



U. S. Chemical Safety and Hazard Investigation Board RECOMMENDATIONS STATUS CHANGE SUMMARY

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| Report: | Donaldson Enterprises, Inc. Fatal Fireworks Disassembly Explosion and Fire |
| Recommendation Number: | 2011-06-I-HI-R9 |
| Date Issued: | January 17, 2013 |
| Recipient: | Environmental Protection Agency (EPA) |
| New Status: | Closed – Unacceptable Action/No Response Received |
| Date of Status Change: | December 20, 2017 |

Recommendation Text:

Revise the Resource Conservation and Recovery Act (RCRA) Subtitle C regulations to require a permitting process with rigorous safety reviews to replace the use of emergency permits under 40 C.F.R. § 270.61 for the disposal of explosive hazardous materials, including fireworks. At a minimum, the new process should require the use of best available technology, safe disposal methodologies, as well as safety management practices, such as those required by OSHA's Process Safety Management Standard (PSM), 29 C.F.R. § 1910.119 (e.g., hazard analysis and control, management of change).

Board Status Change Decision:

A. Rationale for Recommendation

On April 8, 2011, an explosion and fire occurred inside a storage magazine leased by Donaldson Enterprises, Inc. (DEI) at Waikele Self Storage in Waipahu, Hawaii. DEI used the magazine for seized fireworks storage and disposal related activities. As a result of the explosion and fire, five DEI personnel inside the magazine were fatally injured and a sixth sustained minor injuries.

As a part of its investigation, the U.S. Chemical Safety and Hazard Investigation Board (CSB) reviewed the hazardous solid waste disposal regulations promulgated under the Resource Conservation and Recovery Act (RCRA) pertaining to the disposal of fireworks and the issuance of emergency permits for these disposal activities. CSB concluded that RCRA emergency permits lack appropriate safety management practices. As the DEI firework disposal operation evolved and major hazards were introduced from disassembling and accumulating firework components, the emergency hazardous waste permit included no requirements to review safety aspects of these critical changes. Based on the findings of the investigation, the Board voted on January 17, 2013, to issue three recommendations to the Environmental Protection Agency (EPA). This status change summary only addresses CSB Recommendation No. 2011-06-I-HI-R9.

B. Response to the Recommendation

EPA responded that it did not believe that regulatory changes were necessary since the agency believed adequate RCRA Subtitle C regulations already exist; and had they been followed (e.g., no metal spark-producing tools and no other metal objects allowed, and explosive dust kept

swept off the floor), would have prevented the accident's probable causes as identified by the CSB.

In short, EPA believes that the issue is not with the regulations, but with their implementation and pursued criminal charges against DEI which were unsuccessful¹. To address the rules implementation, EPA informed the CSB that it plans to disseminate additional information on the safe management of explosive waste under RCRA. Additionally, the EPA felt that there were we other regulations and guidance that governed the situation. After further review, CSB staff did not concur with this assessment as none of the named agencies' regulations and/or guidance included the safety management practices listed in the recommendation.

C. Board Analysis and Decision

As the EPA has declined to revise the RCRA Subtitle C regulations to address the safety management practices contained in CSB Recommendation No. 2011-06-I-HI-R9 for nearly five years, the fact that its related prosecution against DEI executive for noncompliance with the RCRA regulations was unsuccessful, and the unlikelihood that further actions will persuade the EPA to implement this recommendation, the Board voted to change its status to: **“Closed—Unacceptable Action/No Response Received.”**

¹ EPA pursued criminal charges against a DEI Executive and Manager. In 2016, the Manager accepted a plea deal to single misdemeanor charge of improper storage of explosive material and received a maximum one-year jail term and \$100,000 fine. The DEI Executive was found not guilty of the three felony counts against him for not having a proper permit for hazardous waste, and improper storage and treatment of hazardous waste. Jurors also cleared the company of any wrongdoing