

OHIO E.P.A.

FEB 11 2015

BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY

ENTERED DIRECTOR'S JOURNAL

In the Matter of:

TMI Electrical Contractors, Inc.
423 West Wyoming Avenue
Cincinnati, Ohio 45215

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 TMI Electrical Contractors, Inc. (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 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 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 Ohio Administrative Code (OAC) rule 3745-50-10(A).
3. Respondent operates an electrical contracting service and sales facility located at 423 West Wyoming Ave., Cincinnati, Hamilton County, Ohio 45215 (Facility) and has been assigned EPA ID number OHR000182378. As part of Respondent's operations at the Facility, Respondent manages spent fluorescent lamps, as "lamp" is defined in OAC rule 3745-50-10(A). At a minimum, these spent fluorescent lamps are characteristic hazardous waste for mercury, as described in OAC rule 3745-51-24.
4. On April 24, 2014 Ohio EPA conducted a compliance evaluation inspection (inspection) at the Facility. During the inspection Respondent informed Ohio EPA that Respondent receives spent fluorescent lamps from off site and stores the spent fluorescent lamps at the Facility prior to conducting the initial step in recycling the spent fluorescent lamps. Respondent conducts the initial step in recycling the spent fluorescent lamps by crushing the spent fluorescent lamps prior to shipping the crushed fluorescent lamps to an off-site facility where the crushed fluorescent lamps are reclaimed through a mercury retort operation to recover mercury. At the time of inspection, Respondent had approximately thirteen (13) pallets of spent fluorescent lamps at the Facility including one pallet of spent fluorescent lamps stored outside on a concrete pad next to a fluorescent lamp drum-top crushing unit, where an employee was in the process of crushing the spent fluorescent lamps from this pallet. Additionally during the inspection, Ohio EPA observed pieces of broken lamps on the concrete pad around the pallet. Ohio EPA instructed Respondent to clean up the broken pieces of spent fluorescent lamps from the concrete pad and submit photographic documentation that it had been completed.
5. As a result of the inspection referenced in Finding No. 4. of these Orders, Ohio EPA determined that Respondent, *inter alia*:

- a. Unlawfully established and operated a hazardous waste storage facility by storing hazardous waste spent fluorescent lamps received and generated from off site prior to conducting the initial recycling step by crushing them at the Facility, in violation of ORC §3734.02(E) and (F). Respondent stored the spent fluorescent lamps outside on a concrete pad next to a fluorescent lamp drum-top crushing unit prior to crushing, thereby establishing this area as a hazardous waste management unit; and
 - b. Failed to operate the Facility in a manner to prevent releases of hazardous constituents to air, soil, or surface water, in violation of OAC rule 3745-54-31. Specifically, Respondent left broken pieces of hazardous waste spent fluorescent lamps on the ground in the hazardous waste management unit where lamps were being stored and crushed.
6. By electronic mail dated April 24, 2014, Respondent emailed photos showing that the broken pieces of spent fluorescent lamps on the concrete, as referenced in Finding No. 4. of these Orders, had been cleaned up.
7. By letter dated May 22, 2014, Respondent was notified of the violations referenced in Finding No. 5. of these Orders. This letter also notified Respondent that it had abated the violation referenced in Finding No. 5.b. of these Orders.
8. By letter dated June 10, 2014, Respondent submitted a letter in response to the violations referenced in Finding No. 5. of these Orders. This letter included documentation of the training it provided to the local industry contractors association regarding the management of universal waste spent lamps. This letter also included a statement from Respondent that Respondent will no longer transport any crushed lamps and company policy has been changed to prohibit lamp crushing of any type. A manifest was included in this submittal documenting that the remaining pallets of intact lamps were properly transported to an authorized facility.
9. In October 2014, Respondent and Ohio EPA had multiple communications concerning the violations referenced in Findings Nos. 5.a. and 5.b. of these Orders. With Ohio EPA's assistance, Respondent prepared and submitted an approvable sampling plan on November 9, 2014, that included concrete wipe sampling and analysis for mercury to determine if any releases of mercury occurred within the hazardous waste management unit where Respondent stored and crushed spent fluorescent lamps as described in Finding Nos. 4. and 5.a. of these Orders.

Director's Final Findings and Orders

TMI Electrical Contractors, Inc.

