OHIO E.P.A.

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ENTERED DIRECTOR'S JOURNAL

BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY

In the Matter of: **The D.S. Brown Company** 300 E. Cherry Street North Baltimore, Ohio 45872 **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 The D.S. Brown Company (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 there under.

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:** 10-3-13

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. 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, are unlikely to adversely affect the public health or safety or the environment, 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 manufactures and supplies engineered products such as bearings and expansion joints for the bridge and highway industry at its facility located at 300 E. Cherry Street, North Baltimore, Wood County, Ohio 45872 (Facility).

4. Respondent notified Ohio EPA of its hazardous waste activities at the Facility and was issued U.S. EPA identification number OHD987000734.

5. At the Facility, Respondent generates hazardous waste as that term is defined by ORC §3734.01 and OAC rules 3745-50-10(A) and 3745-51-03. Respondent generates non-acute hazardous waste in amounts greater than 100 kilograms per month, but less than 1,000 kilograms per month, and is therefore considered a small quantity generator (SQG) of hazardous waste. Respondent generates hazardous waste solvent distillation bottoms (D001, D035) and hazardous waste spent solvent (D001, D018, D035, F003, F005) from two paint gun washers at the Facility. Respondent also generates used oil and universal waste spent fluorescent lamps.

6. On November 4, 2011, Ohio EPA conducted a compliance evaluation inspection at the Facility. During the course of the inspection, Ohio EPA observed a drum crushing unit. Respondent indicated the unit was used to crush the metal drums for purposes of recycling the scrap metal. During the crushing process any remaining product in the drums would discharge into a containment area where it

was then stored as a waste. At the time of the inspection there was approximately one half inch of waste in the containment area and Respondent informed Ohio EPA that the last time the containment area was emptied was September 14, 2011. Approximately two-hundred seventy-five (275) gallons of characteristically hazardous waste (characteristically hazardous for Mercury (D009), Benzene (D018), Carbon Tetrachloride (D019), 1,4-Dichloro-benzene (D027), 1,2-Dichloro-ethane (D028), and 1,1-Dichloro-ethylene (D029), as described in OAC rule 3745-51-24) had been removed from the containment area at that time. As a result of this inspection, Ohio EPA determined Respondent had, *inter alia*:

a. Failed to post the required preparedness and prevention information next to the telephone, in violation of OAC rule 3745-52-34(D)(5)(b);

b. Failed to test and maintain emergency equipment as necessary and record inspections of the equipment in a log or summary, in violation of OAC rule 3745-65-33;

c. Failed to label a satellite accumulation container containing hazardous waste paint solvent, in violation of OAC rule 3745-52-34(C)(1)(b);

d. Failed to label totes and a tank of used oil with the words "used oil," in violation of OAC rule 3745-279-22(C)(1);

e. Failed to store spent fluorescent lamps in containers that were closed, in violation of OAC rule 3745-273-13(D)(1);

f. Failed to properly label containers of spent fluorescent lamps in violation of OAC rule 3745-273-14(E);

g. Failed to demonstrate the length of time spent fluorescent lamps had been stored at the Facility, in violation of OAC rule 3745-273-15(C); and

h. Failed to ensure all employees are thoroughly familiar with proper universal waste handling and emergency procedures, in violation of OAC rule 3745-273-16.

7. By letter dated December 1, 2011, Ohio EPA notified Respondent of the violations referenced in Finding No. 6. of these Orders. Additionally, Ohio EPA informed Respondent the violations referenced in Findings Nos. 6.a., 6.c., 6.d., 6.e., 6.f., and 6.h. of these Orders were abated. In the letter, Ohio EPA identified the containment area at the Facility as an area of concern, and requested additional information regarding the unit.

8. By letter dated December 27, 2011, Respondent provided documentation in response to Ohio EPA's December 1, 2011, letter referenced in Finding No.7. of these Orders. The containment area is eighteen feet long by twelve feet wide. It is constructed of eight-inch concrete block and has a concrete floor. The wall joints and floor joints are sealed with rubber seal compound. The containment area is lined with quarter inch steel plate with twenty-four-inch curbing on all four sides. The documentation consisted of hazardous waste manifests documenting shipments of hazardous waste liquids removed from the containment area. These shipments occurred on June 24, 2010, September 15, 2010, and September 14, 2011.

