

BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY

OHIO E.P.A.

OCT 15 2008

FILED UNDER 3734.13

In the Matter of:

Unarco Material Handling, Inc.
407 East Washington Street
Pandora, Ohio 45877

Director's Final
Findings and Orders

Respondent

I certify this to be a true and accurate copy of the
official documents as filed in the records of the Ohio
Environmental Protection Agency.

PREAMBLE

It is agreed by the parties hereto as follows: By: Donna Lassiter Date: 10-15-08

I. JURISDICTION

These Director's Final Findings and Orders (Orders) are issued to Unarco Material Handling, Inc. (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 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

The Director of Ohio EPA has determined the following findings:

1. Respondent is the owner and operator of a facility that manufactures and paints steel storage racks (Facility) and is located at 407 East Washington Street, Pandora, Putnam County, Ohio 45877.
2. Respondent is a "person" as defined in ORC § 3734.01(G) and OAC rule 3745-50-10(A).
3. The Facility has been assigned generator identification number OHD987044807 and Respondent was authorized to do business in Ohio on September 17, 2007.
4. At the Facility, Respondent is a small quantity generator and 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 generates paint related wastes that are hazardous due to ignitability (hazardous waste code D001) and universal waste lamps.
5. On March 14, 2007, Ohio EPA received a complaint stating that treatment of waste paint filters was occurring at the Facility.
6. On January 9, 2008, Ohio EPA performed a complaint investigation/compliance evaluation inspection at the Facility. As a result of the investigation/inspection, Ohio EPA determined that Respondent had, *inter alia*:
 - a. Stored approximately 6.5 fifty-five gallon drums of ignitable hazardous waste (D001) for greater than 180 days without a permit, in violation of ORC § 3734.02(E) and (F);
 - b. Failed to evaluate its wastes to determine if the wastes are hazardous wastes as required by OAC rule 3745-52-11. Specifically, Respondent failed to evaluate:
 - i. waste paint filters;
 - ii. paint related wastes from painting and flushing the paint production lines, and
 - iii. spent lamps;
 - c. Failed to have an internal alarm or emergency communication device available at the container storage area, in violation of OAC rule 3745-65-34(A);
 - d. Failed to mark each 55-gallon drum of paint waste (D001) at its satellite accumulation areas with the words "hazardous waste," in violation of OAC rule 3745-52-34(C)(1)(b);

- e. Failed to label one drum of paint waste (D001) at its container storage area with the words "hazardous waste," and failed to label all six drums in the container storage area with the date upon which each period of accumulation began, in violation of OAC rule 3745-52-34(D)(4); and
 - f. Failed to inspect the areas where containers are stored, including but not limited to the drum locker and the accumulation area near the production paint booth, at least weekly, and record the inspections in an inspection log or summary, in violation of OAC rule 3745-66-74.
7. Based on records reviewed during the January 9, 2008 inspection, Ohio EPA determined Respondent had operated as a large quantity generator of hazardous waste from January 2006 through November 2006 and September 2007 through November 2007.
8. By letter dated January 30, 2008, Ohio EPA notified Respondent of the violations referenced in Finding No. 6 of these Orders. Ohio EPA also informed Respondent that because it had operated as a large quantity generator of hazardous waste, it must submit documentation that demonstrates compliance with the personnel training requirements in OAC rule 3745-65-16(A) and the contingency plan requirements in OAC rule 3745-65-16(A)(1-3), (B), (C), (D) (1-4), and (E).
9. In e-mails received by Ohio EPA on March 3, 2008 and a letter received on March 7, 2008, Respondent submitted information addressing the violations cited in Ohio EPA's January 30, 2008 letter and listed in Finding No. 6 of these Orders.
10. On March 27, Ohio EPA went to the Facility to conduct sampling of the waste paint filters and paint wastes and revisit the container storage areas and satellite accumulation areas.
11. By letter dated May 14, 2008, Ohio EPA notified Respondent it had abated the violations discovered during the January 9, 2008 inspection and referenced in Finding Nos. 6.b., 6.c., 6.d. and 6.e., but remained in violation of ORC §3734.02 (E) and (F) and OAC rule 3745-66-74 referenced in Finding Nos. 6.a. and 6.f. of these Orders. Furthermore, as a result of a review of the information submitted March 3 and March 7, 2008, and the Respondent's large quantity generator status described in Finding No. 7, Ohio EPA determined that Respondent had:
 - a. Failed to record the inspections of the spill control and decontamination equipment in a log or summary, in violation of OAC rule 3745-65-33;

