

OHIO E.P.A.

JUL 27 2011

ENTERED DIRECTOR'S JOURNAL

BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

City of Cincinnati
801 Plum Street
Cincinnati, Ohio 45202

Director's Final
Findings and Orders

Respondent

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.

PREAMBLE

By: [Signature] Date: 7-27-11

It is agreed by the parties hereto as follows:

I. JURISDICTION

These Director's Final Findings and Orders (Orders) are issued to the City of Cincinnati (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 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 there under.

IV. FINDINGS

All the findings necessary for the issuance of these Orders pursuant to ORC §§ 3734.13 and 3745.01 have been made and are outlined below. Nothing in the findings shall be considered to be an admission by the Respondent of any matter of law or fact.

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 owns parcels of land, located in Cincinnati, Hamilton County, Ohio, where the Metropolitan Sewer District of Greater Cincinnati operates. The parcels include the Mill Creek Wastewater Treatment Plant Grit Removal site. At the Mill Creek Wastewater Treatment Plant Grit Removal site, certain development activities took place, hereinafter known as the "Mill Creek project." Respondent also owns parcels of land located at Mehring Way, Cincinnati, Hamilton County, Ohio, as part of the Queensgate South development site, hereinafter known as the "Queensgate South Facility."
3. Respondent contracted for redevelopment activities at both the 1600 Gest Street and Queensgate South Facility locations. With regard to the Queensgate South Facility, in correspondence dated November 9, 2009, Respondent submitted a No Further Action Letter to the Director with a request for a Covenant Not to Sue pursuant to Ohio's Voluntary Action Program, as described in OAC chapter 3745-400.
4. With respect to the Queensgate South Facility, there is a parcel of property which abuts the Queensgate South Facility property, hereinafter known as the "Mehring Way East site." The Mehring Way East site is owned by a person not affiliated with the Respondent.
5. In May 2010, Respondent, through its contractors, generated approximately 1,350 cubic yards of contaminated soil and debris from the Mill Creek project which was transported and stored at the Queensgate South Facility. While in storage at the Queensgate South Facility, a subcontractor caused the release of the contaminated soil and debris onto the Mehring Way East site.
6. On May 27, 2010, Respondent directed an environmental consultant, ATC Associates, Inc. (ATC), to begin an immediate response to the release of contaminated soil at the Mehring Way East site, including sampling and analyzing the released contaminated soil.
7. On or about June 10, 2010, Respondent received results from the sampling described Finding No. 6. Based upon the results, the soil released onto the Mehring Way East site contained a hazardous waste as the soil exhibited the characteristic of a hazardous waste for lead (D008), as described in OAC rule 3745-51-24.

8. In late June or early July 2010, Respondent, who is also the Volunteer at the Queensgate South Facility, initially informed Ohio EPA of the transportation, storage and release of hazardous waste containing soil from the Mill Creek project to the Queensgate South Facility and Mehring Way East site.
9. Based upon the information in Findings Nos. 5. through 8. of these Orders, the Director has determined the Respondent did not identify the waste as hazardous, in violation of OAC rule 3745-52-11, caused the transportation of hazardous waste to an unauthorized facility – Queensgate South Facility, in violation of ORC § 3734.02(F), and established and operated a hazardous waste storage facility without a hazardous waste installation and operation permit at the Queensgate South Facility, in violation of ORC 3734.02(E) and (F). Furthermore, the Director determined that the subcontractor's action caused the release of hazardous waste at the Mehring Way East site.
10. The Respondent directed ATC to develop and implement a soil removal plan to characterize and remove the remaining contaminated soils at the Mehring Way East site and confirm that the area where the hazardous waste was released of was not impacted via sampling and analysis.
11. On August 13, 2010, ATC, on behalf of Respondent, submitted the soil removal plan to Ohio EPA including a sampling and analysis plan where the hazardous waste storage occurred at the Queensgate South Facility. Based upon a review of this plan, the Director has determined this plan, when implemented, would remove any released hazardous waste at the Mehring Way East site and would meet the closure performance standard of OAC rule 3745-55-11 with regard to the hazardous waste storage unit at the Queensgate South Facility.
12. On September 28, 2010, Respondent's contractor submitted, via electronic mail, documentation to Ohio EPA demonstrating that all soils containing hazardous waste generated from the Mill Creek project had been removed from Mehring Way East site. Additionally, the documentation included results demonstrating that the native soil at the Mehring Way East site had not been impacted by the release of hazardous waste. Also, the information provided data that the Queensgate South Facility had not been impacted by the storage of hazardous waste.

13. Based upon the information described in Findings Nos. 10. through 12. of these Orders, the Director has determined that the closure performance standard, OAC rule 3745-55-11, has been achieved with regards to at the Queensgate South Facility. Furthermore, the Director has determined the release of hazardous waste at the Mehring Way East site has been remediated properly. Therefore, the Director has determined that no further action is required at the Queensgate South Facility with respect to the storage of hazardous waste, nor at the Mehring Way East site where the release of hazardous waste occurred.

V. ORDERS

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

1. Respondent shall pay Ohio EPA the amount of \$10,000.00 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 \$8,000.00 in settlement of Ohio EPA's claims for civil penalties, which may be assessed pursuant to ORC Chapter 3734. and 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 \$8,000.00. 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 the Respondent and the Facility. A copy of this check shall be submitted in accordance with Section X. of these Orders.
 - b. In lieu of paying the remaining \$2,000.00 of civil penalty to Ohio EPA, Respondent shall fund a supplemental environmental project (SEP) by making a contribution in the amount of \$2,000.00 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 \$2,000.00. 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 Thomas Kalman, Manager, Compliance and Enforcement Section, 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. 1.b., Respondent shall pay to Ohio EPA, within 7 days after failing to comply with Order No. 1.b., the amount of \$2,000.00 in accordance with the procedures in Order No. 1.a.

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 the Queensgate South 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
Southwest District Office
Division of Materials and Waste Management
401 East Fifth Street
Dayton, Ohio 45402
Attn: DMWM Manager

and Ohio EPA Central Office at the following address:

For mailings, use the post office box number:

Scott J. Nally, Director
Ohio Environmental Protection Agency
Lazarus Government Center
Division of Materials and Waste Management
P.O. Box 1049
Columbus, Ohio 43216-1049
Attn: Manager, Compliance Assurance Section

For deliveries to the building:

Scott J. Nally, Director
Ohio Environmental Protection Agency
Lazarus Government Center
Division of Materials and Waste Management
50 West Town 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 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 Queensgate South 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

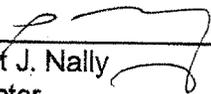
The effective date of these Orders is the date these Orders are entered into the Ohio EPA Director's journal.

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

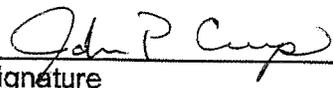


Scott J. Nally
Director

JUL 27 2011
Date

IT IS SO AGREED:

City of Cincinnati



Signature

7/12/2011
Date

John P Curd

Printed or Typed Name

City Solicitor

Title