM)-H-503 state:

“The facility shall accept only materials meeting the classifications specified below. The facility is prohibited from accepting materials meeting the definition of Hazardous Waste as identified within the provisions of ‘Delaware Regulations Governing Hazardous Waste’.

- 3.7.1 *Used or unused automotive crankcase and lubricating oils obtained from vehicle service and gasoline stations, household ‘Do-it-Yourself’ used oil generators and collection agencies (as defined in 40 Code of Regulations Part 279), truck terminals, and garages.*
- 3.7.2 *Tank bottoms, waste fuel oils (ASTM Numbers 1 through 6), waste diesel fuel, waste gasoline, waste kerosene, and waste aviation fuel generated as a result of storage tank testing, cleaning, or replacement of residential and commercial fuel oil storage tanks.*
- 3.7.3 *Tank bottoms, waste fuel oils (ASTM Numbers 1 through 6), waste diesel fuel, waste gasoline, waste kerosene, and waste aviation fuel generated as a result of truck tank trailer, transport vehicles, or other mobile vessels clean-outs, including oily ballast water from product transport units of boats, barges, ships or other vessels.*
- 3.7.4 *Used or unused petroleum based metal working oils, turbine lubricating oils, diesel lubricating oils, and quenching oils that do not exceed 1,000 parts per million halogen content unless the presumptions of mixing with RCRA waste is rebutted.*
- 3.7.5 *Used or unused petroleum based heat transfer oils (that do not contain polychlorinated biphenyls [PCB’s] generated as a result of draining, cleaning, or disposal heat transfer systems.*
- 3.7.6 *Sludge bottoms generated from the processing, blending, and treatment of used oil in a used oil processing/refining facility (as defined in Delaware Regulations Part 279.11).*
- 3.7.7 *Liquid phase materials resulting from remedial activity occurring as a result of spills or releases of the above listed petroleum based oils (Condition 3.7.1 through 3.7.6) to the land or water surface.*

Condition 4.12 of Permit: APC-92/0432-OPERATION(Amendment 6)(SM)-H-503 states in part:

“The company shall monitor/test all incoming raw feed materials to ensure that it meets the classifications for acceptability as per Condition 3.7.1 through 3.7.7. If the material does not meet any of the classifications for acceptability, addressed under condition 3.7.1 through 3.7.7, the company must not accept this material for processing...”

On April 4, 2011 and August 22, 2011, Department representatives observed a 5 gallon red, poly safety can in the on-site laboratory containing waste from the analytical method used to quantify the water fraction in used oil samples. According to information supplied by Respondent’s representative, the process involves first mixing oil with IsoPar E Fluid and then the mixture is distilled. According to the MSDS supplied by Respondent’s representative, IsoPar E Fluid has a flashpoint of 45°F. Because the flashpoint is less than 140°F, demonstrating ignitability characteristics, the IsoPar E and water coming off the top of the distillation unit is a hazardous waste, with the waste code D001. Mixing a hazardous waste with any other waste (the oil) renders the entire mixture a hazardous waste per § 279.10(b)(2) of DRGHW. According to information supplied by Respondent’s representative, this waste stream is processed in the on-site used oil recycling operations. The fact that this waste is a hazardous waste, coupled with the fact that it does not meet one of the classifications listed in permit conditions 3.7.1 through 3.7.7, indicates the waste is not acceptable for processing in the facility’s used oil recycling process; a violation of conditions 3.7 through 3.7.7 and 4.12 of **Permit: APC-92/0432-OPERATION(Amendment 6)(SM)-H-503**.

Section 260.10 of DRGHW states:

“‘Used Oil’ means any oil that has been refined from crude oil, or any synthetic oil, that has been used and as a result of such use is contaminated by physical or chemical impurities.”

On April 4, 2011 and August 22, 2011, Department representatives observed a 5 gallon poly container attached to an ICP Spectrometer in the lab. The container was labeled “Used Oil” and Respondent’s representatives stated that the contents of the container go to the on-site used oil recycling operations. According to documentation provided to the Department by Respondent in an April 18 response letter, what the 5 gallon poly container attached to the ICP Spectrometer actually contained is a solvent called Exxsol D80 Fluid. Exxsol D80 Fluid is hydrotreated light distillates (petroleum), CAS#64724-47-8. The MSDS for this fluid states that the intended use is as a solvent. This waste is a solvent that does not meet the definition of used oil pursuant to § 260.10 of DRGHW and does not fall into one of the classifications listed in permit conditions 3.7.1 through 3.7.7, cited above. Consequently, when Respondent introduces the waste Exxsol D80 Fluid into the used oil process, it violates conditions 3.7 through 3.7.7 of **Permit: APC-92/0432-OPERATION(Amendment 6)(SM)-H-503**.

Additionally, on April 4, 2011 and August 22, 2011, Department representatives observed two 40 gallon drums of light end distillates and oily water in the small truck unloading area. Respondent's representatives stated that this waste is also placed in the onsite used oil recycling process. This waste does not meet the definition of used oil pursuant to § 260.10 of DRGHW and does not meet one of the classifications listed in permit conditions 3.7.1 through 3.7.7. Consequently, when Respondent introduces the light end distillates and oily water waste into the used oil process, it violates conditions 3.7 through 3.7.7 and 4.12 of Permit: APC-92/0432-OPERATION(Amendment 6)(SM)-H-503.

11. Section 122.1(c) of DRGHW states:

"Scope of the hazardous waste permit requirement. DNREC requires a permit for the 'treatment', 'storage', and 'disposal' of any 'hazardous waste' as identified or listed in Part 261."

