

OHIO E.P.A.
FEB 20 2008
REVISED DIRECTOR'S JOURNAL

BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

Soil Remediation, Inc.
6065 Arrel-Smith Road
Lowellville, Ohio 44436

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**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:  Date: 2-20-08

I. JURISDICTION

These Director's Final Findings and Orders ("Orders") are issued to Soil Remediation, 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, 3745.01 and 6111.03.

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 or Site 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 Chapters 3734, 3745, and 6111 and the rules promulgated thereunder.

IV. FINDINGS

Nothing in the findings made by the Director shall be considered to be an admission by Respondent of any matter of law or fact. The Director of Ohio EPA makes the following findings:

1. Respondent is the owner and operator of a contaminated-soil processing facility located at 6065 Arrel-Smith Road, Lowellville, Mahoning County, Ohio, and hereinafter referred to as the "Facility" or "Site."

2. In 2003, and continuing thereafter, Respondent conducted, permitted or otherwise placed materials at the Site that Ohio EPA determined meet the definition of solid waste as that term is defined in Ohio Administrative Code ("OAC") Rule 3745-27-01 and result from steel manufacturing operations in Weirton, West Virginia. Respondent has stated that it intended to reuse the waste materials after further processing or mixing with other products. However, Respondent failed to obtain authorizations under Ohio law to beneficially reuse a solid waste or to engage in an alternative disposal method described in OAC Rule 3745-27-05(A)(4). Consequently, Ohio EPA determined that the materials were at the Site in violation of Ohio solid waste laws.
3. Ohio EPA and Mahoning County Health District provided written notice to Respondent in February, May, July and September 2005, that Respondent's activities constituted ongoing violations of OAC Rule 3745-27-05(C).
4. On or about February 9, 2005, the Director of Ohio EPA received a verified complaint, which was filed pursuant to ORC § 3745.08, from Mary Helen Smith, Director of the Solid Waste Program and Deputy Director of Environmental Health, of the Mahoning County District Board of Health, 50 Westchester Drive, Youngstown, Ohio. The verified complaint alleged that the Site lacked storm water controls and a discharge permit, in violation of water pollution control laws.
5. Activities at the Site are categorized by Standard Industrial Classification ("SIC") codes 2951, 3295, and 5093. Those SIC codes are defined as "industrial activity" by 40 CFR 122.26(b)(14). Activities at the Site also result from a process of industry, manufacture, trade or business within the meaning of ORC § 6111.01(H). Storm water that runs over the Site is "industrial waste" or "other waste" within the meaning of ORC §§ 6111.01(C) and (D). Since at least 2003, these storm water wastes have been discharged to the Mahoning River and an unnamed tributary thereof. The unnamed tributary and Mahoning River constitute "waters of the state" as defined by ORC § 6111.01(H). Placement of this waste into waters of the state constitutes "pollution" as defined in ORC §6111.01(A).
6. During all times of discharge of the storm water into waters of the state and until June 6, 2006 when the Director granted Respondent coverage under the Industrial Storm Water General Permit (see Finding No. 10), Respondent did not have a permit issued by the Director authorizing such discharge. Respondent did have coverage under the general permit for the discharge of storm water from construction activities for a construction and demolition debris facility that the Respondent proposed to construct at the Site; however, that permit did not authorize the industrial discharges described in Finding No. 6 of these Orders.

7. The discharge of wastes as described in Finding No. 6 of these Orders violates ORC §§ 6111.04(A). Pursuant to ORC § 6111.04(A), no person shall cause pollution or place or cause to be placed any sewage, sludge, sludge materials, industrial waste, or other wastes in a location where they cause pollution of any waters of the state. Such an action is prohibited under ORC § 6111.04(A) and is declared to be a public nuisance unless the person causing pollution or placing or causing to be placed wastes in a location in which they cause pollution of any waters of the state holds a valid, unexpired permit, or renewal of a permit, governing the causing or placement as provided in ORC §§ 6111.01 to 6111.08 or if the person's application for renewal of such a permit is pending.
8. On April 1, 2005, Ohio EPA conducted an inspection at the Site and determined that violations as alleged in the verified complaint did exist. A notice of violation ("NOV") letter was sent to Respondent on April 27, 2005 (regarding water pollution control law violations).
9. Ohio EPA received a complete NOI for the Site on June 6, 2005 and granted Respondent coverage under Industrial Storm Water General Permit, Facility Permit No. 3GR01022*DG, effective June 6, 2006. On June 3, 2005, Respondent submitted an industrial storm water pollution prevention plan for the Site.
10. On May 9, 2007, Ohio EPA conducted an investigation to determine if the catch basin depicted near the Proposed Sediment Pond on the Surface Flow Direction Map contained in the SWP3 is hydrologically connected to the Mahoning River. A dye test performed during this investigation confirmed that storm water which enters this catch basin discharges to the Mahoning River. The discharge occurs at Outfall #27 of the Village of Lowellville's municipal separate storm sewer system ("MS4").
11. While on site conducting the investigation discussed in Finding 11, Ohio EPA inspectors noted several instances where the SWP3 is not being implemented as intended. Namely, inspectors noted:
 - a. No diversions to collect runoff from the Stockpile Areas and convey it to the sediment basin have been established;
 - b. No slow dewatering device (such as a skimmer or riser pipe) has been provided for the sediment basin;
 - c. No stabilized conveyance channel has been provided from the point of sediment basin discharge to the receiving catch basin;

