

OHIO E.P.A.

DEC -8 2010

ENTERED DIRECTOR'S JOURNAL

BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

Ohio University
108 Cutler Hall
Athens, OH 45701

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

By John Lassiter Date: 12-8-10

It is agreed by the parties hereto as follows:

I. JURISDICTION

These Director's Final Findings and Orders (Orders) are issued to Ohio University (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 Facilities 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 §§ 3734.02, 3734.13 and 3745.01 have been made and are outlined below. Nothing in the findings shall be considered to be an admission by Respondent of any matter of law or fact. The Director of Ohio EPA has 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 the owner/operator of a higher educational state university located in Ohio. Respondent's largest campus is located in Athens County, Ohio. Respondent owns and operates property located throughout Athens County which is not contiguous. Locations include, but are not limited to, Hudson Health Center, Clippinger Laboratories, University Garage, Facilities Management Shops, Ohio University Airport, and the Ridges Buildings. (referred to collectively as the "Facilities").
3. Respondent is a "person" as defined in ORC § 3734.01(G) and Ohio Administrative Code (OAC) rule 3745-50-10(A). Respondent is an "agency" of the state of Ohio as defined in ORC 111.15(A)(2) for purposes of these Orders. Therefore, Respondent, in accordance with OAC rule 3745-55-40(C) is not subject to requirements of OAC rules 3745-55-40 through 3745-55-51, financial assurance.
4. Respondent notified Ohio EPA of its hazardous waste activities and was issued U.S. EPA identification numbers OHD980586226 (Hudson Health Center), OHD982628422 (Clippinger Laboratories), OHD982628539 (University Garage and Facilities Management Shops), OHD982628547 (Ohio University Airport), and OHD985975068 (Ridges Buildings).
5. At the Facilities, 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 identified as either a conditionally, small or large quantity generator of hazardous waste at each of these Facilities.
6. On August 12 and 15, 2008, Ohio EPA conducted compliance inspections at Respondent's Facilities referenced in Finding No. 2. of these Orders. As a result of these inspections, Ohio EPA determined the Respondent, *inter alia*:
 - a. Unlawfully established and operated a hazardous waste facility without a hazardous waste installation and operation permit, in violation of ORC § 3734.02(E) and (F), through the storage and disposal of hazardous waste at the Ridges Buildings. Specifically, Respondent caused the disposal of hazardous waste to the air by allowing hazardous waste fluorescent bulbs (characteristically hazardous for mercury, D009 - as defined in OAC rule

- 3745-51-24) to be broken and mismanaged and allowing hazardous waste paint waste (characteristically hazardous for ignitability, D001 - as defined in OAC rule 3745-51-24) to evaporate/volatilize. Additionally, Respondent stored hazardous waste which was generated from an off-site location as well as stored hazardous waste beyond the ninety (90) day hazardous waste accumulation limit allowed under OAC rule 3745-52-34(A);
- b. Failed to properly characterize hazardous waste, in violation of OAC rule 3745-52-11;
 - c. Failed to post required emergency contact information, in violation of OAC rule 3745-52-34(D)(5);
 - d. Failed to equip facilities with the required emergency equipment, in violation of OAC rule 3745-65-32(C);
 - e. Failed to maintain a log/record of all testing and maintenance of the required emergency equipment, in violation of OAC rule 3745-65-33;
 - f. Failed to label containers with the words "Hazardous Waste," in violation of OAC rule 3745-52-34(D)(4);
 - g. Failed to manage hazardous waste in containers in good condition, in violation of OAC rule 3745-66-71;
 - h. Failed to conduct inspections of containers at least weekly, in violation of OAC rule 3745-66-74;
 - i. Failed to keep containers of hazardous waste closed, except when adding or removing waste, in violation of OAC rule 3745-66-73(A);
 - j. Failed to properly mark containers of used oil with the appropriate words, in violation of OAC rule 3745-279-22(C);
 - k. Failed to keep containers of universal waste lamps closed, in violation of OAC rule 3745-273-13(D);
 - l. Failed to label containers of universal waste with the appropriate words, in violation of OAC rule 3745-273-14;
 - m. Failed to adequately train employees who manage universal wastes, in violation of OAC rule 3745-273-16; and
 - n. Failed to respond to releases of universal waste, in violation of OAC rule 3745-273-17.

