OhioEPA

State of Ohio Environmental Protection Agency

STREET ADDRESS:

Lazarus Government Center
50 W. Town St., Suite 700
Columbus, Ohio 43215

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

MAILING ADDRESS:

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

July 17, 2008

CERTIFIED MAIL

Re: Director's Final Findings & Orders
EMD Chemicals Inc.
US EPA ID No.: OHD 086 438 538

Mr. Peter Neuschul
Senior Vice President, Operations
EMD Chemicals Inc.
2909 Highland Avenue
Cincinnati, Ohio 45212

Dear Mr. Neuschul:

Here are the Director's Final Findings and Orders (Orders) issued to EMD Chemicals Inc. on July 17, 2008. These Orders are effective today.

I have also enclosed the invoices for the penalty payments as required by Order No. 2.a. through 2.b.. Please remember that your payments are due no later than August 18, 2008.

If you have any questions concerning compliance with these Orders, do not hesitate to contact Harold O'Connell at (937) 285-6357.

Sincerely,

David A. Sholtis, Assistant Chief
Division of Hazardous Waste Management

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Attachments

c: Michael A. Savage, Chief, DHWM CO
Harry Sarvis, Mgr., CAS, DHWM CO
Todd Anderson, Legal
Heidi Griesmer, PIC
Paul Pardi/Pam Hull, DHWM, SWDO
Harold O'Connell, DHWM, SWDO

OHIO E.P.A.

JUL 17 2008

ENTERED DIRECTOR'S JOURNAL

BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

EMD Chemicals Inc.
2909 Highland Avenue
Cincinnati, OH 45212

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 EMD Chemicals (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 all successors in interest liable under Ohio law. No change in ownership of Respondent 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

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:

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: _____ **Date:** 7-17-08

1. Respondent is a "person" as defined in ORC § 3734.01(G) and Ohio Administrative Code (OAC) rule 3745-50-10(A).

2. Respondent operates a chemical manufacturing facility located at 2909 Highland Ave., Cincinnati, Hamilton County, Ohio 45212 (Facility).

3. At the Facility, Respondent generates "hazardous waste" as that term is defined by ORC § 3734.01(J) and OAC rules 3745-50-10(A) and 3745-51-03. Respondent is a large quantity generator of hazardous waste and has been assigned EPA ID number OHD086438538. The hazardous wastes generated by Respondent at the Facility include hazardous waste solvents (D001,F003, F005) flammable corrosives (D001, D002), contaminated well water (D029, D040, D043), de-blocking mixture (F001, F002), Dimethyl carbonate (D001), spent Karl Fischer solvent (D001, D038, F005), methanol/chloroform (D001, D022, F003), silver nitrate (D001, D011), tetrahydrofuran acetic acid (D001, D002), Tetrahydrofuran and triethylamine (D001, D002), Flammable liquids (D001, D002, F003), lab packs, halogenated solvents (D001, D035, F003, F005), Ethyl ether (D001, U117), sodium azide (P105), Toluidines liquid (U238), formaldehyde solution (D001, U122, U145), battery electrolyte (D001, D002), diethylamine (D001, D002), trienthylamine (D002, D011, U404). Respondent is a small quantity handler of universal waste and generates spent lamps.

4. On December 11, 2007, Ohio conducted a compliance evaluation inspection at the Facility. As a result of this inspection, Ohio EPA determined that Respondent had *inter alia*:

   a. Failed to properly train all employees on hazardous waste management relative to their job positions, in violation of OAC rule 3745-65-16;

   b. Failed to maintain the required aisle space in the container accumulation area, in violation of OAC rule 3745-65-35;

   c. Failed to keep two 55-gallon drums of waste in the satellite area closed except when adding or removing waste, in violation of OAC rule 3745-52-34(C)(1)(a);

   d. Failed to mark containers of hazardous waste with the words "Hazardous Waste" in violation of OAC rule 3745-52-34(A)(3);

   e. Failed to label containers of hazardous waste with the accumulation date in violation of OAC rule 3745-52-34(A)(2); and

f. Failed to keep containers of universal waste bulbs closed, in violation of OAC rule 3745-273-13(D)(1).

5. Respondent was notified of these violations in a letter dated January 24, 2008.

6. By letter dated February 29, 2008 Respondent provided responses to Ohio EPA regarding the violations referenced in Finding No. 4 of these Orders.

7. On March 18, 2008, Ohio EPA performed a follow-up compliance evaluation inspection. As a result of this inspection, Ohio EPA determined that Respondent had *inter alia:*

   a. Illegally stored hazardous waste for greater than 90 days without a permit, in violation of ORC § 3734.02 (E) and (F);

   b. Failed to label containers of hazardous waste with the accumulation date in violation of OAC rule 3745-52-34(A)(2); and

   c. Failed to mark containers of hazardous waste with the words "Hazardous Waste" in violation of OAC rule 3745-52-34(A)(3).

8. In a letter dated March 21, 2008, Ohio EPA notified Respondent of the violations referenced in Finding No. 7., and that it had abated the violations referenced in Finding Nos. 4.a. through c. and 4.f. of these Orders.

9. Because Respondent will continue to store hazardous waste in the less than ninety day accumulation area and because no releases of hazardous waste were observed, the Director has determined that no additional action is required of Respondent regarding the ORC § 3734.02(E) and (F) violation referenced in Finding No. 7.a. of these Orders.

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 30 days of the effective date of these Orders, Respondent shall submit documentation showing that all drums of hazardous waste on-site are properly labeled and dated. Receipt of this documentation shall abate the violations referenced in Finding Nos. 4.d. and e., and 7.b. and c. of

these Orders.

2. Respondent shall pay Ohio EPA the amount of $30,700.00 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 Ohio EPA the amount of $24,560.00 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. Payment shall be made by an official check made payable to "Treasurer, State of Ohio" for $24,560.00. 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. A copy of this check shall be submitted in accordance with Section X. of these Orders.

   b. In lieu of paying the remaining $6,140.00 of civil penalty to Ohio EPA, Respondent shall fund a supplemental environmental project (SEP) by making a contribution in the amount of $6,140.00 to the Ohio EPA Clean Diesel School Bus Program (Fund 5CD). Respondent shall make the payment within 30 days after the effective date of these Orders by tendering an official check made payable to "Treasurer, State of Ohio" for $6,140.00. The official check 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 this check shall be submitted in accordance with Section X. of these Orders, and an additional copy of this 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.

   c. Should Respondent fail to satisfy the SEP within the required time frame 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 $6,140.00 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 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 [e.g., 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
Southwest District Office
Division of Hazardous Waste Management
401 E 5th Street
Dayton, Ohio 45402
Attn: DHWM Manager

and Ohio EPA Central Office at the following address:

For mailings, use the post office box number:

Chris Korleski, 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:

Chris Korleski, Director
Ohio Environmental Protection Agency
Lazarus Government Center
Division of Hazardous 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 reserves its rights to exercise its lawful authority to require Respondent to perform closure of the hazardous waste accumulation area 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 of these Orders and agrees to comply with these Orders. Except for the right to seek closure of hazardous waste units and corrective action at the Facility by Respondent for violations specifically cited in these Orders, 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

Chris Korleski
Director

July 17, 2008
Date

IT IS SO AGREED:

EMD Chemicals Inc.

Signature

7-2-08.
Date

Peter Neuschul
Printed or Typed Name

Senior Vice President, Operations
Title