



John R. Kasich, Governor
Mary Taylor, Lt. Governor
Craig W. Butler, Director

March 22, 2022

Austin Powder Company
430 Powder Plant Road
McArthur, OH 45651

**Re: Austin Powder Company
Director's Final Findings and Orders (DFFO)
DFFO
RCRA C - Hazardous Waste
Vinton County
OHD004293775**

Subject: Final Findings and Orders of the Director

Dear Sir or Madam:

Transmitted herewith are the Final Findings and Orders of the Director concerning the matter indicated for Austin Powder Company.

Enclosed is the invoice for the total penalty amount of \$6,000.00 required by the orders. The penalty payment(s) shall be made by official check(s) made payable to "Treasurer, State of Ohio."

If you have any questions, please contact Sarah Miles at (614) 644-3037.

Sincerely,

Diana Bammerlin

Diana Bammerlin, Administrative Professional 2
Division of Environmental Response and Revitalization

Enclosure

cc: Zak Kabelen, DERR, CO
Mitch Mathews, DERR, CO
Tammy Heffelfinger, DERR, CO
Kristy Hunt, DERR, SEDO
Maggie Selbe, DERR, SEDO
Sarah Miles, Legal
Jason Lyons, Austin Powder Company
Lauren Biggs, Austin Powder Company
Christopher Wakefield, Austin Powder Company

By: Wally A. Mink Date: _____

3/21/2022

**BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY**

In the Matter of:

Austin Powder Company
430 Powder Plant Road
McArthur, Ohio 45651

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 Austin Powder Company (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 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

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(P).
2. Respondent operates a business that manufactures explosives. at its facility located at 430 Powder Plant Road, McArthur, Ohio, 45651 (Facility), which has

been assigned U.S. EPA Identification number OHD004293775.

3. At the Facility, Respondent generates "hazardous waste" as that term is defined by ORC § 3734.01(J) and OAC rules 3745-50-10(H) and 3745-51-03. Relevant to these Orders, Respondent generates, among other hazardous waste, spent nitric and sulfuric acids which exhibit the characteristic of corrosivity (D002), as described in OAC rule 3745-51-22, which are managed in tanks in the pentaerythritol tetranitrate (PETN) production area of the Facility. Furthermore, Ohio EPA has determined that Respondent is subject to the hazardous waste laws and rules applicable to a Large Quantity Generator (LQG) of hazardous waste as defined in OAC rule 3745-50-10(L).
4. On March 29, 2019, Ohio EPA conducted a compliance evaluation inspection at the Facility. As a result of the inspection, Ohio EPA determined that Respondent, *inter alia*:
 - a. Failed to obtain a signed hazardous waste manifest from the destination facility for hazardous waste manifest number 011693031FLE in violation of OAC rule 3745-52-20(A)(1);
 - b. Failed to inspect the hazardous waste tank system including tanks TA524 and TA534 used to store spent hazardous waste nitric and sulfuric acids at least once each operating day in violation of OAC rule 3745-66-95(B)(1), (2), & (3). Specifically, Respondent did not inspect the following:
 - (1) Overfill or spill control equipment;
 - (2) Above ground portions of the tank system, to detect corrosion or releases or waste; and
 - (3) The construction materials and the area immediately surrounding the externally accessible portion of the tank system including secondary containment structures to detect erosion or signs of releases of hazardous waste; and
 - c. Failed to obtain a written assessment attesting that the tank system used to store spent hazardous waste nitric and sulfuric acids including tanks TA524 and TA534 generated from the production of PETN has sufficient structural integrity and is acceptable for the storing and treating of hazardous waste, in violation of OAC rule 3745-66-92(A).
5. By letter dated April 12, 2019, Ohio EPA notified Respondent of the violations referenced in Finding No. 4. of these Orders.

