west virginia department of environmental protection

Division of Water and Waste Management
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Earl Ray Tomblin, Governor
Randy C. Huffman, Cabinet Secretary
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ORDER
ISSUED UNDER THE
WATER POLLUTION CONTROL ACT
WEST VIRGINIA CODE, CHAPTER 22, ARTICLE 11
AND THE
GROUNDWATER PROTECTION ACT
WEST VIRGINIA CODE, CHAPTER 22, ARTICLE 12

TO: Freedom Industries, Inc.
Attn: Gary Southern, President
P.O. Box 713
Charleston, WV 25323

DATE: January 10, 2014

ORDER NO.: 8028

INTRODUCTION

The following findings are made and Order issued to Freedom Industries, Inc. pursuant to the authority vested in the Director of the Division of Water and Waste Management under Chapter 22, Article 11, Section 1 et seq. and Chapter 22, Article 12, Section 1 et seq. of the Code of West Virginia.

FINDINGS OF FACT

In support of this Order, the Director hereby finds the following:

1. Freedom Industries, Inc. operates a bulk storage distribution center located near Charleston, Kanawha County, West Virginia. The site was formerly operated by Ettowah River Terminal, LLC under WV/NPDES General Water Pollution Control Permit No. WV0111457, Registration No. WVG610920.

2. Freedom Industries, Inc. purchased the facility from Ettowah River Terminal, LLC on December 9, 2013.

3. On January 9, 2014, West Virginia Department of Environmental Protection (WVDEP) personnel received a complaint concerning an odor at / near the Freedom Industries, Inc. site. After investigation, the following was observed and documented:

a. Free product was observed in secondary containment units surrounding above ground storage tanks containing a chemical described as 4-Methylcyclohexne Methanol (MCHM). It was also observed that this material had escaped the secondary containment unit and had entered the Elk River. Failure to maintain adequate secondary containment for above ground storage tanks is a violation of 47 CSR 58, Section 4.8.a.
b. It was determined that the intake for the local public water supply is located approximately 1.5 miles downstream of the discharge, and has been impacted.
c. The release of this spilled material has caused conditions not allowable in the Elk River by creating odors in the vicinity of state waters, by requiring an unreasonable degree of treatment for the production of potable water, and by creating a sheen on the surface of the water, a violation of 47 CSR 2, Section 3.
d. Freedom Industries, Inc. has failed to take any and all measures necessary to contain the spill and render it harmless, a violation of 47 CSR 11, Section 2.5.

4. At 12:05 p.m. on January 9, 2014, Bob Reynolds with Freedom Industries, Inc. reported the spill to the Emergency Response Spill Hotline. Mr. Reynolds indicated that the facility discovered a hole in the tank; as well as, the secondary containment unit was containing the spilled material.

5. On January 10, 2014, WVDEP personnel continued its investigation of the release of MCHM from Freedom Industries, Inc's facility into the Elk River. During the course of the investigation, the following was observed and documented:

   a. In addition to the three (3) above ground storage tanks containing MCHM, eleven (11) additional tanks were reported as containing other materials with the potential to cause harm to human health and the environment. These tanks are located within the same failed secondary containment structure in which the MCHM leaked. The other materials being stored in the additional tanks include Calcium Chloride and Glycerin.
   b. Freedom Industries, Inc. has removed most of the MCHM from the above ground storage tanks and staged it off-site at Poca Blending, LLC in four large Baker tanks. Approximately twenty four hundred gallons of MCHM tank heels remain onsite to be recovered.

6. 47 CSR 58, Section 4.1. states, "Where the evaluation of an existing facility reveals that contamination is occurring, a schedule of compliance must be submitted by the facility or activity and approved by the director whereby the facility or activity must retrofit or improve or discontinue existing systems, activities or procedures to make them, to the satisfaction of the director, protective of groundwater."

ORDER FOR COMPLIANCE

And now, this day of January 10, 2014, Freedom Industries, Inc. is hereby ORDERED by the Director as follows:

1. Freedom Industries, Inc. shall immediately take measures to initiate compliance with all pertinent laws and rules.

2. All requirements of Order No. 8027 remain in full force and effect.

3. Within twenty-four (24) hours, Freedom Industries, Inc. shall begin removal of all material from all above ground storage tanks and store the material in an off-site area which provides adequate secondary containment.

4. Within twenty-four (24) hours, Freedom Industries, Inc. shall submit for approval, an appropriate plan of corrective action, which at a minimum shall include the following:

   a. An outline of all actions to be taken to immediately remove and appropriately store materials from the site.
   b. A detailed plan to appropriately implement a remediation of all contaminated soil and/or groundwater.
   c. An outline of how all contaminated material and/or unusable product will be properly disposed.
   d. A plan and schedule for the ultimate disposition of the products stored in these tanks including the MHCM currently stored at the POCA Blending facility.

   The plan of corrective action shall be submitted to the onsite WVDEP Inspector.

   A copy of this plan shall be submitted to:

   WVDEP Environmental Inspector Supervisor
   SW Regional Environmental Enforcement Office
   PO Box 662
   Teays, WV 25569

   A copy of this plan shall also be submitted to:

   Chief Inspector
   Environmental Enforcement - Mail Code #031328
   WVDEP
   601 57th Street SE
   Charleston, WV 25304

   Upon approval, the plan of corrective action and schedule shall be incorporated into and become part of this Order, as if fully set forth herein. Failure to submit an approvable plan of corrective action and schedule or failure to adhere to the approved schedule is a violation of this Order.

OTHER PROVISIONS

1. Compliance with the terms and conditions of this Order shall not in any way be construed as relieving Freedom Industries, Inc. of the obligation to comply with any applicable law, permit, other order, or any other requirement otherwise applicable. Violations of the terms and conditions of this Order may subject Freedom Industries, Inc. to additional enforcement action in accordance with the applicable law.

2. The provisions of this Order are severable and should a court or board of competent jurisdiction declare any provisions to be invalid or unenforceable, all other provisions shall remain in full force and effect.

3. This Order is binding on Freedom Industries, Inc., its successors and assigns.

4. This Order shall terminate upon Freedom Industries, Inc.'s notification of full compliance with the "Order for Compliance" and verification of this notification by WVDEP.

RIGHT OF APPEAL

Notice is hereby given of your right to appeal the terms and conditions of this Order which you are aggrieved to the Environmental Quality Board by filing a NOTICE of APPEAL on the form prescribed by such Board, in accordance with the provisions of Chapter 22, Article 11, Section 21 and/or Chapter 22, Article 12, Section 11 of the Code of West Virginia within thirty (30) days after receipt of this Order.

This Order shall become effective upon receipt.

Scott G. Mandirola, Director
Division of Water and Waste Management

revised March 2013