

OHIO E.P.A.

JUN 17 2004

BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY

ENTERED DIRECTOR'S JOURNAL

In the Matter of:

U.S. Technology Corporation
1446 W. Tuscarawas Street
Canton, Ohio 44702

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 U.S. Technology Corporation (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 was authorized to do business in Ohio on August 28, 1987.

3. Respondent produces blasting material which is used by its customers to remove coatings from metal in blasting/stripping operations. Respondent receives the spent blasting material back from its customers and recycles it by using it as an ingredient in the manufacturing of dog bowls, bird baths, planters, patio furniture, and lazy susans at its 1446 W. Tuscarawas Street facility. Split face block using the spent blasting material as an ingredient is manufactured at its facility located at 220 7th Street S.E., Canton, Ohio (Facility). Pursuant to OAC rule 3745-51-02, the spent blasting material is considered to be a "spent material" which is a waste and is a hazardous waste if it is not recycled in accordance with OAC rules 3745-51-01 and 51-02.
4. Respondent notified Ohio EPA of its hazardous waste activities and was issued generator identification number OHD020632147 for the Facility.
5. Sometime in late 2000, Respondent began shipping spent blasting material to Hydromex Inc's (Hydromex) facility in Yazoo, Mississippi. Hydromex does not hold a hazardous waste treatment, storage or disposal permit.
6. By letter dated June 18, 2001, the Mississippi Department of Environmental Quality responded to Respondent's request for a regulatory applicability determination regarding the use of spent plastic blasting material as filler and/or colorant in the manufacture of certain items. The Mississippi Department of Environmental Quality responded that the spent blasting material used by Hydromex as filler and/or colorant in manufactured items would not be considered a solid waste.
7. By letter dated June 19, 2001, Respondent notified Ohio EPA that Respondent had entered into a license and supply agreement with Hydromex located in Yazoo, Mississippi. Respondent indicated that spent blast material would be shipped to Hydromex to be used as an ingredient in the production of cast polymer sheet and block materials. In the June 19, 2001 letter, Respondent also stated that "[t]he state of Mississippi Department of Environmental Quality has been fully informed and has physically inspected the Hydromex facility." Respondent also enclosed a copy of the June 18, 2001 letter from the Mississippi Department of Environmental Quality.
8. On April 17, 2002, Ohio EPA conducted an inspection of Respondent's Facility. As a result of this inspection and by letters dated May 21 and May 28, 2002, Ohio EPA requested that Respondent address several concerns Ohio EPA had with regards to Respondent's operations and recycling practices. Also in the May 21, 2002 letter, Ohio EPA cited Respondent in

violation of OAC rule 3745-51-02(F).

9. By letter dated May 28, 2002, Ohio EPA advised Respondent that, based upon information provided by Respondent during a May 23, 2002 telephone conference, it was rescinding the violation of OAC rule 3745-51-02(F) referenced in the May 21, 2002 letter.
10. By letters dated May 3 and June 17, 2002, Respondent submitted information as requested during the April 17, 2002 inspection and in the May 21 and May 28, 2002 letters referenced in Finding No. 8. of these Orders.
11. On June 25, 2002, US EPA and the Mississippi Department of Environmental Quality conducted an inspection of Hydromex's Yazoo, Mississippi facility.
12. At Respondent's request, Ohio EPA met with Respondent on November 11, 2002 to discuss Respondent's proposal to recycle the spent blasting material into split-faced masonry concrete block.
13. On November 14, 2002, the US EPA, investigative agencies within the Department of Defense, Mississippi Department of Environmental Quality, and the Federal Bureau of Investigation executed a search warrant at the Hydromex facility. Also on November 14, 2002, the Mississippi Department of Environmental Quality issued to Hydromex a cease and desist order in which Hydromex was cited for operating a hazardous waste facility without a permit.
14. In its November 26, 2002 "RCRA Compliance Evaluation Inspection" report, US EPA summarized the results of the inspection referenced in Finding No. 11. of these Orders. In the RCRA Compliance Evaluation Inspection report, US EPA stated: "Based upon the findings of the inspection, [US] EPA has determined that the solid waste exemption claimed by Hydromex for the pads are not valid because the spent blasting material received from offsite and used in making the pads are being used in a manner constituting disposal. In addition, the spent blasting material also appeared not to be an effective substitute for a commercial product or an ingredient to make a viable product." US EPA's RCRA Compliance Evaluation Inspection report went on to state: "Hydromex is operating an illegal hazardous waste treatment, storage and disposal facility because it does not have a RCRA permit."
15. By letter dated December 17, 2002, Ohio EPA notified Respondent that it had established and operated an unpermitted hazardous waste storage facility and transported or caused to be transported hazardous waste to

