

OHIO E.P.A.

NOV 10 2003

ENTERED DIRECTOR'S JOURNAL

**BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY**

In the Matter of:

Vern Miller Chevrolet-Olds, Inc.
dba Baumann Chevrolet-Oldsmobile
2080 South State Rt. 19
Oak Harbor, Ohio 43449

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 Vern Miller Chevrolet-Olds, Inc., dba Baumann Chevrolet-Oldsmobile (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 owned by Respondent 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 owned and operated an automotive service and sales dealership located at 2080 South State Route 19, Oak Harbor, Ottawa County, Ohio (Facility). Respondent ceased operations at the Facility in December, 2001.
3. At the Facility, Respondent generated "hazardous waste" as that term is defined by ORC § 3734.01(J) and OAC rules 3745-50-10(A) and 3745-51-03. Respondent had previously been issued EPA identification number OHD058716572. At the Facility, Respondent generated mixtures of oil, antifreeze, and other associated automobile service related wastes.
4. On December 20, 2001, Ohio EPA conducted a complaint investigation at the Facility. As a result of that investigation, Ohio EPA determined that Respondent had, *inter alia*:
 - a. Failed to evaluate wastes generated at the Facility, which were stored in a floor trench drain, piping, two underground storage tanks, and connected sand filter, to determine if those wastes were hazardous wastes, in violation of OAC rule 3745-52-11; and
 - b. Failed to mark four containers and one tank holding used oil with the words, "Used Oil," in violation of OAC rule 3745-279-22(C).
5. By letter dated January 3, 2002, Ohio EPA notified Respondent of the violations referenced in Finding Nos. 4.a. and 4.b.
6. On January 22, 2002, Ohio EPA conducted a site visit to observe Respondent's sampling of the wastes stored in the floor trench drain, piping, two underground storage tanks, and sand filter.

7. On February 21 and March 14, 2002, Respondent submitted to Ohio EPA laboratory results from the samples referenced in Finding No. 6. Those results indicated that the wastes were hazardous wastes (D001/D006/D007/D008/D018). Based on these results, Ohio EPA determined that Respondent had, *inter alia*:
 - a. Established and operated a hazardous waste storage and disposal facility without a permit, in violation of ORC § 3734.02(E) & (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 maintain a written closure plan, in violation of OAC rule 3745-66-12; and
 - d. 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 3745-66-992.
8. On June 10 and 11, 2002, Respondent manifested off-site for disposal approximately 2,000 gallons of hazardous waste (D001/D006/D007/D008/D018) that was stored at the Facility.
9. By letter dated June 21, 2002, Ohio EPA notified Respondent of the violations referenced in Finding Nos. 7.a. through 7.d. Also in this letter, Ohio EPA notified Respondent that Respondent had abated the violation referenced in Finding No. 4.a.
10. On August 21, 2002, Ohio EPA received a Closure Plan for the floor trench drain, piping, two underground storage tanks, and sand filter.
11. By letter dated January 17, 2003, Ohio EPA provided Respondent with a written statement of Closure Plan deficiencies.
12. By letter dated April 30, 2003, the Director approved a modified Closure Plan for the hazardous waste storage and disposal units at the Facility.
13. On September 26, 2003, Respondent submitted a Closure Certification for the hazardous waste storage and disposal units at the Facility, and therefore has abated the violations referenced in Finding Nos. 7.a. through 7.d.

14. No additional action is required of Respondent at this time regarding the violation referenced in Finding No. 4.b.

V. ORDERS

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

1. Within 30 days after the effective date of these Orders, Respondent shall pay Ohio EPA the amount of \$23,000.00 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. Payment shall be made by an official check made payable to "Treasurer, State of Ohio" for \$23,000.00. 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
Northwest District Office
Division of Hazardous Waste Management
347 N. 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

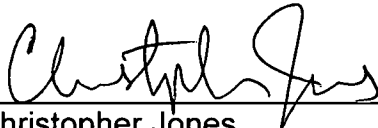
The effective date of these Orders is the date these Orders are entered into the Ohio EPA Director's journal.

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

NOV 10 2003
Date

IT IS SO AGREED:

**Vern Miller Chevrolet-Olds, Inc.
dba Baumann Chevrolet-Oldsmobile**



Signature

OCTOBER 29, 2003
Date

ALBERT V. BAUMANN
Printed or Typed Name

PRESIDENT
Title