



John R. Kasich, Governor  
Mary Taylor, Lt. Governor  
Craig W. Butler, Director

February 9, 2015

Thomas Karet, CEO  
Echo Kingsdale, LLC  
701 Alpha Drive  
Pittsburgh, PA 15238

**Re: Echo Kingsdale, LLC  
DFFO  
Approval  
RCRA C - Hazardous Waste  
Franklin County  
OHR 000 156 604**

**Subject:** Final Findings and Orders of the Director

Dear Sir or Madam:

Transmitted herewith are the Final Findings and Orders of the Director concerning the matter indicated for Echo Kingsdale, LLC.

Enclosed are invoices for the total penalty amount of \$8,000.00 required by the orders. The penalty payment(s) shall be made by official check(s) made payable to "Treasurer, State of Ohio."

If you have any questions, please contact Todd Anderson at (614) 644-2840.

Sincerely,

A handwritten signature in black ink that reads "Demetria Crumiell-Hagens". The signature is written in a cursive, flowing style.

Demetria Crumiell-Hagens, Administrative Professional II  
Division of Materials & Waste Management

Enclosure

cc: Mitch Mathews, DMWM, CO  
Melissa Storch, DMWM, CDO  
Todd Anderson, Legal  
Erik Hagen, DERR, CO

BEFORE THE  
OHIO ENVIRONMENTAL PROTECTION AGENCY

OHIO E.P.A.  
FEB -9 2015

ENTERED DIRECTOR'S JOURNAL

In the Matter of:

Echo Kingsdale, LLC  
701 Alpha Drive  
Pittsburgh, PA 15238

Director's Final  
Findings and Orders

Respondent

PREAMBLE

It is agreed by the parties hereto as follows:

I. JURISDICTION

These Director's Final Findings and Orders (Orders) are issued to Echo Kingsdale, LLC (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

All the findings necessary for the issuance of these Orders pursuant to ORC §§ 3734.13 and 3745.01 have been made as outlined below. Nothing in the findings shall be considered an admission by the Respondent of any matter of fact or law. 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 a commercial shopping center located at 3120 Tremont Road, Upper Arlington, Franklin County, Ohio 43221 (Facility).
4. At the Facility, Respondent generated "hazardous waste" as that term is defined by ORC § 3734.01(J) and OAC rules 3745-50-10(A) and 3745-51-03. During the course of a voluntary environmental remedial project, Respondent generated hazardous waste in quantities greater than 1,000 kilograms of hazardous waste per calendar month. Respondent has been assigned EPA ID number OHR000156604. From this project, Respondent generated characteristic (D039) and listed (F002) hazardous waste, as described in OAC rules 3745-51-24 and 3745-51-31, as a result of the excavation of soils contaminated by releases from a former dry cleaner and other operations.
5. During a review of a No Further Action (NFA) letter submittal regarding a parcel of land being taken through Ohio's Voluntary Action Program by Respondent, Ohio EPA came to learn that in September 2009 an environmental consultant, working on behalf of the Respondent, conducted remedial activities in order to address contaminated soil "hotspots" which existed under the former commercial facilities, including a dry cleaner. As part of these remedial activities, contaminated soil was excavated from two (2) areas beneath the former dry cleaner and commercial facilities located at the Facility.
6. The contaminated soils were excavated and removed from the area of contamination and placed into a newly constructed non-contaminated area located under the parking lot at the Facility.
7. Upon learning of the activity referenced in Finding No. 6, Ohio EPA contacted Respondent regarding closure of the hazardous waste disposal unit pursuant to the hazardous waste regulations. During subsequent discussions, Ohio EPA and Respondent, with Respondent's new environmental consultant, discussed options to meet the closure performance standard and the administrative process in which Respondent would submit a closure plan for review and approval by the Director of Ohio EPA. Respondent, through its environmental consultant,

submitted a draft closure plan for Ohio EPA's review and comment.

8. As a result of a review of the information described in Finding No. 5. of these Orders and discussions with Respondent described in Finding No. 7. of these Orders, Ohio EPA determined the Respondent, *inter alia*, unlawfully established and operated a hazardous waste facility without a hazardous waste installation and operation permit, in violation of ORC § 3734.02(E) and (F). Specifically, Respondent established and operated a hazardous waste facility by excavating contaminated soils which exhibit a characteristic of a hazardous waste and contain a listed hazardous waste, as described in Finding No. 4. of these Orders, and by placing the contaminated soils into a newly excavated area.
9. By letter dated September 20, 2012, Respondent was notified of the violations referenced in Finding No. 8. of these Orders.
10. Due to the establishment and operation of a hazardous waste facility as described in Finding No. 8. 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 permit, Respondent is required to submit "Parts A and B" of the application in accordance with OAC Chapter 3745-50.
11. The submittal of a Closure Plan 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).

#### 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 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 area described in Finding No. 6. of these Orders. The Closure Plan shall be submitted to Ed Lim, Manager, Engineering Section, Division of Environmental Response and Revitalization at the Ohio EPA Central Office address specified in Section X. 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 60 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 violation referenced in Finding No. 9. of these Orders.
2. Respondent shall pay to Ohio EPA the amount of \$8,000.00 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 \$ 6,400.00 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 \$6,400.00. 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. A copy of the check shall be submitted in accordance with Section X. of these Orders, and an additional copy of this check shall be sent to Processing/Records Management Supervisor, Ohio EPA, Division of Materials and Waste Management, P.O. Box 1049, Columbus, Ohio 43216-1049.

- b. In lieu of paying the remaining \$1,600.00 of civil penalty to Ohio EPA, Respondent shall fund a supplemental environmental project (SEP) by making a contribution in the amount of \$1,600.00 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 \$1,600.00. 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 and the Facility. A copy of this check shall be sent to Ohio EPA Division of Materials and Waste Management, Supervisor, Processing Records Management Unit, P.O. Box 1049, Columbus, Ohio 43216-1049 and to Ohio EPA, Division of Air Pollution Control, Manager, Compliance and Enforcement Section, 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 \$1,600.00 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 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, exclusive of penalty checks, required to be submitted by Respondent pursuant to these Orders shall be addressed to:

Ohio Environmental Protection Agency  
Central District Office  
Division of Materials and Waste Management  
Lazarus Government Center  
P.O. Box 1049  
Columbus, Ohio 43216-1049  
Attn: DMWM Manager

and Ohio EPA Central Office at the following address:

For mailings, use the post office box number:

Enforcement Supervisor  
Ohio Environmental Protection Agency

Lazarus Government Center  
Division of Materials and Waste Management  
P.O. Box 1049  
Columbus, Ohio 43216-1049

For deliveries to the building:

Enforcement Supervisor  
Ohio Environmental Protection Agency  
Lazarus Government Center  
Division of Materials and Waste Management  
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 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 with respect to any final action of the Director regarding such 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 right to seek corrective action at the Facility by Respondent, which right Ohio EPA does not waive, compliance with these Orders shall be a full accord and satisfaction for Respondent's liability for only the violations specifically related to the contaminated soils placed in the newly constructed non-contaminated area located under the parking lot at the Facility.

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**



Craig W. Butler  
Director

FEB 09 2015

Date

**IT IS SO AGREED:**

**ECHO KINGSDALE, LLC, a Pennsylvania limited liability company**

By: ECHO Kingsdale Associates, LLC, a Pennsylvania limited liability company, its sole member; By: ECHO Portfolio I LLC, a Pennsylvania limited liability company, its sole member



Signature

Thomas Karet

Printed or Typed Name

Chief Executive Officer

Title

PAB  
FAR

4-25-14

Date

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