



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. 2012-WH-0032

*PERSONALLY SERVED BY AN ENVIRONMENTAL
ENFORCEMENT OFFICER*

Issued To:

Attn: Dr. Patrick T. Harker,
President
162 The Green
University of Delaware
Newark, DE 19716

General Counsel:

Mr. Larry White
Vice President and General Counsel
124 Hullahen Hall
University of Delaware
Newark, DE 19716

Dear Dr. Harker:

The Secretary of the Department of Natural Resources and Environmental Control ("Department") has found the University of Delaware ("Respondent" or "UD") in violation of 7 Del. C. Chapters 60 and 63 and 7 DE Admin. Code 1302, Delaware's *Regulations Governing Hazardous Waste* ("DRGHW"). Accordingly, the Department is issuing this Notice of Administrative Penalty Assessment, pursuant to 7 Del. C. § 6005(b)(3).

BACKGROUND

Respondent is an educational institution that generates hazardous wastes as a result of research and maintenance activities. Respondent has campuses in Georgetown, Lewes, and Newark.

Delaware's Good Nature depends on you!

Respondent's Georgetown campus is a small quantity generator¹ of hazardous waste, Respondent's Lewes campus is a conditionally exempt small quantity² generator of hazardous waste, and Respondent's Newark campus is a large quantity generator³ of hazardous waste. Accordingly, Respondent is regulated by and subject to the requirements of DRGHW.

The Department's Solid and Hazardous Waste Management Section ("SHWMS") conducted a compliance assessment at Respondent's Georgetown campus on March 6, 2012. Information obtained during the assessment revealed six (6) violations of DRGHW.

The SHWMS conducted a compliance assessment at Respondent's Lewes campus on March 14, 2012. SHWMS representatives returned on March 15, 2012 to perform a follow-up assessment. Additionally, as it was determined waste was shipped from the Lewes campus to the Newark campus, SHWMS representatives conducted sampling of those wastes that had been transported to the Newark campus on March 16, 2012. Information obtained during the assessments revealed three (3) violations of DRGHW.

The SHWMS conducted a compliance assessment at Respondent's Newark campus on April 3, 2012. Information obtained during this assessment and the assessments at the Georgetown and Lewes campuses revealed fifteen (15) violations of DRGHW at the Newark campus.

A total of twenty-four (24) violations were identified at the three locations.

The Department issued Notice of Violation ("NOV") No. 12-HW-15, dated May 17, 2012, to Respondent on May 21, 2012, for the violations discovered at the Georgetown campus. The Department issued Notice of Violation No. 12-HW-16, dated May 17, 2012, to Respondent on May 22, 2012, for the violations discovered at the Lewes campus. The Department issued Notice of Violation No. 12-HW-17, dated May 17, 2012, to Respondent on May 22, 2012, for the violations discovered at the Newark campus. The Notices required Respondent to immediately achieve compliance and submit documentation demonstrating compliance to the Department within 30 days of receipt of the NOVs.

FINDINGS OF VIOLATIONS – GEORGETOWN CAMPUS

1. Section 279.22(c)(1) of DRGHW reads:

"Containers and aboveground tanks used to store used oil at generator facilities must be labeled or marked clearly with the words 'Used Oil.'"

¹ Generators of more than 100 kilograms (220 pounds), but less than 1,000 kilograms (2,200 pounds) of hazardous waste in any calendar month (Delaware's *Regulations Governing Hazardous Waste*, 2011).

² Generators of less than 100 kilograms (220 pounds) of hazardous waste in any calendar month (Delaware's *Regulations Governing Hazardous Waste*, 2011).

³ Generators of more than 1,000 kilograms (2,200 pounds) of hazardous waste in any calendar month (Delaware's *Regulations Governing Hazardous Waste*, 2011).

On March 6, 2012, Department representatives observed two (2) – 55 gallon drums containing used oil. Neither container was labeled as to its contents. The two containers of used oil were located on a spill containment pallet. The pallet contained a significant quantity of used oil (approximately 1/3 full) as a result of spillage while pouring used oil into the containers. As the secondary containment pallet held a significant quantity of used oil, as opposed to minor drips and spills, Department representatives considered the secondary containment pallet itself a container. The secondary containment pallet was also not labeled. These are violations of § 279.22(c)(1).