Further, inspectors noted that SRI is not in compliance with Part 3.5.2 of the SWP3 regarding outdoor storage near the soil remediation system. Inspectors observed a pile of soil material near the soil remediation system and it was not (a) stored under the sheltered area, (b) covered with a tarp or (c) located within a curbed area. Respondent says that this pile was a pile of soil excavated in the course of recent on-site construction activities.

12. On August 18, 2006, the Mahoning County District Board of Health verified the successful removal of the waste piles of iron oxide sludge and flue dust.
13. ORC § 3745.08(B) prescribes that if the Director determines that a violation, as alleged, has occurred, is occurring, or will occur, he may enter such order as may be necessary, request the Attorney General to commence appropriate legal proceedings, or, where he determines that prior violations have been terminated and that future violations of the same kind are unlikely to occur, he may dismiss the complaint. Furthermore, this law specifies that the Director provide an opportunity to the complainant and the alleged violator, prior to entry of the order, to attend a conference with the Director or his delegate concerning the alleged violation.
14. Pursuant to ORC § 6111.07(A), no person shall violate or fail to perform any duty imposed by ORC §§ 6111.01 to 6111.08 or violate any order, rule, or term or condition of a permit issued or adopted by the Director of Ohio EPA pursuant to those sections. Each day of violation is a separate offense.
15. The Director has given consideration to, and based his determination on, evidence relating to the technical feasibility and economic reasonableness of complying with these Orders and to evidence relating to conditions calculated to result from compliance with these Orders, and its relation to the benefits to the people of the State to be derived from such compliance in accomplishing the purposes of ORC §§ 3734 and 6111.

V. ORDERS

The Director hereby issues the following Orders:

1. Pursuant to ORC § 3745.08, these Orders are a resolution of the verified complaints received on or about February 9, 2005 from the complainant identified in Finding No. 4.
2. Respondent shall not accept, or dispose of, at the Site solid waste or, regardless of whether Respondent agrees that it is solid waste, iron oxide or flue dust without

obtaining in advance authorization from Director to beneficially reuse such materials or to engage in an alternative disposal method described in OAC Rule 3745-27-05(A)(4).

3. Within thirty (30) days of the effective date of these Orders, Respondent shall certify that the SWP3 submitted on August 2, 2006 for industrial activities is being fully implemented at the Site. For one (1) year from the effective date of these Orders, Respondent shall submit signed copies of all reports, records, notifications and certifications required by the SWP3 to Ohio EPA's NEDO in accordance with Section X of these Orders as confirmation that the SWP3 is being implemented. These items shall include, but are not limited to: (a) Storm Water Pollution Prevention Team Meeting Minutes; (b) Significant Spill and Release Documentation Forms; (c) Monthly Site Inspection Records; (d) Employee Training Forms and Attendance Rosters; (e) Non-Storm Water Discharge Assessment and Certification; and (f) the Annual Comprehensive Site Evaluation Summary. In addition, Respondent shall submit a copy of the Annual Comprehensive Site Evaluation Summary by the anniversary of the effective date of these Orders for each of the next five (5) years.

