

OHIO E.P.A.

APR -5 2005

ENTERED DIRECTOR'S JOURNAL



**BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY**

In the Matter of:

Westwood Finishing Company
5881 Wolf Creek Pike
Trotwood, Ohio 45426

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 Westwood Finishing Company (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 paints parts at 5881 Wolf Creek Pike, Trotwood, Ohio (Facility). Respondent was authorized to do business in Ohio on October 1, 1959.
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 (SQG) of hazardous waste. The hazardous waste generated by Respondent at the Facility includes spent solvent (D001 and F005) used to clean paint guns.
4. On June 14, 1999, Ohio EPA conducted an inspection at Respondent's Facility. As a result of this inspection, Ohio EPA determined that Respondent had, *inter alia*:
 - a. Failed to post the following information next to the phone: (i) the name and telephone number of the emergency coordinator; (ii) location of fire extinguishers and spill control material, and if present fire alarm(s); and (iii) the telephone number of the fire department, in violation of OAC rule 3745-52-34(D)(5)(b);
 - b. Failed to conduct weekly inspections of emergency equipment and container accumulation areas, in violation of OAC rules 3745-65-33 and 3745-66-74;
 - c. Failed to label satellite accumulation containers, in violation of OAC rule 3745-52-34(C)(1)(b); and
 - d. Failed to date two 55-gallon drums of hazardous waste with the accumulation start date, in violation of OAC rule 3745-52-34(D)(4).
5. By letter dated June 24, 1999, Ohio EPA notified Respondent of the violations referenced in Finding No. 4. of these Orders.
6. On August 17, 1999, Ohio EPA conducted a return to compliance inspection at the Facility and determined that Respondent had abated the violations referenced in Finding No. 4. of these Orders.

7. On October 3, 2003, Ohio EPA received a complaint that Respondent had been dumping chemicals into a creek and onto the ground in the back of its Facility.
8. On November 4, November 20 and December 15, 2003, Ohio EPA conducted a complaint investigation and compliance inspections at the Facility. During the complaint investigation and compliance inspections, Ohio EPA noted that Respondent was placing 5-gallon buckets of spent solvent (F005 hazardous waste) outside at the rear of the Facility to allow the solids to settle. Respondent would then pour the remaining liquid into a 55-gallon drum and place the solids into the solid waste dumpster. The contents of the solid waste dumpster are subsequently transported to a solid waste facility for management. Ohio EPA also noted that the container storage at the rear of the Facility showed signs that spent solvents had been spilled. As a result of this investigation and inspections, Ohio EPA determined that Respondent had, *inter alia*:
 - a. Failed to post the following information next to the phone: (i) the name and telephone number of the emergency coordinator; (ii) location of fire extinguishers and spill control material, and if present fire alarm(s); and (iii) the telephone number of the fire department, in violation of OAC rule 3745-52-34(D)(5)(b);
 - b. Failed to conduct weekly inspections of emergency equipment and container accumulation areas, in violation of OAC rules 3745-65-33 and 3745-66-74;
 - c. Failed to label and date containers of hazardous waste, in violation of OAC rule 3745-52-34(D)(4);
 - d. Failed to keep containers of hazardous waste closed, in violation of OAC rule 3745-66-73(A);
 - e. Failed to evaluate wastes to determine if they were hazardous, in violation of OAC rule 3745-52-11; and
 - f. Failed to manifest hazardous wastes, in violation of OAC rule 3745-52-20.
9. By letter dated December 29, 2003, Ohio EPA notified Respondent of the violations referenced in Finding No. 8. of these Orders. In the December 29, 2003 letter, Ohio EPA notified Respondent that Respondent was in violation of ORC § 3734.02(F) for disposing of hazardous waste in a solid waste

dumpster. The Director has determined that the placing of the hazardous waste into the solid waste dumpster does not constitute unpermitted disposal. Rather, the Director has determined that by placing the hazardous waste into the solid waste dumpster, Respondent transported or caused to be transported hazardous waste to other than a permitted hazardous waste facility, in violation of ORC § 3734.02(F). Furthermore, the Director has determined that Respondent treated and disposed of hazardous waste without a permit in violation of ORC § 3734.02(E) and (F) by allowing hazardous waste to evaporate and be spilled onto the ground at the Facility.

