OhioEPA

State of Ohio Environmental Protection Agency

STREET ADDRESS:

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122 S. Front Street
Columbus, Ohio 43215

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MAILING ADDRESS:

P.O. Box 1049
Columbus, Ohio 43216-1049

CERTIFIED MAIL

October 6, 2006

Re: Director's Final Findings & Orders
McWane, Inc.
d.b.a. Clow Water Systems Company
US EPA ID No.: OHD 004 294 849

Jeff Otterstedt, Vice President/General Manager
McWane, Inc.
d.b.a. Clow Water Systems Company
a division of McWane
2266 South Sixth Street
Coshocton, Ohio 43812

Dear Mr. Otterstedt:

Here are the Director's Final Findings and Orders (Orders) issued to McWane, Inc., d.b.a. Clow Water Systems Company on October 6, 2006. These Orders are effective today.

I have also enclosed invoices for the penalty payments as required by Order No. 2.a. and 2.b. Please remember that your payments are due no later than November 5, 2006.

If you have any questions concerning compliance with these Orders, do not hesitate to contact Dave Chenault at (740) 385-8501.

Sincerely,

Pamela S. Allen

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

I:\USERS\DSHARPE\FOSSENT\enf.McWane Inc.

Attachments

c: Michael A. Savage, Chief, DHWM
Harry Sarvis, Mgr., CAS, DHWM
Todd Anderson, Legal
Heidi Greismer, PIC
Dave Chenault, Mgr., DHWM, SEDO
Kristin L. Watt, Esq.

OHIO E.P.A.

OCT -6 2006

ENTERED DIRECTOR'S JOURNAL

BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

McWane, Inc.
d.b.a. Clow Water Systems Company,
a Division of McWane
2266 South Sixth Street
Coshocton, Ohio 43812

Respondent

Director's Final Findings and Orders

PREAMBLE

It is agreed by the parties hereto as follows:

I. JURISDICTION

These Director's Final Findings and Orders (Orders) are issued to McWane, Inc. d.b.a. Clow Water Systems Company, a Division of McWane (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 owned by Respondent, 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:

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

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

2. Respondent owns and operates a ductile piping manufacturing facility located at 2266 South Sixth Street, Coshocton, Coshocton County, Ohio (Facility). At the Facility, Respondent manufactures ductile iron piping and fittings for use in underground water piping systems, as well as in water treatment plants.

3. Respondent notified Ohio EPA of its hazardous waste activities and was issued generator identification number OHD 004 294 849.

4. 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. At the time in question, Respondent generated hazardous waste from painting operations, and was a large quantity generator of hazardous waste. In addition, Respondent generates other wastes at the Facility, including oven sand and core shells from its foundry operations. Respondent routinely managed the oven sand and core shell wastes as non-hazardous wastes in containers, on the ground beneath a pipe rack storage system, and on a concrete storage pad at the Facility.

5. On November 3, 2003, Respondent collected a sample of oven sand waste at the point of generation for analysis by the Toxicity Characteristic Leachate Procedure (TCLP) to determine if metals were present at levels that would classify the waste as a hazardous waste.

6. By report dated November 17, 2003, Respondent received laboratory analysis for the oven sand waste sample, referenced in Finding No. 5 of these Orders, which indicated that the waste was not hazardous using TCLP.

7. On March 5, 2004, Respondent collected an additional sample of oven sand waste at the point of generation for analysis by TCLP to determine if metals were present at levels that would classify the waste as a hazardous waste.

8. By report dated March 11, 2004, Respondent received laboratory analysis for the additional oven sand waste sample, referenced in Finding No. 7 of these Orders, which indicated that the waste exhibited levels of barium which would classify the waste as a hazardous waste (D005). Upon taking the sample for laboratory analysis, Respondent commenced managing the oven sand waste as a hazardous waste.

9. On May 6, 2004, Ohio EPA conducted a compliance evaluation inspection

at the Facility. During the inspection, Ohio EPA observed accumulated oven sand waste beneath the pipe rack storage system.