Hydromex, an unpermitted hazardous waste facility, in violation of ORC § 3734.02(E) and (F). In addition to the violation cited in the December 17, 2002 letter, the Director has determined that Respondent also violated the manifest requirements found in OAC rule 3745-52-20 and the land disposal restriction requirements found in OAC rule 3745-270-07.

16. By letter dated December 23, 2002, the Mississippi Department of Environmental Quality provided a letter to Ohio EPA which stated in part: "[c]oncurrently, U.S. Technology, Inc. has made a serious proposal to MDEQ to recycle all spent blast media . . . currently located at the property occupied by Hydromex." The letter went on to state: ". . . it appears to MDEQ that U.S. Technology is attempting in good faith to incorporate the blast material, in all of its forms, as ingredients in an industrial process to make a product."
17. By letter dated January 16, 2003, Respondent submitted a response to Ohio EPA's letter dated December 17, 2002.
18. By letters dated February 26, 2003 and April 22, 2003, Ohio EPA informed Respondent that the use of spent blast material to manufacture split-face masonry concrete block would not be a waste if used and managed in accordance with the exclusion provided in OAC rules 3745-51-01 and 51-02.
19. On March 12, 2003, Ohio EPA conducted a follow up inspection at the Facility.
20. By letter dated May 1, 2003, Ohio EPA notified Respondent that because the spent blast material shipped to Hydromex was not considered to have been recycled, Respondent speculatively accumulated the spent blast material in the years 2000, 2001 and 2002 as defined in OAC rule 3745-51-01(C)(8). Accordingly, for the years 2000, 2001 and 2002, Ohio EPA takes the position that Respondent operated an unpermitted hazardous waste storage facility, in violation of ORC § 3734.02(E) and (F). Furthermore, Ohio EPA takes the position that Respondent, for the years 2000, 2001 and 2002, failed to comply with the rules applicable to owners and operators of hazardous waste treatment, storage and disposal facilities found in OAC Chapters 3745-54 and 55.
21. On July 17, 2003, Respondent entered into an Agreed Order with the Mississippi Department of Environmental Quality pursuant to which Respondent agreed to conduct operations at the Hydromex facility to recycle and remove the containerized material and the inadequately or improperly recycled material at the Hydromex facility.

22. Inasmuch as Respondent's spent blast material recycling process occurs indoors and involves an enclosed piping system and Ohio EPA has not observed any releases from the spent blast material recycling process, the Director has determined that closure pursuant to ORC Chapter 3734. and OAC Chapters 3745-54, 55, 65, and 66 is not required to abate the violations of ORC § 3734.02(E) and (F) referenced in Finding Nos. 15. and 20. of these Orders.
23. As noted in Finding No. 22. of these Orders, Ohio EPA has not observed any releases from the spent blast material recycling process at the Facility. Additionally, a covenant not to sue was issued pursuant to ORC Chapter 3746 for a portion of the Facility on June 13, 1996. Based upon this information, the Director has determined that Facility-wide corrective action at the Facility will not be required in the foreseeable future and that the Facility would be considered a low priority for Facility-wide corrective action.

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 submit to Ohio EPA monthly reports for a period of twenty-four consecutive months addressing the use of the spent blasting material as an ingredient in the manufacture of split-faced masonry concrete block (Recycling Report). The monthly Recycling Reports shall include the following information:
 - a. The number of containers and weight of hazardous spent blast material meeting material specifications received by Respondent from each generator by date received;
 - b. The number of containers and weight of hazardous spent blast material not meeting material specifications received by Respondent from each generator by date, the disposition of the off-specification blast material, and the date of disposition;
 - c. Per operating day, the weight of hazardous spent blast material used and the total number of blocks produced containing hazardous spent blast material;
 - d. The total number of off-specification blocks containing spent blast material produced per day and the disposition of the blocks.

