**OhioEPA**

State of Ohio Environmental Protection Agency

STREET ADDRESS:

Lazarus Government Center
122 S. Front Street
Columbus, Ohio 43215

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

MAILING ADDRESS:

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

**CERTIFIED MAIL**

October 23, 2006

**Re: Director's Final Findings & Orders**
Vexor Technology, Inc.
US EPA ID No.: OHD 077-772-895

Joseph E. Waters, President
Vexor Technology, Inc.
955 West Smith Road
Medina, Ohio 44256

Dear Mr. Waters:

Here are the Director's Final Findings and Orders (Orders) issued to Vexor Technology, Inc. on October 23, 2006. These Orders are effective today.

I have also enclosed invoices for the penalty payments as required by Order No. 2.a. through 2.m. Please remember that your first payments are due no later than November 22, 2006.

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, Manager
Regulatory and Information Services
Division of Hazardous Waste Management

I:\USERS\DSHARPE\FOSSENT\enf.Vexor Technology, Inc.10.06.wpd.

Attachments

c: Michael A. Savage, Chief, DHWM
Harry Sarvis, Mgr., CAS, DHWM
Todd Anderson, Legal
Heidi Greismer, PIC
Kurt Princic, Mgr., DHWM, NEDO
Keven Drummond Eiber, Attorney At Law

OHIO E.P.A.
OCT 23 2006
ENTERED DIRECTOR'S JOURNAL

**BEFORE THE**
**OHIO ENVIRONMENTAL PROTECTION AGENCY**

**In the Matter of:**

**Vexor Technology, Inc.**
955 West Smith Road
Medina, OH 44256

**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 Vexor Technology, Inc. (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 the 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
10-23-06

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 waste transporter/transfer facility, used oil processor/transporter and industrial waste treatment facility at 955 West Smith Road, Medina, OH 44256 (Facility).

3. Respondent notified Ohio EPA of its hazardous waste, universal waste, and used oil activities and was issued generator identification number OHD077772895.

4. On April 7, 8 and 14, 2005, and May 16, 2005, Ohio EPA conducted a compliance inspection at the Facility. As a result of the inspection, Ohio EPA determined the Respondent, *inter alia*:

   a. Received at the Facility unmanifested hazardous waste and stored hazardous waste at the Facility without a permit, in violation of ORC § 3734.02(E) and (F) on hundreds of occasions from April 24, 2000 to present.

   b. Failed to adequately evaluate waste generated at the Facility to determine if those wastes were hazardous waste, in violation of OAC rule 3745-52-11;

   c. Failed to retain a copy of a hazardous waste manifest, in violation of OAC rule 3745-53-20(D);

   d. Failed to manage universal waste in closed containers, in violation of OAC rule 3745-273-33(D);

   e. Failed to manage universal waste in a container, in violation of OAC rule 3745-273-33(A);

   f. Failed to label universal waste containers appropriately, in violation of OAC rule 3745-273-34(A) and (E);

   g. Failed to immediately notify Ohio EPA that the Facility had received a hazardous waste that is not a universal waste, in violation of OAC rule 3734-273-38(G);

   h Failed to train employees involved with universal waste handling, in violation of OAC rule 3734-273-36;

   i. Failed to maintain adequate aisle space for containers of used oil, in violation of OAC rule 3745-279-52(A)(5);

j. Failed to maintain a complete contingency plan, in violation of OAC rule 3745-279-52(B)(2);

k. Failed to develop and maintain a used oil analysis plan, in violation of OAC rule 3745-279-55;

l. Failed to manage used oil in containers in good condition and failed to label containers with the words "Used Oil," in violation of OAC rule 3745-279-54;

m. Failed to maintain and properly track used oil shipments, in violation of OAC rule 3745-279-56;

n. Failed to maintain an operating record and failed to file a used oil processing report, in violation of OAC rule 3745-279-57; and

o. Failed to properly manage used oil residues from processing, in violation of OAC rule 3745-279-59.