During the assessments on April 4, 2011 and August 22, 2011, Department representatives observed a 5 gallon red, poly safety can in the on-site laboratory, containing waste from the analytical method used to quantify the water fraction in used oil samples. According to information supplied by Respondent's representative, the process involves first mixing oil with IsoPar E Fluid and then the mixture is distilled. According to the MSDS supplied by Respondent's representative, IsoPar E Fluid has a flashpoint of 45°F. Because the flashpoint is less than 140°F, demonstrating ignitability characteristics, the IsoPar E and water coming off the top of the distillation unit is a hazardous waste, with the waste code D001. Mixing a hazardous waste with any other waste (the oil) renders the entire mixture a hazardous waste. According to information supplied by Respondent's representative, this waste stream is processed in the on-site used oil recycling operations. By processing the waste in its on-site used oil recycling process, Respondent treated and disposed of hazardous waste without a permit, a violation of § 122.1(c) of DRGHW.

On April 4, 2011 and August 22, 2011, Department representatives observed two 40 gallon drums of light end distillates and oily water located in the small truck unloading area. On April 4, one of the drums of light end distillates was labeled "Used Oil" and the other drum was not labeled. On August 22, neither of the drums was labeled. Respondent's representative stated that the facility manages the contents of the light end distillate drums as used oil on-site. Respondent's response to the NOV confirms this statement. Based on the flashpoint of the petroleum distillate samples taken by Department representatives on April 8, 2011, the Department concludes the contents of these two drums are hazardous waste for ignitability, carrying the D001 waste code. By transferring the contents of the light end distillate drums to the used oil recycling process, Respondent operated a hazardous waste treatment, storage, and disposal facility without a permit, a violation of §122.1(c).

Based on the compliance assessments, the Department determined Respondent operates a parts washer solvent program in violation of state and federal hazardous waste laws. Respondent collects used parts washer solvent from various customers throughout the Delmarva region. During the April 4, 2011 compliance assessment and in a subsequent electronic mail dated April 5, 2011, Respondent's representative indicated the used parts washer solvent is collected and stored in a box trailer at IPC's Wilmington, Delaware location. When the box trailer is full, information provided by Respondent's representative indicated the trailer and its contents are transported to Rockville, Virginia where the solvent is reclaimed via distillation. Because the parts washer solvent requires processing prior to reuse, the solvent is considered a solid waste requiring a hazardous waste determination. Further, data obtained from the Department's April 8, 2011 sampling reveal the parts washer solvent has a flashpoint less than 140°F, demonstrating ignitability characteristics, thus rendering the parts washer solvent a hazardous waste with a D001 waste code. Therefore, Respondent accepted hazardous waste for storage without a permit, a violation of § 122.1(c).

The Department notified Respondent of this violation in NOV No. 11-HW-19. Respondent indicated in its August 17, 2011 response that the used parts washer solvent is not a waste, but rather a product which Respondent sells for profit; however Respondent did not address its earlier contradictory statements that indicate the parts washer solvent is sent to Rockville, Virginia to be distilled. The response provides an approval letter issued by the Department on January 23, 2006 relating to the use of the parts washer solvent as a product. The approval letter states in part:

"According to the information submitted, it appears that the use of USFilter's⁶ used mineral spirits (from parts washers) in the manufacture of roof-lapping compounds would be a legitimate use of the material as an effective substitute for virgin mineral spirits, a commercial chemical product."

However, the Department's approval was based on information submitted by Respondent that reuse of USFilter's used mineral spirits from its parts washers would be a legitimate use of the material as an effective substitute for virgin mineral spirits and that the materials to be reused did not contain any chemical contaminants or characteristics of concern.

The approval also goes on to note the following:

"Please be advised that a change in the manner in which the mineral spirits are used or reused, or a change in its chemical characteristics can impact the regulatory status of this material rendering it subject to the management and disposal requirements of the Delaware Regulations Governing Hazardous Waste."

⁶ USFilter is the previous owner of International Petroleum Corporation of Delaware.

During its April 8, 2011, compliance assessment, Department representatives obtained samples of the used parts washer solvent stored at Respondent's facility. Testing demonstrates that the used parts washer solvent was contaminated with significant concentrations of chemicals including, but not limited to: perchloroethylene, trichloroethylene, acetone, and methylene chloride. These compounds were not present in detectable levels in the data submitted to the Department by USFilter, on which the approval is based, and the presence of these materials renders it unfit for use as virgin mineral spirits per the January 23, 2006 approval and renders it subject to management and disposal as a hazardous waste.

Additionally, information provided by the Respondent's representative via letter on January 3, 2003, on which the Department's January 23, 2006 approval is based, provides the following description of USFilter's Product Acceptance and Analytical Plan ("the Plan"):

"Prior to unloading drummed containers of material into the bulk storage or transport vehicle, the load's paperwork is verified. Each drum is labeled and marked to identify the original generator and each load is checked against a product fingerprint to ensure the material to be bulked meets, at a minimum, the requirements of the Buyer/End User. The fingerprint analysis includes noting unusual odors and color, or obvious contamination (e.g. paint waste, garbage, unusual solids content or other similar contamination.) Finally as part of the fingerprint analysis, prior to acceptance, we will note if there has been an increased volume from that supplied and if there are separate layers (most notably to determine if water has been added). Prior to transferring individual loads to the bulk tank, up to a maximum 10-drum composite sample will be taken and a specific gravity analysis noted and compared against the normal range for a 'Rule 66' solvent. The results are noted on a daily log and those records are to be kept for three years. Non-conforming loads are set aside for re-characterization and, if rejected, returned to the original generator. A chain of custody is maintained for each rejected load and maintained for at least three years."

