



STATE OF DELAWARE
DEPARTMENT OF NATURAL RESOURCES
AND ENVIRONMENTAL CONTROL

OFFICE OF THE
SECRETARY

89 KINGS HIGHWAY
DOVER, DELAWARE 19901

PHONE: (302) 739-9000
FAX: (302) 739-6242

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

Pursuant to 7 *Del. C.* § 6005

Order No. 2016-WH-0035

*PERSONALLY SERVED BY AN ENVIRONMENTAL
PROTECTION OFFICER*

Issued To:

Mr. Roger Boone
Plant Manager
Formosa Plastics Corporation
780 Schoolhouse Road
Delaware City, Delaware 19706

Registered Agent:

Corporation Service Company
2711 Centerville Road
Suite 400
Wilmington, DE 19808

Dear Mr. Boone:

The Secretary of the Department of Natural Resources and Environmental Control ("Department") has found Formosa Plastics Corporation, Delaware ("Respondent" or "Formosa") 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

Formosa Plastics Corporation, Delaware ("Formosa") manufactures polyvinyl chloride (PVC) solids at its manufacturing facility located at 780 Schoolhouse Road in Delaware City, Delaware. During the operation of its facility, Formosa generates hazardous waste. As such, Respondent is subject to compliance inspections conducted by the Solid and Hazardous Waste

Delaware's Good Nature depends on you!

Management Section (SHWMS”), pursuant to 7 DE Admin. Code 1302, Delaware’s *Regulations Governing Hazardous Waste* (“DRGHW”).

On June 27, 2016, the Department conducted a hazardous waste compliance assessment at Formosa. At the time of the assessment, Respondent was classified as a large quantity generator (“LQG”) ¹ and has been assigned the EPA ID number DED002336394. On the basis of the information gathered during the assessment, the Department found Respondent to be in violation of applicable state statutes and regulations governing the generation and management of hazardous waste.

The Department notified Respondent of its violations by issuing Notice of Violation (“NOV”) No. 16-HW-08, dated July 12, 2016, to Respondent on July 15, 2016. The NOV identified seven (7) violations of DRGHW and required Respondent to immediately comply with the NOV’s requirements and additionally, to submit documentation demonstrating compliance within thirty (30) days of receipt of the NOV. Formosa’s response was due on August 15, 2016. Three (3) of the seven (7) violations identified in the NOV were corrected during the assessment. On August 11, 2016, Formosa responded to the NOV and provided documentation correcting the remaining four (4) violations. Therefore, all violations have been corrected.

FINDINGS OF FACT AND VIOLATION INCLUDING REGULATORY REQUIREMENTS

1. DRGHW § 265.176(b) reads:

“... ‘No smoking’ signs must be conspicuously placed wherever there is a hazard from ignitable or reactive waste.”

At the time of the assessment, Department representatives observed that Formosa had not posted a “No Smoking” sign at its central 90 day accumulation area. A container of spent solvents carrying the ignitable waste code (D001) was observed in the accumulation area. Failing to post a “No Smoking” sign where ignitable wastes are accumulated is a violation of DRGHW § 265.176(b).

2. DRGHW § 279.22(b)(3) reads:

“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.”

At the time of the assessment, Department representatives observed one (1) – 55 gallon drum in front of the used oil tank in the Maintenance Area. The drum was labeled “Used Oil” and had an open flip-top funnel screwed into the bung. Used oil was not

¹ 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*, 2016).

being added or removed from the container. Failing to close a container of used oil is a violation of DRGHW § 279.22(b)(3).

3. DRGHW § 262.11 reads:

“A person who generates a solid waste, as defined in §261.2, must determine if that waste is a hazardous waste using the following method:

(a) He should first determine if the waste is excluded from regulation under §261.4.

(b) He must then determine if the waste is listed as a hazardous waste in Subpart D of Part 261.

Note: Even if the waste is listed, the generator still has an opportunity under Part 260, Subpart C to demonstrate to the Secretary that the waste from his particular facility or operation is not a hazardous waste.

