



STATE OF DELAWARE
**DEPARTMENT OF NATURAL RESOURCES
AND ENVIRONMENTAL CONTROL**
89 KINGS HIGHWAY
DOVER, DELAWARE 19901

Office of the
Secretary

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SECRETARY'S ORDER
Pursuant to 7 *Del. C.* §6309(a)(1)

Order No. 2018-WH-0016

*PERSONALLY SERVED BY A DELAWARE
NATURAL RESOURCES POLICE OFFICER*

Issued To:

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

Registered Agent:

Robert H. Cahill
The Brandywine Investment Group
Corporation
1708 Gunning Drive
Wilmington, Delaware 19803

The Department of Natural Resources and Environmental Control (“Department”) has found Homalite Division of Brandywine Investment Group Corporation. (“Respondent” or “Homalite”) in violation of 7 *Del. C.* Chapter 63 and 7 DE Admin. Code 1302, Delaware’s *Regulations Governing Hazardous Waste* (“DRGHW”). Accordingly, the Department is issuing this Secretary’s Order, pursuant to 7 *Del. C.* §6309(a)(1) and (a)(4).

BACKGROUND

Respondent manufactures polyester display filters (H-100 and H-101) and transparent plastics (H-911) at its facility located at 11 Brookside Drive in Wilmington, Delaware. In the operation of its facility, Homalite generates hazardous waste. As such, Respondent is subject to compliance inspections conducted by the Solid and Hazardous Waste Management Section (“SHWMS”) pursuant to DRGHW.

On September 13, 2016 and September 29, 2016, the Department conducted hazardous waste compliance inspections at Homalite. At the time of the inspections, Respondent was classified as a conditionally exempt small quantity generator (“CESQG”)¹ of hazardous waste and had been assigned the EPA ID number DED020083762. On the basis of the information gathered during the inspections, 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-25, dated December 9, 2016, to Respondent on December 14, 2016. The NOV identified nine (9) violations of DRGHW and required Respondent to immediately comply with the cited violations and additionally, to submit documentation demonstrating compliance within thirty (30) days of receipt of the NOV. Homalite’s response was due by January 13, 2017.

On January 10, 2017, the Department contacted Respondent to reiterate the deadline to demonstrate that the nine (9) violations cited in the NOV had been corrected. On January 11, 2017, Homalite requested an extension of the deadline to demonstrate compliance with the nine (9) violations. The Department granted Respondent’s request and issued a letter stating Homalite had until January 27, 2017 to demonstrate compliance. To confirm delivery, on January 19, 2017, a Delaware Natural Resources Police Officer unsuccessfully attempted to deliver the extension documentation to Respondent. On January 23, 2017, an officer successfully delivered the extension letter, thus providing Respondent until January 27, 2017 to demonstrate compliance with the nine (9) violations cited in the NOV.

FINDINGS OF FACT AND VIOLATION INCLUDING REGULATORY REQUIREMENTS

1. DRGHW §261.5(g)(5) reads:

“(g) In order for hazardous waste generated by a conditionally exempt small quantity generator in quantities of 100 kilograms or less of hazardous waste during a calendar month to be excluded from full regulation under this section, the generator must comply with the following requirements: ...

(5) Marks his containers either with the words ‘Hazardous Waste’ or with the word ‘Waste’ and a description to identify the contents of the container (e.g., Waste Acetone, Waste Solvent).”

At the time of the inspection, outside of the laser-cutting room, Department representatives observed seven (7) – full 55 gallon containers used for the accumulation of various hazardous wastes. None of the containers were labeled to indicate the contents were hazardous waste. Failure to label a container used for the accumulation of hazardous waste with the words “Hazardous Waste” or “Waste” followed by a description of the waste is a violation of DRGHW §261.5(g)(5).

¹ Generators of no more than 100 kilograms (220 pounds) of hazardous waste in any calendar month are conditionally exempt small quantity generators (Delaware’s *Regulations Governing Hazardous Waste*, 2016).

2. DRGHW §265.173(a) reads:

“(a) A container holding hazardous waste must always be closed during storage, except when it is necessary to add or remove waste.”

