OHIO E.P.A.
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BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY

In the Matter Of:

Waste Management of Ohio, Inc. 1006 W. Walnut Street Canal Winchester, Ohio 43110	:	Director's Final Findings and Orders
and		
Evergreen Recycling and Disposal Facility, Inc. 2625 East Broadway Northwood, Ohio 43619	:	
Respondents		

I certify this to be a true and accurate copy of the official documents as filed in the records of the Ohio Environmental Protection Agency.

By: _____ Date: 7-21-11

PREAMBLE

It is agreed by the parties hereto as follows:

I. JURISDICTION

These Director's Final Findings and Orders ("Orders") are issued to Waste Management of Ohio, Inc. (hereinafter "Waste Management" and Evergreen Recycling and Disposal Facility, Inc. (hereinafter "Evergreen") and collectively, "Respondents") pursuant to the authority vested in the Director of the Ohio Environmental Protection Agency ("Ohio EPA") under Ohio Revised Code ("ORC") §§ 3734.13, 3745.01 and 6111.03.

II. PARTIES BOUND

These Orders shall apply to and be binding upon Respondents and successors in interest liable under Ohio law. No change in ownership of Respondents or of the Facility (as hereinafter defined) shall in any way alter Respondents' obligations under these Orders.

III. DEFINITIONS

Unless otherwise stated, all terms used in these Orders shall have the same meaning as defined in ORC Chapters 3734. and 6111. and the rules promulgated thereunder.

IV. FINDINGS

The Director of Ohio EPA makes the following findings:

1. The Evergreen Recycling and Disposal Facility (the "Facility") is located at 2625 East Broadway, Northwood, Wood County, Ohio.

2. Respondent Evergreen is the "operator" of the Facility as that term is defined in Ohio Administrative Code ("OAC") Rule 3745-27-01(O)(5) and is also the license holder for the Facility.

3. Respondent Waste Management of Ohio, Inc. is the "owner" or "property owner" and is also an "operator" of the Facility as those terms are defined in OAC Rule 3745-27-01(O)(7) and OAC Rule 3745-27-01(O)(5).

4. Respondent Waste Management of Ohio, Inc. holds title to the property on which the Facility is located.

5. The Facility is a "sanitary landfill facility" as that term is defined under OAC Rule 3745-27-01(S)(4) and is authorized to accept "solid waste" as that term is defined under ORC Section 3734.01(E) and OAC Rule 3745-27-01(S)(23).

6. The Facility is neither licensed nor permitted to accept and/or treat hazardous waste.

7. Respondents are "person[s]" as that term is defined in ORC Section 3734.01(G) and in OAC Rule 3745-27-01(P)(3).

8. Pursuant to OAC Rule 3745-51-03(A)(2)(a) hazardous waste includes any waste which exhibits any of the characteristics of hazardous waste.

9. On November 19, 2008, Respondent Evergreen notified Ohio EPA of the Facility's acceptance and treatment (via the solidification bins) of potentially hazardous waste (used oil/oil and wastewater mixtures) from waste transporter Safety-Kleen Systems, Inc. ("Safety Kleen").

10. In correspondence dated December 8, 2008 and March 9, 2009, Safety Kleen submitted documentation to Ohio EPA, Division of Hazardous Waste Management-Northwest District Office ("DWHM-NWDO") regarding the bulk liquid waste shipments transported to the Facility. Safety Kleen acknowledged that between July 1, 2005 and June 26, 2008, at least six (6) different generator waste streams on at least thirty-six (36) separate occasions were transported to Evergreen improperly.

11. In the December 8, 2008 correspondence, Safety Kleen also reported that based on the maximum capacity of a Safety Kleen service truck (3,200 gallons), and assuming one shipment per day to the landfill, the total volume of the waste shipped to the Facility was, at a minimum, 15,733 gallons, but could have been as much as 115,200 gallons.

12. From the information Safety Kleen provided to Ohio EPA-DHWM, Ohio EPA determined that Safety Kleen, in violation of the State's hazardous waste statutes, transported characteristically hazardous waste to Respondents' Facility on at least thirty-six occasions. Ohio EPA determined that each shipment was characteristically hazardous waste as described in OAC Rule 3745-51-24, for lead (D008) and occasionally for cadmium (D006) and chromium (D007). In correspondence dated July 24, 2009, Ohio EPA-DHWM notified Safety Kleen Systems, Inc. of the referenced violations.

Water Pollution Control Violations

13. On July 13, 1997, Ohio EPA received an application for a permit to install ("PTI") mixing bins nos. 1 and 2 for "solidification of non-hazardous waste which does not pass the paint filter test" at the Facility from Waste Management for its subsidiary Evergreen. Based on this application, Ohio EPA issued PTI No. 03-10750 for the solidification bins for the Facility effective August 1, 1997.

