



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

CERTIFIED MAIL

November 17, 2008

Susan L. Smith
Universal Materials, Inc.
3995 Mogadore industrial Parkway
Mogadore, OH 44260

and

Susan L. Smith
Owens – Illinois, Inc.
One Michael Owens Way
Perrysburg, OH 43551

**Re: Universal Materials, Inc. and Owens – Illinois, Inc.
Director's Final Findings & Orders
US EPA ID No.: OHD9800792600**

Dear Ms. Smith:

Here are the Director's Final Findings and Orders (Orders) issued to **Universal Materials, Inc. and Owens – Illinois, Inc.** on November 17, 2008. These Orders are effective today.

I have also enclosed an invoice for the penalty payment as required by Order No. 2. Please remember your payment is due no later than December 17, 2008.

If you have any questions concerning compliance with the Orders, do not hesitate to contact Harry Sarvis at (614) 644-2917.

Sincerely,

Jeremy A. Carroll, P.E.
Manager, Regulatory and Information Services Section
Division of Hazardous Waste Management

cc: Michael A. Savage, Chief, DHWM
Harry Sarvis, Mgr., CAS, DHWM
Fran Kovac, Legal
Heidi Greismer, PIC

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

BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

Universal Materials, Inc.
3995 Mogadore Industrial Parkway
Mogadore, OH 44260

**Director's Final
Findings and Orders**

and

Owens - Illinois, Inc.
One Michael Owens Way
Perrysburg, OH 43551

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.

Respondents

By: *[Signature]* Date: 11-17-08

PREAMBLE

It is agreed by the parties hereto as follows:

I. JURISDICTION

These Director's Final Findings and Orders (Orders) are issued to Universal Materials, Inc.(Respondent UMI) and Owens-Illinois, Inc. (Respondent O-I) 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 Respondents and successors in interest liable under Ohio law. No change in ownership of the 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 thereunder.

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 Respondents of any matter of law or fact. The Director of Ohio EPA has determined the following findings:

1. Respondent UMI and Respondent O-I are each a "person" as defined in ORC § 3734.01(G) and Ohio Administrative Code (OAC) rule 3745-50-10(A).
2. Respondent UMI operated a refractory product manufacturing facility located at 3995 Mogadore Industrial Parkway, Mogadore, Ohio 44260 (Facility). The Facility is owned by Respondent O-I.
3. At the Facility, at least one of the industrial processes used spent refractory bricks as an ingredient to make a product, a sprayable refractory product. Included among the various types of spent bricks used in the manufacturing process, were magnesium chromium bricks, which are characteristically hazardous for chromium (D007) per OAC rule 3745-51-24. OAC rule 3745-51-02(E)(1)(a) exempts materials from being wastes when they are recycled by being used as an ingredient in an industrial process to make a product provided the material is not being reclaimed. Through correspondence dated August 23, 1995, and February 22, 1996, as well as in meetings with UMI and their representatives, Ohio EPA provided guidance regarding the regulation and recycling of the spent magnesium chromium bricks.
4. UMI notified Ohio EPA of its hazardous waste activities and was issued generator identification number OHD980792600.
5. In 2002 Respondent UMI sent 549 tons of refractory brick materials off-site for disposal as hazardous waste after removing a storage building in which the materials had been stored prior to processing.
6. On December 15, 2006, the Facility ceased its manufacturing activities.
7. In correspondence dated January 11, 2007 Respondent UMI submitted a 30 day Cessation of Regulated Operations (CRO) notification to Ohio EPA. On March 6,

2007 Ohio EPA provided Respondent UMI with information regarding CRO obligations. On March 13 and 20, 2007 Respondent UMI submitted CRO extension requests to Ohio EPA. Ohio EPA granted the requested extension on May 11, 2007.