At the time of the inspection, Department representatives observed one (1) – 55 gallon, open container equipped with an open funnel amongst the seven (7) aforementioned 55 gallon containers. Failure to close a hazardous waste container is a violation of DRGHW §265.173(a).

3. DRGHW §273.13(d)(1) reads:

“(d) Lamps. A small quantity handler of universal waste must manage lamps in a way that prevents releases of any universal waste or component of a universal waste to the environment, as follows:

(1) 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.”

At the time of the inspection, on wooden storage racks near the product packaging room, Department representatives observed over twenty (20) spent, intact, hazardous waste fluorescent lamps stored without proper containerization to prevent a release. Failure to accumulate spent lamps being managed as universal waste in a manner that prevents breakage and the subsequent release of waste to the environment is a violation of DRGHW §273.13(d)(1).

4. DRGHW §273.14(e) reads:

“A small quantity handler 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)’.”

During the inspection, Department representatives observed the aforementioned spent fluorescent lamps. The spent lamps were not labeled. Failure to label a spent lamp or container of spent lamps is a violation of DRGHW §273.14(e).

5. DRGHW §273.15(c) reads:

“(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.”

During the September 13, 2016 inspection, Respondent stated that the site had ceased throwing spent hazardous waste fluorescent lamps into the trash, yet had not sent any off-site for management, as he was unaware of how to manage them. However, during a previous compliance assistance visit on December 11, 2012, a Department representative informed Homalite of the management requirements for spent lamps managed as universal waste. Despite this guidance, Homalite had not created or maintained a spent lamp inventory system. Failure to create and maintain an inventory system for universal waste accumulation is a violation of DRGHW §273.15(c).

6. DRGHW §273.15(a) reads:

“(a) A small quantity handler of universal waste may accumulate universal waste for no longer than one year from the date the universal waste is generated...”

During the September 13, 2016 inspection, Respondent stated that the site had ceased throwing spent hazardous waste fluorescent lamps into the trash, yet had not sent any off-site for management, as Respondent was unaware of how to manage them. However, during a previous compliance assistance visit on December 11, 2012, a Department representative informed Homalite of the management options for spent lamps. As the compliance assistance visit and the compliance inspection were performed over three and a half (3.5) years apart, Department representatives conclude Homalite accumulated the spent lamps observed on September 13, 2016 for over 3.5 years. Accumulating a universal waste (i.e., spent lamps) for longer than one year is a violation of DRGHW §273.15(a).

7. DRGHW §261.5(g)(2) reads:

“(g) In order for hazardous waste generated by a conditionally exempt small quantity generator in quantities of 100 kilograms or less of hazardous waste during a calendar month to be excluded from full regulation under this section, the generator must comply with the following requirements: ...

(2) The conditionally exempt small quantity generator may accumulate hazardous waste on-site. If he accumulates at any time 1,000 kilograms or greater of his hazardous wastes, all of those accumulated wastes are subject to regulation under the special provisions of Part 262 applicable to generators of greater than 100 kg and less than 1000 kg of hazardous waste in a calendar month as well as the requirements of Parts 263 through 266, 268 and Parts 122 and 124 of these regulations, and the applicable notification requirements of 7 Del.C. Chapter 63. The time

period of §262.34(d) for accumulation of wastes on-site begins for a conditionally exempt small quantity generator when the accumulated wastes equal or exceed 1000 kilograms;”

At the time of the inspections, Respondent had accumulated nine (9) – 55 gallon hazardous waste containers (with eleven (11) other containers awaiting hazardous waste determinations of their contents). The observed accumulation exceeded the CESQG hazardous waste accumulation limit of 1000kg/2200lbs. Exceeding the CESQG hazardous waste accumulation limit and failing to manage all hazardous waste in accordance with small quantity generator (SQG) requirements is a violation of DRGHW §261.5(g)(2).

8. DRGHW §262.11, which 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.

(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.”

Department representatives observed four (4) – 55 gallon containers labeled with CR39 product labels. Homalite representatives stated that the four (4) CR39 containers were waste, but the site representatives were unsure if the waste was solely expired CR39 or a mixture of CR39 and another substance. Regardless, Respondent is required to make a hazardous waste determination for each solid waste at the time of its generation.

