OhioEPA

State of Ohio Environmental Protection Agency

STREET ADDRESS:

Lazarus Government Center
122 S. Front Street
Columbus, Ohio 43215

TELE: (614) 644-3020 FAX: (614) 644-3184
www.epa.state.oh.us

MAILING ADDRESS:

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

CERTIFIED MAIL

August 31, 2006

Re: Director's Final Findings & Orders
Heartland Petroleum, LLC
OHD 986984383

Mr. Michael D. Kopf
Compliance Officer
Heartland Petroleum, LLC
4376 State Route 601
Norwalk, Ohio 44857

Dear Mr. Kopf:

Here are the Director's Final Findings and Orders (Orders) issued to Heartland Petroleum, LLC on August 31, 2006. These Orders are effective today.

I have also enclosed invoices for the penalty payments as required by Order Nos. 3.a through d and 4.a through d. Please remember that your first payment is due no later than September 30, 2006.

If you have any questions concerning compliance with these Orders, do not hesitate to contact John Pasquarette at (419) 352-8461.

Sincerely,

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

Attachments

cc: Michael A. Savage, Chief, DHWM
Harry Sarvis, Mgr., CAS, DHWM
Todd Anderson, Legal
Heidi Greismer, PIC
John Pasquarette, Mgr., DHWM, NWDO
Robert J. Schmidt, Jr., Porter, Wright, Morris and Arthur, LLP

enf.heartland.petroleum.06.wpd

OHIO E.P.A.

AUG 31 2006

ENTERED DIRECTOR'S JOURNAL

BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY

In the Matter of: **Heartland Petroleum, LLC** 4376 State Route 601 Norwalk, Ohio 44857 **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 Heartland Petroleum, 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 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

8/31/06

IV. FINDINGS

The Director of Ohio EPA has determined the following findings:

1. Respondent owns and operates a used oil transfer facility located at 4376 State Route 601, Norwalk, Huron County, Ohio (Facility). Respondent was authorized to do business in Ohio on February 10, 2003.

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 at the Facility and was issued generator identification number OHD 986 984 383. Respondent has generated hazardous waste at the Facility, including halogenated hazardous waste (F001). At the Facility, Respondent does not hold a hazardous waste facility installation and operation permit.

4. On August 26, 2004, Ohio EPA inspected the Elbert Building Company's facility in Lorain County, Ohio (Elbert Facility) and discovered 82 containers of unevaluated waste. On November 23, 2004, Ohio EPA sampled numerous containers at the Elbert Facility. Of the samples collected and analyzed by Ohio EPA at the Elbert Facility, nine were determined to be hazardous waste. Of the hazardous waste containers, five contained greater than 1,000 parts per million total halogens. Pursuant to OAC rule 3745-279-44, this waste is presumed to be a hazardous waste because it has been mixed with halogenated hazardous waste listed in OAC rules 3745-51-30 through 3745-51-35.

5. By letter dated September 6, 2005, Ohio EPA notified the Elbert Building Company that it had violated the state's hazardous waste and used oil laws by, inter alia, storing hazardous waste without a permit at the Elbert Facility, in violation of ORC § 3734.02(E) and (F).

6. On March 29, 2005 and April 1, 2005, Respondent transported to and received at the Facility what was described in shipping papers accompanying the loads as approximately 3,500 gallons of used oil. These shipments contained the contents of the 82 containers from the Elbert Facility referenced in Finding No. 4. At the Facility, Respondent sampled each load as it was received, then unloaded and co-mingled the waste with used oil in Tank No. 101. The samples taken by Respondent are known as "Retain Samples." Respondent did not analyze the Retain Samples taken of the shipments from the Elbert Facility.

7. On or about August 10, 2005, after discussions with Ohio EPA, Respondent had the Retain Samples analyzed. On August 25, 2005, Respondent submitted the Retain

Sample analytical results to Ohio EPA. Respondent's analytical results indicated each load contained greater than 1,000 parts per million total halogens. Pursuant to OAC rule 3745-279-44, this waste is presumed to be a hazardous waste because it has been mixed with halogenated hazardous waste listed in OAC rules 3745-51-30 through 3745-51-35. Respondent did not attempt to rebut the presumption prior to mixing the waste shipments in question with used oil in Tank No. 101.

