OHIO E.P.A.

OCT 20 2010

ENTERED DIRECTOR'S JOURNAL

BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

Sunrise Equipment Company, LLC
5075 Navarre Road SW
Canton, OH 44706

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 Sunrise Equipment Company, LLC (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 the 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.

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).

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: [signature] Date: 10-20-10

2. Respondent operated a new and used sales, rental, parts and service facility for heavy duty and construction equipment located at 5075 Navarre Road SW, Canton, Stark County, Ohio 44706 (Facility).

3. At the Facility, Respondent generated "hazardous waste" as that term is defined by ORC § 3734.01(J) and OAC rules 3745-50-10(A) and 3745-51-03. Respondent was a conditionally exempt small quantity generator of hazardous waste and was assigned EPA ID number OHR000146704. The hazardous wastes generated by Respondent at the Facility included hazardous waste painting solvent (hazardous waste codes D001/D035/F003/F005). Respondent also generated spent lamps and used oil.

4. Ohio EPA conducted a compliance evaluation inspection at the Facility on November 13, 2007. During the inspection, Ohio EPA discovered that Respondent accumulated greater than 1000kg of hazardous waste on site, classifying Respondent as a small quantity generator. In accordance with OAC rule 3745-51-05(G)(2), Respondent was evaluated as a small quantity generator during this inspection.

5. As a result of the November 13, 2007 inspection referenced in Finding No. 4. of these Orders, Ohio EPA determined that Respondent had *inter alia*:

   a. Stored hazardous waste on site greater than 180 days without a permit, in violation of ORC § 3734.02 (E) and (F);

   b. Failed to comply with several small quantity generator rules in OAC Chapters 3745-52, 3745-65 and 3745-66;

   c. Failed to label containers of used oil with the words "used oil," in violation of 3745-279-22(C); and

   d. Failed to respond to releases of used oil in violation of OAC rule 3745-279-22(D).

6. Respondent was notified of the violations referenced in Finding No. 5. of these Orders in a letter from Ohio EPA dated November 28, 2007.

7. By letter dated December 14, 2007, Respondent responded to Ohio EPA's November 28, 2007 letter.

8. By letter dated February 22, 2008, Ohio EPA notified Respondent that the violations referenced in Finding Nos. 5.b., 5.c. and 5.d. were abated.

9. By letter submitted September 14, 2009, Respondent submitted a sampling plan for the unpermitted storage area referenced in Finding No. 5.a. of these Orders to Ohio EPA for review.

10. Respondent was notified of Ohio EPA's comments to the sampling plan referenced in Finding No. 9. of these Orders by letter dated October 29, 2009.

11. By letter dated November 17, 2009, Respondent submitted responses to Ohio EPA's comments referenced in Finding No. 10. of these Orders.

12. By electronic mail dated August 17, 2010, Respondent submitted documentation to Ohio EPA showing that on April 16, 2010, a judgment was rendered against Respondent in the Stark County Court of Common Pleas in favor of the plaintiff, FirstMerit Bank N.A., in the amount of $6,978,053.04. This electronic mail also stated that all of Respondent's assets had been sold and further indicated that Respondent was no longer conducting business at the Facility.

13. Based upon a review of the information submitted by Respondent referenced in Finding No. 12. of these Orders, 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 March 28, 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. Within 30 days of the effective date of these Orders, Respondent shall implement the sampling plan with the agreed upon changes referenced in Finding Nos. 9. And 11. of these Orders.

2. Within 60 days of implementing the sampling plan, Respondent shall submit the results to Ohio EPA in accordance with the sampling plan procedures.

3. 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. This amount will be deposited into the hazardous waste cleanup fund established pursuant to ORC § 3734.28 pursuant to the following schedule:

   a. Within 30 days after the effective date of these Orders, Respondent shall pay to Ohio EPA the amount of $2,500.00; and

   b. Within 180 days after the effective date of these Orders, Respondent shall pay to Ohio EPA the amount of $2,500.00.

   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.

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 person 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
Northeast District Office
Division of Hazardous Waste Management
2110 East Aurora Road
Twinsburg, Ohio 44087
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 of the hazardous waste storage area as well as 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 such closure or 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 rights to seek closure of the hazardous waste storage area and corrective action at the Facility, 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

October 20, 2010
Date

IT IS SO AGREED:

Sunrise Equipment Company, LLC

Signature

9/29/10
Date

Kenneth Joseph
Printed or Typed Name

Pres.
Title

C:\Documents and Settings\Theffelfi\My Documents\iFolder\Sunrise Equipment\sunrise F&Os 9.20.10.docx