State of Ohio Environmental Protection Agency

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

CERTIFIED MAIL

June 6, 2008

Re: Director's Final Findings & Orders
McWane, Inc.
d.b.a. Clow Water Systems Co.
A Division of McWane
OHD 004 294 849

Mr. Jeff Otterstedt
Vice-President/General Manager
McWane, Inc.
2266 South Sixth Street
Coshocton, Ohio 43812

Dear Mr. Otterstedt:

Here are the Director's Final Findings and Orders (Orders) issued to McWane, Inc. on June 6, 2008. 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 July 7, 2008.

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

Sincerely,

David A. Sholtis, Assistant Chief
Division of Hazardous Waste Management

Attachments

cc: Michael A. Savage, Chief, DHWM
Harry Sarvis, Mgr., CAS, DHWM
Todd Anderson, Legal
Heidi Greismer, PIC
Dave Chenault, Mgr., DHWM, SEDO

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OHIO E.P.A.
JUN -6 2008
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) §§ 3734.02(G), 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.

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: _____ Date: 6-6-08

IV. FINDINGS

All of the findings necessary for the issuance of these Orders pursuant to ORC §§ 3734.02(G), 3734.13 and 3745.01 have been made and are outlined below. Nothing in the findings shall be considered to be an admission by Respondent of any matter of law or fact. The Director of Ohio EPA has determined the following findings:

1. Pursuant to ORC § 3734.02(G) and rule 3745-50-31 of the Ohio Administrative Code (OAC), the Director, may, by order, exempt any person generating, storing, treating, or disposing of hazardous waste in such quantities or under such circumstances that, in the determination of the Director, are unlikely to adversely affect the public health or safety or the environment, from any requirement to obtain a permit or comply with other requirements of ORC Chapter 3734. Any such exemption shall be consistent with and equivalent to rules promulgated under the Resource Conservation and Recovery Act of 1976, 90 Stat. 2806, 42 U.S.C. § 6921 et seq., as amended.

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

3. 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.

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

5. 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 times in question, Respondent generated hazardous waste from cleaning the cupola orifice ring and is a large quantity generator of hazardous waste.

6. On April 4, 2007, Ohio EPA conducted a complaint investigation at the Facility. As a result of this complaint investigation, Ohio EPA determined that Respondent had, *inter alia:*

   a. Stored a roll-off box of hazardous waste on-site for greater than 90 days without a permit, in violation of ORC § 3734.02(E) and (F);

b. Disposed of hazardous waste without a permit in an area of the Facility known as the "charge yard," in violation of ORC § 3734.02(E) and (F). This hazardous waste is generally referred to as "orifice ring waste;"

c. Failed to keep one roll-off box of hazardous waste closed, in violation of OAC rule 3745-66-73; and

d. Failed to weekly conduct inspections of the hazardous waste accumulation area where the roll-off box was being stored, in violation of OAC rule 3745-66-74.

7. On April 17, 2007, Respondent submitted sampling results to Ohio EPA for the waste in the roll-off box referenced in Finding No. 6.a. of these Orders. The sampling results showed that the waste was characteristically hazardous for lead.

8. By letter dated April 25, 2007, Respondent submitted information to Ohio EPA demonstrating that the roll-off box of hazardous waste referenced in Finding No. 6.a. was stored on-site from December 19, 2006 until it was manifested off-site on April 24, 2007.

9. By letter dated June 4, 2007, Ohio EPA notified Respondent of the violations referenced in Finding No. 6. of these Orders.

10. On July 12, 2007, Respondent submitted a response to Ohio EPA's letter dated June 4, 2007. As an attachment to this letter, Respondent submitted a closure plan for the roll-off box storage area titled "Closure Plan, Container Storage of Hazardous Waste."

11. By letter dated October 9, 2007, Ohio EPA notified Respondent of the deficiencies in the closure plan referenced in Finding No. 10. of these Orders.

12. On November 5, 2007, Respondent resubmitted the closure plan for the roll-off box storage area.

13. The Director has determined that no further action is required to abate the violations referenced in Finding Nos. 6.c. and 6.d. because the roll-off box has been shipped off-site to a permitted hazardous waste facility.