Department representatives observed one (1) – full 55 gallon container labeled “Sun Material.” Homalite representatives were uncertain of the container’s contents, but the contents were not being actively used in a process nor managed as a product. Therefore, the container was used for the accumulation of waste and a hazardous waste determination is required to be made by Homalite.

Near the ovens, Department representatives observed two (2) – 55 gallon, full, closed, rusted and unlabeled containers. Homalite representatives did not know the contents of the containers and could not state if the contents were waste or product. As the containers and their contents were not managed as a product, the Department deems the contents to be waste, therefore Homalite is required to make hazardous waste determinations.

On a wooden pallet, Department representatives observed one (1) – 55 gallon container used for the accumulation of assorted solid waste, including smaller sealed containers. Site representatives could not identify the contents of the 55 gallon container, nor any of the smaller containers. Upon discarding products, Homalite is required to make hazardous waste determinations.

On the same wooden pallet, Department representatives observed two (2) – 55 gallon, full, closed, rusted, cobweb covered, and unlabeled containers. Homalite representatives did not know the contents of the containers. As the containers and their contents were not managed as a product, the Department deems the contents to be waste, therefore Homalite is required to make hazardous waste determinations.

Department representatives observed one (1) – 5 gallon poly container used for the accumulation of an unidentified liquid. The container was closed, unlabeled, discolored and dusty. Site representatives were unable to identify the contents and did not state the liquid was used in operations. As the container and its contents were not managed as a product, Department representatives deemed the contents to be waste and Homalite failed to make a hazardous waste determination.

Homalite failed to make hazardous waste determinations on the contents of eleven (11) waste containers found throughout the site. Failure to make a hazardous waste determination is a violation of DGRHW §262.11.

9. DRGHW §273.16, which reads:

“A small quantity handler of universal waste must inform all employees who handle or have responsibility for managing universal waste. The information must describe proper handling and emergency procedures appropriate to the type(s) of universal waste handled at the facility.”

While Homalite personnel are trained to not dispose of spent hazardous waste fluorescent lamps in the general solid waste stream, personnel are not trained on how to properly manage spent hazardous waste fluorescent lamps as universal waste (i.e., accumulating in closed container, labeling spent fluorescent lamps). Failure to properly train personnel on universal waste management is a violation of DRGHW §273.16.

CONCLUSIONS

Based on the foregoing, the Department has concluded that Respondent has violated the above-cited statutory and regulatory provisions.

SECRETARY'S ORDER

As Respondent has failed to comply with the requirements cited in the December 14, 2016 Notice of Violation (No. 16-HW-25), it is ordered by the Department that Respondent shall demonstrate compliance related to outstanding violations. Therefore, in consideration of the foregoing findings, notice is hereby given, pursuant to 7 *Del. C.* §6309 (a)(4), Respondent is ordered to achieve full compliance with all applicable laws and regulatory requirements by undertaking the following actions:

1. Within fifteen (15) calendar days, submit manifests documenting the lawful removal and management of the seven (7) – 55 gallon containers of hazardous waste referenced in Violation #1.
2. Within fifteen (15) calendar days, submit documentation of hazardous waste determinations for the eleven (11) containers referenced in Violation #8 and include manifests documenting the lawful removal and management of those wastes determined to be hazardous. In the alternative, Respondent may elect to manage all eleven (11) containers referenced in Violation #8 as hazardous waste, submitting manifests documenting lawful removal and management within fifteen (15) days.
3. Within fifteen (15) calendar days, submit shipping records documenting the lawful removal and management of universal waste lamps referenced in Violations #3 and #4.
4. Within fifteen (15) calendar days, submit a written operational procedure that encompasses the following regulatory requirements so as to achieve and maintain compliance in the future:
 - a. Making an accurate hazardous waste determination at the initial time of waste generation, in accordance with DRGHW §262.11.
 - b. Labeling hazardous waste containers in accordance with DRGHW §261.5(g)(5).
 - c. Maintaining closed hazardous waste containers in accordance with DRGHW §265.173(a).
 - d. Generating less than 100 kg of hazardous waste per month in accordance with DRGHW §261.5(g).
 - e. Accumulating less than 1,000 kg of hazardous waste on-site at any one time in accordance with DRGHW §261.5(g)(2).
 - f. In the event Respondent exceeds generation or waste accumulation limits above, Respondent is required to notify the Department of its change in

