OHIO E.P.A.
FEB 12 2009
ENTERED DIRECTOR'S JOURNAL

BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

Maumee & Western Railroad Corporation
4301 N Western Avenue
Connersville, Indiana 47331

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.

By: _____ Date: 2/12/09

PREAMBLE

It is agreed by the parties hereto as follows:

I. JURISDICTION

These Director's Final Findings and Orders (Orders) are issued to Maumee & Western Railroad Corporation (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 Facilities 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.

IV. FINDINGS

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, it is unlikely that the public health or safety or the environment will be adversely affected thereby, 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 OAC rule 3745-50-10(A).

3. Respondent is the owner and operator of a short line railroad running from Liberty Center, Ohio, to Woodburn, Indiana. Respondent operates a rail yard located at 817 Fifth St., Defiance, Defiance County, Ohio 43512 (Defiance Facility).

4. Respondent is authorized to do business in Ohio and was issued generator identification numbers of OHR000134445 for the Defiance Facility and OHR000134544 for a track area of concern between Cleveland Ave. and Main Ave., Antwerp, Paulding County, Ohio 45813 (Antwerp Facility).

5. At the Defiance Facility, Respondent is a conditionally exempt small quantity generator and 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 generates lead acid batteries (D002, D008), used oil, spent antifreeze, a used oil/antifreeze/water mixture from the locomotive pollution tanks, and diesel fuel from overflows and spills.

6. On January 5, 2006, Ohio EPA performed a compliance evaluation inspection at the Defiance and Antwerp Facilities. As a result of the inspection, Ohio EPA determined that Respondent had, *inter alia,* at the Defiance Facility, failed to evaluate its wastes to determine if the wastes are hazardous wastes as required by OAC rule 3745-52-11. Specifically, at the Defiance Facility, Respondent failed to evaluate waste sludge, five drums of waste antifreeze, two drums in the storage car, waste batteries, and other drums and pails on the ground. Additionally, at the Antwerp Facility, Respondent failed to mark four drums with the words "used oil" in violation of OAC rule 3745-279-22(C).

7. By letter dated February 2, 2006, Ohio EPA notified Respondent of the violations referenced in Finding No. 6 of these Orders.

8. Ohio EPA contacted Respondent regarding the violations in Finding No. 6 multiple times between the February 2, 2006 letter and a follow-up inspection at both Facilities on April 10, 2007. As a result of this inspection, Ohio EPA determined that in addition to the violations in Finding No. 6., Respondent had, *inter alia,* at the Defiance Facility:

   a. Unlawfully disposed of hazardous waste lead acid batteries without a permit in violation of ORC § 3734.02(E) and (F);

   b. Failed to evaluate three piles of contaminated soils on plastic sheeting along the rail line, west of the office building, and one pail of red liquid on the ground outside the rail car, in violation of OAC rule 3745-52-11;

   c. Failed to mark containers of used oil with the words "Used Oil" in violation of OAC rule 3745-279-22(C)(1); and

   d. Failed to clean up the soil contaminated by used oil releases, in violation of OAC rule 3745-279-22(D).

9. Respondent was notified of the violations in Finding No. 8 by letter from Ohio EPA dated June 1, 2007. In this letter, Ohio EPA also notified Respondent that due to the unpermitted disposal of hazardous waste, Respondent was subject to all applicable general facility standards found in OAC chapters 3745-54 and 3745-55, including but not limited to, closure of the unpermitted hazardous waste disposal areas in accordance with OAC rules 3745-55-11 through 3745-55-20 and the financial assurance requirements in OAC rules 3745-55-42 through 3745-55-51, and closure and post closure care under OAC rule 3745-55-97.

10. Ohio EPA conducted another follow-up inspection at both Facilities on July 12, 2007. As a result of this inspection, Ohio EPA determined that Respondent had violated the hazardous waste laws at both Facilities. At the Defiance Facility, Ohio EPA determined that Respondent had:

   a. Unlawfully disposed of hazardous waste on-site without a permit, in violation of ORC § 3734.02(E) and (F) by dumping a spent lead acid battery in a pile of solid waste and allowing the contents of the battery to be discharged to the ground;

   b. Failed to properly evaluate wastes to determine if the wastes are hazardous wastes as required by OAC rule 3745-52-11. Specifically, Respondent failed to evaluate:

i. One full open top 55-gallon drum of waste;
ii. One 55-gallon drum leaking waste to the ground;
iii. A new waste pile #1, west of the Defiance Facility;
iv. A new waste pile #2, west of the Defiance Facility;
v. A 5-gallon pail; and
vi. A yellow collection pail, filled with a waste liquid.

c. Failed to respond appropriately to releases of used oil in violation of OAC rule 3745-279-22(D). Respondent has not cleaned up the soil at the Defiance Facility that is contaminated with used oil.

