

BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY

ENTERED DIRECTOR'S JOURNAL

AUG 25 2004

OHIO E.P.A.

In the Matter of:

Indalex Inc.
930 Sandusky Street
Fostoria, Ohio 44830

Director's Final
Findings and Orders

Respondent

PREAMBLE

It is agreed by the parties hereto as follows:

I. JURISDICTION

These Director's Final Findings and Orders (Orders) are issued to Indalex 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 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 manufactures aluminum extruded parts at 930 Sandusky Street, Fostoria, Ohio (Facility). Respondent is a foreign corporation authorized to do business in Ohio on May 8, 2000.
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 large quantity generator of hazardous waste. The hazardous waste generated by Respondent at the Facility includes spent caustic wash (D002) from the cleaning of aluminum extrusion dyes.
4. On June 30, 2000, Ohio EPA conducted an inspection at the Facility and determined that Respondent had failed to adequately evaluate the spent caustic wash, in violation of OAC rule 3745-52-11. By letter dated July 27, 2000, Ohio EPA notified Respondent of the aforementioned violation.
5. By letters dated August 8, 2000, August 14, 2000, September 20, 2000 and January 5, 2001, Respondent submitted responses to Ohio EPA's July 27, 2000 letter.
6. On April 11, 2001, Ohio EPA met with Respondent to discuss a proposal to ship the spent caustic wash off-site for reuse as a product. The same day a fax was sent by Respondent describing the reuse of the spent caustic wash.
7. By letter dated May 3, 2001, Ohio EPA notified Respondent that the violation referenced in Finding 4. had been abated. Furthermore, in this letter Ohio EPA concurred with Respondent that the caustic wash would be exempt from the hazardous waste regulations if used as described during the April 11, 2001 meeting and in the fax received the same day. In this May 3, 2001 letter, Ohio EPA also notified Respondent that the spent caustic wash may be regulated as a hazardous waste if it was not directly used as a substitute for a commercial product.
8. On May 15, 2003 and May 21, 2003, Ohio EPA conducted an inspection of the Facility. During this inspection Ohio EPA discovered that Respondent had shipped the spent caustic wash off-site as a hazardous waste on numerous occasions since 2000. Furthermore, Respondent was storing this hazardous waste in an uncertified tank. As a result of this inspection, Ohio EPA determined that Respondent had, *inter alia*:
 - a. Failed to conduct personnel training, in violation of OAC rule 3745-65-16;

- b. Failed to maintain and operate the Facility in a manner that would minimize the possibility of any unplanned non-sudden release of hazardous waste which could threaten human health and the environment, in violation of OAC rule 3745-65-31;
 - c. Failed to conduct and record weekly inspections of emergency equipment, in violation of OAC rule 3745-65-33;
 - d. Failed to obtain a written assessment for the hazardous waste tank system at the Facility, in violation of OAC rule 3745-66-92(A);
 - e. Failed to ensure that the hazardous waste tank system was installed properly, in violation of OAC rule 3745-66-92(B);
 - f. Failed to obtain and keep on file written statements by those persons required to certify the design of the hazardous waste tank system, in violation of OAC rule 3745-66-92(G);
 - g. Failed to document that the secondary containment was designed properly, in violation of OAC rule 3745-66-93;
 - h. Failed to ensure that appropriate controls and practices were in place to prevent spills and overflows from hazardous waste tank or secondary containment systems, in violation of OAC rule 3745-66-94; and
 - i. Failed to conduct and record daily inspection of the hazardous waste tank system, in violation of OAC rule 3745-66-95.
9. By letter dated June 6, 2003, Ohio EPA notified Respondent of the violations referenced in Finding No 8.
10. By letter dated June 25, 2003, Respondent submitted a response to Ohio EPA's June 6, 2003 letter.
11. On November 21, 2003, Ohio EPA conducted an inspection of the Facility. During this inspection Ohio EPA discovered that Respondent was still shipping the spent caustic wash off-site as a hazardous waste and storing the hazardous waste in the uncertified tank referenced in Finding No. 8.
12. As a result of the November 21, 2003 inspection, Ohio EPA determined that Respondent had, *inter alia*:

- a. Failed to obtain a written assessment for the hazardous waste tank system at the Facility, in violation of OAC rule 3745-66-92(A);
 - b. Failed to ensure that the hazardous waste tank system was installed properly, in violation of OAC rule 3745-66-92(B); and
 - c. Failed to obtain and keep on file written statements by those persons required to certify the design of the hazardous waste tank system, in violation of OAC rule 3745-66-92(G).
13. By letters dated December 2, December 4 and December 15, 2003, Respondent submitted information pertaining to Ohio EPA's June 6, 2003 letter and November 21, 2003 inspection. Included in this information was an engineering certification report for the tank system referenced in Finding Nos. 8. and 11.
 14. By letter dated December 22, 2003, Ohio EPA notified Respondent that it had abated the violations referenced in Finding Nos. 8 and 12.

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 \$12,000 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 \$3,000;
 - b. Within 60 days after the effective date of these Orders, Respondent shall pay to Ohio EPA the amount of \$3,000;
 - c. Within 90 days after the effective date of these Orders, Respondent shall pay to Ohio EPA the amount of \$3,000; and
 - d. Within 120 days after the effective date of these Orders, Respondent shall pay to Ohio EPA the amount of \$3,000.

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:

Ohio Environmental Protection Agency
Northwest District Office
Division of Hazardous Waste Management
347 North Dunbridge Road
Bowling Green, Ohio 43402
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 and Respondent each reserve all 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, and in lieu of further enforcement action by Ohio EPA for only the violations specifically cited in these Orders, Respondent consents to the issuance of these Orders and agrees to comply with these Orders. 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

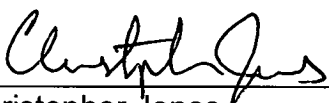
The effective date of these Orders is the date these Orders are entered into the Ohio EPA Director's journal.

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

August 25, 2004

Date

IT IS SO AGREED:

Indalex Inc.



Signature

9 Aug 2004

Date

Robert M. Sharpe

Printed or Typed Name

Plant Manager

Title