OHIO E.P.A.

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**BEFORE THE**
**OHIO ENVIRONMENTAL PROTECTION AGENCY**

**In the Matter of:**

**Lamps, Inc.**
**d.b.a. Environmental Recycling, Inc.**
527 East Woodland Circle
Bowling Green, Ohio 43402

**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 Lamps, Inc. d.b.a. Environmental Recycling, Inc. (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 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 there under.

## IV. FINDINGS

The Director of Ohio EPA has determined the following findings:

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: 4-23-12

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 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 OAC rule 3745-50-10(A).

3. Respondent operates a hazardous waste storage facility located at 527 East Woodland Circle, Bowling Green, Wood County, Ohio for purposes of recycling universal waste, e.g., mercury containing devices such as fluorescent lamps (Facility). In addition to these activities, Respondent is a used oil generator, transporter, transfer facility and processor at the Facility.

4. Respondent notified Ohio EPA of its hazardous waste activities at the Facility and was issued a U.S. EPA identification number OHR000034025. Respondent was issued a hazardous waste facility installation and operation permit on May 27, 2008.

5. Respondent manages "hazardous waste" and "used oil" as those terms are defined by ORC § 3734.01, and OAC rules 3745-50-10(A), 3745-51-03 and 3745-279-01.

6. As described in OAC rule 3745-279-10(B), used oil containing more than one thousand parts per million total halogens is presumed to be a hazardous waste because it has been mixed with halogenated hazardous waste listed in OAC rules 3745-51-30 to 3745-51-35.

7. On February 3, 2010, Respondent transported thirty-seven (37) fifty-five (55) gallon containers from a facility in Michigan to Respondent's Facility. The material in the containers was identified as used oil. Respondent placed the contents of the thirty-seven containers into Respondent's two (2) indoor used oil storage tanks, labeled numbers 3 and 7. The total amount of material stored in the two tanks totaled approximately 6,500 gallons. The material was stored in these tanks for twenty-seven (27) days.

8. On March 2, 2010, Respondent transported the material stored in the tanks at

the Facility to a used oil processor, Fauste Oil Services Inc. (Fauste), in Kentucky. When Fauste received the material identified as used oil from Respondent, Fauste tested the material to determine the halogen content. Fauste's test revealed the material contained halogen concentrations at levels greater than one thousand parts per million, therefore presuming the material to be a listed hazardous waste. Fauste is not an authorized facility to manage hazardous waste. On March 11, 2010, Fauste rejected the hazardous waste back to Respondent's Facility.

9. On March 11, 2010, Respondent received the hazardous waste from Fauste and placed the hazardous waste back into tanks numbered 3 and 7 at the Facility. Respondent reviewed the profile and analytical results from Fauste regarding the material that was received at the Facility on February 3, 2010, from the Michigan facility, referenced in Finding No. 7. of these Orders. From this review, Respondent determined the material identified as used oil was actually listed hazardous waste, F002, as described in OAC rule 3745-51-31. Respondent stored the hazardous waste received back from Fauste at the Facility until March 25, 2010, at which time all hazardous waste stored in tanks numbered 3 and 7 was transported to an authorized hazardous waste facility. The hazardous waste was stored for an additional fourteen (14) days in tanks numbered 3 and 7 after being received back from Fauste.

10. After Respondent removed the hazardous waste from tanks numbered 3 and 7 at the Facility, Respondent removed tanks numbered 3 and 7 from service until cleaning and confirmation sampling of the tanks demonstrated that the tanks no longer contained listed hazardous waste.

11. On April 7, April 14, and April 21, 2011, Ohio EPA conducted a compliance evaluation inspection at the Facility. As a result of this inspection, Ohio EPA learned of the activities which took place described in Findings Nos. 7., 8., and 9. of these Orders. Based on this information, Ohio EPA determined Respondent, *inter alia;*

    a. Established and operated a hazardous waste storage facility without a hazardous waste installation and operation permit, in violation of ORC § 3734.02(E) and (F). As described in Findings Nos. 7. and 9. of these Orders, Respondent received from off-site and stored F002 hazardous waste for a total of forty-one (41) days in tanks numbered 3 and 7 at the Facility;

    b. Transported or caused the unlawful transportation of hazardous waste to an unauthorized facility in violation of ORC § 3734.02(F). As described in