9. By letter dated February 24, 2012, Ohio EPA acknowledged receipt of Respondent's December 27, 2011, letter and based on the information provided in Respondent's letter, Ohio EPA notified Respondent it had, *inter alia*: unlawfully stored hazardous waste liquid in the containment area for greater than 180 days from September 15, 2010, to September 14, 2011, without a hazardous waste installation and operation permit, in violation of ORC §3734.02(E) and (F). Additionally, Ohio EPA asked Respondent to identify the type of unit (i.e. tank, surface impoundment, etc.) that best represented the containment area at the Facility. Finally, Ohio EPA informed Respondent it had abated the violations referenced in Findings Nos. 6.b. and 6.g. of these Orders.

10. By letters and electronic mail dated March 12, and March 27, 2012, Respondent provided additional information, including clarification of the management of the hazardous waste in the containment area. Specifically, Respondent informed Ohio EPA that hazardous waste was stored in the containment area from September 15, 2010, through June 22, 2011. On June 22, 2011, the hazardous waste was pumped out of the containment area and into five (5) fifty-five (55) gallon drums, which were then stored from June 22, 2011, until September 14, 2011.

11. Based upon information provided by Respondent in the March 12, 2012, correspondence and described in Finding No. 10. of these Orders, the Director has further determined Respondent unlawfully stored, in a separate drum storage area, the hazardous waste removed from the containment area on June 22, 2011, without a hazardous waste installation and operation permit, in violation of ORC §3734.02(E) and (F).

12. In a letter dated August 10, 2012, Respondent provided a status update for the containment area. On March 1, 2012, the containment area was pumped out,

generating three 55-gallon drums of liquid that were shipped offsite as hazardous waste on March 15, 2012. In June, 2012, a final cleanout of the containment area was performed, generating four 55-gallon drums of liquid that was shipped offsite as hazardous waste on June 27, 2012.

13. In a letter dated September 26, 2012, Ohio EPA notified Respondent that based on the information regarding the construction of the containment area described in Respondent's March 12, 2012, correspondence and Findings Nos. 8. and 10. of these Orders, for regulatory purposes, the unit would be considered a tank, which would be subject to the applicable standards set forth in OAC rules 3745-55-90 through 3745-55-99. Based on this information, the Director has determined Respondent failed to comply with the applicable hazardous waste tank requirements, in violation of OAC rules 3745-55-90 through 3745-55-99.

14. Due to Respondent's establishment and operation of a hazardous waste storage facility as described in Finding Nos. 9., 10., and 11. 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, 3745-55-98, 3745-55-78 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 permit, Respondent is required to submit "Parts A and B" of the application in accordance with OAC Chapter 3745-50.

15. The submittal of a Closure Plan which complies with the administrative requirements of OAC Chapters 3745-65 and 66 and the substantive requirements of OAC Chapters 3745-54 and 55 including but not limited to the groundwater protection program in accordance with OAC rules 3745-54-90 through 3745-54-100 in lieu of the submittal of an application for a hazardous waste facility installation and operation permit to store hazardous waste in the containment area tank and the separate container storage area at the Facility, 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 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 there under 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, *provided that* Respondent complies with the following;

    a. Within 60 days after the effective date of these Orders, Respondent shall submit to Ohio EPA for review and approval a Closure Plan for all areas at the Facility where hazardous waste was managed, including but not limited to, the containment area described in Findings Nos. 6. and 8. where hazardous waste liquids were stored, and the location where the five, 55-gallon drums referenced in Finding No. 10., were stored. A copy of the closure plan shall be submitted in accordance with Section X. of these Orders and an additional copy submitted to Ohio EPA, Division of Environmental Response and Revitalization, Ed Lim, Manager, Engineering Section, P.O. Box 1049, Columbus, Ohio 43216-1049;

