State of Ohio Environmental Protection Agency

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P.O. Box 1049
Columbus, OH 43216-1049

CERTIFIED MAIL

October 8, 2009

Re: Director's Final Findings & Orders
Zaclon, LLC
US EPA ID No.: OHD 004 184 768

Mr. James B. Krimmel
President
Zaclon, LLC
2981 Independence Road
Cleveland, Ohio 44115

Mr. J.T. Turgeon
Chairman
Independence Land Development Company
325 Euclid Avenue #110
Cleveland, Ohio 44115

Dear Sirs:

Here are the Director's Final Findings and Orders (Orders) issued to Zaclon, LLC and Independence Land Development Company on October 8, 2009. These Orders are effective today.

Enclosed are invoices for the penalty payments required by Order No. 2.a. thru 2.l. and Order No. 3.a. thru 3.l. Please remember your first payments are due no later than November 7, 2009.

If you have any questions concerning compliance with these Orders, do not hesitate to contact Natalie Oryshkewych at (330) 425-9171.

Sincerely,

Harry E. Sarvis, Manager
Compliance and Assurance Section
Division of Hazardous Waste Management

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c: Michael A. Savage, Chief, DHWM
Todd Anderson, Legal
Heidi Greismer, PIC
Natalie Oryshkewych, Mgr., DHWM, NEDO
Christopher Jones, Attorney at Law, Calfee, Halter & Griswold LLP

OHIO E.P.A.
OCT -8 2009
ENTERED DIRECTOR'S JOURNAL

BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

Zaclon, LLC
2981 Independence Road
Cleveland, OH 44115

and

Independence Land Development Company
325 Euclid Avenue #110
Cleveland, Ohio 44115

Respondents

Director's Final Findings and Orders

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: _____ Date: 10-8-09

PREAMBLE

It is agreed by the parties hereto as follows:

I. JURISDICTION

These Director's Final Findings and Orders (Orders) are issued to Zaclon, LLC. (Respondent Zaclon) and Independence Land Development Company (Respondent Independence) 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 had determined the following findings:

1. Respondent Zaclon and Respondent Independence are each a "person" as defined in ORC § 3734.01(G) and Ohio Administrative Code (OAC) rule 3745-50-10(A).

2. Respondent Zaclon operates a speciality and basic chemical manufacturing facility located at 2981 Independence Road, Cleveland, OH 44115 (Facility). Respondent Independence owns the Facility.

3. Respondent Zaclon notified Ohio EPA of its hazardous waste, universal waste, and used oil activities and was issued generator identification number OHD004184768.

4. On September 29, 2004 and October 14, 2005, the United States Environmental Protection Agency (U.S. EPA) informed the Respondents, through proposed complaints, that hazardous waste had been unlawfully managed at the Facility. In the proposed complaints, the U.S. EPA alleged that Respondent Zaclon and Respondent Independence were unlawfully managing hazardous waste at the Facility as generally described in Finding Nos. 5.a.i., and 5.a.ii. of these Orders. On November 3, 2005, U.S. EPA's Chief Administrative Law Judge ruled that Respondent Zaclon had failed to recycle 75 percent of the sash and baghouse dust accumulated at the beginning of each of the six years preceding 2002, therefore had unlawfully stored hazardous waste as described in Findings Nos 5.a.i. and 5.a.ii. of these Orders.

5. On August 10, 11, and 12, 2005, Ohio EPA conducted a compliance inspection at the Facility. As a result of the inspection, Ohio EPA determined that Respondent Zaclon had, *inter alia*:

   a. Established an unpermitted hazardous waste facility, in violation of ORC § 3734.02(E) and (F), through its mismanagement at the Facility of hazardous wastes. Specifically, Respondent Zaclon:

      i. stored hazardous waste in a pile on the ground located outside Building 24 (SASH Pile) since 1987;
      ii. stored hazardous waste baghouse dust outside Building 24on a ledge (East Pad) near the SASH Pile; and
      iii. stored hazardous waste brass and rolling mill fines in Building 39. The brass fines were received in the mid 1990's and were involved in a fire at the Facility on June 19, 2005. After the fire the brass fines

were moved outside prior to management off-site.