In response to concerns from the Department, Respondent's representative submitted a letter dated May 11, 2005, which states in part:

"Furthermore, as part of our 'Plan' we use a 'sniffer' probe sensitive to traces of halogen bearing gas, (halogen leak detector). USFilter routinely uses these meters in our Used Oil Recycling Program. Specifically, we use these meters to test the headspace of each drum of used solvent prior to pick-up. USFilter would not consider a positive response by a halogen leak detector ground for refusal of the solvent into the program. A detection of halogenated compounds would be followed up by a review of the generator's process. This review, coupled with the fingerprinting as described in the January 3, 2003 letter, would form the basis for acceptance or rejection as a substitute commercial chemical product."

During the compliance assessments, Respondent's representatives were unable to identify the generator of each container of used parts washer solvent. Given the inability to determine the original generator of the parts washer solvent and the Department's data indicating the parts washer solvent contains contaminants not present in the original approval, including, but not limited to trichloroethylene, perchloroethylene and methylene chloride, which will be detected by the halogen meter referenced above, the Department concludes Respondent is not operating its used parts washer solvent program in accordance with the Department's January 23, 2006 approval. As such, the used parts washer solvent is subject to DRGHW and Respondent is storing hazardous waste without a permit; a violation of § 122.1(c).

12. Section 279.54(d)(2) of DRGHW states:

(d) Secondary containment for existing aboveground tanks. Existing aboveground tanks used to store or process used oil at processing and re-refining facilities must be equipped with a secondary containment system.

"(2) The entire containment system, including walls and floor, must be sufficiently impervious to used oil to prevent any used oil released into the containment system from migrating out of the system to the soil, groundwater, or surface water."

On April 4, 2011, April 8, 2011, and August 22, 2011, Department representatives observed gaps between the concrete pad and the asphalt surrounding the pad that is used for secondary containment of the tanks. Department representatives also observed an area where the pad was damaged and the asphalt was crumbled; these are violations of § 279.54(d)(2).

13. Section 279.10(b)(2) of DRGHW states:

"(b) Mixtures of used oil and hazardous waste.

(2) Characteristic hazardous waste. Mixing of used oil and hazardous waste that solely exhibit one or more hazardous waste characteristics identified in Subpart C of Part 261 are prohibited. Such incidental mixtures are subject to regulation as hazardous waste under Parts 260 through 266, 268, 122 and 124 of these regulations."

On April 4, 2011 and August 22, 2011, Department representatives observed two 40 gallon drums of light end distillates in the small truck unloading area (referenced in numbers 7, 10 and 11, above). Respondent's representative stated that they also pump any oily water remaining in the pump or hosing from the unloading of the previously emptied truck into the drum with light end distillates. Mixing used oil with a characteristic hazardous waste (the D001 light end distillates) is a violation of § 279.10(b)(2).

14. Section 273.14(e) of DRGHW states:

“A small quantity handler⁷ of universal waste must label or mark the universal waste to identify the type of universal waste as specified below:

(e) Each lamp or a container or package in which such lamps are contained must be labeled or marked clearly with one of the following phrases: ‘Universal Waste—Lamp(s)’, or ‘Waste Lamp(s)’, or ‘Used Lamp(s)’.”

On April 4, 2011, Department representatives observed one 4 foot fiber tube containing silver-tipped fluorescent lamps. The container was not labeled; a violation of § 273.14(e).

15. Section 273.15 (c) of DRGHW states in part:

“(c) A small quantity handler of universal waste who accumulates universal waste must be able to demonstrate the length of time that the universal waste has been accumulated from the date it becomes a waste or is received.”

On April 4, 2011, Department representatives observed that the container of lamps referenced in number 14, above, was not marked with an accumulation start date; a violation of § 273.15(c).

16. Section 262.12 (d) of DRGHW states:

“(d) A generator must submit a subsequent ‘RCRA Subtitle C Site Identification Form’, EPA Form 8700-12 whenever there is a change in name, mailing address, contact person, contact address, telephone number, ownership, type of regulated waste activity (for example, generator status), or changes in the description of regulated wastes managed or permanently ceases the regulated waste activity. This subsequent notification must be submitted to the DNREC Secretary no less than 10 days prior to implementation of the change(s).”

On April 4, 2011, Department representatives observed that the most recent RCRA Subtitle C Site Identification Form submitted to the SHWMS listed Tim Ford as the site contact. At the time of the April 4, 2011 assessment, Mr. Ford had not been employed at the facility for approximately six months. Failure to submit an updated notification form is a violation of § 262.12(d).

17. Section 262.20(a)(1) of DRGHW states:

“(a)(1) A generator who transports, or offers for transportation, hazardous waste for off site treatment, storage, or disposal, or a treatment, storage, and disposal

⁷ Respondent is a small quantity handler of ‘universal waste’, not to be confused with Respondent’s status as a large quantity generator of ‘hazardous waste.’

facility who offers for transport a rejected hazardous waste load, must prepare a Manifest (U.S. OMB Control Number 2050 0039) on EPA form 8700 22 and, if necessary EPA form 8700 22A, according to the instructions included in the appendix to this part."

Appendix to Part 262, I. Instructions for Generators, Item 13. Waste Codes states:

"Enter up to six federal and state waste codes to describe each waste stream identified in Item 9b. State waste codes that are not redundant with federal codes must be entered here, in addition to the federal waste codes which are most representative of the properties of the waste."

