

OHIO E.P.A.

JUN 10 2013

BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY
DIRECTOR'S JOURNAL

In the Matter of:

Bluffton Aeration Service, Inc.
9485 Shifferly Road
Bluffton, Ohio 45817

Director's Final
Findings and Orders

Respondent

PREAMBLE

It is agreed by the parties hereto as follows:

I. JURISDICTION

These Director's Final Findings and Orders (Orders) are issued to Bluffton Aeration Service, 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 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 operates a business that provides services for septic and aeration tanks at its facility located at 9485 Shifferly Road, Bluffton, Allen County, Ohio 45817 (Bluffton Facility).
3. At the Bluffton Facility, Respondent stored "hazardous waste" as that term is defined by ORC § 3734.01(J) and OAC rules 3745-50-10(A) and 3745-51-03. Respondent stored hazardous waste wastewaters (D001 – ignitable, D018 – benzene; as defined in OAC rules 3745-51-21 and 3745-51-24) in an underground storage tank at the Bluffton Facility.
4. Due to heavy precipitation, the underground gasoline tank at Alger Carryout, a convenience store and gas station, flooded. In February 2011, the owner of Alger Carryout contacted Respondent to empty the flooded underground gasoline tank.
5. On February 28, and March 1, 2011, Respondent transported a total of approximately 2300 gallons of gasoline impacted wastewater from Alger Carryout to the Bluffton Facility where approximately 1550 gallons of the wastewater was transferred into a stationary tanker and approximately 750 gallons was transferred into an underground storage tank.
6. During the transfer into the stationary tanker at the Bluffton Facility, Respondent became aware of a strong gasoline odor. Subsequently, Respondent contacted Environmental Remediation Services, Inc. regarding the gasoline impacted wastewater. On April 29, 2011, Environmental Remediation Services, Inc. transported the 1550 gallons of the gasoline impacted wastewater from the stationary tanker at the Bluffton Facility to an authorized facility.
7. On April 19, 2011, Respondent transported the wastewater that had been stored in the underground storage tank at the Bluffton Facility, to the Bowling Green Waste Water Treatment Plant (BG WWTP). Based on observations by the operator at the BG WWTP, this wastewater contained a black petroleum substance and sheen that passed through the BG WWTP and was released into Poe Ditch. The BG WWTP identified the Respondent as the owner of the tanker

trunk that offloaded the wastewater and contacted the Respondent regarding the release. Respondent returned to the BG WWTP to clean up the release. Ohio EPA Division of Environmental Response and Revitalization (DERR) also responded to the release.

8. Upon observing the black petroleum substance and sheen, the operator at the BG WWTP also collected samples of the wastewater. April 27, 2011 analytical results from these samples indicated this material was a hazardous waste due to ignitability (D001) and benzene (D018).
9. On May 6, 2011, Ohio EPA DERR notified the Division of Materials and Waste Management (DMWM) regarding the incident described in Finding No. 8. of these Orders.
10. On June 8, 2011, Ohio EPA conducted a compliance evaluation inspection at the Bluffton Facility. As a result of this inspection, Ohio EPA learned of the transportation and storage of hazardous waste gasoline impacted wastewater from Alger Carryout to the Bluffton Facility. Based upon this information, Ohio EPA determined Respondent *inter alia*:
 - a. Caused hazardous waste wastewater (D001, D018) to be transported from the Alger Carryout to its Bluffton Facility, a facility not authorized to receive and store hazardous waste, in violation of ORC §3734.02(F);
 - b. 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). Respondent stored hazardous waste wastewater (D001, D018) that had been generated offsite, in an underground storage tank at the Bluffton Facility prior to transporting the hazardous waste wastewater to the BG WWTP;
 - c. Failed to comply with the tank system requirements applicable to owners and operators of facilities that use tank systems for storing or treating hazardous waste, in violation of OAC rules 3745-55-91 through 3745-55-99;
 - d. Failed to obtain a manifest from the generator of the hazardous waste wastewater prior to transporting the hazardous waste gasoline wastewater to the Bluffton Facility, in violation of OAC rule 3745-53-20(A);
 - e. Failed to prepare a hazardous waste manifest when transporting the hazardous waste wastewater from the Bluffton Facility to the BG WWTP, in violation of OAC rule 3745-54-71(C); and

