



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. 2011-WH-0040

***PERSONALLY SERVED BY
AN ENVIRONMENTAL CRIMES
UNIT 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

This is to notify International Petroleum Corporation of Delaware ("Respondent" or "IPC") that the Secretary of the Delaware Department of Natural Resources and Environmental Control ("Department") has found Respondent in violation of 7 Del. C. Chapters 60 and 63 and 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. The Department, as set forth below, has determined that Respondent has been unlawfully storing hazardous wastes as part of its used parts washer solvent program and unlawfully introducing hazardous laboratory waste into its used oil recycling program. The Department has determined that these constitute continuing and ongoing violations of Respondent's permit and Delaware law

¹ Respondent's 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" is now the Division of Air Quality ("DAQ"). The SHWMS (formerly "SHWMB") is now a "section" under a separate and newly designated division, the Division of Waste and Hazardous Substances ("WHS").

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and is accordingly ordering IPC to immediately cease and desist operating its used parts washer solvent program and to immediately cease and desist introducing any and all on-site processing of waste generated in the on-site lab.

BACKGROUND

The Secretary of the Department is responsible for the protection of the public health and safety, the health of organisms and the environment from the effects of the improper, inadequate or unsound management of hazardous wastes by establishing a program of regulation over the storage, transportation, treatment and disposal of hazardous wastes and to assure the safe and adequate management of hazardous wastes within the State of Delaware, pursuant to the authority set forth in 7 *Del. C.* Chapters 60 and 63. Respondent is a large quantity generator of hazardous waste³ and operates a used-oil recycling services facility in Wilmington, Delaware ("Facility").

Respondent's 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.

On April 4, 2011, and April 8, 2011, the Department conducted compliance assessments at Respondent's facility. The compliance assessments revealed 32 violations of Respondent's permit and DRGHW. Thereafter, the Department issued Notice of Violation ("NOV") No. 11-HW-19, dated June 1, 2011, to Respondent on June 16, 2011. The NOV notified Respondent of the 32 violations discovered on April 4th and April 8th. 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 the Respondent's responses.

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 6 additional new violations of Respondent's DAQ permit and DRGHW. Two of these violations related to the used parts washer solvent program and on-site processing of waste generated in the on-site lab.

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

SPECIFICALLY

The Department has found Respondent in violation of 7 Del. C. Chapters 60 and 63, 7 DE Admin. Code 1302, Delaware's *Regulations Governing Hazardous Waste* ("DRGHW") and its permit based on the compliance assessments of April 2011 and August 2011 and the notice of violations issued on June 1, 2011. These violations relate to Respondent's failure to abide by specific conditions of its permit and DRGHW.

Respondent is not allowed to accept into its facility materials it is not permitted to recycle by its DAQ permit. Conditions 3.7.1. through 3.7.7. of Respondent's DAQ Permit describe in detail the materials the Facility may accept and the materials that may not be accepted for use in its recycling program. The DAQ Permit further expressly prohibits Respondent from accepting or utilizing materials meeting the definition of Hazardous Waste as identified within the provisions of "**Delaware Regulations Governing Hazardous Waste.**"

Condition 4.12 of Respondent's DAQ Permit requires Respondent to monitor and test all incoming feed materials to ensure they meet the classifications set out in Conditions 3.1.1. through 3.7.7. Respondent's testing involves mixing IsoPar E with the incoming used oil samples and distilling it, in order to quantify the water fraction to determine properties of incoming materials. The resulting waste from the testing is a hazardous waste because of its ignitability characteristics. During the Department's compliance assessments on April 4, 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, 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 Section 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. 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 and the DAQ permit, as described above.

During the compliance assessments on April 4, and August 22, 2011, Department representatives further 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 contents of the container are incorporated into the on-site used oil recycling operations. According to documentation provided to the Department by Respondent in an April 18th 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.

Consequently, when Respondent introduces the waste Exxsol D80 Fluid into the used oil process, it violates conditions 3.7 through 3.7.7 of its DAQ Permit.

On or about January 23, 2006, the Department issued an approval for Respondent's parts washer solvent program. The 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. Specifically noted in its approval was notice that any change in the resulting use or any change in its chemical characteristics could impact the regulatory status of the material and could render it subject to management and disposal as a hazardous waste.

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.

Based on the compliance assessments, the Department determined that 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, 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 is rather a product which Respondent sells for profit (an assertion relied on by the Department in its prior approval, but an assertion contradicted by Respondent's representative during the inspection). Regardless of whether the material is recycled or not before sale, as noted above, the samples obtained on April 8, 2011 by Department representatives of the used parts washer solvent stored at Respondent's facility shows significant contamination with concentrations of chemicals including, but not limited to: perchloroethylene, trichloroethylene, acetone, and methylene chloride. The Department in its initial approval of the program had

further approved a Product Acceptance and Analytical Plan ("the Plan") which was intended to insure that any reused product would not contain unacceptable levels of contamination. The process specified that prior to unloading any drummed containers, paperwork would be verified and each drum would be labeled and marked and that further fingerprinting analysis and testing using a halogen gas meter would take place to ensure the characteristics of the materials. The receipt of materials and testing was required to be logged on a daily basis and records were required to be maintained for three years. Respondent's Plan required it to set aside non-conforming loads for re-characterization and they were to be rejected and returned to the original generator.

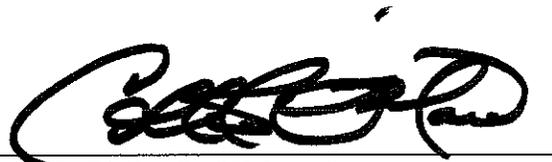
During the compliance assessments, Respondent's representatives were unable to identify the generator of each container of used parts washer solvent. Given the inability to determine the original generator of the parts washer solvent and the Department's data indicating the parts washer solvent contains 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.

ORDER

IT IS HERBY ORDERED, based on the foregoing findings and pursuant to the authority vested in the Secretary by 7 *Del. C.* § 6018 and § 6308, that Respondent cease and desist all operations relating to the used parts washer solvent program and operations involving on-site processing of waste generated in the on-site lab. Respondent shall manage the waste generated as a result of these operations in accordance with DRGHW.

Nothing in this order shall be deemed to 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: 10/11/11


Collin P. O'Mara, Secretary

xc: Valerie M. Satterfield, Deputy Attorney General
Marjorie A. Crofts, Director
Ali Mirzakhali, Director