

OHIO E.P.A.

DEC 30 2003

ENTERED DIRECTOR'S JOURNAL

**BEFORE THE  
OHIO ENVIRONMENTAL PROTECTION AGENCY**

**In the Matter of:**

**The Euclid Chemical Company**  
19218 Redwood Road  
Cleveland, Ohio 44110-2799

**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 The Euclid Chemical Company (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 manufactures products for the concrete and masonry industry at the facility located at 19218 Redwood Road, Cleveland, Ohio (Facility). Respondent is a corporation qualified to do business in Ohio on December 27, 1965.
2. 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 OHD004201042.
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.
5. On June 21, June 26 and June 27, 2002, Ohio EPA conducted inspections of the Facility. As a result of these inspections, Ohio EPA determined that Respondent had, *inter alia*:
  - a. Failed to evaluate containers of 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);
  - c. Failed to maintain and operate the Facility in a manner that minimizes the possibility of a fire, explosion, or any unplanned sudden or non-sudden release of hazardous waste constituents to air, soil, or surface water which could threaten human health or the environment, in violation of OAC rule 3745-65-31;
  - d. Failed to conduct inspections of emergency equipment and container accumulation areas, in violation of OAC rules 3745-65-33 and 3745-66-74;

- e. Failed to maintain aisle space to allow the unobstructed movement of personnel, fire protection equipment, spill control equipment, and decontamination equipment, in violation of OAC rule 3745-65-35;
  - f. Failed to conduct annual personnel training, keep job descriptions, job titles, and the type and amount of introductory and continuing training and failed to document that personnel completed the training, in violation of OAC rule 3745-65-16;
  - g. Failed to maintain a complete contingency plan, in violation of OAC rule 3745-65-52;
  - h. Failed to amend the contingency plan when the list of emergency coordinators changed, in violation of OAC rule 3745-65-54;
  - i. Failed to keep containers holding hazardous waste in good condition and to transfer hazardous wastes from leaking containers into containers in good condition, in violation of OAC rule 3745-66-71;
  - j. Failed to keep containers holding hazardous waste closed, in violation of OAC rule 3745-66-73;
  - k. Failed to keep containers holding ignitable hazardous waste at least fifteen meters (fifty feet) from the Facility's property line, in violation of OAC rule 3745-66-76;
  - l. Failed to comply with land disposal restriction (LDR) requirements for hazardous wastes, in violation of OAC rule 3745-270-07;
  - m. Failed to comply with the manifest requirements for shipments of hazardous waste, in violation of OAC rules 3745-52-20 through 3745-52-23; and
  - n. Failed to label and mark containers of hazardous waste in accordance with Department of Transportation (DOT) regulations under 49 CFR Part 172, in violation of OAC rules 3745-52-31 and 3745-52-32.
6. By letter dated July 17, 2002, Ohio EPA notified Respondent of the violations referenced in Finding No. 5 of these Orders.
7. By letters dated August 6 and August 21, 2002, Respondent provided responses to Ohio EPA's July 17, 2002 letter.

8. On August 29, 2002, Ohio EPA conducted a follow-up inspection of the Facility. As a result of this inspection, Ohio EPA determined that Respondent failed to date containers of hazardous waste, in violation of OAC rule 3745-52-34(A).
9. On September 23 and September 24, 2002, Ohio EPA received a copy of waste evaluation results for containers of waste solvent, waste solvent based products and waste corrosives which indicated that the wastes were hazardous waste.
10. By letter dated October 22, 2002, Ohio EPA notified Respondent of the violations referenced in Finding No. 8 of these Orders. In this same letter, Ohio EPA notified Respondent that Respondent had stored and disposed of hazardous waste without a permit, in violation of ORC § 3734.02(E) and (F). Furthermore, the letter informed Respondent that it had abated the violations referenced in Finding Nos. 5.a., 5.b., 5.d., 5.e., 5.g., 5.h., 5.i., 5.j., 5.l. and 8. of these Orders.
11. By letter dated November 27, 2002, Respondent provided a response to Ohio EPA's October 22, 2002 letter. As an attachment to this letter, Respondent submitted to Ohio EPA a Sampling and Analysis Plan (SAP) for sampling activities to determine the rate and extent of contamination for all areas at the Facility where hazardous waste was stored and disposed without a permit.
12. By letter dated December 17, 2002, Respondent submitted a Facility Compliance Plan (FCP) to Ohio EPA, as requested in Ohio EPA's July 17 and October 22, 2002 letters.
13. By letter dated December 19, 2002, Ohio EPA provided comments on the SAP referenced in Finding No. 11. of these Orders.
14. On January 6, 2003, Ohio EPA conducted a follow-up inspection of the Facility. As a result of this inspection, Ohio EPA determined that Respondent had, *inter alia*:
  - a. Failed to evaluate a container of hazardous waste, in violation of OAC rule 3745-52-11;
  - b. Failed to conduct inspections of emergency equipment and container accumulation areas, in violation of OAC rules 3745-65-33 and 3745-66-74;

