



State of Ohio Environmental Protection Agency

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MAILING ADDRESS:

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

**CERTIFIED MAIL**

June 4, 2009

**Re: Director's Final Findings & Orders**  
McWane, Inc.  
d.b.a. Clow Water Systems Company,  
a Division of McWane  
US EPA ID No.: OHD 004 294 849

Mr. Jeff Otterstedt  
Vice President and General Manager  
McWane, Inc.  
d.b.a. Clow Water Systems Company,  
a Division of McWane  
2266 South Sixth Street  
Coshocton, Ohio 43812

Dear Mr. Otterstedt:

Here are the Director's Final Findings and Orders (Orders) issued to McWane, Inc. d.b.a. Clow Water Systems Company, a Division of McWane on June 3, 2009. These Orders are effective today.

If you have any questions concerning compliance with these Orders, do not hesitate to contact Dave Chenault at (740) 385-8501.

Sincerely,

Harry Sarvis, Manager  
Compliance and Assurance Section  
Division of Hazardous Waste Management

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**Attachments**

c: Michael A. Savage, Chief, DHWM  
Todd Anderson, Legal  
Heidi Greismer, PIC  
Dave Chenault, Mgr., DHWM, SEDO  
Jim Sferra/Donna Goodman, DHWM, SEDO

Ted Strickland, Governor  
Lee Fisher, Lieutenant Governor  
Chris Korleski, Director

OHIO E.P.A.

JUN -3 2009

ENTERED DIRECTOR'S JOURNAL

BEFORE THE  
OHIO ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

McWane, Inc.  
d.b.a. Clow Water Systems Company,  
a Division of McWane  
2266 South Sixth Street  
Coshocton, Ohio 43812

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 McWane, Inc. d.b.a. Clow Water Systems Company, a Division of McWane (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 the Respondent, or the Facility owned by 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 regulations promulgated thereunder.

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: Jeff Lassiter Date: 6-3-09

#### IV. FINDINGS OF FACT

All of the findings necessary for the issuance of these Orders pursuant to ORC §§ 3734.02(G), 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 to 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 owns and operates a ductile piping manufacturing facility located at 2266 South Sixth Street, Coshocton, Coshocton County, Ohio (Facility). At the Facility, Respondent manufactures ductile iron piping and fittings for use in underground water piping systems, as well as in water treatment plants.
4. Respondent notified Ohio EPA of its hazardous waste activities and was issued generator identification number OHD 004 294 849.
5. At the Facility, Respondent operates an NPDES permitted Waste Water Treatment Plant ("WWTP"). Hazardous waste handled in the WWTP is subject to the WWTP exemption located in OAC 3745-54-01(G)(5). Water from the WWTP was circulated to a concrete structure (concrete cooling pond) and the water was used as non-contact cooling water for the manufacturing equipment. Over time, sludge would accumulate in the concrete pond.
6. In July 2004, the United States Environmental Protection Agency (US EPA) conducted an investigation at the Facility. As a result of this investigation, US EPA determined that Respondent had, *inter alia*, stored, treated or disposed of hazardous waste in a surface impoundment without a permit, in violation of ORC § 3734.02(E) and (F);

7. On June 6, 2007, US EPA issued a request for information to Respondent. Respondent responded to such request in letters dated July 6, 2007 and August 6, 2007.
8. On August 23, 2007, representatives of Respondent met with US EPA representatives. During that meeting, US EPA indicated its position to Respondent that the cooling pond was not part of the WWTP, was not subject to the WWTP exemption and was a surface impoundment improperly storing hazardous waste.
9. US EPA notified Respondent that it would require Respondent to perform a closure on the cooling pond.
10. On August 20, 2008, Respondent submitted to Ohio EPA a closure plan for the concrete pond entitled "Closure Plan Concrete Pond." As addressed in the Closure Plan Concrete Pond, Respondent has reengineered its waste water loops to avoid accumulating hazardous sludge in the cooling pond.
11. On October 2, 2008, US EPA submitted to Ohio EPA comments on the closure plan referenced in Finding No. 10.
12. By letter dated December 9, 2008, Ohio EPA notified Respondent of deficiencies in the closure plan referenced in Finding No. 10.
13. On January 5, 2009, Ohio EPA and Respondent discussed the deficiencies in the closure plan.
14. On February 6, 2009, Respondent submitted a Closure Plan which addressed the December 9, 2008, deficiency letter.
15. On March 23, 2009, Ohio EPA and Respondent held a meeting to discuss the Closure.
16. On April 9, 2009, Clow submitted a revised Closure/Post-Closure Plan.
17. Due to Respondent's establishment and operation of a hazardous waste facility as described in Finding No. 6 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, 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.

18. The submittal of a Closure/Post-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 for the Facility 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 thereunder according to the following compliance schedule:

1. The 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 30 days after the effective date of these Orders, Respondent shall submit to Ohio EPA a Closure/Post-Closure Plan for the concrete pond/surface impoundment unit referenced in Finding Nos. 5 and 6 of these Orders. The Closure/Post-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 3745-54-100;
  - b. The Closure/Post-Closure Plan is subject to approval by Ohio EPA. If Ohio EPA modifies the Closure/Post-Closure Plan, the modified Closure/Post-Closure Plan becomes the approved plan;
  - c. Upon Ohio EPA approval of the Closure/Post-Closure Plan, Respondent

shall implement the approved Closure/Post-Closure Plan in the manner and pursuant to the timeframes set forth in the approved Closure Plan and OAC rules 3745-55-13/3745-66-13;

- d. Within 90 days after Ohio EPA's approval of the Closure/Post-Closure Plan for the concrete pond/surface impoundment referenced in Order No. 1.a. of these Orders, Respondent shall submit closure cost estimates and documentation demonstrating that Respondent has established financial assurance and liability coverage for the concrete pond, in accordance with OAC rules 3745-55-42 through 3745-55-47.

## **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 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 signatory to these Orders, for any liability arising from, or relating to, the operations 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  
Southeast District Office  
Division of Hazardous Waste Management  
2195 Front Street  
Logan, Ohio 43138  
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 W. Town St., Suite 700  
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 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.

Nothing in these Orders shall be construed to diminish the right of the United States Environmental Protection Agency to seek penalties from Respondent for the violations alleged in these Orders or corrective action under RCRA, 42 U.S.C. 6901, et seq. or as may be otherwise provided by law.

#### **XII. WAIVER**

In order to resolve disputed claims, without admission of act, 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, 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**

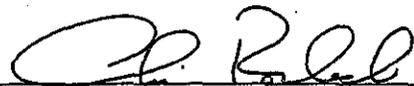
The effective date of these Orders is the date these Orders are entered into the

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.

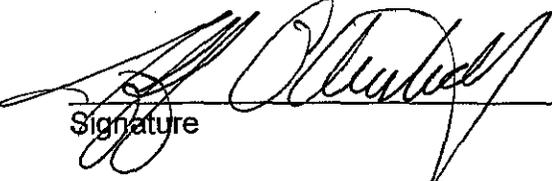
**IT IS SO ORDERED AND AGREED:**

  
\_\_\_\_\_  
Chris Korleski  
Director

June 3, 2009  
Date

**IT IS SO AGREED:**

**McWane, Inc. d.b.a. Clow Water Systems Company, a Division of McWane**

  
\_\_\_\_\_  
Signature  
JEFF OTTERSTEDT  
Printed or Typed Name

5-22-09  
Date

VICE-PRESIDENT / GENERAL MGR.  
Title: