

OHIO E.P.A.

APR -2 2009

Effective Date APR 2 2009

DIRECTOR'S JOURNAL

BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

Progressive Foam Technologies, : DIRECTOR'S FINAL
Inc. : FINDINGS AND ORDERS
6753 Chestnut Ridge Road :
Beach City, Ohio 44608 :
:

Respondent

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: *Sonye Lassiter* Date: 4-2-09

I. JURISDICTION

These Director's Final Findings and Orders (Orders) are issued to Progressive Foam Technologies, Inc. (Respondent) pursuant to the authority vested in the Director of the Ohio Environmental Protection Agency (Ohio EPA) under Ohio Revised Code (ORC) Chapters 6109 and 6111 and ORC § 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's public water system or 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 6109, ORC Chapter 6111 and the rules promulgated thereunder.

IV. FINDINGS

The Director of Ohio EPA (Director) makes the following findings:

1. Respondent operates a business located at 6753 Chestnut Ridge Road, NW, Beach City (Wayne Township, Tuscarawas County) Ohio 44608.

2. Operation of the business has included the disposal of process waste waters, sanitary waste waters and storm water into the subsurface through wells located on the property.
3. In accordance with Ohio Administrative Code (OAC) Rule 3745-34-01(WWW), "well" means: (1) a bored, drilled, or driven shaft whose depth is greater than the largest surface dimension; or (2) a dug hole whose depth is greater than the largest surface dimension; or (3) an improved sinkhole; or (4) a subsurface fluid distribution system, drywell, septic system, cesspool, or motor vehicle waste disposal well.
4. In accordance with OAC Rule 3745-34-01(NN), "injection well" means a well into which fluids are being injected.
5. In accordance with OAC Rule 3745-34-01(S), "drywell" means a well, other than an improved sinkhole or subsurface fluid distribution system, completed above the water table so its bottom and sides are typically dry except when receiving fluids.
6. In accordance with OAC Rule 3745-34-04(E), Class V injection wells are typically shallow wells used to place a variety of fluids directly below the land surface into or above formations that contain underground sources of drinking water (USDW). Class V injection wells include, but are not limited to, drainage wells used to drain surface fluid, primarily storm runoff, into a subsurface formation; dry wells used for the injection of wastes into a subsurface formation; cooling water return flow wells used to inject water previously used for cooling; and septic system wells used to inject the waste or effluent from a multiple dwelling, business establishment, community or regional business establishment septic tank.
7. In accordance with OAC Rule 3745-34-01(LL), "industrial waste" means any liquid, gaseous, or solid waste substance resulting from any process of industry, manufacture, trade, or business, or from the development, processing, or recovery of any natural resource, together with such sewage as is present.
8. In accordance with ORC Section 6111.45, no person who conducts a business in the operation of which an industrial waste is produced shall do so until the plans for treating such waste have been approved by Ohio EPA. In accordance with OAC Rule 3745-34-13(D), the owner or operator of any class V well shall notify the director of the existence of any well under the owner or operator's control meeting the definition of a class V well. The owner or operator of a new class V well shall submit the notification within thirty days of installing the well.
9. In accordance with OAC Rule 3745-34-06, any underground injection, except as authorized by permit or rule issued under this chapter is prohibited. The construction of any well required to have a permit is prohibited until the permit has been issued.

Further, in accordance with OAC Rule 3745-34-13(A)(3), no person shall inject industrial wastes or other wastes, into or above a USDW without first obtaining a underground injection control (UIC) permit to drill, where applicable, and a permit to operate under OAC Rule 3745-34-16.