b. Failed to adequately evaluate wastes generated at the Facility to determine if the wastes were hazardous wastes, in violation of OAC rule 3745-52-11;

c. Failed to obtain a U.S. EPA identification number when Respondent Zaclon became the generator of hazardous waste at the site, in violation of OAC rule 3745-52-12;

d. Failed to complete all required portions of the hazardous waste generator annual report, in violation of OAC rule 3745-52-41(A)(5);

e. Failed to retain or maintain personnel training records, in violation of OAC rule 3745-65-16(D);

f. Failed to include its contingency plan implementation as part of the hazardous waste management personnel training program, in violation of OAC rule 3745-65-16(A)(2);

g. Failed to maintain, distribute and implement a contingency plan, in violation of OAC rules 3745-65-51 through 3745-65-53;

h. Failed to maintain and operate the Facility to minimize the possibility of a fire, explosion or unplanned release, in violation of OAC rules 3745-65-31.

i. Failed to maintain decontamination/emergency equipment in the hazardous waste accumulation areas, in violation of OAC rule 3745-65-32;

j. Failed to maintain a emergency equipment log associated with the hazardous waste accumulation areas, in violation of OAC rule 3745-65-33;

k. Failed to label and date containers of hazardous waste, in violation of OAC rule 3745-52-34(A) and (C);

l. Failed to keep containers of hazardous waste closed, in violation of OAC rule 3745-66-73(A);

m. Failed to label used oil containers with words "Used Oil," in violation of OAC rule 3745-279-22;

n. Failed to manage universal waste in closed containers, in violation of OAC rule 3745-273-13(D)(1);

o. Failed to demonstrate the length of time universal waste was managed on-

site, in violation of OAC rule 3745-273-15(C);

p. Failed to label universal waste containers appropriately, in violation of OAC rule 3745-273-14(E);

q. Failed to provide training to personnel for universal waste management, in violation of OAC rule 3745-273-16; and

r. Failed to comply with Land Disposal Restrictions requirements, in violation of OAC rule 3745-270-07(A);

6. By letter dated November 14, 2005, Ohio EPA notified Respondent Zaclon of the violations referenced in Finding Nos 5.a. through 5.r. of these Orders.

7. In correspondence dated December 16, 2005, Respondent Zaclon provided responses to Ohio EPA's November 14, 2005 letter.

8. In a letter dated March 17, 2006, Ohio EPA notified Respondent Zaclon that it had abated the violations referenced in Findings 5.b. (in part) through 5.e. and 5.h. through 5.q. (in part) of these Orders. Additionally, in the March 17, 2006 letter, Ohio EPA notified Respondent Zaclon that it had failed to evaluate two other wastes at the Facility, in violation of OAC rule 3745-52-11.

9. In correspondence dated April 28, 2005, Respondent Zaclon provided responses to Ohio EPA's November 14, 2005 and March 17, 2006 letters.

10. In a letter dated October 23, 2006, Ohio EPA notified Respondent Zaclon that it had established an unpermitted hazardous waste storage facility, in violation of ORC § 3734.02(E) and (F), through its storage of 14 containers containing either ignitable (D001) or corrosive (D002) hazardous waste behind Building 25, some of which had been stored at the Facility for approximately 5 years. In addition, Respondent Zaclon was informed that it had either abated or partially abated the violations referenced in Finding Nos. 5.b. and 5.g.

11. In addition to the violations referenced in Finding Nos. 5. and 10. of these Orders, the Director has determined that Respondent Zaclon stored hazardous waste in Building 13, in violation of ORC § 3734.02(E) and (F). On June 14, 2006, Respondent Zaclon shipped the hazardous waste off-site to a hazardous waste facility.

