

BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY

OHIO E.P.A.
AUG 26 2010

ENTERED DIRECTOR'S JOURNAL

In the Matter of:

MTD Consumer Group Inc.
5903 Grafton Road
Valley City, Ohio 44280

Respondent

Director's Final
Findings and Orders

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: [Signature] Date: 8-26-10

I. JURISDICTION

These Director's Final Findings and Orders (Orders) are issued to MTD Consumer Group Inc. (Respondent) pursuant to the authority vested in the Director of the Ohio Environmental Protection Agency (Ohio EPA) under Ohio Revised Code (ORC) §§ 3734.02(G), 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 Respondents of any matter of law or fact. The Director of Ohio EPA had determined the following findings:

1. Pursuant to ORC § 3734.02(G) and rule 3745-50-31 of the Ohio Administrative Code (OAC), the Director, may, by order, exempt any person generating, storing, treating, or disposing of hazardous waste in such quantities or under such circumstances that, in the determination of the Director, are unlikely to adversely affect the public health or safety or the

environment, from any requirement to obtain a permit or comply with other requirements of ORC Chapter 3734. Any such exemption shall be consistent with and equivalent to rules promulgated under the Resource Conservation and Recovery Act of 1976, 90 Stat. 2806, 42 U.S.C. § 6921 et seq., as amended.

2. Respondent is a person as defined in ORC § 3734.01(G) and OAC rule 3745-50-10(A).
3. Respondent owns the property located at 5389 West 130th Street, Parma, Cuyahoga County, Ohio (Facility).
4. At the Facility, Respondent generated, treated and disposed of hazardous waste as defined by ORC § 3734.01(J) and OAC rules 3745-50-10(A) and 3745-51-03. Respondent is identified as a large quantity generator of hazardous waste. Respondent generated soils containing trichloroethylene (TCE) (D040 - as defined in OAC rule 3745-51-24) as part of a Facility remediation project.
5. On October 17, 2008, Ohio EPA met with the Respondent at the Facility at which time Respondent discussed planned remediation activities, including removing a former storm sewer line and an underground storage tank. The purpose of this activity was to remediate soils contaminated primarily with TCE. These soils when generated would contain a characteristic hazardous waste, D040, trichloroethylene, as described in OAC rule 3745-51-24. Respondent further explained they intended to treat the soil via a pug mill with quick lime. Ohio EPA requested Respondent submit more information about the planned remediation.
6. On October 30, 2008, Ohio EPA and Respondent held a conference call in which Ohio EPA explained to Respondent that without a written plan Ohio EPA could not concur that Respondent's planned remediation was compliant with Ohio's hazardous waste laws.
7. On November 13, 2008, Ohio EPA conducted an investigation at the Facility. At this time, Respondent had identified soils that contained TCE, among other compounds, and was conducting remedial activities at the Facility. These remedial activities included hazardous waste treatment, storage and disposal of soils containing TCE hazardous waste. Respondent stored and disposed of the soils containing hazardous waste in piles in the northern portion of the Facility. Respondent also was treating the soils containing the hazardous waste in a pug mill which also caused the disposal of hazardous waste to the air.

8. As a result of the investigation on November 13, 2008, Ohio EPA determined that Respondent had, *infer alia*, established and operated an unpermitted hazardous waste facility, in violation of ORC § 3734.02(E) and (F), through the treatment, storage, and disposal of hazardous waste at the Facility. Specifically, Respondent stored and disposed of soils containing hazardous waste in piles, treated soils containing hazardous waste in a pug mill and disposed of hazardous waste to the air via the treatment of the soils containing the hazardous waste. The soils contained TCE, a characteristically hazardous waste as defined in OAC rule 3745-51-24.
9. In correspondence received by Ohio EPA dated November 14, 2008, Respondent supplied information regarding the remedial work at the Facility. Included in this information was Respondent's determination that the soil removed during the remedial operations contained the characteristic hazardous waste, D040, TCE.
10. By letter dated November 24, 2008, Ohio EPA notified Respondent of the violations referenced in Finding No. 8. of these Orders.
11. On December 17, 2008, Ohio EPA received electronic correspondence from the Respondent. The correspondence provided further information regarding the remedial activities which were on going at the Facility.
12. On December 19, 2008, Ohio EPA and Respondent, Respondent's environmental consultant, and Respondent's legal counsel participated in a conference call to discuss remedial operations at the Facility and the applicability of Ohio's hazardous waste laws.
13. By letter dated January 14, 2009, Respondent submitted additional information regarding the remedial activities at the Facility. Included in this correspondence was information regarding the treatment of the soil which contained hazardous waste.
14. By letter dated April 7, 2009, Ohio EPA notified Respondent of an additional violation of ORC § 3734.02(E) and (F), the establishment and operation of hazardous waste facility without a permit, and requested additional information regarding the remedial activities at the Facility.
15. By letter dated May 29, 2009, Respondent provided requested information and responded to Ohio EPA's additional information regarding the remedial activities at the Facility and responded to Ohio EPA's additional violation.
16. In a meeting with Ohio EPA on March 4, 2010, and in correspondence dated July 1, 2010, Respondent articulated its position regarding the TCE soil contamination at the Facility.

