

OHIO E.P.A.

MAR 26 2002

ENTERED DIRECTOR'S JOURNAL

BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

Davis Fabricators, Inc.
15765 W. State Route 2
Oak Harbor, Ohio 43449

Respondent

**Director's Final
Findings and Orders**

PREAMBLE

It is hereby agreed by and among the parties hereto as follows:

I. JURISDICTION

These Director's Final Findings and Orders (Orders) are issued to Davis Fabricators, Inc. (Respondent) pursuant to the authority vested in the director of the Ohio Environmental Protection Agency (Ohio EPA) under §§ 3734.13 and 3745.01 of the Ohio Revised Code (ORC).

II. PARTIES BOUND

These Orders shall apply to and be binding upon Respondent and successors in interest liable under Ohio law. No changes in ownership relating to the Facility will in any way alter Respondent's obligations under these Orders. Respondent's obligations under these Orders may be altered only by the written action of the director of Ohio EPA.

III. DEFINITIONS

1. Unless otherwise stated, all terms in these Orders shall have the same meaning as used in Chapter 3734. of the ORC and the regulations promulgated thereunder.
2. The effective date of these Orders is the date these Orders are entered into the Ohio EPA director's journal.

IV. FINDINGS OF FACT

The director of Ohio EPA has determined the following findings of fact:

1. Respondent is a "person" as defined in ORC § 3734.01(G) and Ohio Administrative Code (OAC) rule 3745-50-10(A).
2. Respondent owns and operates a manufacturing facility located at 15765 West State Route 2, Ottawa County, Oak Harbor, Ohio 43449 (Facility). Respondent was incorporated to do business in the State of Ohio on February 8, 1984. Respondent received hazardous waste generator identification number OHR000040428 from Ohio EPA on March 28, 2000.
3. At the Facility, Respondent generates or has generated "hazardous waste" as that term is defined by ORC § 3734.01(J) and OAC rules 3745-50-10(A) and 3745-51-03, including waste xylene (D001, F003).
4. On March 15, 2000, Ohio EPA conducted a compliance evaluation inspection at the Facility, and determined that Respondent had failed to evaluate all waste generated at the Facility to determine whether the waste is hazardous waste, in violation of OAC rule 3745-52-11. Specifically, Respondent failed to evaluate fourteen 55-gallon drums that appeared to contain spent solvent. By letter dated April 13, 2000, Ohio EPA notified Respondent of the results of this inspection.
5. By letter dated April 27, 2000, Respondent responded to Ohio EPA's April 13, 2000 letter, stating that of the fourteen drums noted from the March 15, 2000 inspection, eleven were identified as containing waste xylene. These eleven drums were combined to make eight full 55-gallon drums of waste xylene. Respondent also provided Ohio EPA with a hazardous waste manifest documenting that the eight hazardous waste drums had been properly removed to a hazardous waste disposal facility.
6. By letter dated May 15, 2000, Ohio EPA notified Respondent that the OAC rule 3745-52-11 violation noted in Finding No. 4 had been abated. This letter also stated that due to Respondent's unpermitted storage of the drums of hazardous waste xylene referenced in Finding No. 4, Respondent had, *inter alia*:
 - a. Stored hazardous waste spent xylene at the Facility for greater than 180 days without a permit issued by the Ohio Hazardous Waste

Facility Board, in violation of Ohio Revised Code §§ 3734.02(E) and 3734.02(F);

- b. Failed to properly mark and label all of the containers with the words "Hazardous Waste" and failed to record the date upon which each period of accumulation began for these containers, in violation of OAC rule 3745-52-34(D)(4);
- c. Failed to properly post emergency response information, in violation of OAC rule 3745-52-34(D)(5)(b);
- d. Failed to ensure that all employees are thoroughly familiar with proper waste handling and emergency procedures, in violation of OAC rule 3745-52-34(D)(5)(c);
- e. Failed to evaluate all wastes to determine if they are restricted from land disposal, in violation of OAC rule 3745-59-07(A);
- f. Failed to evaluate all wastes to determine each Ohio EPA hazardous waste code applicable to the waste generated, in violation of OAC rule 3745-59-09(A);
- g. Failed to obtain a valid hazardous waste generator and facility identification number, in violation of OAC rules 3745-52-12 and 3745-65-11, respectively;
- h. Failed to minimize the potential for the unauthorized entry onto the active portion of the Facility, in violation of OAC rule 3745-65-14;
- i. Failed to develop and maintain a closure plan for the Facility that meets the requirements of OAC rules 3745-66-11 through 3745-66-20, in violation of OAC rule 3745-66-12; and
- j. Failed to maintain hazardous waste containers closed except when necessary to add or remove waste, in violation of OAC rule 3745-66-73(A).

The May 15, 2000, letter notified Respondent that Respondent had abated those violations referenced in Finding Nos. 6.b, 6.e, 6.f, 6.g, 6.h, and 6.j.

- 7. On May 30, 2000, and July 17, 2000, Respondent submitted documentation which demonstrated it had returned to compliance with the requirement to post emergency response information and familiarize its employees with

proper waste handling and emergency procedures. By letter dated July 31, 2000, Ohio EPA notified Respondent that Respondent had abated those violations listed in Finding Nos. 6.c and 6.d.

