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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CONSENT 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 24, 2014

ORDER NO.: 8034

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 Etowah River Terminal, LLC under WV/NPDES General Water Pollution Control Permit No. WV0111457, Registration No. WVG610920.

2. The memberships in Etowah River Terminal, LLC were purchased by Chemstream Holdings, Inc. in mid-December 2013. Etowah River Terminal, LLC merged with Freedom Industries, Inc. on December 31, 2013, with Freedom Industries, Inc. as the surviving entity.

3. On January 10, 2014 WVDEP issued Order No. 8028. Paragraph 3 under the Order for Compliance Section required Freedom Industries, Inc., within twenty-four (24) hours to 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. On January 11, 2014 WVDEP received a written response to Order No. 8028 from Gary Southern, President of Freedom Industries, Inc. This response stated that "all 4-methylcyclohexane methanol (MCHM) stored in tanks at Freedom's Charleston facility has been removed and transported to the Poca Blending facility." Furthermore, regarding the removal of non-MCHM material from the tanks at this facility, this response stated "Freedom estimates that all material would be removed from the Site by no later than March 30, 2014."

5. On January 14, 2014 WVDEP replied to Freedom Industries, Inc.'s January 11, 2014 correspondence based on discussions with WVDEP personnel that had been providing oversight for this incident. In its correspondence, the agency determined that Freedom Industries, Inc.'s primary focus should continue to be the ongoing containment and remediation of the spilled material; however, WVDEP informed Freedom Industries, Inc. that the proposed date of March 30, 2014 for accomplishing the removal of the remaining materials from above ground storage in tanks at the facility was unacceptable. WVDEP amended paragraph 3 under the Order for Compliance Section of Order No. 8028 to require that "As soon as possible, but no later than fourteen (14) days from the effective date of the Order, Freedom Industries 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 in accordance with 47 CSR 58, Section 4.8.a."

6. Freedom Industries, Inc. has not brought any additional materials on to the site since January 9, 2014. In addition, Freedom Industries, Inc. reported to WVDEP that by January 20, 2014 it had removed approximately 269,419 gallons of the remaining materials from the facility. This represents a reduction of approximately 20% from the January 9, 2014 inventory of other materials.

ORDER FOR COMPLIANCE

Now, therefore, in accordance with Chapter 22, Article 11, Section 1 et seq. and Chapter 22, Article 12, Section 1 et seq. of the West Virginia Code, it is hereby agreed between the parties, and ORDERED by the Director:

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

2. The terms and conditions of this Order are intended to administratively resolve paragraph 3 under the Order for Compliance Section of Order No. 8028. All remaining requirements of Order No. 8028 remain in full force and effect.

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

4. All requirements or Order No. 8033 remain in full force and effect.

5. On or before March 15, 2014, Freedom Industries, Inc. shall remove all material from all above ground storage tanks at the Charleston facility and either sell the material to its customers, return the material to the original vendor, or store the material in an off-site area which provides adequate secondary containment, in accordance with 47 CSR 58, Section 4.8.a. Upon commencement of the removal of the materials from the tanks, and on a weekly basis thereafter, until the project is completed, Freedom Industries, Inc. will provide a written report to WVDEP detailing progress, outlining anticipated actions, and describing the disposition of the materials removed from the tanks. Reports shall be mailed to the addresses provided below.

6. On or before March 15, 2014, Freedom Industries, Inc. will begin to dismantle, remove, and properly manage the disposition of all above ground storage tanks, associated piping, machinery, and appurtenances, associated with the bulk storage operations at the Charleston facility. Freedom Industries, Inc. shall provide appropriate interim measures to ensure that secondary containment is adequate to contain any spills resulting from its dismantling operations. Secondary containment structures surrounding the aforementioned AST's shall not be removed until the AST's have been dismantled and removed from the site. Upon commencement of the dismantling and removal of these fixtures, and on a weekly basis thereafter, until the project is completed, Freedom Industries, Inc. will provide a written report to WVDEP detailing progress, outlining anticipated actions, and describing the disposition of the materials removed from the site. Reports shall be mailed to:

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

A copy of these reports shall also be submitted to:

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

7. Freedom Industries, Inc. is hereby required to document the precise nature of the changes, alterations or modifications, the date they occurred and by whose authority they were made for all AST dismantling activities required by this Order.

OTHER PROVISIONS

1. Freedom Industries, Inc. hereby waives its right to appeal this Order under the provisions of Chapter 22, Article 11, Section 21 of the Code of West Virginia and/or Chapter 22,

Article 12, Section 11. Under this Order, Freedom Industries, Inc. agrees to take all actions required by the terms and conditions of this Order and consents to and will not contest the Director's jurisdiction regarding this Order. However, Freedom Industries, Inc. does not admit to any factual and legal determinations made by the Director and reserves all rights and defenses available regarding liability or responsibility in any proceedings regarding Freedom Industries, Inc. other than proceedings, administrative or civil, to enforce this Order.

2. The Director reserves the right to take further action if compliance with the terms and conditions of this Order does not adequately address the violations noted herein and reserves all rights and defenses which he may have pursuant to any legal authority, as well as the right to raise, as a basis for supporting such legal authority or defenses, facts other than those contained in the Findings of Fact.

3. If any event occurs which causes delay in the achievement of the requirements of this Order, Freedom Industries, Inc. shall have the burden of proving that the delay was caused by circumstances beyond its reasonable control which could not have been overcome by due diligence (i.e., force majeure). Force majeure shall not include delays caused or contributed to by the lack of sufficient funding. Within three (3) working days after Freedom Industries, Inc. becomes aware of such a delay, notification shall be provided to the Director/Chief Inspector and Freedom Industries, Inc. shall, within ten (10) working days of initial notification, submit a detailed written explanation of the anticipated length and cause of the delay, the measures taken and/or to be taken to prevent or minimize the delay, and a timetable by which Freedom Industries, Inc. intends to implement these measures. If the Director agrees that the delay has been or will be caused by circumstances beyond the reasonable control of Freedom Industries, Inc. (i.e., force majeure), the time for performance hereunder shall be extended for a period of time equal to the delay resulting from such circumstances. A force majeure amendment granted by the Director shall be considered a binding extension of this Order and of the requirements herein. The determination of the Director shall be final and not subject to appeal.

4. **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 penalties and injunctive relief in accordance with the applicable law.

5. 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.

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

7. 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.

Gary Southern, President
Freedom Industries, Inc.

1/24/2014
Date

Public Notice begin:

Date

Public Notice end:

Date

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

1/24/14
Date