

**BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY**

In the Matter Of:

Ohio University :
Cutler Hall :
Athens, Ohio 45701-2979 :

Director's Final Findings
and Orders

Respondent

PREAMBLE

It is hereby agreed by and between the parties hereto as follows:

I. JURISDICTION

These Director's Final Findings and Orders ("Orders") are hereby issued to Ohio University ("Respondent") pursuant to the authority vested in the Director of the Ohio Environmental Protection Agency ("Ohio EPA") under Sections 3734.13 and 3745.01 of the Ohio Revised Code ("ORC").

II. PARTIES

These Orders shall apply to and be binding upon Respondent and its successors in interest liable under Ohio law. No change in ownership relating to the Property, as hereinafter defined, shall in any way alter Respondent's obligations under these Orders. Respondent's obligations under these Orders may be altered only by the written action of the Director of Ohio EPA.

III. DEFINITIONS

Unless otherwise stated, all terms used in these Orders shall have the same meaning as used

in ORC Chapter 3734 and the rules promulgated thereunder.

IV. FINDINGS

The Director has determined the following findings. Nothing in these findings shall be considered to be an admission by Respondent of any matter of law or fact.

1. Respondent is the owner of the property upon which is situated Ohio University's Ironton Campus located in the city of Ironton, Lawrence County, Ohio. Ohio University purchased the Ironton Campus property ("the Property") from the Ironton City School Board in 1982.
2. Shortly after purchasing the Property in 1982, Respondent engaged in certain construction activities whereby an Ohio University building was erected. In December of 1985, Ohio University dedicated the Collins Center located on the Property. Subsequently, Respondent constructed the Student Center, Academic Center and the Technology Center on the Property.
3. On February 21, 2001, Ohio EPA conducted an inspection of the Property in response to a February 20, 2001 complaint from a member of the public. The complainant alleged that Respondent's buildings located on the Property had been constructed upon a disposal site once used by Amcast Corporation for disposal of mixed foundry sand and other solid wastes. The complainant further alleged that commingled foundry sand and other solid wastes were excavated by Respondent and used as a cover material for Ironton's Floodwall Project.
4. Circa 1950 and continuing until 1977, prior to Respondent's purchase of the Property, records indicate that the Property had been used by Amcast Corporation, which also conducted business under the names of Dayton Malleable Iron Company and Dayton Malleable, Inc., as a disposal site for foundry wastes and other wastes. Aerial photographs and other records further indicate that dumping of these waste materials continued through the 1970s and that the disposal site was commonly known as the 9th Street Pit.
5. Ohio EPA has obtained records indicating that Amcast and/or Dayton Malleable, Inc. and/or Dayton Iron Company disposed of a commingled industrial waste stream generated from its malleable iron foundry located in Ironton. The commingled waste stream consisted of foundry sand, broken mold cores, waste from the foundry's cupolas and other miscellaneous waste generated at that foundry. The foundry's

manufacturing process included sand molds made of a mixture of sand, water, bentonite clay, seacoal and sawdust or cereal. When molten steel contacted the sand molds, a portion of the seacoal burned, another portion remained un-burned and a third portion of partially burned seacoal transformed into polynuclear aromatic hydrocarbons ("PAHs") through a pyrolysis process.

