

OHIO E.P.A.

AUG 10 2006

ENTERED DIRECTOR'S JOURNAL

**BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY**

In the Matter of:

**The Sherwin-Williams Company
dba General Polymers
145 Caldwell Drive
Cincinnati, Ohio 45216**

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 The Sherwin-Williams Company dba General Polymers (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.

I certify this to be a true and accurate copy of the
official document as filed in the records of the Ohio
Environmental Protection Agency

By: _____ Date: _____

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 Respondent of any matter of law or fact. 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 operates as a manufacturer of high quality seamless floor and wall systems at 145 Caldwell Drive, Cincinnati, Hamilton County, Ohio (Facility). Respondent notified Ohio EPA of its hazardous waste activities and was issued generator identification number OHD157370594.
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 is a large quantity generator of hazardous waste. The hazardous waste generated by Respondent at the Facility includes spent solvents (D001, D035, F003, F005), off-specification materials or products (D001, D018, U069) and universal waste .
4. On May 18, 2005, Ohio EPA conducted a compliance evaluation inspection at the Facility. As a result of the inspection, Ohio EPA determined that Respondent had, *inter alia*:
 - a. Established and operated a hazardous waste storage facility without obtaining a permit by storing hazardous waste for fourteen days in excess of the 90-day accumulation period on one occasion, in violation of ORC § 3734.02(E) and (F);
 - b. Failed to include instructions on the implementation of the hazardous waste contingency plan in the hazardous waste management training provided to employees at the Facility, in violation of OAC rules 3745-54-16(A)(2)/3745-65-16(A)(2);
 - c. Failed to provide annual hazardous waste management training to employees at the Facility that handle and/or manage hazardous waste during the calendar year 2004, as well as two employees listed as emergency coordinator in the hazardous waste contingency plan during calendar years 2003 and 2004, in violation of OAC rules 3745-54-16(C)/3745-65-16(C);

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- d. Failed to maintain written job titles and descriptions of employees at the Facility that handle and/or manage hazardous waste, in violation of OAC rules 3745-54-16(D)(1) and (2)/3745-65-16(D)(1) and (2);
- e. Failed to include the appropriate addresses of all employees at the Facility qualified to act as emergency coordinator, in violation of OAC rules 3745-54-52(D)/3745-65-52(D);
- f. Failed to include the location and brief outline of the capabilities of emergency equipment in the hazardous waste contingency plan at the Facility, in violation of OAC rules 3745-54-52(E)/3745-65-52(E);
- g. Failed to conduct and document inspections of spill control and other emergency equipment at the Facility, in violation of OAC rules 3745-54-33/3745-65-33;
- h. Failed to provide copies of the hazardous waste contingency plan to all local authorities that may respond to an emergency at the Facility, in violation of OAC rules 3745-54-53/3745-65-53;
- i. Failed to determine whether solvent-contaminated waste rags generated at the Facility are hazardous wastes, in violation of OAC rule 3745-52-11;
- j. Failed to mark three hazardous waste storage containers with the accumulation start date, in violation of OAC rule 3745-52-34(A)(2);
- k. Failed to conduct and document weekly inspections of all areas at the Facility where hazardous wastes are stored, in violation of OAC rules 3745-55-74/3745-66-74;
- l. Failed to keep a hazardous waste accumulation container closed when not adding or removing waste and failed to mark a hazardous waste accumulation container with the words, "Hazardous Waste," or other words to identify the contents, in violation of OAC rules 3745-52-34(C)(1)(a) and (b);
- m. Failed to properly complete land disposal restriction notification forms to include the appropriate manifest number, treatability group, and underlying hazardous constituents for off-site shipments of hazardous waste, in violation of OAC rules 3745-270-07(A)(2) and 3745-270-09(A);