2. Section 279.22(b)(3) of DRGHW reads:

“(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 March 6, 2012, Department representatives observed a secondary containment pallet referenced in violation number 1 above. The secondary containment pallet held a significant quantity of used oil and was open. This is a violation of § 279.22(b)(3).

3. Section 262.34(d)(5)(iii) of DRGHW reads:

“The generator must ensure that all employees are thoroughly familiar with proper waste handling and emergency procedures, relevant to their responsibilities during normal facility operations and emergencies.”

On March 6, 2012, Respondent’s representatives were unable to provide documentation demonstrating that employees responsible for handling hazardous waste have received training, a violation of § 262.34(d)(5)(iii).

4. Section 265.37(a) of DRGHW reads:

“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 response 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 March 6, 2012, Respondent's representatives were unable to provide documentation that information on its waste accumulation area had been sent to local police departments, fire departments, and hospitals, a violation of § 265.37(a).

5. Section 265.174 of DRGHW reads:

"The owner or operator must inspect areas where containers are stored at least weekly, looking for leaks and for deterioration caused by corrosion or other factors. A written record of the inspections must be maintained onsite for a minimum of 3 years."

On March 6, 2012, Respondent's representatives were unable to provide records demonstrating that weekly inspections had been performed in the waste accumulation area, a violation of § 265.174.

6. Section 262.34(d)(5)(ii) of DRGHW reads:

"The generator must post the following information next to the telephone:
(A) The name and telephone number of the emergency coordinator;
(B) Location of fire extinguishers and spill control material, and, if present, fire alarm; and
(C) The telephone number of the fire department, unless the facility has a direct alarm."

On March 6, 2012, Respondent's representatives were unable to demonstrate the required emergency response information was posted near a telephone, a violation of § 262.34(d)(5)(ii).

FINDINGS OF VIOLATIONS – LEWES CAMPUS

1. Section 262.11 of DRGHW reads:

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

On March 14, 2012, Department representatives observed approximately 20 small containers within a secondary containment bin in a hood in Cannon Lab 119. Respondent's representatives indicated the containers were waste and were being

prepared for pickup by UD Newark the following day. No hazardous waste determination had been made on the containers, a violation of § 262.11.

2. Section 273.14(e) of DRGHW reads:

“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 March 14, 2012, SHWMS representatives observed two (2) – 8 foot fiber boxes, one (1) – 4 foot fiber box, and two (2) – 2 foot fiber boxes of spent lamps in the Accumulation Shed. Each of the boxes was closed; however none were labeled, violations of § 273.14(e).

3. Section 261.5(g)(3) of DRGHW reads in part:

“A conditionally exempt small quantity generator may either treat or dispose of his hazardous waste in an on-site facility or ensure, by maintaining for a period of three years, appropriate documentation (i.e. tolling agreement, letter of acceptance, manifest or other documentation deemed acceptable by the Secretary) demonstrating delivery to an off-site treatment, storage or disposal facility, either of which, if located in the U.S., is:

- (i) Permitted under Part 122 of these regulations;*
- (ii) In interim status under Parts 122 and 265 of these regulations;*
- (iii) Authorized to manage hazardous waste by a State with a hazardous waste program under Part 271 of 40 CFR; ...”*

On March 16, 2012, Department representatives obtained samples of waste that was generated at the University of Delaware – Lewes Campus and transported by the University of Delaware to its Newark Campus. The Department’s samples were sent to TestAmerica’s Edison and Pittsburgh laboratories for analysis. The Respondent split samples with the Department and sent its samples to Mid-Atlantic Environmental Laboratories for analysis. The results are summarized below:

Sample ID	Container sampled (identified as containing)	Analytical requested	Test America – Edison Analytical Results	Test America – Pittsburgh Analytical Results	Mid-Atlantic Environ. Analytical Results
UD3	Amber glass jug containing methanol and boric acid (Bin 1)	Ignitability	95°F	97°F	140°F
UD4	Amber glass jug containing benzene	Corrosivity (pH)	1	N/A	1

	and phenol	TCLP benzene	ND	N/A	N/A
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The results received from TestAmerica for sample UD3 indicate the flash point is 95°F and 97°F, which is less than 140°F, rendering it an ignitable hazardous waste, carrying the D001 waste code.

