OHIO E.P.A.

OCT 29 2013

ENTERED DIRECTOR'S JOURNAL

BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

James Dupre Hill dba JD Services and JR's Trucks and Parts
16100 South Waterloo Road
Cleveland, OH 44110

16606 South Waterloo Road
Cleveland, OH 44110

Respondent

Director's Final Findings and Orders

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: 10-29-13

PREAMBLE

It is agreed by the parties hereto as follows:

I. JURISDICTION

These Director's Final Findings and Orders (Orders) are issued to James Dupre Hill, dba JD Services and JR's Trucks and Parts (Respondent) pursuant to the authority vested in the Director of the Ohio Environmental Protection Agency (Ohio EPA) under Ohio Revised Code (ORC) §§ 3734.13, 3734.20, 3745.01, and 6111.03(H).

II. PARTIES BOUND

These Orders shall apply to and be binding upon Respondent and heirs and successors in interest liable under Ohio law. No change in ownership of Respondent or of the Facilities 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.

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 operated a vehicle salvage facility located at 16100 South Waterloo Road, Cleveland, Cuyahoga County, Ohio 44114 (Facility A) and operates a vehicle salvage facility located at 16606 South Waterloo Road, Cleveland, Cuyahoga County, Ohio 44114 (Facility B).

3. At Facility A and B, Respondent generates "used oil" as that term is defined by ORC § 3734.01(FF) and OAC rules 3745-50-10 and 3745-279-01. Used oil constitutes "industrial wastes" or "other wastes" as defined under ORC § 6111.01 (C) and (D).

4. On April 20, 2010, Ohio EPA conducted a complaint investigation regarding allegations of releases of used oil to the environment and a compliance evaluation inspection at Facility A. Used oil contaminated soil was observed near the maintenance garage, and oily sheens were visible on the surface of water in numerous depressions in the yard south of the garage. Used oil contaminated waste/soil was also observed on concrete and soil adjacent to a storm sewer grating. As a result of this inspection, Ohio EPA determined Respondent released used oil to the environment at this approximately two acre site both inside a maintenance garage and outside the garage to the east and south covering a significant portion of the yard behind the garage, and that Respondent had, *inter alia*:

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

   b. Failed to respond to releases of used oil, in violation of OAC rule 3745-279-22(D).

5. By letter dated May 6, 2010, Respondent was notified of the violations referenced in Finding No. 4. of these Orders. This letter also indicated the violation referenced in Finding No. 4.a. of these Orders was abated during the inspection.

6. On July 9, 2010, Ohio EPA conducted a follow-up visit at Facility A. During this visit Ohio EPA observed and photographed two piles of used oil-contaminated soil accounting for approximately eighty percent of the used oil contaminated soil which was impacted by the releases of used oil described in Finding No. 4. of these Orders.

7. On September 10, 2010, Ohio EPA received a response from Respondent in regard to the violations referenced in Finding No. 4. of these Orders. This response included a plan to respond to the releases of used oil at Facility A, as referenced in Finding No. 4.b. of these Orders. Additionally, the response indicated that a sample of the soil piles had been collected and sent to a lab for analysis.

8. By electronic mail dated September 22, 2010, Ohio EPA received analytical results of the soil sample from Respondent indicating the soil is non-hazardous.

9. On March 23, 2011 Ohio EPA conducted a complaint investigation for used oil releases and a compliance evaluation inspection at Facility A. During this inspection, Ohio EPA noted the soil piles referenced in Finding No. 6. of these Orders were still present at Facility A. As a result of this inspection, Ohio EPA determined that Respondent, *inter alia*;

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

   b. Remains in violation of OAC rule 3745-279-22(D) as referenced in Finding No. 4.b. of these Orders.

10. By letter dated April 4, 2011, Ohio EPA notified Respondent of the violations referenced in Finding No. 9. of these Orders.