- c. Failed to comply with LDR requirements for hazardous wastes, in violation of OAC rule 3745-270-07;
  - d. Failed to comply with the manifest requirements for shipments of hazardous waste, in violation of OAC rules 3745-52-20 through 3745-52-23; and
  - e. Failed to label and mark containers of hazardous waste in accordance with DOT regulations under 49 CFR Part 172, in violation of OAC rules 3745-52-31 and 3745-52-32.
- 15. On January 21, 2003, Respondent submitted a revised SAP to Ohio EPA.
  - 16. On February 7, 2003, Respondent submitted a revised SAP after meeting with Ohio EPA representatives on January 29, 2003.
  - 17. By letter dated March 3, 2003, Ohio EPA approved the SAP referenced in Finding No. 16. of these Orders with modifications.
  - 18. By letter dated March 14, 2003, Ohio EPA notified Respondent of the violations referenced in Finding No. 14. of these Orders. In this same letter, Ohio EPA notified Respondent that based upon the information submitted to Ohio EPA on February 24 and March 7, 2003, Respondent had abated the violations referenced in Finding Nos. 5.f., 5k. and 14.b. of these Orders. Also as an attachment to this same letter, Ohio EPA provided comments on the FCP referenced in Finding No. 12. of these Orders.
  - 19. On June 4, 2003, Respondent submitted to Ohio EPA a report ("SAP Report") that included the laboratory analysis and evaluation of data generated from implementing the approved SAP.
  - 20. On August 5, 2003, Respondent submitted to Ohio EPA a revised FCP.

## **V. ORDERS**

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

- 1. The SAP Report referenced in Finding No. 19 of these Orders is subject to Ohio EPA review and approval. If Ohio EPA does not approve the SAP Report and provides Respondent with a written statement of deficiencies, Respondent shall revise the SAP Report or submit a new SAP Report for approval that corrects the stated deficiencies within 30 days after receipt of

such written statement. If Ohio EPA approves the SAP Report and it indicates that soil, but not ground water, has been contaminated by hazardous waste above the remediation levels identified in Ohio EPA's "Closure Plan Review Guidance" dated March 1, 1999 as supplemented, as a result of hazardous waste stored and disposed at the Facility without a permit, in violation of ORC § 3734.02(E) and (F) and the rules promulgated thereunder, Respondent shall prepare a Remediation Plan.

2. The Remediation Plan shall be submitted to Ohio EPA within thirty (30) days after Ohio EPA's approval of the SAP Report. The Remediation Plan shall propose methods of and a schedule for remediation of the area(s) at the Facility where hazardous waste was stored and disposed without a permit, in violation of ORC § 3734.02(E) and (F) and the rules promulgated thereunder.
3. The Remediation Plan is subject to Ohio EPA review and approval. If Ohio EPA does not approve the Remediation Plan and provides Respondent with a written statement of deficiencies, Respondent shall revise the Remediation Plan or submit a new Remediation Plan for approval that corrects the stated deficiencies within 30 days after receipt of such written statement.
4. Upon receipt of Ohio EPA's approval of the Remediation Plan, Respondent shall implement the Remediation Plan in accordance with the requirements of OAC rules 3745-66-11 and 3745-66-14 and the specifications and schedules contained in the approved Remediation Plan and any conditions attached thereto.
5. Within 60 days after the completion of work required by the approved Remediation Plan, Respondent shall submit to Ohio EPA, for review and approval, a certification that the remediation work was conducted in accordance with the approved Remediation Plan. The certification shall be signed by Respondent using the format found in OAC rule 3745-50-42(D).
6. If Ohio EPA accepts the SAP Report and it indicates that both soil and ground water have been contaminated by hazardous waste above the remediation levels identified in Ohio EPA's "Closure Plan Review Guidance" dated March 1, 1999 as supplemented, as a result of hazardous waste stored and disposed at the Facility without a permit, in violation of ORC § 3734.02(E) and (F) and the rules promulgated thereunder, 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.

