UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

JUL 29 2016

REPLY TO THE ATTENTION OF:

CERTIFIED MAIL 7009 1680 0000 7642 2932
RETURN RECEIPT REQUESTED

Mr. Jim Sayre
E.H.S Manager
American Colors, Inc.
1110 Edgewater Avenue
Sandusky, Ohio 44870

Re: Notice of Violation
Compliance Evaluation Inspection
OHD986966323

Dear Mr. Sayre:

On March 16, 2016, representatives of the U.S. Environmental Protection Agency and Ohio Environmental Protection Agency inspected American Colors, Inc., located in Sandusky, Ohio (hereinafter "ACI" or "you"). As a large quantity generator of hazardous waste, ACI is subject to the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 et seq. ("RCRA"). The purpose of the inspection was to evaluate ACI's compliance with certain provisions of RCRA and its implementing regulations related to the generation, treatment and storage of hazardous waste. A copy of the inspection report is enclosed for your reference.

Based on information provided by ACI, EPA's review of records pertaining to ACI, and the inspector's observations, EPA has determined that ACI has unlawfully stored hazardous waste without a permit or interim status as a result of ACI's failure to comply with certain conditions for a permit exemption under Ohio Admin. Code § 3745-52-34(A)-(C) [40 C.F.R. § 262.34(a)-(c)]. EPA has identified the permit exemption conditions with which ACI was out of compliance at the time of the inspection in paragraphs 1 – 6, below.

Many of the conditions for a RCRA permit exemption are also independent requirements that apply to permitted and interim status hazardous waste management facilities that treat, store, or dispose of hazardous waste (TSD requirements). When a hazardous waste generator loses its permit exemption due to a failure to comply with an exemption condition incorporated from Ohio Admin. Code chs. 3745-65 to 68 and 3745-256, the generator: (a) becomes an operator of a hazardous waste storage facility; and (b) simultaneously violates the corresponding TSD requirement. The exemption conditions identified in paragraphs 3 - 6 are also independent TSD requirements incorporated from Ohio Admin. Code chs. 3745-65 to 68 and 3745-256. Accordingly, each failure of ACI to comply with these conditions is also a violation of the

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corresponding requirement in Ohio Admin. Code chs. 3745-65 to 68 and 3745-256 [40 C.F.R. Part 265], or Ohio Admin. Code chs. 3745-54 to 57 and 3745-205 [40 C.F.R. Part 264].

Finally, EPA has determined that ACI also violated RCRA requirements related to universal waste management, and manifest and land disposal restriction recordkeeping.

STORAGE OF HAZARDOUS WASTE WITHOUT A PERMIT OR INTERIM STATUS AND VIOLATIONS OF TSD REQUIREMENTS

At the time of the inspection, ACI was out of compliance with the following large quantity generator permit exemption conditions:

1. Labeling of Hazardous Waste Satellite Containers

Under Ohio Admin. Code § 3745-52-34(C)(1)(b) [40 C.F.R. § 262.34(c)(1)(ii)], a generator may accumulate as much as 55 gallons of hazardous waste in containers ("satellite containers") at or near the point of waste generation which are under the control of the operator of the process generating the waste without a permit or interim status, as long as the container is marked with the words "Hazardous Waste."

At the time of the inspection, ACI maintained an acetone dip tank for cleaning purposes in the southwest corner of its mixing room. Underneath this dip tank was an unlabeled bucket of spent acetone. ACI indicated during the inspection that this spent acetone would be taken to the on-site solvent still for recovery. Because, in the State of Ohio, spent materials including this spent acetone are hazardous waste prior to on-site reclamation per OAC 3745-51-02(C)(3), this bucket was required to be marked as "Hazardous Waste." ACI, therefore, failed to meet this permit exemption condition.

2. Labeling of Hazardous Waste Tank Systems

Under Ohio Admin. Code § 3745-52-34(A)(3) [40 C.F.R. § 262.34(a)(3)], a large quantity generator must label or clearly mark each tank holding hazardous waste with the words "Hazardous Waste."

At the time of inspection, ACI maintained a solvent recovery still in the southeast corner of its manufacturing building. Prior to recovery in the still, hazardous waste acetone is accumulated in a 600-gallon tank system. During the inspection all labels on the tank were obscured by sludge and other grime, and it was not evident that the tank was marked as containing "Hazardous Waste." ACI, therefore, failed to clearly mark its hazardous waste tank and to meet this permit exemption condition.

The permit exemption conditions identified below in paragraphs 3 - 6 are also independent TSD requirements violated by ACI:

3. Hazardous Waste Contingency Plan Amendment

Under Ohio Admin. Code §§ 3745-52-34(A)(4); 3745-65-54 [40 C.F.R. § 262.34(a)(4); 265.54(c)], a large quantity generator must immediately amend its hazardous waste contingency plan whenever the facility changes – in its design, construction, operation, maintenance, or other circumstances – in a way that may change the response necessary in an emergency.

