

BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY

OHIO E.P.A.

SEP -4 2012

ENTERED DIRECTOR'S JOURNAL

In the Matter of:

H. J. Heinz Company
dba Heinz North America
1 PPG Place Suite 3100
Pittsburgh, Pennsylvania 15222

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 H. J. Heinz Company dba Heinz North America (Respondent) 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 Respondent and successors in interest liable under Ohio law. No change in ownership of Respondent, or of 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 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.

{B0760572.1}

By John Cassider Date: 9/4/12

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. 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. 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 food production facility located at 1200 North Fifth Street, Fremont, Sandusky County, Ohio 43420, that includes the North Fifth Street plant and the Bloom Road location (Facility).
4. 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 generates non-acute hazardous waste in amounts greater than 100 kilograms per month, but less than 1,000 kilograms per month, and therefore is considered a small quantity generator (SQG) of hazardous waste pursuant to OAC rule 3745-52-34(D), and has been assigned EPA ID number OHD005034301. Respondent generates silver nitrate (D011) and a water alcohol solution (D001) from product testing.
5. On June 22, 2010, Ohio EPA Northwest District Office received a complaint about abandoned drums at Respondent's Bloom Road location at the Facility.
6. On July 21, 2010, Ohio EPA conducted a complaint investigation of the Bloom Road location at the Facility. During the complaint investigation, Ohio EPA discovered approximately 100 polyethylene 55-gallon drums stored (some on

their sides and/or leaning over) amongst vegetative overgrowth along a fence. The drums contained unevaluated waste in various amounts.

7. By letter dated July 30, 2010, Ohio EPA notified Respondent of its initial findings of the investigation and confirmed that a sampling event to characterize the waste would take place.
8. As a result of this investigation, on August 2, 2010, Respondent sampled drums of unknown waste found at the Bloom Road location of the Facility. Drums were initially segregated into two groups, empty drums and drums with waste in them. Of the total number of drums discovered, one hundred nine 55-gallon drums had waste present, and these were divided into two groups. Each group was placed into a rubber containment system, and open drums were covered with plastic bags to keep rainwater out. Respondent submitted sample results to Ohio EPA on August 10, 2010, and August 12, 2010.
9. Upon review of the sample results referenced in Finding No.8. of these Orders, Ohio EPA has determined that Respondent, *inter alia*:
 - a. Established and operated a hazardous waste storage facility without a permit at the Bloom Road location of the Facility, in violation of ORC 3734.02 (E) and (F). At a minimum, Respondent stored at least four (4) drums of corrosive hazardous waste, D002, for an undetermined amount of time;
 - b. Failed to evaluate wastes at the Bloom Road location of the Facility to determine if they are hazardous, in violation of OAC rule 3745-52-11. Respondent failed to adequately characterize all the waste found at the Bloom Road location in accordance with OAC rule 3745-52-11 and the methods referenced by the rule;
 - c. Failed to label all containers of hazardous waste at the Bloom Road location of the Facility with the words "hazardous waste" in violation of OAC rule 3745-52-34(A)(3);
 - d. Failed to label containers of hazardous waste at the Bloom Road location of the Facility with the accumulation start date, in violation of OAC rule 3745-52-34(A)(2);

- e. Failed to conduct and document weekly inspections of the container storage area at the Bloom Road location of the Facility, in violation of OAC rule 3745-66-74; and
 - f. Failed to operate and maintain the Bloom Road location of the Facility in a manner that minimizes any unplanned sudden or non-sudden release of hazardous waste constituents to air, soil, or surface water which could threaten human health or the environment, in violation of OAC rule 3745-65-31.
10. By letter dated August 23, 2010, Ohio EPA notified Respondent of the violations referenced in Finding No. 9. of these Orders.
11. By letter dated September 27, 2010, Respondent submitted information regarding the violations referenced in Finding No. 9. of these Orders as well as articulated their position regarding the regulatory status of the drums referenced in Finding No. 9.a. of these Orders. This submittal included changes to waste management procedures, confirmatory lab results for some of the wastes, MSDS for an adhesive, an affidavit that the tote and wooden tank were empty when removed from the property, and photographs of the locked cage that the drums were being stored in.
12. By letter dated February 8, 2011, Ohio EPA sent Respondent additional information regarding the violations referenced in Finding No. 9. of these Orders. This letter acknowledged the information Respondent provided as referenced in Finding No. 11. of these Orders, and expressed Ohio EPA's concerns with the methods used to sample the wastes.
13. By letter dated March 15, 2011, Respondent restated its position from its September 27, 2010, letter but did submit additional information regarding the violations referenced in Finding No. 9 of these Orders. This submittal included documentation showing the empty and non-hazardous waste drums were properly disposed of, a bill of lading to move the hazardous waste drums to the North Fifth Street plant, a photograph of these drums, a property inspection form, certification statements from the receiving facility, and inspection logs.
14. By letter dated May 11, 2011, Ohio EPA notified Respondent that the violations referenced in Findings Nos. 9.c., 9.e., and 9.f. of these Orders were abated. This letter also notified Respondent that Ohio EPA has determined that Respondent, *inter alia*:

