



State of Ohio Environmental Protection Agency

STREET ADDRESS:

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P.O. Box 1049
Columbus, Ohio 43216-1049

CERTIFIED MAIL

May 10, 2006

**Re: Director's Final Findings & Orders
C.J. Mahan Construction Company
US EPA ID No.: OHD 987 016 292**

Mr. Charles C. Wooster
C.J. Mahan Construction Company
3400 Southwest Boulevard
Grove City, Ohio 43123

Dear Mr. Wooster:

Here are the Director's Final Findings and Orders (Orders) issued to C.J. Mahan Construction Company on May 10, 2006. These Orders are effective today.

I have also enclosed invoices for the penalty payments as required by Order Nos. 1.a. through 1.c. and Order Nos. 2.a. through 2.c. Please remember that your first payments are due no later than June 9, 2006.

If you have any questions concerning compliance with these Orders, do not hesitate to contact Steve Rath at (614) 728-3778.

Sincerely,

Pamela S. Allen, Manager
Regulatory and Information Services
Division of Hazardous Waste Management

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Attachments

cc: Michael A. Savage, Chief, DHWM
Harry Sarvis, Mgr., CAS, DHWM
Todd Anderson, Legal
Heidi Greismer, PIC
Steve Rath, Mgr., DHWM, CDO
Frank J. Reed, Jr., Esq., Benesch, Friedlander, Coplan & Aronoff LLP

Bob Taft, Governor
Bruce Johnson, Lieutenant Governor
Joseph P. Koncelik, Director



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OHIO E.P.A.
MAY 10 2006

INTERIM DIRECTOR'S JOURNAL

BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

C.J. Mahan Construction Company
3400 Southwest Blvd.
Grove City, Ohio 43123

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 C.J. Mahan Construction Company (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 thereunder.

I certify this to be a true and accurate copy of the
official document as filed in the records of the Ohio
Environmental Protection Agency

[Signature] Date 5-10-06

IV. FINDINGS

All of the findings necessary for the issuance of these Orders pursuant to ORC §§ 3734.13 and 3745.01 have been made and are outlined below. Nothing in the findings shall be considered to be an admission by Respondent of any matter of law or fact. The Director of Ohio EPA has determined the following findings:

1. Respondent builds and removes bridges. Respondent sandblasts bridge beams at its Facility located at 3400 Southwest Blvd., Grove City, Ohio (Facility). Respondent is the owner and operator of the Facility. Respondent was authorized to do business in Ohio on July 11, 1977.
2. Respondent is a "person" as defined in ORC § 3734.01(G) and Ohio Administrative Code (OAC) rule 3745-50-10(A).
3. Respondent notified Ohio EPA of its hazardous waste activities and was issued generator identification number OHD987016292.
4. At the Facility, Respondent 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 is identified as a large quantity generator of hazardous waste. The hazardous waste generated by Respondent at the Facility includes sandblasting waste (D008) and parts washer solvent (D001, D018, D038 and D040).
5. In April of 2004, Respondent began sandblasting bridge beams outside at the Facility. During sandblasting operations, sandblast waste was released to the ground at the Facility. On April 26, 2004, Respondent sampled the sandblasting waste to determine if it was a hazardous waste. The analytical results, which were received in May 2004, demonstrated that the sandblasting waste was hazardous for lead (D008). At this time, Respondent collected the hazardous sandblasting waste and some surrounding soils into 55-gallon drums.
6. In February 2005, Respondent emptied the 55-gallon drums of hazardous sandblasting waste out on tarpaulins and treated the hazardous waste with Ecobond, a metal binding agent. The treated sandblasting waste was then placed in roll-off boxes and on February 25, 2005, a composite sample was collected. The analytical results showed that the composite sample was non-hazardous.
7. On March 2, 2005 and March 4, 2005, Respondent shipped the treated sandblasting waste off-site to a non-hazardous waste facility.

8. On March 10, 2005, Ohio EPA conducted an inspection of the Facility. As a result of this inspection, Ohio EPA determined that Respondent had, *inter alia*:
 - a. Unlawfully treated and stored hazardous waste without a permit, in violation of ORC § 3734.02(E) and (F);
 - b. Failed to develop and follow a written Waste Analysis Plan (WAP) and meet Land Disposal Restriction (LDR) requirements, in violation of OAC rule 3745-270-07 and OAC rule 3745-270-09;
 - c. Failed to have a contingency plan, in violation of OAC rule 3745-65-52 and OAC rule 3745-65-53;
 - d. Failed to have a personnel training program, in violation of OAC rule 3745-65-16;
 - e. Failed to submit annual hazardous waste reports, in violation of OAC rule 3745-52-41;
 - f. Failed to conduct weekly inspections of the hazardous waste accumulation area, in violation of OAC rule 3745-66-74;
 - g. Failed to label universal waste lamps and failed to maintain a system that demonstrates the length of time that the universal waste lamps were being accumulated, in violation of OAC rule 3745-273-14(E) and OAC rule 3745-273-15(C); and
 - h. Failed to label two tanks of used oil, in violation of OAC rule 3745-279-22(C). This violation was abated at the time of the inspection.
9. The Director has also determined that Respondent unlawfully disposed of hazardous sandblasting wastes onto the ground in April of 2004, in violation of ORC § 3734.02(E) and (F). Additionally, because Respondent treated, stored and disposed of hazardous waste at the Facility without a permit, the Director has determined that Respondent violated numerous requirements found in OAC Chapters 3745-54 and 55.
10. By letter dated April 7, 2005, Ohio EPA notified Respondent of the violations referenced in Finding No. 8. of these Orders.
11. On April 25, 2005, and May 4, 2005, Respondent submitted responses to Ohio EPA's letter referenced in Finding No. 10. of these Orders.