10. Respondent undertook a voluntary internal audit to confirm compliance with Ohio EPA's water regulations. As a result of the audit, Respondent contacted Ohio EPA on November 15, 2005 (Janet Barth and Dave Schuetz) regarding the findings of the audit. On January 5, 2006, Ohio EPA inspected Respondent's facility and confirmed the operation of four (4) unpermitted drywells as injection wells for the disposal of industrial wastes and storm water runoff. These four wells are Class V injection wells.
11. Respondent submitted inventory information for the Class V wells on the property required by OAC Rule 3745-34-13(D) on May 15, 2006. The inventory information identified the injected fluids as process waters consisting of steam condensate, contact cooling water, and water from the accumulator tanks and storm water.
12. Respondent stated in a letter received May 15, 2006, that it was committed to eliminating the discharge of process water to the drywells no later than June 30, 2006. In order to do so, Respondent and Ohio EPA acknowledged the need for Respondent to identify, develop and implement a long-term option to replace the discharge to the four Class V wells.
13. In December 2008, Ohio EPA became aware that Respondent was continuing to use the four Class V wells in violation of ORC Section 6111.45, OAC Rules 3745-34-06 and 3745-34-13. On December 24, 2008, Ohio EPA sent Respondent a certified letter instructing Respondent to cease discharging process waters to the wells by January 31, 2009. Respondent timely ceased discharging process waters on January 27, 2009.
14. Respondent submitted analytical results for the process water on February 2, 2009. Three waste streams were identified as reverse osmosis (RO) waste water, block mold water (contact cooling water) and process water.
15. In accordance with OAC Rule 3745-34-07 (A), no owner or operator shall construct, operate, maintain, convert, plug, abandon, or conduct any other injection activity in a manner that allows the movement of fluid containing any contaminant into an underground source of drinking water, if the presence of that contaminant may cause a violation of any primary drinking water rule under Chapter 3745-81 of the Administrative Code or may otherwise adversely affect the health of persons.
16. In accordance with OAC Rule 3745-81-11(B), the maximum contaminant level (MCL) for arsenic is 0.010 mg/L. In accordance with OAC Rule 3745-81-12(D), the

MCL for styrene is 0.10 mg/L.

17. Analytical results for the RO waste water included a concentration of arsenic of 0.014 mg/L. Analytical results for the block mold waste water included a concentration of styrene of 0.120 mg/L.
18. In violation of OAC Rule 3745-34-07(A), Respondent conducted injection activity in a manner that allows the movement of fluid containing contaminants into an underground source of drinking water that may cause a violation of a primary drinking water rule under OAC Chapter 3745-81.
19. Respondent operates two (2) on-site septic systems for the disposal of sanitary waste, which are also Class V injection wells in accordance with OAC Rule 3745-34-04(E).
20. In accordance with OAC Rule 3745-42-02(A), no person shall cause, permit or allow the installation of a new disposal system or cause, permit or allow the modification of a disposal system without first obtaining an individual permit to install, a general permit to install or plan approval in accordance with OAC Chapter 3745-42 and all other applicable rules and laws.
21. In accordance with OAC Rule 3745-42-04, the Director of Ohio EPA issued permits to install (PTI) for the septic systems on August 7, 1995 (PTI #06-4584) and October 7, 1997 (PTI #06-5270). In those applications, Respondent stated that the only source of wastewater from the facility operations was from sewage from employees.
22. Respondent submitted inventory information for the two on-site septic systems as Class V wells required by OAC Rule 3745-34-13(D) on May 15, 2006.
23. Respondent owns and operates a "public water system" (PWS), which is also a nontransient noncommunity water system as defined by ORC § 6109.01 and Ohio Administrative Code (OAC) Rule 3745-81-01. Ohio EPA personnel discovered the Respondent's operation of an unlicensed public water system during a compliance evaluation inspection conducted on December 7, 2005. Respondent is believed to have operated this unlicensed system from at least 1996 until 2006 when a License to Operate a Public Water System was issued and Respondent began to comply with PWS monitoring and reporting regulations.
24. Respondent's PWS (ID# OH7949712) is located at 6753 Chestnut Ridge Road, Beach City, OH 44608.
25. Respondent's PWS obtains its drinking water from a ground water source as defined by OAC Rule 3745-81-01, and serves a population of approximately 100

persons.

26. Each violation cited above represents a separate violation of ORC § 6111.07.
27. The Director has given consideration to, and based his determination on, evidence relating to the technical feasibility and economic reasonableness of complying with these Orders and to evidence relating to conditions calculated to result from compliance with these Orders, and its relation to the benefits to the people of the state to be derived from such compliance in accomplishing the purposes of ORC Chapter 6111.

