KDHE Ruling Brief

In the most recent KDHE hearing related to hazardous waste violations cited at a Client facility, the Judge ruled in favor of all of KDHE’s citations. That being said, the following brief covers those select items the Client attempted to refute and the Judge’s final decision.

**Brief Background**

The Client was first inspected by KDHE in December 2010, the result of which led to a Consent Agreement with KDHE for the period of 3 years (June 2012 – June 2015). In December 2014, the Client was inspected a second time by KDHE and cited for 4 violations leading KDHE to extend the Consent Agreement another 2 years (June 2015 – June 2017). In February 2017, the Client was inspected a third time by KDHE and cited for 10 violations and classified as being in “significant non-compliance” leading to the current penalties.

**1st Violation Argued – Fluorescent Lamp**

3 violations cited for one spent 8’ fluorescent lamp left on a shelf:

1) Failure to containerize lamp;

2) Failure to label lamp as Universal Waste; and,

3) Failure to mark lamp with accumulation start date

Client tried to prove that lamps are non-hazardous and purchased from Lowe’s by providing receipts; however, receipt was for 4’ lamps vs 8’ lamps. Client also tried to prove that a container was indeed present for lamps (KDHE acknowledged this in their notes from the inspection); therefore, they should not be cited for the container violations (failure to label and failure to date), only the failure to containerize violation.

**Court Ruling**

While the lamp was ultimately placed in the container as required, that does not detract from the fact that, upon inspection, the spent lamp had not been placed in a container. Moreover, since the lamp was not in a labeled container, the regulation requires that the lamp itself be labeled. It is not enough that there was a container in the facility that was properly labeled. If the lamp was not in that container then it must be labeled, according to the regulation. Likewise, the lamp needed to be dated to indicate when it became, waste. While the Client points out there was a labeled and dated container in the facility, the lamp in question was not in that container. Because the lamp was not in the container maintained by the facility, the Client was in technical violation of all three regulations.

**2nd Violation Argued – Blast Bag**

2 violations cited for one bag sitting outside of a blast unit:

1) Failure to mark storage container with accumulation start date; and,

2) Failure to label storage container as Hazardous Waste

Client tried to prove the blast unit had been out of service since 2014. The waste determination provided during the inspection was dated 2015 for the disposal of the waste after the unit was discontinued. Client told KDHE during the inspection that the blast unit had recently been used by an employee to blast their bicycle during off hours and that the waste determination provided was not applicable as that was for the waste when it was taken out of service in 2015.

**Court Ruling**

The only evidence before the Judge is a container of waste material that does not have an accumulation start date on the container; nor does the container have the words "Hazardous Waste" on it. The only documentation, submitted for consideration indicated that the blasting unit had previously had hazardous waste material removed from it. There is no evidence as to whether the hazardous materials identified in the Waste Determination in May of 2015 were emptied of or if they remained in the yellow container. There was no analysis completed on the contents of the yellow container to determine if the contents were or remained, hazardous. It is reasonable; absent any evidence to the contrary, for the KDHE inspector to assume that hazardous waste was in the yellow container that was removed from the blasting unit. This assumption was based on the only

historical information that was provided, which determined in May of 2015 that waste from the blasting unit was hazardous. As such, the yellow container needed to be labeled "Hazardous Waste" and needed to include an accumulation start date. Neither of these were on the yellow container.

**3rd Violation Argued – Paint Drips**

1 violation cited for paint drips on the ground outside by the dumpster:

1) Failure to prevent the possibility of fires, explosions or sudden releases of hazardous waste

Client tried to prove the paint drips came from exempt containers that were RCRA empty at the time of disposal into the dumpster. The paint drips have accumulated over time as the Client has been at this location for over 10 years.

**Court Ruling**

The first consideration is whether all wastes were removed from the can that could be removed, as required by regulation in order for the remaining contents to be exempt. If the contents were able to drip from the cans upon transport to the dumpster, and in the quantity that had been dripped, it is obvious that not all of the wastes were removed from the paint cans that could have been removed. As a handler of hazardous wastes, the Client had a responsibility to take precautions to ensure that hazardous materials were not subject to a release "to air, soil, or surface water which could threaten human health or the environment." Those precautions were not taken, as evidenced by the inspection findings and the photographs that were taken. Spills are understandable; however, the failure to clean up the spills and mitigate the release is crucial. It is clear from the photographs that the spills in question during this inspection had not been cleaned, nor does it appear that there was any effort made to clean the spills.

With the premise that .the hazardous waste contents of the paint cans were no longer exempt once they exited the paint can(s), the question is then whether the spills identified during the inspection violate the regulation that has been cited as the basis for the violation and the penalty, 40 CFR 265.31. The regulation states: "Facilities must be maintained and operated to minimize the possibility of a fire, explosion, or any unplanned sudden or non-sudden release of hazardous waste

or hazardous waste constituents to air, soil, or surface water which could threaten human health or the environment." Based upon the testimony and evidence offered, it does not appear that the Client operated to minimize the possibility of a fire or release of hazardous waste. It appears that the Client took the least restrictive means' of handling a hazardous waste, resulting in spills. During the hearing a question was posed to the inspector as to what could have been done to prevent the spills. The inspector mentioned the possibility of using better bags for disposal or even double bagging the paint containers and testified that landfills are constructed to avoid release of hazardous wastes into the environment. The Client must take precautions to mitigate release, at the very least until the waste reaches the landfill. The Client did not take such precautions.

**NOTE**

There were 4 other citations issued to the Client, totaling 10 citations. The citations above were the main focus of the hearing and the Judge ordered 100% in favor of KDHE and issued the penalties in full to the Client.