

OHIO E.P.A.

MAY 18 2005

ENTERED DIRECTOR'S JOURNAL

**BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY**

In the Matter of:

Helmig Painting Service, Inc.
600 South Shawnee Street
Lima, Ohio 45805

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 Helmig Painting Service, 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 operates a commercial and residential painting facility located at 600 South Shawnee Street, Lima, Allen County, Ohio (Facility) and was incorporated to do business in the State of Ohio on March 20, 1990.
2. Respondent is a "person" as defined in ORC § 3734.01(G) and Ohio Administrative Code (OAC) rule 3745-50-10(A).
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. The hazardous waste generated by Respondent at the Facility includes a waste paint and solvent mixture (D001, D008, D018 and F005).
4. Respondent is a conditionally exempt small quantity generator and has received hazardous waste identification number OHR000124164.
5. On January 20, and August 3, 2004, Ohio EPA conducted a complaint investigation at the Facility and determined that Respondent had, inter alia:
 - a. Disposed of hazardous waste on the ground and into the air without a permit, in violation of ORC §§ 3734.02 (E) and (F);
 - b. Failed to properly characterize its waste to determine if it was hazardous waste, in violation of OAC rule 3745-52-11; and
 - c. Failed to label used oil containers with the words "Used Oil," in violation of OAC rule 3745-279-22(C).
6. By letter dated August 16, 2004, Ohio EPA notified Respondent of the violations noted in Finding No. 5.
7. By letter dated September 7, 2004, Respondent replied to the letter noted in Finding No. 6.
8. On September 8, 2004, Respondent's consultant, Environmental Management Specialists, Inc., sampled unevaluated containers of waste, sand blasting waste

and soils in the area where hazardous waste was disposed of without a permit at the Facility.

9. On October 14, 2004, Ohio EPA received a letter from Respondent containing results from the sampling described in Finding No. 8.
10. On November 15, 2004, Ohio EPA responded to the October 14, 2004 letter referenced in Finding No. 9. and based on the sample results informed Respondent that:
 - a. A container of used oil, paint thinner and Methyl Ethyl Ketone (MEK) was hazardous for Benzene (D018), and MEK (F005);
 - b. Three containers of used oil, paint, thinner and MEK were hazardous for ignitability (D001), Lead (D008), and MEK (F005);
 - c. A container of waste dry fall was hazardous for ignitability (D001);
 - d. A 5-gallon pail of waste MEK was hazardous for MEK (F005); and
 - e. Soil from the area where waste paint and solvent were disposed of was hazardous for Lead (D018) and MEK (F005).
11. In the letter noted in Finding No. 10. , Ohio EPA also rescinded the violation of OAC rule 3745-279-22(C) noted in Finding No. 5.c. and explained that based upon the sample results, the unevaluated wastes were not used oil but rather hazardous waste. Therefore, Respondent had violated, in addition to the violations referenced in Finding Nos. 5.a. and 5.b., OAC rules 3745-52-34(A)(2) and (A)(3) by failing to label hazardous waste containers with the words "Hazardous Waste" and by failing to mark the containers with the accumulation start dates.
12. By facsimiles dated February 25, 2005 and March 8, 2005, Respondent submitted financial information to Ohio EPA 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 January 4, 2005. Ohio EPA has reviewed Respondent's financial information and has determined that Respondent has the ability to pay a civil penalty settlement of not more than \$5,000.

V. ORDERS

Respondent shall achieve compliance with Chapter 3734. of the ORC and the regulations promulgated thereunder according to the following compliance schedule:

1. Within 60 days after the effective date of these Orders, Respondent shall submit to Ohio EPA, for review and approval, a sampling and analysis plan (SAP) for sampling activities to determine the rate and extent of contamination for all areas at the Facility where hazardous waste was disposed without a permit.
2. The SAP is subject to Ohio EPA review and approval. If Ohio EPA does not approve the SAP and provides Respondent with a written statement of deficiencies, Respondent shall revise the SAP or submit a new SAP for approval that corrects the stated deficiencies within 30 days after receipt of such written statement. Ohio EPA may approve the SAP with modifications. If Ohio EPA modifies the SAP, the modified SAP becomes the approved SAP. Upon Respondent's receipt of approval from Ohio EPA of the SAP, Respondent shall implement the approved SAP in accordance with the terms, conditions and schedules contained therein.
3. Following receipt of the analytical results generated by the implementation of the approved SAP, 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.
4. 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 March 1, 1999, 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 and comply with Orders Nos. 5 through 8.
5. 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.

6. 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.
7. Upon receipt of Ohio EPA's approval of Remediation Plan, Respondent shall implement the Remediation Plan in accordance with the requirements of OAC rules 3745-66-11 and 3745-66-14 and the specifications and schedules contained in the approved Remediation Plan and any conditions attached thereto.
8. 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).
9. 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 March 1, 1999, 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 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 Orders Nos. 10 through 13.
10. 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.
11. 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.

12. Within 60 days after completion of closure, Respondent shall submit to Ohio EPA a closure certification, for review and approval, in accordance with OAC rules 3745-55-15/3745-66-15.
13. 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 Orders Nos. 1. through 13., Respondent will have abated the violation referenced in Finding No. 5.a.
14. Within 30 days after the effective date of these orders, Respondent will manifest all accumulated hazardous waste off-site to a permitted treatment, storage or disposal facility and submit copies of the manifests to Ohio EPA.
15. Respondent shall pay to Ohio EPA the amount of \$5,000.00 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 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 \$1,250;
 - b. Within 180 days after the effective date of these Orders, Respondent shall pay to Ohio EPA the amount of \$1,250;
 - c. Within 270 days after the effective date of these Orders, Respondent shall pay to Ohio EPA the amount of \$1,250; and
 - d. Within 360 days after the effective date of these Orders, Respondent shall pay to Ohio EPA the amount of \$1,250.

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, P.O. Box 1049, Columbus, Ohio 43216-1049, 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.

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.

This 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 required to be submitted by Respondent pursuant to these Orders shall be addressed to:

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Helmig Painting Service, Inc.
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Ohio Environmental Protection Agency
Northwest District Office
Division of Hazardous Waste Management
347 North Dunbridge Road
Bowling Green, OH 43402
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 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

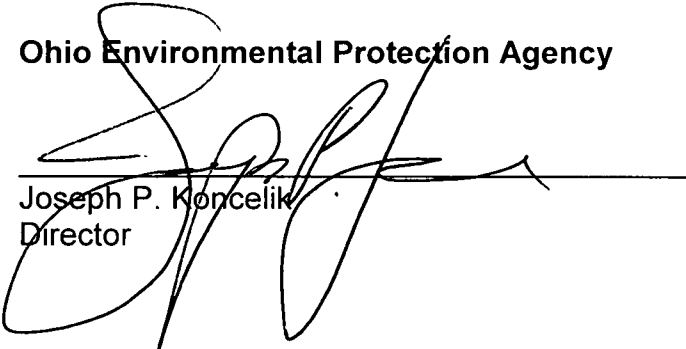
The effective date of these Orders is the date these Orders are entered into the Ohio EPA Director's journal.

XIV. SIGNATORIES

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

MAY 18 2005

Date

IT IS SO AGREED:

Helmig Painting Service, Inc.

Carl Helmig
Signature

4/27/05
Date

Helmig Painting Service, Inc.

Carl Helmig
Printed or Typed Name

President
Title