



State of Ohio Environmental Protection Agency

STREET ADDRESS:

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

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MAILING ADDRESS:

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

CERTIFIED MAIL

September 25, 2006

Re: Director's Final Findings & Orders
Ohio Surface Technologies, Corp.
US EPA ID No.: OHR 000 028 324

Mr. Michael J. Burtscher
5239 Temperance Road
Ottawa Lake, Michigan 49267

Dear Mr. Burtscher:

Here are the Director's Final Findings and Orders (Orders) issued to Michael J. Burtscher on September 25, 2006. These Orders are effective today.

If you have any questions concerning compliance with these Orders, do not hesitate to contact John Pasquarette at (419) 352-3057.

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
Elissa Miller, Legal
Heidi Greismer, PIC
John Pasquarette, Mgr., DHWM, Northwest District Office

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

OHIO E.P.A.

SEP 25 2006

ENTERED DIRECTOR'S JOURNAL

**BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY**

In the Matter of:

**Michael J. Burtscher
5239 Temperance Road
Ottawa Lake, MI 49267**

**Director's Final
Findings and Orders**

Respondent

PREAMBLE

It is agreed by the parties hereto as follows:

I. JURISDICTION

These Director's Final Findings and Orders (Orders) are issued to Michael J. Burtscher (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.

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

Donna J. Jacobs 9-25-06

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).
2. Respondent formerly owned the property located at 3618 King Road, Toledo, Lucas County, Ohio (Facility).
3. Respondent leased the Facility to Ohio Surface Technologies, Corp. (Surface Technologies), an Ohio corporation that formerly conducted wastewater treatment operations. Surface Technologies notified Ohio EPA of its hazardous waste activities and was issued generator identification number OHR000028324.
4. At the Facility, Surface Technologies generated "hazardous waste" as that term is defined by ORC § 3734.01(J) and OAC rules 3745-50-10(A) and 3745-51-03. Surface Technologies was a large quantity generator of hazardous waste. The hazardous waste generated by Surface Technologies at the Facility included wastewater treatment sludge (F006).
5. On October 28, 2003, Ohio EPA was contacted by the Sylvania Township Fire Department regarding containers discovered during an inspection of the Facility. Specifically, Ohio EPA was informed that over one hundred containers were observed inside the Facility, and that odors were detected immediately outside an entrance to the Facility.
6. On October 28, 2003, Ohio EPA's Divisions of Emergency and Remedial Response and Hazardous Waste Management conducted a complaint investigation at the Facility to determine the validity of the allegations and observed over two hundred containers of waste stored at the Facility. During the investigation, Ohio EPA was informed that Surface Technologies generated the waste, but no longer conducted wastewater treatment operations at the Facility.
7. On November 4, 2003, Ohio EPA orchestrated an initial waste identification, segregation and sampling event at the Facility to determine the contents of the containers at the Facility, including determining the number of containers storing hazardous waste. These activities were conducted in coordination with Surface Technologies and Respondent.

8. Based upon the analytical results of the samples collected during the November 4, 2003 sampling event, Ohio EPA determined that at least twenty-one containers of waste were hazardous waste. Consequently, and by letters dated January 27, 2004 and February 10, 2004, Ohio EPA notified Surface Technologies and Respondent that Surface Technologies and Respondent had, *inter alia*, established and operated a hazardous waste storage facility without a permit, in violation of ORC § 3734.02(E) & (F).
9. In correspondence dated March 3, 2004, Respondent submitted responses to Ohio EPA's January 27 and February 10, 2004 letters. In addition, and during a telephone call on April 19, 2004, Respondent notified Ohio EPA that the twenty-one containers of hazardous waste, referenced in Finding No. 8 of these Orders, were transported to a facility operating under a hazardous waste facility installation and operation permit.
10. On August 16 and 23, 2004, Ohio EPA met with Respondent and Surface Technologies for the purpose of finalizing the number of containers of waste remaining at the Facility that were hazardous waste.
11. On June 27 and 28, 2005, Ohio EPA observed the removal of all remaining hazardous waste to a facility operating under a hazardous waste facility installation and operation permit.
12. On October 13, 2005, Glenn Metz, former owner and operator of Surface Technologies, was convicted of criminal charges stemming from his involvement in the establishment and operation of the unpermitted hazardous waste storage unit, referenced in Finding No. 8 of these Orders. Specifically, Mr. Metz was found guilty of criminal endangerment, sentenced to one year probation, and required to pay restitution.
13. On December 28, 2005, Respondent sold the Facility to Lankford-Ashby, LLC. The Facility is currently operated by Decoline, Ltd., an Ohio corporation, that does not generate hazardous waste.

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 sampling and analysis plan (SAP) for sampling activities to determine the rate and extent of

contamination, if any, for the hazardous waste storage unit referenced in Finding No. 8 of these Orders.

