

OHIO E.P.A.

JAN 13 2004

ENTERED DIRECTOR'S JOURNAL

**BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY**

In the Matter of:

American Colors, Inc.
1110 Edgewater Avenue
Sandusky, Ohio 44870

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 American Colors, 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 owned by Respondent 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 is a "person" as defined in ORC § 3734.01(G) and Ohio Administrative Code (OAC) rule 3745-50-10(A).
2. Respondent owns and operates a color dispersion manufacturing facility located at 1110 Edgewater Avenue, Sandusky, Erie County, Ohio (Facility). At the Facility, Respondent manufactures color dispersions for plastics, paints and composites. Respondent was incorporated in the State of Ohio on May 15, 1975.
3. Respondent notified Ohio EPA of its hazardous waste activities and was issued generator identification number OHD 986 966 323.
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 large quantity generator of hazardous waste. The hazardous waste generated by Respondent at the Facility includes cleanup materials from the dispersion production processes (D006, D007, D008, D026, D035 and F003) and pigment dust from dust collection systems (D006, D007 and D008).
5. On November 27 and 28, 2001, Ohio EPA conducted an 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 a permit, in violation of ORC § 3734.02(E) and (F);
 - b. Failed to evaluate waste generated at the Facility, in violation of OAC rule 3745-52-11;
 - c. Failed to provide adequate annual hazardous waste management training, in violation of OAC rule 3745-65-16(B) and (C);

- d. Failed to maintain job descriptions for employees that manage and/or handle hazardous waste at the Facility, in violation of OAC rule 3745-65-16(D);
 - e. Failed to maintain an adequate contingency plan, in violation of OAC rule 3745-65-52, OAC rule 3745-65-55 and OAC rule 3745-65-56;
 - f. Failed to properly document weekly emergency equipment inspections, in violation of OAC rule 3745-65-33;
 - g. Failed to properly document hazardous waste storage area inspections, in violation of OAC rule 3745-66-74;
 - h. Failed to mark hazardous waste containers with the accumulation start date and failed to label hazardous waste containers with the words "Hazardous Waste," in violation of OAC rule 3745-52-34(A)(2) and (3);
 - i. Failed to label satellite accumulation containers with the words "Hazardous Waste" or other words to identify the contents, in violation of OAC rule 3745-52-34(C)(1)(b); and
 - j. Failed to meet the design, installation, operation and inspection requirements for new tank systems that store hazardous waste, in violation of OAC rules 3745-66-91 through 3745-66-95, and OAC rule 3745-66-98.
6. By letter dated January 2, 2002, Ohio EPA notified Respondent of these violations.
7. By letters dated January 30, April 3, April 8, April 25, and May 9, 2002, Respondent provided responses to Ohio EPA's letter dated January 2, 2002.
8. By letter dated May 13, 2002, Ohio EPA notified Respondent that Respondent had abated the violations referenced in Finding Nos. 5.b., and 5.e. through 5.i.
9. By letter dated May 28, 2002, Respondent provided responses to Ohio EPA's letter dated May 13, 2002.
10. By letter dated June 25, 2002, Ohio EPA notified Respondent that Respondent had abated the violations referenced in Finding Nos. 5.a., 5.c.,

and 5.d. Also in the June 25, 2002 letter, Ohio EPA notified Respondent that Respondent had failed to develop and maintain a Closure Plan for the baghouse area east of the warehouse, in violation of OAC rule 3745-66-12.

11. By letters dated June 26 and July 10, 2002, Respondent provided responses to Ohio EPA's letter dated June 25, 2002.
12. By letter dated July 25, 2002, Ohio EPA notified Respondent that Respondent had abated the violation referenced in Finding No. 5.j.
13. On August 26, 2002, Ohio EPA received a Closure Plan for the baghouse area east of the warehouse.
14. By letter dated December 30, 2002, Ohio EPA provided Respondent with a written statement of Closure Plan deficiencies.
15. On January 29, 2003, Ohio EPA received a revised Closure Plan for the baghouse area east of the warehouse.
16. By letter dated June 17, 2003, the Director of Ohio EPA approved the revised Closure Plan referenced in Finding No. 15.
17. Respondent began implementation of the approved Closure Plan on August 5, 2003.

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 continue to implement the approved Closure Plan in the manner and pursuant to the time frames set forth in the approved Closure Plan and OAC rule 3745-66-13.
2. Within 60 days after completion of closure, Respondent shall submit certification of closure to Ohio EPA in accordance with OAC rule 3745-66-15. Ohio EPA's approval of the closure certification of the area described in Finding No. 15 will abate the violation referenced in Finding No. 10.

3. Within 60 days after the effective date of these Orders, Respondent shall submit a closure cost estimate and documentation demonstrating that Respondent has established financial assurance and liability coverage for the area of the Facility subject to closure, in accordance with OAC rules 3745-66-42 through 3745-66-47.
4. Respondent shall pay to Ohio EPA the amount of \$49,900.00 in settlement of Ohio EPA's claims for civil penalties for all matters described in the Findings which may be assessed for noncompliance pursuant to ORC Chapter 3734. \$37,180.00 of this amount shall be deposited into the hazardous waste clean-up fund established pursuant to ORC § 3734.28 pursuant to the following schedule:
 - a. Within 30 days after the effective date of these Orders, Respondent shall pay to Ohio EPA the amount of \$12,393.33;
 - b. Within 90 days after the effective date of these Orders, Respondent shall pay to Ohio EPA the amount of \$12,393.33; and
 - c. Within 180 days after the effective date of these Orders, Respondent shall pay to Ohio EPA the amount of \$12,393.34.

Payments shall be made by official checks 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.

5. Within 120 days after the effective date of these Orders, and in lieu of payment of the remaining \$12,720.00 of the civil penalty settlement, Respondent shall implement a supplemental environmental project (SEP). The SEP shall consist of a one-time charitable contribution in the amount of \$12,720.00 to the Erie County Emergency Management Agency for the purchase of twenty (20) Level A first responder HAZMAT suits and related equipment, to be used primarily during response, containment, and decontamination following a hazardous materials release.

Within 60 days after implementation of the SEP, Respondent shall submit to Ohio EPA documentation of expenditures (e.g. paid invoices, cancelled check, etc.) related to the charitable contribution of \$12,720.00 to the Erie

County Emergency Management Agency. This documentation 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
Northwest District Office
Division of Hazardous Waste Management
347 N. Dunbridge Road
Bowling Green, Ohio 34302
Attn: DHWM Manager

and Ohio EPA Central Office at the following address:

For mailings, use the post office box number:

Christopher Jones, 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:

Christopher Jones, 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 performing 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

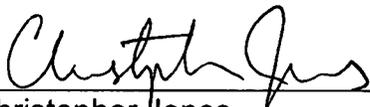
The effective date of these Orders is the date these Orders are entered into the Ohio EPA Director's journal.

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



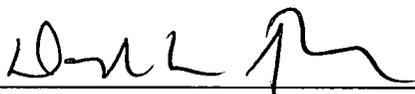
Christopher Jones
Director

JAN 13 2004

Date

IT IS SO AGREED:

American Colors, Inc.



Signature

12/17/2003

Date

DAVID L. Rulung

Printed or Typed Name

Vice President

Title