(c) For the purpose of compliance with Part 268, or if the waste is not listed in Subpart D of Part 261, the generator must then determine whether the waste is identified in Subpart C of Part 261 by either:

(1) Testing the waste according to the methods set forth in Subpart C of Part 261, or according to an equivalent method approved by the Secretary under Part 260, Subpart C, or;

(2) Applying knowledge of the hazard characteristic of the waste in light of the materials or the processes used.

(d) If the waste is determined to be hazardous, the generator must refer to Parts 261, 264, 265, 266, 268 and 273 of these regulations for possible exclusions or restrictions pertaining to management of the specific waste.”

At the time of the assessment, Department representatives inquired about the management of spent filters from the aerosol can puncturing device in the Maintenance Area. Subsequent to the assessment, Formosa representatives provided information indicating that the filters had been changed twice and that they believe the spent filters were placed in the regular trash, as no other documentation is available regarding disposal. Formosa was unable to demonstrate a hazardous waste determination was made. Failure to make a hazardous waste determination on the spent filters is a violation of DRGHW § 262.11.

4. DRGHW § 262.34(a)(3) reads:

“While being accumulated on site, each container and tank is labeled or marked clearly with the words ‘Hazardous Waste’ ...”

Formosa generates PVC solids referred to as BB’s (Material Identifier D999B) which are considered byproducts. Provided at least 75% of the material is recycled in a calendar year, the byproduct is not considered a solid waste, in accordance with DRGHW § 261.2, Table 1. Based on documentation provided by Formosa, the

inventory on-site on January 1, 2015 was 193,800 pounds, while 104,703 pounds were recycled in 2015. This yields a 54% recycling rate. As Formosa failed to achieve the 75% recycling rate, the remaining 89,097 pounds of byproduct (approximately 71 supersacks) became a solid waste on January 1, 2016 and all applicable RCRA requirements became applicable. At the time of the assessment, the observed supersacks of BB's were not labeled as hazardous waste. Failing to label the supersacks of BB waste is a violation of DRGHW § 262.34(a)(3).

5. DRGHW § 262.34(a)(2) reads:

"The date upon which each period of accumulation begins is clearly marked and visible for inspection on each container;"

The approximately 71 supersacks referenced in Violation #4 were not labeled with a January 1, 2016 accumulation start date. Failing to mark each container with an accumulation start date is a violation of DRGHW § 262.34(a)(2).

6. DRGHW § 262.34(a) reads:

"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 or without having interim status..."

At the time of the assessment, Formosa had accumulated the remaining 89,097 pounds of waste BB's referenced in Violation #4 from January 1, 2016 until June 27, 2016, which is a total of 179 days. Failing to ship the waste off-site within 90 days is a violation of DRGHW § 262.34(a).

7. DRGHW § 262.34(b) reads:

"A generator who accumulates hazardous waste for more than 90 days is an operator of a storage facility and is subject to the requirements of Part 264 and 265 and the permit requirements of Part 122 unless he has been granted an extension to the 90 day period. Such extension may be granted by DNREC if hazardous wastes must remain on site for longer than 90 days due to unforeseen, temporary, and uncontrollable circumstances. An extension of up to 30 days may be granted at the discretion of the Secretary on a case by case basis."

DRGHW § 122.1(c), which reads:

"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 ..."

Because Formosa exceeded the 90 day accumulation limit, as described in Violation #6, Formosa operated a hazardous waste storage facility without a permit, which is a violation of DRGHW § 122.1(c).

CONCLUSIONS

Based on the foregoing, the Department has concluded that Respondent has violated the above cited statutory and 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 \$241,013.00 for the violations identified in this Assessment and Order.

In addition to the penalty assessment, Respondent is hereby assessed costs in the amount of \$3,563.00, 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 \$241,013.00 to pay the penalty and one check to the Department in the amount of \$3,563.00 to pay the Department's 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: Devera B. Scott, Deputy Attorney General, Department of Justice, Environmental Unit, 102 W. Water Street-3rd Floor, Dover, Delaware 19904.

