



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

Office of the
Secretary

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

Pursuant to 7 *Del.C.* §6005

Order No. 2018-WH-0012

*PERSONALLY SERVED BY A DELAWARE
NATURAL RESOURCES POLICE OFFICER*

Issued To:

Ms. Michele van Krieken
The Chemours Company FC, LLC
1007 Market Street
Room 4073
Wilmington, Delaware 19899

Registered Agent:

The Corporation Trust Company
Corporate Trust Center
1209 Orange Street
Wilmington, Delaware 19801

Dear Ms. van Krieken:

The Department of Natural Resources and Environmental Control ("Department") has found the Chemours Company FC, LLC @ Sardo & Sons Warehouse ("Respondent" or "Chemours") 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

The Chemours Company FC, LLC, develops, researches, and produces products and performance chemicals that are utilized by manufacturing companies worldwide. At 300 White Clay Center Drive in Newark, Respondent rents space at Sardo & Sons Warehousing to store

products and chemicals. In addition to renting storage space at the site, Respondent contracts with Sardo & Sons Warehousing to have Sardo & Sons Warehousing personnel act as their on-site agent(s). Along with maintaining products at the warehouse, Respondent generates hazardous waste when expired, off-spec, or unwanted products and chemicals are purged from inventory. Respondent utilizes both Sardo & Sons personnel and Clean Harbors to manage any hazardous waste generated at the site.

As Respondent generates hazardous waste, Respondent is subject to compliance inspections conducted by the Solid and Hazardous Waste Management Section ("SHWMS") pursuant to 7 DE Admin. Code 1302, DRGHW.

On May 2, 2017, the Department conducted a hazardous waste compliance assessment of Chemours' operations at the Sardo & Sons Warehousing located at 300 White Clay Center Drive in Newark, Delaware. At the time of the assessment, Respondent was classified as a large quantity generator ("LQG") of hazardous waste. On the basis of the information gathered during the assessment, the Department found Respondent 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. 17-HW-16, dated August 9, 2017, to Respondent on August 14, 2017. The NOV identified thirteen (13) violations of DRGHW and required Respondent to immediately comply with the NOV's requirement and additionally, to submit documentation demonstrating compliance within thirty (30) days of receipt of the NOV. Chemours' response was due by September 13, 2017.

It is relevant to note that on September 1, 2017, Chemours requested an extension to the deadline, as Respondent was "working diligently to develop the documentation and implement the training required for compliance...". At the time of the request, Chemours had demonstrated compliance with one (1) of the thirteen (13) violations stated within the NOV (17-HW-16). The Respondent requested an extension with the new deadline date September 29, 2017, which the Department granted verbally on September 5, 2017, and written correspondence on September 8, 2017. On September 6, 2017, Chemours submitted documentation correcting two (2) additional violations. On September 29, 2017, Chemours submitted documentation correcting the remaining ten (10) violations cited within the NOV.

***FINDINGS OF FACT AND VIOLATION INCLUDING
REGULATORY REQUIREMENTS***

1. DRGHW §262.11 reads in part:

*“Section 262.11 Hazardous waste determination.
A person who generates a solid waste, as defined in §261.2, must
determine if that waste is a hazardous waste...”*

At the time of the assessment, SHWMS representatives observed containers of various types and sizes on pallets, organized into three (3) rows of five (5) pallets deep, with some stacked two (2) high. SHWMS representatives observed that none of the containers were labeled to indicate that they were a waste, hazardous or otherwise. Sardo & Sons Warehousing (S&S) representatives stated that the containers were removed from inventory and “blocked” for disposal per a Chemours July 12, 2016, email. Upon being “blocked” by S&S personnel, the containers were staged in the Chemours’ waste accumulation area to await action by Clean Harbors, who makes Chemours’ hazardous waste determinations.

Based upon information obtained from both Chemours and S&S representatives during the assessment, SHWMS representatives determined that the observed purged products were waste, thus hazardous waste determinations were required to be immediately made, or the waste was required to be managed as hazardous until determined otherwise by Clean Harbors. Chemours failed to make hazardous waste determinations immediately upon generating the waste, which is a violation of DRGHW §262.11.

2. DRGHW §262.34(a)(3) reads:

*“(a) 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.’”*

At the time of the assessment, none of the observed hazardous waste containers were labeled to indicate they contained hazardous waste. The items were deemed to be waste by Chemours in a July 12, 2016, email and were awaiting final hazardous waste determinations by Clean Harbors. Subsequent to the assessment, Clean Harbors determined that some of the waste was hazardous, and as such, the containers were required to be labeled. Chemours failed to label 90 day accumulation area hazardous waste containers with the phrase “Hazardous Waste,” which is a violation of DRGHW §262.34(a)(3).