12. Respondent Zaclon operated hazardous waste accumulation areas which are subject to the generator closure requirements per OAC rule 3745-52-34 including, but not limited to, Roll-off Box area under Building 39, heavy metal sludge accumulation area just south of the SASH pad, debris roll-off area for SASH pad debris, and accelerator hazardous waste drum accumulation area in northeast

corner of Building 14.

13. On April 16, 2009, Respondent Zaclon submitted results from implementation of a sampling plan. The sampling results generally demonstrate that there is wide spread contamination at the Facility which impacts the soils and the ground water at the Facility. Due to Facility-wide ground water contamination, remediation of the ground water at the Facility is better suited for a Facility wide clean up (e.g., Voluntary Action Program, RCRA corrective action) rather than by a unit specific clean up approach as specified per OAC rule 3745-55-11.

14. Due to the establishment and operation of an unpermitted hazardous waste facility as described in Finding Nos. 5., 10. and 11. of these Orders, Respondents 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.

15. The submittal of a Closure Plan(s) which comply with the administrative requirements of OAC Chapters 3745-65 and 66 and the substantial requirements of OAC Chapters 3745-54 and 55 in lieu of 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 installation and operation permit for the Facility is unlikely to adversely affect the public health or safety or the environment with 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. The 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(s) for the unpermitted hazardous waste management units referred to in Finding Nos. 5.a., 10 and 11. 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, except for the groundwater protection program in accordance with OAC rules 3745-54-90 through 54-100 for reasons described in Finding No. 13 of these Orders. 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; The Closure Plan(s) shall be prepared in accordance with OAC rules 3745-55-11/3745-66-11 through 3745-55-20/3745-66-20.

b. The Closure Plan(s) is subject to approval by Ohio EPA. If Ohio EPA does not approve the Closure Plan(s) referenced in Order No. 1., and provides Respondents with a written statement of deficiencies, Respondents shall submit a revised Closure Plan(s) for approval addressing the deficiencies within 30 days of receiving such written statement. If Ohio EPA modifies the Closure Plan(s), the modified Closure Plan(s) becomes the approved plan.

c. Upon Ohio EPA approval of the Closure Plan(s), Respondents shall implement the approved Closure Plan(s) in the manner and pursuant to the time frames set forth in the approved Closure Plan(s) and OAC rules 3745-55-13.

d. Within 60 days after completion of closure, Respondents shall submit certification of closure to Ohio EPA in accordance with OAC rules 3745-55-15.

e. Within 30 days after the submittal of the Closure Plan(s) pursuant to Order No. 1., above, 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.

2. Respondents shall pay to Ohio EPA the amount of $72,350.00 in settlement of Ohio EPA's claims for civil penalties, which may be assessed pursuant to ORC Chapter 3734. $57,880.00 of this amount will be deposited into the hazardous waste cleanup fund established pursuant to ORC § 3734.28 in accordance with the following schedule:

a. Within 30 days after the effective date of these Orders, Respondents shall pay to Ohio EPA the amount of $4,823.33;

b. Within 60 days after the effective date of these Orders, Respondents shall pay to Ohio EPA the amount of $4,823.33;

c. Within 90 days after the effective date of these Orders, Respondents shall pay to Ohio EPA the amount of $4,823.33;

d. Within 120 days after the effective date of these Orders, Respondents shall pay to Ohio EPA the amount of $4,823.33;

e. Within 150 days after the effective date of these Orders, Respondents shall pay to Ohio EPA the amount of $4,823.33;

f. Within 180 days after the effective date of these Orders, Respondents shall pay to Ohio EPA the amount of $4,823.33;

g. Within 210 days after the effective date of these Orders, Respondents shall pay to Ohio EPA the amount of $$4,823.33;

h. Within 240 days after the effective date of these Orders, Respondents shall pay to Ohio EPA the amount of $4,823.33;

i. Within 270 days after the effective date of these Orders, Respondents shall pay to Ohio EPA the amount of $4,823.33

j. Within 300 days after the effective date of these Orders, Respondents shall pay to Ohio EPA the amount of $4,823.33;

k. Within 330 days after the effective date of these Orders, Respondents shall pay to Ohio EPA the amount of $4,823.33; and

l. Within 360 days after the effective date of these Orders, Respondents shall pay to Ohio EPA the amount of $4,823.37.