The results received from TestAmerica for sample UD4 indicate the pH is 1, which is below 2, rendering it a corrosive hazardous waste, carrying the D002 waste code. Additionally, Department representatives obtained a second sample from this container on April 3, 2012 and submitted the sample to the Department's Environmental Laboratory Section for pH analysis. Results from the Department's Environmental Laboratory Section indicate the waste has a pH of <0.1. Therefore, the Department concludes this waste stream is a corrosive hazardous waste, carrying the D002 waste code.

These hazardous wastes were shipped from Respondent's Lewes campus to Respondent's Newark campus without appropriate documentation. Additionally, Respondent's Newark campus is not authorized to accept hazardous waste from off-site locations. Failing to deliver hazardous waste to an authorized facility and failing to maintain documentation demonstrating the shipments of hazardous waste is a violation of § 261.5(g)(3).

FINDINGS OF VIOLATIONS – NEWARK CAMPUS

1. Section 273.14(a) of DRGHW reads:

“Universal waste batteries (i.e., each battery), or a container in which the batteries are contained, must be labeled or marked clearly with any one of the following phrases: ‘Universal Waste-Battery(ies),’ or ‘Waste Battery(ies),’ or ‘Used Battery(ies).’”

On April 3, 2012, Department representatives observed a small coffee can for the accumulation of used batteries in Room 240G of the Delaware Biotechnology Institute. The container was not labeled appropriately. Additionally, Department representatives observed a fiber box containing batteries outside Office 120 in the Studio Arts Building. Neither the individual batteries, nor the box they were contained in, were labeled. Failing to properly label universal waste batteries is a violation of § 273.14(a).

2. Section 273.15(c) of DRGHW reads in part:

“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 3, 2012, Department representatives observed:

- A small coffee can for the accumulation of used batteries in Room 240G of the Delaware Biotechnology Institute.
- A fiber box containing batteries outside Office 120 in the Studio Arts Building.
- Nine (9) fiber boxes and one trash can full of both silver-tipped high mercury and green-tipped low mercury fluorescent lamps in the Loading Dock Area of the Delaware Biotechnology Institute.

The containers were not marked with an accumulation start date and Respondent's representatives were unable to determine the length of time the universal waste had been accumulated. This is a violation of DRGHW § 273.15(c).

3. Section 273.14(e) of DRGHW reads:

"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 3, 2012, Department representatives observed nine (9) fiber boxes and one trash can full of both silver-tipped high mercury and green-tipped low mercury fluorescent lamps in the Loading Dock Area of the Delaware Biotechnology Institute. The boxes and trash can were not labeled appropriately. This is a violation of DRGHW § 273.14(e).

4. Section 273.13(d)(1) of DRGHW reads:

"A small quantity handler of universal waste must contain any lamp in containers or packages that are structurally sound, adequate to prevent breakage, and compatible with the contents of the lamps. Such containers and packages must remain closed and must lack evidence of leakage, spillage or damage that could cause leakage under reasonably foreseeable conditions."

On April 3, 2012, Department representatives observed nine (9) fiber boxes and one trash can full of both silver-tipped high mercury and green-tipped low mercury fluorescent lamps in the Loading Dock Area of the Delaware Biotechnology Institute. The boxes and trash can were open, a violation of § 273.13(d)(1).

5. Section 265.173(a) of DRGHW reads:

"A container holding hazardous waste must always be closed during storage, except when it is necessary to add or remove waste."

On April 3, 2012, Department representatives observed:

- A 2.5 gallon poly safety can used for the accumulation of spent solvents in Lab 244 of the Delaware Biotechnology Institute.
- A 30 yd³ roll-off container outside the Materials Management Facility (MMF) used to accumulate contaminated lab trash.
- An approximately 10-15 gallon poly container in the MMF used for the accumulation of vials containing corrosive acids.

These containers were open at the time of the assessment and no waste was being added or removed from the containers, a violation of § 265.173(a).

