BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

20100 St. Clair Avenue, LLC
20100 St. Clair Avenue
Euclid, Ohio 44117

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 20100 St. Clair Avenue, LLC (Respondent) 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 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 thereunder.

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
2. Respondent is a "person" as defined in ORC § 3734.01(G) and Ohio Administrative Code (OAC) rule 3745-50-10(A).

3. The former Cleveland Trencher Company site is an abandoned manufacturing complex located at 20100 St. Clair Avenue, Euclid, Cuyahoga County, Ohio 44117 (Facility). When in operation, the Cleveland Trencher Company generated "hazardous waste" as that term is defined by ORC § 3734.01(J) and OAC rules 3745-50-10(A) and 3745-51-03.

4. In 2002, Cleveland Trencher entered into an agreement with the Joseph J. Piscazzi Revocable Trust (Trust) appointing Gary Thomas as trustee (Trustee) with the right to sell the Facility in the event Cleveland Trencher defaulted on a financial instrument securing a loan on the Facility. Cleveland Trencher defaulted and was evicted in 2006. Upon default, the Trust and Trustee became owner and operator of the Facility.

5. On March 6, 2008, Ohio EPA conducted a complaint inspection at the Facility and documented the presence of numerous containers with unknown contents. Ohio EPA later learned the containers contained paints, solvents and oils.

6. By letters dated April 2 and August 6, 2008, Ohio EPA notified the Trustee of the requirement to evaluate the wastes present at the Facility per OAC rule 3745-52-11 and properly manage them. The Trustee indicated he would not evaluate the wastes and would not undertake the proper management of the waste. However, the Trustee did move all of the containers to centralized locations, Container Area #1 and Container Area #2. Some of these containers were leaking and releasing their contents to the environment.

7. On March 5, 2009, Ohio EPA collected representative samples of the wastes at the Facility from Container Area #1, Container Area #2, and of the paint waste on the floor of the former paint booth area.

8. On April 16, 2009, Ohio EPA received the analytical results of the samples referenced in Finding No. 7. of these Orders. The results indicated that the samples were hazardous for ignitability (D001) as defined in OAC rule 3745-51-21, and toxicity for lead (D008) and methyl ethyl ketone (D035), as defined in OAC rule 3745-51-24.
9. As a result of the sample analyses referenced in Finding No. 8. of these Orders, the Facility was identified as an unpermitted hazardous waste storage and disposal facility in violation of ORC § 3734.02(E) and (F). Specifically, the containers sampled and found to be hazardous were stored in Container Area #1 and Container Area #2, establishing these areas, as well as the former paint booth area, as hazardous waste management units. Additionally, the containers found in Container Area #1 and Container Area #2 were moved there from various locations around the Facility, including a former drum storage pad. This former drum storage pad is also a hazardous waste management unit. All four hazardous waste management units are depicted in Attachment A, which is incorporated herein by reference.

10. By letter dated April 30, 2009, Ohio EPA notified the Trust and the Trustee of the violations referenced in Finding No. 9. of these Orders. This letter also notified the Trust and Trustee of the requirement to conduct closure of the unpermitted hazardous waste management units in accordance with OAC rules 3745-55-11 through 3745-55-20, and evaluate the remaining wastes at the Facility in accordance with OAC rule 3745-52-11.


12. On July 7, 2009, Ohio EPA referred the Former Cleveland Trencher Company, the Trust and Trustee to the Ohio Attorney General’s Office (AGO) for violations of ORC Chapters 3734 and 3704 and OAC Chapter 3745-20. The violations included, but are not limited to, establishing an unpermitted hazardous waste storage and disposal facility without a permit, in violation of ORC § 3734.02(E) and (F) as described in Finding No. 9. of these Orders.

13. On June 21, 2010, U.S. EPA issued a unilateral Administrative Order to the Cleveland Trencher Company, the Trust, Trustee, and others to conduct, inter alia, evaluation and removal activities of the remaining wastes at the Facility, and investigate and remove contaminated surface soil from leaking containers at the Facility.


16. The activities described in Findings Nos. 11. through 15. of these Orders do not fully meet the hazardous waste closure performance standard articulated in OAC
rules 3745-55-11 through 3745-55-20. And, therefore, closure of the areas at the Facility where hazardous waste was stored or disposed is still necessary.

17. On or about February 19, 2015, the Ohio Attorney General, on behalf of Ohio EPA, filed a complaint against The Cleveland Trencher Company, Gary L. Thomas, Joseph J. Piscazzi, and the Joseph J. Piscazzi Recoverable Living Trust U/A DTD Jan 07 1997 (collectively “Piscazzi”) (Case No. CV-15-840730). On or about September 22, 2016, the State of Ohio and Piscazzi settled and entered into a consent order.

18. Respondent’s implementation of the approved closure plan described in Order No. 1. of these Orders, at a minimum, constitutes Respondent’s overall responsibility for the hazardous waste facility established by Piscazzi and makes Respondent, at a minimum, an “operator” as defined in OAC rule 3745-50-10.

