

BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY

OHIO E.P.A.
MAR -3 2004
ENTERED DIRECTOR'S JOURNAL

In the Matter of:

Kautex, Inc.
474 S. Nelson Avenue
Wilmington, OH 45177

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 Kautex, 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

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 an automotive fuel filler manufacturing facility located at 474 S. Nelson Avenue, Wilmington, Clinton County, Ohio (Facility).
3. Respondent notified Ohio EPA of its hazardous waste activities and was issued generator identification number OHD 004 254 983.
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 paint waste (D001, D007) from periodic clean-outs of product storage tanks associated with the coating operations at the Facility.
5. On December 10, 2002, a fire occurred in a roll-off container holding pieces of a dismantled hazardous waste storage tank and associated ancillary equipment, which were being managed as a hazardous waste solid (D001, D007). Respondent implemented its hazardous waste contingency plan and contacted the local fire department who extinguished the fire.
6. On March 21, 2003, 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 maintain and operate the Facility in a manner that minimizes the potential for releases of hazardous waste, or hazardous waste constituents, to the environment, in violation of OAC rule 3745-65-31;
 - c. Failed to evaluate wastes generated at the Facility, in violation of OAC rule 3745-52-11;

- d. Failed to provide adequate annual hazardous waste management training for employees at the Facility, in violation of OAC rule 3745-65-16;
 - e. Failed to properly document inspections of emergency equipment, in violation of OAC rule 3745-65-33;
 - f. Failed to properly document weekly inspections of hazardous waste storage areas, in violation of OAC rule 3745-66-74;
 - g. Failed to maintain spill control equipment at the Facility, in violation of OAC rule 3745-65-32(C);
 - h. Failed to submit a written report to the Director of Ohio EPA within 15 days of an incident that required the implementation of the hazardous waste contingency plan at the Facility, in violation of OAC rule 3745-65-56(J);
 - i. Failed to mark a hazardous waste tank with the accumulation start date and with the words, "Hazardous Waste," in violation of OAC rules 3745-52-34(A)(2) and (3);
 - j. Failed to properly close two roll-off containers holding hazardous waste, in violation of OAC rule 3745-66-73(A); and
 - k. Failed to meet the design, installation, operation, and inspection requirements for a tank system that stored hazardous waste, in violation of OAC rules 3745-66-91 through 66-992.
7. By letter dated March 31, 2003, Ohio EPA notified Respondent of the violations referenced in Finding No. 6. Also in the March 31, 2003 letter, Ohio EPA notified Respondent that the violations referenced in Finding Nos. 6.b. through 6.g., and 6.i. through 6.k. were no longer occurring at the Facility.
8. By letter dated April 8, 2003, Respondent submitted a written report detailing an incident which occurred at the Facility on December 10, 2002, for which Respondent implemented its hazardous waste contingency plan following a fire in a hazardous waste roll-off container.
9. In correspondence dated May 2, 2003, Respondent provided additional responses to Ohio EPA's March 31, 2003 letter.

10. The Director has determined that, based upon Respondent's submittal of the incident report referenced in Finding No. 8, Respondent has abated the violation referenced in Finding No. 6.h. Furthermore, no additional action is required of Respondent at this time regarding the ORC § 3734.02(E) and (F) violation referenced in Finding No. 6.a.
11. On November 20, 2003, Ohio EPA conducted an inspection at the Facility. As a result of the inspection, Ohio EPA determined that Respondent had failed to provide adequate annual hazardous waste management training for employees at the Facility, in violation of OAC rule 3745-65-16.
12. By letter dated December 11, 2003, Ohio EPA notified Respondent of the violation referenced in Finding No. 11. Also in the December 11, 2003 letter, and based upon a records review conducted during the November 20, 2003 inspection, Ohio EPA notified Respondent that Respondent had abated the violation referenced in Finding No. 11.

V. ORDERS

Respondent shall achieve compliance with Chapter 3734. of the ORC and the regulations promulgated thereunder according to the following compliance schedule:

1. For a period of three years after the effective date of these Orders, Respondent shall provide written notification to Ohio EPA within five business days from the date Respondent generates greater than 1000 kilograms of hazardous waste in any calendar month. This notification shall be submitted in accordance with Section X. of these Orders.
2. Respondent shall pay to Ohio EPA the amount of \$77,550.00 in settlement of Ohio EPA's claims for civil penalties for all matters described in the Findings of Fact which may be assessed for noncompliance pursuant to ORC Chapter 3734. \$55,000.00 of this amount shall be deposited into the hazardous waste clean-up fund established pursuant to ORC § 3734.28. Payment shall be made within 30 days after the effective date of these Orders by tendering a certified check for \$55,000.00 made payable to "Treasurer, State of Ohio" to Ohio EPA, Office of Fiscal Administration, P.O. Box 1049, Columbus, Ohio 43216-1049, together with a letter identifying Respondent and the Facility. A copy of this check shall be submitted in accordance with Section X of these Orders.
3. In lieu of payment of the remaining \$22,550.00 of the civil penalty settlement, Respondent shall implement at the Facility a supplemental project as follows:

- a. Within 140 days after the effective date of these Orders, Respondent shall implement at the Facility a paint drip accumulation and reclamation system as described in Attachment A to these Orders, incorporated herein.
 - b. Within 30 days after the installation of the paint drip accumulation and reclamation system, Respondent shall submit to Ohio EPA a report demonstrating completion of the paint drip accumulation and reclamation system. The report shall include documentation of expenditures, e.g., paid invoices, relating to the installation of the paint drip accumulation and reclamation system. The report shall be submitted in accordance with Section X of these Orders.
4. Should Respondent fail to implement the SEP in a timely manner, or fail to fully implement the SEP in the amount of at least \$45,100.00 within 140 days after the effective date of these Orders, Respondent shall pay to Ohio EPA the \$22,550.00 balance of the civil penalty which will be deposited into the hazardous waste cleanup fund established pursuant to ORC § 3734.28. Payment shall be made within 170 days after the effective date of these Orders by tendering a certified check for \$22,550.00 made payable to "Treasurer, State of Ohio" to Ohio EPA, Office of Fiscal Administration, P.O. Box 1049, Columbus, Ohio 43216-1049, together with a letter identifying Respondent and the Facility. A copy of this 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 5th Street
Dayton, Ohio 45402
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

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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.

ATTACHMENT A

Project#1:

The project covers the removal of the paint system drip tunnel floor. The floor in its current state has accumulated paint drips, which contributes to the majority of hazardous waste from this facility. The replacement floor will incorporate a river of the process paint to re-capture 85% of the disposed collection of paint drips.

- Two main benefits of the project:
 1. reduce paint usage by re-claim some of the loss;
 2. reduce hazardous waste generation to level of small quantity generator.
- Cost of the project:

Equipment installation (pump, plumbing, etc.)	\$ 30,000
Floor dis-assemble and re-install:	\$ 17,500

- Timing of the project:
 - All equipment installation: May 2004
 - All system in place and operating: June 2004