

OHIO E.P.A.

JAN 24 2013

BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY

ENTERED DIRECTOR'S JOURNAL

In the Matter of:

Tice Enterprises, Inc.
13822 N. Vision Dr., P.O. Box 37
Kenton, OH 43326

MAT Enterprises, LLC
13822 N. Vision Dr., P.O. Box 37
Kenton, OH 43326

Director's Final
Findings and Orders

Respondents

PREAMBLE

It is agreed by the parties hereto as follows:

I. JURISDICTION

These Director's Final Findings and Orders (Orders) are issued to Tice Enterprises, Inc. (Respondent Tice) and MAT Enterprises, LLC (Respondent MAT), (together, Respondents) 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 Respondents and successors in interest liable under Ohio law. No change in ownership of Respondents or of the Facility shall in any way alter Respondents' 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.

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: Imy Kusler Date: 1-24-13

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. Respondents are each a "person" as defined in ORC §3734.01(G) and Ohio Administrative Code (OAC) rule 3745-50-10(A). Respondent Tice is a corporation which registered to conduct business in Ohio on April 2, 1996. Respondent MAT is a corporation which registered to conduct business in Ohio on December 9, 2010.
3. On May 9, 2001, Ohio EPA conducted a complaint investigation at the facility located at 820 Steiner Ave., Kenton, Ohio (Facility). At the time of the investigation, the Facility was owned and operated by King-Ohio Forge, Inc. (King-Ohio). King-Ohio did not conduct any manufacturing or forging operations at the Facility, however, the investigation revealed that King-Ohio was storing hazardous waste 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 rule 3745-52-11.
4. In April 2003, Ohio EPA referred King-Ohio to the Ohio Attorney General (AGO) for 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 over 280 containers and tanks of waste, in violation of OAC rule 3745-52-11. The containers and tanks of waste were subsequently evaluated and removed from the Facility by King-Ohio and on July 20, 2010 a signed consent order between the State of Ohio and King-Ohio was entered in the Hardin County Court of Common Pleas. The consent order required King-Ohio to pay a civil penalty and submit a closure plan in accordance with OAC Chapter 3745-55 for areas in Building 5 and Building 2 at the Facility where hazardous waste had been stored. Section VI., paragraph 8. of the July 20, 2010, consent order reads

in part: "King-Ohio Forge has entered into an option to purchase agreement with a prospective purchaser, Tice Enterprises, Inc. (Tice) for the sale of 820 Steiner Avenue, Kenton, Ohio (the "Property")." The July 20, 2010, consent order also included the following language in Section VI., paragraph 10.: "If Tice takes title to the Property on or before December 31, 2010, the State hereby waives all claims against King-Ohio Forge for injunctive relief for the claims alleged within the complaint . . ."

5. On November 19, 2010, the Clean Ohio Council awarded a Clean Ohio Revitalization Fund grant to the City of Kenton and its Development Partner, Respondent Tice, to conduct a site-wide cleanup at the Facility, under the Ohio EPA Voluntary Action Program, including closure of the former hazardous waste storage areas. In consideration for obtaining title to the Property, Respondent Tice agreed to complete the voluntary action at the Property.
6. On or about December 30, 2010, Respondent MAT, a party affiliated with Respondent Tice, purchased the Facility from King-Ohio Forge. Respondent MAT is an "owner" as defined in OAC rule 3745-50-10(A).
7. After Respondent MAT purchased the Facility, Respondent Tice conducted certain remediation activities to address the units subject to closure referenced in Finding No. 4. of these Orders. Respondent Tice is an "operator" as defined in OAC rule 3745-50-10(A) due solely to its activities relating to the remediation/closure of the Facility.
8. On or about June 18, 2012, Respondent Tice submitted to Ohio EPA a document entitled *Certification Report for the Closure of Container Storage Areas King-Ohio Forge Facility*, summarizing the remediation work referenced in Finding No. 7. of these Orders. This document was submitted pursuant to OAC rule 3745-55-15. Respondents had not submitted to Ohio EPA a hazardous waste closure plan prepared in accordance with OAC Chapter 3745-55 prior to submittal of the closure certification.
9. As the owner and operator of an unpermitted hazardous waste facility, as described in Findings Nos. 3., 6. and 7. of these Orders, Respondents are required to have a hazardous waste facility installation and operation permit and are 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, Respondents are required to have a written closure plan in accordance with OAC Chapter 3745-55.

