

OHIO E.P.A.

MAR 12 2004

ENTERED DIRECTOR'S JOURNAL

BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

AstroCosmos Metallurgical, Inc.
3225 West Old Lincoln Way
Wooster, OH 44691-1229

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 AstroCosmos Metallurgical, 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

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 operated one facility in Ohio, located at 3225 West Old Lincoln Way, Wooster, Wayne County, Ohio (Facility). Respondent was a manufacturer of piping, heat exchanger, and pressure vessels for the chemical industry. Respondent fabricated this equipment out of specialty alloys (titanium, zinc, tantalum, and hastalloys). Respondent has ceased operations at the Facility.
3. At the Facility, Respondent generated "hazardous waste" as that term is defined by ORC § 3734.01(J) and OAC rules 3745-50-10(A) and 3745-51-03. Respondent generated spent pickling acid (D002/D007), X-ray developing solution waste (D011), waste paint-related materials (D001/D035/F003/F005), scrubber sludge (D007), and used oil and solvent-contaminated rags (recycled).
4. On April 10, 2000, Respondent notified Ohio EPA of its hazardous waste activities and requested re-activation of generator identification number OHD 990.659.435.
5. On September 5, 2000, Ohio EPA conducted a complaint investigation at the Facility following the receipt of a complaint concerning the dumping of spent acid at the Facility. Ohio EPA obtained information from Respondent during the investigation which characterized the disposed waste as spent acid. Ohio EPA determined that Respondent had:
 - a. Failed to maintain and operate the Facility to minimize the possibility of a fire, explosion, or any unplanned sudden or non-sudden release of hazardous waste or 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. Ohio EPA was notified during the inspection that 30 gallons of spent pickling acid was disposed of onto the ground at the Facility; and
 - b. Failed to evaluate the waste prior to disposal to determine if the wastes were hazardous wastes, in violation of OAC rule 3745-52-11.

Ohio EPA informed Respondent of these violations by letter dated September 26, 2000. By letter dated November 14, 2000, Ohio EPA informed Respondent that Respondent had abated the violations referenced in Findings Nos. 5.a., and 5.b.

6. On January 29, 2002, Ohio EPA conducted a complaint investigation following receipt of a complaint concerning the mismanagement of hazardous waste and other generator requirements. During the on-site investigation, Ohio EPA informed Respondent that a compliance inspection would also be conducted at the Facility. As a result of the investigation and subsequent inspection, Ohio EPA determined that Respondent had, *inter alia*:
 - a. Failed to evaluate paint-related material waste, scrubber sludge waste, wastewater recovery sludge, and X-ray developing solution waste, in violation of OAC rule 3745-52-11;
 - b. Failed to provide annual hazardous waste management training for personnel handling and/or managing hazardous waste, in violation of OAC rules 3745-54-16/3745-65-16;
 - c. Failed to include the home address of a person listed as an alternate emergency coordinator, in violation of OAC rules 3745-54-52/3745-65-52;
 - d. Failed to operate and maintain the Facility to minimize the possibility of a fire, explosion, or unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to the air, soil, or surface water, in violation of OAC rules 3745-54-31/3745-65-31. Events in June, 2000, lead to the influx of water into a secondary containment hazardous waste tank vault associated with a hazardous waste storage tank. The water caused the tank to be lifted off its concrete base and ruptured ancillary equipment lines. In addition, Respondent inadvertently opened pickle tank waste acid transfer lines, releasing acid into the secondary containment hazardous waste tank vault in August, 2000;
 - e. Failed to conduct and document emergency equipment inspections, in violation of OAC rules 3745-54-33/3745-65-33;
 - f. Stored hazardous waste in a hazardous waste storage tank in excess of 90 days without a permit, in violation of ORC § 3734.02(E) & (F);
 - g. Failed to meet the installation, operation, and inspection requirements for new tank systems that store hazardous waste, in violation of OAC rules 3745-55-91/3745-66-91 through 3745-55-99/3745-66-991;

- h. Failed to label or clearly mark a hazardous waste storage tank with the words "Hazardous Waste," in violation of OAC rule 3745-52-34(A)(3); and
- i. Failed to label or clearly mark one aboveground used oil storage tank and three used oil containers with the words "Used Oil," in violation of OAC rule 3745-279-22(C).

Ohio EPA informed Respondent of these violations by letter dated March 11, 2002. By letter dated May 30, 2002, Ohio EPA notified Respondent that Respondent had abated the violations referenced in Findings Nos. 6.a., 6.c., 6.e., 6.h., and 6.i.

