OHIO E.P.A.
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ENTERED DIRECTOR'S JOURNAL

BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

K.P. McNamara Company 3972 Hamilton Ave Cleveland, Ohio 44114 **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 K. P. McNamara Company (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 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 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 [signature] Date: 9-2-09

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

2. Respondent operates an industrial container service and sales facility located at 3972 Hamilton Ave., Cleveland, Cuyahoga County, Ohio 44114 (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 OHR000108027. The hazardous wastes generated by Respondent at the Facility include hazardous waste paint and thinners, polyester primer, and polyester resin with styrene generated from the Facility's steel tote content removal process (hazardous waste codes D001/D007/D035/F003/F005). Respondent also generates caustic sludge, filters and rags from the steel tote cleaning process (hazardous waste codes D001/D002/D035). Plastic tote cleaning generates hydrochloric acid or sodium hydroxide solution (hazardous waste code D002). Respondent is a small quantity handler of universal waste and generates spent lamps.

4. On April 3, 2007, the Cleveland Fire Department (CFD) responded to a complaint of an odor emanating from a trailer owned by Respondent located at East 45th Street and Lakeside Avenue in Cleveland. The CFD found numerous containers in the trailer. CFD required Respondent to off-load the contents at Respondent's Facility, approximately one-third mile from the parking lot where the trailer was discovered. The trailer and its contents had been stored in the parking lot since the end of November, 2006. CFD referred Respondent to Ohio EPA for follow-up.

5. On April 4 and 5, 2007, Ohio EPA conducted a compliance evaluation inspection at the Facility. As a result of this inspection, Ohio EPA determined that Respondent had:

a. Unlawfully transported hazardous waste to a parking lot located at East 45th Street and Lakeside Avenue in Cleveland, in violation of ORC § 3734.02(F);

b. Established an unpermitted hazardous waste storage facility by storing hazardous waste at a parking lot located at East 45th Street and Lakeside Avenue in Cleveland without a permit, in violation of ORC § 3734.02(E) and (F);

c. Failed to provide annual hazardous waste management training to employees at the Facility that handle and/or manage hazardous waste and failed to maintain job titles and job descriptions for Facility employees who handle and/or manage hazardous waste, in violation of OAC rule 3745-65-16;

d. Failed to maintain a contingency plan that meets the requirements of OAC rule 3745-65-52(D) and (E);

e. Failed to conduct inspections of the spill control equipment designated for the hazardous waste accumulation area, in violation of OAC rule 3745-65-33;

f. Failed to label/mark three boxes of universal waste lamps with the words "universal waste-lamp(s)," or "waste lamp(s)" or "used lamp(s)" as required by OAC rule 3745-273-14(E);

g. Failed to track the length of time that the universal waste lamps have been accumulated as required by OAC rule 3745-273-15(C);

h. Failed to evaluate wastes to determine if they were hazardous wastes, in violation of OAC rule 3745-52-11;

i. Failed to comply with the manifest requirements for hazardous waste, in violation of OAC rules 3745-52-20 through 3745-52-23;

j. Failed to label and mark containers of hazardous waste in accordance with U.S. Department of Transportation regulations, in violation of OAC rules 3745-52-31 and 3745-52-32; and

k. Failed to comply with the Land Disposal Restriction requirements for hazardous waste, in violation of OAC rule 3745-270-07.

6. By electronic correspondence dated April 18, 2007, Respondent provided a copy of the discrepancy reports requested by Ohio EPA during the inspection and laboratory results of samples taken during the April 4 and 5, 2007 compliance evaluation inspection.

7. By electronic correspondence dated April 19 and 23, 2007, Ohio EPA requested additional information regarding the laboratory results.

8. By electronic correspondence dated April 24, 2007, Respondent provided documentation on hazardous waste personnel training.

9. By electronic correspondence dated April 25 and May 10, 2007, Ohio EPA requested additional information from Respondent on the personnel training at the Facility.

10. By letter dated May 9, 2007, Respondent provided Ohio EPA with additional information regarding personnel training at the Facility.

11. By letter dated May 23, 2007, Ohio EPA notified Respondent of the violations referenced in Finding No. 5. of these Orders. Also in the May 23, 2007 letter, Ohio EPA notified Respondent that Respondent had abated the violation referenced in Finding No. 5.e. of these Orders.