11. On August 10, 2011, Ohio EPA conducted a complaint investigation for used oil releases and compliance evaluation inspection at Facility A and Facility B. During the inspection at Facility A, Ohio EPA observed that the two soil piles referenced in Finding No. 6. of these Orders were spread out around the maintenance garage to control storm water flow around the building. As a result of the inspection at Facility A, Ohio EPA determined that Respondent, *inter alia*, remains in violation of OAC rule 3745-279-22(D) as referenced in Finding Nos. 4.b. and 9.b. of these Orders; and that Respondent had abated the violation of OAC rule 3745-279-22(C)(1) referenced in Finding No. 9.a. of these Orders. Furthermore, as a result of the inspection at Facility B, Ohio EPA observed heavily contaminated used oil soils and an oily sheen on storm water running off the site. Therefore, Ohio EPA determined that Respondent had, *inter alia*, failed to respond to releases of used oil, in violation of OAC rule 3745-279-22(D), at Facility B.

12. By letters dated September 14, 2011, Ohio EPA notified Respondent of the violations referenced in Finding No. 11. of these Orders.

13. By letter dated October 11, 2011, Ohio EPA received correspondence from Respondent in response to the letters referenced in Finding No. 12. of these Orders. Respondent also submitted correspondence to Ohio EPA in reference to the violations referenced in Finding No. 11. of these Orders by electronic mail on December 18, 2011, January 13, 2012, and April 5, 2012. The April 5, 2012, correspondence included information documenting the removal of approximately 41 tons of used oil-contaminated soils, including the piles referenced in Finding No. 6. of these Orders, from Facility A. No additional sampling information was provided demonstrating the used oil contaminated soil was not a hazardous waste.

14. On May 17, 2012, Ohio EPA conducted a compliance evaluation inspection at Facility A and Facility B. At Facility A, Ohio EPA observed additional areas of used oil contaminated soil in the yard around the garage. At Facility B, Ohio EPA observed heavily contaminated used oil soils, and could not determine if any progress had been made since the August 10, 2011, inspection referenced in Finding No. 11. of these Orders. As a result of this inspection, Ohio EPA determined that Respondent, *inter alia:*

    a. Has not achieved compliance with OAC rule 3745-279-22(D), response to releases of used oil, as cited in Findings Nos. 4.b., 9.b., and 11. of these Orders for Facility A and Facility B;

    b. Failed to label containers of used oil with the words "used oil" in violation of OAC rule 3745-279-22(C)(1) at Facility A; and

    c. Failed to ensure used oil meets the specifications for a used oil marketer before transfer and disposal from Facility A, in violation of OAC rule 3745-279-72(A).

15. By letters dated May 31, and June 11, 2012, Ohio EPA notified Respondent of the violations referenced in Finding No. 14. of these Orders. Additionally, Ohio EPA requested analytical information demonstrating that the used oil contaminated soil was properly evaluated in accordance with OAC rule 3745-52-11.

16. On September 6, 2012, Ohio EPA conducted a follow-up inspection at Facility A and Facility B. During this inspection, Ohio EPA learned that Respondent transported used oil-contaminated soils that were scraped up since Ohio EPA's visit on May 17, 2012, from Facility A to Facility B. Furthermore, Respondent failed to provide Ohio EPA any information during the inspection demonstrating the used oil contaminated soil which was transported off-site was properly

evaluated in accordance with OAC rule 3745-52-11.

17. Based upon the information referenced in Findings Nos. 13., 15. and 16. of these Orders, the Director has determined Respondent failed to determine if the used oil contaminated soil is a hazardous waste, in violation of OAC rule 3745-52-11.

18. On July 25, 2013, Ohio EPA conducted a site visit at Facility A and Facility B. Based on the observations at Facility A, Ohio EPA determined that Respondent had removed all oil-stained soils to a visibly clean standard as required. Therefore, the violations referenced in Findings Nos. 4.b., 9.b., 14. b. and 14.c. are abated and no further action is required of Respondent at Facility A.

19. By letter dated September 11, 2013, Respondent was notified of the compliance status of Facility A based on the July 25, 2013, visit as referenced in Finding No. 18. of these Orders.