14. Due to Respondent's establishment and operation of a hazardous waste facility as described in Finding Nos. 6.a. and 6.b. of these Orders,

Respondent is required to have a hazardous waste facility installation and operation permit and is subject to all general facility standards found in OAC Chapters 3745-54 and 55, including but not limited to, closure in accordance with OAC rules 3745-55-11 through 3745-55-20, the financial assurance for closure requirements contained in OAC rules 3745-55-42 through 3745-55-51 and corrective action for waste management units in accordance with OAC rule 3745-54-101. To obtain a hazardous waste facility installation and operation permit, Respondent is required to submit "Parts A and B" of the application in accordance with OAC Chapter 3745-50.

15. The submittal of Closure Plans which comply with the administrative requirements of OAC Chapters 3745-65 and 66 and the substantive requirements of OAC Chapters 3745-54 and 55 including but not limited to the groundwater protection program in accordance with OAC rules 3745-54-90 through 3745-54-100 in lieu of the submittal of an application for a hazardous waste facility installation and operation permit is unlikely to adversely affect the public health or safety or the environment. Therefore, the Director finds that the issuance to Respondent of an exemption from the requirement to submit an application for a hazardous waste facility installation and operation permit for the Facility is unlikely to adversely affect the public health or safety or the environment within the meaning of ORC § 3734.02(G).

16. Respondent has taken steps to re-engineer the cupola to avoid generating the orifice ring waste in the future.

V. ORDERS

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

1. The Respondent is hereby exempted from the requirement to submit an application for a hazardous waste facility installation and operation permit for the Facility, *provided that* Respondent complies with the following:

   a. Within 30 days after the effective date of these Orders, Respondent shall submit to Ohio EPA Closure Plans for the hazardous waste storage area referenced in Finding No. 6.a. of these Orders and the disposal area referenced in Finding No. 6.b. of these Orders;

   b. The Closure Plans shall comply with the administrative requirements of OAC Chapters 3745-65 and 3745-66 and the substantive requirements of OAC Chapters 3745-54 and 3745-55, including but

not limited to, the groundwater protection program in accordance with OAC rules 3745-54-90 through 3745-54-100;

c. The Closure Plans are subject to approval by Ohio EPA. If Ohio EPA does not approve the Closure Plans referenced in Order No. 1.a. of these Orders and provided Respondent with a written statement of deficiencies, Respondent shall submit revised Closure Plans for approval addressing the deficiencies within 30 days of receiving such written statement. If Ohio EPA modifies the Closure Plans, the modified Closure Plans become the approved plans;

d. Upon Ohio EPA approval of the Closure Plans, Respondent shall implement the approved Closure Plans in the manner and pursuant to the timeframes set forth in the approved Closure Plans and OAC rules 3745-55-13/3745-66-13;

e. Within 90 days after Ohio EPA's approval of the Closure Plan for the hazardous waste storage area referenced in Order No. 1.a. of these Orders, Respondent shall submit closure cost estimates and documentation demonstrating that Respondent has established financial assurance and liability coverage for the hazardous waste storage area, in accordance with OAC rules 3745-55-42 through 3745-55-47; and

f. Within 180 days after Ohio EPA's approval of the Closure Plan for the hazardous waste disposal area referenced in Order No. 1.a. of these Orders, Respondent shall submit closure cost estimates and documentation demonstrating that Respondent has established financial assurance and liability coverage for the hazardous waste disposal area, in accordance with OAC rules 3745-55-42 through 3745-55-47.

2. Respondent shall pay Ohio EPA the amount of $19,400.00 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 $15,520.00 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 $15,520.00. 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 $3,880.00 of the total civil penalty to Ohio EPA, Respondent shall fund a supplemental environmental project (SEP) by making a contribution in the amount of $3,880.00 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 $3,880.00. 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 $3,880.00 in accordance with the procedures in Order No. 2.a.

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:

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, 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 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 rights 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 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

Chris Korleski
Director

June 6, 2008
Date

IT IS SO AGREED:

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

Signature

MAY 5, 2008
Date

JEFF OTTERSTEDT
Printed or Typed Name

VICE-PRESIDENT/GENERAL MANAGER
Title