OhioEPA

State of Ohio Environmental Protection Agency

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

CERTIFIED MAIL

November 12, 2009

Re: Director's Final Findings & Orders
The Dow Chemical Company and
Americas Styrenics LLC
US EPA ID No.: OHD 039 128 913

Mr. Joseph M. Minadeo
Senior Counsel
The Dow Chemical Company
925 County Road 1-A
Ironton, Ohio 45638

and

Mr. Joe Hulett
General Counsel
Americas Styrenics LLC
24 Waterway Avenue
Suite 1200
The Woodlands, Texas 77380

Dear Mr. Minadeo & Mr. Hulett:

Here are the Director's Final Findings and Orders (Orders) issued to The Dow Chemical Company and Americas Styrenics LLC on November 12, 2009. These Orders are effective today.

Enclosed is the invoice for the penalty payment required by Order Nos. 1 thru 2. Please remember your payment is due no later than December 14, 2009.

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

Sincerely,

for Harry A. Sarvis, Manager
Compliance and Assurance Section
Division of Hazardous Waste Management

enf.TheDowChemAmericasStyrenicsLLC.SEDO.09.jams.doc

Attachments

c: Michael A. Savage, Chief, DHWM
Todd Anderson, Legal
Heidi Greismer, PIC
Dave Chenault, Mgr., DHWM, SEDO
Robert J. Schmidt, Esq., Porter Wright Morris & Arthur LLP

OHIO E.P.A.

NOV 12 2009

ENTERED DIRECTOR'S JOURNAL

BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

The Dow Chemical Company
925 County Road 1-A
Ironton, Ohio 45638

Americas Styrenics LLC
24 Waterway Avenue
Suite 1200
The Woodlands, Texas 77380

Respondents

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 The Dow Chemical Company (Respondent Dow) and Americas Styrenics, LLC (Respondent Americas Styrenics) 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 Respondents and successors in interest liable under Ohio law. No change in ownership of Respondents or of the Facility 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 Chapter 3734. and the rules promulgated there under.

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: 11-12-09

IV. FINDINGS

All of 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 Respondents of any matter of law or fact. The Director of Ohio EPA has determined the following findings:

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

2. Respondents are the owners of a chemical manufacturing plant known as the Hanging Rock facility that engages in the production of plastic foam products and polystyrene and is located at 925 County Road 1-A, Ironton, Lawrence County, Ohio (Facility). Respondent Dow is a foreign corporation registered to do business in Ohio.

3. Respondent Dow holds a Final Resource Conservation and Recovery Act (RCRA) Permit (Permit #04-44-0022) issued by the United States Environmental Protection Agency (US EPA). Included in the Permit, among other things, are Sections IV and V which contain requirements for the Operation of the Boiler Units Burning Hazardous Waste and Corrective Action, including a Schedule of Compliance. Respondent Dow was issued identification number OHD039128913.

4. Respondent Americas Styrenics is a joint venture between Respondent Dow and Chevron Phillips Chemical Company LP. Respondent Americas Styrenics is a foreign limited liability company registered to do business in Ohio.

5. On November 22, 2004, Respondent Dow submitted a Part A Permit Application to Ohio EPA for the two hazardous waste boilers at the Facility, pursuant to OAC rule 3745-50-40(C), also known as the "permit-by- rule" provision, as a result of Ohio's adoption of the rules in OAC Chapter 3745-266 for hazardous waste boilers and industrial furnaces.

6. In a letter dated June 27, 2005, Ohio EPA requested that Respondent Dow submit a Part B Permit Application and informed Respondent Dow it qualified for "permit-by-rule" pursuant to OAC rule 3745-50-40(C), as a result of Ohio's adoption of the rules in OAC Chapter 3745-266.