- generator status in accordance with DRGHW §262.12 and comply with the applicable regulatory requirements for the new generator category.
- g. Placing universal waste lamps in a container in accordance with DRGHW §273.13(d)(1).
 - h. Labeling universal waste lamps containers in accordance with DRGHW §273.14(e).
 - i. Ensuring a mechanism is in place to track the length of time universal waste lamps are accumulated on-site in accordance with DRGHW §273.15(c).
 - j. Accumulating universal waste lamps for less than one (1) year in accordance with DRGHW §273.15(a).
5. Within fifteen (15) calendar days, submit documentation demonstrating employees have received training on the operational procedures identified in Requirement #4 above.

Submit all documentation and correspondence to:

Lindsey M. Douglas
Department of Natural Resources and Environmental Control
Division of Waste and Hazardous Substances
Solid and Hazardous Waste Management Section
89 Kings Highway
Dover, Delaware 19901

ASSESSMENT OF PENALTY AND COSTS

Pursuant to the provisions of 7 *Del. C.* §6309(a)(4), the Department is assessing Respondent an administrative penalty of \$110,125.00 for the violations identified in this Order.

Respondent shall submit a check to the Department in the amount of \$110,125.00 to pay the penalty. The check shall be made payable to the "State of Delaware" and shall be directed to: Ralph K. Durstein III, Deputy Attorney General, Department of Justice, Environmental Unit, 102. W. Water Street – 3rd Floor, Dover, DE 19904.

The Department reserves the right to take additional enforcement actions regarding these and other violations at the Respondent's facility, including but not limited to one or more of the following: an action under 7 *Del. C.* §6309(a)(2) seeking civil penalties for failure to take corrective action within the timeframe specified within the Order, and an action in the Court of Chancery pursuant to 7 *Del. C.* §6309(c) seeking a temporary restraining order or an injunction. Nothing in this document 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 these violations.

PUBLIC HEARING AND APPEAL RIGHTS

This Assessment and Order is effective and final upon receipt by Respondent. Pursuant to §6313(a) of Title 7 of the Delaware Code, which incorporates by reference the appeal provisions of §6008 of Title 7, any person whose interest is substantially affected by this action of the Secretary may appeal to the Environmental Appeals Board within **20 days** of the receipt of the Assessment and Order. In the alternative, Respondent may, pursuant to 7 *Del. C.* §6309(a)(3), request a public hearing on the penalty assessment and Order, within **30 days** of receipt of the Assessment and Order. A hearing would be conducted pursuant to 7 *Del. C.* §6312, and the Secretary's order following the hearing would be subject to appeal, pursuant to 7 *Del. C.* §6008(a), by any person substantially affected.

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

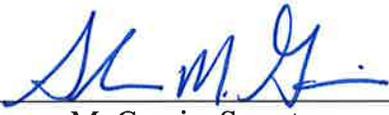
To submit an appeal to the Environmental Appeals Board, there is a \$50.00 filing fee, with a check made payable to the: "Environmental Appeals Board" and sent to:

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

2/20/18


Shawn M. Garvin, Secretary

cc: Ralph K. Durstein III, Deputy Attorney General
Marjorie A. Crofts, WHS Director
Nancy C. Marker, SHWMS Program Administrator
Susan S. Baker, Enforcement Coordinator

WAIVER OF STATUTORY RIGHT TO A HEARING

Homalite Division of Brandywine Investment Group Corporation hereby waives its right to a hearing and its opportunity to appeal or contest this Assessment and Order and agrees to the following:

Homalite Division of Brandywine Investment Group Corporation will pay the administrative penalty in the amount of \$110,125.00 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 Ralph K. Durstein III, Deputy Attorney General, Department of Justice, Environmental Unit, 102 W. Water Street-3rd Floor, Dover, Delaware 19904;

**Homalite Division of Brandywine
Investment Group Corporation**

Date: _____

By: _____

Title: _____