Surface Water Penalties

4. Respondent shall pay the amount of fifteen thousand dollars (\$15,000) in settlement of Ohio EPA's water pollution control law claims for civil penalties, which may be assessed pursuant to ORC Chapter 6111. Twelve Thousand Dollars (\$12,000) of this civil penalty shall be paid in four installments. The first installment of \$3,750 shall be made within fourteen (14) days after the effective date of these Orders; the second installment of \$3,750 shall be made within 120 days after the effective date of these Orders; the third installment of \$3,750 shall be made within 240 days after the effective date of these Orders; and the fourth installment of \$750 shall be made within 360 days after the effective date of these Orders. Each installment payment to Ohio EPA shall be made by an official check made payable to "Treasurer, State of Ohio." Each official check shall be submitted to Brenda Case, or her successor, together with a letter identifying the Respondent, to:

Ohio EPA
Office of Fiscal Administration
P.O. Box 1049
Columbus, Ohio 43216-1049

A photocopy of the check shall be sent to Ohio EPA's NEDO in accordance with Section X of these Orders.

Solid Waste Penalties

5. Respondent shall pay the amount of eight thousand dollars (\$8,000) in settlement of Ohio EPA's claims for civil penalties, which may be assessed pursuant to ORC Chapter 3734. Six Thousand Four Hundred Dollars (\$6,400) of this civil penalty shall be paid in four installments. The first installment of \$2,000 shall be made within fourteen (14) days after the effective date of these Orders; the second installment of \$2,000 shall be made within 120 days after the effective date of these Orders; the third installment of \$2,000 shall be made within 240 days after the effective date of these Orders; and the fourth installment of \$400 shall be made within 360 days after the effective date of these Orders. Each installment payment shall be made by an official check made payable to "Treasurer, State of Ohio." Each official check shall be submitted to Brenda Case, or her successor, together with a letter identifying the Respondent, to:

Ohio EPA
Office of Fiscal Administration
P.O. Box 1049
Columbus, Ohio 43216-1049

A copy of the letter and check shall be sent to Ohio EPA, DSIWM, Supervisor, Systems Management Unit, P.O. Box 1049, Columbus, Ohio 43216-1049.

6. In lieu of paying the remaining three thousand dollars (\$3,000) of the above Surface Water civil penalty and the remaining One Thousand Six Hundred Dollars (\$1,600) of the Solid Waste civil penalty, Respondent shall, within 360 days after the effective date of these Orders, fund a Supplemental Environmental Project ("SEP") by making a contribution in the amount of Four Thousand Six Hundred Dollars (\$4,600) to the Ohio EPA's Clean Diesel School Bus Fund (Fund 5CD). Respondent shall tender an official check made payable to "Treasurer, State of Ohio" for said amount. The official check shall be submitted to Brenda Case, or her successor, together with a letter identifying the Respondent, to the above-stated address.

A copy of the check shall be sent to the following addresses:

Mark Mann
Environmental Manager
Storm Water and Enforcement Section
Ohio EPA
Division of Surface Water
P.O. Box 1049

Columbus, Ohio 43216-1049

And to:

Brian Dearth
Supervisor
Systems Management Unit
Ohio EPA
DSIWM
P.O. Box 1049
Columbus, Ohio 43216-1049

7. Should Respondent fail to fund the SEP within the required time frame set forth in Order No. 7, Respondent shall immediately pay to Ohio EPA the remaining Four Thousand Six Hundred Dollars (\$4,600) of the civil penalty in accordance with the procedures in Order Nos. 5 and 6.

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 the Ohio EPA's Division of Surface Water 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.

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 or Site.

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 Order No. 3 shall be addressed to:

Ohio EPA
Northeast District Office/DSIWM
2110 East Aurora Road
Twinsburg, Ohio 44087
Attention: Solid Waste Supervisor

And to:

Mahoning County Board of Health
50 Westchester Drive
Youngstown, Ohio 44515

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

All documents required to be submitted by Respondent pursuant to Order No. 4 shall be addressed to:

Ohio EPA
Northeast District Office/Division of Surface Water
2110 East Aurora Road
Twinsburg, Ohio 44087
Attention: Enforcement Supervisor

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, 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

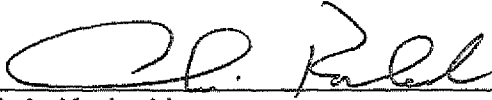
The effective date of these Orders is the date these Orders are entered into the Ohio EPA Director's journal.

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

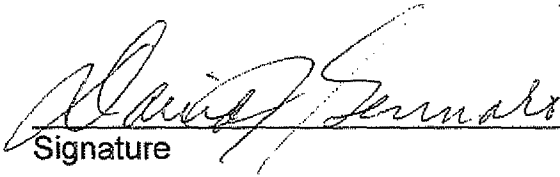


Chris Korleski
Director

2/19/08
Date

IT IS SO AGREED:

Soil Remediation, Inc.



Signature

2-4-08
Date

DAVID J GENNARO
Printed or Typed Name

PRESIDENT
Title