



STATE OF DELAWARE
**DEPARTMENT OF NATURAL RESOURCES AND
ENVIRONMENTAL CONTROL**

OFFICE OF THE
SECRETARY

RICHARDSON & ROBBINS BUILDING
89 KINGS HIGHWAY
DOVER, DELAWARE 19901

PHONE
(302) 739-9000

**NOTICE OF ADMINISTRATIVE COST RECOVERY DEMAND
AND SECRETARY'S ORDER**

Pursuant to 7 Del. C. § 9109 and 7 Del. C. § 6005

Order No. 2020-WH-0035

***PERSONALLY SERVED BY
AN ENVIRONMENTAL CRIMES
UNIT OFFICER
and
BY CERTIFIED
MAIL***

Issued To:

Solvay Specialty Polymers USA, L.L.C.
Attn: Drew Liguori, Plant Manager
800 Greenbank Road
Wilmington, Delaware 19806

Certified Mail:

Kegan A. Brown, Esquire
Latham & Watkins LLP
53rd at Third
885 Third Avenue
New York, New York 10022

Respondent's Registered Agent:

Corporation Service Company
251 Little Falls Drive
Wilmington Delaware, 19808

The Secretary of the Department of Natural Resources and Environmental Control ("Department" or "DNREC") has found Solvay Specialty Polymers USA, L.L.C. ("Respondent") to be in violation of Delaware's Hazardous Substance Cleanup Act, 7 Del. C. Chapter 91 ("HSCA"), 7 Del. C. Chapter 60, 7 DE Admin. Code 1375, Delaware's *Regulations Governing Hazardous Substance Cleanup* ("Hazardous Substance Cleanup Regulations"), and 7

DE Admin. Code 1102, *Delaware's Division of Air Quality Permit Regulations*. Accordingly, the Department is issuing this Notice of the Secretary's Order pursuant to 7 Del. C. § 9109(a) (3) and 7 Del. C. § 6005(b)(3).

BACKGROUND

1. On June 25 and August 27, 2020, DNREC conducted site visits at Solvay Specialty Polymers USA, LLC ("Solvay") processing facility (the "Facility"), located at 800 Greenbank Road in Wilmington, Delaware, identified by New Castle County as tax parcel number 08-039.30-156.
2. During the site visits, DNREC documented the release or threatened release of hazardous substances, pollutants, or contaminants at the Facility.
3. DNREC has determined that a remedial action is required under HSCA to protect the public health and welfare and the environment. The Department's conclusion arises from the presence of a hazardous substance, perfluorooctanoic acid ("PFOA"), in the process flow immediately upstream of Solvay's dust-collector (baghouse) filters and exhausts, and in soil, sediment, groundwater, and surface water at locations immediately adjacent to the Facility.
4. Recent testing detected per- and polyfluoroalkyl substances (PFAS), including PFOA, in accumulated particulate material collected from the housings of the Facility's baghouses. DNREC has no evidence that the chemical composition of air exhaust would differ from this material. Although the Department issued Solvay air permits associated with its operations, including the baghouses, the requested permits were issued based on permit applications that indicated Solvay would use polytetrafluoroethylene (PTFE) as a feedstock. Delaware law, at 7 Del. C. § 6003(a)(1) prohibits the undertaking of any activity in a way which may cause or contribute to the discharge of an air contaminant without first having obtained a permit from the Secretary. Solvay's air permit

applications did not identify PTFE that contained other PFAS; consequently, that permit does not allow the emission of PFAS. Therefore, the Department considers Solvay in violation of 7 Del. C. § 6003(a)(1) and Section 2.1 of 7 DE Admin. Code 1102 for the unpermitted emissions of PTFE containing other PFAS.

5. Environmental sampling indicates that PFOA is present in the groundwater in the vicinity of the Solvay facility. These detections are in excess of the current HSCA Screening Level (SL), dated February 2020, for PFOA and perfluorooctanoic acid (PFOS), combined, in groundwater, which is 0.07 micrograms per liter ($\mu\text{g/L}$, equal to 70 ng/L).
6. Additionally, PFOA has been reported in soil samples in the vicinity of the Solvay Facility and in sediment and surface water from Red Clay Creek sampled in close proximity to the Facility. Air transport and deposition is a known pathway mechanism for PFAS compounds, including PFOA, and PFAS compounds are known to pass from surface deposition into groundwater or other media. Evidence indicates that a release of PFOA, which is a regulated hazardous substance and may be attributed to the Solvay Facility, has impacted environmental media at surrounding properties.

