I. JURISDICTION

These Director’s Final Findings and Orders (Orders) are issued to Terrycorp, 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.

II. PARTIES BOUND

These Orders shall apply to and be binding upon Respondent and heirs 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. Respondent is a “person” as defined in ORC § 3734.01(G) and Ohio Administrative Code (OAC) rule 3745-50-10(A).

2. Respondent is an active corporation that owns real property located at 750 Albany Street, Dayton, Montgomery County, Ohio 45417 (Facility). Respondent operated the Facility as a waterproofing business until sometime in 2012.

3. At the Facility, Respondent abandoned “hazardous waste” as that term is defined
by ORC § 3734.01(J) and OAC rules 3745-50-10(A) and 3745-51-03. The hazardous wastes abandoned by Respondent at the Facility include D001 – ignitable waste and D002 – corrosive waste as described in OAC rules 3745-51-21 and 3745-51-22, respectively.

4. On April 11, April 20, and May 3, 2016, Ohio EPA conducted complaint investigations and compliance evaluation inspections at the Facility. Ohio EPA discovered approximately 81, 55-gallon drums, 230 containers ranging in size from 5-gallons or less, three 250-gallon totes, seven 330-gallon totes, and one 6,000-gallon tanker all containing uncharacterized waste. The containers were located both inside a building and outside, and some containers were releasing their contents onto the floor or into the soil. Respondent informed Ohio EPA that it filed for Chapter 7 bankruptcy in 2012 and operations at the Facility ceased at that time. All containers of product used during operations were abandoned at that time as well, classifying them as wastes. Ohio EPA informed Respondent of its obligation to ensure any wastes left from the business operations are evaluated and properly managed. Respondent has not evaluated any of these wastes, and is therefore in violation of OAC rule 3745-52-11.

5. By letter dated May 11, 2016, Ohio EPA notified Respondent of the violation of OAC rule 3745-52-11 referenced in Finding No. 4. of these Orders.

6. As of November 2016, Ohio EPA confirmed that on July 12, 2012, Respondent filed a petition for Chapter 7 bankruptcy. That petition was approved on June 24, 2015, with Respondent receiving a full discharge and liquidation.

7. On June 28, 2016, Ohio EPA conducted a follow-up inspection at the Facility with a representative of U.S. EPA to determine the applicability of a Time Critical Removal (TCR) of the wastes present.


9. Analytical results of the samples collected as referenced in Finding No. 8. of these Orders were received by Ohio EPA on August 9, 2016, and confirmed the presence of ignitable (D001) and corrosive (D002) hazardous wastes at the Facility.

10. By abandoning the Facility and its chemical contents at the end of the bankruptcy in 2012, Respondent generated hazardous waste in the amounts that exceeded, at a minimum, 100 kilograms for the calendar month and therefore is, at a minimum, a Small Quantity Generator (SQG), subject to the requirements found in OAC rules 3745-52-34(D) through (F). OAC rule 3745-52-34(F) provides that a
SQG who accumulates hazardous waste for greater than 180 days is an operator of a storage facility. Since Respondent has stored hazardous waste for greater than 180 days, Respondent has 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). Because ignitable and corrosive hazardous wastes were stored both inside the building as well as outside the building, both areas have been established as unpermitted hazardous waste management units.

11. By letter dated September 14, 2016, Ohio EPA notified Respondent of the violation referenced in Finding No. 10. of these Orders.

12. By letter dated November 10, 2016, Ohio EPA notified Respondent that the violation of OAC rule 3745-52-11 referenced in Finding No. 4. of these Orders remained outstanding, as well as the violation of ORC § 3734.02(E) and (F) referenced in Finding No. 10. of these Orders for storing hazardous waste at the Facility without a permit. Furthermore, this letter explained that in addition to the storage violation, the documented releases of hazardous waste to the environment constituted disposal of hazardous waste without a permit in both hazardous waste management units, which is an additional violation of ORC § 3734.02(E) and (F).

V. ORDERS

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

1. Within 30 days of the effective date of these Orders, Respondent shall submit documentation showing it has characterized all wastes pursuant to OAC rule 3745-52-11 and properly caused the off-site transportation of the hazardous wastes to an authorized facility. Approval of this documentation shall resolve the violation referenced in Finding No. 4. of these Orders.

2. Within 60 days after the effective date of these Orders, Respondent shall comply with the following:

   a) Respondent shall submit to Ohio EPA for review and approval a Closure Plan for the hazardous waste management units at the Facility where hazardous waste was managed as described in Findings No. 10. and 12. of these Orders. A copy of the Closure Plan shall be submitted in accordance with Section VIII. 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, 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 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. 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 30 days after approval of the Closure Plan pursuant to Order No. 2.c., 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 rule 3745-55-15. Ohio EPA’s acceptance of the closure certification shall abate the violations referenced in Findings Nos. 10. and 12. 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 Respondent.

VII. 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.

VIII. NOTICE

All documents required to be submitted by Respondent pursuant to these Orders shall be addressed to:

Ohio Environmental Protection Agency  
Southwest District Office  
Division of Environmental Response and Revitalization  
401 East Fifth Street  
Dayton, OH 45402  
Attn: Hazardous Waste Program Manager

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:
IX. RESERVATION OF RIGHTS

Nothing contained herein shall be construed to prevent Ohio EPA from seeking legal or equitable relief to enforce the terms of these Orders or from taking other administrative, legal or equitable action as deemed appropriate and necessary, including seeking corrective action at the Facility and penalties against Respondent for noncompliance with these Orders and/or for the violations described herein. Nothing contained herein shall be construed to prevent Ohio EPA from exercising its lawful authority to require Respondent to perform additional activities pursuant to ORC Chapter 3734, or any other applicable law in the future. Nothing herein shall restrict the right of Respondent to raise any administrative, legal or equitable claim or defense with respect to such further actions which Ohio EPA may seek to require of Respondent. Nothing in these Orders shall be construed to limit the authority of Ohio EPA to seek relief for violations not addressed in these Orders.

X. APPEAL RIGHTS

You are hereby notified that this action of the Director is final and may be appealed to the Environmental Review Appeals Commission pursuant to ORC § 3745.04. The appeal must be in writing and set forth the action complained of and the grounds upon which the appeal is based. The appeal must be filed with the Commission within thirty (30) days after notice of the Director's action. The appeal must be accompanied by a filing fee of $70.00, made payable to "Treasurer, State of Ohio," which the Commission, in its discretion, may reduce if by affidavit you demonstrate that payment of the full amount of the fee would cause extreme hardship. Notice of the filing of the appeal shall be filed with the Director within three (3) days of filing with the Commission. Ohio EPA requests that a copy of the appeal be served upon the Ohio Attorney General's Office, Environmental Enforcement Section. An appeal may be filed with the Environmental Review Appeals Commission at the following address:
XI. EFFECTIVE DATE

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

IT IS SO ORDERED:

Ohio Environmental Protection Agency

[Signature]
Craig W. Butler
Director