At the time of the inspection, ACI presented a hazardous waste contingency plan which contained a map of all hazardous waste satellite accumulation areas located around the site. Two of the satellite container locations marked on the map were not viewed during the site tour. ACI indicated that those two satellite container locations were no longer present, and that the contingency plan required an update. By failing to amend its contingency plan in response to changes in facility operation, ACI violated the above requirement.

4. Hazardous Waste Tank Systems – Recordkeeping

Under Ohio Admin. Code §§ 3745-52-34(A)(1)(b); 3745-66-92(A) and (G) [40 C.F.R. §§ 262.34(a)(1)(ii); 265.192(a) and (g)] the owner or operator of a hazardous waste tank system must have a written assessment that attests to the adequacy of the design, installation, and structural integrity of the tank system to manage hazardous waste. This assessment must be certified by a professional engineer. The owner or operator of the tank system must maintain this written assessment on site.

In communication with ACI after the inspection, ACI could not provide a copy of the certified assessment that attested to the adequacy of its hazardous waste acetone tank system. An ACI representative stated that a professional engineer had certified to its tank system in the past, but records of the assessment could not be located. ACI, therefore, violated the above recordkeeping requirement.

5. Hazardous Waste Tank Systems - Secondary Containment Management

Under Ohio Admin. Code § 3745-52-34(A)(1)(b); 3745-66-93(C)(4) [40 C.F.R. § 262.34(a)(1)(ii); 265.193(c)(4)], the owner or operator of a hazardous waste tank system must ensure that any spilled or leaked hazardous waste in the tank secondary containment system is removed in as timely a manner as possible to prevent harm to human health or the environment.

At the time of the inspection, a significant quantity of hazardous waste acetone and sludge was present in the secondary containment of ACI's hazardous waste acetone tank. An ACI representative stated that bottom sludge is sometimes removed from the tank into the containment system, and that the sludge observed in the containment system was likely leftover material from a previous clean-out. By failing to ensure hazardous waste is removed from the secondary containment system in a timely manner, ACI violated the above requirement.

Summary: By failing to comply with the conditions for a permit exemption as described above, ACI became an operator of a hazardous waste storage facility, and was required to obtain an Ohio hazardous waste storage permit. ACI failed to apply for such a permit. ACI's failure to apply for and obtain a hazardous waste storage permit violated the requirements of Ohio Admin. Code §§ 3745-50-45(A) and 3745-50-41(A) and (D) [40 C.F.R. §§ 270.1(c), and 270.10(a) and (d)]. Any failure to comply with a permit exemption condition incorporated into Ohio Admin. Code chs. 3745-65 to 68 and 3745-256 is also an independent violation of the corresponding TSD requirement.

Furthermore, in order to avoid the need for a federal hazardous waste permit, ACI must comply with the conditions necessary for a federal hazardous waste permit exemption, specifically, federal RCRA Subpart CC air emission standards for tanks. The conditions necessary for a federal hazardous waste permit exemption include the following:

6. Hazardous Waste Tank Systems – Subpart CC Air Emission Requirements

Under 40 C.F.R. §§ 262.34(a)(1)(ii); 265.1085(b) and (c), a large quantity generator, per the applicability in 40 C.F.R. § 265.1080, must control air pollutant emissions from each hazardous waste tank in accordance with the requirements applicable to that tank. The applicable requirements depend on, among other things, the volume of the hazardous waste tank and the physical and chemical properties of the hazardous waste stored in the tank.

Based on the volume of the hazardous waste acetone tank at ACI's site and the properties of the acetone waste held therein, Level 1 tank controls and requirements apply. Under 40 C.F.R. § 265.1085(c), Level 1 tanks require:

a) The owner or operator of the tank shall determine and record the maximum organic vapor pressure for hazardous waste stored within the tank, per the procedures at 40 C.F.R. § 265.1084(c);
b) The tank have a fixed roof that forms a continuous barrier over the hazardous waste in the tank, and has no visible cracks, holes, gaps or other open spaces between the roof and the tank walls;

c) Each opening in the fixed roof be equipped with a closure device (e.g., a hatch cover) to prevent air pollutant emissions to the atmosphere, or with a closed-vent system that is vented to a control device which removes or destroys organics in the vent stream prior to emission to the atmosphere. This excludes openings equipped with pressure relief valves, conservation vents, or other relief devices that maintain a safe internal tank pressure;
d) The fixed roof and its closure devices are made of materials that will minimize exposure of the hazardous waste to the atmosphere and will maintain the integrity of the fixed roof and closure devices for their intended service life; and
e) The owner or operator must inspect the fixed roof and any closure devices on or before the date waste is initially placed in the tank, and annually thereafter, to check for defects that could result in air pollutant emissions, and records of these inspections must be maintained at the facility for at least three years.

At the time of the inspection, ACI had not determined or recorded the maximum organic vapor pressure for the hazardous waste acetone stored in its hazardous waste tank. Additionally, an open pipe leading from the acetone tank and venting to the atmosphere above the facility roof was not equipped with a closure device or control device to prevent the emission of air pollutants. Finally, ACI was not conducting and recording inspections of the fixed roof and closure devices associated with its hazardous waste tank. ACI, therefore, failed to maintain its hazardous waste tank in compliance with the applicable air emission standards.