Findings Nos. 7., 8., and 9. of these Orders, Respondent transported the hazardous waste from the Michigan facility to Respondent's Facility and from Respondent's Facility to a used oil processor in Kentucky, both facilities are not authorized to receive hazardous waste;

c. Failed to report to the Director any instances of non-compliance, in violation of ORC § 3734.11(B) and Permit Conditions A.5. and A.22. Respondent failed to notify the Director that Respondent had stored hazardous waste at its Facility without authorization under Respondent's hazardous waste installation and operation permit;

d. Failed to comply with the hazardous waste tank system requirements, in violation OAC rules 3745-55-91 through 3745-55-99. Respondent stored hazardous waste in tanks numbered 3 and 7 without complying with the hazardous waste tank system requirements;

e. Failed to determine whether the total halogen content of the used oil was above or below one thousand parts per million (ppm) as required for used oil transporters and processors, in violation of OAC rules 3745-279-44(A) and 3745-279-53(A). Respondent failed to determine if what was ultimately determined to be hazardous waste contained total halogens above or below one thousand (ppm) either as a used oil transporter or as a used oil processor. Had Respondent tested the contents to be shipped to Respondent's Facility, Respondent would have determined the contents contained total halogens greater than one thousand ppm and would have known to presume the material a hazardous waste;

f. Failed to comply with the manifest requirements, in violation of OAC rule 3745-52-20(A) and Permit Condition B.24.;

g. Failed to file an unmanifested waste report to the Director, in violation of OAC rule 3745-54-76(A); and

h. Failed to comply with land disposal restriction treatment determination and notification requirements, in violation of OAC rules 3745-270-07(A)(1) and 3745-270-07(A)(2).

12. In correspondence dated June 23, 2011, Ohio EPA notified Respondent of the violations referenced in Finding No. 11. of these Orders. Additionally in the correspondence, Ohio EPA either acknowledged Respondent had abated or did not require any further action for violations referenced in Findings Nos. 11.e., 11.f., 11.g., and 11.h. of these Orders.

13. In correspondence dated July 20, 2011, and July 21, 2011, Respondent provided additional information regarding the hazardous waste shipment to Respondent's Facility. Respondent explained the original generator of the hazardous waste had mistakenly switched containers of hazardous waste with used oil. Respondent further described the cleaning of the tanks at the Facility. Respondent described tanks numbered 3 and 7, which stored the hazardous waste, were tripled rinsed on three separate occasions and provided analytical results of samples taken of the final two rinses to Ohio EPA. Additionally, Respondent acknowledged the requirement of reporting noncompliance events which occur at the Facility to the Director of Ohio EPA.

14. In correspondence dated October 3, 2011, Ohio EPA notified Respondent the violations referenced in Findings Nos. 11.c. and 11.d. of these Orders were abated.

15. Due to Respondent's establishment and operation of a hazardous waste storage facility as described in Findings Nos. 7., 8., and 9. of these Orders, Respondent is required to a have 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.

16. The Director has determined that based upon: 1) the removal of the hazardous waste from tanks numbered 3 and 7 as referenced in Finding No. 9. of these Orders; 2) the analytical results of the rinseate samples from the tanks numbered 3 and 7 at the Facility as referenced in Finding No. 10.; 3) no evidence of any releases from these tanks occurred; and 4) that the Respondent will continue to use these tanks for storage of used oil in compliance with OAC Chapter 3745-279, no further removal or decontamination of these tanks is warranted. The Director has determined the substantive requirements of the closure performance standard pursuant to OAC rule 3745-55-11 has been achieved.

17. The submittal of a closure certification which documents/describes how the Respondent achieved the closure performance standard as set forth in OAC rule 3745-55-11 with regard to the removal and decontamination activities which took place to tanks numbered 3 and 7, as referenced in Findings Nos. 10. and 13. of

these Orders, in lieu of the submittal of an application for a hazardous waste facility installation and operation permit, 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, 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 and a closure plan, provided that Respondent, within 30 days after the effective date of these Orders, submits a closure certification for tanks numbered 3 and 7 as described in Finding No. 17. of these Orders. The closure certification shall comply with OAC rule 3745-55-15, including the certification statement found in OAC rule 3745-50-42(D)(1).

2. Respondent shall pay Ohio EPA the amount of $30,000.00 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 $24,000.00 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 $24,000.00. 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 the Respondent and the Facility. 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 Supervisor,

Processing/Records Management Unit, Ohio EPA, Division of Materials and Waste Management, P.O. Box 1049, Columbus, Ohio 43216-1049.

b. In lieu of paying the remaining $6,000.00 of civil penalty to Ohio EPA, Respondent shall fund a supplemental environmental project (SEP) by making a contribution in the amount of $6,000.00 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 $6,000.00. 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 additional copies 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 and Supervisor, Processing/Records Management Unit, Ohio EPA, Division of Materials and Waste Management, 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 $6,000.00 in accordance with the procedures in Order No. 2.a.

## VI. TERMINATION

Respondent may request termination of these Orders 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 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 North 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 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, and in lieu of further enforcement action by Ohio EPA for only the violations specifically cited in these Orders, 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**

Scott J. Nally
Director

April 23, 2012
Date

**IT IS SO AGREED:**

**Lamps, Inc. dba Environmental Recycling, Inc.**

Signature

4/10/12
Date

Paul Cottrell
Printed or Typed Name

President
Title