6. To date, neither Amcast nor Dayton Malleable, Inc./Dayton Iron Company have made a non-toxic demonstration, approved by Ohio EPA, for the waste material disposed at the Property. Furthermore, common disposal practices during the time in which disposal occurred at the Property did not include waste stream segregation for certain waste characteristics which had yet to be required by law. In addition, Ohio EPA has records indicating the waste stream disposed at the Property was commingled and heterogenous in nature and therefore the waste material is a solid waste as that term is defined in Ohio law and regulations.
7. According to Ohio EPA records, the 9th Street Pit has never been authorized by the Director of Ohio EPA as a licensed and/or permitted solid waste disposal facility.
8. Prior to construction of Respondent's Technology Center, Respondent received substrate data in the geotechnical report prepared for the construction of the Center issued on June 28, 2000 which indicated that waste material exists from 7.5 to 45 feet below ground surface throughout portions of the building site. The waste contains a mixture of cinders, foundry sand, coal fragments, clay, silt, rock fragments, gravel, organic material and other waste. On August 29, 2000, Respondent received further data confirming the presence of semi-volatile organic compounds found in a "waste black silt soil".
9. On March 15, 2001, as a result of Ohio EPA's February 21, 2001 inspection, Respondent engaged in soil sampling to determine the regulatory characteristics of the waste material. On April 3, 2001, Ohio EPA received the analytical results which indicated the waste material does not exhibit those characteristics of a hazardous waste, as that term is defined in ORC Section 3734.01(J).
10. OAC Rule 3745-27-13(A) states, " No person shall, without prior authorization from the director, engage in filling, grading, excavating, building, drilling, or mining on land where a hazardous waste facility or solid waste facility was operated."
11. Ohio EPA notified Respondent of violations of Ohio Administrative Code (OAC) Rule 3745-27-13(A) in correspondence dated March 5, 2001, April 9, 2001, May 21, 2001 and June 25, 2001 for failing to obtain authorization from the Director of Ohio EPA

prior to building on the Property.

12. OAC Rule 3745-27-01(B)(43) defines solid waste as, " such unwanted residual solid or semisolid material as results from industrial, commercial, agricultural, and community operations, excluding earth or material from construction, mining, or demolition operations, or other waste materials of the type that normally would be included in demolition debris, nontoxic fly ash and bottom ash, including at least ash that results from combustion of coal, and ash that results from the combustion of coal in combination with scrap tires where scrap tires comprise not more than fifty per cent of heat input in any month, spent nontoxic foundry sand, and slag and other substances that are not harmful or inimical to public health, and includes, but is not limited to, garbage, scrap tires, combustible and noncombustible material, street dirt, and debris. Solid waste does not include any material that is an infectious waste or a hazardous waste.

For the purpose of this definition, "semisolid material" does not contain liquids which can be readily released under normal climatic conditions, as determined by method 9095 (paint filter liquids test) in SW-846: "Test Methods for Evaluating Solid Wastes, Physical/Chemical Methods".

13. The parties agree to resolve the above-referenced violations through a two-stage process. The first stage, which is embodied in these Findings & Orders, shall require Respondent to engage in sampling and analysis to delineate the extent and composition of the solid waste underlying the Property. The second stage, which shall commence upon Respondent's delivery of the Site Investigation Report to Ohio EPA, shall require respondent, in conjunction with Ohio EPA, to develop a remedial plan to address the violations in a manner that is protective of human health, safety and the environment. The remedy shall be embodied in a subsequent set of Director's Findings & Orders that will prescribe the appropriate remedy and the procedure and time table for implementing that remedy.

V. ORDERS

The Respondent shall conduct the following in accordance with the schedule contained herein:

1. Within 30 days after the effective date of these Orders, Respondent shall commence the implementation of the Respondent's Investigation Work Plan, November 6, 2002, attached hereto as Attachment A, and shall complete implementation of the Work Plan in accordance with the schedule contained in the Work Plan. Attachment A shall be

fully incorporated herein, and shall be made a part hereof as if fully rewritten herein, with the exception of Section 5.1(i) on page 11, which shall be amended as follows:

- (i) Tabulated comparison of fill testing results with OEPA Policy DSW 0400.07 for “non-toxic” foundry sand and criteria are to be provided for informational purposes only. It is Ohio EPA’s position that this policy does not apply to waste materials that were disposed without being evaluated by the generator for compliance with the policy.
2. The work performed in accordance with Attachment A will meet the following minimum objectives:
 - a. Delineate the full vertical and horizontal extent of solid waste, including residual waste and/or industrial waste and/or C&DD disposal within the 9th Street Pit and/or other waste disposal areas located on the Property;
 - b. Conduct representative waste sampling and analysis to determine the full chemical composition of the waste material using the most recent update to SW-846 and EPA Methods 6010B, 8082A, 8260B and 8270D. Analysis shall be to the method detection limit and shall include analysis for all constituents identified within each method;
 - c. Install a Groundwater Detection Monitoring System which meets the requirements of OAC Rule 3745-27-10(B);
 - d. Conduct representative groundwater sampling and analysis to determine the full chemical composition of the groundwater in the upper most zone of saturation using the most recent update to SW-846 and EPA Methods 6010B, 8082A, 8260B and 8270D. Analysis shall be to the method detection limit and shall include analysis for all constituents identified within each method;
 - e. Implement a prepared Emergency Contingency Plan in the event that adverse conditions and/or hazardous materials may be encountered during the Waste Evaluation process.
3. Upon implementation of the work described in Attachment A, Respondent shall further conduct all such work activities in a manner that is protective of human health, safety and the environment, conduct such work in a manner not inconsistent with all applicable federal and state laws and carry out all work in a manner which is protective of the workers’ safety as is required by OSHA 1910. Where any portion of the work requires a permit or approval, Respondent shall submit applications in a timely manner and take all other action necessary to obtain such permits or approvals. These Orders are