V. ORDERS

1. Under the authority of ORC Division 6111.043(E) and under the terms and conditions established by these Orders, Respondent may inject the process waste waters identified in its submittals of May 15, 2006 and February 2, 2009 into the four (4) unpermitted Class V injection wells for a period of time defined by these Orders.
2. Within thirty (30) days of the effective date of these Orders, Respondent shall submit the information identifying the volumes of the individual waste streams disposed on a daily and monthly basis.
3. Within thirty (30) days of the effective date of these Orders, Respondent shall submit a chemical analysis of the combined industrial waste stream. The industrial waste sample collected to analyze the combined industrial waste stream shall be composed of representative portions as reflected in the response to Order #2 for the three industrial waste streams produced daily by the Respondent. The analyses shall be conducted using drinking water analytical methods in accordance with OAC Rule 3745-81-27 (not as waste water analytical methods). Concentrations shall be provided for the following constituents: arsenic, barium, beryllium, cadmium, chromium, mercury, manganese, lead, antimony, selenium, thallium, zinc, 1,1,2-trichloroethane, 1,1-dichloroethene, 1,2-dibromo-3-chloropropane, 1,2-dichloroethane, 1,2-dichloropropane, acetone, benzene, carbon tetrachloride, dichloromethane, ethyl benzene, isopropylbenzene, n-propyl benzene, styrene, tetrachloroethene, trichloroethene, vinyl Chloride, fluoride, sulfate as SO₄, and total dissolved solids.
4. Within thirty (30) days of the effective date of these Orders, Respondent shall submit a report that will include the following, at a minimum.
 - a. As-built construction drawings drawn to scale of the four (4) drywells used to dispose of industrial waste.

- b. A description of the geology and hydrogeology of the site including ground water depth, flow direction and stratigraphy based on existing regional data and well logs.
 - c. A map to a scale of not smaller than 400 feet to 1 inch identifying the location of the building(s), septic tanks and leach fields, the drywells, water supply well(s), both for potable and process water, and any ground water monitoring wells on-site.
5. The combined industrial waste must be mixed together completely prior to injection.
6. Respondent shall limit injection pressure at each of the well heads to atmospheric pressure (gravity flow) at all times.
7. Upon resumption of injection of Respondent's process waste waters into the four (4) unpermitted Class V injection wells, Respondent shall conduct the following data collection and reporting activities for waste disposal activities:
 - a. Measure and record the flow rate of injected fluid into the drywells on a daily basis. Daily measured flow rate and monthly average flow rate shall be reported for the drywells in a monthly report;
 - b. Collect a representative sample of the injected fluid in accordance with the following schedule;
 - i. on a monthly basis analyze the injectate sample for total solids, total dissolved solids, total iron, total manganese, arsenic, cadmium, chromium, lead, total acidity, total alkalinity, conductivity, pH and sulfate. The results of the analysis shall be reported within the monthly report; and
 - ii. On quarterly basis analyze the injectate sample for calcium, magnesium, sodium, carbonate, bicarbonate, chloride, cyanide, fluoride, nitrate, total dissolved solids, potassium, barium, boron, strontium, arsenic, cadmium, aluminum, antimony, cobalt, chromium, lead, mercury, phenol, selenium, silver, zinc and dissolved oxygen. The results of this analysis shall be submitted with the next monthly report after Respondent receives the results.
8. Within thirty (30) days of the effective date of these Orders, Respondent shall submit an injectate sampling and analysis plan for the Director's approval that

describes how the sampling and analyses required by Order #7 will be conducted. Attachment A to these Orders provides an outline of procedures to be followed and supporting information to be collected. The injectate sampling and analysis plan shall describe how the procedures in Attachment A will be met.