- b. Failed to conduct personnel training for employees involved in the handling or management of hazardous waste at the Facility in violation of OAC rule 3745-65-16(A)(1) through (A)(3);
 - c. Failed to train new employees within six months after the date of their employment or assignment, in violation of OAC rule 3745-65-16(B);
 - d. Failed to provide annual refresher hazardous waste management training in violation of OAC rule 3745-65-16(C);
 - e. Failed to maintain personnel training records including but not limited to, employee name, job title, job descriptions, and type and amount of introductory and continuous training for employees responsible for waste handling and spill response duties in violation of OAC rule 3745-65-16(D);
 - f. Failed to maintain training records on current and former employees' hazardous waste training in violation of OAC rule 3745-65-16(E);
 - g. Failed to describe arrangements agreed to by local police departments, fire departments, hospitals, contractors, Ohio EPA, and local emergency response teams in the contingency plan that was submitted to Ohio EPA on March 7, 2008, in violation of OAC rule 3745-65-52(C); and
 - h. Failed to list in the contingency plan the spill control and decontamination equipment located at the Facility, a brief outline containing a physical description of each item and its capabilities, and the location of the equipment, in violation of OAC rule 3745-65-52(E), and of the spill control and decontamination equipment.
12. By letter dated July 16, 2008, Respondent submitted information to address the violations set forth in the May 14, 2008 letter from Ohio EPA and the violations that remained outstanding from the January 9, 2008 inspection at the Facility. Based on a review of this information, Ohio EPA has determined Respondent has abated the violations referenced in Finding Nos. 6.f., and 11.a. through 11.f.
13. In e-mails received by Ohio EPA on August 21 and August 22, 2008, Respondent provided additional information to address the violations cited in Ohio EPA's May 14, 2008 letter. Based on a review of this information, Ohio EPA has determined Respondent has abated the violations referenced in Finding Nos. 11.g. and 11.h. of these Orders.
14. The Director has determined that no additional action is required of Respondent regarding the violation of ORC § 3734.02(E) and (F) referenced in Finding No.

6.a. and it is unnecessary to reserve closure for the hazardous waste storage areas because these areas are at a secure location at the Facility, there is no evidence of releases, and Respondent continues to use these areas to accumulate hazardous waste.

V. ORDERS

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

1. Respondent shall pay Ohio EPA the amount of \$24,660.00 in settlement of Ohio EPA's claims for civil penalties, which may be assessed pursuant to ORC Chapter 3734. \$19,728.00 of this amount will be deposited into the hazardous waste cleanup fund established pursuant to ORC § 3734.28 and in accordance with the following schedule:
 - a. Within 90 days after the effective date of these Orders, Respondent shall pay to Ohio EPA the amount of \$4,932.00;
 - b. Within 180 days after the effective date of these Orders, Respondent shall pay to Ohio EPA the amount of \$4,932.00;
 - c. Within 270 days after the effective date of these Orders, Respondent shall pay to Ohio EPA the amount of \$4,932.00; and
 - d. Within 365 days after the effective date of these Orders, Respondent shall pay to Ohio EPA the amount of \$4,932.00.

Respondent shall make each payment by tendering 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 Respondent and the Facility. A copy of each check shall be submitted in accordance with Section X. of these Orders.

2. In lieu of paying the remaining \$4,932.00 of civil penalty to Ohio EPA, Respondent shall fund a supplemental environmental project (SEP) by making a contribution in the amount of \$4,932.00 to the Ohio EPA Clean Diesel School Bus Program (Fund 5CD) 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 \$1,233.00;

- b. Within 180 days after the effective date of these Orders, Respondent shall pay to Ohio EPA the amount of \$1,233.00;
- c. Within 270 days after the effective date of these Orders, Respondent shall pay to Ohio EPA the amount of \$1,233.00; and
- d. Within 365 days after the effective date of these Orders, Respondent shall pay to Ohio EPA the amount of \$1,233.00.

Respondent shall make each payment by tendering an official check made payable to "Treasurer, State of Ohio." The official check shall be submitted to Brenda Case, or her successor, Ohio EPA, Office of Fiscal Administration, Department L-2711, Columbus, Ohio 43260-2711, 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.

- 3. Should Respondent fail to fund the SEP within the required time frames established in Order Nos. 2.a. through 2.d., Respondent shall pay to Ohio EPA the missed payment amount no later than 7 days after the missed payment due date. Payment shall be made in accordance with the procedures established in Order No. 1.

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 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:

Chris Korleski, 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:

Chris Korleski, Director
Ohio Environmental Protection Agency
Lazarus Government Center
Division of Hazardous Waste Management
50 West Town 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 reserves its rights to exercise its lawful authority to require Respondent to perform corrective action at the Facility at some time in the future, pursuant to ORC Chapter 3734, or any other applicable law. Respondent reserves its

rights to raise any administrative, legal or equitable claim or defense with respect to any final action of the Director regarding such corrective action. Ohio EPA and Respondent each reserve all other 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 agrees to comply with these Orders. Except for the right to seek corrective action at the Facility, which right Ohio EPA does not waive, 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.

III. EFFECTIVE DATE

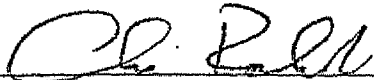
The effective date of these Orders is the date these Orders are entered into the Ohio EPA Director's journal.

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

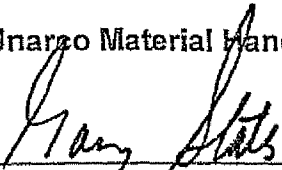


Chris Korleski
Director

October 15, 2008
Date

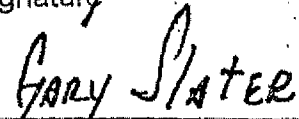
IT IS SO AGREED:

Unarco Material Handling, Inc.

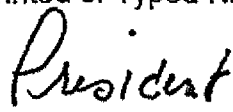


Signature

9.2.08
Date



Printed or Typed Name



Title