



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

Office of the
Secretary

Phone: (302) 739-9000
Fax: (302) 739-6242

SECRETARY'S ORDER
Pursuant to 7 *Del. C.* § 6005

Order No. 2018-WH-0062

***PERSONALLY SERVED BY
AN ENVIRONMENTAL CRIMES
UNIT OFFICER AND VIA
CERTIFIED MAIL***

Issued To:

Michael Hibay
Environmental, Health, Safety
and Security (EHS&S) Manager
Axalta Coating Systems
1050 Constitution Avenue
Philadelphia Naval Shipyard
Philadelphia, PA 19112

Corporation Service Company
251 Little Falls Drive
Wilmington, DE 19808

Dear Mr. Hibay:

The Secretary of the Department of Natural Resources and Environmental Control ("Department") has found Axalta Coating Systems ("Respondent" or "Axalta") 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 and Secretary's Order, pursuant to 7 *Del. C.* § 6005(b)(3).

BACKGROUND

Axalta operated a research and development facility located at 200 Powder Mill Road, Building 308, Wilmington, Delaware (“facility”). During the operation of its facility, Axalta generated hazardous waste. As such, Respondent was subject to compliance inspections conducted by the Department’s Solid and Hazardous Waste Management Section (“SHWMS”), pursuant to 7 DE Admin. Code § 1302.

On March 23, 2018, the Department conducted a compliance inspection of Axalta’s facility. At the time of the assessment, Respondent was classified as a large quantity generator (“LQG”)¹. The facility has been assigned the EPA ID number DEN201300001. Based on the information gathered during the inspection, 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 the violations identified during the March 23, 2018, inspection by issuing Notice of Violation (“NOV”) No. 18-HW-11 dated May 2, 2018, to Respondent. Respondent received the NOV on May 7, 2018. The NOV identified 13 violations of DRGHW.

Respondent corrected one (1) of the 13 violations at the time of the March 23, 2018, inspection. On May 30, 2018, Respondent submitted documentation to the Department demonstrating that it corrected another one (1) of the 13 violations. On June 8, 2018, Respondent submitted additional documentation to the Department demonstrating that it corrected two (2) more of the 13 violations. On July 24, 2018, Respondent submitted additional documentation to the Department demonstrating that it corrected eight (8) of the remaining nine (9) violations. On August 17, 2018, Respondent informed the Department that it returned control of the site to DuPont on July 31, 2018, and is no longer regulated under DRGHW. As such, the Department considered the remaining violation corrected.

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).

FINDINGS OF FACT AND VIOLATION INCLUDING REGULATORY REQUIREMENTS

1. DRGHW § 262.11 states:

“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.”

On March 23, 2018, Department representatives observed 15 waste containers that were marked solely with an internal code. At the time of the March 23, 2018, inspection, Axalta representatives were unable to identify whether or not the waste was hazardous. Failure to make a hazardous waste determination at the point of generation is a violation of DRGHW § 262.11.

2. DRGHW § 262.34(a)(2) states 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 or without having interim status, provided that...

(2) The date upon which each period of accumulation begins is clearly marked and visible for inspection on each container...”

On March 23, 2018, Department representatives observed two (2) hazardous waste containers in a 90-day accumulation area that were not marked with an accumulation start date. Failure to mark hazardous waste containers with an accumulation start date is a violation of DRGHW § 262.34(a)(2).

3. DRGHW § 262.34(a) states:

“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, provided that...

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

On March 23, 2018, Department representatives observed one (1) hazardous waste container in a 90-day accumulation area that was not marked with the words “Hazardous Waste.” Failure to mark a hazardous waste container in a 90-day accumulation area with the words “Hazardous Waste” is a violation of DRGHW § 262.34(a).

4. DRGHW § 265.173(a) states:

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

On March 23, 2018, Department representatives observed one (1) hazardous waste container in a 90-day accumulation area that was not closed. Failure to close a hazardous waste container in a 90-day accumulation area is a violation of DRGHW § 265.173(a).