10. On May 7, 2004, Respondent collected two samples of oven sand waste from the ground beneath the pipe rack storage system for analysis by TCLP to determine if metals were present at levels that would classify the waste as a hazardous waste.

11. In correspondence dated May 14, 2004, Respondent submitted information regarding the characterization and subsequent management of oven sand at the Facility.

12. By report dated May 17, 2004, Respondent received laboratory analysis for the two oven sand waste samples, referenced in Finding No. 10 of these Orders, which indicated that one of the oven sand waste samples taken from the ground beneath the pipe rack storage system exhibited levels of barium which would classify the waste as a hazardous waste.

13. As a result of the May 6, 2004 inspection, referenced in Finding No. 9 of these Orders, as well as a review of the information contained in the submittals referenced in Finding Nos. 11 and 12 of these Orders, Ohio EPA determined that Respondent had, *inter alia*:

    a. Established and operated a hazardous waste storage and disposal facility without a permit by storing and disposing of hazardous waste oven sand on a concrete storage pad and on the ground beneath the pipe rack storage system at the Facility, in violation of ORC § 3734.02(E) and (F);

    b. Failed to submit to Ohio EPA a written closure plan for the hazardous waste storage and disposal areas at the Facility, in violation of OAC rules 3745-55-12(A)/3745-66-12(A);

    c. Failed to maintain and operate the Facility in a manner that minimizes the possibility of a fire, explosion or any release of hazardous waste constituents to the air, soil, or surface water, in violation of OAC rules 3745-54-31/3745-65-31; and

    d. Failed to implement the contingency plan at the Facility when Respondent discovered that releases of hazardous waste from the concrete storage pad and/or the ground beneath the pipe rack storage system had occurred, in violation of OAC rules 3745-54-51(B)/3745-65-51(B).

14. By letter dated June 17, 2004, Ohio EPA notified Respondent of the violations referenced in Finding No. 13 of these Orders.

15. By letter dated August 6, 2004, Respondent provided responses to Ohio EPA's June 17, 2004 letter.

16. On May 2, 2006, Ohio EPA received Respondent's Closure Plan for the hazardous waste storage and disposal unit, referenced in Finding No. 13.a. of these Orders.

17. On May 18, 2005, Respondent notified Ohio EPA that, based upon administrative alterations to the production processes at the Facility, Respondent had attained conditionally small quantity generator status. The alterations included, but were not limited to, switching from solvent-based to water-based painting operations and eliminating metal-bearing raw materials which rendered the hazardous waste oven sand, referenced in Finding No. 8 of these Orders, as non-hazardous waste.

18. By letter dated July 7, 2006, Ohio EPA provided Respondent with a written statement of deficiencies for the Closure Plan referenced in Finding No. 16 of these Orders.

19. On August 18, 2006, Ohio EPA received Respondent's responses to the statement of deficiencies for the Closure Plan, referenced in Finding No. 17 of these Orders.

20. On September 15, 2006, the Director approved, with modifications, the Closure Plan for the hazardous waste storage and disposal unit referenced in Finding No. 13.a. 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 implement the approved, modified Closure Plan, referenced in Finding No. 20 of these Orders, pursuant to OAC rules 3745-55-11/3745-66-11 through 3745-55-20/3745-66-20, the specifications and schedules contained in the approved, modified Closure Plan, and any modifications attached to the approved, modified Closure Plan.