7. On January 4, 2006, Respondent Dow submitted a Part B Permit Application to Ohio EPA.

8. On May 1, 2008, Respondent Dow transferred ownership and operation of the two hazardous waste boilers at the Facility to Respondent Americas Styrenics. Respondent Dow maintained ownership of the real property (the land). In accordance with ORC § 3734.05 and OAC rules 3745-50-51 and 3745-50-52, a hazardous waste permit may be transferred by the permittee to a new owner or operator only if the permit has been modified to identify the new permittee and incorporate such other requirements as may be necessary under applicable law. Respondent Dow's hazardous waste permit was not modified prior to the transfer of ownership and operation from Respondent Dow to Respondent Americas Styrenics.

9. Based upon the transfer of ownership and operation of the two hazardous waste boilers referenced in Finding No. 8., the Director has determined that Respondents Americas Styrenics and Dow are in violation of ORC § 3734.02(E) and (F) and OAC rules 3745-50-51 and 3745-50-52 for owning and operating a hazardous waste facility without providing formal notification of asset ownership transfer and by operating two hazardous waste boilers at the Facility prior to the submittal of either a request for temporary authorization to operate, or a request to modify the permit.

10. In a letter dated November 10, 2008, Respondents submitted a revised closure plan for the two hazardous waste boilers at the Facility per OAC Chapter 3745-55. In an electronic mail on November 20, 2008, Ohio EPA provided comments on the plan to Respondents. In a letter dated December 11, 2008, Respondents submitted a revised closure plan per Ohio EPA comments.

11. In a letter dated November 18, 2008, Respondents, pursuant to OAC rule 3745-51-38, provided notice to Ohio EPA claiming that the waste generated and burned at the Facility meets the definition of comparable fuel in OAC rule 3745-51-38(C).

12. In a letter dated November 3, 2009, the Director approved Respondents' December 11, 2008, closure plan referenced in Finding No. 10. of these Orders.

13. The Director has determined that with approval of the closure plan referenced in Finding No. 12. of these Orders and Respondents' comparable fuel notice referenced in Finding No. 11. of these Orders, Respondents are no longer in violation of ORC § 3734.02(E) and (F) and OAC rules 3745-50-51 and 3745-50-52 as described in Finding No. 9. of these Orders.

V. ORDERS

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

1. Respondents shall implement the approved closure plan referenced in Finding No. 12. of these Orders in accordance with the time frames set forth in the approved plan and OAC Chapter 3745-55.

2. Within 30 days after the effective date of these Orders, Respondents shall pay Ohio EPA the amount of $5,000.00 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 $5,000.00. 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 Respondents. A copy of this check shall be submitted in accordance with Section X. of these Orders.

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 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 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 each Respondent. For purposes of these Orders, a responsible official is a corporate officer who is in charge of a principal business function of each 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 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.

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
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:

Chris Korleski, 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:

Chris Korleski, Director
Ohio Environmental Protection Agency
Lazarus Government Center
Division of Hazardous 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 reserves its rights to exercise its lawful authority to require Respondents to perform corrective action at Facility, at some time in the future, pursuant to ORC Chapter 3734. or any other applicable law. Respondents reserve the right to raise any administrative, legal or equitable claim or defense with respect to performing such corrective action. Ohio EPA and Respondents 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, Respondents consent to the issuance of these Orders and agree to comply with these Orders. Except for the right to seek corrective action at the Facility, which right Ohio EPA does not waive, compliance with these Orders shall be a full accord and satisfaction for Respondents' liability for the violations specifically cited herein.

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.

IT IS SO ORDERED AND AGREED:

Ohio Environmental Protection Agency

Chris Korleski
Director

NOV 12 2009
Date

IT IS SO AGREED:

The Dow Chemical Company

Signature

10/12/2009
Date

Joseph M. Minadeo
Printed or Typed Name

Sr. Counsel (Ohio License # 0077240)
Title

Americas Styrenics LLC

Signature

10-9-09
Date

Joe Hulett
Printed or Typed Name

General Counsel
Title