On April 4, 2011, Department representatives identified three manifests that had incorrect or missing hazardous waste codes. Manifest 005395666JJK signed by the generator on December 23, 2008 reflects a shipment of hazardous waste solids contaminated with benzene and tetrachloroethene. The only hazardous waste code listed on the manifest is D018 (benzene). The manifest is missing the D039 hazardous waste code for tetrachloroethene. Manifest 005395678JJK signed by the generator on December 30, 2008 reflects a shipment of hazardous waste liquid contaminated with benzene and tetrachloroethene. The only hazardous waste code listed on the manifest is D018 (benzene). The manifest is missing the D039 hazardous waste code for tetrachloroethene. Manifest 005395668JJK reflects a shipment of hazardous waste liquid contaminated with trichloroethylene and benzene. The hazardous waste codes listed on the manifest are D018 (benzene) and D039 (tetrachloroethene). The correct hazardous waste code for trichloroethylene is D040. The three manifest discrepancies are a violation of § 262.20(a)(1).

18. Section 262.41(a) of DRGHW states:

"(a) A generator must prepare and submit a single copy of an Annual Report to the State of Delaware, Department of Natural Resources and Environmental Control by no later than March 1 for the preceding calendar year. The Annual Report must be submitted on a form prescribed by the Department according to the instructions on the form and must cover generator activities during the previous year. The Annual Report must include the following information:"

On April 4, 2011, Department representatives observed that Respondent had not submitted its 2010 Annual Hazardous Waste Report to the Department. A Department representative previously called and spoke with Respondent's representative on three separate occasions between March 1 and April 4, 2011, to notify the facility that its report was late. On April 4, 2011, the Department hand-delivered a Letter of Warning to Respondent, during the compliance assessment, requiring Respondent to submit the annual report within 30 days, or no later than May 4, 2011. The Department did not receive a report from Respondent by the May 4th deadline. On August 19, 2011,

Respondent submitted a report to the Department approximately 5 months after their original required deadline of March 1. Upon reviewing the report, the Department determined that Respondent not only failed to submit the report in a timely fashion, but the majority of required information was absent; this is a violation of § 262.41(a).

19. Section 265.54(d) of DRGHW states:

“The contingency plan must be reviewed, and immediately amended, if necessary, whenever:...

(d) The list of emergency coordinators changes;...”

On April 4, 2011, Department representatives observed at least five separate lists of emergency coordinators in the facility’s two contingency plans that were each slightly different and contained different information. Each list included David Gamble as the primary emergency coordinator and Timothy Ford and Bill Edelin as the secondary emergency coordinators. Tim Ford and Bill Edelin are no longer employed by the facility. Tim Ford had not been employed at the facility for approximately 6 months at the time of the April 4, 2011 compliance assessment. Failure to amend the contingency plan when the list of emergency coordinators has changed is a violation of § 265.54(d).

20. Section 279.52(b)(4)(iv) of DRGHW states in part:

“(b) Contingency plan and emergency procedures. Owners and operators of used oil processing and re-refining facilities must comply with the following requirements:

(4) Amendment of contingency plan. The contingency plan must be reviewed, and immediately amended, if necessary, whenever:...

(iv) The list of emergency coordinators changes.”

On April 4, 2011, Department representatives observed at least five separate lists of emergency coordinators in the facility’s two contingency plans that were each slightly different and contained different information. Each list included David Gamble as the primary emergency coordinator and Timothy Ford and Bill Edelin as the secondary emergency coordinators. Tim Ford and Bill Edelin are no longer employed by the facility. Tim Ford had not been employed at the facility for approximately 6 months at the time of the compliance assessment. Failure to amend the contingency plan when the list of emergency coordinators has changed is a violation of § 279.52(b)(4)(iv).

21. Section 265.37(a) of DRGHW states:

“(a) The owner or operator must attempt in writing, with documentation of receipt, to make the following arrangements, as appropriate for the type of waste handled at his facility and potential need for the services of these organizations:

- (1) Arrangements to familiarize police, fire departments, and emergency responses teams with the layout of the facility, properties of hazardous waste handled at the facility and associated hazards, places where facility personnel would normally be working, entrances to roads inside the facility, and possible evacuation routes;*
- (2) Where more than one police and fire department might respond to an emergency, agreements designating primary emergency authority to specific police and a specific fire department, and agreements with any others to provide support to the primary emergency authority;*
- (3) Agreements with State emergency response teams, emergency response contractors, and equipment suppliers; and*
- (4) Arrangements to familiarize local hospitals with the properties of hazardous waste handled at the facility and the types of injuries or illnesses which could result from fires, explosions, or releases at the facility.”*

On April 4, 2011, Respondent was unable to provide Department representatives with a contingency plan that provided for arrangements with local authorities regarding hazardous waste generated at the facility; a violation of § 265.37(a).

22. Section 279.52(a)(6)(i) of DRGHW states:

“(a) Preparedness and prevention. Owners and operators of used oil processing and re-refining facilities must comply with the following requirements:

- (6) Arrangements with local authorities.*
 - (i) The owner or operator must attempt to make the following arrangements, as appropriate for the type of used oil handled at the facility and the potential need for the services of these organizations:*
 - (A) Arrangements to familiarize police, fire departments, and emergency responses teams with the layout of the facility, properties of hazardous waste handled at the facility and associated hazards, places where facility personnel would normally be working, entrances to roads inside the facility, and possible evacuation routes;*

(B) Where more than one police and fire department might respond to an emergency, agreements designating primary emergency authority to specific police and a specific fire department, and agreements with any others to provide support to the primary emergency authority;

(C) Agreements with State emergency response teams, emergency response contractors, and equipment suppliers; and

(D) Arrangements to familiarize local hospitals with the properties of hazardous waste handled at the facility and the types of injuries or illnesses which could result from fires, explosions, or releases at the facility."

