

IV. FINDINGS OF FACT

All of the findings of fact necessary for the issuance of these Orders pursuant to ORC §§ 3734.13 and 3745.01 have been made and are outlined below. Nothing in these Orders, including the findings of fact, is intended by Ohio EPA and Respondent to be, or shall be, an admission of facts by Respondent for any purpose except as otherwise provided in Section I, herein. 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 3630 East Kemper Road, Sharonville, Hamilton County, Ohio 45241-2046 ("Facility").
3. 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.
4. On April 28, 1999, Respondent notified Ohio EPA of its hazardous waste activity and received hazardous waste generator identification number OHD081853681.
5. On January 12, 2000, and January 25, 2000, Ohio EPA's Division of Hazardous Waste Management ("DHW") conducted compliance evaluation inspections at the Facility and determined that Respondent had:
 - a. Failed to maintain adequate aisle space in the less than 90-day hazardous waste storage area to allow unobstructed movement of emergency or spill equipment, in violation of OAC Rule 3745-65-35;
 - b. Failed to conduct and document inspections of the less than 90-day hazardous waste storage area, in violation of OAC Rules 3745-66-74(A) and (B);
 - c. Failed to separate incompatible hazardous waste containers, in violation of OAC Rule 3745-66-77(C);
 - d. As a generator of greater than 1,000 kilograms of hazardous waste in a month, Respondent failed to contact the transporter and/or the designated facility when Respondent did not receive a copy of the manifest with the handwritten signature of the owner or operator of the designated facility

- within 35 days of the time the waste was accepted by the initial transporter and failed to submit an exception report to Ohio EPA within 45 days of the time the waste was accepted by the initial transporter, in violation of OAC Rules 3745-52-42(A)(1) and(A)(2);
- e. Failed to evaluate wastes to determine if the wastes are restricted from land disposal, in violation of OAC Rule 3745-59-07(A);
 - f. Failed to determine the appropriate Ohio EPA hazardous waste codes, in violation of OAC Rule 3745-59-09(A);
 - g. Failed to characterize material in containers labeled as hazardous waste and sludge generated from the clean-out of its 3500 gallon pit and 35,000 gallon neutralization sump, to determine if the material and/or sludge were a hazardous waste, in violation of OAC Rule 3745-52-11;
 - h. Failed to place in the Facility's file a one-time notice for the 35,000 gallon neutralization sump and discharge to the Cincinnati Metropolitan Sewer District, in violation of OAC Rule 3745-59-07(A)(6);
 - i. Failed to test emergency equipment weekly and to record/maintain the results in a log or summary, in violation of OAC Rules 3745-65-33(A) and (B);
 - j. Failed to maintain personnel training records for 1999, in violation of OAC Rule 3745-65-16(D)(4);
 - k. Failed to provide hazardous waste annual refresher training for employees in 1999, in violation of OAC Rule 3745-65-16(C);
 - l. Failed to include in its contingency plan agreements/arrangements with the listed emergency services, in violation of OAC Rule 3745-65-52(C);
 - m. Failed to include in its contingency plan home addresses for emergency coordinators and did not designate primary and alternate emergency coordinators, in violation of OAC Rule 3745-65-52(D);

- n. Failed to include in its contingency plan a brief outline of the capabilities of its emergency equipment, in violation of OAC Rule 3745-65-52(E);
 - o. Failed to amend the list of emergency coordinators in its contingency plan, in violation of OAC Rule 3745-65-54; and
 - p. Failed to mark containers holding used oil with the words "Used Oil," in violation of OAC Rule 3745-279-22(C)(1).
6. On January 21, 25, and 29, and February 1, 2000, Respondent provided information to Ohio EPA addressing the violations referenced in Finding No. 5.
 7. By Notice of Violation ("NOV") letter, dated April 12, 2000, Ohio EPA notified Respondent of the violations referenced in Finding Nos. 5.a. through 5.p., and informed Respondent that the violations referenced in Finding Nos. 5.a., 5.b., 5.c., 5.d., 5.f., 5.i. and 5.p. had been abated.
 8. On May 12 and 18, 2000, Respondent provided responses to Ohio EPA's April 12, 2000, NOV letter.
 9. Pursuant to a response submitted to Ohio EPA by Respondent, Ohio EPA reviewed Respondent's contingency plan and found that Respondent had *inter alia*, failed to include notification of Ohio EPA's emergency response team, in violation of OAC Rule 3745-65-52(A).
 10. By NOV letter dated June 30, 2000, Ohio EPA informed Respondent that Respondent had abated the violations referenced in Finding Nos. 5.m. and 5.n. and notified Respondent of the violation referenced in Finding No. 9.
 11. On July 31, 2000, Respondent provided a response to Ohio EPA's June 30, 2000, NOV letter.
 12. By letter dated August 15, 2000, Ohio EPA notified Respondent that Respondent had partially returned to compliance by abating the violations referenced in Finding Nos. 5.e., 5.j., 5.k., and 5.l.

13. On September 13, 2000, Respondent provided a response to Ohio EPA's August 15, 2000, letter.
14. Pursuant to responses submitted to Ohio EPA by Respondent, Ohio EPA has determined that Respondent has abated the violations referenced in Finding Nos. 5.g., 5.h., 5.o., and 9.

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 thirty (30) days after the effective date of these Orders, Respondent shall pay to Ohio EPA the amount of thirty-seven thousand six hundred dollars (\$37,600) 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 by tendering a certified check for \$37,600 to Ohio EPA, Department 631, Columbus, Ohio 43265-0631, made payable to "Treasurer, State of Ohio." A copy of this check shall be submitted in accordance with Section IX of these Orders.

VI. TERMINATION

Respondent's obligations under these Orders shall terminate upon Ohio EPA's receipt and successful negotiation of the certified check required above.

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 its 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
Southwest District Office
Division of Hazardous Waste Management
Attn: DHWM Manager
401 East Fifth Street
Dayton, Ohio, 45402-2911

and Ohio EPA Central Office at the following address:

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

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

X. RESERVATION OF RIGHTS

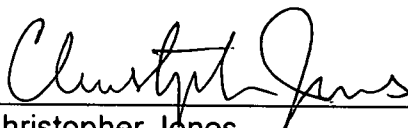
Nothing contained herein shall be construed to prevent Ohio EPA from seeking legal or equitable relief to enforce the terms of these Orders or from taking administrative, legal or equitable action as deemed appropriate and necessary, including seeking penalties against Respondent for noncompliance with 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

MAY 18 2001

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 it hereby waives any and all rights it might have to seek administrative or judicial review of these Orders either in law or equity.

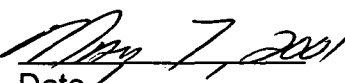
Notwithstanding the preceding, Ohio EPA and Respondent agree that in the event that these Orders are appealed by any other party to the Environmental Review Appeals Commission, or any court, Respondent retains the right to intervene and participate in such appeal. In such an event, Respondent shall continue to comply with these Orders notwithstanding such appeal and intervention unless these Orders are stayed, vacated or modified.

IT IS SO AGREED:


Diversey Lever, Inc.



James Walker

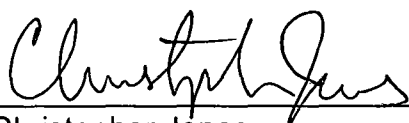


Date



Title Vice President North American Supply Chain
Diversey Lever, Inc.

Ohio Environmental Protection Agency



Christopher Jones
Director

MAY 18 2001

Date