6. Section 262.34(c)(1)(ii) of DRGHW reads:

“A generator may accumulate as much as 55 gallons of hazardous waste or one quart of acutely hazardous waste listed in §261.31 or §261.33(e) in containers at or near any point of generation where wastes initially accumulate, which is under the control of the operator of the process generating the waste, without a permit or interim status and without complying with paragraph (a) or (d) as applicable of this section provided he: ...

(ii) Marks his containers either with the words ‘Hazardous Waste’ or with other words that identify the contents of the containers.”

On April 3, 2012, Department representatives observed two (2) aerosol cans outside Office 120 in the Studio Arts Building. Both cans had spray nozzles removed. One appeared empty through normal use and the other still contained product, though was being disposed. The aerosol cans were not labeled, a violation of § 262.34(c)(1)(ii).

7. Section 262.34(a) of DRGHW reads in part:

“Except as provided in paragraphs (d), (e), and (f) of this section, a generator may accumulate hazardous waste on site for 90 days or less without a permit ...”

On April 3, 2012, Department representatives observed several containers that, according to Respondent’s representatives, had been brought to the MMF earlier that day for a hazardous waste determination, segregation, and bulking if appropriate. The University of Delaware utilizes a University-specific orange “Chemical Waste/Hazardous Waste” label. A date is placed on the top of the label indicating the date waste was first placed in the container in a satellite accumulation area. At the bottom of the label is a place to include the date the container was moved to a central accumulation area. However, based on the Department’s representatives’ observations during the assessment, it appeared that the date the container was moved to the central accumulation area (the MMF) is rarely completed. The following containers, which the Department determined to contain hazardous waste, were observed:

- 1 gallon poly jug generated in Evans 152 containing acetone, trichloroethylene, ethanol, and toluene. The container was labeled "Chemical Waste/Hazardous Waste" and was dated November 21, 2011. Based on this date, at the time of the assessment, the container had been accumulated for 134 days.
- 1 gallon poly jug generated in Evans 152 containing acetone and aluminum shavings. The container was labeled "Chemical Waste/Hazardous Waste" and was dated December 9, 2011. Based on this date, at the time of the assessment, the container had been accumulated for 116 days.
- 2 gallon poly jug generated in Colburn 322 containing cresol, acetone, furan, chloroform, and methanol. The container was labeled "Chemical Waste/Hazardous Waste" and was dated November 1, 2011. Based on this date, at the time of the assessment, the container had been accumulated for 155 days.
- 1 gallon poly jug generated in DuPont Hall 227 containing acetone, dichloromethane, methanol, ethanol, ether, water, and TFA. The container was labeled "Chemical Waste/Hazardous Waste" and was dated December 2011. Based on this date, at the time of the assessment, the container had been accumulated between 94 and 125 days.

Based on the date provided on each of these containers, the wastes have been accumulated in excess of 90 days, a violation of § 262.34(a).

8. Section 262.11 of DRGHW reads:

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

Immediately adjacent to the containers described in violation number 7 above that Respondent's representatives indicated were moved to the central accumulation area on April 3, 2012, Department representatives observed a bin of approximately 60 small containers of lab reagents for disposal. Of the 60 small containers, three (3) were labeled "Chemical Waste/Hazardous Waste." The remaining were not labeled. The bin itself was marked with a label indicating the containers had been moved to the central accumulation area on March 6, 2012. Respondent's representative stated that no waste determination had been made on these wastes, a violation of § 262.11.

9. Section 262.20 (a)(1) of DRGHW reads:

"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 3, 2012, Respondent’s representatives stated that all of Respondent’s hazardous wastes are transported over public roadways and delivered to the MMF. Respondent’s representatives also stated that hazardous waste manifests were not prepared for these shipments, a violation of § 262.20(a)(1).

10. Section 122.1(c) of DRGHW reads in part:

“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...”

By exceeding the 90 day accumulation limit referenced in violation number 7 above, Respondent is operating a hazardous waste storage facility without a permit. Additionally, by transporting hazardous waste to the MMF Building, as described in violation number 9 above, Respondent is operating the MMF as a hazardous storage facility without a permit.