12. By electronic correspondence dated May 31, 2007, Ohio EPA notified Respondent that two of the samples of the wastes referenced in Finding No. 4. of these Orders that Ohio EPA collected during the April 5, 2007 compliance evaluation inspection were analyzed and found to be ignitable hazardous waste (D001).

13. On June 11, 2007, the containers of hazardous waste referenced in Finding No. 4. of these Orders were shipped off-site as a hazardous waste to a permitted facility.

14. By letter dated June 18, 2007, Respondent provided responses to Ohio EPA regarding the violations referenced in Finding No. 5. of these Orders.

15. On August 6, 2007, Ohio EPA discovered that Respondent had failed to include two 55-gallon drums of hazardous waste received by Chemical Solvents in Respondent's 2006 Hazardous Waste Annual Report. Chemical Solvents confirmed that the waste was received as non-hazardous, and changed to hazardous after sampling based on verbal approval of Respondent.

16. By electronic correspondence dated August 20, 2007, Ohio EPA notified Respondent of the Annual Report discrepancy noted in Finding No.15. of these Orders and all of the corresponding violations, including OAC rules 3745-52-23, 3745-52-31, 3745-52-32, 3745-270-07 and 3745-52-41.

17. By electronic correspondence dated August 23, 2007, Respondent provided additional information requested by Ohio EPA concerning the violations referenced in Finding No. 5. of these Orders, as well as provided a response to Ohio EPA regarding the violations referenced in Finding No. 16. of these Orders.

18. By letter dated September 5, 2007, Ohio EPA notified Respondent that Respondent had abated the violations referenced in Finding Nos. 5.f. and 5.g. of these Orders, and that no further action was required at that time regarding the violation listed in Finding No. 5.a. of these Orders.

19. By letter dated September 19, 2007 and electronic correspondence dated October 14, 2007, Respondent provided responses to Ohio EPA's September 5, 2007 letter concerning the violations referenced in Finding Nos. 5. and 16. of these Orders.

20. By letter dated October 16, 2007, Ohio EPA notified Respondent that Respondent had abated the violations referenced in Finding Nos. 5.c., 5.d., 5.h. through 5.k., and 16. of these Orders.

21. On February 24, 2009, Ohio EPA conducted a compliance evaluation inspection at the Facility. As a result of the inspection, Ohio EPA determined that Respondent had, *inter alia*:

    a. Failed to maintain the label and date on a hazardous waste container visible for inspection in violation of OAC rules 3745-52-34(A)(2) and (3);

    b. Failed to conduct annual personnel training, in violation of OAC rule 3745-65-16(C);

    c. Failed to maintain and operate the Facility in such a manner as to minimize the possibility of a fire, explosion or unplanned release of hazardous waste constituents to air, soil or surface water, in violation of OAC rule 3745-65-31;

d. Failed to have a current contingency at the Facility, in violation of OAC rule 3745-65-52(E);

e. Failed to conduct weekly inspections of the hazardous waste container storage area, in violation of OAC rule 3745-66-74;

f. Failed to evaluate wastes generated at the Facility, in violation of OAC rule 3745-52-11;

g. Failed to comply with the manifest requirement for hazardous wastes, in violation of OAC rule 3745-52-20;

h. Failed to label and mark containers of hazardous waste in accordance with DOT regulations under 49 CFR Part 172, in violation of OAC rules 3745-52-31 and 3745-52-32; and

i. Failed to comply with the LDR requirements for hazardous waste, in violation of OAC rule 3745-270-07.

22. On February 25, 2009, Ohio EPA requested documentation from Respondent via electronic mail.

23. On March 26, 2009, Respondent submitted the documentation requested in Finding No. 22. of these Orders.

24. On April 9, 2009, Ohio EPA conducted a follow-up compliance evaluation inspection at the Facility.

25. On April 10 and April 23, 2009, Respondent submitted additional documentation to Ohio EPA, including a revised Standard Operating Procedure (SOP) on waste generation and off-site shipment for Ohio EPA review.

26. Based upon Ohio EPA's review of the submitted documents referenced in Finding Nos. 23. and 25. of these Orders, and the inspection referenced in Finding No. 24. of these Orders, Ohio EPA determined that Respondent had abated the violations referenced in Finding No. 21. of these Orders.

