

OHIO E.P.A.

MAY - 7 2014

ENTERED DIRECTOR BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

Miceli – Lograsso Development III LLC
2721 East 90th Street
Cleveland, OH 44104

Director's Final
Findings and Orders

Respondent

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: Donna Cassel Date: 5-7-14

PREAMBLE

It is agreed by the parties hereto as follows:

I. JURISDICTION

These Director's Final Findings and Orders (Orders) are issued to Miceli – Lograsso Development III 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, 3734.02(G) 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.

IV. FINDINGS

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, it is unlikely that the public health or safety or the environment will be adversely affected thereby, 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). Respondent purchased a parcel of land that was used as part of a drum reconditioning business located at or near 2800 East 90th Street, Cleveland, Cuyahoga County, Ohio (Facility). The parcel was designated as parcel number 126-21-004, with an address of 2818 East 90th Street, Cleveland, Cuyahoga County, Ohio, as recorded by the Cuyahoga County's Recorder.
3. On May 30, 2007, Ohio EPA conducted a compliance evaluation inspection at the Facility. At the time of the inspection, the Facility was operated by, amongst others, Gray Container, LLC (Gray). In addition, parcel number 126-21-004 was owned by Mr. Anthony Gray. The inspection revealed that Gray was storing and disposing of hazardous waste at the Facility, including, but not limited to, areas known as G05, Trailer 1 (T1), and G33 without a hazardous waste installation and operation permit, in violation of ORC §3734.02(E) and (F) and had failed to evaluate wastes in violation of OAC rules 3745-54-13 and 3745-52-11.
4. In April 2008, Ohio EPA referred Gray to the Ohio Attorney General (AGO) for establishing and operating a hazardous waste facility without a hazardous waste installation and operation permit in violation of ORC §3734.02(E) and (F) and failing to evaluate hundreds of containers of waste, in violation of OAC rules 3745-54-13 and 3745-52-11. On July 21, 2009, the AGO filed a complaint in the Cuyahoga County Court of Common Pleas against Gray. In part, the complaint resulted in a preliminary injunction requiring Gray to submit a closure plan which ensures the closure performance standards in OAC rule 3745-55-11 are met. This preliminary injunction was issued September 8, 2009. Gray was to submit the closure plan by December 7, 2009. To date, Gray has not submitted a

closure plan

5. On or about July 31, 2012, Respondent purchased parcel number 126-21-004 of the Facility, as recorded by the Cuyahoga County's Recorder, for purposes of business expansion and redevelopment activities. This parcel includes the areas known as G05, T1, and G33, as referenced in Finding No. 3. of these Orders. Prior to purchasing the property, Respondent, conducted environmental assessments of the property for purposes of site wide cleanup of parcel number 126-21-004. Following Respondent's purchase of the property, parcel number 126-21-004 was consolidated with parcel number 126-21-001.
6. As the owner of an unpermitted hazardous waste facility, as described in Findings No. 5. 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 and the financial assurance for closure requirements contained in OAC rules 3745-55-42 through 3745-55-51. As the owner and operator of a hazardous waste facility, Respondent is required to have a written closure plan in accordance with OAC Chapter 3745-55.
7. As the result of Respondent's ownership of a hazardous waste facility, as described in Finding No. 5. of these Orders, the Director has determined that Respondent is in violation of ORC 3734.02(E) and (F), and 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, 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.
8. 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 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

Respondents shall achieve compliance with Chapter 3734. of the ORC and the regulations promulgated there under and are hereby exempted from the requirement to submit an application for a hazardous waste facility installation and operation permit for the Facility, provided that Respondents comply with the following:

1. Within 60 days after the effective date of these Orders, Respondent shall submit to Ohio EPA a Closure Plan for the identified hazardous waste storage and disposal areas described in Finding No. 5. of these Orders. A copy of the closure plan shall be submitted in accordance with Section X. of these Orders and an additional copy shall be submitted Ohio EPA, Division of Environmental Response and Revitalization, Ed Lim, Manager, Engineering Section, P. O. Box 1049, Columbus, Ohio 43216-1049;
2. 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;
3. The Closure Plan is subject to approval by Ohio EPA. If Ohio EPA does not approve the Closure Plan referenced in Order No. 1.a., 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;
4. Upon Ohio EPA 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;
5. Within 60 days after Ohio EPA's approval of the Closure Plan pursuant to Order No. 1.a., above, 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

6. Within 60 days after completion of closure, Respondent shall submit certification of closure to Ohio EPA in accordance with OAC rule 3745-55-15. Closure certification of the area described in Order No. 1.a. will abate the violation referenced in Finding No. 7. 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 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
Northeast District Office
Division of Materials and Waste Management
2110 East Aurora Road
Twinsburg, Ohio 44087
Attn: DMWM Manager

and Ohio EPA Central Office at the following addresses:

For mailings, use the post office box number:

Craig W. Butler, Director
Ohio Environmental Protection Agency
Lazarus Government Center
Division of Materials and Waste Management
P.O. Box 1049
Columbus, Ohio 43216-1049
Attn: Manager, Compliance Assurance Section

For deliveries to the building:

Craig W. Butler, Director
Ohio Environmental Protection Agency
Lazarus Government Center
Division of Materials and Waste Management
50 West Town 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 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, 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

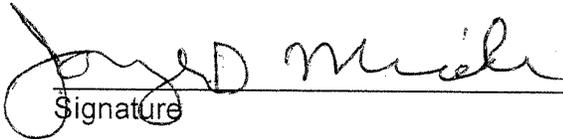


Craig W. Butler
Director

May 7, 2014
Date

IT IS SO AGREED:

Miceli – Lograsso Development III LLC



Signature

4/7/14
Date

JOSEPH D. MICELI
Printed or Typed Name

MEMBER
Title