In addition, on March 16, 2012, Department representatives obtained samples of wastes that were generated at the Respondent’s Lewes Campus and transported by the University of Delaware to its Newark Campus. The Department’s samples were sent to TestAmerica’s Edison and Pittsburgh laboratories for analysis. Respondent split samples with the Department and sent its samples to Mid-Atlantic Environmental Laboratories for analysis. The results are summarized below:

Sample ID	Container sampled (identified as containing)	Analytical requested	Test America – Edison Analytical Results	Test America – Pittsburgh Analytical Results	Mid-Atlantic Environ. Analytical Results
UD3	Amber glass jug containing methanol and boric acid (Bin 1)	Ignitability	95°F	97°F	140°F
UD4	Amber glass jug containing benzene and phenol	Corrosivity (pH)	1	N/A	1
		TCLP benzene	ND	N/A	N/A

The results received from TestAmerica for sample UD3 indicate the flash point is 95°F and 97°F, which is less than 140°F, rendering it an ignitable hazardous waste, carrying the D001 waste code.

The results received from TestAmerica for sample UD4 indicate the pH is 1, which is below 2, rendering it a corrosive hazardous waste, carrying the D002 waste code. Department representatives also obtained a second sample from this container on April 3, 2012 and submitted the sample to the Department's Environmental Laboratory Section for pH analysis. Results from the Department's Environmental Laboratory Section indicate the waste has a pH of <0.1. Therefore, the Department concludes this waste stream is a corrosive hazardous waste, carrying the D002 waste code.

The University of Delaware – Newark Campus is not permitted to accept hazardous waste from other off-site locations. By accepting hazardous waste from its Lewes campus, Respondent is operating a hazardous waste treatment, storage, and disposal facility (TSDF) for which it has not obtained a permit.

These three instances of operating a hazardous waste treatment, storage, and disposal facility without a permit are violations § 122.1(c).

11. Section 265.16(d)(1) of DRGHW reads:

"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 3, 2012, Respondent's representatives provided a list of job titles for each position at the University's Newark campus requiring hazardous waste management. The list of employees and job titles indicated that Michael Wayock filled the Senior Environmental Health and Safety Technician position and that the Environmental Health and Safety Specialist position was vacant. However, Michael Wayock was promoted to the Environmental Health and Safety Specialist position in September 2011 and Arman Fardenesh was hired to fill the Senior Environmental Health and Safety Technician position (vacated by Michael Wayock) in February 2012. Failing to maintain an updated list of employees and job titles is a violation of § 265.16(d)(1).

12. Section 265.53(b) of DRGHW reads:

"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. These records must be kept for a period of at least 3 years since last being applicable."

On April 3, 2012, Respondent's representatives provided a contingency plan titled "Hazardous Waste Contingency Plan and Emergency Procedures," revised on January 11, 2011. The plan was most recently submitted to local emergency response

authorities on February 7, 2007. The plan has been substantively revised since then and not re-submitted, a violation of § 265.53(b).

13. Section 262.40(a) of DRGHW reads:

"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 April 3, 2012, Respondent's representatives were unable to provide a TSD-signed copy of Manifest number 003989125FLE accepted by the transporter on November 5, 2010. Failing to maintain a copy of the manifest is a violation of § 262.40(a).

14. Section 268.7(a) of DRGHW reads in part:

"(2) If the waste or contaminated soil does not meet the treatment standard: With the initial shipment of waste to each treatment or storage facility, the generator must send a one-time written notice to each treatment or storage facility receiving the waste, and place a copy in the file. The notice must include the information in column "268.7(a)(2)" of the Generator Paperwork Requirements Table in §268.7(a)(4). No further notification is necessary until such time that the waste or facility change, in which case a new notification must be sent and a copy placed in the generator's file.

...
(3) If the waste or contaminated soil meets the treatment standard at the original point of generation:

(i) With the initial shipment of waste to each treatment, storage, or disposal facility, the generator must send a one-time written notice to each treatment, storage, or disposal facility receiving the waste, and place a copy in the file. The notice must include the information indicated in column "268.7(a)(3)" of the Generator Paperwork Requirements Table in §268.7(a)(4) and the following certification statement, signed by an authorized representative:

I certify under penalty of law that I personally have examined and am familiar with the waste through analysis and testing or through knowledge of the waste to support this certification that the waste complies with the treatment standards specified in Part 268, Subpart D. I believe that the information I submitted is true, accurate, and complete. I am aware that there are significant penalties for submitting a false certification, including the possibility of a fine and imprisonment.

