

BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

Sugarcreek Industries, Inc.
425 South Broadway Street
Sugarcreek, Ohio 44681

**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 Sugarcreek Industries, 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

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 doors and windows at 425 South Broadway Street, Sugarcreek, Ohio (Facility). Respondent became incorporated in Ohio on April 25, 1995.

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 a spent methylene chloride/urethane solvent (F002) used to purge debridger lines and paint wastes (D001/F003).
4. On October 30, 2003, Ohio EPA conducted an inspection of the Facility. During this inspection, Ohio EPA discovered that Respondent had been allowing spent solvents to evaporate into the air. In addition, Respondent had been placing 5 gallon containers of this solvent into the solid waste dumpster. As a result of this inspection, Ohio EPA determined that Respondent had, *inter alia*:
 - a. Failed to evaluate waste to determine if the waste was hazardous waste, in violation of OAC rule 3745-52-11;
 - b. Failed to label and date containers of hazardous waste, in violation of OAC rule 3745-52-34(A)(2) and (3); and
 - c. Failed to store hazardous waste in containers that were closed, in violation of OAC rule 3745-66-73.
5. By letter dated November 13, 2003, Ohio EPA notified Respondent of the violations referenced in Finding No. 4. of these Orders.
6. By letter dated November 25, 2003 and facsimile dated November 26, 2003, Respondent submitted responses to Ohio EPA's November 13, 2003 letter. These responses included analytical results for the waste stream referenced in Finding No. 4.a. of these Orders. The November 25, 2003 letter also indicated that the methylene chloride solvent being used to purge the debridger lines had been replaced with a non-hazardous solvent.
7. The analytical results submitted to Ohio EPA on November 25, 2003, demonstrate that the waste referenced in Finding No. 4.a. of these Orders was a hazardous waste (F002). Therefore, during the October 30, 2003 inspection, Respondent had been illegally treating and disposing of hazardous waste by allowing it to evaporate into the air, in violation of ORC § 3734.02(E) and (F). Furthermore, Respondent had been placing 5 gallon containers of F002 hazardous waste, approximately 21 gallons per year, into the solid waste dumpster. Therefore, the Director has determined that by placing spent hazardous waste solvents (F002) into a solid waste dumpster, Respondent transported or caused to be transported hazardous wastes to

an unpermitted facility; failed to ensure delivery of hazardous waste to an off-site permitted, treatment, storage or disposal facility; and failed to manifest hazardous wastes, in violation of ORC § 3734.02(F) and OAC rule 3745-52-20.

8. By letter dated December 13, 2003, Ohio EPA notified Respondent that the violations referenced in Finding No. 4. of these Orders had been abated.
9. Based upon the responses and actions taken by Respondent as referenced in Finding No. 6 of these Orders, the Director has determined that the violations referenced in Finding No. 7. of these Orders have been abated.
10. Ohio EPA is not requiring nor reserving Ohio EPA's right to require Respondent to perform closure of Respondent's hazardous waste unit because there were no visible signs of release onto the ground, and Respondent, as a large quantity generator, is subject to generator closure at some point in the future.
11. Pursuant to Respondent's request, and review and approval by Ohio EPA, a forty percent (40%) credit was applied to the civil penalty settlement amount to account for the supplemental environmental projects (SEPs) performed at the Facility. These SEPs included a high efficiency air compressor, an upgraded paint system, and a shift from methylene chloride to a nonhazardous material to purge the debridger line. Accordingly, Ohio EPA agreed to credit 40% of the \$11,800 civil penalty settlement account (\$4,720) for these activities. The remainder of the \$11,800 civil penalty settlement amount (\$7,080) is to be paid in accordance with Section V.

V. ORDERS

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

Within 30 days after the effective date of these Orders, Respondent shall pay Ohio EPA the amount of \$ 7,080 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. Payment shall be made by an official check made payable to "Treasurer, State of Ohio" for \$7,080. The official check 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 this 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 check 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
Southeast District Office
Division of Hazardous Waste Management
2195 Front Street
Logan, Ohio 43138
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 any final action of the Director regarding 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

11-18-04

Date

IT IS SO AGREED:

Sugarcreek Industries, Inc.



Signature

10/29/04

Date

SCOTT E WIDMER

Printed or Typed Name

ENVIRONMENTAL COORDINATOR

Title