14. On October 5, 1999, Ohio EPA received an application for a PTI for a third mixing bin at the Facility from Waste Management for its subsidiary Evergreen. The application stated that "[a]ll bins are used to mix liquid containing non-hazardous waste with solidification agent or agents to create non-hazardous solid waste for disposal." Based on this application, Ohio EPA issued PTI No. 03-12035 for solidification bin no. 3 for the Facility effective December 20, 1999.

15. On March 22, 2001, Ohio EPA received an application for a PTI for solidification bins nos. 4, 5, and 6 from Respondent Waste Management. The PTI application identified the type of establishment as a "[n]on-haz[ardous] liquid solidification facility," and stated that the "[o]bjective is to solidify the liquid containing non-hazardous waste using soil, saw dust, and auto fluff, with the resulting mixture being disposed of properly." Based on this application, Ohio EPA issued PTI No. 03-12821 for "Solid Waste Solidification Bins for Evergreen RDF..." effective June 14, 2001. A provision of the PTI states: "No liquids, sludges, or toxic or hazardous substances other than those set forth in the approved permit shall be accepted for disposal without the prior written approval of the Ohio Environmental Protection Agency."

16. On December 11, 2006, Ohio EPA issued Director's Final Findings and Orders to Respondent Evergreen and to SC Holdings, Inc., f.k.a. Ohio Waste Systems Inc. Pursuant to Order No. 4 of the 2006 Orders, "Respondents shall not accept any hazardous wastes or substances, including but not limited to PCBs and radioactive waste, for treatment in the mixing bins."

17 Respondents did not seek nor obtain written approval of Ohio EPA prior to acceptance of the used oil with hazardous waste characteristics into the Facility's solidification bins on at least thirty-six (36) separate occasions between July 1, 2005 and June 26, 2008.

18. On each occasion Respondents accepted the used oil/used oil and waste water from Safety Kleen into the solidification bins, in violation of PTI Nos. 03-10750, 03-12035, and 03-12821.

19. ORC Section 6111.07(A) prohibits any person from violating, or failing to perform any duty imposed by ORC Sections 6111.01 to 6111.08 or violating any order, rule, or term or condition of a permit issued or adopted by the Director of Environmental Protection pursuant to those sections. Each day of violation is a separate offense.

20. Pursuant to OAC Rule 3745-42-02(G)(1), the Director may revoke a permit to install or plan approval if the Director concludes at any time that any applicable laws have been or are likely to be violated.

21. Compliance with the ORC Chapter 6111. is not contingent upon the availability or receipt of financial assistance.

22. The Director has given consideration to, and based his determination on, evidence relating to the technical feasibility and economic reasonableness of complying with these Orders and to evidence relating to conditions calculated to result from compliance with these Orders, and its relation to the benefits to the people of the State to be derived from such compliance in accomplishing the purposes of ORC Chapter 6111.

Division of Materials and Waste Management Violations

23. In accordance with OAC Rule 3745-27-19(B)(1), "[t]he owner or operator shall conduct all operations at a sanitary landfill facility in strict compliance with the terms and conditions of the solid waste disposal license issued for the facility in accordance with Chapter 3745-37 of the Administrative Code."

24. In accordance with OAC Rule 3745-27-19(B)(2), "[t]he owner or operator shall conduct all construction and operation at a sanitary landfill facility in strict compliance with the applicable authorizing document(s), including permit(s) to install, a plan approval, an operational report, an approved closure plan, an alteration(s) concurred with in writing by Ohio EPA, or any other document(s) listed in paragraph (I) of rule 3745-27-09 of the Administrative Code. . ."

25. According to OAC Rule 3745-27-19(E)(8): "The owner or operator shall not accept for disposal or dispose of ... [(c) materials that are defined as hazardous wastes pursuant to rule 3745-51-03 of the Administrative Code] at a sanitary landfill facility."

26. By NOV correspondence dated September 16, 2009, Ohio EPA-DSIWM informed Respondent Evergreen of violations of OAC Rule 3745-27-19(E)(8)(c) regarding acceptance of characteristically hazardous waste at the Facility on at least thirty-six (36) separate occasions.

V. ORDERS

Respondents shall achieve compliance with ORC Chapters 3734. and 6111. and the rules promulgated thereunder according to the following compliance schedule:

1. Upon the effective date of these Orders, Respondents shall cease acceptance of all bulk liquid waste.

2. Upon the effective date of these Orders, PTIs No. 03-10750, 03-12035, and 03-12821 are hereby revoked.

3. Respondents shall not accept nor dispose of hazardous waste at the Facility.

4. Within forty-five (45) days after the effective date of these Orders, Respondents shall submit a closure plan for the mixing bins.