- 7. In addition to the violations referenced in Finding No. 6, the Director has determined that Respondent had:
 - a. Treated, stored and disposed of hazardous waste without a permit, in violation of ORC § 3734.02(E) & (F), and OAC rule 3745-270-03 by conducting the following:
 - i. Respondent treated X-ray developing solution waste without a permit when Respondent placed such waste into the spent acid hazardous waste tank and did not characterize the waste upon shipment off-site. Respondent also stored hazardous waste in a hazardous waste storage tank in excess of ninety days without a permit;
 - ii. Respondent stored hazardous waste at a paint drying cabinet in excess of 90 days without a permit. Respondent treated and disposed of hazardous waste by allowing open containers of paint and solvent to evaporate without a permit; and
 - iii. Respondent disposed of hazardous waste during the August, 2000 acid release without a permit.
 - b. Failed to implement the contingency plan following the August, 2000 acid release, in violation of OAC rules 3745-54-51/3745-65-51; and
 - c. Failed to submit a report to the Director for a release of hazardous waste onto the ground following the August, 2000 acid release, in violation of OAC rules 3745-54-56/3745-65-56.

Ohio EPA notified Respondent of these violations by letter dated May 30, 2002.

8. On August 8, 2002, and April 30, 2003, Respondent submitted, for Ohio EPA review and approval, a Closure Plan and revised Closure Plan, respectively, for the hazardous waste units referenced in Finding Nos. 6.d., 6.f., and 7.a.i. through 7.a.iii.
9. By letter dated December 3, 2003, the Director approved, with modifications, the Closure Plan referenced in Finding No. 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 implement the approved Closure Plan referenced in Finding No. 9. in the manner and pursuant to the time frames set forth in the approved Closure Plan and OAC rules 3745-55-13/3745-66-13.
2. Within 60 days after completion of closure, Respondent shall submit certification of closure to Ohio EPA in accordance with OAC rules 3745-55-15/3745-66-15. Closure certification of the areas described in the approved Closure Plan referenced in Finding No. 9. will abate the violations referenced in Finding Nos. 6.b., 6.d., 6.f., 6.g., 7.a., 7.b., and 7.c.
3. Within 60 days after the effective date of these Orders, Respondent shall submit documentation demonstrating that Respondent has established financial assurance and liability coverage for the areas of the Facility subject to closure, in accordance with OAC rules 3745-55-42/3745-66-42 through 3745-55-47/3745-66-47. Following the establishment of financial assurance and liability coverage, and during the pendency of these Orders, Respondent shall comply with OAC rules 3745-55-42/3745-66-42 through 3745-55-47/3745-66-47.
4. Upon the effective date of these Orders and continuing until Ohio EPA notifies Respondent that the closure certification submitted pursuant to Order No. 2 is adequate, Respondent shall inspect on a weekly basis and document inspections of the hazardous waste units at the Facility, pursuant to OAC rules 3745-54-15/3745-65-15.
5. Upon the effective date of these Orders and continuing until Ohio EPA notifies Respondent that the closure certification submitted pursuant to Order No. 2 is adequate, Respondent shall, pursuant to OAC rules 3745-54-14/3745-65-14, prevent the unknowing entry, and minimize the possibility for the unauthorized entry, of persons onto the areas of the Facility subject to closure.

6. Respondent shall pay Ohio EPA the amount of \$109,860.00 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 thirty (30) days after the effective date of these Orders, Respondent shall pay to Ohio EPA the amount of \$36,620.00;
 - b. Within ninety (90) days after the effective date of these Orders, Respondent shall pay to Ohio EPA the amount of \$36,620.00; and
 - c. Within one hundred fifty (150) days after the effective date of these Orders, Respondent shall pay to Ohio EPA the amount of \$36,620.00.

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.

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
Northeast District Office
Division of Hazardous Waste Management
2110 E. Aurora Road
Twinsburg, OH 44087
Attn: DHWM Manager

and Ohio EPA Central Office at the following address:

For mailings, use the post office box number:

Ohio Environmental Protection Agency
Lazarus Government Center
Division of Hazardous Waste Management
122 South Front Street, 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

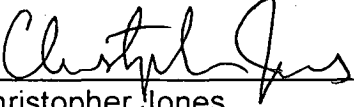
The effective date of these Orders is the date these Orders are entered into the Ohio EPA Director's journal.

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:

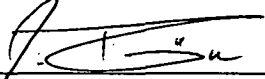
Ohio Environmental Protection Agency



Christopher Jones
Director

MAR 12 2004
Date

AstroCosmos Metallurgical, Inc.



Signature

3/4/04
Date

GERHARD DOERR

Printed or Typed Name

PRESIDENT & CEO

Title