10. On February 18 and February 24, 2004, Ohio EPA conducted a return to compliance inspection at the Facility.
11. By letter dated March 3, 2004, Ohio EPA notified Respondent that the violations referenced in Finding Nos. 8.a. thru 8.f. of these Orders had been abated.
12. On June 7, 2004, Ohio EPA received from Respondent a preliminary sampling and analysis plan for the area at the Facility where hazardous waste was treated and disposed of without a permit.
13. By letter dated June 24, 2004, Ohio EPA approved the preliminary sampling and analysis plan referenced in Finding No. 12. of these Orders.
14. On August 18, 2004, Ohio EPA received from Respondent a document entitled "soil investigation report." The soil investigation report summarized the results of the implementation of the preliminary sampling and analysis plan referenced in Finding No. 12. of these Orders.
15. By letter dated October 13, 2004, Ohio EPA provided Respondent with its review of the soil investigation report referenced in Finding No. 14. of these Orders. In the October 13, 2004 letter, Ohio EPA explained that the soil investigation report indicated the presence of one contaminant of concern, xylene, at the Facility above the remediation levels identified in Ohio EPA's Closure Plan Review Guidance, dated March 1, 1999, as supplemented. Also in the October 13, 2004 letter, Ohio EPA informed Respondent that it must submit to Ohio EPA an additional sampling and analysis plan to fully determine the rate and extent of xylene contamination at the Facility.
16. On December 10, 2004, Respondent submitted a document entitled "Soil Excavation Work Plan." The Soil Excavation Work Plan included a sampling and analysis plan to fully determine the rate and extent of contamination at the hazardous waste disposal area at the Facility.

17. On January 5, 2005, Ohio EPA approved the Soil Excavation Work Plan referenced in Finding No. 16. of these Orders.
18. On February 2 and February 23, 2005, Respondent implemented the approved Soil Excavation Work Plan referenced in Finding No. 17. of these Orders.
19. Respondent submitted to Ohio EPA financial documentation 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 April 8, 2004. Ohio EPA has reviewed Respondent's financial information and has determined that Respondent has the ability to pay a \$30,000 civil penalty settlement.

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 report that includes the laboratory analysis and evaluation of data generated from implementing the approved Soil Excavation Work Plan. Using the format found in OAC rule 3745-50-42(D), Respondent shall certify that all work was conducted in accordance with the approved Soil Excavation Work Plan. The certification shall be signed by Respondent and shall be included in the report. Compliance with this Order shall abate the unpermitted treatment and disposal of hazardous waste referenced in Finding No. 9. of these Orders.
2. Respondent shall pay to Ohio EPA the amount of \$30,000.00 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 \$3,000.00;
 - b. Within 180 days after the effective date of these Orders, Respondent shall pay to Ohio EPA the amount of \$3,000.00;

- c. Within 270 days after the effective date of these Orders, Respondent shall pay to Ohio EPA the amount of \$3,000.00;
- d. Within 360 days after the effective date of these Orders, Respondent shall pay to Ohio EPA the amount of \$3,000.00;
- e. Within 450 days after the effective date of these Orders, Respondent shall pay to Ohio EPA the amount of \$3,000.00;
- f. Within 540 days after the effective date of these Orders, Respondent shall pay to Ohio EPA the amount of \$3,000.00;
- g. Within 630 days after the effective date of these Orders, Respondent shall pay to Ohio EPA the amount of \$3,000.00;
- h. Within 720 days after the effective date of these Orders, Respondent shall pay to Ohio EPA the amount of \$3,000.00;
- i. Within 810 days after the effective date of these Orders, Respondent shall pay to Ohio EPA the amount of \$3,000.00; and
- j. Within 900 days after the effective date of these Orders, Respondent shall pay to Ohio EPA the amount of \$3,000.00.

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, 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.

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.

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 Fifth Street
Dayton, Ohio 45402-2911
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

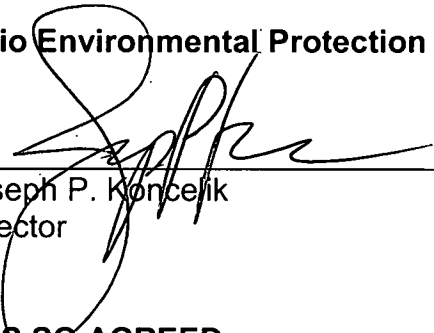
The effective date of these Orders is the date these Orders are entered into the Ohio EPA Director's journal.

XIV. 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

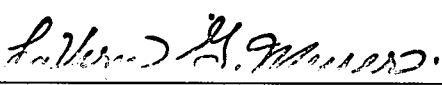


Joseph P. Koncelik
Director

April 5, 2005
Date

IT IS SO AGREED:

Westwood Finishing Company



Signature

3/7/05
Date

L A VERN G. MEYER
Printed or Typed Name

PRESIDENT & OWNER
Title