OhioEPA
State of Ohio Environmental Protection Agency

STREET ADDRESS:
Lazarus Government Center
50 W. Town St., Suite 700
Columbus, Ohio 43215

TELE: (614) 644-3020 FAX: (614) 644-3184
www.epa.state.oh.us

MAILING ADDRESS:
P.O. Box 1049
Columbus, OH 43216-1049

January 10, 2007

CERTIFIED MAIL

Re: Director's Final Findings & Orders
The Mahoning Paint Corporation
US EPA ID No.: OHD 004 167 854

Mr. Charles C. Rumberg, President
The Mahoning Paint Corporation
653 Jones Street
Youngstown, OH 44502

Dear Mr. Rumberg:

Here are the Director's Final Findings and Orders (Orders) issued to The Mahoning Paint Corporation on January 10, 2007. These Orders are effective today.

I have also enclosed invoices for the penalty payments as required by Order No. 1.a. through 1.c. and Order No. 2.a. through 2.c. Please remember that your first payments are due no later than February 9, 2007.

If you have any questions concerning compliance with these Orders, do not hesitate to contact Kurt Princic at (330) 963-1200.

Sincerely,

Pamela S. Allen

Pamela S. Allen, Manager
Regulatory and Information Services
Division of Hazardous Waste Management

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Attachments

C: Michael A. Savage, Chief, DHWM
Harry Sarvis, Mgr., CAS, DHWM
Elissa Miller, Legal
Heidi Greismer, PIC
Kurt Princic, Mgr., DHWM, NEDO
Christopher Jones

OHIO E.P.A.

JAN 10 2007

ENTERED DIRECTOR'S JOURNAL

BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

The Mahoning Paint Corporation
653 Jones Street
Youngstown, OH 44502

Respondent

Director's Final Findings and Orders

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: [signature] Date: 1-10-07

PREAMBLE

It is agreed by the parties hereto as follows:

I. JURISDICTION

These Director's Final Findings and Orders (Orders) are issued to The Mahoning Paint Corporation (Respondent) pursuant to the authority vested in the Director of the Ohio Environmental Protection Agency (Ohio EPA) under Ohio Revised Code (ORC) §§ 3734.13 and 3745.01.

II. PARTIES BOUND

These Orders shall apply to and be binding upon Respondent and successors in interest liable under Ohio law. No change in ownership of the Respondent or of the Facility shall in any way alter Respondent's obligations under these Orders.

III. DEFINITIONS

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

IV. FINDINGS

The Director of Ohio EPA has determined the following findings:

1. Respondent is a "person" as defined in ORC § 3734.01(G) and Ohio Administrative Code (OAC) rule 3745-50-10(A).

2. Respondent manufactures oil-based and water-based paints and coatings at a facility located at 653 Jones Street, Youngstown, Mahoning County, Ohio (Facility). Respondent notified Ohio EPA of its hazardous waste activities and was issued generator identification number OHD004167854.

3. At the Facility, Respondent generates "hazardous waste" as that term is defined by ORC § 3734.01(J) and OAC rules 3745-50-10(A) and 3745-51-03. Respondent is a large quantity generator of hazardous waste. The hazardous waste generated by Respondent at the Facility includes paint-related waste and spent solvents (D001, D035, F003, F005).

4. On April 4, 2004, Respondent transported or caused to be transported three containers of waste to Vexor Technology, Inc. located at 955 West Smith Road, Medina, Ohio (Vexor). Vexor does not hold a hazardous waste facility installation and operation permit issued in accordance with ORC Chapter 3734. The three containers of waste were transported as non-hazardous waste and were accompanied by non-hazardous shipping papers.

5. Once received at Vexor, Vexor analyzed the three containers of wastes for the hazardous waste characteristics of flashpoint and corrosivity only. Based upon Vexor's analysis, the waste was found to exhibit the hazardous waste characteristic of ignitability. Based upon this information, the Director has determined that Respondent caused hazardous waste to be transported to Vexor, a facility not operating under a hazardous waste facility installation and operation permit issued in accordance with ORC Chapter 3734., in violation of ORC § 3734.02(F).

6. Vexor contacted Respondent and informed Respondent of the analytical results referenced in Finding No. 5 of these Orders. In response, Respondent informed Vexor that the three containers of hazardous waste were also characteristic for methyl ethyl ketone (D035), as well as a listed hazardous waste (F003, F005).