(ii) For contaminated soil, with the initial shipment of wastes to each treatment, storage, or disposal facility, the generator must send a one-time written notice to each facility receiving the waste and place a copy in the

file. The notice must include the information in column “§268.7(a)(3)” of the Generator Paperwork Requirements Table in §268.7(a)(4).

(iii) If the waste changes, the generator must send a new notice and certification to the receiving facility, and place a copy in their files.

Generators of hazardous debris excluded from the definition of hazardous waste under §261.3(f) of these regulations are not subject to these requirements.”

On April 3, 2012, Respondent’s representatives provided a Land Disposal Restriction (LDR) form associated with waste compressed gas and liquefied gas cylinders shipped to Tradebe Treatment and Recycling, LLC on November 4, 2011 via Manifest number 004813380FLE. The LDR form is not complete and instead reads, “Please see attached Cylinder Approval/Packing Lists.” However, the Cylinder Approval/Packing List forms do not address the land disposal restriction requirements, a violation of § 268.7(a).

15. Section 279.43(a) of DRGHW reads:

“Deliveries. A used oil transporter must deliver all used oil received to:

(1) Another used oil transporter, provided that the transporter has obtained an EPA identification number, and a Delaware Waste Transporter permit;

(2) A used oil processing/re-refining facility who has obtained an EPA identification number;

(3) An off-specification used oil burner facility who has obtained an EPA identification number; or

(4) An on-specification used oil burner facility.”

On March 6, 2012, Department representatives identified that UD was transporting used oil in quantities exceeding 55 gallons from its Georgetown campus to its Newark campus for consolidation. As the quantities exceed 55 gallons, Respondent cannot avail itself to the limited requirements for self-transportation found in DRGHW § 279.24(b). Instead, Respondent meets the definition of a used oil transporter. Used oil transporters are required to deliver used oil to an authorized facility. Respondent’s Newark campus is not an authorized facility. As such, Respondent violated § 279.43(a).

CONCLUSIONS

Based on the foregoing, the Department has concluded that the University of Delaware has violated the above cited regulatory provisions.

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 \$10,000.00 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 \$1,500.00, 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 \$10,000.00 to pay the penalty and one check to the Department in the amount of \$1,500.00 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: David L. Ormond, Jr., Deputy Attorney General, Department of Justice, Environmental Unit, 102 W. Water Street-3rd Floor, Dover, Delaware 19904.

PUBLIC HEARING

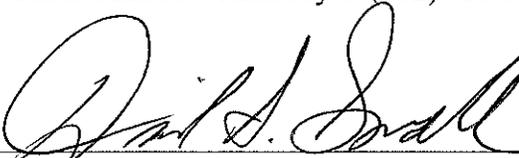
This Administrative Penalty Assessment and Order shall become effective and final unless the Department receives from Respondent, no later than 30 days from the receipt of this Notice, a written request for a public hearing on these matters as provided in 7 *Del. C.* § 6005(b)(3) and (c). In the event 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 \$10,000.00 and the Department's estimated costs in the amount of \$1,500.00 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.

8/14/12
Date



David Small, Deputy Secretary

cc: David L. Ormond, Jr., Deputy Attorney General
Marjorie A. Crofts, Director, Division of Waste and Hazardous Substances
Nancy Marker, Program Administrator, SHWMS
Karen J'Anthony, Program Manager, SHWMS
Melissa Ferree, Engineer, SHWMS
Jenny Bothell, Enforcement Coordinator
Susan Baker, Paralegal, SHWMS
SHWMS File

15-67maf(5)

WAIVER OF STATUTORY RIGHT TO A HEARING

The University 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. **The University of Delaware** will pay the administrative penalty in the amount of \$10,000.00 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 David L. Ormond, Jr., Deputy Attorney General, Department of Justice, 102 W. Water Street-3rd Floor, Dover, DE 19904; and
2. **The University of Delaware** will reimburse the Department in the amount of \$1,500.00 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 David L. Ormond, Jr., Deputy Attorney General, Department of Justice, 102 W. Water Street-3rd Floor, Dover, DE 19904.

University of Delaware

Date: _____

By: _____

Title: _____