

OHIO E.P.A.

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ENTERED DIRECTOR'S JOURNAL



**BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY**

In the Matter of:

Jevic Transportation Inc.
5340 West 161st Street
Brookpark, Ohio 44142

**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 Jevic Transportation 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 the 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 operates as a transporter of non-hazardous liquids and solids at a facility located at 5340 West 161st Street, Brookpark, Cuyahoga County, Ohio (Facility). Respondent notified Ohio EPA of its hazardous waste activities and was issued generator identification number OHR000106203.
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 small quantity generator of hazardous waste. The hazardous waste generated by Respondent at the Facility includes off-specification or damaged products which are unreturnable to the customer (routinely D001, D002).
4. On November 17 and 18, 2005, Respondent transported or caused to be transported a total of three containers of waste to Vexor Technology, Inc. located at 955 West Smith Road, Medina, Ohio (Vexor). Vexor does not hold a hazardous waste facility installation and operation permit issued in accordance with ORC Chapter 3734. The three containers of waste were transported as non-hazardous waste and were accompanied by non-hazardous shipping papers.
5. Once received at Vexor, Vexor analyzed the three containers of waste for the hazardous waste characteristics of flashpoint and corrosivity only. Based upon Vexor's analysis, the wastes were found to exhibit the hazardous waste characteristic of ignitability. Based upon this information, the Director has determined that Respondent caused hazardous waste to be transported to Vexor, a facility not operating under a hazardous waste facility installation and operation permit issued in accordance with ORC Chapter 3734., in violation of ORC § 3734.02(F).
6. Vexor contacted Respondent and informed Respondent of the analytical results referenced in Finding No. 5 of these Orders.

7. On November 22, 2005, Vexor shipped two of the three containers of hazardous waste to Hukill Chemical Corporation (Hukill), a facility operating under a hazardous waste facility installation and operation permit. On November 29, 2005, Vexor shipped the third and last container of hazardous waste to Hukill.
8. On April 20 and 25, 2006, 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. Failed to notify Ohio EPA when a copy of a hazardous waste manifest, signed by the receiving facility, was not submitted to Respondent within sixty days of the date the waste was accepted by the initial transporter, in violation of OAC rule 3745-52-42(B);
 - b. Failed to post all of the necessary emergency information next to a telephone at the Facility, in violation of OAC rule 3745-52-34(D)(5)(b);
 - c. Failed to maintain adequate aisle space in a hazardous waste storage area at the Facility, in violation of OAC rule 3745-65-35; and
 - d. Failed to maintain, and make available for review, complete land disposal restriction notifications for all off-site shipments of hazardous waste, in violation of OAC rule 3745-270-07(A).
9. By letter dated April 28, 2006, Ohio EPA notified Respondent of the violations referenced in Finding Nos. 5 and 8.a. through 8.d. of these Orders.
10. In correspondences dated May 19 and June 1, 2006, Respondent provided responses to Ohio EPA's letter dated April 28, 2006.
11. Based upon the information contained in Respondent's responses, referenced in Finding No. 10 of these Orders, Ohio EPA informed Respondent, by letter dated June 1, 2006, that Respondent had abated the violations referenced in Finding Nos. 8.a. through 8.d. of these Orders. Further, the Director has determined that no additional action is required of Respondent regarding the ORC § 3734.02(F) violation referenced in Finding No. 5 of these Orders.

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 \$8,120.00 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 \$6,500.00 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 \$6,500.00. 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 \$1,620.00 of civil penalty to Ohio EPA, Respondent shall fund a supplemental environmental project (SEP) by making a contribution in the amount of \$1,620.00 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 \$1,620.00. 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. of these Orders, Respondent shall pay to Ohio EPA within 7 days of failing to comply with Order No. 1.b. the amount of \$1,620.00 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
Attn: DHWM Manager
2110 E. Aurora Road
Twinsburg, Ohio 44087

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 and Respondent each reserve all 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, and in lieu of further enforcement action by Ohio EPA for only the violations specifically cited in these Orders, Respondent consents to the issuance of these Orders and agrees to comply with these Orders. 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

NOV 27 2006

Date

IT IS SO AGREED:

Jevic Transportation Inc.



Signature

10/23/06

Date

GERARD PAULSON

Printed or Typed Name

CFO

Title