2. Respondent shall pay Ohio EPA the amount of $82,800.00 in settlement of Ohio EPA's claims for civil penalties, which may be assessed pursuant to ORC Chapter 3734., in accordance with the following provisions:

   a. Within 30 days after the effective date of these Orders, Respondent shall pay Ohio EPA the amount of $50,240.00 in settlement of Ohio EPA's claims for civil penalties which will be deposited into the hazardous waste cleanup fund established pursuant to ORC § 3734.28. Payment shall be made by an official check made payable to "Treasurer, State of Ohio" for $50,240.00. The official check 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 this check shall be submitted in accordance with Section X. of these Orders.

   b. In lieu of paying $16,560.00 of the total civil penalty to Ohio EPA, Respondent shall fund a supplemental environmental project (SEP) by making a contribution in the amount of $16,560.00 to the Ohio EPA Clean Diesel School Bus Program (Fund 5CD). Respondent shall make the payment within 30 days after the effective date of these Orders by tendering an official check made payable to "Treasurer, State of Ohio" for $16,560.00. The official check 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 this check shall be submitted in accordance with Section X. of these Orders, and an additional copy of this 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.

   c. Should Respondent fail to fund the SEP within the required time frame established in Order No. 2.b., Respondent shall pay to Ohio EPA, within 7 days after failing to comply with Order No. 2.b., the amount of $16,560.00 in accordance with the procedures in Order No. 2.a.

   d. Within 60 days after the effective date of these Orders, and in lieu of payment of $10,000.00 of the above civil penalty settlement, Respondent shall implement a supplemental environmental project (SEP). The SEP shall consist of one-time contributions to the Coshocton Fire Department and the Three Rivers Fire District. The contributions shall total a combined amount of at least $10,000.00

and shall be used to purchase hazardous material response and communication equipment, which may be used during response, containment, and decontamination activities following a hazardous materials release. Specifically, the response and communication equipment will be comprised of a MSA Passport 5-Star Multi-Gas Detector and two 3020 Intercom Systems, as those items are identified in Attachment A of these Orders.

e. Within 60 days after implementation of the SEP referenced in Order No. 2.d., Respondent shall submit to Ohio EPA documentation of expenditures (e.g. paid invoices, cancelled check, etc.) related to the combined contributions of at least $10,000.00 to the Coshocton Fire Department and the Three Rivers Fire District. This documentation shall be submitted in accordance with Section X of these Orders.

f. Should Respondent fail to fund the SEP within the required time frame established in Order No. 2.d., Respondent shall, within 7 days after failing to comply with Order No. 2.d., pay to Ohio EPA the amount of $10,000.00 in accordance with the procedures in Order No. 1.a.

g. Based upon Respondent's efforts to attain and sustain conditionally exempt small quantity generator status, as referenced in Finding No. 17 of these Orders, Ohio EPA has determined that such efforts meet the criteria of a SEP and warrant a credit in the amount of $6,000 of the remaining civil penalty. No further action is required of Respondent regarding the SEP credit referenced in Order No. 2.g.

VI. TERMINATION

Respondent's obligations under these Orders shall terminate when Respondent certifies in writing and demonstrates to the satisfaction of Ohio EPA that Respondent has performed all obligations under these Orders and Ohio EPA's Division of Hazardous 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 Respondent of the obligations that have not been performed, in which case Respondent 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 Respondent to Ohio EPA and shall be signed by a responsible official of Respondent. For purposes of these Orders, a responsible

official is a corporate officer who is in charge of a principal business function of Respondent.

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
Southeast District Office
Division of Hazardous Waste Management
2195 Front Street
Logan, Ohio 43138
Attn: DHWM Manager

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:

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

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

XI. RESERVATION OF RIGHTS

Ohio EPA reserves its rights to exercise its lawful authority to require Respondent to perform corrective action at the Facility at some time in the future, pursuant to ORC Chapter 3734. or any other applicable law. Respondent reserves its rights to raise any administrative, legal or equitable claim or defense with respect to any final action of the Director regarding such corrective action. Ohio EPA and Respondent each reserve all other 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, Respondent consents to the issuance of these Orders and agrees to comply with these Orders. Except for the right to seek corrective action at the Facility by Respondent, which right Ohio EPA does not waive, 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
Director

OCT - 6 2006
Date

IT IS SO AGREED:

McWane, Inc. d.b.a. Clow Water Systems Company, a Division of McWane

Signature

9-22-06
Date

JEFF OTTERSTEDT
Printed or Typed Name

VICE PRESIDENT/GENERAL MANAGER
Title

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