8. On August 22, 2000, Respondent submitted to Ohio EPA for review and approval a closure plan for the area of the Facility used by Respondent for unpermitted hazardous waste spent xylene drum storage. By letter dated December 13, 2000, Ohio EPA notified Respondent that the closure plan had been approved.
9. By letter dated November 7, 2001, Respondent requested an extension of time to complete closure activities at the Facility. By letter dated January 17, 2002, Ohio EPA granted Respondent an extension of time to complete closure through June 6, 2002.

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 implement the approved closure plan referenced in Finding No.8 pursuant to the specifications and schedules contained in the approved closure plan, OAC rule 3745-66-13, and the closure extension granted through June 6, 2002, referenced in Finding No.9.
2. Within sixty (60) days after completion of closure pursuant to the approved closure plan referenced in Finding No. 8, Respondent shall submit to Ohio EPA a closure certification in accordance with OAC rule 3745-66-15.

Compliance with Order Nos. 1 and 2 shall constitute Respondent's abatement of those violations referenced in Finding Nos. 6.a and 6.i.

3. Respondent shall pay to Ohio EPA the amount of \$18,200.00 in settlement of Ohio EPA's claims for civil penalties which may be assessed for noncompliance 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 pursuant to the following schedule:
 - a. Within thirty (30) days after the effective date of these Orders, Respondent shall pay \$3,200.00;

- b. Within ninety (90) days after the effective date of these Orders, Respondent shall pay \$5,000.00;
- c. Within one hundred and eighty (180) days after the effective date of these Orders, Respondent shall pay \$5,000.00; and
- d. Within three hundred and sixty (360) days after the effective date of these Orders, Respondent shall pay \$5,000.00.

Each \$5,000.00 payment noted in this order shall be made by tendering a certified check to Ohio EPA, Department 631, Columbus, Ohio 43265-0631, made payable to "Treasurer, State of Ohio." A copy of these checks shall be submitted in accordance with Section IX of these Orders.

VI. TERMINATION

Respondent's obligations under these Orders shall terminate when Respondent demonstrates in writing and certifies to the satisfaction of Ohio EPA that all obligations under these Orders have been performed and Ohio EPA's Division of Hazardous Waste Management acknowledges, in writing, Ohio EPA's acceptance of this demonstration and certification.

This certification shall be submitted by Respondent and shall be signed by a responsible official of Respondent. The certification shall make the following attestation: "I certify that the information contained in or accompanying this certification is true, accurate and complete."

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 signatory to these Orders, for any liability arising out of or relating to the operations 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. Nothing in these Orders shall be construed as waiving or compromising in any

way the applicability and enforcement of any other statutes or regulations applicable to Respondent's operation of the Facility. Ohio EPA reserves all rights and privileges except as specified herein.

IX. NOTICE

All documents demonstrating compliance with these Orders, and other documents required under these Orders to be submitted to Ohio EPA, shall be addressed to:

Ohio Environmental Protection Agency
Northwest District Office
Division of Hazardous Waste Management
Attn: DHWM Manager
347 North Dunbridge Road
Bowling Green, OH 43402

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
Attn: Manager, Compliance Assurance Section
P.O. Box 1049
Columbus, Ohio 43216-1049

For deliveries to the building and courier services:

Christopher Jones, Director
Ohio Environmental Protection Agency
Lazarus Government Center
Division of Hazardous Waste Management
Attn: Manager, Compliance Assurance Section
122 South Front Street
Columbus, Ohio 43215

or to such persons and addresses as may hereafter be otherwise specified in writing by Ohio EPA.

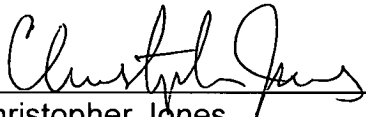
X. RESERVATION OF RIGHTS

Nothing contained herein shall be construed to prevent Ohio EPA from seeking legal or equitable relief to enforce the terms of these Orders or from taking administrative, legal or equitable action as deemed appropriate and necessary, including seeking penalties against Respondent for noncompliance with these Orders. Nothing contained herein shall be construed to prevent Ohio EPA from exercising its lawful authority to require Respondent to perform additional activities pursuant to ORC Chapter 3734. or any other applicable law in the future. Nothing herein shall restrict the right of Respondent to raise any administrative, legal or equitable claim or defense with respect to such further actions which Ohio EPA may seek to require of Respondent. Nothing in these Orders shall be construed to limit the authority of Ohio EPA to seek relief for violations not addressed in these Orders.

XI. SIGNATORIES

Each undersigned representative of a signatory to these Orders certifies that he or she is fully authorized to enter into these Orders and to legally bind such signatory to this document.

IT IS SO ORDERED:



Christopher Jones
Director

MAR 26 2002

Date

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 addressed in these Orders, Respondent agrees that these Orders are lawful and reasonable, that the times provided for compliance herein are reasonable and that Respondent agrees to comply with these Orders. Compliance with these Orders shall be a full accord and satisfaction for Respondent's liability for the violations cited herein.

Respondent hereby waives the right to appeal the issuance, terms and service of these Orders and hereby waives any and all rights it might have to seek administrative or judicial review of these Orders either in law or equity.

Notwithstanding the preceding, Ohio EPA and Respondent agree that in the event that 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.

IT IS SO AGREED:

Davis Fabricators, Inc.

Walter T Davis

3/15/02
Date

WALTER T DAVIS
Printed or Typed Name

PRESIDENT
Title

Ohio Environmental Protection Agency

Christopher Jones
Christopher Jones
Director

MAR 26 2002
Date