not, and shall not be construed to be, a permit issued pursuant to any statute or regulation.

4. If while performing the work described in Attachment A, the Respondent elects to utilize Ohio EPA's Site Investigation Field Unit for specific activities contemplated by Attachment A, Respondent shall provide Ohio EPA with a minimum notice of 45 days prior to Ohio EPA conducting the work. Respondent further agrees that in the event Ohio EPA performs portions of the work described in Attachment A, Respondent will reimburse Ohio EPA for its services within 30 days after receipt of Ohio EPA's invoice.
5. Respondent shall submit to Ohio EPA information in a series of documents, referred to in Attachment A as "Deliverables," in accordance with the schedule set forth in the attachment. The submitted information shall accurately depict the results of the investigation performed under Attachment A.
6. Ohio EPA shall have the right to review and provide written comments to Respondent as to the completeness of the data submitted pursuant to Order 5, and with respect to any written assumptions or conclusions drawn by Respondent from the data. Should Ohio EPA provide written comments to Respondent in response to documents provided by Respondent pursuant to Attachment A, Respondent, within thirty (30) days of receipt of such comments, shall respond in writing to the written comments, either concurring with the comments or stating why Respondent does not concur. Respondent and Ohio EPA shall endeavor to resolve any disagreements pertaining to such written comments.
7. Upon final submission of the all documents to be submitted under Attachment A, Respondent and Ohio EPA shall confer and attempt to agree upon the steps that are necessary to remedy the violations and, in the event that agreement is reached, shall enter into another set of Director's Findings & Orders to prescribe the appropriate remedy and the time table for completing the agreed upon remedy. Whether the remedy includes active measures to remove or reduce the concentration of hazardous substances will be determined at that time.

VI. SAMPLING AND DATA AVAILABILITY

Unless otherwise agreed to in writing by Ohio EPA, Respondent shall notify Ohio EPA not less than fifteen (15) days in advance of all sample collection activity. Upon request, Respondent shall allow split and/or duplicate samples to be taken by Ohio EPA. Ohio EPA shall also have the right to take any additional samples it deems necessary. Upon request, Ohio EPA shall

allow Respondent to take split and/or duplicate samples of any samples Ohio EPA takes as part of its oversight of Respondent's implementation of the work.

Unless otherwise agreed in writing by Ohio EPA, Respondent shall, within seven (7) days after a request by Ohio EPA, submit to Ohio EPA copies of the results of all sampling and/or tests or other data, including raw data and original laboratory reports, generated by or on behalf of Respondent with respect to the Property and/or the implementation of these Orders. Respondent may submit to Ohio EPA any interpretive reports and written explanations concerning the raw data and original laboratory reports. Such interpretive reports and written explanations shall not be submitted in lieu of original laboratory reports and raw data. Should Respondent subsequently discover an error in any report or raw data, Respondent shall promptly notify Ohio EPA of such discovery and provide the correct information.

VII. ACCESS

Ohio EPA shall have access at all times to the Property and any other property to which access is required for the implementation of these Orders, to the extent access to the property is controlled by Respondent. Access under these Orders shall be for the purposes of conducting any activity related to these Orders including, but not limited to the following:

- a. Monitoring the Work;
- b. Conducting sampling;
- c. Inspecting and copying records, operating logs, contracts, and/or other documents related to the implementation of these Orders;
- d. Conducting investigations and tests related to the implementation of these Orders; and
- e. Verifying any data and/or other information submitted to Ohio EPA.