- f. Failed to evaluate waste generated from the spill clean-up at Poe Ditch to determine if the waste was hazardous waste, in violation of OAC rule 3745-52-11.
11. By letter dated November 3, 2011, Ohio EPA notified Respondent of the violations referenced in Finding No. 10. of these Orders. Additionally, Ohio EPA notified Respondent that Respondent had abated the violations referenced in Findings Nos. 10.d., 10.e., and 10.f. of these Orders.
12. By letter dated December 2, 2011, Respondent provided documentation in response to Ohio EPA's November 3, 2011, letter referenced in Finding No. 11. of these Orders. Respondent also provided additional information by telephone on January 18, 2012. Respondent claimed the wastewater offloaded at the BG WWTP was from the underground storage tank at the Bluffton Facility and was hazardous waste as a result of wastewater from Alger Carryout that had been previously transported to Bluffton Facility.
13. By letter dated January 24, 2012, Ohio EPA acknowledged receipt of Respondent's December 2, 2011, letter. Furthermore, the Director has determined that no further action is required by Respondent with regard to the violation referenced in Finding No. 10.a. of these Orders.
14. On December 18, 2012, Ohio EPA and Respondent held a telephone conference to discuss the violations at the Bluffton Facility. Specifically, Ohio EPA and Respondent discussed integrity testing that would need to be conducted on the underground storage tank referenced in Finding No. 10.b of these Orders to determine if there were any releases of hazardous waste to the soil.
15. By letter dated January 8, 2013, Respondent submitted to Ohio EPA a draft Standard Operating Procedure (SOP) for the tank integrity testing of the underground storage tank referenced in Finding No. 10.b. of these Orders.
16. In various communications between January and March 2013, with the Respondent, Ohio EPA provided comments on the SOP for the tank integrity testing of the underground storage tank referenced in Finding No. 10.b. of these Orders.
17. By electronic mail on March 18, 2013, Respondent, based upon the comments provided by Ohio EPA referenced in Finding No. 16. of these Orders, Respondent submitted a more detailed SOP for the tank integrity testing of the underground storage tank referenced in Finding No. 10.b. of these Orders.

18. By electronic mail on May 9, 2013, Ohio EPA submitted to Respondent a revised SOP to be followed during the integrity test of the underground storage tank referenced in Finding No. 10.b. of these Orders.
19. On May 14, 15, and 16, 2013, Respondent implemented the SOP for the tank integrity test referenced in Finding No. 17. of these Orders.
20. Based upon the results of the underground storage tank integrity testing referenced in Finding No. 18. of these Orders, Respondent demonstrated that the underground storage tank is competent. Therefore, the Director has determined that Respondent has met the closure performance standard requirements of OAC rule 3745-55-11 for the underground storage tank and no further action is required to abate the violation referenced in Finding No. 10.b. 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 \$10,000.00 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 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 \$1,250.00;
 - b. Within 180 days after the effective date of these Orders, Respondent shall pay to Ohio EPA the amount of \$1,250.00;
 - c. Within 270 days after the effective date of these Orders, Respondent shall pay to Ohio EPA the amount of \$1,250.00;
 - d. Within 360 days after the effective date of these Orders, Respondent shall pay to Ohio EPA the amount of \$1,250.00;
 - e. Within 450 days after the effective date of these Orders, Respondent shall pay to Ohio EPA the amount of \$1,250.00;
 - f. Within 540 days after the effective date of these Orders, Respondent shall pay to Ohio EPA the amount of \$1,250.00;

- g. Within 630 days after the effective date of these Orders, Respondent shall pay to Ohio EPA the amount of \$1,250.00; and
- h. Within 720 days after the effective date of these Orders, Respondent shall pay to Ohio EPA the amount of \$1,250.00.

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, Department L-2711, Columbus, Ohio 43260-2711, together with a letter identifying Respondent and the Facility. A copy of each check shall be sent to Ohio EPA Division of Materials and Waste Management, Supervisor, Processing Records Management Unit, P.O. Box 1049, Columbus, Ohio 43216-1049.

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 Materials and Waste Management
347 N. Dunbridge Road
Bowling Green, Ohio 43402
Attn: DMWM Manager

and Ohio EPA Central Office at the following address:

For mailings, use the post office box number:

Enforcement Supervisor
Ohio Environmental Protection Agency
Lazarus Government Center
Division of Materials and Waste Management
P.O. Box 1049
Columbus, Ohio 43216-1049

For deliveries to the building:

Enforcement Supervisor
Ohio Environmental Protection Agency
Lazarus Government Center
Division of Materials and Waste Management
50 West Town Street
Columbus, Ohio 43215

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 Bluffton 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 Bluffton 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




Scott J. Nally
Director

June 10, 2013

Date

IT IS SO AGREED:

Bluffton Aeration Service, Inc.



Signature

5/20/13

Date

ROBERT C. SNEED

Printed or Typed Name

owner

Title