



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-0063

***PERSONALLY SERVED BY
AN ENVIRONMENTAL CRIMES
UNIT OFFICER***

Issued To:

Kelly M. Wright
Senior Manager Environmental Relations
Johnson Controls Battery Group, Inc.
700 North Broad Street
Middletown, DE 19708

The Corporation Trust Company
1209 Orange Street
Wilmington, DE 19801

Dear Ms. Wright:

The Secretary of the Department of Natural Resources and Environmental Control ("Department") has found Johnson Controls Battery Group, Inc. ("Respondent" or "Johnson Controls") 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

Johnson Controls operates a lead core manufacturing facility located at 700 North Broad Street, Middletown, Delaware (“facility”). During the operation of its facility, Johnson Controls generates hazardous waste. As such, Respondent is subject to compliance inspections conducted by the Department’s Solid and Hazardous Waste Management Section (“SHWMS”), pursuant to 7 DE Admin. Code § 1302.

On July 5, 2018, the Department conducted a compliance inspection of Johnson Controls’ 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 DED002353092. 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 July 5, 2018, inspection by issuing Notice of Violation (“NOV”) No. 18-HW-35 dated August 21, 2018, to Respondent. Respondent received the NOV on August 23, 2018. The NOV identified three (3) violations of DRGHW, which Respondent corrected prior to the Department’s issuance of the NOV.

On July 6, 2018, Respondent submitted documentation to the Department confirming it corrected one of the three violations cited in the NOV. On July 10, 2018, Respondent submitted documentation to the Department demonstrating that it corrected the two remaining violations. The submitted documentation corrected the violations to the satisfaction of SHWMS.

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 § 262.34(b) states:

“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.”

2. DRGHW § 122.1(c) states in part:

“...DNREC requires a permit for the ‘treatment’, ‘storage’, and ‘disposal’ of any hazardous waste’ as identified or listed in Part 261. The terms ‘treatment’, ‘storage’, ‘disposal’, and ‘hazardous waste’ are defined in Section 122.2. Owners and operators of hazardous waste management units must have permits during the active life (including the closure period) of the unit...”

On July 5, 2018, Department representatives observed one 55-gallon container and two 264-gallon containers of hazardous waste that were marked with an accumulation start date that exceeded 90 days. A large quantity generator of hazardous waste may store hazardous waste up to 90 days without a permit, but must obtain a permit to store hazardous waste in excess of 90 days. At the time of the July 5, 2018, inspection, Johnson Controls did not have a permit authorizing it to store hazardous waste in excess of 90 days.

Storage of hazardous waste longer than 90 days without a permit is a violation of DRGHW § 122.1(c).

3. DRGHW § 273.15(a) states in part:

“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...”

On July 5, 2018, Department representatives observed 12 30-gallon fiberboard containers of universal waste that were marked with an accumulation start date that exceeded one (1) year.

Storage of universal waste longer than one (1) year is a violation of DRGHW § 273.15(a).

4. DRGHW § 265.53(b) states:

*“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.”*

On July 5, 2018, Johnson Controls provided Department representatives documentation demonstrating the contingency plan had been mailed to the local fire company, police station, hospital, and emergency responders. However, because USPS periodically purges records of certified mail delivery, Johnson Controls was unable to demonstrate confirmation of delivery of the letters.

Failure to demonstrate confirmation of delivery of the contingency plan to the local authorities is a violation of DRGHW § 265.53(b).

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 \$12,600.00 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 \$3,058.56 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 \$12,600.00 to pay the administrative penalty and one check to the Department in the amount of \$3,058.56 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.

11/16/18
Date


Shawn M. Garvin, Secretary

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

WAIVER OF STATUTORY RIGHT TO A HEARING

Johnson Controls Battery Group, Inc. 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. **Johnson Controls Battery Group, Inc.** will pay the administrative penalty in the amount of \$12,600.00 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. **Johnson Controls Battery Group, Inc.** will reimburse the Department in the amount of \$3,058.56 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.

Johnson Controls Battery Group, Inc.

Date: _____

By: _____

Title: _____