On April 4, 2011, Respondent was unable to provide Department representatives with a contingency plan that provided for arrangements with local authorities regarding used oil accepted and processed at the site; a violation of § 279.52(a)(6)(i).

23. Section 265.53(b) of DRGHW states:

"A printed copy of the contingency plan and all provisions to the plan must be:

(b) Submitted to all local police departments, fire departments, hospitals, and State and local emergency response teams that may be called upon to provide emergency services. Documentation of written submission and receipt must be maintained at the facility."

On April 4, 2011, Respondent was unable to demonstrate that a copy of the facility's contingency plan had been submitted to the local authorities; a violation of § 265.53(b).

24. Section 279.52(b)(3) of DRGHW states:

"(b) Contingency plan and emergency procedures. Owners and operators of used oil processing and re-refining facilities must comply with the following requirements:

(3) Copies of contingency plan. A copy of the contingency plan and all revisions to the plan must be:

(ii) Submitted to all local police departments, fire departments, hospitals, and State and local emergency response teams that may be called upon to provide emergency services."

On April 4, 2011, Respondent was unable to demonstrate that a copy of the facility's contingency plan had been submitted to the local authorities; a violation of § 279.52(b)(3).

25. Section 265.16(d) of DRGHW states:

“(d) The owner or operator must maintain the following documents and records at the facility:

(1) The job title for each position at the facility related to hazardous waste management, and the name of the employee filling each job;”

On April 4, 2011, Respondent’s representative provided a list of employees to Department representatives, including the job titles of those who handle hazardous waste. However, two employees, Brian Mast and David Patterson were not included on the list; these employees handle hazardous waste. Additionally, the list included the name of employee Brett Miller, indicating that his job title is that of Transportation Manager. However, the most recently received RCRA Subtitle C Identification Form received by the Department was signed by Mr. Miller and indicates that his title is that of Facilities Manager. Failure to maintain accurate job titles for each position at the facility related to hazardous waste is a violation of § 265.16(d).

26. Section 265.16(d)(2) of DRGHW states:

“(d) The owner or operator must maintain the following documents and records at the facility:

(2) A written job description for each position listed under paragraph (d)(1) of this section. This description may be consistent in its degree of specificity with description for other similar positions in the same company location or bargaining unit, but must include the requisite skill, education, or other qualification, and duties of facility personnel assigned to each position;”

On April 4, 2011, Respondent was unable to provide job descriptions for employees Brian Mast and David Patterson; a violation of § 265.16(d)(2).

27. Section 265.16(c) of DRGHW states:

“(c) Facility personnel must take part in an annual review of the initial training required in paragraph (a) of this section.”

On April 4, 2011, Respondent’s representative provided training records to Department representatives, demonstrating that employees Tim Ford, Rick Mitchell, and Brett Miller (managers) had received annual hazardous waste training in May 2010. However, Respondent could not provide documentation demonstrating that these managers had received training in 2008 or 2009. Respondent was also unable to provide documentation demonstrating that any of its employees, who are not managers, received hazardous waste

training in 2008, 2009, or 2010. These employees include Peter Van Tine, Bobbi Melvin, Ryan George, Fred Lynch, Elias Maldonado, Wayne Johnson, Brian Mast, David Patterson, Jon Reed, and Matt Palese. Additionally, Respondent was also unable to provide documentation demonstrating that its emergency coordinator (Dave Gamble) had received training. These are all violations of § 265.16(c).

28. Section 279.56(a)(1-4) of DRGHW states:

“(a) Acceptance. Used oil processors/re-refiners must keep a record of each used oil shipment accepted for processing/re-refining. These records may take the form of a log, invoice, manifest, bill of lading or other shipping documents. Records for each shipment must include the following information:

- (1) The name and address of the transporter who delivered the used oil to the processor/re-refiner;*
- (2) The name and address of the generator or processor/re-refiner from whom the used oil was sent for processing/re-refining;*
- (3) The EPA identification number of the transporter who delivered the used oil to the processor/re-refiner;*
- (4) The EPA identification number (if applicable) of the generator or processor/re-refiner from whom the used oil was sent for processing/re-refining; ...”*

On April 4, 2011, Respondent provided records to Department representatives, documenting a shipment of oily water transferred from FCC Environmental's Bayonne, NJ facility to its Wilmington, Delaware facility. The records, Service Order number 3623072 and corresponding Receiving Report number 000008, do not include the generator's address and EPA identification number, nor do they include the transporter's address and EPA identification number. On August 22, 2011 Respondent provided records to Department representatives documenting two incoming shipments (Receiving Reports 003036 and 003038). Neither document included the generator's address or the transporter's address or EPA identification number; though the Respondent's response to the NOV indicated actions had been taken to correct the issue. These are violations of § 279.22(d).

29. Condition 5.1 of Permit: APC-92/0432-OPERATION(Amendment 6)(SM)-H-503 states:

“The company shall maintain records of the following:

5.12 All maintenance conducted on the perimeter fence detailing routine and non-routine maintenance performed and the results of the monthly inspections.”