6. By electronic mail on May 22, 2019, Respondent provided to Ohio EPA a response to the Notice of Violation (NOV) referenced in Finding No. 5. of these Orders. Specifically, Respondent provided a copy of hazardous waste manifest number 011693031FLE which had been signed by the destination facility.
7. By letter dated June 5, 2019, Ohio EPA notified Respondent that based upon the documentation provided by Respondent and referenced in Finding No. 6. of these Orders, the violation described in Finding No. 4.a. of these Orders has been resolved, but the violations referenced in Findings Nos. 4.b. and 4.c. of these Orders remain outstanding.
8. On June 26, and July 26, 2019, Respondent provided updated daily inspection logs to include visual checks of the overflow and spill equipment for the hazardous waste storage tanks TA524 and TA534 which were used to store spent nitric and sulfuric acids. Additionally, Respondent provided notification that improvements had been made to the production system such that corrosive wastes could be successfully neutralized prior to waste being transferred to tanks TA524 and TA534.
9. On August 9, 2019, Ohio EPA conducted an inspection of the Facility. During the inspection, Ohio EPA determined that the neutralizing of the acidic waste stream process was operating correctly and therefore tanks TA524 and TA534 were no longer subject to the hazardous waste tank standards.
10. By letter dated August 27, 2019, Ohio EPA notified Respondent that based upon the information received from Respondent and referenced in Finding No. 8. of these Orders, and the inspection referenced in Finding No. 9. of these Orders, the violations referenced in Findings Nos. 4.b. and 4.c., of these Orders have been resolved.
11. On September 24, 2020, Ohio EPA conducted a virtual site visit of the Facility. As a result of the inspection, Ohio EPA determined that Respondent's elementary neutralization system was not operating correctly and tank TA524 was holding corrosive hazardous waste. Because tank TA524 held hazardous waste, it was subject to the hazardous waste tank requirements. Therefore, Ohio EPA determined that Respondent, *inter alia*:
 - a. Failed to inspect the hazardous waste tank TA524 used to store spent hazardous waste nitric and sulfuric acids at least once each operating day in violation of OAC rule 3745-66-95(B)(1), (2), and (3). Specifically, Respondent did not inspect the following:

- (1) Overfill or spill control equipment;
 - (2) Above ground portions of the tank system, to detect corrosion or releases or waste; and
 - (3) The construction materials and the area immediately surrounding the externally accessible portion of the tank system including secondary containment structures to detect erosion or signs of releases of hazardous waste; and
 - b. Failed to obtain a written assessment attesting that the design, installation, and structural integrity of tank TA524 used to store spent hazardous waste nitric and sulfuric acids generated from the production of PETN, in violation of OAC rule 3745-66-92(A).
12. By letter dated October 29, 2020, Ohio EPA notified Respondent of the violations referenced in Finding No. 11. of these Orders.
 13. On November 12, 2020, Respondent provided to Ohio EPA a response to the NOV letter referenced in Finding No. 12. of these Orders. Specifically, Respondent included in the response one week's worth of completed hazardous waste tank inspection forms. Respondent informed Ohio EPA in the response that the daily inspection checklist was implemented on October 7, 2020.
 14. By letter dated November 19, 2020, Ohio EPA notified Respondent that based upon the documentation provided by Respondent and referenced in Finding No. 13. of these Orders, the violation described in Finding No. 11.a. of these Orders has been resolved.
 15. On December 11, 2020, Respondent provided to Ohio EPA a written assessment completed by a professional engineer of the PETN hazardous waste storage tank TA524.
 16. By letter dated January 14, 2021, Ohio EPA notified Respondent that based upon the documentation provided by Respondent and referenced in Finding No. 15. of these Orders, the violation described in Finding No. 11.b. of these Orders has been resolved.
 17. On May 28, 2021, Respondent provided to Ohio EPA an Unplanned Event Investigation Report. In the report, Respondent explained that on May 22, 2021, the neutralization skid lost caustic flow leading to low pH in the neutralization skid, and the system was shut down. On May 25, 2021, Respondent checked the pH of the contents of tank TA534 with pH strips, which was estimated to be a

pH of 1. Respondent attempted to neutralize the contents by feeding excess caustic to the neutralization skid. On May 26, 2021, Respondent checked the pH of the contents of tank TA534 with pH strips prior to shipment offsite, and the pH was estimated to be approximately 3. The waste was transported offsite. The receiving facility tested the waste with a pH meter once it arrived and measured the pH to be 2, at which time the waste was reclassified as a hazardous waste. Upon delivery at the authorized facility, the transporter completed a hazardous waste manifest on behalf of Respondent.

18. Based upon the information provided by Respondent and referenced in Finding No. 17. of these Orders, tank TA534 accumulated hazardous waste and was therefore subject to the hazardous waste tank requirements. Ohio EPA determined that Respondent, *inter alia*:
 - a. Failed to complete a written assessment attesting that tank TA534 has sufficient structural integrity and is acceptable for the storing and treatment of hazardous waste, in violation of OAC rule 3745-66-92(A); and
 - b. Failed to prepare a hazardous waste manifest for the transportation of hazardous waste to an authorized facility, in violation of OAC rule 3745-52-20(A)(1).
19. By letter dated July 23, 2021, Ohio EPA notified Respondent of the violations referenced in Finding No. 18. of these Orders. In the letter, Ohio EPA notified Respondent that based upon the documentation provided by Respondent and referenced in Finding No. 17. of these Orders, the violation described in Finding No. 18.b. of these Orders has been resolved.
20. On August 6, 2021, and August 11, 2021, Respondent provided to Ohio EPA a response stating a new pH meter and an alarm with interlock to stop the flow to the neutralization skid upon low pH detection, to prevent hazardous waste from flowing into tank TA534, had been installed. Respondent provided photographic documentation of the installed pH meter and interlock, as well as a diagram indicating where the instruments were installed. Additionally, Respondent provided Ohio EPA with an updated procedure for evaluating waste in tank TA354 during production and prior to shipment. The procedure included the evaluation of waste utilizing a pH meter and instructions for sampling.
21. By letter dated August 30, 2021, Ohio EPA notified Respondent that based upon the documentation provided by Respondent and referenced in Finding No. 20. of these Orders, the violation described in Finding No. 18.a. of these Orders has been resolved.

