

OHIO E.P.A.

DEC 30 2004

ENTERED DIRECTOR'S JOURNAL

**BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY**

In the Matter of:

Richland Moulded Brick Company, Inc.
1000 Richland-Shale Road
Mansfield, Ohio 44903

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 Richland Moulded Brick Company, 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 formerly manufactured bricks at its facility located at 1000 Richland-Shale Road, Mansfield, Ohio (Facility). At the time it manufactured bricks, Respondent owned the Facility.
2. Respondent was incorporated in Ohio on September 14, 1988. 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 OHR000011221.
4. On August 3, 1990, Respondent petitioned Ohio EPA to allow it to accept hazardous waste in the form of Electric Arc Furnace (EAF) dust, a listed hazardous waste (K061) and use it as an ingredient in the manufacturing of bricks. Respondent submitted documentation describing the manner in which the EAF dust would be handled and the bricks would be manufactured.
5. By letters dated May 31, 1991 and July 15, 1993, Ohio EPA concurred that EAF dust could be used to manufacture bricks at Respondent's Facility provided that the process was consistent with the description provided by Respondent.
6. By letters dated May 1, 1995 and November 6, 1995, Ohio EPA notified Respondent that if brick made with EAF dust were applied or placed on the land then land disposal restriction requirements were applicable. The letters stated that such bricks would be considered hazardous waste if used in a manner constituting disposal.
7. On August 27, 1997, Ohio EPA conducted an inspection of the Facility. As a result of this inspection, by letters dated September 17 and December 12, 1997, Ohio EPA informed Respondent that scrap brick which contained EAF dust was required to be managed as hazardous waste unless it could be used directly in the manufacturing process.

8. By May of 1998, Respondent had received 592.72 tons of EAF dust at its Facility and started using the EAF dust to manufacture bricks according to the process submitted to Ohio EPA. The process as proposed and implemented did not produce the quality of brick that Respondent had anticipated. The calcine (a material that is an intermediate stage of EAF dust brick manufacture) and a significant quantity of the EAF dust-containing bricks, which are hazardous wastes (K061), are currently being stored in a brick building owned by Respondent that is west of the manufacturing Facility (the "Brick Building").
9. On August 27, 2001, Ohio EPA conducted a complaint investigation at Respondent's Facility. As a result of this complaint investigation, Ohio EPA determined that Respondent had:
 - a. Failed to evaluate wastes, in violation of OAC rule 3745-52-11; and
 - b. Failed to clean up and manage releases of used oil, in violation of OAC rule 3745-279-22(D)(3).
10. By letter dated September 7, 2001, Ohio EPA notified Respondent of the violations referenced in Finding No. 9.
11. By letters dated October 3 and October 18, 2001, Respondent provided a response to Ohio EPA's September 7, 2001 letter.
12. By letter dated February 21, 2002, Ohio notified Respondent that the violation referenced in Finding No. 9.a. of these Orders had been abated.
13. On April 4 and May 9, 2002, Ohio EPA conducted follow-up inspections at the Facility. As a result of these inspections, Ohio EPA determined that Respondent had:
 - 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 wastes, in violation of OAC rule 3745-52-11;
 - c. Failed to institute a personnel training program, in violation of OAC rule 3745-65-16;
 - d. Failed to develop and maintain a contingency plan, in violation of OAC rule 3745-65-51;

- e. Failed to conduct weekly inspections of hazardous waste accumulation areas, in violation of OAC rule 3745-66-74; and
 - f. Failed to label containers of used oil, in violation of OAC rule 3745-279-22(C)(1).
- 14. By letter dated June 17, 2002, Ohio EPA notified Respondent of the violations referenced in Finding No. 13.
 - 15. By letter dated June 28, 2002, Respondent provided a response to Ohio EPA's June 17, 2002 letter.
 - 16. By email dated August 28, 2003, Respondent submitted documentation to demonstrate that the violation referenced in Finding No. 9.b had been abated. By letter dated October 22, 2003, Ohio EPA notified Respondent that the violation referenced in Finding No. 9.b. of these Orders had been abated.
 - 17. By email dated November 23, 2004, Respondent submitted a manifest to Ohio EPA demonstrating that four drums of used oil had been shipped off-site. Therefore, the violation referenced in Finding No. 13.f of these Orders has been abated.

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 close the hazardous waste storage area in the Brick Building, where hazardous waste scrap and/or intermediate bricks are being stored without a permit, in accordance with OAC rules 3745-55-11/3745-66-11 through 3745-55-20/3745-66-20. Within 30 days after the effective date of these Orders, Respondent shall submit to Ohio EPA a closure plan, prepared in accordance with OAC rules 3745-55-11/3745-66-11 through 3745-55-20/3745-66-20.
- 2. The closure plan referenced in Order No. 1 is subject to Ohio EPA review and approval. If Ohio EPA does not approve the closure plan, and provides Respondent with a written statement of deficiencies, Respondent shall, within 30 days after receipt of such written statement, revise the closure plan or submit a new closure plan to Ohio EPA addressing the deficiencies. Ohio

EPA may approve the closure plan with modifications. If Ohio EPA modifies the closure plan, the modified closure plan shall become the approved closure plan.

3. Upon receiving Ohio EPA's written approval of the closure plan, Respondent shall implement the approved closure plan pursuant to the specifications and schedules contained in the approved closure plan, any modifications attached to the approved closure plan, and OAC rules 3745-55-13/3745-66-13.
4. Within 60 days after completion of closure, Respondent shall submit to Ohio EPA a closure certification in accordance with OAC rules 3745-55-15/3745-66-15.
5. Within 60 days after the effective date of these Orders, Respondent shall submit to Ohio EPA a closure cost estimate and documentation demonstrating that Respondent has established financial assurance and liability coverage for closure in accordance with OAC rules 3745-55-42/3745-66-42 through 3745-55-47/3745-66-47. Completion of Order Nos. 1 through 5 will abate the violations referenced in Finding Nos. 13.a., 13.c., 13.d. and 13.e.
6. Within 14 days after the effective date of these Orders, Respondent shall, evaluate the coal tar wastes referenced in Finding No. 13.b. Within 7 days after receipt of laboratory results, Respondent shall submit a copy of the waste evaluation to Ohio EPA. Completion of this Order will abate the violation referenced in Finding No. 13.b.
7. Respondent shall pay to Ohio EPA the amount of \$20,100.00 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 \$7,500.00;
 - b. Within 395 days after the effective date of these Orders, Respondent shall pay to Ohio EPA the amount of \$4,200.00;
 - c. Within 760 days after the effective date of these Orders, Respondent shall pay to Ohio EPA the amount of \$4,200.00; and

- d. Within 1125 days after the effective date of these Orders, Respondent shall pay to Ohio EPA the amount of \$4,200.00.

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 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 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 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

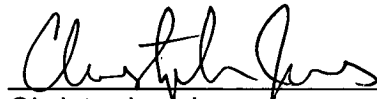
The effective date of these Orders is the date these Orders are entered into the Ohio EPA Director's journal.

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

December 30, 2004
Date

IT IS SO AGREED:

Richland Moulded Brick Company, Inc.



Signature

12-27-04
Date

Scott W. Frame

Printed or Typed Name

Vice President

Title