OHIO E.P.A.
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ENTERED DIRECTOR'S JOURNAL

BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

Bramhi, Inc.
10282 Bulaville Pike
Bidwell, Ohio 45692

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 Bramhi, 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 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.

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: 1-16-09

IV. FINDINGS

The Director of Ohio EPA has determined the following findings:

1. Respondent owns and operates a business that processes and sells coal for residential and commercial purposes and is located at 17987 State Route 124, Jackson County, Wellston, Ohio (Facility).

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

3. On March 21, 2008, Ohio EPA was notified of a fire at the Facility. Ohio EPA subsequently conducted an investigation at the Facility and observed an area where nine 55-gallon drums containing unknown materials had been burned. Ohio EPA also observed an additional location where drums had been burned that appeared to contain similar materials.

4. Ohio EPA collected samples in both locations to determine if the wastes which had been burned were hazardous waste. Analytical results from the samples indicated that waste in the area where the nine 55-gallon drums were burned contained waste which was hazardous waste due to chromium toxicity (D007).

5. Based on the results of the investigation and sampling, Ohio EPA determined that the Respondent had, *inter alia*;

    a. Unlawfully treated and disposed of waste which was hazardous waste due to chromium toxicity (D007), by burning the waste in drums, without a permit, in violation of ORC § 3734.02(E) and (F); and

    b. Failed to evaluate wastes to determine if they are hazardous wastes, in violation of OAC rule 3745-52-11.

6. On May 7, 2008, Ohio EPA personnel removed the hazardous waste D007 and visible contamination from the ground in the vicinity of the burned drums, placed it into a 55-gallon drum, and labeled the drum, "D007 hazardous waste." This area of contamination was located on "coal fines" which are produced at the Facility as a result of the mechanized processing of larger pieces of coal into smaller sizes. Ohio EPA personnel

collected a composite sample from the excavation where the hazardous waste D007 and coal fines were removed. The analytical results from this composite sample indicated that no detectable levels chromium remained in the area where the hazardous waste D007 was released.

7. Respondent was notified of the violations in Finding No. 5. by letter from Ohio EPA dated June 17, 2008. In this letter, Ohio EPA also notified Respondent that due to the unpermitted treatment and disposal of hazardous waste, Respondent was in violation of the land disposal restriction requirements in OAC rule 3745-270-07(A) and 3745-270-09(A).

8. Based on the information in Finding No. 5.a., the Director has determined Respondent failed to comply with the general waste analysis requirements, in violation of OAC rule 3745-54-13.

9. By letter dated August 5, 2008, Respondent submitted a response to Ohio EPA's June 17, 2008, letter.

10. Respondent was issued generator identification number OHR000149674 to ship the D007 hazardous waste from its Facility.

11. On July 18, 2008, the drum of D007 hazardous waste referenced in Finding No. 6. was shipped off-site to a permitted hazardous waste facility in accordance with Chapter 3734. of the ORC. Therefore, the Director has determined no further action is required of Respondent to abate the violations of OAC rules 3745-270-07(A), 3745-270-09(A) and 3745-54-13 referenced in Finding Nos. 7. and 8. of these Orders.

12. Because the analytical results from the sample collected by Ohio EPA and referenced in Finding No. 6. indicate that the D007 hazardous waste has been removed from the area where the drums were burned, the Director has determined that it is unnecessary to reserve closure for this area and that no further action is required of Respondent to abate the violation of ORC § 3734.02(E) and (F) referenced in Finding No. 5.a. of these Orders.

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 $ 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 pursuant to the following schedule:

    a. Within ninety (90) days after the effective date of these Orders, Respondent shall pay to Ohio EPA the amount of $ 625.00;

    b. Within one hundred eighty (180) days after the effective date of these Orders, Respondent shall pay to Ohio EPA the amount of $ 625.00;

    c. Within two hundred seventy (270) days after the effective date of these Orders, Respondent shall pay to Ohio EPA the amount of $ 625.00;

    d. Within three hundred sixty-five (365) days after the effective date of these Orders, Respondent shall pay to Ohio EPA the amount of $ 625.00;

    e. Within four hundred fifty-five (455) days after the effective date of these Orders, Respondent shall pay to Ohio EPA the amount of $ 625.00;

    f. Within five hundred forty-five (545) days after the effective date of these Orders, Respondent shall pay to Ohio EPA the amount of $ 625.00;

    g. Within six hundred thirty-five (635) days after the effective date of these Orders, Respondent shall pay to Ohio EPA the amount of $ 625.00; and

    h. Within seven hundred thirty (730) days after the effective date of these Orders, Respondent shall pay to Ohio EPA the amount of $ 625.00.

    Payments shall be made by official checks made payable to "Treasurer, State of Ohio." The official checks shall be submitted to Ohio EPA, Office of Fiscal Administration, P.O. Box 1049, Columbus, Ohio 43216-1049,

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.

VI. TERMINATION

Respondent's obligations under these Orders shall terminate upon Ohio EPA's receipt of the official check 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 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
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 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

Chris Korleski
Director

January 16, 2009
Date

IT IS SO AGREED:

Bramhi, Inc.

Signature

12/29/08
Date

Lyne Johnson
Printed or Typed Name

President
Title