9. Upon resumption of injection of Respondent's process waste waters into the four (4) unpermitted Class V injection wells, Respond shall also collect a representative sample of ground water on a quarterly basis from the public water supply well at the Respondent's facility and analyze the sample for total solids, total dissolved solids, total iron, total manganese, arsenic, cadmium, chromium, lead, total acidity, total alkalinity, conductivity, pH, sulfate, calcium, magnesium, sodium, carbonate, bicarbonate, chloride, cyanide, fluoride, nitrate, total dissolved solids, potassium, barium, boron, strontium, aluminum, antimony, cobalt, lead, mercury, phenol, selenium, silver, zinc and dissolved oxygen. This sampling requirement is in addition to the PWS compliance monitoring required by OAC Chapter 3745-81 and any monitoring schedules issued by the Director.
10. Within thirty (30) days of resuming injection, Respondent shall submit a plan for Ohio EPA's review for sampling and analysis of the ground water from the public water supply well as described in Order #9. The plan shall include, at a minimum, a description of the sampling and analytical methodology and other information identified in Attachment B to these Orders.
11. Within sixty (60) days of the effective date of these Orders Respondent shall submit a general plan for the Director's approval with at least three alternative options for achieving compliance with all applicable requirements of ORC Chapter 6111 and rules adopted thereunder for disposal of its waste streams/storm water. The general plan shall identify a preferred alternative for compliance and provide a schedule for submitting detail plans, any required permitting activities and any construction activities necessary to achieve compliance.
12. Within ninety (90) days of the Director's approval of the general plan, Respondent shall submit detail plans for the preferred option and any applications for permits necessary to achieve compliance. Construction shall be completed in accordance with the schedule in the detail plan approval.

13. Should project delays render the approved construction schedule significantly altered, the Director may require an alternate option for treatment and disposal. Before doing so, Director shall consult with Respondent to determine source of the delays and whether such delays can be reasonably remedied.
14. Within thirty (30) days of notification, Respondent shall respond in writing to address any comments or deficiencies noted by Ohio EPA on any plan, permit application or other documentation submitted by Respondent.
15. Respondent shall pay the amount of twenty nine thousand nine hundred forty seven dollars (\$29,947.00) in settlement of Ohio EPA's claim for civil penalties, which may be assessed pursuant to ORC Chapter 6111. Within thirty (30) days of the effective date of these Orders, payment to Ohio EPA shall be made by official check made payable to "Treasurer, State of Ohio" for twenty four thousand ninety seven dollars and sixty cents (\$24,097.60) dollars. The official check shall be submitted to Brenda Case, or her successor, together with a letter identifying the Respondent, to:

Ohio EPA
Office of Fiscal Administration
P.O. Box 1049
Columbus, Ohio 43216-1049

16. In lieu of paying the remaining five thousand eight hundred forty nine dollars and forty cents (\$5,849.40) of the civil penalty, Respondent shall within thirty (30) days of the effective date of these Orders, fund a Supplemental Environmental Project (SEP) by making a contribution in the amount of five thousand eight hundred forty nine dollars and forty cents (\$5,849.40) to the Ohio EPA's Clean Diesel School Bus Fund (Fund 5CD). Respondent shall tender an official check made payable to "Treasurer, State of Ohio" for five thousand eight hundred forty nine dollars and forty cents (\$5849.40). The official check shall be submitted to Brenda Case, or her successor, together with a letter identifying the Respondent, to:

Ohio EPA
Office of Fiscal Administration
P.O. Box 1049
Columbus, Ohio 43216-1049

17. Should Respondent fail to fund the SEP within the required timeframe set forth in Order #16, Respondent shall pay to Ohio EPA five thousand eight hundred forty

nine dollars and forty cents (\$5,849.40) of the civil penalty in accordance with the procedures in Orders #15.

18. Respondent shall submit monitoring reports including, where appropriate, the information described in Attachment A of these orders to the Ohio EPA, Division of Drinking and Ground Waters, Underground Injection Control Unit by the 15th day of the month following each month that monitoring results are required in accordance with schedules described in these orders and sign per the requirements of OAC 3745-34-17 at the following address:

Ohio EPA
Division of Drinking and Ground Waters
Underground Injection Control Unit
P.O. Box 1049
Columbus, Ohio 43216-1049

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 the Chief of Ohio EPA's DDAGW 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 as defined in OAC Rule 3745-33-03(D)(1) for a corporation.

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 PWS.

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 EPA
Division of Drinking and Ground Waters
Underground Injection Control Unit
P.O. Box 1049
Columbus, Ohio 43216-1049

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 claims specifically covered by 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 covered claims.