- e. The name and address of each person to whom Respondent sells or transfers blocks, the date of the sale or transfer, and the total number of blocks sold or transferred to each person;
- f. The number of blocks used by Respondent and for what purpose(s); and
- g. Documentation that the spent blast material and the blocks made using spent blast media meet specifications provided in Respondent's December 18, 2002 letter to Ohio EPA and American Society for Testing and Measurements industry specifications for compression strength for load bearing masonry units.

The first Recycling Report shall be submitted to Ohio EPA no later than the last day of the first full month following the effective date of these Orders. Respondent shall submit to Ohio EPA each subsequent Recycling Report no later than the last day of the corresponding month for twenty-four consecutive months.

- 2. Within 30 days after the effective date of these Orders, Respondent shall submit to Ohio EPA for review and approval a sampling and analysis plan (Sampling Plan). The Sampling Plan shall be developed using the methods described in chapter nine of "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA publication SW-846. The objective of the Sampling Plan is to ensure that Respondent's blocks produced using hazardous spent blasting material do not exhibit the characteristic of toxicity for lead, chromium and cadmium. The Sampling Plan shall include a description of sampling methods, the frequency of sampling and the analytical procedures to be used to analyze the blocks, a description of quality assurance methods and a description of analysis of data that will be produced.
- 3. Respondent shall notify Ohio EPA at least 30 days before conducting storage of spent blasting material and/or manufacturing of items using spent blasting material as an ingredient to manufacture split-faced masonry concrete block or any other product at any facility other than those referenced in Finding No. 3. of these Orders.
- 4. Respondent shall pay to Ohio EPA the amount of \$150,000 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 \$12,500;
- b. Within 60 days after the effective date of these Orders, Respondent shall pay to Ohio EPA the amount of \$12,500;
- c. Within 90 days after the effective date of these Orders, Respondent shall pay to Ohio EPA the amount of \$12,500;
- d. Within 120 days after the effective date of these Orders, Respondent shall pay to Ohio EPA the amount of \$12,500;
- e. Within 150 days after the effective date of these Orders, Respondent shall pay to Ohio EPA the amount of \$12,500;
- f. Within 180 days after the effective date of these Orders, Respondent shall pay to Ohio EPA the amount of \$12,500;
- g. Within 210 days after the effective date of these Orders, Respondent shall pay to Ohio EPA the amount of \$12,500;
- h. Within 240 days after the effective date of these Orders, Respondent shall pay to Ohio EPA the amount of \$12,500;
- i. Within 270 days after the effective date of these Orders, Respondent shall pay to Ohio EPA the amount of \$12,500;
- j. Within 300 days after the effective date of these Orders, Respondent shall pay to Ohio EPA the amount of \$12,500;
- k. Within 330 days after the effective date of these Orders, Respondent shall pay to Ohio EPA the amount of \$12,500; and
- l. Within 360 days after the effective date of these Orders, Respondent shall pay to Ohio EPA the amount of \$12,500.

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
Northeast District Office
Division of Hazardous Waste Management
2110 East Aurora Road
Twinsburg, Ohio 44087
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 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, 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

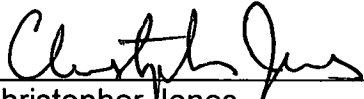
The effective date of these Orders is the date these Orders are entered into the Ohio EPA Director's journal.

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



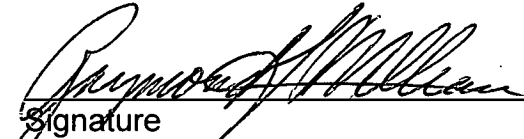
Christopher Jones
Director

June 17, 2004

Date

IT IS SO AGREED:

U.S. Technology Corporation



Signature

5/21/04

Date

Raymond F. Williams

Printed or Typed Name

President

Title