On April 4, 2011, Respondent was unable to provide Department representatives with recordkeeping of maintenance performed on the facility's perimeter fence, nor was Respondent able to provide results of monthly inspections; a violation of condition 5.12 of **Permit: APC-92/0432-OPERATION(Amendment 6)(SM)-H-503.**

30. Section 268.7(a)(8) of DRGHW states in part:

“(a) Requirements for generators:

(8) Generators must retain on-site a copy of all notices, certifications, waste analysis data, and other documentation produced pursuant to this section for at least three years from the date that the waste that is the subject of such documentation was last sent to on-site or off-site treatment, storage, or disposal.”

On April 4, 2011, Department representatives discovered that Respondent did not maintain copies of land disposal restriction forms for hazardous waste streams shipped on hazardous waste manifest numbers 005395668JJK, 000096094VES, 000388702VES, and 000337197VES; a violation of § 268.7(a)(8).

31. Section 264.173(b) of DRGHW states:

“(b) A container holding hazardous waste must not be opened, handled, or stored in a manner which may rupture the container or cause it to leak.”

On April 8, 2011, Department representatives observed that drum H22 was leaking in the Part Washer Solvent Trailer. The drum contained used parts washer solvent. Based on the results of the sampling, the Department determined the parts washer solvent is a hazardous waste (see violation number 11). At 11:42 a.m., Department representatives notified Respondent's representative that the drum was leaking. Again, at 1:52 p.m., Department representatives notified two of Respondent's representatives that the drum was leaking. When Department representatives departed the facility at approximately 3:00 p.m., the leaking drum had not yet been remedied; a violation of § 264.173(b).

32. Section 264.171 of DRGHW states:

“If a container holding hazardous waste is not in good condition (e.g., severe rusting, apparent structural defects) or if it begins to leak, the owner or operator must transfer the hazardous waste from this container or manage the waste in some other way that complies with the requirements of this part.”

On April 8, 2011, Department representatives observed that drum H22 was leaking in the Part Washer Solvent Trailer. The drum contained used parts washer solvent. Based on the results of the sampling, the Department determined the parts washer solvent is a hazardous waste (see violation number 11). At 11:42 a.m., Department representatives notified Respondent's representative that the drum was leaking. Again, at 1:52 p.m., Department representatives notified two of Respondent's representatives that the drum was leaking. When Department representatives departed the facility at approximately 3:00 p.m., the leaking drum had not yet been remedied; a violation of § 264.171.

33. Section 279.54(b)(1) of DRGHW states:

“(b) Condition of Units. Containers and aboveground tanks used to store or process used oil at processing and re-refining facilities must be:

(1) In good condition (no severe rusting, apparent structural defects or deterioration);”

On August 22, 2011, Department representatives observed one (1) drum of used oil filters that had been punctured by a fork lift. Not storing used oil in a structurally sound container is a violation of § 279.54(b)(1).

34. Section 279.54(c) of DRGHW states:

“(c) Secondary containment for containers. Containers used to store or process used oil at processing and re-refining facilities must be equipped with a secondary containment system.

(1) The secondary containment system must consist of, at a minimum:

- (i) Dikes, berms or retaining walls; and*
- (ii) A floor. The floor must cover the entire area within the dike, berm, or retaining wall; or*
- (iii) An equivalent secondary containment system.*

(2) The entire containment system, including walls and floor, must be sufficiently impervious to used oil to prevent any used oil released into the containment system from migrating out of the system to the soil, groundwater, or surface water.”

On August 22, 2011, Department representatives observed that approximately 50 feet of curbing in the southwest corner of the facility had been removed. The 6 inch curbing was serving as the secondary containment for used oil containers. Removing the curbing is a violation of § 279.54(c).

35. Conditions 1.4 and 1.4.1 of Permit: APC-92/0432-OPERATION(Amendment 6)(SM)-H-503 state:

“1.4 The Company shall maintain a six (6) inch curb inside the facility boundaries to provide additional spill containment beyond that of the existing secondary containment. The curb shall be maintained:

1.4.1 along the south side of the facility running along the edge of the road in a east/west direction connecting to the south edge of the eastern secondary containment berm and running west to a point behind the existing garage...”

On August 22, 2011, Department representatives observed that approximately 50 feet of curbing in the southwest corner of the facility had been removed. The 6 inch curbing was serving as the secondary containment for used oil containers. Removing the curbing is a violation of Condition 1.4 of Permit: **APC-92/0432-OPERATION(Amendment 6)(SM)-H-503.**

36. Section 262.40(a) of DRGHW states:

“(a) A generator must keep a copy of each manifest signed in accordance with §262.23(a) for three years or until he receives a signed copy from the designated facility which received the waste. This signed copy must be retained as a record for at least three years from the date the waste was accepted by the initial transporter.”

On August 22, 2011, Department representatives requested copies of hazardous waste manifests reflecting shipments of hazardous waste in 2010. Respondent’s representative stated that Respondent had not shipped any hazardous waste off-site in 2010. However, records demonstrating hazardous waste shipments in 2010 were previously provided to Department representatives during the April 4, 2011 compliance assessment. Additionally, Department representatives have a record of at least two (2) shipments of hazardous waste in 2010 (Manifests 000388702VES and 000337197VES). Not maintaining a copy of hazardous waste manifests is a violation of §262.40(a).

37. Section 265.52(d) of DRGHW states:

(d) The plan must list names, addresses (office and home), and phone numbers (office and home) of all persons qualified to act as emergency coordinator (see §265.55), and this list must be kept up to date. Where more than one person is listed, one must be named as primary emergency coordinator and others must be listed in the order in which they will assume responsibility as alternates.

On August 22, 2011, Respondent was unable to provide a hazardous waste contingency plan that provided home addresses of the emergency coordinators; a violation of §265.52(d).