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:

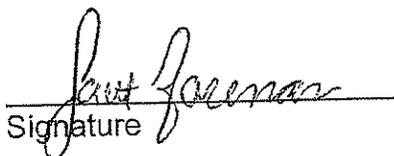
Ohio Environmental Protection Agency


Chris Korleski, Director

APR 2 2009
Date

IT IS SO AGREED:

Progressive Foam Technologies, Inc.


Signature

3-31-09
Date

Scott Foreman
Printed or Typed Name and Title

Director, MANUFACTURING EXCELLENCE

Attachment A
Injectate Sampling and Analysis Procedures

The injectate sampling and analysis plan shall include copies of all blank forms necessary and a detailed description of the equipment, procedures, and techniques to be used to do the following:

- (A) The owner or operator shall include a description of the sample withdrawal technique including location of sampling, sampling device used, sample containers used, and sample handling and preservation for each sample obtained.
- (B) Perform field analysis for temperature, pH, specific conductance, and turbidity for each sample, including the following:
- (1) Procedures and blank forms for recording field measurements that include the specific location, time, and site-specific conditions associated with the field data acquisition.
 - (2) Procedures used for the calibration of field devices and blank forms for the documentation of calibration procedures.
- (C) Decontaminate all non-dedicated and non-disposable monitoring, purging, and sampling equipment prior to use.
- (D) Establish the chain of custody for the samples. The chain of custody form must be included with the sampling and analysis plan and shall note:
- (1) Name of the facility and facility identification number as assigned by Ohio EPA, if applicable.
 - (2) Field sample identification number for each sample.
 - (3) Date and time each sample was collected.
 - (4) The printed name and signature of each person having custody of the sample prior to its analysis with the exception of a person employed by a commercial carrier contracted to transport the ground water samples to the laboratory.
 - (5) The date and time that each person receives custody of the ground water sample, including the date and time the sample is relinquished to the laboratory.
 - (6) Chemical preservatives added to the sample.

- (7) Whether ice is present or the internal temperature of each cooler when received by the laboratory.
 - (8) All special instructions regarding sample handling, preservation, analysis, or other information that needs to be documented to ensure that the associated sample analytical results will be representative.
- (E) Obtain field quality control samples.
- (F) Obtain all of the information required to be recorded on the sampling form. A copy of the blank sampling form shall also be included.

Attachment B
Ground Water Monitoring and Reporting

The following information shall be submitted to Ohio EPA in a form specified by the director:

(A) All results generated and information recorded in accordance with the sampling and analysis plan specified in the PTO.

(B) Laboratory data sheets. The laboratory data sheets shall include at a minimum the following:

- (1) Name of the facility.
- (2) Field sample identification number for each ground water sample.
- (3) Laboratory sample identification number for each ground water sample.
- (4) Sampling date.
- (5) Date the laboratory received the sample.
- (6) Analytical method identification numbers for all parameters.
- (7) Sample extraction date, if applicable.
- (8) Sample analysis date.
- (9) Analytical results for all parameters including method detection limits (MDLs), practical quantitation limits (PQLs) and any laboratory estimated values.
- (10) Laboratory data qualifiers, if applicable.
- (11) Sample dilution factor, if applicable.
- (12) Laboratory quality control information. This information shall include at a minimum the following:
 - (a) Case narrative describing each problem that was encountered between sample receipt and the completion of sample analysis.
 - (b) Field and laboratory sample identification numbers.
 - (c) Holding times specified in the sampling and analysis plan for each

parameter, or a statement by the laboratory that all holding time requirements were met.

- (d) Whether meniscus bubbles were present in any volatile organic sample containers when received by the laboratory.
- (e) Surrogate and spike recoveries with control limits.
- (f) Data results from the analysis of blank samples including trip blanks, method blanks, and, if required, instrument blanks with control limits.
- (g) Data from the analysis of matrix spike/matrix spike duplicates (MS/MSD) and matrix spike blanks with control limits.
- (h) Relative per cent difference calculations based on MS/MSD results.
- (i) Laboratory control sample results if the metals spike recovery results are determined to be out of control.

(D) Data summary tables. The data summary tables shall include ground water elevation data and the analytical data collected from the sampling event applicable to the data submission and may include previously submitted data from past sampling events.