7. On April 8, 2004, Vexor shipped the three containers of hazardous waste off-site on a proper hazardous waste manifest for management and disposal.

8. On May 23, 2005, Ohio EPA conducted a compliance evaluation inspection at the Facility. During the inspection, and through documentation obtained subsequent to the inspection, Ohio EPA discovered that Respondent had caused five additional shipments of waste to be transported to Vexor from June, 2004 through June, 2005, as non-hazardous waste which, upon analysis by Vexor, were determined to be hazardous waste. After making this determination, Vexor shipped the hazardous waste off-site on a proper hazardous waste manifest for management and disposal. As a result of the inspection, Ohio EPA determined that Respondent had, *inter alia*:

   a. Caused hazardous waste to be transported to Vexor, a facility not operating under a hazardous waste facility installation and operation permit issued in accordance with ORC Chapter 3734., in violation of ORC § 3734.02(F);

   b. Failed to properly evaluate containers of waste to determine whether those wastes were hazardous wastes, in violation of OAC rule 3745-52-11;

   c. Failed to properly prepare and complete a hazardous waste manifest prior to offering hazardous waste for transportation off-site, in violation of OAC rule 3745-52-20(A);

   d. Failure to provide training specific to hazardous waste management, including hazardous waste manifest usage, to employees at the Facility that handle and/or manage hazardous waste, in violation of OAC rule 3745-65-16;

   e. Failed to maintain a current hazardous waste contingency plan, in violation of OAC rules 3745-65-51 through 3745-65-56;

   f. Failed to maintain emergency equipment in a hazardous waste storage area at the Facility, in violation of OAC rule 3745-65-32;

   g. Failed to maintain adequate aisle space in a hazardous waste storage area at the Facility, in violation of OAC rule 3745-65-35;

   h. Failed to mark hazardous waste accumulation containers with the words, "Hazardous Waste," or with other words that identify the contents, in violation of OAC rule 3745-52-34(C)(1)(b);

i. Failure to complete a land disposal restriction notification form for each off-site shipments of hazardous waste, in violation of OAC rule 3745-270-07(A)(2); and

j. Failed to store containers of ignitable hazardous waste at least fifteen meters (fifty feet) from the Facility property line, in violation of OAC rule 3745-66-76.

9. By letter dated June 28, 2005, Ohio EPA notified Respondent of the violations referenced in Finding Nos. 8.a. through 8.j. of these Orders.

10. In correspondences dated August 10, September 20, October 12, and November 8, 2005, Respondent provided responses to Ohio EPA's letter dated June 28, 2005. In the responses, Respondent requested an exemption, pursuant to ORC § 3734.02(G), from OAC rule 3745-66-76 for the hazardous waste storage area at the Facility, referenced in Finding No. 8.j. of these Orders.

11. By letter dated December 22, 2005, the Director notified Respondent that Respondent was exempted, pursuant to ORC § 3734.02(G), from OAC rule 3745-66-76 for the hazardous waste storage area.

12. Based upon the information contained in Respondent's responses, referenced in Finding No. 10 of these Orders, as well as the issuance of an exemption from OAC rule 3745-66-76, referenced in Finding No. 11 of these Orders, Ohio EPA informed Respondent, by letter dated January 5, 2006, that Respondent had abated the violations referenced in Finding Nos. 8.a. through 8.j. of these Orders. Further, the Director has determined that no additional action is required of Respondent regarding the ORC § 3734.02(F) violation referenced in Finding No. 5 of these Orders.

V. ORDERS

Respondent shall achieve compliance with Chapter 3734. of the ORC and the regulations promulgated thereunder according to the following compliance schedule:

1. Respondent shall pay Ohio EPA the amount of $15,640.00 in settlement of Ohio EPA's claims for civil penalties, which may be assessed pursuant to ORC Chapter 3734. $12,500.00 of this amount will be deposited into the hazardous waste cleanup fund established pursuant to ORC § 3734.28 pursuant to the following schedule:

a. Within 30 days after the effective date of these Orders, Respondent shall pay to Ohio EPA the amount of $4,166.00;

b. Within 105 days after the effective date of these Orders, Respondent shall pay to Ohio EPA the amount of $4,167.00; and

c. Within 180 days after the effective date of these Orders, Respondent shall pay to Ohio EPA the amount of $4,167.00.

Payments shall be made by official checks made payable to "Treasurer, State of Ohio." The official checks shall be submitted to Ohio EPA, Office of Fiscal Administration, Department L-2711, Columbus, Ohio 43260-2711, together with a letter identifying Respondent. A copy of each check shall be submitted in accordance with Section X. of these Orders.