Page 4 of 9

10. On November 20, 2014, Ohio EPA observed Respondent implement the sampling and analysis plan and conduct sampling of the area of the hazardous waste management unit where Respondent stored and crushed spent fluorescent lamps as referenced in Findings Nos. 4., 5.a. and 5.b of these Orders.
11. By electronic mail dated December 1, 2014, Respondent submitted analytical results of the samples collected as referenced in Finding No. 10. of these Orders showing no observable releases of mercury in the hazardous waste management unit.
12. Based upon the results of the concrete wipe sampling performed and the non-detect sample analysis results referenced in Findings Nos. 10. and 11. of these Orders, the Director has determined that Respondent has met the substantive requirements of the closure performance standard pursuant to OAC rules 3745-55-11(A) and (B) and 3745-55-78.
13. Due to Respondent's establishment and operation of hazardous waste storage facility as described in Findings Nos. 4. and 5.a. of these Orders, Respondent is required to have a hazardous waste facility installation and operation permit 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.
14. The submittal of a certification which documents/describes how the Respondent achieved the closure performance standard as set forth in OAC rule 3745-55-11 and 3745-55-78 with regard to the removal and sampling activities which took place on the concrete pad, as referenced in Findings Nos. 10., 11., and 12. of these Orders in lieu of the submittal of an application for a hazardous waste facility installation and operation permit 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 an application for a hazardous waste facility installation and operation permit for the Facility is unlikely to adversely affect the public health or safety or the environment within the meaning of ORC § 3734.02(G).

V. ORDERS

Respondent shall achieve compliance with Chapter 3734. of the ORC and the regulations promulgated thereunder according to the following compliance schedule:

1. Respondent is hereby exempted from the requirement to submit an application for a hazardous waste facility installation and operation permit for the Facility and a closure plan, provided that Respondent, within 30 days after the effective date of these Orders, submits to Ohio EPA for review and approval a certification for the hazardous waste management unit where the spent fluorescent lamp crushing activities took place as referenced in Findings Nos. 4. and 5.a. of these Orders. The certification shall attest that the information regarding the actions taken to address the hazardous waste management unit referenced in Findings Nos. 4. and 5.a. of these Orders met the requirements of OAC rules 3745-55-11(A) and (B) and 3745-55-78. This certification shall state:

"I certify under penalty of law that this attestation was prepared either by me, or under my direction, to assure that qualified personnel properly gathered, reviewed and evaluated the information with regard to the unit referenced in Findings Nos. 4 and 5.a. of the Orders dated (enter effective date). Based upon my knowledge or inquiry of the qualified person or persons who reviewed and evaluated the information gathered, the hazardous waste management unit referenced in Findings Nos. 4. and 5.a of the Orders dated (enter effective date of Orders) was closed in accordance with OAC rules 3745-55-11(A) and (B) and 3745-55-78. I believe this statement to the best of my knowledge to be true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations." The certification shall be submitted to Erik Hagen, Manager, Engineering Section, Division of Environmental Response and Revitalization at the Ohio EPA Central Office address specified in Section X. of these Orders.

Successful completion of this Order will correct the violation referenced in Finding No. 5.a. of these Orders.

2. Within 30 days after the effective date of these Orders, Respondent shall pay Ohio EPA the amount of \$2,000.00 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 \$2,000.00. The official check shall be submitted to Ohio EPA, Office of Fiscal Administration, Department L-2711, Columbus, Ohio 43260-2711, together with a letter identifying the Respondent. A copy of the check shall be sent to Supervisor, Administrative Processing Unit, Ohio EPA, Division of Materials and Waste Management, 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 Ohio EPA's Division of Materials and 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
Southwest District Office
Division of Materials and Waste Management
401 East 5th Street
Dayton, Ohio 45402
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 reserves its rights to exercise its lawful authority to require Respondent to perform 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 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 right to seek corrective action at the Facility by Respondent, which right 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

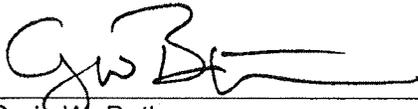
The effective date of these Orders is the date these Orders are entered into the Ohio EPA Director's journal.

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



Craig W. Butler
Director

IT IS SO AGREED:

TMI Electrical Contractors, Inc.


Signature

1/21/2015
Date

Timothy M. Cleary
Printed or Typed Name

His: Chief Operations Officer
Title



Elizabeth M. Retherford
ELIZABETH M RETHERFORD
Notary Public, State of Ohio
My Commission Expires
October 18, 2016

