

OHIO E.P.A.

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ENTERED DIRECTOR'S JOURNAL



**BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY**

In the Matter of:

Boyer Signs & Graphics, Inc.
21611 Tungsten Road
Euclid, Ohio 44117

**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 Boyer Signs & Graphics, 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

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 operates a facility located at 21611 Tungsten Road, in Euclid, Cuyahoga County (Facility). At the Facility, Respondent manufactures electric and non-electric signs. Respondent was authorized to do business in Ohio on August 11, 1994.
2. Respondent is a "person" as defined in ORC § 3734.01(G) and Ohio Administrative Code (OAC) rule 3745-50-10(A).
3. Respondent notified Ohio EPA of its hazardous waste activities and was issued generator identification number OHD986976900.
4. 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 conditionally exempt small quantity generator of hazardous waste. The hazardous waste generated by Respondent at the Facility includes spent solvents (F003, F005, D001 and D035), spent paint filters (D007), and spent fluorescent lamps (D009).
5. On September 5, 2002, Ohio EPA received a complaint that Respondent had been mismanaging mercury containing wastes at the Facility.
6. On September 11, 2002, Ohio EPA conducted a complaint investigation and compliance evaluation inspection at the Facility. During the investigation and inspection, Ohio EPA discovered that Respondent had been placing spent fluorescent lamps and solvent contaminated rags in the solid waste dumpster without evaluating them to determine if they were hazardous wastes. During this investigation and inspection, Ohio EPA also observed crushed fluorescent lamps in direct contact with the soil and pavement in the sign storage area which is located outside in the northeast corner of the Facility. The sign storage area is the area at the Facility where spent hazardous waste fluorescent lamps were placed upon the ground without a hazardous waste permit.
7. Based upon the complaint investigation, compliance evaluation inspection and a review of information submitted by Respondent, Ohio EPA in correspondence dated September 24, 2002, December 13, 2002, February 10, 2003, September 8, 2003, and August 24, 2004, determined that Respondent failed to evaluate spent fluorescent lamps, spent paint filters and solvent contaminated rags, in violation of OAC rule 3745-52-11, caused hazardous wastes (spent fluorescent lamps, spent paint filters and solvent contaminated rags) to be transported to an unpermitted facility, in violation of ORC § 3734.02 (F) and disposed of hazardous spent fluorescent lamps, in violation of ORC § 3734.02(E) and (F).

8. By letter dated February 10, 2003, Ohio EPA notified Respondent that the violations of OAC rule 3745-52-11 referenced in Finding No. 7. of these Orders had been abated.
9. In response to the violations referenced in Finding No. 7. of these Orders, Respondent submitted to Ohio EPA, on February 24, 2003, a document entitled "RCRA Investigation Work Plan" for the sign storage area with revisions dated April 15, 2003.
10. By letter dated April 24, 2003, Ohio EPA conditionally approved the RCRA Investigation Work Plan.
11. On June 16, 2003, Respondent conducted sampling in accordance with the approved RCRA Investigation Work Plan.
12. By letter dated August 9, 2003, Respondent submitted a report on the RCRA Investigation Work Plan to Ohio EPA.
13. By letter dated December 8, 2003, Respondent submitted a Closure Plan for the sign storage area.
14. By letter dated December 24, 2003, Ohio EPA sent Respondent a letter acknowledging the receipt of the Closure Plan referenced in Finding No. 12. of these Orders. On this same date, Ohio EPA public noticed the Closure Plan.
15. By letter dated February 11, 2004, Ohio EPA sent Respondent a notice of deficiency letter (NOD) for the Closure Plan.
16. On April 8, 2004, Ohio EPA met with Respondent, Respondent's consultant, representatives from the City of Euclid and representatives from the Cuyahoga County Commissioners Office to discuss Respondent's Facility and the Closure Plan.
17. On May 25, 2004, Ohio EPA sent Respondent a letter requesting the submittal of a revised Closure Plan which addressed the comments from the February 11, 2004 NOD referenced in Finding No. 15. of these Orders.
18. By letter June 8, 2004, Respondent submitted a response to Ohio EPA's February 11, 2004 NOD referenced in Finding No. 15. of these Orders.
19. By letter dated August 24, 2004, Ohio EPA sent Respondent a response to Respondent's June 8, 2004 letter referenced in Finding No. 18. of these Orders.

