

OHIO E.P.A.

MAY -7 2004

ENTERED DIRECTOR'S JOURNAL

**BEFORE THE  
OHIO ENVIRONMENTAL PROTECTION AGENCY**

**In the Matter of:**

**Ashtabula Rubber Company**  
2751 West Avenue  
Ashtabula, Ohio 44004

**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 Ashtabula Rubber 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

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 manufactures rubber products at its facility located at 2751 West Avenue, Ashtabula, Ohio (Facility). Respondent is a corporation qualified to do business in Ohio on April 26, 1945.
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 OHD980826325.
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.
5. On June 1, 1993, Ohio EPA conducted a complaint investigation at the Facility. As a result of this investigation Ohio EPA sent a letter dated June 11, 1993 to Respondent requesting Respondent to provide documentation demonstrating how wastes being sent for reclamation met the regulatory exclusion under OAC rule 3745-51-02(F) and also requested analytical documentation showing that waste filters and lead-contaminated waste dusts had been properly evaluated.
6. By letter dated July 12, 1993, Respondent provided information in response to Ohio EPA's June 11, 1993 letter.
7. By letter dated January 31, 1995, Respondent informed Ohio EPA that it was of the position that the lead-contaminated dust referenced in Finding No. 5. of these Orders was not a waste nor a hazardous waste because the dust was being recycled. In support of its position, Respondent included, as an attachment to the January 31, 1995 letter, pages from Respondent's consultant's phone log purporting to summarize a phone call with Ohio EPA in which the issue of recycling of the lead-contaminated dust was discussed. In its letter, Respondent makes reference to the phone call and states: "[w]ith regard to the sand contaminated with lead particles that we discussed, we are advising you that this material is not to be considered a hazardous waste since [Ashtabula] plans to use the material in mixing concrete . . ."

8. On May 15, 2002, Ohio EPA received a complaint alleging that material was being improperly managed at the Facility. On May 31, 2002, Ohio EPA conducted a complaint investigation at the Facility. A follow up inspection to this investigation was conducted on June 17, 2002. As a result of these inspections, Ohio EPA determined that Respondent, *inter alia*:
  - a. Unlawfully treated and stored hazardous waste, in violation of ORC § 3734.02 (E) and (F). During the May 31 and June 17, 2002 inspections, Ohio EPA discovered approximately twenty containers of lead contaminated dusts and verbally explained to Respondent that, notwithstanding the communication referenced in Finding No. 7. of these Orders, the lead-contaminated dusts which were used to make concrete pads as referenced in Finding No. 7. of these Orders would not constitute a recyclable material because the pads were used in a manner constituting disposal and were not produced for use by the general public;
  - b. Caused the transportation of hazardous waste paint filters (F003 and D008) to an unpermitted facility, in violation of ORC § 3734.02 (F);
  - c. Failed to properly evaluate hazardous waste streams, in violation of OAC rule 3745-52-11;
  - d. Failed to maintain and operate the Facility in a manner that minimizes the possibility of an unplanned sudden or non-sudden release of hazardous waste constituents to air, soil, or surface water which could threaten human health or the environment, in violation of OAC rules 3745-54-31/3745-65-31. During the June 17, 2002 follow-up inspection it was noted that this violation had been abated;
  - e. Failed to conduct inspections of emergency equipment and container accumulation areas; in violation of OAC rules 3745-54-33/3745-65-33 and 3745-55-74/3745-66-74;
  - f. Failed to label and date containers of hazardous waste, in violation of OAC rule 3745-52-34(A);
  - g. Failed to maintain containers holding hazardous waste closed, in violation of OAC rules 3745-55-73(A)/3745-66-73(A). During the June 17, 2002 follow-up inspection, it was noted that this violation had been abated;