8. In 2006 and 2007, as part of their cessation of operations, Respondents UMI and O-I shipped a total of 6,311 tons of spent refractory brick material off site as characteristically hazardous waste (chromium, D007) for disposal after the Facility ceased manufacturing activities. 6,046 tons were disposed within 90 days after the Facility ceased operating; the remaining 265 tons were disposed of 126 days after ceasing operations. The last shipment of hazardous waste was on April 20, 2007.
9. On March 28, 2007 Ohio EPA conducted a compliance inspection at the Facility. As a result of the inspection, Ohio EPA determined that Respondents UMI and O-I had, *inter alia*: established an unpermitted hazardous waste facility, in violation of ORC § 3734.02(E) and (F), through receipt and mismanagement at the Facility of hazardous wastes. Specifically, Respondent UMI disposed and/or stored hazardous waste on the ground and inside buildings without a permit. Respondent UMI managed hazardous waste in B-02 Receiving Shed, B-04 Storage Building, B-06 Main Building and an outside storage area (titled Storage Area 2 per UMI Site Plan 3/28/1995) situated between the three buildings. This hazardous waste consisted of the spent magnesium chromium refractory bricks which are characteristically hazardous for chromium. Because the bricks were not used as an ingredient to make a product, a sprayable refractory product, the bricks were a hazardous waste when received at the Facility. Respondent O-I is the owner of an unpermitted hazardous waste storage facility which stored hazardous waste without a permit, in violation of ORC § 3734.02(E) and (F).
10. By letters dated April 12, June 6, and August 14, 2007, Ohio EPA notified Respondents O-I and UMI of the violation referenced in Finding No. 9 of these Orders.
11. By letters dated May 11, June 25 and October 1, 2007, Respondent O-I provided responses to the NOV letters referenced in Finding No. 10 of these Orders.
12. On July 19, 2007, Ohio EPA-DHWM performed surface soil sampling at the UMI facility. The results indicate that the site surface soil at a minimum has been impacted by the releases of hazardous waste as evidenced by the elevated levels of metals, such as chromium, in the surface soils.
13. Due to Respondents' establishment and operation of an unpermitted hazardous waste facility as described in Finding No. 9. of these Orders, Respondents UMI and O-I 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.

14. 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 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

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

1. Respondents 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:
 - a. Within 60 days after the effective date of these Orders, Respondents shall submit to Ohio EPA a Closure Plan for the unpermitted hazardous waste management units referred to in Finding No. 9. Respondents shall submit to Ohio EPA for review and approval a Closure Plan which complies 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. 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. 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 rule 3745-55-13;

- b. Within 30 days after the submittal of the Closure Plan pursuant to Order No. 1.a., above, Respondents shall submit to Ohio EPA 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; and
- c. Within 60 days after completion of closure, Respondents shall submit certification of closure to Ohio EPA in accordance with OAC rules 3745-55-15.

Completion of Order No. 1 shall abate the violations referenced in Finding No. 9 of these Orders.

2. Within 30 days after the effective date of these Orders, Respondents shall pay Ohio EPA the amount of \$99,500 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 \$99,500. 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 the Respondents and the Facility. A copy of the check shall be submitted in accordance with Section X. of these Orders.

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 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 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
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:

Christopher 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:

Christopher Korleski, Director
Ohio Environmental Protection Agency
Lazarus Government Center
Division of Hazardous Waste Management
122 South Front 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 Respondents to perform corrective action at Facility, at some time in the future, pursuant to ORC Chapter 3734. or any other applicable law. Respondents reserve their rights to raise any administrative, legal or equitable claim or defense with respect to performing such corrective action. Ohio EPA and Respondents 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, Respondents consent to the issuance of these Orders and agree to comply with these Orders. Except for the right to seek corrective action at the Facility by Respondents, which right Ohio EPA does not waive, compliance with these Orders shall be a full accord and satisfaction for Respondents' 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

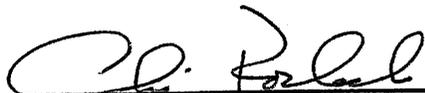
The effective date of these Orders is the date these Orders are entered into the Ohio EPA Director's journal.

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



Christopher Korleski
Director

November 17, 2008

Date

IT IS SO AGREED:

Universal Materials, Inc.



Signature

September 30, 2008
Date

Susan L. Smith

Printed or Typed Name

Counsel

Title

Owens-Illinois, Inc.



Signature

September 30, 2008
Date

Susan L. Smith

Printed or Typed Name

Counsel

Title