    b. This Closure Plan shall comply with the administrative requirements of OAC Chapters 3745-65 and 3745-66 and the substantive requirements of OAC Chapters 3745-54 and 3745-55, including but not limited to, the groundwater protection program in accordance with OAC rules 3745-54-90 through 54-100 and the closure and post-closure requirements for tanks in OAC rule 3745-55-97. The Closure Plan is subject to approval by Ohio EPA. If Ohio EPA does not approve the Closure Plan and provides Respondent with a written statement of deficiencies, Respondent shall submit a revised Closure Plan for approval addressing the deficiencies within 30 days of receiving such written statement. If Ohio EPA modifies the Closure Plan, the modified Closure Plan becomes the approved plan. Upon Ohio EPA's written approval of the Closure Plan, Respondent shall implement the approved Closure Plan in the manner and pursuant to the time frames set forth in the approved Closure Plan and OAC rules 3745-55-13/3745-66-13;

    c. Within 30 days after approval of the Closure Plan pursuant to Order No. 1.a., Respondent shall submit a closure cost estimate and documentation demonstrating that Respondent has established financial assurance and liability coverage for the areas of the Facility subject to closure, in accordance with OAC rules 3745-55-42 through 3745-55-47; and

d. Within 60 days after completion of closure, Respondent shall submit certification of closure to Ohio EPA in accordance with OAC rules 3745-55-15. Closure certification of the areas described in Order No. 1.a. will abate the violations referenced in Finding No. 9. 11., and 13. of these Orders.

2. Respondent shall pay to Ohio EPA the amount of $14,000.00 in settlement of Ohio EPA's claims for civil penalties, which may be assessed pursuant to ORC Chapter 3734. in accordance with the following provisions:

   a. Within 30 days after the effective date of these Orders, Respondent shall pay the amount of $10,500.00 of the total amount 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 $10,500.00. 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 Respondent and the Facility. A copy of this check shall be sent to Ohio EPA Division of Materials and Waste Management, Supervisor, Processing Records Management Unit, P.O. Box 1049, Columbus, Ohio 43216-1049.

   b. Within 30 days after the effective date of these Orders, and in lieu of payment of the remaining $3,500.00 of the civil penalty settlement, Respondent shall implement a Supplemental Environmental Project (SEP) consisting of a one-time contribution in the amount of $3,500.00 to the North Baltimore Fire Department for the purchase of a super vac fan, LED lights, fire gloves, Nomex® hoods and helmet lights as specified in the letter from the North Baltimore Fire Department, attached to these Orders and incorporated herein as Attachment A to these Orders. Respondent shall submit to Ohio EPA documentation (e.g., cancelled check) demonstrating that the $3,500.00 payment has been made in accordance with this Order. The documentation shall be sent to Ohio EPA Division of Materials and Waste Management, Supervisor, Compliance Assurance Section, P.O. Box 1049, Columbus, Ohio 43216-1049.

   c. Should Respondent fail to fund the SEP within the required time frames established in Order No. 2.b., Respondent shall pay to Ohio EPA, within 7 days after failing to comply with Order No. 2.b., the amount of $3,500.00 in accordance with the procedures in Order No. 2.a.

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 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
Northwest District Office
Division of Materials and Waste Management
347 N. Dunbridge Road
Bowling Green, Ohio 43402
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

Scott J. Nally
Director

October 3, 2013
Date

IT IS SO AGREED:

The D.S. Brown Company

Signature

9/16/13
Date

PHIL RENDA - PRESIDENT
Printed or Typed Name

Title

Attachment A

North Baltimore Fire Department

201 N Main St. North Baltimore, Ohio 45872

Ted E Francisco II Fire Chief

Dear Mr. Scherer,

In follow up to our phone conversation, let this correspondence confirm that the donation to purchase the following equipment:

Super vac fan.	$2359.30
Led lights.	
Fire gloves.	$95.00 each
Nomex hoods.	$40.00 each
Helmet lights.	$44.00 each

Sincerely,

Ted E Francisco II, Fire Chief