5. DRGHW § 273.15(c) states:

“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 March 23, 2018, Department representatives observed one (1) universal waste container that was not marked with an accumulation start date and Axalta representatives were unable to demonstrate the length of time universal waste had been accumulated. Failure to demonstrate the length of time universal waste has been accumulated is a violation of DRGHW § 273.15(c).

6. DRGHW § 262.34(c)(1) states:

“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...”

On March 23, 2018, Axalta representatives stated hazardous waste is transferred from one-gallon containers to five-gallon containers in a satellite accumulation area. The transfer of hazardous waste from one satellite accumulation container to another in a satellite accumulation area is a violation of DRGHW § 262.34(c)(1).

7. DRGHW § 262.34(c)(1)(ii) states in part:

“A generator may accumulate...hazardous waste...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 the word ‘Waste’ and a description to identify the contents of the container (e.g., Waste Acetone, Waste Solvent).”

On March 23, 2018, Department representatives observed a one-gallon container accumulating hazardous waste stored inside a secondary container that was labeled “Hazardous Waste.” Failure to mark the one-gallon container that was actually accumulating hazardous waste with the words “Hazardous Waste” or with the word “Waste” and a description of the contents is a violation of DRGHW § 262.34(c)(1)(ii).

8. DRGHW § 265.16(d)(1) states:

“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 March 23, 2018, Respondent was unable to provide a list of employees, including their job title, who were responsible for handling hazardous waste. Failure to maintain records of employees who handle hazardous waste and their job title is a violation of DRGHW § 265.16(d)(1).

9. DRGHW § 265.16(d)(2) states:

“The owner or operator must maintain the following documents and records at the facility:...

(2) A written job description for each position listed under paragraph (d)(1) of this section. This description may be consistent in its degree of specificity with descriptions for other similar positions in the same company location or bargaining unit, but must include the requisite skill, education, or other qualification, and duties of facility personnel assigned to each position;”

On March 23, 2018, Respondent was unable to provide a job description for each employee responsible for handling hazardous waste. Failure to maintain records of job descriptions for each employee who handles hazardous waste is a violation of DRGHW § 265.16(d)(2).

10. DRGHW § 265.16(d)(3) states:

“The owner or operator must maintain the following documents and records at the facility: ...

(3) A written description of the type and amount of both introductory and continuing training that will be given to each person filling a position listed under paragraph (d)(1) of this section;”

On March 23, 2018, Respondent was unable to provide a description of required training for each employee responsible for handling hazardous waste. Failure to maintain records of required training for each employee who handles hazardous waste is a violation of DRGHW § 265.16(d)(3).

11. DRGHW § 265.16(d)(4) states:

“The owner or operator must maintain the following documents and records at the facility: ...

(4) Records that document that the training or job experience required under paragraphs (a), (b), and (c) of this section has been given to, and completed by, facility personnel.”

On March 23, 2018, Respondent was unable to provide documentation of completed training for each employee responsible for handling hazardous waste. Failure to maintain records of completed training for each employee who handles hazardous waste is a violation of DRGHW § 265.16(d)(4).

12. DRGHW § 265.174 states:

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

On March 23, 2018, Department representatives reviewed Axalta's weekly inspection records. Based on the inspection reports Axalta provided, the Department was unable to confirm whether Reactor Bay Room 112 90-day accumulation area was inspected between 07/08/2016 and 07/21/2016 and between 12/12/2016 and 01/10/2017, periods of 13 and 29 days, respectively. Therefore, Axalta failed to maintain a written record demonstrating that it inspected the Reactor Bay Room weekly. Failure to conduct weekly inspections of a 90-day accumulation area and to maintain a written record of the inspections is a violation of DRGHW § 265.174.

13. DRGHW § 262.34(a) states in part:

“...a generator may accumulate hazardous waste on site for 90 days or less without a permit or without having interim status, provided that:

(1) The waste is placed:

(i) In containers and the generator complies with the applicable requirements of Subparts I, AA, BB, and CC of Part 265...”