- h. Failed to keep containers holding hazardous waste in good condition, in violation of OAC rules 3745-55-71/3745-66-71. During the June 17, 2002 follow-up inspection, it was noted that this violation had been abated;
  - i. Failed to develop a waste analysis plan for the treatment of hazardous waste and failed to determine if treated waste met land disposal restrictions, in violation of OAC rules 3745-270-07 and 3745-59-07;
  - j. Failed to determine if waste dust contained underlying hazardous constituents, in violation of OAC rules 3745-270-09 and 3745-59-09; and
  - k. Failed to label containers of used oil, in violation of OAC rule 3745-279-22(C). During the June 17, 2002 follow-up inspection it was noted that this violation had been abated.
9. By letter dated August 15, 2002, Ohio EPA notified Respondent of the violations referenced in Finding No. 8. of these Orders. Also in the August 15, 2002 letter, Ohio EPA explained that, notwithstanding the communication referenced in Finding No. 7. of these Orders, the lead-contaminated waste dusts which had been used to make concrete pads which were placed on the ground at the Facility would not be a recyclable material since the concrete pads were used in a manner constituting disposal and the pads were not a product produced for use by the general public and therefore, the lead-contaminated waste dusts are, and were at all times, a hazardous waste subject to all the requirements in ORC Chapter 3734. and the rules promulgated thereunder. In this letter Ohio EPA informed Respondent that sampling of the concrete pads must be conducted.
10. By letters dated August 15, September 10 and September 16, 2002, Respondent provided responses to Ohio EPA's August 15, 2002 letter. The responses were further discussed in a conference call between Ohio EPA and Respondent on November 14, 2002.
11. By letter dated November 18, 2002, Ohio EPA notified Respondent that based upon the information submitted to Ohio EPA on August 15, September 10 and September 16, 2002, Respondent had abated the violations referenced in Finding Nos. 8.c., 8.e., 8.f. and 8.i. of these Orders.
12. On December 20, 2002, Respondent collected two samples from the concrete pads as referenced in Finding Nos. 7. and 9. of these Orders.

13. By letters dated January 7, 2003, February 10, 2003 and February 18, 2003, Respondent submitted to Ohio EPA analytical information obtained from sampling of the pads. The sample results show that the mixture of hazardous waste and concrete used to make the concrete pads resulted in hazardous constituents which were below the hazardous characteristic and land disposal restriction regulatory levels.
14. Based upon the information submitted by Respondent on November 26, 2002, January 7, 2003, February 10, 2003 and February 18, 2003, the Director has determined that no further action, other than the payment of the civil penalty settlement described herein, is required at this time to address the violations referenced in Finding Nos. 8.a., 8.b. and 8.j. of these Orders.
15. The Director has determined that even if the lead contaminated dusts referenced in these Orders had been recycled into a product which was not used in a manner constituting disposal and which was produced for use by the general public, Respondent nonetheless stored hazardous waste without a permit in violation of ORC § 3734.02(E) and (F) because Respondent "accumulated speculatively" the lead-contaminated dusts as defined in OAC rule 3745-51-01(C)(8).

## **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 to Ohio EPA the amount of \$23,000.00 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 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 \$5,750;
  - b. Within 120 days after the effective date of these Orders, Respondent shall pay to Ohio EPA the amount of \$5,750;
  - c. Within 210 days after the effective date of these Orders, Respondent shall pay to Ohio EPA the amount of \$5,750; and

- d. Within 300 days after the effective date of these Orders, Respondent shall pay to Ohio EPA the amount of \$5,750.

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 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:

Director's Final Findings and Orders  
Ashtabula Rubber Company  
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Ohio Environmental Protection Agency  
Northeast District Office  
Division of Hazardous Waste Management  
2110 East 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:

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 closure of hazardous waste units at the Facility, as well as 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 closure or 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 rights to seek closure of hazardous waste units and corrective action at the Facility by Respondent, which rights 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**

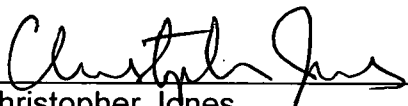
The effective date of these Orders is the date these Orders are entered into the Ohio EPA Director's journal.

## **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**

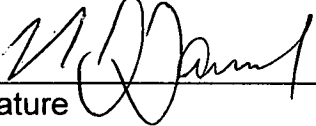
  
\_\_\_\_\_  
Christopher Jones  
Director

May 7, 2004  
\_\_\_\_\_  
Date



**IT IS SO AGREED:**

**Ashtabula Rubber Company**

  
\_\_\_\_\_  
Signature

APRIL 13, 2004  
Date

NICHOLAS J. JAMMAL  
Printed or Typed Name

PRESIDENT + C.E.O.  
Title