20. Based on the information described above with reference to the releases of used oil to the environment at Facility B, the Director has determined that conditions at Facility B are causing or contributing to, or threatening to cause or contribute to, water pollution or soil contamination, in violation of ORC § 6111.04 . The ground water and surface water at or within the vicinity of Facility B are "waters of the state" as defined under ORC § 6111.01(H).

21. The work required by these Orders will contribute to the prohibition or abatement of the discharge of industrial wastes or other wastes into the waters of the state. In issuing these Orders, the Director has given consideration to, and based his determination on, evidence relating to the technical feasibility and economical reasonableness of complying with these Orders, and to evidence relating to conditions calculated to result from compliance with these Orders, and their relation to benefits to the people of the state to be derived from such compliance.

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. Within thirty (30) days of the effective date of these Orders, Respondent shall submit to Ohio EPA for approval a used oil management plan (Plan) in accordance with OAC rule 3745-279-22. The Plan shall propose a strategy for assuring compliance with the used oil regulations, including procedures for properly managing used oil, properly labeling used oil containers with the words

"used oil" and specify activities for cleaning up used oil that has been released at Facility B. This plan shall include a sampling and analysis plan for characterizing soils containing used oil as a result of the cleanup, in accordance with OAC rule 3745-52-11.

2. The Plan is subject to Ohio EPA review and approval. If Ohio EPA does not approve the Plan and provides Respondent with a written statement of deficiencies, the Respondent shall revise the Plan or submit a new Plan for approval that corrects the stated deficiencies within 30 days of receipt such written notification. Ohio EPA may approve the Plan with modifications. If Ohio EPA modifies the Plan, the modified Plan becomes the approved Plan.

   Upon Respondent's receipt of approval from Ohio EPA of the Plan, the Respondent shall implement the approved Plan in accordance with the terms, conditions and schedules contained therein. Respondent shall submit a report documenting completion of used oil cleanup including analytical results of samples of the used oil contaminated soils resulting from the cleanup. Completion of Orders Nos. 1. and 2. will abate the violations referenced in Findings Nos. 11., 14.a., and 17. of these Orders.

3. Respondent shall pay Ohio EPA the amount of $6,100.00 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 pursuant to the following schedule:

   a. Within 90 days after the effective date of these Orders, Respondent shall pay to Ohio EPA the amount of $763.00;

   b. Within 180 days after the effective date of these Orders, Respondent shall pay to Ohio EPA the amount of $763.00;

   c. Within 270 days after the effective date of these Orders, Respondent shall pay to Ohio EPA the amount of $763.00;

   d. Within 365 days after the effective date of these Orders, Respondent shall pay Ohio EPA the amount of $763.00;

   e. Within 455 days after the effective date of these Orders, Respondent shall pay Ohio EPA the amount of $762.00;

f. Within 545 days after the effective date of these Orders, Respondent shall pay Ohio EPA the amount of $762.00;

g. Within 635 days after the effective date of these Orders, Respondent shall pay Ohio EPA the amount of $762.00; and

h. Within 730 days after the effective date of these Orders, Respondent shall pay Ohio EPA the amount of $762.00.

Payment 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 Respondent and the Facility. A copy of each check shall be sent to Processing and Records Management Supervisor, 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 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 Facilities.

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, exclusive of penalty checks, required to be submitted by Respondent pursuant to these Orders shall be addressed to:

Ohio Environmental Protection Agency
Northeast District Office
Division of Materials and Waste Management
2110 E. Aurora Road
Twinsburg, Ohio 44087
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 and Respondent each reserve all 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, and in lieu of further enforcement action by Ohio EPA for only the violations specifically cited in these Orders, Respondent consents to the issuance of these Orders and agrees to comply with these Orders. 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 29, 2013
Date

IT IS SO AGREED:

James Dupre Hill dba JD Services and JR's Trucks and Parts

Signature

10-9-13
Date

James D. Hill
Printed or Typed Name

owner
Title

Witnessed by
Ed Haddad Jr
10/9/13
Clean CEMP Engineering