Each of the payments above shall be made by an official check made payable to "Treasurer, State of Ohio." The official checks 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 each check shall be submitted in accordance with Section X. of these Orders.

3. In lieu of paying $14,470.00 of civil penalty to Ohio EPA, Respondents shall fund a supplemental environmental project (SEP) by making a contribution in the amount of $14,470.00 to the Ohio EPA Clean Diesel School Bus Program (Fund 5CD). Respondents shall make payments in accordance with the following schedule:

a. Within 30 days after the effective date of these Orders, Respondents shall pay to Ohio EPA the amount of $1,205.83;

b. Within 60 days after the effective date of these Orders, Respondents shall pay to Ohio EPA the amount of $1,205.83;

c. Within 90 days after the effective date of these Orders, Respondents shall pay to Ohio EPA the amount of $1,205.83;

d. Within 120 days after the effective date of these Orders, Respondents shall pay to Ohio EPA the amount of $1,205.83;

e. Within 150 days after the effective date of these Orders, Respondents shall pay to Ohio EPA the amount of $1,205.83;

f. Within 180 days after the effective date of these Orders, Respondents shall pay to Ohio EPA the amount of $1,205.83;

g. Within 210 days after the effective date of these Orders, Respondents shall pay to Ohio EPA the amount of $1,205.83;

h. Within 240 days after the effective date of these Orders, Respondents shall pay to Ohio EPA the amount of $1,205.83;

i. Within 270 days after the effective date of these Orders, Respondents shall pay to Ohio EPA the amount of $1,205.83

j. Within 300 days after the effective date of these Orders, Respondents shall pay to Ohio EPA the amount of $1,205.83;

k. Within 330 days after the effective date of these Orders, Respondents shall pay to Ohio EPA the amount of $1,205.83; and

l. Within 360 days after the effective date of these Orders, Respondents shall pay to Ohio EPA the amount of $1,205.87.

Each of the payments shall be made by tendering an official check made payable to "Treasurer, State of Ohio". Each official check shall be submitted to Brenda Case, or her successor, Ohio EPA, Office of Fiscal Administration, P.O. Box 1049, Columbus, Ohio 43216-1049, together with a letter identifying Respondents. 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 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 Respondents fail to make a scheduled payment as described in Orders 3.a. through 3.l. of these Orders, Respondents 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 in Order No. 2. of these Orders. A copy of each 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 each Respondent. For purposes of these Orders, a responsible official is a corporate officer who is in charge of a principal business function of each 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 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:

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
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. TOLLING AGREEMENT (ORC § 3745.31)

Respondents agree that the time period between the effective date of these Orders and payment in full of the civil penalty settlement amount ($72,350) set out in Section V. of these Orders will not be included in computing the time periods under the statute of limitations set forth in ORC § 3745.31. Respondents agree not to assert, plead or raise in any fashion, in any such action hereafter initiated or maintained by the State of Ohio, whether by answer, motion or otherwise, any defense or avoidance based on (a) the running of the statute of limitations during the aforementioned period; or (b) laches or other principles concerning the timeliness of commencing a civil action based upon the failure of the State of Ohio to assert such claims during the aforementioned period; and the statute of limitations shall be tolled during and for such period.

XV. 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

OCT 08 2009
Date

IT IS SO AGREED:

Zaclon, LLC.

Signature

9/23/09
Date

James B. Krimmel
Printed or Typed Name

President
Title

Independence Land Development Company

Signature

9/23/09
Date

J T TURGEON IV
Printed or Typed Name

Chairman
Title