5. By letter dated May 12, 2005, Ohio EPA notified Respondent of the violations referenced in Finding Nos 4.b. through 4.o. of these Orders.

6. By letter dated July 20, 2005, Ohio EPA notified Respondent of the violations referenced in Finding No 4.a. of these Orders.

7. In correspondence dated June 10, 2005 and July 29, 2005, Respondent provided responses to Ohio EPA's May 12, 2005 and July 20, 2005 letters.

8. In letters dated May 12, 2005 and July 20, 2005, Ohio EPA notified Respondent that it had abated the violations referenced in Findings 4.b. through 4.o. of these Orders.

9. In addition to the violations referenced in Finding No. 4. of these Orders, The Director has determined that the Respondent transported hazardous waste to its Facility on numerous occasions, in violation of ORC § 3734.02(F).

10. On January 16, 2006, Respondent submitted to Ohio EPA a Waste Analysis Plan (WAP) and Facility Compliance (FCP) for the Facility. On May 9, July 20, August 29, and September 8, 2006, Ohio EPA received revisions to the WAP and FCP.

11. By letter dated September 12, 2006, Ohio EPA approved the WAP and FCP referenced in Finding No. 10 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 immediately implement the approved WAP and FCP, attached to these Orders as Attachment A, in accordance with the terms, conditions and schedules contained therein.

2. Respondent shall pay to Ohio EPA the amount of $195,720.00 in settlement of Ohio EPA's claims for civil penalties, which may be assessed pursuant to ORC Chapter 3734. $135,720.00 of this amount will be deposited into the hazardous waste cleanup fund established pursuant to ORC § 3734.28 in accordance with the following schedule:

   a. Within 30 days after the effective date of these Orders, Respondent shall pay to Ohio EPA the amount of $11,310;

   b. Within 60 days after the effective date of these Orders, Respondent shall pay to Ohio EPA the amount of $11,310;

   c. Within 90 days after the effective date of these Orders, Respondent shall pay to Ohio EPA the amount of $11,310;

   d. Within 120 days after the effective date of these Orders, Respondent shall pay to Ohio EPA the amount of $11,310;

   e. Within 150 days after the effective date of these Orders, Respondent shall pay to Ohio EPA the amount of $11,310;

   f. Within 180 days after the effective date of these Orders, Respondent shall pay to Ohio EPA the amount of $11,310;

   g. Within 210 days after the effective date of these Orders, Respondent shall pay to Ohio EPA the amount of $11,310;

   h. Within 240 days after the effective date of these Orders, Respondent shall pay to Ohio EPA the amount of $11,310;

   i. Within 270 days after the effective date of these Orders, Respondent shall pay to Ohio EPA the amount of $11,310;

   j. Within 300 days after the effective date of these Orders, Respondent shall

pay to Ohio EPA the amount of $11,310;

k. Within 330 days after the effective date of these Orders, Respondent shall pay to Ohio EPA the amount of $11,310; and

l. Within 360 days after the effective date of these Orders, Respondent shall pay to Ohio EPA the amount of $11,310.

Each of the payments above shall be made by an official check 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 the Respondent and the Facility. A copy of each check shall be submitted in accordance with Section X. of these Orders.

m. In lieu of paying $40,000.00 of civil penalty to Ohio EPA, Respondent shall fund a supplemental environmental project (SEP) by making a contribution in the amount of $40,000.00 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 $40,000.00. The official check shall be submitted to Brenda Case, or her successor, Ohio EPA, Office of Fiscal Administration, P.O. Box 1049, Columbus, Ohio 43216-1049, 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.