38. Section 279.52(b)(2)(iv) of DRGHW states:

(b) Contingency plan and emergency procedures. Owners and operators of used oil processing and re-refining facilities must comply with the following requirements:

(2) Content of contingency plan.

(iv) The plan must list names, addresses, and phone numbers (office and home) of all persons qualified to act as emergency coordinator (see paragraph (b)(5) of this section), and this list must be kept up to date. Where more than one person is listed, one must be named as primary emergency coordinator and others must be listed in the order in which they will assume responsibility as alternates.

On August 22, 2011, Respondent was unable to provide a used oil contingency plan that provided home addresses of the emergency coordinators; a violation of §279.52(b)(2)(iv).

39. Section 262.20(a)(1) of DRGHW states:

“(a)(1) A generator who transports, or offers for transportation, hazardous waste for off site treatment, storage, or disposal, or a treatment, storage, and disposal facility who offers for transport a rejected hazardous waste load, must prepare a Manifest (U.S. OMB Control Number 2050 0039) on EPA Form 8700 22 and, if necessary EPA Form 8700 22A, according to the instructions included in the appendix to this part.”

Appendix to Part 262, Instructions for Generators, Item 1. Generator's U.S. EPA Identification Number states:

“Enter the generator's U.S. EPA twelve digit identification number, or the State generator identification number if the generator site does not have an EPA identification number.”

In its August 17, 2011 response to the Department's Notice of Violation No. 11-HW-19, Respondent provided Manifest 007661473JJK to demonstrate IPC had shipped fluorescent lamps off-site. The manifest also documents a shipment of hazardous waste aerosol cans and non-regulated computer equipment. However, in Item 1: Generator ID Number, IPC provided its EPA identification number as “CESQG.” IPC is not a conditionally exempt small quantity generator of hazardous waste, but is rather a large quantity generator of hazardous waste, with DED984073692 assigned as its EPA identification number. Not providing its EPA identification number on the manifest is a violation of DRGHW § 262.20(a)(1).

CONCLUSIONS

Based on the foregoing, the Department has concluded that International Petroleum Corporation of Delaware has violated the above cited regulatory provisions and permit conditions.

ORDER

Respondent shall submit the following documentation within 15 calendar days:

1. Documentation demonstrating compliance with the requirement to maintain closed containers of used oil, unless used oil is being added or removed from the container, as set forth in DRGHW §279.52(a)(1) and DRGHW §279.22(b)(3). This documentation shall include: (1) photographs showing all containers of used oil in the drum accumulation area are closed and (2) a procedure that will be implemented to ensure continued compliance with these regulations.
2. Documentation demonstrating compliance with the requirement to maintain adequate aisle space, as set forth in DRGHW 279.52(a)(5). This documentation shall include: (1) photographs showing the containers in the drum accumulation area are stored with adequate aisle space and (2) a procedure that will be implemented to ensure continued compliance with this requirement.
3. Documentation demonstrating compliance with the requirement to ship all hazardous waste on a Uniform Hazardous Waste Manifest, as set forth in DRGHW §262.20(a)(1) and to ship hazardous waste to a permitted treatment, storage, and disposal facility, as set forth in §262.12(c). This documentation shall include a procedure to be implemented to ensure that all aerosol cans generated on-site will be collected and managed as hazardous waste.
4. Written confirmation that the waste Isopar E/water mixture will be managed as hazardous waste and will not be processed in the facility's on-site used oil recycling process.
5. Written confirmation that the light end distillates that are placed in drums and used as a solvent to clean equipment will be managed as a hazardous waste and will not be processed in the facility's on-site used oil recycling process.
6. Documentation demonstrating compliance with the requirement to clean up used oil spills upon detection, as set forth in DRGHW §279.22(d). This documentation shall include a procedure that will be implemented to ensure all spills of used oil are remedied immediately upon detection.

7. Written confirmation that the spent parts washer solvent generated in Delaware will be managed as a hazardous waste, including labeling, transportation, and manifesting requirements.
8. Documentation demonstrating compliance with the requirement to maintain impervious secondary containment for used oil tanks, as set forth in DRGHW §279.54(d)(2). This documentation shall include: (1) photographs documenting that the joints between the concrete pad and the asphalt area have been epoxy-coated; (2) photographs documenting all cracked or damaged areas of the containment system have been repaired; and (3) a procedure to be implemented to regularly inspect and repair damage to the secondary containment system.
9. Documentation demonstrating compliance with the prohibition of mixing used oil with hazardous waste, as set forth in DRGHW §279.10(b)(2). This documentation shall include: (1) a written confirmation that used oil will not be mixed with hazardous waste and (2) a procedure to be implemented describing the management of oily water remaining in pumps and hoses that was historically pumped into containers containing light end distillates.
10. Documentation demonstrating compliance with the requirement to properly apply hazardous waste codes on a Uniform Hazardous Waste Manifest, as set forth in DRGHW §262.20(a)(1) and the Appendix to Part 262, I. Instruction for Generators, Item 13. Waste Codes. IPC shall issue a letter to the generator state, designated facility, and designated facility state notifying each of the identified discrepancies on Manifests 005395666JJK, 005395678JJK, and 005395668JJK detailed in Violation Number 17.
11. Documentation demonstrating compliance with the requirement to submit an annual report detailing hazardous waste generated, as set forth in DRGHW §262.41(a). IPC shall submit a complete and accurate annual report detailing its operations with regard to hazardous waste generation in Calendar Year 2010.
12. Documentation demonstrating compliance with the requirement to maintain records of each used oil shipment received at the facility, as set forth in DRGHW §279.56(a). This documentation shall be in the form of a procedure to be implemented to ensure compliance with this requirement.
13. Documentation demonstrating compliance with the requirement to maintain records of routine and non-routine maintenance and fence repair of the perimeter fence and the results of monthly inspections of the fence, as set forth in Permit condition 5.12 of the above-referenced air permit. This documentation shall be in the form of a procedure to be implemented to ensure compliance with this requirement.
14. Documentation demonstrating compliance with the requirement to maintain a copy of land disposal restriction forms, as set forth in DRGHW §268.7(a)(8). This documentation shall include either (1) the land disposal restriction form associated with the waste

shipped on Manifest 005395668JJK or (2) a procedure to be implemented to ensure compliance with this requirement.