3. DRGHW §262.34(a)(2) reads:

“(a) 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.”

Chemours' products become a waste immediately upon Chemours stating that they were to be purged for disposal. The waste containers are subsequently relocated by S&S personnel to a staging area (90 day accumulation area), and are immediately required to be marked with an accumulation start date. SHWMS representatives observed no accumulation start dates upon any of the containers. Failure to mark the accumulation start date on a hazardous waste 90 day accumulation container is a violation of DRGHW §262.34(a)(2).

4. DRGHW §262.34(a) reads in part:

“(a) 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...”

As a large quantity generator of hazardous waste, Chemours is afforded the ability to accumulate hazardous waste for up to 90 days without a permit or without obtaining interim status. It was determined that the observed waste had been accumulated for approximately eight (8) months. Accumulating hazardous waste for longer than 90 days without obtaining a permit or interim status is a violation of DRGHW §262.34(a).

5. DRGHW §265.176(b) reads in part:

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

At the time of the assessment, SHWMS representatives did not observe “No Smoking” signage to be posted in Chemours' 90 day accumulation area, despite ignitable hazardous waste being present. Failure to post “No Smoking” signage when ignitable or reactive waste is present is a violation of DRGHW §265.176(b).

6. DRGHW §262.20(a)(1) reads:

“A generator who transports, or offers for transportation, hazardous waste for off site treatment, storage, or disposal, or a treatment, storage, and disposal facility who offers for transport a rejected hazardous waste load, must prepare a Manifest (U.S. OMB Control Number 2050-0039) on EPA Form 8700-22 and, if necessary EPA Form 8700-22A, according to the instructions included in the appendix to this part.”

Upon review of Chemours' manifests, SHWMS representatives determined that ten (10) hazardous waste manifests did not utilize Chemours' EPA ID number (DEN201300051). The hazardous waste shipments had been managed using Sardo & Sons' EPA ID number (DEN201300046). Chemours is required to ensure that the information on each manifest is accurate and complete prior to shipment. As the generator EPA ID number on ten (10) manifests was incorrect, Chemours failed to complete manifests in accordance with regulatory requirements, which is a violation of DRGHW §262.20(a)(1).

7. DRGHW §262.40(a) reads:

“A generator must keep a copy of each manifest signed in accordance with §262.23(a) for three years or until he receives a signed copy from the designated facility which received the waste. This signed copy must be retained as a record for at least three years from the date the waste was accepted by the initial transporter.”

SHWMS representatives requested the three (3) years' worth of Treatment Storage, or Disposal Facility (TSDF) signed manifests. In response, Chemours representatives provided copies of the requested manifests; however, none of the manifests included the TSDF signature. Failure to maintain copies of TSDF signed manifests is a violation of DRGHW §262.40(a).

8. DRGHW §265.52(d) reads:

“The plan must list names, addresses (office and home), and phone numbers (office and home) of all persons qualified to act as emergency coordinator (see §265.55), and this list must be kept up to date. Where more than one person is listed, one must be named as primary emergency coordinator and others must be listed in the order in which they will assume responsibility as alternates.”

Since Chemours elects to contract with S&S Warehousing and utilizes its services and documents to fulfill hazardous waste regulatory requirements, Chemours is responsible for ensuring that all portions of the contingency plan sufficiently meet regulatory requirements. SHWMS representatives reviewed the plan and determined that the plan does not contain a home address and home phone number for the emergency coordinator, S&S site manager David Gripp.

Failure to include the emergency coordinator's home address and home phone number within the contingency plan is a violation of DRGHW §265.52(d).

9. DRGHW §265.52(f) reads:

"The plan must include an evacuation plan for facility personnel where there is a possibility that evacuation could be necessary. This plan must describe signal(s) to be used to begin evacuation, evacuation routes, and alternate evacuation routes (in cases where the primary routes could be blocked by releases of hazardous waste or fires)."

While the aforementioned contingency plan includes an emergency evacuation procedure, it only states, "All personnel take the shortest and safest route through or around the site and report to the parking lot outside for a head count." This procedure fails to meet all portions of the evacuation plan regulatory requirements, which is a violation of DRGHW §265.52(f).