On March 23, 2018, a Department representative observed a container that appeared to have a design capacity greater than 0.46m³ and did not appear to meet Level 2 container requirements as the lid was not vapor tight. Respondent was unable to demonstrate compliance with the Subpart CC requirements. Failure to comply with Subpart CC requirements is a violation of DRGHW § 262.34(a).

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 \$39,660.00 for the violations identified in this Assessment and Order.

In addition to the penalty assessment, Respondent is hereby assessed, pursuant to 7 *Del. C.* §6005(c), costs in the amount of \$2,935.14, which were incurred by the Department in abating and investigating the noted violations.

Respondent shall submit one check to the Department in the amount of \$39,660.00 to pay the administrative penalty and one check to the Department in the amount of \$2,935.14 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: William J. Kassab, Deputy Attorney General, c/o Emily Gabriellini, 102 W. Water Street, Dover, Delaware 19901.

PUBLIC HEARING AND APPEAL RIGHTS

This Assessment and Order affects Respondent's legal rights and is effective and final upon receipt by Respondent. Pursuant to Section 6008 of Title 7 of the Delaware Code, 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.* § 6005(b)(3), request a public hearing on the Assessment and Order within **30 days** of receipt of the Assessment and Order. A public hearing pursuant to 7 *Del. C.* §6005(b)(3) would be conducted pursuant to 7 *Del. C.* § 6006, and the Secretary's order following the hearing would be subject to appeal, pursuant to 7 *Del. C.* § 6008, by any person substantially affected.

Respondent is further advised that the above assessed administrative penalty and costs shall be due and owing within 30 days of Respondent's receipt of this Assessment and Order. In the event of nonpayment of the administrative penalty and/or costs assessed above, and after Respondent has exhausted all legal appeals, if any, a civil action may be brought by the Secretary in Superior Court for collection of the administrative penalty, including interest, attorneys' fees and costs, and the validity, amount and appropriateness of such administrative penalty and/or costs shall **not** be subject to review pursuant to 7 *Del. C.* §§ 6005(b)(3) and (c).

To request a public hearing pursuant to 7 *Del. C.* § 6005(b)(3), 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 pursuant to 7 *Del. C.* § 6008, you must file your written statement of appeal and submit a check, made payable to:

“Environmental Appeals Board,” for the \$50.00 filing fee, 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

For additional information on filing an appeal with the Environmental Appeals Board and what information you must include in your written statement of appeal, please refer to the Environmental Appeals Board Regulations, codified at 7 DE Admin. Code § 105.

The Department, to the extent necessary, reserves the right to take additional enforcement actions regarding these and other violations by Respondent, 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). 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.

If you have any questions, please contact, or have your attorney contact William J. Kassab, Deputy Attorney General, at 302-395-2600.

Date

11/16/18

Shawn M. Garvin, Secretary

cc. William J. Kassab, Deputy Attorney General
Marjorie A. Crofts, Division Director

WAIVER OF STATUTORY RIGHT TO A HEARING

Axalta Coating Systems hereby waives its right to a public hearing under 7 *Del. C.* § 6005(b)(3) and its right to appeal under 7 *Del. C.* § 6008 this Assessment and Order and agrees to the following:

1. **Axalta Coating Systems** will pay the administrative penalty in the amount of \$39,660.00 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 William J. Kassab, Deputy Attorney General, c/o Emily Gabriellini, 102 W. Water Street, Dover, Delaware 19901; and
2. **Axalta Coating Systems** will reimburse the Department in the amount of \$2,935.14 which represents the Department’s actual costs incurred in abating and investigating the violations cited in this Assessment and Order. 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 William J. Kassab, Deputy Attorney General, c/o Emily Gabriellini, 102 W. Water Street, Dover, Delaware 19901.

Axalta Coating Systems

Date: _____

By: _____

Title: _____