7. The closure plan shall be submitted to Ohio EPA within thirty (30) days after Respondent's receipt of Ohio EPA's approval of the SAP Report. The closure plan is subject to Ohio EPA 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 its receipt of such written statement, revise the closure plan or submit a new closure plan to Ohio EPA addressing the deficiencies. Upon receipt of Respondent's new or revised closure plan, Ohio EPA will notify Respondent in writing that Ohio EPA either approves the closure plan or approves the closure plan with modifications. If Ohio EPA modifies the closure plan, the modified closure plan shall become the approved closure plan.
8. Upon receiving Ohio EPA's written approval of the closure plan, Respondent shall implement the approved closure plan pursuant to OAC rules 3745-55-11/3745-66-11 through 3745-55-20/3745-66-20, the specifications and schedules contained in the approved closure plan, and any modifications attached to the approved closure plan.
9. Within 60 days after completion of closure, Respondent shall submit to Ohio EPA a closure certification in accordance with OAC rule 3745-55-15/3745-66-15.
10. Within 30 days after submitting the closure plan referenced in Order No. 6. 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.
11. The FCP referenced in Finding No. 20. of these Orders is subject to Ohio EPA review and approval. If Ohio EPA does not approve the FCP and provides Respondent with a written statement of deficiencies, Respondent shall revise the FCP or submit a new FCP for approval that corrects the stated deficiencies within 30 days after receipt of such written statement. Upon approval by Ohio EPA, Respondent shall implement the FCP. The FCP shall remain in effect for 730 days from the effective date of these Orders. Implementation of the approved FCP will abate the violations referenced in Finding Nos. 5.c., 5.m., 5.n., 14.a., 14.c., 14.d. and 14.e. of these Orders.
12. Respondent shall pay to Ohio EPA the amount of \$59,600.00 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 90 days after the effective date of these Orders, Respondent shall pay to Ohio EPA the amount of \$12,400.00;
- b. Within 180 days after the effective date of these Orders, Respondent shall pay to Ohio EPA the amount of \$12,400.00;
- c. Within 270 days after the effective date of these Orders, Respondent shall pay to Ohio EPA the amount of \$12,400.00; and
- d. Within 365 days after the effective date of these Orders, Respondent shall pay to Ohio EPA the amount of \$12,400.00.

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.

- e. Within 365 days after the effective date of these Orders and in lieu of payment of the remaining \$10,000.00 of the civil penalty settlement, Respondent shall complete installation of the closed sealant manufacturing process at the Facility as described in drawings PP-1, P&ID 1-2 and 2-2 attached to these Orders and incorporated herein. Within 30 days after completion of installation of the closed sealant manufacturing process, Respondent shall submit to Ohio EPA a report demonstrating completion of the installation of the closed sealant manufacturing process. The report shall include documentation of expenditures, e.g., paid invoices, contracts, etc., relating to the installation of the closed sealant manufacturing process. Respondent shall submit the report in accordance with Section X. of these Orders.
- f. Should Respondent fail to fully install the closed sealant manufacturing process within the time frame established in Order No. 12.e. of these Orders, Respondent shall pay to Ohio EPA the remaining \$10,000.00 of the civil penalty settlement. Payment of this civil penalty settlement shall be in accordance with the procedures set out in Order No. 12. of these Orders and shall be paid to Ohio EPA



within 7 days after the date the closed sealant manufacturing process was required to be completed.

#### **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 person 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 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. However, nothing contained herein shall be construed to be a waiver of Respondent's right to appeal a final action taken by Ohio EPA other than the issuance of these Orders.

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**

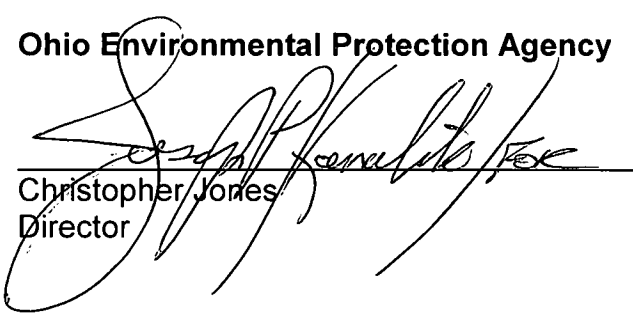
The effective date of these Orders is the date these Orders are entered into the Ohio EPA Director's journal.

## **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

12/30/03  
\_\_\_\_\_  
Date

**IT IS SO AGREED:**

**The Euclid Chemical Company**



Signature

DECEMBER 23, 2003  
Date

Moorman L. Scott

Printed or Typed Name

EXECUTIVE VICE-PRESIDENT

Title