20. By letter dated September 3, 2004, Respondent submitted a response to Ohio EPA's August 24, 2004 letter referenced in Finding No. 19. of these Orders.
21. By letter dated January 12, 2005, Respondent submitted a request to withdraw the Closure Plan referenced in Finding No. 13. of these Orders.
22. On March 29, 2005, Ohio EPA received financial documentation from Respondent in an effort to demonstrate that it did not possess the financial ability to pay the entire civil penalty settlement included in the Orders proposed to Respondent on February 7, 2005. Additionally, on March 29, 2005, Ohio EPA met with the Respondent. During this meeting, Respondent further clarified its financial condition. Based upon a review of financial information provided by Respondent, Ohio EPA determined that Respondent does not possess the financial ability to pay the entire civil penalty settlement proposed in the Director's letter of February 7, 2005.
23. On May 17, 2005, Respondent submitted to Ohio EPA a sampling and analysis plan (SAP) for the Facility. On October 5, 2005 and November 3, 2005, Ohio EPA received revisions to the SAP.
24. By letter dated November 14, 2005, Ohio EPA approved, with modifications, the SAP referenced in Finding No. 23. of these Orders.
25. The Director has determined that no further action is required to abate the ORC § 3734.02 (F) violation referenced in Finding No. 7. of these Orders since the spent fluorescent lamps, spent paint filters and solvent contaminated rags are now being managed properly.

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 implement the SAP, as modified, referenced in Finding No. 24. of these Orders in accordance with the terms, conditions and schedules contained therein.
2. Following receipt of the analytical results generated by the implementation of the approved SAP referenced in Finding No. 24. of these Orders, Respondent shall, pursuant to the schedule in the approved SAP, submit to Ohio EPA a report (SAP Report) that includes the laboratory analysis and evaluation of data generated from implementing the approved SAP. Using the format found in OAC rule 3745-50-42(D), Respondent shall certify that

the sampling and analysis was conducted in accordance with the approved SAP. The certification shall be signed by Respondent and shall be included in the SAP Report.

3. The SAP Report is subject to Ohio EPA review and approval. If Ohio EPA approves the SAP Report and it indicates that soil, but not ground water, has been contaminated by hazardous waste or hazardous constituents above the remediation levels identified in Ohio EPA's "Closure Plan Review Guidance" dated June 2005, as supplemented, and it is a result of hazardous waste disposal at the Facility without a permit, in violation of ORC § 3734.02(E) and (F) and the rules promulgated thereunder, Respondent shall prepare and submit a Remediation Plan.
4. The Remediation Plan shall be submitted to Ohio EPA within 30 days after Ohio EPA's approval of the SAP Report. The Remediation Plan shall propose methods of and a schedule for remediation of the areas at the Facility where hazardous waste was disposed without a permit, in violation of ORC § 3734.02(E) and (F) and the rules promulgated thereunder.
5. The Remediation Plan is subject to Ohio EPA review and approval. If Ohio EPA does not approve the Remediation Plan and provides Respondent with a written statement of deficiencies, Respondent shall revise the Remediation Plan or submit a new Remediation Plan for approval that corrects the stated deficiencies within 30 days after receipt of such written statement.
6. Upon receipt of Ohio EPA's approval of the Remediation Plan, Respondent shall implement the Remediation Plan in accordance with the requirements of OAC rules 3745-55-11/3745-66-11 and 3745-55-14/3745-66-14 and the specifications and schedules contained in the approved Remediation Plan and any conditions attached thereto.
7. Within 60 days after the completion of work required by the approved Remediation Plan, Respondent shall submit to Ohio EPA, for review and approval, a certification that the remediation work was conducted in accordance with the approved Remediation Plan. The certification shall be signed by Respondent using the format found in OAC rule 3745-50-42(D).
8. If Ohio EPA accepts the SAP Report and it indicates that both soil and ground water have been contaminated by hazardous waste, hazardous constituents or hazardous waste decomposition products to the ground water above the remediation levels identified in Ohio EPA's "Closure Plan Review Guidance" dated June 2005, as supplemented, and it is result of hazardous waste disposal at the Facility without a permit, in violation of ORC § 3734.02(E) and (F) and the rules promulgated thereunder, Respondent shall

submit to Ohio EPA a closure plan prepared in accordance with OAC rules 3745-55-11/3745-66-11 through 3745-55-20/3745-66-20 and comply with Order Nos. 9. through 12. of these Orders.

9. The closure plan shall be submitted to Ohio EPA within 30 days after Respondent's receipt of Ohio EPA's approval of the SAP Report. The closure plan is subject to Ohio EPA approval. If Ohio EPA does not approve the closure plan and provides Respondent with a written statement of deficiencies, Respondent shall, within 30 days after receipt of such written statement, revise the closure plan or submit a new closure plan to Ohio EPA addressing the deficiencies. Upon receipt of Respondent's new or revised closure plan, Ohio EPA will notify Respondent in writing that Ohio EPA either approves the closure plan or approves the closure plan with modifications. If Ohio EPA modifies the closure plan, the modified closure plan shall become the approved closure plan.
10. Upon receiving Ohio EPA's written approval of the closure plan, Respondent shall implement the approved closure plan pursuant to OAC rules 3745-55-11/3745-66-11 through 3745-55-20/3745-66-20, the specifications and schedules contained in the approved closure plan, and any modifications attached to the approved closure plan.
11. Within 60 days after completion of closure, Respondent shall submit to Ohio EPA a closure certification in accordance with OAC rules 3745-55-15/3745-66-15.
12. Within 30 days after submitting the closure plan referenced in Order No. 9 of these Orders, Respondent shall submit to Ohio EPA a closure cost estimate and documentation demonstrating that Respondent has established financial assurance and liability coverage for closure in accordance with OAC rules 3745-55-42/3745-66-42 through 3745-55-47/3745-66-47. Once Respondent completes the actions required under Order Nos. 1. through 12. of these Orders, Respondent will have abated the violation referenced in Finding No. 7. of these Orders.
13. Respondent shall pay Ohio EPA the amount of \$15,000.00 in settlement of Ohio EPA's claims for civil penalties, which may be assessed pursuant to ORC Chapter 3734. \$12,000.00 of this amount will be deposited into the hazardous waste clean up fund established pursuant to ORC § 3734.28 in accordance with the following schedule:
 - a. Within 90 days after the effective date of these Orders, Respondent shall pay to Ohio EPA the amount of \$1,200.00;