17. Due to the establishment and operation of an unpermitted hazardous waste facility as described in Findings Nos. 7, 8., and 14. of these Orders, Respondent is required to have a hazardous waste facility installation and operation permit and is subject to all general facility standards found in OAC Chapters 3745-54 and 55, including but not limited to, closure in accordance with OAC rules 3745-55-11 through 3745-55-20, the financial assurance for closure requirements contained in OAC rules 3745-55-42 through 3745-55-51 and corrective action for waste management units in accordance with OAC rule 3745-54-101. To obtain a hazardous waste facility installation and operation permit, Respondent is required to submit "Parts A and B" of the application in accordance with OAC Chapter 3745-50. In regards to the unlawful storage referenced in Findings Nos. 7, 8., and 14. closure must be conducted in accordance with the closure standards found in OAC rules 3745-55-11 through 3745-55-20.

18. The submittal of a Closure Plan which complies with the administrative requirements of OAC Chapters 3745-65 and 66 and the substantive requirements of OAC Chapters 3745-54 and 55 including but not limited to the groundwater protection program in accordance with OAC rules 3745-54-90 through 3745-54-100 in lieu of submittal of an application for a hazardous waste facility installation and operation permit is unlikely to adversely affect the public health or safety or the environment. Therefore, the Director finds that the issuance to Respondent of an exemption from the installation and operation permit for the Facility is unlikely to adversely affect the public health or safety or the environment with the meaning of ORC § 3734.02(G).

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 Respondent is hereby exempted from the requirement to submit an application for a hazardous waste facility installation and operation permit for the Facility, provided that Respondent complies with the following:
 - a. Within 60 days after the effective date of these Orders, Respondent shall submit to Ohio EPA a Closure Plan for the unpermitted hazardous waste management units referred to in Finding Nos. 7, 8., and 14.
 - b. The Closure Plan shall comply with the administrative requirements of OAC rules 3745-65 and 3745-66 and the substantive requirements of OAC chapters 3745-54 and 3745-55.

- c. The Closure Plan is subject to approval by Ohio EPA. If Ohio EPA does not approve the Closure Plan referenced in Order No. 1.a. of these Orders and provides Respondent with a written statement of deficiencies, Respondent shall submit revised Closure Plan for approval addressing the deficiencies within 30 days of receiving such written statement. If Ohio EPA modifies the Closure Plan, the modified Closure Plan becomes the approved plan.
 - d. Upon Ohio EPA approval of the Closure Plan, Respondent shall implement the approved Closure Plan in the manner and pursuant to the timeframes set forth in the approved Closure Plan and OAC rules 3745-55-13/3745-66-13.
 - e. Within 30 days after Ohio EPA's approval of the Closure Plan for the hazardous waste management units referenced in Order 1.a. of these Orders, Respondent shall submit closure cost estimates and documentation demonstrating that Respondent has established financial assurance and liability coverage for the hazardous waste management units, in accordance with OAC rules 3745-55-42 through 3745-55-47.
 - f. Within 60 days after completion of closure, Respondent shall submit certification of closure to Ohio EPA in accordance with OAC rules 3745-55-15. Completion of Order No. 1. shall abate the violations referenced in Finding Nos. 7., 8., and 14 of these Orders.
2. Respondent shall pay Ohio EPA the amount of \$25,000.00 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 \$20,000.00 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. Payment shall be made by an official check made payable to "Treasurer, State of Ohio" for \$20,000.00. The official check shall be submitted to Ohio EPA, Office of Fiscal Administration, Department L-2711, Columbus, Ohio 43260-2711, 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.
 - b. In lieu of paying \$5,000.00 of civil penalty to Ohio EPA, Respondent shall fund a supplemental environmental project (SEP) by making a contribution in the amount of \$5,000.00 to the Ohio EPA Clean Diesel School Bus Program (Fund 5CD). Respondent shall make the payment within 30 days after the effective date of these Orders by tendering an official check made payable to "Treasurer, State of Ohio" for \$5,000.00. 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 in Order No. 2.b. within the required time frame established in Order No. 2.b of these Orders, Respondent shall pay to Ohio EPA, within 7 days after failing to comply with Order No. 2.b. of these Orders, the amount of \$5,000.00 in accordance with the procedures in Order No. 2.a. of these Orders.

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 [e.g., 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 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:

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, Suite 700
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 Facility, at some time in the future, pursuant to ORC Chapter 3734. or any other applicable law. Respondent reserves the right to raise any administrative, legal or equitable claim or defense with respect to performing 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 by Respondent, 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.

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




Chris Korfleski
Director

August 26, 2010

Date

IT IS SO AGREED:

MTD Consumer Group Inc.



Signature

8-10-10

Date

JAMES MILINSKI

Printed or Typed Name

Treasurer

Title