19. By letter dated February 7, 2019, Respondent notified Ohio EPA of its intention to enter into Ohio EPA’s Voluntary Action Program (Ohio VAP) for a Covenant Not to Sue pursuant to ORC Chapter 3746 to address releases of hazardous substances or petroleum which would include potential groundwater contamination under the Ohio VAP and comply with applicable standards to address releases under Ohio’s VAP.

20. Although not responsible for the initial illegal hazardous waste storage and disposal of the Facility, at a minimum, by virtue of Respondent’s activities as an operator of an unpermitted hazardous waste storage and disposal facility as described in Finding No. 9. of these Orders, the Director has determined that Respondent is required to have a hazardous waste facility installation and operation permit pursuant to ORC § 3734.02(E) and is subject to all general facility standards found in OAC Chapter 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.

21. The submittal of a Closure Plan for the areas at the Facility where hazardous waste was stored or disposed as described in Finding No. 9. of these Orders, in lieu of the submittal of an application for a hazardous waste facility installation and operation permit is acceptable and unlikely to adversely affect the public health or safety or the environment. The Closure Plan shall comply with the administrative requirements of OAC Chapters 3745-65 and 66 and the substantive requirements of OAC Chapters 3745-54 and 55. 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 is unlikely to adversely
affect the public health or safety or the environment within the meaning of ORC §
3734.02(G), provided Respondent meet the conditions set forth in the Orders.

V. ORDERS

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

1. Respondent is hereby exempted from the requirement to submit an application for
a hazardous waste facility installation and operation permit for the Facility,
provided that Respondent complies with the following;

   a. Within 180 days after the effective date of these Orders, Respondent shall
submit to Ohio EPA for review and approval a Closure Plan for areas at the
Facility where hazardous waste was managed as described in Finding No.
9. of these Orders and Attachment A. A copy of the Closure Plan shall be
submitted in accordance with Section X. of these Orders and an additional
copy submitted to Ohio EPA, Division of Environmental Response and
Revitalization, Manager, Engineering Section, P.O. Box 1049, Columbus,
Ohio 43216-1049;

   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, except for the groundwater protection
program pursuant to OAC rules 3745-54-90 through 3745-54-100, for
reasons described in Finding No. 19. of these Orders.

   c. The Closure Plan is subject to approval by Ohio EPA. If Ohio EPA does not
approve the Closure Plan and provides Respondent with a written
statement of deficiencies, Respondent shall submit a revised Closure Plan
for approval addressing the deficiencies within 45 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, 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;

   d. Within 180 days after approval of the Closure Plan pursuant to Order No.
1.a., 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

e. Within 60 days after completion of closure, Respondent shall submit
certification of closure to Ohio EPA in accordance with OAC rules 3745-55-15. Ohio EPA’s acceptance of the closure certification shall address the
closure obligation described in Finding No. 20. of these Orders.

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 the Chief of Ohio EPA’s Division of
Environmental Response and Revitalization 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  
Northeast District Office  
Division of Environmental Response and Revitalization  
2110 East Aurora Road  
Twinsburg, Ohio 44087  
Attn: DERR Manager, Hazardous Waste Program

and Ohio EPA Central Office at the following address:

For mailings, use the post office box number:

Manager, Hazardous Waste Compliance Assurance Section  
Ohio Environmental Protection Agency  
Lazarus Government Center  
Division of Environmental Response and Revitalization  
P.O. Box 1049  
Columbus, Ohio 43216-1049

For deliveries to the building:

Manager, Hazardous Waste Compliance Assurance Section  
Ohio Environmental Protection Agency  
Lazarus Government Center  
Division of Environmental Response and Revitalization  
50 West Town Street  
Columbus, Ohio 43215

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 groundwater investigation at the Facility in accordance with OAC rules 3745-54-90 through 3745-54-100 and OAC rule 3745-56-28 corrective action at the Facility, at some time in the future, pursuant to ORC Chapter 3734. or any other applicable law unless a no further action letter is issued by Ohio EPA in accordance with OAC rule 3745-300-13 on behalf of Respondent. Respondent reserves its rights to raise any administrative, legal or equitable claim or defense with respect to any final action of the Director regarding such groundwater investigation and remediation and 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. Nothing in these Orders shall be construed either to create any rights in or grant any cause of action to a person not a party to these Orders, or to release or waive any claim, cause of action, demand, or defense in law or equity that any person not a party to these Orders may have against Respondent.

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 right to require Respondent to perform groundwater investigation and remediation at the Facility in accordance with OAC rules 3745-54-90 through 3745-54-100 and OAC rule 3745-56-28 and seek corrective action at the Facility by Respondent in the event that a no further action letter is not issued and submitted to Ohio’s VAP in accordance with OAC rule 3745-300-13 on behalf of Respondent, which right 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

Laurie A. Stevenson
Director

IT IS SO AGREED:

20100 St. Clair Avenue, LLC

JOEL ROSENBERG
Printed or Typed Name

MEMBER
Title
Attachment A

Hazardous Waste Management Units