- a. Established and operated a hazardous waste storage facility at the North Fifth Street plant hazardous waste accumulation area of the Facility in violation of ORC § 3734.02 (E) and (F). Respondent received from off-site the hazardous waste which had been previously stored at the Bloom Road location. This hazardous waste was transported via North Ohio Avenue, a public right of way, to the North Fifth Street plant hazardous waste accumulation area of the Facility;
 - b. Failed to comply with the hazardous waste manifest requirements in violation of OAC rule 3745-52-20 (A); and
 - c. Failed to complete a land disposal restriction notice in violation of OAC rule 3745-270-07 (A)(2).
15. By letter dated June 14, 2011, Respondent submitted a hazardous waste manifest for the drums, and analytical results for these drums in response to the violations referenced in Findings Nos. 9. and 14. of these Orders.
16. By letter dated August 10, 2011, Ohio EPA notified Respondent that the violations referenced in Findings Nos. 9.b., 9.d., 14.b., and 14.c. of these Orders are resolved. This letter also notified Respondent that Ohio EPA determined that Respondent caused the transportation of hazardous waste to an unauthorized facility, in violation of ORC § 3734.02 (F), by transporting the hazardous waste from the Bloom Road location to the North Fifth Plant location of the Facility. Additionally, the Director has determined no further action is required with regard to this violation.
17. Due to Respondent's establishment and operation of hazardous waste storage facilities as described in Findings Nos. 9. and 14. 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 permits, 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 Plan for the Bloom Road location 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).
19. Because Respondent will continue to accumulate hazardous waste generated at the North Fifth Street plant in the hazardous waste accumulation area referenced in Finding No. 14.a. of these Orders, and because no releases of hazardous waste were observed at the Facility, the Director has determined that no additional action is required of Respondent regarding the ORC § 3734.02(E) and (F) violation for the storage of hazardous waste at the North Fifth Street plant referenced in Finding No. 14.a. of these Orders at this time.

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. The Respondent is hereby exempted from the requirement to submit an application for a hazardous waste facility installation and operation permit for the Bloom Road location at the Facility, *provided that* Respondent complies with the following:
 - a. Within 60 days after the effective date of these Orders, Respondent shall submit to Ohio EPA a Closure Plan for the identified hazardous waste storage area referenced in Finding No. 9.a. of these Orders.
 - b. 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;

- c. The Closure Plan is subject to approval by Ohio EPA. If Ohio EPA does not approve the Closure Plan referenced in Order No. 1.a., and provides Respondent with a written statement of deficiencies, Respondent 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;
 - d. Upon Ohio EPA approval of the Closure Plan, Respondent 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;
 - e. Within 90 days after Ohio EPA's approval of the Closure Plan pursuant to Order No. 1.a., above, Respondent shall submit a closure cost estimate and documentation demonstrating that Respondent has 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
 - f. Within 60 days after completion of closure, Respondent shall submit certification of closure to Ohio EPA in accordance with OAC rule 3745-55-15. Closure certification of the area described in Order No. 1.a. will abate the violations referenced in Finding No. 9.a. of these Orders.
2. Respondent shall pay Ohio EPA the amount of \$29,000.00 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 \$23,200.00 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 \$23,200.00. 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 \$5,800.00 of civil penalty to Ohio EPA, Respondent shall fund a supplemental environmental project (SEP) by making a contribution in the amount of \$5,800.00 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 \$5,800.00. 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 , Manager, Compliance and Enforcement Section, , Ohio EPA, Division of Air Pollution Control, P.O. Box 1049, Columbus, Ohio 43216-1049.
- c. Should Respondent fail to fund 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 \$5,800.00 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 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 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
Northwest District Office
Division of Materials and Waste Management
347 N. Dunbridge Road
Bowling Green, Ohio 43402
Attn: DMWM Manager

and Ohio EPA Central Office at the following address:

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 reserves its rights to exercise its lawful authority to require Respondent to perform closure of the hazardous waste accumulation area at the North Fifth Street plant 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, including Respondent's implementation of the Closure Plan, 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 rights to seek closure of the hazardous waste accumulation area at the North Fifth Street Plant and corrective action at the Facility, which rights 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



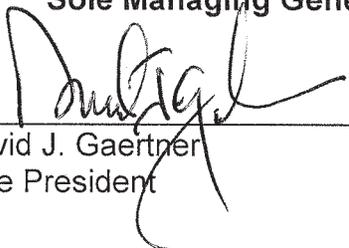
Scott J. Nally
Director

September 4, 2012

Date

IT IS SO AGREED:

H. J. Heinz Company, L.P.
By: Heinz GP LLC
Sole Managing General Partner



David J. Gaertner
Vice President

8/21/12

Date