OTHER VIOLATIONS

7. Universal Waste Storage Requirements

Under Ohio Admin. Code § 3745-273-13(D)(1) [40 C.F.R. § 273.13(d)(1)], a small quantity handler of universal waste must contain universal waste lamps 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.

ACI is a small quantity handler of universal waste because it accumulates less than 5,000 kilograms of universal waste on its site at any time. At the time of the inspection, ACI was accumulating universal waste lamps in a single box in the northeast corner of its storage warehouse. The box was initially observed open, but was later closed by a facility representative during the site tour. Thus, no further action is necessary to comply with this requirement.

8. Hazardous Waste Manifest Recordkeeping

Under Ohio Admin. Code § 3745-52-40 [40 C.F.R. § 262.40(a)], a large quantity generator shall keep a copy of each hazardous waste manifest signed in accordance with paragraph (A) of rule 3745-52-23 [40 C.F.R. § 262.23] for three years or until it receives a signed copy from the designated treatment, storage, or disposal (TSD) facility which received the waste. This signed copy shall be retained as a record for not less than three years from the date the waste was accepted by the initial transporter.

At the time of the inspection, the signed TSD copies of two manifests were not available in ACI's records. The two manifests had initial shipment dates of July 1, 2014 and November 24, 2015. By not maintaining on site the signed TSD copies of these hazardous waste manifests, ACI violated the above recordkeeping requirement.

9. Land Disposal Restriction Notification Recordkeeping

Under Ohio Admin. Code § 3745-270-07(A)(8) [40 C.F.R. § 268.7(a)(8)], a generator of a hazardous waste restricted from land disposal without further treatment must retain on-site copies of all notices, certifications, waste analysis data, and other documentation related to land disposal restrictions for at least three years from the date that the waste that is subject to such documentation was last sent to an off-site treatment storage or disposal facility.

At the time of the inspection, ACI could not provide copies of the initial land disposal restriction notification forms associated with its acetone recovery still bottom and "glop" hazardous waste streams. Because these hazardous waste streams are still actively generated at ACI and shipped off site for disposal, ACI must maintain the initial land disposal restriction notification forms. ACI, therefore, is in violation of the above recordkeeping requirement.

10. Use Oil Marketing and Burning Prohibitions

Under Ohio Admin. Code § 3745-279-71 [40 C.F.R. § 279.71], a used oil fuel marketer must initiate a shipment of off-specification used oil only to a used oil burner who has a U.S. EPA identification number and burns the used oil in an industrial furnace or boiler identified in paragraph (A) of rule 3745-279-61 [40 C.F.R. § 279.61(a)].

Under Ohio Admin. Code § 3745-279-11 [40 C.F.R. § 279.11], used oil that is burned for energy recovery is subject to regulation under Ohio Admin. Code Chapter 3745-279 unless it can be shown not to exceed any of the allowable levels of the constituents and properties shown in the table in this rule. Used oil that exceeds the allowable levels and properties is "off-specification" used oil, and used oil that is below allowable levels and properties is "on-specification" used oil. If used oil that is to be burned for energy

recovery has been shown not to be exceed any allowable level, and the person making that showing complies with rules 3745-279-72, 3745-279-73, and paragraphs (B) and (C) of rule 3745-279-74, the used oil is no longer subject to regulation under Ohio Admin. Code Chapter 3745-279.

In short, EPA regulates used oil that is burned for energy recovery as off-specification used oil unless it is adequately demonstrated that the used oil meets the definition of on-specification used oil, per the requirements above.

At the time of the inspection, ACI indicated that the used oil it generated was taken off-site and burned for energy recovery. ACI could not provide any information related to its used oil to demonstrate that it was not off-specification used oil. ACI, therefore, violated the prohibition for marketers of used oil fuel and could not demonstrate its used oil was not off-specification.

At this time, EPA is not requiring ACI to apply for an Ohio or federal hazardous waste storage permit so long as it immediately establishes compliance with the conditions for a permit exemption outlined in paragraphs 1 - 6, above.

According to Section 3008(a) of RCRA, EPA may issue an order assessing a civil penalty for any past or current violation, requiring compliance immediately or within a specified time period, or both. Although this letter is not such an order, or a request for information under Section 3007 of RCRA, 42 U.S.C. § 6927, we request that you submit a response in writing to us no later than 30 days after receipt of this letter documenting the actions, if any, which you have taken since the inspection to establish compliance with the above permit exemption conditions and recordkeeping and used oil requirements. You should submit your response to Mr. Brian Kennedy, U.S. EPA, Region 5, 77 West Jackson Boulevard, LR-8J, Chicago, Illinois 60604.

If you have any questions regarding this letter, please contact Mr. Brian Kennedy, of my staff, at (312) 353-4383 or at kennedy.brian@epa.gov.

Sincerely,

Gary J. Victorine, Chief
RCRA Branch

Enclosure

cc: Kara Reynolds, Ohio EPA (kara.reynolds@epa.ohio.gov)
Maryann Miller, Ohio EPA (maryann.miller@epa.ohio.gov)
Mitch Matthews, Ohio EPA (mitchell.matthews@epa.ohio.gov)