The Department reserves the right to take additional enforcement actions regarding these and other violations incurred by Formosa, including but not limited to one or more of the following: an action under 7 *Del. C.* § 6005(b)(1) seeking penalties for past violations, an action under 7 *Del. C.* § 6005(b)(2) seeking penalties for continuing violations, an action in the Court of Chancery pursuant to 7 *Del. C.* § 6005(b)(2) seeking a temporary restraining order or an injunction, and the imposition of civil penalties and recovery of the Department's costs and attorney's fees pursuant to 7 *Del. C.* §§ 6005(b)(3) & (c)(1).

PUBLIC HEARING AND APPEAL RIGHTS

This Notice of 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). The Department does not otherwise intend to convene a public hearing on these matters, but reserves the right to do so at its discretion. If no public hearing is requested within thirty days, this Order shall become final.

Any person whose interest is substantially affected by an action of the Secretary may appeal to the Environmental Appeals Board, pursuant to 7 *Del. C.* § 6008(a), within twenty (20) days of the receipt or publication of the Secretary's final order.

If no hearing is requested and no appeal is filed, the administrative penalty of \$241,013.00 and costs in the amount of \$3,563.00 shall be due and owing. In the alternative, Respondent may pay the penalty and costs within thirty (30) days of receipt of this Notice as delineated in the Assessment Section above by executing the attached waiver form and remitting two (2) checks payable to the State of Delaware in the amounts of \$241,013.00 and \$3,563.00, and mail to: Devera B. Scott, Deputy Attorney General, Department of Justice, Environmental Unit, 102 W. Water Street-3rd Floor, Dover, Delaware 19904. By doing so, Respondent waives its right to a hearing and the opportunity to appeal or contest this Assessment and Order, which shall become a final Order.

To request a hearing, please submit your request, in writing, to:

Department of Natural Resources and Environmental Control
Office of the Secretary
89 Kings Highway
Dover, DE 19901
Ph: (302) 739-9000

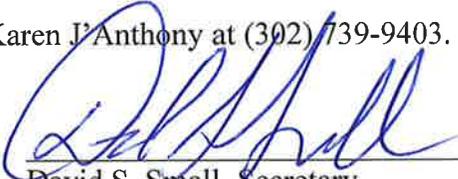
To submit an appeal to the Environmental Appeals Board, there is a \$50.00 filing fee, with a check made payable to the: "Environmental Appeals Board" and sent to:

Department of Natural Resources and Environmental Control
Office of the Secretary
Attn: Assistant to the Environmental Appeals Board
89 Kings Highway
Dover, DE 19901
Ph: (302) 739-9000

If you have any questions, please contact Karen J'Anthony at (302) 739-9403.

Date

9/27/16


David S. Small, Secretary

cc: Devera B. Scott, Deputy Attorney General
Marjorie A. Crofts, WHS Director
Nancy C. Marker, SHWMS Program Administrator
Karen G. J'Anthony, SHWMS Program Manager
Melissa A. Ferree, SHWMS Engineer
Susan S. Baker, Enforcement Coordinator
SHWMS File

WAIVER OF STATUTORY RIGHT TO A HEARING

Formosa Plastics Corporation hereby waives its right to a hearing and its opportunity to appeal or contest this Assessment and Order and agrees to the following:

1. **Formosa Plastics Corporation** will pay the administrative penalty in the amount of \$241,013.00 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 Devera B. Scott, Deputy Attorney General, Department of Justice, Environmental Unit, 102 W. Water Street-3rd Floor, Dover, Delaware 19904; and
2. **Formosa Plastics Corporation** will reimburse the Department in the amount of 3,563.00 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 Devera B. Scott, Deputy Attorney General, Department of Justice, Environmental Unit, 102 W. Water Street-3rd Floor, Dover, Delaware 19904.

Formosa Plastics Corporation

Date: _____

By: _____

Title: _____