- b. Within 180 days after the effective date of these Orders, Respondent shall pay to Ohio EPA the amount of \$1,200.00;
- c. Within 270 days after the effective date of these Orders, Respondent shall pay to Ohio EPA the amount of \$1,200.00;
- d. Within 360 days after the effective date of these Orders, Respondent shall pay to Ohio EPA the amount of \$1,200.00;
- e. Within 450 days after the effective date of these Orders, Respondent shall pay to Ohio EPA the amount of \$1,200.00;
- f. Within 540 days after the effective date of these Orders, Respondent shall pay to Ohio EPA the amount of \$1,200.00;
- g. Within 630 days after the effective date of these Orders, Respondent shall pay to Ohio EPA the amount of \$1,200.00;
- h. Within 720 days after the effective date of these Orders, Respondent shall pay to Ohio EPA the amount of \$1,200.00;
- i. Within 810 days after the effective date of these Orders, Respondent shall pay to Ohio EPA the amount of \$1,200.00; and
- j. Within 900 days after the effective date of these Orders, Respondent shall pay to Ohio EPA the amount of \$1,200.00.

Each of the payments above shall be made by an official check made payable to "Treasurer, State of Ohio." The official checks shall be submitted to Ohio EPA, Office of Fiscal Administration, Department L-2711, Columbus, Ohio 43260-2711, together with a letter identifying the Respondent and the Facility. A copy of each check shall be submitted in accordance with Section X. of these Orders.

- 14. In lieu of paying the remaining \$3,000.00 of civil penalty, Respondent shall fund a supplemental environmental project (SEP) by making a contribution in the amount of \$3,000.00 to the Ohio EPA Clean Diesel School Bus Program (Fund 5CD) in accordance with the following schedule:
 - a. Within 90 days after the effective date of these Orders, Respondent shall pay to the Ohio EPA Clean Diesel School Bus Program the amount of \$750.00;
 - b. Within 180 days after the effective date of these Orders, Respondent

shall pay to the Ohio EPA Clean Diesel School Bus Program the amount of \$750.00;

- c. Within 270 days after the effective date of these Orders, Respondent shall pay to the Ohio EPA Clean Diesel School Bus Program the amount of \$750.00; and
- d. Within 360 days after the effective date of these Orders, Respondent shall pay to the Ohio EPA Clean Diesel School Bus Program the amount of \$750.00.

Each of the payments above shall be made by an official check made payable to "Treasurer, State of Ohio." The official checks shall be submitted to Ohio EPA, Office of Fiscal Administration, Department L-2711, Columbus, Ohio 43260-2711, together with a letter identifying the Respondent and the Facility. A copy of each check shall be submitted in accordance with Section X. of these Orders, and an additional copy of the checks 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.

- 15. Should Respondent miss a scheduled payment as described in Order Nos. 14.a. through 14.d. of these Orders, Respondent shall pay to Ohio EPA the missed payment amount no later than 7 days after the missed payment due date. Payment shall be made in accordance with the procedures established in Order No. 13. of these Orders. A copy of each check shall be submitted in accordance with Section X. 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 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 person 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.

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 corrective action at the Facility at some time in the future, pursuant to ORC Chapter 3734. or any other applicable law. Respondent reserve 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, Respondent agrees 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

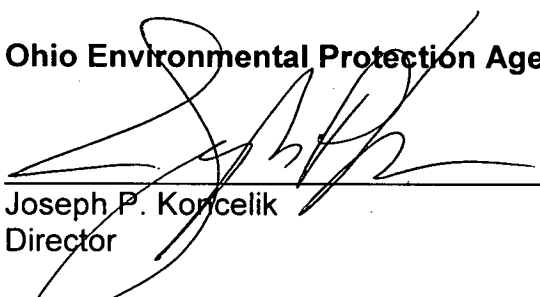
Ohio EPA Director's journal.

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. Korcelik
Director

1-11-06
Date

IT IS SO AGREED:

Boyer Signs & Graphics, Inc.

Michael S. Boyer
Signature

1-4-06
Date

MICHAEL S. BOYER
Printed or Typed Name

PRESIDENT
Title