n. Should Respondent fail to fund the SEP within the required time frame established in Order No. 2.m. of these Orders, Respondent shall pay to Ohio EPA, within 7 days after failing to comply with Order No. 2.m. of these Orders, the amount of $40,000.00. The $40,000.00 payment shall be made by an official check made payable to "Treasurer, State of Ohio." 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 the Respondent and the Facility. A copy of the check shall be submitted in accordance with Section X. of these Orders.

o. Within 30 days after the effective date of these Orders, and in lieu of payment of $10,000.00 of the civil penalty settlement, Respondent shall implement a SEP consisting of a one-time contribution in the amount of $10,000.00 to the Medina County Fire Chief's Association, Technical Rescue

and Operations Team for the purchase of confined space air respirators, mobile air car supplied air system and super vac ventilation fan for confined space as specified in the letter from the Medina County Fire Chief's Association, attached to these Orders and incorporated herein as Attachment A to these Orders. Respondent shall submit to Ohio EPA documentation (e.g., cancelled check) demonstrating that the $10,000.00 payment has been made in accordance with this Order. The documentation shall be submitted in accordance with Section X of these Orders.

p. Should Respondent fail to fund the SEP within the required time frame established in Order No. 2.o. of these Orders, Respondent shall pay to Ohio EPA, within 7 days after failing to comply with Order No. 2.o., the amount of $10,000.00. The payment shall be made by an official check made payable to "Treasurer, State of Ohio." 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 the Respondent and the Facility. A copy of the check shall be submitted in accordance with Section X. of these Orders.

q. Within 90 days after the effective date of these Orders, and in lieu of payment of $10,000.00 of the civil penalty settlement, Respondent shall implement a SEP in the form of the *Generator/Broker Outreach Program* training contained within the approved FCP. The *Generator/Broker Outreach Program* training shall be implemented according to the approved FCP over the effective period of these Orders. Respondent shall submit to Ohio EPA documentation demonstrating that the *Generator/Broker Outreach Program* training program has been implemented in accordance with this Order. The documentation shall be submitted in accordance with Section X of these Orders.

r. Should Respondent fail to complete the *Generator/Broker Outreach Program* within the required time frame established in Order No. 2.q. of these Orders, Respondent shall pay to Ohio EPA, within 7 days after failing to comply with Order No. 2.q., the amount of $10,000.00. The payment shall be made by an official check made payable to "Treasurer, State of Ohio." 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 the Respondent and the Facility. A copy of the check shall be submitted in accordance with Section X. of these Orders.

3. Notwithstanding Section VI. of these Orders:

a. These Orders shall terminate 1095 days after the effective date of these

Orders. The FCP and WAP referenced in Order No. 1. of these Orders may be renewed by agreement of the parties thereto. Renewal of the FCP and WAP referenced in Order No. 1. of these Orders shall be in writing and shall be effective on the date entered into the journal of the Director of Ohio EPA. In the event these Orders terminate prior to a final action of the Director of Ohio EPA to renew the FCP and WAP referenced in Order No. 1. of these Orders, Respondent may continue to operate in accordance with these Orders until a final action of the Director of Ohio to renew the FCP and WAP referenced in Order No.1. of these Orders is approved or denied provided that Respondent submits to Ohio EPA a renewal request at least 60 days before the expiration date of these Orders.

b. During the effective term, the FCP and WAP may be modified by agreement of the parties hereto. Modifications shall be in writing and shall be effective on the date entered into the journal of the Director of Ohio EPA.

## 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 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
Northeast District Office
Division of Hazardous Waste Management
2110 E. Aurora Rd.
Twinsburg, Ohio 44087
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 closure of hazardous waste management units at the Facility, as well as corrective action at 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 performing 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 rights to seek closure of hazardous waste management units at the Facility, as well as corrective action at the Facility by Respondent, which rights Ohio EPA do 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 23 2006
Date

**IT IS SO AGREED:**

**Vexor Technology, Inc.**

Signature

10/2/06
Date

Joseph E. Waters
Printed or Typed Name

President
Title

G:\vexororders9.19.06.wpd