

BEFORE THE  
OHIO ENVIRONMENTAL PROTECTION AGENCY

OHIO E.P.A.  
FEB 10 2012

ENTERED DIRECTOR'S JOURNAL

In the Matter of:

**Silgan Can Company**  
21800 Oxnard St. Ste. 600  
Woodland Hills, CA 91367

**Respondent**

**Director's Final  
Findings and Orders**

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**

It is agreed by the parties hereto as follows:

By:  Date: 2.10.2012

**I. JURISDICTION**

These Director's Final Findings and Orders (Orders) are issued to Silgan Can Company (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 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 there under.

**IV. FINDINGS**

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 operates a two and three piece can manufacturing facility for the food service industry located at 12-773 State Route 110, Napoleon, Henry County, Ohio 43545 (Facility).
3. 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. Respondent is a large quantity generator of hazardous waste and has been assigned EPA ID number OHR000029223. The hazardous wastes generated by Respondent at the Facility include hazardous waste liquid 3PC waste (D001, F003), liquid coating waste (D001, F003), liquid press waste (D001), video jet ink (D001), off specification paint (D001), water-based waste from the coating line (D018), and mercury switches and thermostats (D009).
4. On February 8, 2011, Ohio EPA conducted a compliance evaluation inspection at the Facility.
5. As a result of the inspection referenced in Finding No. 4. of these Orders, Ohio EPA determined that Respondent had, *inter alia*, failed to have a list and location of all of the emergency equipment at the Facility in the contingency plan, in violation of OAC rule 3745-65-52(E). Respondent abated this violation during the inspection.
6. By electronic mail dated February 10, and February 14, 2011, Respondent submitted additional information related to the wastes generated at the Facility.
7. Respondent was notified of the violation referenced in Finding No. 5. of these Orders, and its abatement, by letter dated February 23, 2011. This letter also requested additional information on the wastes generated by Respondent at the Facility.
8. By letter dated March 25, 2011, and by electronic mail dated April 13, May 9, and June 9, 2011, Respondent submitted sample analysis results for wastes generated at the Facility, including, but not limited to, results regarding the water-based waste from the coating line.
9. Upon review of the information submitted by Respondent referenced in Finding No. 8. of these Orders, Ohio EPA determined that Respondent, *inter alia*:
  - a. Failed to adequately evaluate wastes to determine if they are hazardous, in violation of OAC rule 3745-52-11. Specifically, Respondent failed to properly evaluate the water-based waste from the coating line. The water-

based waste from the coating line is characteristically hazardous for benzene, D018, as described in OAC rule 3745-51-24;

- b. Caused hazardous waste to be transported to an unauthorized facility, in violation of ORC § 3734.02(F). Respondent caused multiple shipments of D018 waste stream to be transported to a facility not authorized to receive and manage hazardous waste;
  - c. Failed to use a hazardous waste manifest to ship hazardous waste off site, in violation of OAC rule 3745-52-20(A)(1);
  - d. Failed to determine if their hazardous waste needed to be treated prior to being land disposed, in violation of OAC rule 3745-270-07(A)(1); and
  - e. Failed to send a one-time written notice to the treatment or storage facility receiving the hazardous waste, in violation of OAC rule 3745-270-07(A)(2).
10. Respondent was notified of the violations referenced in Finding No. 9. of these Orders by letter dated July 6, 2011. This letter also notified Respondent that the violation referenced in Finding No. 9.a. of these Orders was abated.
  11. By letter dated July 28, 2011, Respondent submitted documentation in response to the violations referenced in Finding No. 9. of these Orders.
  12. By letter dated August 16, 2011, Ohio EPA notified Respondent that the violations referenced in Finding Nos. 9.c., 9.d., and 9.e. of these Orders are abated and that no further action is required of Respondent with regard to the violation referenced in Finding No. 9.b. 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 \$14,160.00 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 \$11,328.00 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 \$11,328.00. The official check 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. 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 Processing/Records Management Supervisor, Ohio EPA, Division of Materials and Waste Management, P.O. Box 1049, Columbus, Ohio 43216-1049.
- b. In lieu of paying the remaining \$2,832.00 of civil penalty to Ohio EPA, Respondent shall fund a supplemental environmental project (SEP) by making a contribution in the amount of \$2,832.00 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 \$2,832.00. The official check shall be submitted to Ohio EPA, Office of Fiscal Administration, P.O. Box 1049, Columbus, Ohio 43216-1049, together with a letter identifying Respondent and the Facility. 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 Ohio EPA Division of Materials and Waste Management, Supervisor, Processing Records Management Unit, P.O. Box 1049, Columbus, Ohio 43216-1049 and to Ohio EPA, Division of Air Pollution Control, Manager, Compliance and Enforcement Section, 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 \$2,832.00 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 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  
Northwest District Office  
Division of Materials and Waste Management  
347 North Dunbridge Road  
Bowling Green, Ohio 43402  
Attn: DMWM Manager

and Ohio EPA Central Office at the following address:

For mailings, use the post office box number:

Enforcement Supervisor  
Ohio Environmental Protection Agency  
Lazarus Government Center  
Division of Materials and Waste Management  
P.O. Box 1049  
Columbus, Ohio 43216-1049

For deliveries to the building:

Enforcement Supervisor  
Ohio Environmental Protection Agency  
Lazarus Government Center  
Division of Materials and Waste Management  
50 West Town Street  
Columbus, Ohio 43215

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 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, and in lieu of further enforcement action by Ohio EPA for only the violations specifically cited in these Orders, Respondent consents to the issuance of these Orders and agrees to comply with these Orders. 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**

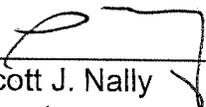
The effective date of these Orders is the date these Orders are entered into the Ohio EPA Director's journal.

**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

\_\_\_\_\_  
February 10, 2012  
Date

**IT IS SO AGREED:**

**Silgan Can Company**

  
\_\_\_\_\_  
Signature

\_\_\_\_\_  
1/30/12  
Date

\_\_\_\_\_  
PHILLIP CESEN  
Printed or Typed Name

\_\_\_\_\_  
PLANT MANAGER  
Title