8. On September 1, 2005, Ohio EPA conducted a compliance evaluation inspection at the Facility. During the inspection and after receiving the Retain Sample analytical results referenced in Finding No. 7, Ohio EPA determined that Respondent had:

   a. Unlawfully established a hazardous waste storage facility without a permit, in violation of ORC §3734.02(E) and (F); and

   b. Failed to comply with the applicable hazardous waste tank system requirements, in violation of OAC rules 3745-55-91 through 3745-55-99.

   By letter dated February 8, 2006, Ohio EPA notified Respondent of the results if the inspection.

9. On September 8, 2005, Respondent had the waste referenced in Finding Nos. 4 , 6. and 7. and the tank rinseate transported to a permitted hazardous waste treatment, storage and disposal facility.

10. By letter dated March 7, 2006, Respondent replied to Ohio EPA regarding the Agency's February 8, 2006 letter.

11. By letter dated May 31, 2006, Ohio EPA notified Respondent that Respondent had violated OAC rule 3745-52-41 by failing to submit an Annual Hazardous Waste Report for 2005. Ohio EPA has not received a response to this letter from Respondent.

12. The Director has determined that on March 29, 2005 and April 1, 2005, Respondent transported hazardous waste to the Facility, in violation of ORC §3734.02(F) and OAC Chapter 3745-53. The Director has also determined closure is not required by Respondent at this time to address the violations listed in Find No. 8. since the waste was removed from Tank 101 and transported offsite to a permitted hazardous waste facility and Tank 101 is still used to accumulate used oil.

V. ORDERS

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

1. Within 60 days after the effective date of these Orders, Respondent shall submit to Ohio EPA for review and approval a plan demonstrating how Respondent will prevent recurrence of the hazardous waste transport and storage violations referenced in Finding Nos. 8. and 12. Ohio EPA's written approval of Respondent's submittal will abate violations referenced in Finding Nos. 8. and 12.

2. Within 30 days after the effective date of these Orders, Respondent shall submit to Ohio EPA, pursuant to OAC rule 3745-52-41, a 2005 Annual Hazardous Waste Report.

3. Respondent shall pay to Ohio EPA the amount of $16,500.00 in settlement of Ohio EPA's claims for civil penalties, which may be assessed pursuant to ORC Chapter 3734. $13,200.00 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 $3,300.00;

    b. Within 180 days after the effective date of these Orders, Respondent shall pay to Ohio EPA the amount of $3,300.00;

    c. Within 270 days after the effective date of these Orders, Respondent shall pay to Ohio EPA the amount of $3,300.00; and

    d. Within 360 days after the effective date of these Orders, Respondent shall pay to Ohio EPA the amount of $3,300.00.

    Each of the payments above shall be made by an official check 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 the Respondent. A copy of each check shall be submitted in accordance with Section X. of these Orders.

4. In lieu of paying the remaining $3,300.00 of the civil penalty, Respondent shall fund a supplemental environmental project (SEP) by making a contribution in the amount of $3,300.00 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 $825.00;

b. Within 180 days after the effective date of these Orders, Respondent shall pay to the Ohio EPA Clean Diesel School Bus Program the amount of $825.00;

c. Within 270 days after the effective date of these Orders, Respondent shall pay to the Ohio EPA Clean Diesel School Bus Program the amount of $825.00; and

d. Within 360 days after the effective date of these Orders, Respondent shall pay to the Ohio EPA Clean Diesel School Bus Program the amount of $825.00.

Each of the payments above 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 each 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.

5. Should Respondent miss a scheduled payment as described in Order Nos. 4.a. through 4.d. of these Orders, Respondent shall pay to Ohio EPA the missed payment amount no later than 7 days after the missed payment due date. Payment shall be made in accordance with the procedures established in Order No.3. of these Orders. 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
Northwest District Office
Division of Hazardous Waste Management
347 North Dunbridge Road
Bowling Green, Ohio 43402-9398
Attn: DHWM Manager

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 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

AUG 31 2006
Date

IT IS SO AGREED:

Heartland Petroleum, LLC

Signature

8-10-06
Date

MICHAEL KOPF
Printed or Typed Name

COMPLIANCE Officer
Title