

BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY

OHIO E.P.A.

MAR 21 2012

ENTERED DIRECTOR'S JOURNAL

In the Matter of:

Warren Fabricating Corporation
7845 Chestnut Ridge Road
Hubbard, Ohio 44425

Respondent

**Director's Final
Findings and Orders**

PREAMBLE

It is agreed by the parties hereto as follows:

I. JURISDICTION

These Director's Final Findings and Orders (Orders) are issued to Warren Fabricating Corporation (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 there under.

IV. FINDINGS

The Director of Ohio EPA has determined the following findings:

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 heavy machining and fabrication company which manufactures, among other things, surface mining, steel mill and power generation equipment and is located at 7845 Chestnut Ridge Road, Hubbard, Trumbull County, Ohio (Facility).
3. Respondent notified Ohio EPA of its hazardous waste activities at the Facility and was issued U.S. EPA identification number OHR000030411.
4. At the Facility, Respondent generates hazardous waste and used oil as those terms are defined by ORC §3734.01, and OAC rules 3745-50-10(A) and 3745-51-03. Respondent generates non-acute hazardous waste in amounts greater than 100 kilograms per month, but less than 1,000 kilograms per month, and therefore is considered a small quantity generator (SQG) of hazardous waste. As a SQG, Respondent may accumulate hazardous waste for up to 180 days, but may not exceed a total of 6000 kilograms of hazardous waste, in accordance with OAC rule 3745-52-34(D), without having a hazardous waste installation and operation permit. Respondent generates spent xylene solvent from cleaning paint guns, which is listed hazardous waste F003 as described in OAC rule 3745-51-31 and characteristically hazardous for ignitability, D001, as described in OAC rule 3745-51-21.
5. On March 4, 2011, Ohio EPA conducted a complaint investigation and a partial compliance evaluation inspection at the Facility. As a result of this investigation/inspection, Ohio EPA determined Respondent, *inter alia*, failed to label containers of used oil with the words "Used Oil," in violation of OAC rule 3745-279-22(C)(1).
6. In a letter dated March 24, 2011, Ohio EPA notified Respondent of the violation referenced in Finding No. 5. of these Orders. Additionally, Ohio EPA requested Respondent sample the hazardous waste spent xylene solvent and have it analyzed to verify the waste was adequately characterized.
7. By letter dated April 21, 2011, Respondent submitted documentation in response to Ohio EPA's letter referenced in Finding No. 6. of these Orders. This documentation included photographs, a hazardous waste manifest dated April 6, 2011, indicating the hazardous waste spent xylene solvent had been shipped offsite to a facility authorized to receive hazardous waste, and analytical results dated April 13, 2011, which indicated the spent xylene solvent was listed hazardous waste F003 as described in OAC rule 3745-51-31 and characteristically hazardous for ignitability, D001, as described in OAC rule 3745-51-21.

8. Because the spent xylene solvent was listed hazardous waste and the manifest for the April 6, 2011 shipment of hazardous waste submitted by Respondent documented greater than 180 days since the previous shipment of hazardous waste off-site on August 28, 2009 and Respondent accumulated quantities of waste in excess of the 6000 kilogram maximum allowed for SQGs, Ohio EPA determined Respondent had, *inter alia*, established and operated a hazardous waste storage facility without a hazardous waste installation and operation permit, in violation of ORC §3734.02(E) and (F).
9. In a letter dated June 23, 2011, Ohio EPA notified Respondent of the violations referenced in Finding No. 8. of these Orders.
10. In a letter dated July 11, 2011, Ohio EPA notified Respondent it had abated the violation referenced in Finding No. 5. of these Orders.
11. Because the waste was shipped offsite to an authorized facility on April 6, 2011, there was no evidence of releases of the hazardous waste, the containers appeared to be in good condition, and Respondent will continue to use the area to accumulate hazardous waste for less than 180 days, the Director has determined that no additional action, including closure in accordance with OAC chapter 3745-54 and 3745-55, is required of Respondent at this time regarding the ORC § 3734.02(E) and (F) violations referenced in Finding No. 8. of these Orders.

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 \$26,000.00 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 60 days after the effective date of these Orders, Respondent shall pay Ohio EPA the amount of \$20,800.00 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

\$20,800.00. 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 \$5,200.00 of civil penalty to Ohio EPA, Respondent shall fund a supplemental environmental project (SEP) by making a contribution in the amount of \$5,200.00 to the Ohio EPA Clean Diesel School Bus Program (Fund 5CD). Respondent shall make the payment within 60 days after the effective date of these Orders by tendering an official check made payable to "Treasurer, State of Ohio" for \$5,200.00. 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 Thomas Kalman, Manager, Compliance and Enforcement Section, 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 within the required time frame established in Order No. 1.b., Respondent shall pay to Ohio EPA, within 7 days after failing to comply with Order No. 1.b., the amount of \$5,200.00 in accordance with the procedures in Order No. 1.a.

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
Northeast District Office
Division of Materials and Waste Management
2110 East Aurora Road
Twinsburg, Ohio 44087
Attn: DMWM Manager

and Ohio EPA Central Office at the following address:

For mailings, use the post office box number:

Scott J. Nally, Director
Ohio Environmental Protection Agency
Lazarus Government Center
Division of Materials and Waste Management
P.O. Box 1049
Columbus, Ohio 43216-1049
Attn: Manager, Compliance Assurance Section

For deliveries to the building:

Scott J. Nally, Director
Ohio Environmental Protection Agency
Lazarus Government Center
Division of Materials and 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 closure of the hazardous waste accumulation area as well as 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 closure or 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 rights to seek closure of the hazardous waste accumulation area and corrective action at the Facility, which rights 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

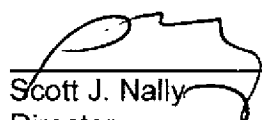
The effective date of these Orders is the date these Orders are entered into the Ohio EPA Director's journal.

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

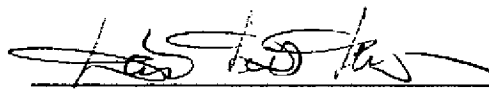


Scott J. Nally
Director

March 21, 2012
Date

IT IS SO AGREED:

Warren Fabricating Corporation



Signature

March 2, 2012
Date

David Della Donna
Printed or Typed Name

Executive V.P.
Title