2. In lieu of paying the remaining $3,140.00 in hazardous waste related claims for civil penalties, which may be assessed pursuant to ORC Chapter 3734., Respondent shall fund a supplemental environmental project (SEP) by making a contribution totaling $3,140.00 to the Ohio EPA Clean Diesel School Bus Program (Fund 5CD) in accordance with the following schedule:

a. Within 30 days after the effective date of these Orders, Respondent shall pay to the Ohio EPA Clean Diesel School Bus Program the amount of $1,046.00;

b. Within 105 days after the effective date of these Orders, Respondent shall pay to the Ohio EPA Clean Diesel School Bus Program the amount of $1,047.00; and

c. Within 180 days after the effective date of these Orders, Respondent shall pay to the Ohio EPA Clean Diesel School Bus Program the amount of $1,047.00.

Payments shall be made by official checks made payable to "Treasurer, State of Ohio." The official checks shall be submitted to Brenda Case, or her successor, Ohio EPA, Office of Fiscal Administration, Department L-2711, Columbus, Ohio 43260-2711, together with a letter identifying Respondent. A copy of each check shall be submitted in accordance with Section X. of these Orders, and an additional copy of each check shall be sent to James A. Orlemann, Assistant Chief, SIP Development and Enforcement, or his successor, Ohio EPA, Division of Air Pollution Control, P.O. Box 1049, Columbus, Ohio 43216-1049.

3. Should Respondent miss a scheduled payment as described in Order Nos. 2.a. through 2.c., Respondent shall pay to Ohio EPA the missed payment amount no later than 7 days after the missed payment due date. Payment shall be made in accordance with the procedures established in Order No. 1. A copy of each check shall be submitted in accordance with Section X. of these Orders.

VI. TERMINATION

Respondent's obligations under these Orders shall terminate upon Ohio EPA's receipt of the official checks required by Section V. of these Orders.

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 Respondent's 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 Respondent.

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 Respondent pursuant to these Orders shall be addressed to:

Ohio Environmental Protection Agency
Northeast District Office
Division of Hazardous Waste Management
Attn: DHWM Manager
2110 E. Aurora Road
Twinsburg, Ohio 44087

and Ohio EPA Central Office at the following address:

For mailings, use the post office box number:

Joseph P. Koncelik, Director
Ohio Environmental Protection Agency
Lazarus Government Center
Division of Hazardous Waste Management
P.O. Box 1049
Columbus, Ohio 43216-1049
Attn: Manager, Compliance Assurance Section

For deliveries to the building before December 31, 2006:

Joseph P. Koncelik, Director
Ohio Environmental Protection Agency
Lazarus Government Center
Division of Hazardous Waste Management
122 South Front Street
Columbus, Ohio 43215
Attn: Manager, Compliance Assurance Section

For deliveries to the building after December 31, 2006:

Joseph P. Koncelik, Director
Ohio Environmental Protection Agency
Lazarus Government Center
Division of Hazardous Waste Management
50 West Town Street, Suite 700
Columbus, Ohio 43215
Attn: Manager, Compliance Assurance Section

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

XI. RESERVATION OF RIGHTS

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

XII. WAIVER

In order to resolve disputed claims, without admission of fact, violation or liability, and in lieu of further enforcement action by Ohio EPA for only the violations specifically cited in these Orders, Respondent consents to the issuance of these Orders and agrees to comply with these Orders. Compliance with these Orders shall be a full accord and satisfaction for Respondent's liability for the violations specifically cited herein.

Respondent hereby waives the right to appeal the issuance, terms and conditions, and service of these Orders, and Respondent hereby waives any and all rights Respondent may have to seek administrative or judicial review of these Orders either in law or equity.

Notwithstanding the preceding, Ohio EPA and Respondent agree that if these Orders are appealed by any other party to the Environmental Review Appeals Commission, or any court, Respondent retains the right to intervene and participate in such appeal. In such an event, Respondent 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.

IT IS SO ORDERED AND AGREED:

Ohio Environmental Protection Agency

~~Joseph P. Koncelik~~ Laura H. Powell
Director

JAN 10 2007
Date

IT IS SO AGREED:

The Mahoning Paint Corporation

Signature

12-12-06.
Date

CHARLES C. RUMBERG.
Printed or Typed Name

President
Title

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