

OHIO E.P.A.

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ENTERED DIRECTOR'S JOURNAL

**BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY**

In the Matter of:

Ferro Corporation
1000 Lakeside Avenue
Cleveland, Ohio 44114

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 Ferro 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 Respondent, the 56th Street Facility, Orrville Facility, 1000 Wayside Road Facility, or 1636 Wayside Road 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 owns and operates four facilities in Ohio. Respondent manufactures enamel flakes and powders, as well as specialty glass, at 4150 East 56th Street, Cleveland, Cuyahoga County (56th Street Facility). Respondent manufactures color concentrates for the glass industry at 1560 North Main Street, Orrville, Wayne County (Orrville Facility). Respondent manufactures powder stabilizers for use in plastics, polyvinyl chloride piping and vinyl siding at 1000 Wayside Road, Cleveland, Cuyahoga County (1000 Wayside Road Facility). Respondent also manufactures non-hazardous calcium, zinc, magnesium and aluminum stearate for use as lubricants in the plastic industry at 1636 Wayside Road, Cleveland, Cuyahoga County (1636 Wayside Road Facility).

Findings for the 56th Street Facility

3. At the 56th Street 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 at the 56th Street Facility and has been issued generator identification number OHD 097 625 396. The hazardous waste generated by Respondent at the 56th Street Facility includes characteristic process waste (D006, D007, D008), waste laboratory solvents (D001, D005, D007, F003, F005), and used vanadium pentoxide drums and liners (P120).
4. On October 27 and 29, 2004, Ohio EPA conducted a compliance evaluation inspection at the 56th Street Facility. As a result of the inspection, Ohio EPA determined that Respondent had, *inter alia*:
 - a. Caused two containers of hazardous waste to be placed into a scrap metal roll-off box, which was subsequently transported off-site to a facility not operating under a hazardous waste permit issued in accordance with ORC Chapter 3734., in violation of ORC § 3734.02(F);

- b. Failed to maintain and operate the 56th Street Facility in a manner that minimizes the potential that hazardous waste or hazardous waste constituents are released to the environment, in violation of OAC rule 3745-65-31;
 - c. Failed to provide annual hazardous waste management training to employees at the 56th Street Facility that handle and/or manage hazardous waste, in violation of OAC rule 3745-65-16(C);
 - d. Failed to maintain a written description of the training provided to employees at the 56th Street Facility that handle and/or manage hazardous waste, in violation of OAC rule 3745-65-16(D); and
 - e. Failed to include a list of all emergency and spill control equipment in the contingency plan, in violation of OAC rule 3745-65-52.
5. In correspondence dated November 24, 2004, Respondent provided documentation to address the violation referenced in Finding No. 4.c. of these Orders.
 6. By letter dated December 16, 2004, Ohio EPA notified Respondent of the violations referenced in Finding Nos. 4.a. through 4.e. of these Orders.
 7. In correspondence dated February 14, 2005, Respondent provided responses to Ohio EPA's December 16, 2004 letter.
 8. By letter dated March 7, 2005, Ohio EPA notified Respondent that Respondent had abated the violations referenced in Finding Nos. 4.b. through 4.e. of these Orders.
 9. Based upon the information contained in Respondent's February 14, 2005 letter to Ohio EPA, referenced in Finding No. 7 of these Orders, the Director has determined that no additional action is required of Respondent regarding the ORC § 3734.02(F) violation referenced in Finding No. 4.a. of these Orders.

Findings for the Orrville Facility

10. At the Orrville 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 at the Orrville Facility and has been issued generator identification number OHD 049 369 440. The hazardous waste generated by Respondent at the Orrville

Facility includes baghouse dust (D010), wastewater solids and sludge (D005, D010) and used oil.

11. On January 21, 2005, Ohio EPA conducted a compliance evaluation inspection at the Orrville Facility. As a result of the inspection, Ohio EPA determined that Respondent had, *inter alia*:
 - a. Failed to provide annual hazardous waste management training to the training director, whom is responsible for providing annual hazardous waste management to employees at the Orrville Facility and failed to maintain a written description of the type and amount of both introductory and continuing training to be supplied to employees, in violation of OAC rule 3745-65-16(C) and (D); and
 - b. Failed to provide spill control equipment in a hazardous waste storage area, in violation of OAC rule 3745-65-32.
12. By letter dated February 17, 2005, Ohio EPA notified Respondent of the violations referenced in Finding Nos. 11.a. and 11.b. of these Orders.
13. In correspondence dated March 17, 2005, Respondent provided responses to Ohio EPA's February 17, 2005 letter.
14. By letter dated March 24, 2005, Ohio EPA notified Respondent that Respondent had abated the violations referenced in Finding Nos. 11.a. and 11.b. of these Orders.