10. The Director has determined that Respondent MAT is the owner and Respondent Tice is the operator of an unpermitted hazardous waste facility and as such, Respondents are required to have a hazardous waste facility installation and operation permit and are 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, Respondents are required to submit "Parts A and B" of the application in accordance with OAC Chapter 3745-50.
11. 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 Respondents 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).
12. On October 19, 2012, Respondent Tice submitted to Ohio EPA the draft document *RCRA Closure Plan for Container Storage Areas King-Ohio Forge Facility*.
13. Because Respondent Tice has conducted certain remediation activities to address the closure of the hazardous waste management units, will submit a closure plan in accordance with OAC Chapter 3745-55 and these Orders for those units described in Finding No. 4. of these Orders, and has entered Ohio's Voluntary Action Program to address any site-wide contamination, the Director has determined that it is unnecessary to reserve site-wide corrective action for the Facility.

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, Respondents shall submit to Ohio EPA for review and approval a Closure Plan for the hazardous waste drum storage areas in Building 5 and Building 2 at the Facility.
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 and provides Respondents with a written statement of deficiencies, Respondents 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's written approval of the Closure Plan, Respondents 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 approval of the Closure Plan pursuant to Order No. 3. of these Orders, Respondents shall submit a closure cost estimate and documentation demonstrating that Respondents have 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.
6. Subsequent to the approval of the Closure Plan, Ohio EPA shall review the document *Certification Report for the Closure of Container Storage Areas King-Ohio Forge Facility* referenced in Finding No. 8. of these Orders to determine if the requirements of OAC rule 3745-55-15. If Ohio EPA identifies deficiencies with respect to closure certification and provides a written statement of the

deficiencies, Respondents shall address the deficiencies in writing within 30 days of receiving such written statement.

VI. TERMINATION

Respondents' obligations under these Orders shall terminate when Respondents certify in writing and demonstrate to the satisfaction of Ohio EPA that Respondents have 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 shall notify Respondents of the obligations that have not been performed, in which case Respondents 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 Respondents to Ohio EPA and shall be signed by a responsible official of Respondents. For purposes of these Orders, a responsible official is a corporate officer who is in charge of a principal business function of Respondents.

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 Respondents' 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 Respondents.

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 Respondents pursuant to these Orders shall be addressed to:

Ohio Environmental Protection Agency
Northwest District Office
Division of Materials and Waste Management
347 North Dunbridge Road
Bowling Green, Ohio 43402
Attn: DMWM Manager

and Ohio EPA Central Office at the following addresses:

For mailings, use the post office box number:

Scott J. Nally, 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:

Scott J. Nally, 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 Respondents each reserve all rights, privileges and causes of action, except as specifically waived in Section XII. of these Orders.

XII. WAIVER

In order to initiate and complete closure of hazardous waste units at the Facility, without admission of fact, violation or liability, Respondents consent to the issuance of these Orders and agree 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.

Respondents hereby waive the right to appeal the issuance, terms and conditions, and service of these Orders and Respondents hereby waive any and all rights Respondents may have to seek administrative or judicial review of these Orders either in law or equity.

Notwithstanding the preceding, Ohio EPA and Respondents agree that if these Orders are appealed by any other party to the Environmental Review Appeals Commission, or any court, Respondents retain the right to intervene and participate in such appeal. In such an event, Respondents shall continue to comply with these Orders notwithstanding such appeal and intervention unless these Orders are stayed, vacated or modified.

XIII. EFFECTIVE DATE

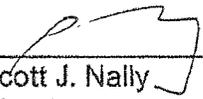
The effective date of these Orders is the date these Orders are entered into the Ohio EPA Director's journal.

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

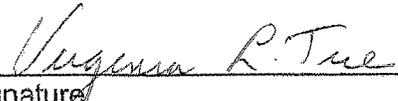


Scott J. Nally
Director

January 24, 2013
Date

IT IS SO AGREED:

Tice Enterprises, Inc.



Signature

November 8, 2012
Date

Virginia L. Tice
Printed or Typed Name
President
Title

MAT Enterprises, LLC



Signature

November 8, 2012
Date

Mark A. Tice
Printed or Typed Name
Owner
Title