- n. Failed to label or mark a container holding used oil with the words, "Used Oil," in violation of OAC rule 3745-279-22(C)(1);
 - o. Failed to label or mark containers of universal waste lamps with the words, "Universal Waste-Lamps," or "Waste Lamps," or "Used Lamps," in violation of OAC rule 3745-273-14(E); and
 - p. Failed to document the length of time that universal waste was stored on-site, in violation of OAC rule 3745-273-15(C).
5. By letter dated June 1, 2005, Ohio EPA notified Respondent of the violations referenced in Finding Nos. 4.a. through 4.p. of these Orders.
 6. In correspondence dated June 30, 2005, Respondent provided responses to Ohio EPA's June 1, 2005 letter.
 7. By letter dated July 21, 2005, Ohio EPA notified Respondent that Respondent had abated the violations referenced in Finding Nos. 4.b. through 4.j., 4.l., 4.m., and 4.p. of these Orders. Also in the July 21, 2005 letter, and based upon a review of the documentation provided in Respondent's June 30, 2005 correspondence, Ohio EPA notified Respondent that Respondent had, *inter alia*, caused solvent-contaminated hazardous waste rags to be transported to a facility not operating under a hazardous waste permit issued in accordance with ORC Chapter 3734., in violation of ORC § 3734.02(F).
 8. In correspondence dated August 9, 2005, Respondent provided responses to Ohio EPA's July 21, 2005 letter.
 9. By letter dated September 6, 2005, Ohio EPA notified Respondent that Respondent had abated the violations referenced in Finding Nos. 4.k., 4.n., and 4.o. of these Orders.
 10. Because no releases of hazardous waste were observed, and based upon a review by Ohio EPA of Respondent's generator closure activities performed at the hazardous waste storage unit, the Director has determined that no additional action is required of Respondent at this time regarding the ORC § 3734.02(E) & (F) violations referenced in Finding Nos. 4.a. and 7 of these Orders. In addition, and based upon the aforementioned conditions, the Director has determined that it is unnecessary to reserve closure for the hazardous waste storage unit.

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 \$32,000.00 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 \$19,200.00 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 \$19,200.00. 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 \$6,400.00 of the remaining civil penalty to Ohio EPA, Respondent shall fund a supplemental environmental project (SEP) by making a contribution in the amount of \$6,400.00 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 \$6,400.00. 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 \$6,400.00 in accordance with the procedures in Order No. 1.a.

- d. In lieu of paying the remaining \$6,400.00 of civil penalty to Ohio EPA, Respondent shall implement a supplemental environmental project (SEP) which reduces the amount of solvent-related hazardous waste generated at the Facility. Respondent may achieve this reduction by either altering the processes at the Facility which generate solvent-related hazardous waste (e.g. use of nonhazardous solution for tank cleaning), or purchasing equipment which recovers a legitimate percentage of the solvent-related hazardous waste for reuse at the Facility. Implementation of the SEP shall be as follows:
 - i. Within 180 days after the effective date of these Orders, Respondent shall submit documentation (e.g. equipment invoices, description of process changes, installation logs, etc.) demonstrating that Respondent has commenced activities conducted for the purpose of reducing the amount of solvent-related hazardous waste generated at the Facility. Respondent shall also demonstrate (e.g. equipment invoices, equipment/materials purchased due to process changes, raw material purchase orders, etc.) that the total cost incurred by Respondent for the implementation of the SEP referenced in Order No. 1.d. is at minimum \$12,800.00.
 - ii. Within 360 days after the effective date of these Orders, Respondent shall submit a report which demonstrates that implementation of the SEP referenced in Order No. 1.d. has resulted in a measurable reduction in the amount of solvent-related hazardous waste generated at the Facility.
- e. Should Respondent fail to implement the SEP in accordance with the requirements established in Order No. 1.d.i., or should Respondent fail to demonstrate that measurable reductions in the amount of solvent-related hazardous wastes generated at the Facility have been achieved, as referenced in Order No. 1.d.ii., Respondent shall pay to Ohio EPA, within 7 days after failing to comply with either Order No. 1.d.i. or Order No. 1.d.ii., the amount of \$6,400.00 in accordance with the procedures in Order No. 1.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 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 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.

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X. 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 Hazardous Waste Management
401 East 5th Street
Dayton, Ohio 45402
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 right 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 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



Joseph P. Koncelik
Director

AUG 10 2006

Date

IT IS SO AGREED:

The Sherwin-Williams Company dba General Polymers



Signature

7/18/06

Date

Louis E. Stellato
Printed or Typed Name

Vice President, General Counsel and Secretary
Title