27. By letter dated May 11, 2009, Ohio EPA notified Respondent of the violations referenced in Finding No. 21. of these Orders, and their abatement. This letter also notified Respondent that Ohio EPA approved the revised SOP referenced in Finding No. 25. of these Orders.

28. Because Ohio EPA did not observe any hazardous waste releases from the trailer at the time of the compliance evaluation inspection referenced in Finding No. 5. of these Orders, the Director has determined that no further action is required regarding the violation of ORC § 3734.02 (E) and (F) referenced in Finding No. 5.b. of these Orders.

V. ORDERS

Respondent shall achieve compliance with Chapter 3734. of the ORC and the regulations promulgated thereunder according to the following compliance schedule:

1. Respondent shall implement the approved SOP referenced in Finding Nos. 25. and 27. of these Orders. The SOP shall remain in effect for 2 years (730 days) from the effective date of these Orders.

2. Respondent shall pay Ohio EPA the amount of $55,800.00 in settlement of Ohio EPA's claims for civil penalties, which may be assessed pursuant to ORC Chapter 3734. $44,640.00 of this amount 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 $5,580.00;

   b. Within 180 days after the effective date of these Orders, Respondent shall pay to Ohio EPA the amount of $5,580.00;

   c. Within 270 days after the effective date of these Orders, Respondent shall pay to Ohio EPA the amount of $5,580.00;

   d. Within 365 days after the effective date of these Orders, Respondent shall pay to Ohio EPA the amount of $5,580.00;

   e. Within 455 days after the effective date of these Orders, Respondent shall pay to Ohio EPA the amount of $5,580.00;

   f. Within 545 days after the effective date of these Orders, Respondent shall pay to Ohio EPA the amount of $5,580.00;

   g. Within 635 days after the effective date of these Orders, Respondent shall pay to Ohio EPA the amount of $5,580.00; and

h. Within 725 days after the effective date of these Orders, Respondent shall pay to Ohio EPA the amount of $5,580.00.

Respondent shall make each payment by tendering an official check made payable to "Treasurer, State of Ohio." The official checks shall be submitted to Ohio EPA, Office of Fiscal Administration, P.O. Box 1049, Columbus, Ohio 43216-1049, together with a letter identifying Respondent and the Facility. A copy of each check shall be submitted in accordance with Section X. of these Orders.

3. In lieu of paying the remaining $11,160.00 of the civil penalty to Ohio EPA, Respondent shall fund a supplemental environmental project (SEP) by making a contribution in the amount of $11,160.00 to the Ohio EPA Clean Diesel School Bus Program (Fund 5CD) 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 $1,395.00;

b. Within 180 days after the effective date of these Orders, Respondent shall pay to Ohio EPA the amount of $1,395.00;

c. Within 270 days after the effective date of these Orders, Respondent shall pay to Ohio EPA the amount of $1,395.00;

d. Within 365 days after the effective date of these Orders, Respondent shall pay to Ohio EPA the amount of $1,395.00;

e. Within 455 days after the effective date of these Orders, Respondent shall pay to Ohio EPA the amount of $1,395.00;

f. Within 545 days after the effective date of these Orders, Respondent shall pay to Ohio EPA the amount of $1,395.00;

g. Within 635 days after the effective date of these Orders, Respondent shall pay to Ohio EPA the amount of $1,395.00;

h. Within 725 days after the effective date of these Orders, Respondent shall pay to Ohio EPA the amount of $1,395.00;

Payments shall be made by official checks made payable to "Treasurer, State of Ohio." The official checks 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 these checks

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.

4. Should Respondent fail to fund the SEP within the required time frames established in Order Nos. 3.a. through 3.h., Respondent shall pay to Ohio EPA the missed payment amount no later than 7 days after the missed payment due date. Payment shall be made in accordance with the procedures established in Order No. 2.

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
Northeast District Office
Division of Hazardous Waste Management
2110 E. Aurora Rd.
Twinsburg, Ohio 44087
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, 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 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. 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

September 2, 2009
Date

IT IS SO AGREED:

K.P. McNamara Company

Signature

8-10-09
Date

Kerry McNamara
Printed or Typed Name

President
Title

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