V. ORDERS

Respondent shall achieve compliance with Chapter 3734. of the ORC and the regulations promulgated thereunder according to the following compliance schedule:

1. Within 30 days after the effective date of these Orders, Respondent shall pay Ohio EPA the amount of \$6,000.00 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 environmental protection remediation fund established pursuant to ORC § 3734.281. Payment shall be made by an official check made payable to "Treasurer, State of Ohio" for \$6,000.00. The official check shall be submitted to Ohio EPA, PO Box 77005, Cleveland, Ohio 44194-7005, together with a letter identifying the Respondent. Notification of penalty payment shall be sent to the Hazardous Waste Program Compliance Assurance Manager, Ohio EPA, Division of Environmental Response and Revitalization, 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 check 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 (except penalty payment checks) required to be submitted by Respondent pursuant to these Orders shall be addressed to:

Ohio Environmental Protection Agency
Southeast District Office
Division of Environmental Response and Revitalization
2195 East Front Street
Logan, Ohio 43138
Attn: Hazardous Waste Program Manager

and Ohio EPA Central Office at the following address:

For mailings, use the post office box number:

Manager, Hazardous Waste Compliance Assurance Section
Ohio Environmental Protection Agency
Lazarus Government Center
Division of Environmental Response and Revitalization
P.O. Box 1049
Columbus, Ohio 43216-1049

For deliveries to the building:

Manager, Hazardous Waste Compliance Assurance Section
Ohio Environmental Protection Agency
Lazarus Government Center
Division of Environmental Response and Revitalization
50 West Town Street
Columbus, Ohio 43215

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

For electronic mail delivery, submit documents to the following email addresses:

Mitchell.Mathews@epa.ohio.gov
Kristy.Hunt@epa.ohio.gov

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:

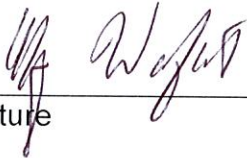
Ohio Environmental Protection Agency



Laurie A. Stevenson
Director

IT IS SO AGREED:

Austin Powder Company



Signature

3-17-2022

Date

Christopher Wakefield

Printed or Typed Name

Plant Manager

Title



Mike DeWine, Governor
Jon Husted, Lt. Governor
Laurie A. Stevenson, Director

Ohio EPA Invoice

Date Printed: March 22, 2022

Austin Powder Emulsion
430 Powder Plant Rd
MCARTHUR, OH 45651

Receivable ID: 1481796
Please include this Receivable ID with all correspondence

Due Date: April 22, 2022
Amount Due: \$6,000.00
Effective Date: March 22, 2022

Revenue Description: DERR - Findings and Orders - Hazardous Waste Cleanup (FFOHW)
Program Name: RCRA C - Hazardous Waste
Reason: Per Director's Final Findings and Orders - Austin Powder Company settlement of Ohio EPA's claims for civil penalties pursuant to ORC Chapter 3734.

How to Pay Fee Online:

- 1. Go to Ohio EPA's homepage: <https://epa.ohio.gov/>
- 2. In the "Featured Content" section locate the tile for the eBusiness Center and click.
- 3. On the right side of the screen click the blue "Launch" tile to enter the eBusiness Center.
- 4. To use the eBusiness center you will need an account. If you have an account, click the OH|ID icon in the light blue section on the left of the screen to log in.
- 5. If you do not have an account, the light blue section on the right of the screen has eBiz Help Wizard to assist with creating an account.
- 6. If you are paying your receivable with a credit card no PIN is required. If you plan to pay using a bank account and routing information you will need to request a PIN.

CUT OFF THIS STUB AND MAIL IT WITH YOUR CHECK. DO NOT MAIL TOP PORTION.

Pay to: Treasurer, State of Ohio. Please write the Revenue ID on your check. Please send this stub with your check. DO NOT SEND LETTERS OR OTHER FORMS.

Ohio EPA
PO Box 77005
Cleveland, OH 44194-7005

Due Date:	4/22/2022
Revenue ID:	1481796
Amount Due	\$6,000.00
Type Code:	FFOHW
Transaction ID:	