5. Within forty-five (45) days after the effective date of these Orders, Respondents shall dispose of all stockpiled bulking agents.

6. Respondents agree not to re-apply for authorization to operate a liquid mixing pit at the Facility for a period not less than four (4) years after the effective date of these Orders. If at a later date, Respondents seek to re-apply to the Director for authorization to operate a liquid mixing pit at the Facility, Respondents shall apply to the Director of Ohio EPA for authorization in accordance with OAC Rule 3745-27-19(E).

VI. TERMINATION

Respondents' obligations under these Orders shall terminate when Respondents certify in writing and demonstrate to the satisfaction of Ohio EPA that Respondents have performed all obligations under these Orders and the Enforcement Coordinator of Ohio EPA's Division of Materials and Waste Management acknowledges, in writing, the termination of these Orders. If Ohio EPA does not agree that all obligations have been performed, then Ohio EPA will notify Respondents of the obligations that have not been performed, in which case Respondents shall have an opportunity to address any such deficiencies and seek termination as described above.

The certification shall contain the following attestation: "I certify that the information contained in or accompanying this certification is true, accurate and complete."

This certification shall be submitted by Respondents to Ohio EPA and shall be signed by a responsible official of Respondents. For purposes of these Orders, a responsible official is a principal executive officer of at least one level of vice president or his duly authorized representative, if such a representative is responsible for the overall operation of the Facility.

VII. OTHER CLAIMS

Nothing in these Orders shall constitute or be construed as a release from any claim, cause of action or demand in law or equity against any person, firm, partnership or corporation, not a party to these Orders, for any liability arising from, or related to, the operation of Respondents' Facility.

VIII. OTHER APPLICABLE LAWS

All actions required to be taken pursuant to these Orders shall be undertaken in accordance with the requirements of all applicable local, state and federal laws and regulations. These Orders do not waive or compromise the applicability and enforcement of any other statutes or regulations applicable to Respondents or the Facility.

IX. MODIFICATIONS

These Orders may be modified by agreement of the parties hereto. Modifications shall be in writing and shall be effective on the date entered in the journal of the Director of Ohio EPA.

X. NOTICE

All documents required to be submitted by Respondents pursuant to these Orders shall be addressed to:

Ohio Environmental Protection Agency
Northwest District Office
Division of Materials and Waste Management
347 North Dunbridge Road
Bowling Green, Ohio 43402

Attn: Unit supervisor, DMWM

and to:

Wood County Health District
1840 East Gypsy Lane Road
Bowling Green, Ohio 43402
Attn: Health Commissioner

or to such persons and addresses as may hereafter be otherwise specified in writing by Ohio EPA.

XI. RESERVATION OF RIGHTS

Ohio EPA and Respondents each reserve all rights, privileges and causes of action, except as specifically waived in Section XII of these Orders.

XII. WAIVER

Nothing in the findings shall be considered to be an admission by Respondents of any matter of law or fact. Respondents will not contest the terms, conditions, service or jurisdiction of these Orders. Respondents consent to the issuance of these Orders and agree to comply with these Orders. Respondents hereby waive the right to appeal the issuance, terms and conditions, and service of these Orders, and Respondents hereby waive any and all rights Respondents may have to seek administrative or judicial review of these Orders either in law or equity.

Notwithstanding the preceding, Ohio EPA and Respondents agree that if these Orders are appealed by any other party to the Environmental Review Appeals Commission, or any court, Respondents retain the right to intervene and participate in such appeal. In such an event, Respondents shall continue to comply with these Orders notwithstanding such appeal and intervention unless these Orders are stayed, vacated or modified.

XIII. EFFECTIVE DATE

The effective date of these Orders is the date these Orders are entered into the Ohio EPA Director's journal.

XIV. SIGNATORY AUTHORITY

Each undersigned representative of a party to these Orders certifies that he or she is fully authorized to enter into these Orders and to legally bind such party to these Orders.

ORDERED AND AGREED:

Ohio Environmental Protection Agency

Scott J. Nally
Director

AGREED:

Evergreen Recycling and Disposal Facility, Inc.

Signature — Date: June 23, 2011

Denise J. Gretz
Printed or Typed Name

Area Vice President
Title

AGREED:

Waste Management of Ohio, Inc.

Denise J. Gretz
Signature

June 23, 2011
Date

Denise J. Gretz
Printed or Typed Name

Area Vice President
Title