At the Antwerp Facility, Ohio determined that Respondent had:

d. Failed to evaluate wastes to determine if the wastes are hazardous waste in violation of OAC Rule 3745-52-11. The following wastes have not been evaluated:

i. Four 55-gallon drums of waste oil at the side of the track near the grain elevators in Antwerp, Ohio. This waste was generated during repairs to Engine #7;
ii. One black 55-gallon drum of waste located beside the rail with a flammable liquids label attached; and
iii. One 5-gallon pail, located along the rail.

11. By letter dated July 20, 2007, Ohio EPA notified Respondent of the violations referenced in Finding No. 10. of these Orders, as well as the previous violations that have not been addressed. In this letter, Ohio EPA determined that the violation cited in Finding No. 6. regarding the violation of OAC rule 3745-279-22(C) for failing to mark four containers of used oil at the Antwerp Facility no longer applied, and had been replaced with the violation referenced in Finding No. 10.d.

12. On November 19 and 20, 2007, Ohio EPA observed sampling of several drums of waste, soil and waste piles at the Defiance and Antwerp Facilities.

13. Based on the sampling results, Ohio EPA has determined that Respondent established an unpermitted hazardous waste storage facility at the Antwerp Facility, in violation of ORC § 3734.02 (E) and (F).

14. By letter dated February 1, 2008, Ohio EPA notified Respondent of the violation referenced in Finding No. 13. of these Orders.

15. Due to Respondent's establishment and operation of hazardous waste storage and disposal facilities as described in Finding Nos. 8.a., 10.a. and 13. of these Orders, Respondent is required to have hazardous waste facility installation and operation permits 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 permits, Respondent is required to submit "Parts A and B" of the application in accordance with OAC Chapter 3745-50.

16. 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 applications for hazardous waste facility installation and operation permits 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 applications for hazardous waste facility installation and operation permits for the Defiance and Antwerp Facilities is unlikely to adversely affect the public health or safety or the environment within the meaning of ORC § 3734.02(G).

17. Because the drums at the Antwerp Facility were closed, and no signs of releases were visible, the Director has determined that no further action is required of Respondent at this time regarding the violation referenced in Finding No. 13. of these Orders.

18. Based upon a review of financial information submitted by Respondent on June 27, 2008, Ohio EPA determined that Respondent does not possess the financial ability to pay the entire civil penalty settlement proposed in the Director's letter of April 11, 2008.

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

   a. Within 60 days after the effective date of these Orders, Respondent shall submit to Ohio EPA for review and approval a Closure Plan for all hazardous waste storage and disposal areas including but not limited to:

      i. The hazardous waste lead acid battery disposal area referenced in Finding No. 8.a. of these Orders; and
      ii. The hazardous waste lead acid battery disposal area referenced in Finding No. 10.a. of these Orders.

   b. The Closure Plan 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 54-100.

   c. The Closure Plan is subject to approval by Ohio EPA. If Ohio EPA does not approve the Closure Plan and provides Respondent with a written statement of deficiencies, Respondent shall submit a revised Closure Plan for approval addressing the deficiencies within 30 days of receiving such written statement. If Ohio EPA modifies the Closure Plan, the modified Closure Plan becomes the approved plan.

   d. Upon Ohio EPA's written approval of the Closure Plan, Respondent shall implement the approved Closure Plan in the manner and pursuant to the time frames set forth in the approved Closure Plan and OAC rules 3745-55-13/3745-66-13;

   e. Within 30 days after the submittal of the Closure Plan pursuant to Order No. 1.a., above, Respondent shall submit a closure cost estimate and documentation demonstrating that Respondent has established financial assurance and liability coverage for the areas of the Defiance Facility

subject to closure, in accordance with OAC rules 3745-55-42/3745-66-42 through 3745-55-47/3745-66-47; and

f. Within 60 days after completion of each closure, Respondent shall submit certification of closure to Ohio EPA in accordance with OAC rules 3745-55-15/3745-66-15. Closure certification of the area(s) described in Order No. 1.a. will abate the violations referenced in Finding Nos. 8.a., and 10.a. of these Orders.