Findings for the 1000 Wayside Road Facility

15. At the 1000 Wayside Road 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 at the 1000 Wayside Road Facility and has been issued generator identification number OHD 980 586 788. The hazardous waste generated by Respondent at the 1000 Wayside Road Facility consists mostly of baghouse dust (D005, D006).
16. On January 21, 2005, Ohio EPA conducted a compliance evaluation inspection at the 1000 Wayside Road Facility. As a result of the inspection, Ohio EPA determined that Respondent had, *inter alia*:

- a. Failed to maintain a current list of all persons qualified to act as emergency coordinator, in violation of OAC rule 3745-65-52(D); and
 - b. Failed to keep one container of hazardous waste closed when not adding or removing waste, in violation of OAC rule 3745-66-73(A).
17. By letter dated February 23, 2005, Ohio EPA notified Respondent of the violations referenced in Finding Nos. 16.a. and 16.b. of these Orders. Also in the February 23, 2005 letter, Ohio EPA notified Respondent that Respondent had abated the violation referenced in Finding No. 16.b. of these Orders.
 18. In correspondence dated March 8 and April 5, 2005, Respondent provided responses to Ohio EPA's February 23, 2005 letter.
 19. By letter dated April 6, 2005, Ohio EPA notified Respondent that Respondent had abated the violation referenced in Finding No. 16.a. of these Orders.

Findings for the 1636 Wayside Road Facility

20. At the 1636 Wayside Road 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 an episodic large quantity generator of hazardous waste at the 1636 Wayside Road Facility and has been issued generator identification number OHD 077 783 603. The hazardous waste generated by Respondent at the 1636 Wayside Road Facility includes baghouse dust (D005, D006) and spent laboratory solvents (D001, D005, D006).
21. On January 21, 2005, Ohio EPA conducted a compliance evaluation inspection at the 1636 Wayside Road Facility. As a result of the inspection, Ohio EPA determined that Respondent had failed to develop and maintain on-site a contingency plan for the 1636 Wayside Road Facility, in violation of OAC rule 3745-65-51.
22. By letter dated March 1, 2005, Ohio EPA notified Respondent of the violation referenced in Finding No. 21 of these Orders.
23. In correspondence dated March 8 and April 5, 2005, Respondent provided responses to Ohio EPA's March 1, 2005 letter.
24. By letter dated April 6, 2005, Ohio EPA notified Respondent that Respondent had abated the violation referenced in Finding No. 21 of these Orders.

Additional Findings for the 1000 and 1636 Wayside Road Facilities

25. As a result of the compliance evaluation inspections conducted at the 1000 and 1636 Wayside Road Facilities, referenced in Finding Nos. 16 and 21 of these Orders, Ohio EPA determined that Respondent had:
 - a. Failed to provide annual hazardous waste management training to employees at the 1000 and 1636 Wayside Road Facilities that handle and/or manage hazardous waste, in violation of OAC rule 3745-65-16(C); and
 - b. Failed to maintain written job titles and job descriptions for employees at the 1000 and 1636 Wayside Road Facilities that handle and/or manage hazardous waste and failed to maintain a written description of the type and amount of both introductory and continuing training to be supplied to employees, in violation of OAC rule 3745-65-16(D).
26. By letters dated February 23 and March 1, 2005, Ohio EPA notified Respondent of the violations referenced in Finding Nos. 25.a. and 25.b. of these Orders.
27. In correspondence dated March 8 and April 5, 2005, Respondent provided responses to Ohio EPA's February 23 and March 1, 2005 letters.
28. By letter dated April 6, 2005, Ohio EPA notified Respondent that Respondent had abated the violations referenced in Finding Nos. 25.a. and 25.b. of these Orders.

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 pay Ohio EPA the amount of \$21,500.00 in settlement of Ohio EPA's claims for civil penalties, which may be assessed pursuant to ORC Chapter 3734., in accordance with the following provisions:
 - a. Within 30 days after the effective date of these Orders, Respondent shall pay Ohio EPA the amount of \$17,200.00 in settlement of Ohio EPA's claims for civil penalties 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 \$17,200.00. 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 Respondent. A copy of this check shall be submitted in accordance with Section X. of these Orders.

- b. In lieu of paying the remaining \$4,300.00 of civil penalty to Ohio EPA, Respondent shall fund a supplemental environmental project (SEP) by making a contribution in the amount of \$4,300.00 to the Ohio EPA Clean Diesel School Bus Program. Respondent shall make the payment on or within 60 days after July 1, 2005 by tendering an official check made payable to "Treasurer, State of Ohio" for \$4,300.00. The official check shall be submitted to Brenda Case, or her successor, Ohio EPA, Office of Fiscal Administration, P.O. Box 1049, Columbus, Ohio 43216-1049, together with a letter identifying Respondent. A copy of this check shall be submitted in accordance with Section X. of these Orders, and an additional copy of this check shall be sent to James A. Orlemann, Assistant Chief, SIP Development and Enforcement, or his successor, Ohio EPA, Division of Air Pollution Control, P.O. Box 1049, Columbus, Ohio 43216-1049.
- c. Should Respondent fail to fund the SEP within the required time frame established in Order No. 1.b., Respondent shall pay to Ohio EPA the amount of \$4,300.00 in accordance with the procedures in Order No. 1.a.

VI. TERMINATION

Respondent's obligations under these Orders shall terminate upon Ohio EPA's receipt of the official checks 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 56th Street, Orrville, 1000 Wayside Road, or 1636 Wayside Road Facilities.

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 E. 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:

Joseph P. Koncelik, 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:

Joseph P. Koncelik, 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, Respondent consents to the issuance of these Orders and agree 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



Joseph P. Koncelik
Director

JUL 12 2005

Date

IT IS SO AGREED:

Ferro Corporation



Signature

June 27, 2005

Date

James F. Kirsch

Printed or Typed Name

President and Chief Operating Officer

Title