7. Respondent was notified of violations referenced in finding No. 6. of these Orders by letter dated September 15, 2008.
8. Ohio EPA received responses to the violations identified in the September 15, 2008, letter on October 10, 2008 and November 14, 2008.
9. On August 23, 2008, Ohio received a complaint alleging Respondent improperly managed hazardous waste paint chips and debris (characteristically hazardous for lead, D008 - as defined in OAC rule 3745-51-24). Ohio EPA conducted a site visit on October 10, 2008 at the Facilities in response to the complaint.
10. Ohio EPA and Respondent had conference calls on December 2 and December 17, 2008, to address violations found in Finding No. 6. of these Orders and the complaint referenced in Finding No. 9. of these Orders.
11. Respondent was notified of a partial return to compliance for violations in Finding No. 6. and was notified of the unlawful establishment and operation of a hazardous waste facility without a hazardous waste installation and operation permit at the Ridges Buildings, in violation of ORC § 3734.02(E) and (F), for the storage of hazardous waste paint chips and debris referenced in Finding No. 9. of these Orders by letter dated December 29, 2008.
12. Ohio EPA received additional responses to the violations identified in the September 15, 2008, and the December 29, 2008, letters in a letter dated January 20, 2009.
13. Respondent was notified of partial return to compliance for all violations, save for violations of ORC § 3734.02(E) and (F), by letter dated March 2, 2009.
14. Due to the establishment and operation of an unpermitted hazardous waste facility as described in Finding Nos. 6. and 11. 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, 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 Finding Nos. 6. and 11. of these Orders, closure must be conducted in accordance with the closure standards found in OAC rules 3745-55-11 through 3745-55-20.
15. The submittal of a Closure Plan(s) which comply 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(s) for the unpermitted hazardous waste management units referred to in Finding Nos. 6. and 11. of these Orders.
 - b. The Closure Plan(s) 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, including but not limited to, the groundwater protection program in accordance with OAC rules 3745-54-90 through 3745-54-100, as applicable.
 - c. The Closure Plan(s) is subject to approval by Ohio EPA. If Ohio EPA does not approve the Closure Plan(s) referenced in Order No. 1.a. of these Orders and provides Respondent with a written statement of deficiencies, Respondent shall submit revised Closure Plan(s) for approval addressing the deficiencies within 30 days of receiving such written statement. If Ohio EPA modifies the Closure Plan(s), the modified Closure Plan(s) becomes the approved plan.
 - d. Upon Ohio EPA approval of the Closure Plan(s), Respondent shall implement the approved Closure Plan(s) in the manner and pursuant to the timeframes set forth in the approved Closure Plan(s) and OAC rules 3745-55-13/3745-66-13.
 - e. Within 60 days after completion of closure, Respondent shall submit certification of closure to Ohio EPA in accordance with OAC rules 3745-55-15.

2. Respondent shall pay Ohio EPA the amount of \$34,600.00 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 \$24,220.00 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 \$24,220.00 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 Respondent. A copy of this check shall be submitted in accordance with Section X. of these Orders.
 - b. In lieu of paying the remaining \$10,380.00 of civil penalty to Ohio EPA, Respondent shall within 30 days after the effective date of these Orders fund a supplemental environmental project (SEP) by making a one-time contribution in the amount of \$10,380.00 to the Hocking River Commission. These funds shall be used by the Hocking River Commission for the purchase of riparian land for conservation purposes, purchase of riparian easements and/or restoration of riparian forests within the Hocking River watershed. Within 45 days after the effective date of these Orders, Respondent shall submit to Ohio EPA documentation demonstrating that the \$10,380.00 payment has been made in accordance with this Order. The documentation shall be submitted in accordance with Section X. of these Orders.
 - c. Should Respondent fail to fund the SEP within the required time frame established in Order No.2.b of these Orders, Respondent shall pay to Ohio EPA within 7 days of failing to comply with Order 2.b. the amount of \$10,380.00 in accordance with the procedures in Order No. 2.a.

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 person who is in charge of a principal administrative, financial or operational 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
Southeast District Office
Division of Hazardous Waste Management
2195 Front Street
Logan, Ohio 43138
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:

Christopher 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 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, and in lieu of further enforcement action by Ohio EPA for only the violations specifically cited in these Orders, Respondent consents to the issuance of these Orders and agrees 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



Chris Korleski
Director

December 8, 2010
Date

IT IS SO AGREED:

Ohio University



Signature

Nov. 19, 2010
Date

STEPHEN GOLDING
Printed or Typed Name

VICE PRESIDENT FINANCE & ADMINISTRATION
Title