12. By letter dated May 5, 2005, Ohio EPA notified Respondent that it had abated the violation referenced in Finding No. 8.g. of these Orders.
13. On May 5, 2005, Respondent submitted a response to Ohio EPA's letter referenced in Finding No. 12. of these Orders.
14. By letter dated May 11, 2005, Ohio EPA notified Respondent of the outstanding violations referenced in Finding No. 8. of these Orders.
15. On May 18, 2005, Respondent submitted a response to Ohio EPA's letter referenced in Finding No. 14. of these Orders
16. On May 19, 2005, Ohio EPA conducted a follow up inspection at the Facility. As a result of this inspection, Ohio EPA determined that Respondent had, *inter alia*:
 - a. Failed to develop and follow a written WAP and meet LDR requirements, in violation of OAC rule 3745-270-07 and OAC rule 3745-270-09; and
 - b. Failed to conduct weekly inspections of the hazardous waste accumulation area and failed to inspect emergency equipment, in violation of OAC rule 3745-66-74 and OAC rule 3745-65-33.
17. By letter dated June 3, 2005, Ohio EPA notified Respondent of the violations referenced in Finding No. 16. of these Orders. In this same letter, Ohio EPA notified Respondent that it had abated the violations referenced in Finding Nos. 8.c. 8.d. and 8.e. of these Orders.
18. On June 22, 2005, Respondent submitted a response to Ohio EPA's letter referenced in Finding No. 17. of these Orders.
19. By letter dated June 29, 2005, Ohio EPA notified Respondent that it had abated the violations referenced in Finding Nos. 8.f. and 16.b. of these Orders.
20. Because some soil has been removed from the area where the hazardous sandblasting waste was unlawfully treated and disposed and Respondent is now sandblasting the bridge beams in an enclosed area, the Director has determined that no further action is necessary at this time to abate the violations referenced in Finding Nos. 8.a. and 9. of these Orders.
21. Respondent informed Ohio EPA that Respondent is not now and will not in

the future treat hazardous wastes at the Facility. Therefore, the Director has determined that no further action is necessary to abate the violations referenced in Finding Nos. 8.b. and 16.a. of these Orders.

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 shall pay Ohio EPA the amount of \$30,000.00 in settlement of Ohio EPA's claims for civil penalties, which may be assessed pursuant to ORC Chapter 3734. \$24,000.00 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 30 days after the effective date of these Orders, Respondent shall pay to Ohio EPA the amount of \$8,000.00;
 - b. Within 60 days after the effective date of these Orders, Respondent shall pay to Ohio EPA the amount of \$8,000.00; and
 - c. Within 90 days after the effective date of these Orders, Respondent shall pay to Ohio EPA the amount of \$8,000.00.

Payments shall be made by official checks made payable to "Treasurer, State of Ohio." The official checks shall be submitted to Ohio EPA, Office of Fiscal Administration, Department L-2711, Columbus, Ohio 43260-2711, together with a letter identifying Respondent. A copy of each check shall be submitted in accordance with Section X. of these Orders.

2. In lieu of paying the remaining \$6,000.00 of civil penalty to Ohio EPA, Respondent shall fund a supplemental environmental project (SEP) by making a contribution in the amount of \$6,000.00 to the Ohio EPA Clean Diesel School Bus Program (Fund 5CD) in accordance with the following schedule:
 - a. Within 30 days after the effective date of these Orders, Respondent shall pay to the Ohio EPA Clean Diesel School Bus Program the amount of \$2,000.00;
 - b. Within 60 days after the effective date of these Orders, Respondent shall pay to the Ohio EPA Clean Diesel School Bus Program the amount of \$2,000.00; and

- c. Within 90 days after the effective date of these Orders, Respondent shall pay to the Ohio EPA Clean Diesel School Bus Program the amount of \$2,000.00.

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 each check 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.

3. Should Respondent miss a scheduled payment as described in Order Nos. 2.a., 2.b., and 2.c. of these Orders, Respondent shall pay to Ohio EPA the missed payment amount no later than 7 days after the payment was due. Payment shall be made in accordance with the procedures established in Order No. 1. 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 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
Central District Office
Division of Hazardous Waste Management
Attn: DHWM Manager
3232 Alum Creek Drive
Columbus, Ohio 43207

and Ohio EPA Central Office at the following address:

For mailings, use the post office box number:

Joseph P. Koncelik, 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:

Joseph P. Koncelik, Director
Ohio Environmental Protection Agency
Lazarus Government Center
Division of Hazardous Waste Management
122 South Front 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 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 hazardous waste units 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

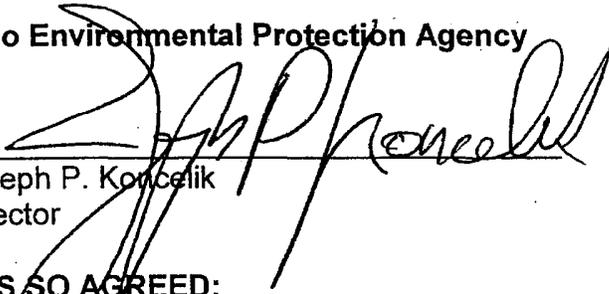
The effective date of these Orders is the date these Orders are entered into the Ohio EPA Director's journal.

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



Joseph P. Koncelik
Director

5/19/06
Date

IT IS SO AGREED:

C.J. Mahan Construction Company



Signature

4/27/06
Date

CHARLES C. WOOSTER
Printed or Typed Name

VICE PRESIDENT
Title