15. Documentation demonstrating compliance with the requirement to accumulate hazardous waste in a manner that will prevent the container from leaking, as set forth in DRGHW §264.173(b). This documentation shall be in the form of a procedure to be implemented to ensure compliance with this requirement.
16. Documentation demonstrating compliance with the requirement to transfer contents from a leaking hazardous waste container to a container in good condition, as set forth in DRGHW §264.171. This documentation shall be in the form of a procedure to be implemented to ensure compliance with this requirement. The procedure shall indicate that the transfer will occur immediately upon detection.
17. Documentation demonstrating compliance with the requirement to accumulate used oil in a container in good condition, as set forth in DRGHW §279.54(b)(1). This documentation shall be in the form of a procedure to be implemented to ensure compliance with this requirement. The procedure shall indicate contents from a damaged container will be transferred to a container in good condition immediately upon detection.
18. Documentation demonstrating compliance with the requirement to maintain secondary containment for used oil containers, as set forth in DRGHW §279.54(c), and in Condition 1.4 of the above-referenced air permit. This documentation shall include: (1) photographs documenting that the curbing in the southwest corner of the site has been repaired and (2) a procedure to be implemented to regularly inspect and repair damage to the secondary containment system.
19. Documentation demonstrating compliance with the requirement to maintain a copy of each manifest documenting a shipment of hazardous waste, as set forth in DRGHW §262.40(a). This documentation shall include: (1) copies of each manifest documenting a shipment of hazardous waste in 2010 and (2) a procedure to be implemented to ensure compliance with this requirement.
20. Documentation demonstrating compliance with the requirement to include home addresses of the emergency coordinators identified in the facility's contingency plan, as set forth in DRGHW §265.52(d) and DRGHW §279.52(b)(2)(iv). This documentation shall be in the form of an updated contingency plan reflecting the home addresses of each emergency coordinator.
21. Documentation demonstrating compliance with the requirement to include the facility's EPA identification number on all hazardous waste manifests, as set forth in DRGHW §262.20(a)(1) and the Appendix to Part 262, Instructions for Generators, Item 1. Generator's U.S. EPA Identification Number. This documentation shall include: (1) a letter to the generator state, the designated facility, and the designated facility state

notifying each of the discrepancy identified on Manifest 007661473JJK, as detailed in Violation Number 39.

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 \$55,452.00 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 \$8,318.00, 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 \$55,452.00 to pay the penalty and one check to the Department in the amount of \$8,318.00 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: Kevin P. Maloney, Deputy Attorney General, Department of Justice, Environmental Unit, 102 W. Water Street-3rd Floor, Dover, Delaware 19904.

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.

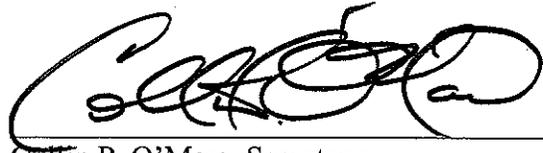
PRE-PAYMENT

Respondent may prepay the administrative penalty of \$55,452.00 and the Department's estimated costs in the amount of \$8,318.00 in the manner described in the assessment section above. 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 Karen J'Anthony at (302) 739-9403 (for SHWMS) or Paul Foster at (302) 323-4542 (for DAQ).

1/20/2012

Date



Collin P. O'Mara, Secretary

cc: Kevin P. Maloney, Deputy Attorney General
Marjorie A. Crofts, Division of Waste and Hazardous Substances Director
Ali Mirzakhali, P.E., Division of Air Quality Director
Nancy Marker, SHWMS Program Administrator
Paul Foster, P.E., DAQ Program Manager
Karen J'Anthony, SHWMS Program Manager
Everett DeWhitt, DAQ Managing Engineer
Melissa Ferree, SHWMS Engineer
Brad Klotz, DAQ Engineer
Jenny Bothell, Enforcement Coordinator
Susan Baker, Paralegal
Dawn Minor, Paralegal
SHWMS File
DAQ Dover File

15-57(6)ssb

WAIVER OF STATUTORY RIGHT TO A HEARING

International Petroleum Corporation of Delaware hereby waives its right to a hearing and its opportunity to appeal or contest this Assessment and Order and agrees to the following:

1. **International Petroleum Corporation of Delaware** will pay the administrative penalty in the amount of \$55,452.00 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 M. Satterfield, Deputy Attorney General, Department of Justice, 102 W. Water Street-3rd Floor, Dover, DE 19904; and
2. **International Petroleum Corporation of Delaware** will reimburse the Department in the amount of \$8,318.00 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 M. Satterfield, Deputy Attorney General, Department of Justice, 102 W. Water Street-3rd Floor, Dover, DE 19904.

**International Petroleum Corporation
of Delaware**

Date: _____

By: _____

Title: _____