

OHIO E.P.A.

AUG 22 2006

ENTERED DIRECTOR'S JOURNAL

**BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY**

In the Matter of:

Champion Plating, Inc.
5200 Superior Avenue
Cleveland, Ohio 44103

**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 Champion Plating, 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 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. Respondent is a "person" as defined in ORC § 3734.01(G) and Ohio Administrative Code (OAC) rule 3745-50-10(A).
2. Respondent conducts electroplating activities, specifically zinc plating on carbon steel, and is located at 5200 Superior Avenue, Cleveland, Cuyahoga County, Ohio (Facility). Respondent notified Ohio EPA of its hazardous waste activities and was issued generator identification number OHD004154340.
3. At the Facility, Respondent generates "hazardous waste" as that term is defined by ORC § 3734.01(J) and OAC rules 3745-50-10(A) and 3745-51-03. Respondent currently operates as a conditionally exempt small quantity generator of hazardous waste, however, prior to approximately March, 2001, Respondent operated as a large quantity generator of hazardous waste and generated wastewater treatment sludge (F006). The waste currently generated by Respondent at the Facility includes universal waste spent fluorescent lamps.
4. On September 23, 2004, Ohio EPA conducted a compliance evaluation inspection at the Facility. During the inspection, Ohio EPA observed several containers storing unidentified waste and determined that Respondent had, *inter alia*, failed to determine whether wastes generated at the Facility were hazardous wastes, in violation of OAC rule 3745-52-11.
5. By letter dated October 22, 2004, Ohio EPA notified Respondent of the violation referenced in Finding No. 4 of these Orders.
6. In letters dated November 18, 2004, April 8, May 23, August 26, October 10, November 10, November 14, and December 5, 2005, Respondent provided documentation in response to Ohio EPA's September 23, 2004 compliance evaluation inspection.
7. By letters dated January 6, March 9, April 22, June 13, August 4, and September 12, 2005, Ohio EPA responded to Respondent's letters referenced in Finding No. 6 of these Orders and notified Respondent of the outstanding violation referenced in Finding No. 4 of these Orders.
8. On December 28, 2005, Ohio EPA conducted a follow-up site visit at the Facility. As a result of the follow-up site visit, Ohio EPA determined that, in

addition to remaining in violation of OAC rule 3745-52-11, as referenced in Finding No. 4 of these Orders, Respondent had, *inter alia*:

- a. Failed to manage universal waste in closed containers, in violation of OAC rule 3745-273-13(D)(1);
 - b. Failed to label or mark each lamp or container with the phrases, "Universal Waste - Lamps," "Waste Lamp(s)," or "Used Lamp(s)," in violation of OAC rule 3745-273-14(E);
 - c. Failed to ensure and document that universal waste is not accumulated on-site for greater than one year, in violation of OAC rules 3745-273-15(A) and 3745-273-15(C); and
 - d. Failed to inform employees at the Facility who handle or have responsibility for managing universal waste of the proper handling and emergency procedures appropriate for the type(s) of universal waste handled at the Facility, in violation of OAC rule 3745-273-16.
9. By letter dated January 13, 2006, Ohio EPA notified Respondent of the violations referenced in Finding Nos. 4 and 8.a. through 8.d. of these Orders.
 10. On February 16, 2006, Ohio EPA conducted a follow-up site visit at the Facility.
 11. In correspondence dated February 22, 2006, Respondent provided responses to Ohio EPA's letter dated February 16, 2006.
 12. Based upon the documentation contained in Respondent's correspondences, referenced in Finding Nos. 6 and 11 of these Orders, as well as information obtained during Ohio EPA's follow-up site visits at the Facility, referenced in Finding Nos. 8 and 10 of these Orders, Ohio EPA determined that the unidentified wastes, referenced in Finding No. 4 of these Orders, were generated while Respondent operated as a large quantity generator and were hazardous wastes, a portion of which had been stored on-site since approximately 1995 or 1996.
 13. By letter dated March 1, 2006, Ohio EPA notified Respondent that Respondent had, *inter alia*:
 - a. Established and operated a hazardous waste storage facility without a permit, in violation of ORC § 3734.02(E) & (F);

- b. Failed to ensure containers holding hazardous waste are closed when not adding or removing waste, in violation of OAC rules 3745-55-73(A)/3745-66-73(A);
- c. Failed to mark each container holding hazardous waste with the accumulation start date, in violation of OAC rule 3745-52-34(A)(2); and
- d. Failed to label containers holding hazardous waste with the words, "Hazardous Waste," in violation of OAC rule 3745-52-34(A)(3).

In addition, Ohio EPA notified Respondent that Respondent had abated the violations referenced in Finding Nos. 4, 8.a. through 8.d., and 13.b. through 13.d. of these Orders.

- 14. Based upon the documentation submitted by Respondent, Ohio EPA's observations during the compliance evaluation inspection and subsequent follow-up site visits, and Respondent's ongoing obligation to perform generator closure of the less than 90 day storage area operated while Respondent was a large quantity generator of hazardous waste, the Director has determined that no additional action is required of Respondent at this time regarding the ORC § 3734.02(E) & (F) violation referenced in Finding No. 13.a. of these Orders.
- 15. Based upon a review of Respondent's financial information, Ohio EPA determined that Respondent does not possess the financial ability to pay the entire civil penalty settlement as proposed in the Director's June 16, 2006 letter.

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 shall pay Ohio EPA the amount of \$7,500.00 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 \$6,000.00 in settlement of Ohio EPA's claims for civil penalties 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 \$6,000.00. 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 Respondent. A copy of this check shall be submitted in accordance with Section X. of these Orders.

- b. In lieu of paying the remaining \$1,500.00 of civil penalty to Ohio EPA, Respondent shall fund a supplemental environmental project (SEP) by making a contribution in the amount of \$1,500.00 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 \$1,500.00. 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 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.
- c. Should Respondent fail to fund the SEP within the required time frame established in Order No. 1.b., Respondent shall pay to Ohio EPA, within 7 days after failing to comply with Order No. 1.b., the amount of \$1,500.00 in accordance with the procedures in Order No. 1.a.

VI. TERMINATION

Respondent's obligations under these Orders shall terminate upon Ohio EPA's receipt of the official checks required by Section V. of these Orders.

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 Hazardous Waste Management
2110 E. Aurora Road
Twinsburg, Ohio 44087
Attn: DHWM Manager

and Ohio EPA Central Office at the following address:

For mailings, use the post office box number:

Joseph P. Koncelik, 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:

Joseph P. Koncelik, 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 Respondent to perform closure of hazardous waste units at the Facility, as well as corrective action at the Facility, 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 closure or 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 rights to seek closure of hazardous waste units and corrective action at the Facility by Respondent, which rights 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