10. DRGHW §265.53(b) reads:

*"A printed copy of the contingency plan and all provisions to the plan must be...
(b) Submitted to all local police departments, fire departments, hospitals, and State and local emergency response teams that may be called upon to provide emergency services. Documentation of written submission and receipt must be maintained at the facility. These records must be kept for a period of at least 3 years since last being applicable."*

Since Chemours elects to contract with S&S Warehousing and utilizes their services and documents to fulfill hazardous waste regulatory requirements, Chemours is responsible for ensuring that the contingency plan is submitted to the proper local emergency responders. Neither Chemours, nor S&S Warehousing, provided the contingency plan to local emergency agencies on behalf of Chemours. Failure to provide copies of the contingency plan to local emergency responders, and maintain subsequent documentation of receipt, is a violation of DRGHW §265.53(b).

DRGHW §265.16(a) reads:

“(a) (1) Facility personnel must successfully complete a program of classroom instruction or on-the-job training that teaches them to perform their duties in a way that ensure that facility's compliance with the requirements of this part. The owner or operator must ensure that this program includes all the elements described in the document required under paragraph (d)(3) of this section.

(2) This program must be directed by a person trained in hazardous waste management procedures, and must include instruction which teaches facility personnel hazardous waste management procedures (including contingency plan implementation) relevant to the positions in which they are employed.

(3) At a minimum, the training program must be designed to ensure that facility personnel are able to respond effectively to emergencies by familiarizing them with emergency procedures, emergency equipment, and emergency systems, including where applicable:

- (i) Procedures for using, inspecting, repairing, and replacing facility emergency and monitoring equipment;*
- (ii) Key parameters for automatic waste feed cut-off systems;*
- (iii) Communications or alarm systems;*
- (iv) Response to fires or explosions;*
- (v) Response to groundwater contamination incidents and*
- (vi) Shutdown of operations.”*

SHWMS representatives received a list of S&S personnel that are responsible for managing Chemours' inventory and waste (e.g., purged products). S&S personnel are not trained in hazardous waste handling or emergency procedures. As it is Chemours' waste, it is Chemours' responsibility to ensure its agents are properly trained. Failure to ensure that personnel who handle hazardous waste are properly trained on hazardous waste management and emergency procedures is a violation of DRGHW §265.16(a).

11. DRGHW §265.55(b) reads:

“The emergency coordinator annual training must address assessing possible hazards to human health and the environment that may result from a release, fire, or explosion.”

Chemours representatives stated that S&S Warehousing site manager, David Gripp, serves as their emergency coordinator. SHWMS representatives are aware that Mr. Gripp has not had emergency coordinator training, let alone training on an annual basis. Failure to ensure that the emergency coordinator is properly trained, and trained annually, is a violation of DRGHW §265.55(b).

DRGHW §265.174 reads:

“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.”

At the time of the assessment, Chemours' agents had never conducted weekly inspections of the 90 day accumulation area. Failure to conduct, and maintain records of, weekly inspections of a 90 day accumulation area is a violation of DRGHW §265.174.

CONCLUSIONS

Based on the foregoing, the Department has concluded that The Chemours Company FC, LLC @ Sardo & Sons Warehouse 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 \$59,360 for the violations identified in this Assessment and Order.

In addition to the penalty assessment, Respondent is hereby assessed estimated costs in the amount of \$3,717, 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 \$59,360 to pay the penalty and one check to the Department in the amount of \$3,717 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: Ralph K. Durstein, III, Deputy Attorney General, Department of Justice, Environmental Unit, 102. W. Water Street – 3rd Floor, Dover, DE 19904.

PUBLIC HEARING AND APPEAL RIGHTS

This Assessment and Order 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 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 penalty assessment and Order, within **30 days** of receipt of the Assessment and Order. A hearing 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.

The Department reserves the right to take additional enforcement actions regarding these and other violations at Respondent's facility, 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.

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

The Chemours Company FC, LLC @ Sardo & Sons Warehouse hereby waives its right to a hearing and its opportunity to appeal or contest this Assessment and Order and agrees to the following:

The Chemours Company FC, LLC @ Sardo & Sons Warehouse will pay the administrative penalty in the amount of \$59,360 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; and

The Chemours Company FC, LLC @ Sardo & Sons Warehouse will reimburse the Department in the amount of \$3,717 which represents the Department's estimated costs. The reimbursement shall be paid within 30 days of receipt of this Assessment and Order. The check payable to the "State of Delaware" and be directed to Ralph K. Durstein, III, Deputy Attorney General, Department of Justice, Environmental Unit, 102 W. Water Street-3rd Floor, Dover, Delaware 19904;

**The Chemours Company FC, LLC @
Sardo & Sons Warehouse**

Date: _____

By: _____

Title: _____

