



STATE OF DELAWARE
DEPARTMENT OF NATURAL RESOURCES
AND ENVIRONMENTAL CONTROL

OFFICE OF THE
SECRETARY

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Secretary's Order to Cease and Desist

Issued Pursuant to 7 Del. C. § 6018

ORDER NO. 2013-WH-0032

***PERSONALLY SERVED
BY AN ENVIRONMENTAL PROTECTION OFFICER***

Issued to:

Mr. Robert Cahill
Homalite Division
Brandywine Investment Group, Corporation
11 Brookside Drive
Wilmington, DE 19804

Registered Agent:

Robert H. Cahill
1708 Gunning Drive
Wilmington, DE 19803

Dear Mr. Cahill:

This is to notify you, Robert Cahill, and Homalite Division, Brandywine Investment Group, Corp., ("Respondent") that the Secretary of the Delaware Department of Natural Resources and Environmental Control ("DNREC"), has found Respondent in violation of 7 Del. C. Chapter 77, *The Extremely Hazardous Substances Risk Management Act* and 7 DE Admin Code 1201, *Accidental Release Prevention Regulation* (the "Regulations") and is issuing Respondent this Secretary's Order to Cease and Desist ("Order") pursuant to 7 Del. C. § 6018.

I. BACKGROUND

The Secretary of the Department is responsible for the protection of the public health and safety and the environment from the effects of the improper, inadequate or unsound management of extremely hazardous substances and to assure the safe and adequate management of extremely hazardous substances within the State of Delaware, pursuant to the authority set forth in 7 Del. C. Chapter 77. Respondent operates a manufacturing facility at 11 Brookside Drive, Wilmington, Delaware ("Facility") that stores the extremely hazardous chemical Diisopropyl

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peroxydicarbonate (“IPP”). IPP is an organic peroxide chemical that is unstable at temperatures above minus four degrees Fahrenheit.

On September 7, 2012 an explosion of IPP occurred at Respondent’s Facility when the freezer used to store IPP at temperatures necessary to prevent spontaneous and violent decomposition failed. The resulting explosion caused building structural failure and an emergency response by the Five Points Volunteer Fire Company, a deputy State Fire Marshal, and the DNREC Emergency Response Team at the time of the explosion.

On June 29, 1991 DNREC records indicate a similar incident occurred at this facility when a freezer containing 150 pounds of IPP and high temperature alarm systems failed. This incident caused the evacuation of occupants in several buildings along Brookside Drive.

On December 11, 2012 DNREC representatives conducted a compliance assessment inspection at the Respondent’s Facility. During this inspection, DNREC determined that the IPP stored at Respondent’s Facility was not being stored according to the industry standards that stipulate proper storage requirements for unstable chemicals such as the extremely hazardous chemical IPP. According to National Fire Protection Association (NFPA) 432: Code for the Storage of Organic Peroxide Formulations, and NFPA 70: National Electrical Code, organic peroxide chemicals such as IPP must be stored in an explosion-safe freezer with a high temperature alarm system that assures a prompt response.

On December 13, 2012, in electronic mail correspondence to DNREC, Respondent stated that an explosion-safe freezer purchase order would be issued that day. In a telephone conversation with Respondent on April 15, 2013, DNREC determined that Respondent did not purchase an explosion-safe freezer.

DNREC issued Notice of Violation 13-ARP-001 (“NOV”) on May 29, 2013. Respondent received the NOV on May 30, 2013. The NOV notified Respondent that by June 21, 2013 Respondent must either cease storing IPP or install a NFPA 432 and NFPA 70 compliant explosion-safe freezer and high temperature alarm system.

In Respondent’s June 4, 2013 reply to DNREC’s NOV, Respondent stated that an explosion-safe freezer would be installed by September 1, 2013. DNREC did not agree to Respondent’s September deadline.

DNREC conducted a Facility assessment on July 10, 2013 and determined that the IPP peroxide catalyst at the Facility was not stored in an explosion-safe freezer and temperatures continued to be maintained using dry ice. While on site, Respondent provided DNREC with a copy of a purchase order for an explosion-safe freezer dated July 1, 2013. According to the manufacturer’s quote, the cost of the explosion-safe freezer is less than \$6,000.00. According to Respondent, the cost of the dry ice is approximately \$100 to \$200.00 per week. Given the cost of the dry ice, the freezer would be paid off in less than one year.

In correspondence dated July 12, 2013 Respondent stated that the explosion-safe freezer will not be delivered until October 2013.

II. FINDINGS

Using dry ice to maintain low temperature and ensure IPP stability represents improper storage of IPP and indicates unsafe operations of Respondent's Facility, based on the September 2012 and June 1991 incidents involving IPP at Respondent's Facility. The current IPP storage and recent explosion represent a potential hazard to the public and emergency responders as well as Respondent's employees. Respondent has failed to obtain an explosion-safe freezer to ensure safe storage of IPP.

Respondent has a general duty under 7 *Del. C.* § 7704 (a) to operate a safe facility. Based on the requirements in 7 *Del. C.* § 7704 (a), and Section 3.0 of the Regulations, Respondent has failed to operate a safe facility that anticipates and minimizes the chances of catastrophic events such as the September 12, 2012 event by storing an extremely hazardous substance, IPP, in a manner that poses a hazard to the public and specifically by not storing IPP according to industry codes and in a manner recognized as safe.

III. ORDER

IT IS HEREBY ORDERED, based on the foregoing findings and pursuant to the authority vested in the Secretary by 7 *Del. C.* Section 6018, Respondent shall immediately cease and desist storing or handling peroxide catalysts including IPP and properly dispose of any unused catalyst, unless Respondent implements the requirements as strictly set forth below by DNREC:

1. No later than August 30, 2013 submit to DNREC written proof, from the freezer manufacturer, guaranteeing that the date of delivery of the freezer and its alarm system will be no later than October 1, 2013.
2. No later than August 30, 2013 submit written proof, from the freezer manufacturer and a licensed electrician, if appropriate, guaranteeing that the date of installation of the freezer and its alarm system will be no later than October 1, 2013 that shows the IPP at the Facility will be stored in an industrial freezer with electrical hook ups that meet Class I, Group D, Division 1 requirements, as defined in Article 500 and 501 of NFPA 70 and required by NFPA 432, with a high temperature alarm system that can be monitored and can send failure alerts 24 hours per day and 7 days per week.
3. On or before September 16, 2013 submit a written update, from the manufacturer, on the delivery date and scheduled installation of the freezer and the high temperature alarm, in addition to submitting the previous 4 weeks of manual temperature monitoring logs.

Should Respondent miss any of the required deadlines above, Respondent shall immediately cease and desist storing or handling peroxide catalysts including IPP and properly dispose of any unused catalyst.

Nothing in this order shall be deemed to waive, estop or in any way preclude, any additional enforcement action for these or any other violations, including administrative and civil penalties for each day of violation, or an action for the recovery of Department costs expended in abating this violation.

Date:

8/22/13



Collin P. O'Mara, Secretary
Department of Natural Resources
and Environmental Control

- cc. Ralph K. Durstein III, Deputy Attorney General
Marjorie A. Crofts, Director, WHS
Ellen D. Malenfant, Program Manager, ERPS
Susan S. Baker, Paralegal
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Jennifer M. Bothell, Enforcement Coordinator