FINDINGS OF FACT AND VIOLATION

7. On September 11, 2020, by certified mail, pursuant to §§ 9104 and 9105 of the HSCA, DNREC notified Solvay Specialty Polymers USA, LLC, as an owner and/or operator of the Facility, that Solvay is a potentially responsible party ("PRP") as defined in §§ 9103(23) and 9105 of HSCA. That letter superseded the previous notice of liability, dated July 28, 2020, and was updated based on information provided to DNREC by Solvay and confirmed during the site visit of August 27, 2020.
8. DNREC received the return of service green card for the September 11, 2020, notice of liability mentioned above on September 17, 2020.

9. DNREC invited Solvay to participate in the Voluntary Cleanup Program ("VCP") commencing on October 12, 2020 and extended the date to join the VCP until November 12, 2020.
10. On December 14, 2020, DNREC received an application to join the VCP from Solvay.
11. Solvay's application to join the VCP is rejected as insufficient because it does not propose a remedy as defined in 7 Del. C. § 9103(27). There is no attempt to address the need to investigate the release of hazardous substances from the Facility and, if necessary, perform a remedy at the Facility.
12. Solvay has not applied for an air quality permit identifying PFAS other than PTFE as a pollutant of concern nor has it received a permit from the Secretary of DNREC allowing the undertaking of an activity at the site with the potential to emit PFAS other than PTFE.

CONCLUSIONS

Based on the foregoing, the Department has concluded that Respondent is a PRP and that it has violated HSCA, 7 Del. C. Chapter 60, the *Hazardous Substance Cleanup Act*, and *Delaware's Regulations Governing Hazardous Substance Cleanup*, 7 DE Admin. Code 1102. The Respondent is hereby ordered, pursuant to 7 Del. C. § 9109(a)(3), to:

1. Submit to DNREC, within sixty (60) days from the date of this order, the name and qualifications of the consultant who will be performing the remedial investigation, risk assessment and feasibility study of the Facility required by Section 9.4 of the *Delaware Regulations Governing Hazardous Substance Cleanup* and 7 Del. C. § 9106. A copy of the Department's policy for Minimum Qualification Requirements for Consultants can be found at DNREC's website at the following link:
http://www.dnrec.delaware.gov/dwhs/SIRB/Pages/SIRB_Consultant_Lab_Qualifications.aspx

2. Submit to DNREC, within forty-five (45) days of DNREC's approval of your consultant, a draft work plan.
3. Submit a completed Remedial Investigation and Feasibility Study for DNREC's review within one year from the date of this order.
4. Pay DNREC its costs incurred in designing or implementing a remedial action or remedy, as those terms are defined in 7 Del. C. §§ 9103 (26) and (27), respectively, that have been incurred and/or billed through the date of this Secretary's Order and agree to pay any other such reasonably incurred costs.
5. Implement the approved Final Plan of Remedial Action upon issuance; and
6. Notify DNREC within seven (7) days of any circumstance that comes to your attention and is beyond your reasonable control that will prevent you from complying with any deadline established by this Order.

PUBLIC HEARING AND APPEAL RIGHTS

This Order affects Respondent's legal rights and is effective and final upon receipt by Respondent. Pursuant to § 6008 of Title 7 of the Delaware Code, any person whose interest is substantially affected by an action of the Secretary may appeal to the Environmental Appeals Board within 20 days of the receipt of the Order. In the alternative, Respondent may, pursuant to 7 Del. C. §§ 6005(b)(2) & (b)(3), request a public hearing on the Order within 30 days of receipt of the Order. A public hearing pursuant to Del. C. §§ 6005(b)(2) & (b)(3) would be conducted pursuant to 7 Del. C. § 6006, and the Secretary's order would be subject to appeal following the hearing, pursuant to 7 Del. C. § 6008, by any person substantially affected.

To request a public hearing pursuant to 7 Del. C. §§ 6005(b)(2) & (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

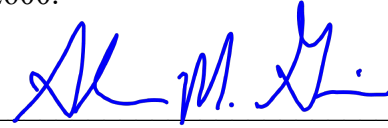
For additional information on filing an appeal with the Environmental Appeals Board and what information you must include in your written statement of appeal, please refer to the Environmental Appeals Board Regulations, codified at 7 DE Admin. Code § 105. Additional information may be found at: <https://dnrec.alpha.delaware.gov/environmental-appeals-board>.

The Department, 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).

If you have any questions, please contact, or have your attorney contact, Robert F. Phillips, Deputy Attorney General, at 302-395-2600.

12/17/20

Date



Shawn M. Garvin, Secretary