2. Within thirty (30) days after the effective date of these Orders, Respondent shall, submit to Ohio EPA, a used oil management plan (Plan) in accordance with OAC rule 3745-279-22.

a. The Plan shall propose a strategy for assuring compliance with the used oil regulations, including procedures for properly labeling used oil containers with the words "Used Oil," and specify activities for cleaning-up used oil that has been released at the Defiance Facility.

b. The Plan is subject to Ohio EPA review and approval. If Ohio EPA does not approve the Plan and provides Respondent with a written statement of deficiencies, the Respondent shall revise the Plan or submit a new Plan for approval that corrects the stated deficiencies within 30 days of receipt of such written notification. Ohio EPA may approve the Plan with modifications. If Ohio EPA modifies the Plan, the modified Plan becomes the approved Plan.

c. Upon Respondent's receipt of written approval from Ohio EPA of the Plan, the Respondent shall implement the approved Plan in accordance with the terms, conditions and schedules contained therein. Completion of Order No. 2. will abate the violations referenced in Finding Nos. 8.c, 8.d and 10.c.

3. Within 60 days after entry of these Orders, Respondent shall submit documentation to Ohio EPA demonstrating Respondent has evaluated all wastes referenced in Finding Nos. 6., 8.b., 10.b., and 10.d. of these Orders in accordance OAC rule 3745-52-11.

4. Respondent shall pay Ohio EPA the amount of $12,500.00 in settlement of Ohio EPA's claims for civil penalties, which may be assessed pursuant to ORC Chapter 3734. $10,000.00 of this amount will be deposited into the hazardous waste cleanup fund established pursuant to ORC § 3734.28 pursuant to the following schedule:

a. Within 90 days after the effective date of these Orders, Respondent shall pay to Ohio EPA the amount of $1,250.00;

b. Within 180 days after the effective date of these Orders, Respondent shall pay to Ohio EPA the amount of $1,250.00;

c. Within 270 days after the effective date of these Orders, Respondent shall pay to Ohio EPA the amount of $1,250.00;

d. Within 360 days after the effective date of these Orders, Respondent shall pay to Ohio EPA the amount of $1,250.00;

e. Within 450 days after the effective date of these Orders, Respondent shall pay to Ohio EPA the amount of $1,250.00;

f. Within 540 days after the effective date of these Orders, Respondent shall pay to Ohio EPA the amount of $1,250.00;

g. Within 630 days after the effective date of these Orders, Respondent shall pay to Ohio EPA the amount of $1,250.00; and

h. Within 720 days after the effective date of these Orders, Respondent shall pay to Ohio EPA the amount of $1,250.00.

Respondent shall make each payment by tendering an official check 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 Respondent and the Facility. A copy of each check shall be submitted in accordance with Section X. of these Orders.

5. In lieu of paying the remaining $2,500.00 of the civil penalty to Ohio EPA, Respondent shall fund a supplemental environmental project (SEP) by making a contribution in the amount of $2,500.00 to the Ohio EPA Clean Diesel School Bus Program (Fund 5CD) pursuant to the following schedule:

a. Within 90 days after the effective date of these Orders, Respondent shall pay to Ohio EPA the amount of $312.50;

b. Within 180 days after the effective date of these Orders, Respondent shall pay to Ohio EPA the amount of $312.50;

c. Within 270 days after the effective date of these Orders, Respondent shall pay to Ohio EPA the amount of $312.50;

d. Within 360 days after the effective date of these Orders, Respondent shall pay to Ohio EPA the amount of $312.50;

e. Within 450 days after the effective date of these Orders, Respondent shall pay to Ohio EPA the amount of $312.50;

f. Within 540 days after the effective date of these Orders, Respondent shall pay to Ohio EPA the amount of $312.50;

g. Within 630 days after the effective date of these Orders, Respondent shall pay to Ohio EPA the amount of $312.50; and

h. Within 720 days after the effective date of these Orders, Respondent shall pay to Ohio EPA the amount of $312.50.

Payments shall be made by official checks made payable to "Treasurer, State of Ohio." The official checks 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 these checks 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.

6. Should Respondent fail to fund the SEP within the required time frames established in Order Nos. 5.a. through 5.h., Respondent shall pay to Ohio EPA the missed payment amount no later than 7 days after the missed payment due date. Payment shall be made in accordance with the procedures established in Order No. 4.

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 [e.g., 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
Northwest District Office

Division of Hazardous Waste Management
347 N. Dunbridge Road
Bowling Green, Ohio 43402
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 closure at the Antwerp Facility and corrective action at the Defiance and Antwerp Facilities 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, 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. Except for the right to seek closure at the Antwerp Facility and corrective action at the Defiance and Antwerp Facilities, which rights 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

February 12, 2009
Date

IT IS SO AGREED:

Maumee & Western Railroad Corporation

Spencer Wendel
Signature

5-19-09
Date

Spencer Wendelin
Printed or Typed Name

CEC
Title

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