To the extent that the Property or any other property to which access is required for the implementation of these Orders is owned or controlled by persons other than Respondent, Respondent shall use its best efforts to secure from such persons access for Respondents and Ohio EPA as necessary to effectuate these Orders. Copies of all access agreements obtained by Respondent shall be provided promptly to Ohio EPA. If any access required to effectuate these Orders is not obtained within thirty (30) days of the effective date of these Orders, or within thirty (30) days of the date Ohio EPA notifies Respondent in writing that additional access beyond that previously secured is necessary, Respondent shall promptly notify Ohio EPA in writing of the steps Respondent has taken to attempt to obtain access.

Ohio EPA may, as it deems appropriate, assist Respondent in obtaining access.

Notwithstanding any provision of these Orders, the State of Ohio retains all of its access rights and authorities, including enforcement authorities related thereto, under any applicable statute or regulations including but not limited to Ohio Revised Code Sections 3734.13, 3734.20 and 6111.05.

VIII. TERMINATION

The Respondent's obligations under these Orders shall terminate when the Respondent certifies in writing and demonstrates to the satisfaction of Ohio EPA, Division of Solid and Infectious Waste Management, that all obligations under these Orders have been performed and Ohio EPA, Division of Solid and Infectious Waste Management, acknowledges, in writing, Ohio EPA's acceptance of this certification and demonstration.

This certification shall be submitted by the Respondent and shall be signed by a responsible official of the Respondent. The certification shall make the following attestation: "I certify that the information contained in or accompanying this certification is true, accurate and complete."

For purposes of these Orders, a responsible official is an administrative officer who is in charge of a principal business function of the Respondent.

IX. 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 signatory to these Orders, for any liability arising out of or relating to the Property.

X. OTHER APPLICABLE LAWS

All actions required to be taken pursuant to these Orders shall be undertaken in accordance with the requirements of all applicable federal, state, and local laws and regulations. Nothing in these Orders shall be construed as waiving or compromising in any way the applicability and enforcement of any other statutes or regulations applicable to the Property. Ohio EPA reserves all rights and privileges except as specified herein.

XI. NOTICE

All documents demonstrating compliance with these Orders and all other documents required

under these Orders to be submitted to Ohio EPA shall be addressed to:

Ohio Environmental Protection Agency
Southeast District Office
Division of Solid and Infectious Waste Management
Attn: Unit Supervisor, DSIWM
2195 Front Street
Logan, OH 43138

or to such persons and addresses as may hereafter be otherwise specified in writing by Ohio EPA.

XII. RESERVATION OF RIGHTS

Ohio EPA reserves the right to seek legal and equitable relief to enforce the terms and conditions of these Orders, including penalties against Respondent for noncompliance with these Orders.

Ohio EPA reserves the right to take any action and pursue any claim against Respondent and any other potentially liable parties, including but not limited to, any administrative, civil or criminal enforcement action or claim, pursuant to any available legal authority as a result of past, present or future violations of state or federal laws or regulations, as a result of the common law and/or as a result of events or conditions arising from or related to the Property. Ohio EPA expressly and specifically reserves the right to take any action and pursue any claim, including a claim for civil penalties, and/or the issuance of unilateral orders, pursuant to any available legal authority to address the violations of law which are the subject of these Orders and any other violations of law which are in any way associated with the Property.

XIII. 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.

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. Respondents expressly waive any and all claims and defenses of res judicata, collateral estoppel, waiver, laches, statute of limitations, issue preclusion, claim splitting and other claims and defenses based upon any contention that the actions taken or claims raised by Ohio EPA or the State of Ohio in a subsequent proceeding were or should have been raised,

brought or resolved in these Orders.

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. Nothing in these Orders shall be construed to limit the authority of Ohio EPA to seek relief for violations not addressed in these Orders.

XIV. EFFECTIVE DATE

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

XV. SIGNATORIES

Each undersigned representative of a signatory to these Orders certifies that he or she is fully authorized to enter into the terms and conditions of these Orders and to legally bind such signatory to this document.

IT IS SO AGREED:

Ohio University (Respondent)

By: _____

_____ Date

Title: _____

Ohio Environmental Protection Agency

Christopher Jones, Director