2. The SAP is subject to Ohio EPA review and approval. If Ohio EPA does not approve the SAP and provides Respondent with a written statement of deficiencies, Respondent shall revise the SAP or submit a new SAP for approval that corrects the stated deficiencies within 30 days after receipt of such written statement. Ohio EPA may approve the SAP with modifications. If Ohio EPA modifies the SAP, the modified SAP becomes the approved SAP. Upon Respondent's receipt of approval from Ohio EPA of the SAP, Respondent shall implement the approved SAP in accordance with the terms, conditions and schedules contained therein.
3. Following receipt of the analytical results generated by the implementation of the approved SAP, Respondent shall, pursuant to the schedule in the approved SAP, submit to Ohio EPA a report (SAP Report) that includes the laboratory analysis and evaluation of data generated from implementing the approved SAP. Using the format found in OAC rule 3745-50-42(D), Respondent shall certify that the sampling and analysis was conducted in accordance with the approved SAP. The certification shall be signed by Respondent and shall be included in the SAP Report.
4. The SAP Report is subject to Ohio EPA review and approval. If Ohio EPA approves the SAP Report and it indicates that soil, but not ground water, has been contaminated by hazardous waste or hazardous waste constituents above the remediation levels identified in Ohio EPA's "Closure Plan Review Guidance" dated June 2005, as supplemented, as a result of hazardous waste stored at the Facility without a permit, in violation of ORC § 3734.02(E) and (F) and the rules promulgated thereunder, Respondent shall prepare a Remediation Plan and comply with Order Nos. 5 through 8.
5. The Remediation Plan shall be submitted to Ohio EPA within 30 days after Ohio EPA's approval of the SAP Report. The Remediation Plan shall propose methods of and a schedule for remediation of the area at the Facility where hazardous waste was stored without a permit, in violation of ORC § 3734.02(E) and (F) and the rules promulgated thereunder.
6. The Remediation Plan is subject to Ohio EPA review and approval. If Ohio EPA does not approve the Remediation Plan and provides Respondent with a written statement of deficiencies, Respondent shall revise the Remediation Plan or submit a new Remediation Plan for approval that corrects the stated deficiencies within 30 days after receipt of such written statement.

7. Upon receipt of Ohio EPA's approval of the Remediation Plan, Respondent shall implement the Remediation Plan in accordance with the requirements of OAC rules 3745-55-11/3745-66-11 and OAC rules 3745-55-14/3745-66-14 and the specifications and schedules contained in the approved Remediation Plan and any conditions attached thereto.
8. Within 60 days after the completion of work required by the approved Remediation Plan, Respondent shall submit to Ohio EPA, for review and approval, a certification that the remediation work was conducted in accordance with the approved Remediation Plan. The certification shall be signed by Respondent using the format found in OAC rule 3745-50-42(D).
9. If Ohio EPA accepts the SAP Report and it indicates that both soil and ground water have been contaminated by hazardous waste, hazardous waste constituents or hazardous waste decomposition products above the remediation levels identified in Ohio EPA's "Closure Plan Review Guidance" dated June 2005, as supplemented, as a result of hazardous waste stored at the Facility without a permit, in violation of ORC § 3734.02(E) and (F) and the rules promulgated thereunder, Respondent shall submit to Ohio EPA a closure plan prepared in accordance with OAC rules 3745-55-11/3745-66-11 through 3745-55-20/3745-66-20, and comply with Order Nos. 10 through 13.
10. The closure plan shall be submitted to Ohio EPA within 30 days after Respondent's receipt of Ohio EPA's approval of the SAP Report. The closure plan is subject to Ohio EPA approval. If Ohio EPA does not approve the closure plan and provides Respondent with a written statement of deficiencies, Respondent shall, within 30 days after receipt of such written statement, revise the closure plan or submit a new closure plan to Ohio EPA addressing the deficiencies. Upon receipt of Respondent's new or revised closure plan, Ohio EPA will notify Respondent in writing that Ohio EPA either approves the closure plan or approves the closure plan with modifications. If Ohio EPA modifies the closure plan, the modified closure plan shall become the approved closure plan.
11. Upon receiving Ohio EPA's written approval of the closure plan, Respondent shall implement the approved closure plan pursuant to OAC rules 3745-55-11/3745-66-11 through 3745-55-20/3745-66-20, the specifications and schedules contained in the approved closure plan, and any modifications attached to the approved closure plan.

12. Within 60 days after completion of closure, Respondent shall submit to Ohio EPA a closure certification in accordance with OAC rules 3745-55-15/3745-66-15.
13. Within 30 days after submitting the closure plan referenced in Order No. 9, Respondent shall submit to Ohio EPA a closure cost estimate and documentation demonstrating that Respondent has established financial assurance and liability coverage for the area of the Facility subject to closure in accordance with OAC rules 3745-55-42/3745-66-42 through 3745-55-47/3745-66-47. Completion of Order Nos. 1 through 13 will abate the ORC § 3734.02(E) and (F) violation referenced in Finding No. 8 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 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 the 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 N. Dunbridge Road
Bowling Green, Ohio 43402
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 right 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

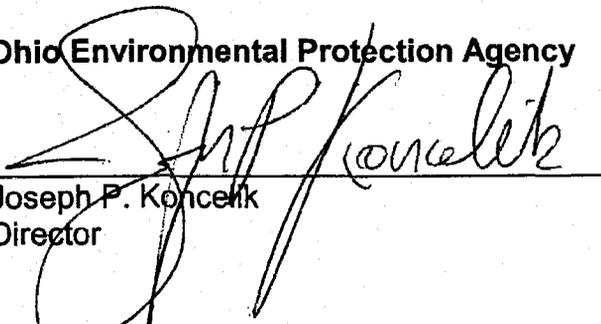
The effective date of these Orders is the date these Orders are entered into the Ohio EPA Director's journal.

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



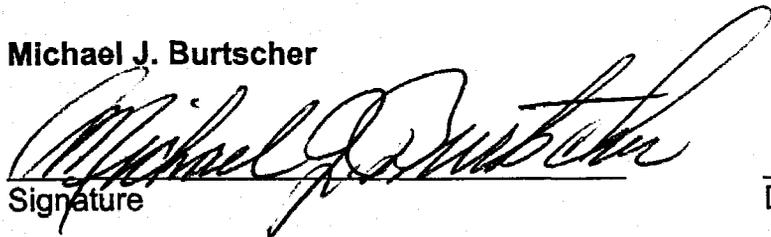
Joseph P. Koncerk
Director

SEP 25 2006

Date

IT IS SO AGREED:

Michael J. Burtcher



Signature

9/17/06

Date

Michael J. Burtcher

Printed or Typed Name

Title