OhioEPA

State of Ohio Environmental Protection Agency

STREET ADDRESS:

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50 W. Town St., Suite 700
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MAILING ADDRESS:

P.O. Box 1049
Columbus, OH 43216-1049

**CERTIFIED MAIL**

April 23 2007

**Re: Director's Final Findings & Orders**
Abrivo APS, Inc. dba
Hardwood Connection
US EPA ID No.: OHR 000 133 520

Mr. John D. Jackson, General Manager
Abrivo APS, Inc. dba Hardwood Connection
724 E. Perry Street
Bryan, Ohio 43506

Dear Mr. Jackson:

Here are the Director's Final Findings and Orders (Orders) issued to Abrivo APS, Inc. dba Hardwood Connection on April 23, 2007. These Orders are effective today.

I have also enclosed invoices for the penalty payments as required by Order No. 14. a. through 14. d. Please remember that your first payment is due no later than July 22, 2007.

If you have any questions concerning compliance with these Orders, do not hesitate to contact John Pasquarette at (419) 352-8461.

Sincerely,

for Pamela S. Allen, Manager
Regulatory and Information Services
Division of Hazardous Waste Management

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Attachments

c: Michael A. Savage, Chief, DHWM CO
Harry Sarvis, Mgr., CAS, DHWM CO
Elissa Miller, Legal
Heidi Greismer, PIC
John Pasquarette, Mgr., DHWM, NWDO
John Jackson, Abrivo APS, Inc.

OHIO E.P.A.

APR 23 2007

ENTERED DIRECTOR'S JOURNAL

**BEFORE THE**
**OHIO ENVIRONMENTAL PROTECTION AGENCY**

**In the Matter of:**

**Abrivo APS, Inc.**
**dba Hardwood Connection**
520 Edgerton Street
Hamler, Ohio 43524

**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.**

**By:** _____ **Date:** 4-23-07

## PREAMBLE

It is agreed by the parties hereto as follows:

## I. JURISDICTION

These Director's Final Findings and Orders (Orders) are issued to Abrivo APS, Inc., dba Hardwood Connection (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 thereunder.

## IV. FINDINGS

The Director of Ohio EPA has determined the following findings:

1. Respondent operates a facility located at 520 Edgerton Street, in Hamler,

Henry County (Facility). At the Facility, Respondent manufactures indoor millwork including wood moldings. Respondent is authorized to do business in Ohio.

2. Respondent is a "person" as defined in ORC § 3734.01(G) and Ohio Administrative Code (OAC) rule 3745-50-10(A).

3. Respondent was issued generator identification number OHR000133520.

4. At the Facility, 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. The hazardous wastes generated by Respondent at the Facility include spent solvents and spent paint filters (F003/F005).

5. On June 20, 2005, Ohio EPA received a complaint that Respondent had been unlawfully disposing of paint/lacquer thinner onto the ground at the Facility.

6. On July 20, 2005, Ohio EPA conducted an inspection at the Facility. During this inspection, Respondent was generating spent paint filters from the paint cleaning operations. Ohio EPA observed that spent paint filters and other debris were being disposed of on the ground, outside in the back of the Facility. Furthermore, spent paint filters and other debris were being burned in a pile and also in 55-gallon and 5-gallon containers in the back of the Facility. As a result of the inspection, Ohio EPA determined that Respondent had, *inter alia*:

   a. Unlawfully disposed of spent paint filters without a permit, in violation of ORC § 3734.02 (E) and (F); and

   b. Failed to evaluate wastes to determine if the wastes were hazardous wastes, in violation of OAC rule 3745-52-11.

7. By letter dated August 18, 2005, Ohio EPA notified Respondent of the violations referenced in Finding No. 6. of these Orders.

8. By facsimiles dated August 30, 2005, September 1, 2005 and September 8, 2005, Respondent submitted to Ohio EPA Material Safety Data Sheets in an attempt to evaluate the spent solvents generated at the Facility.

9. On September 29, 2005, Ohio EPA received a response from Respondent in regards to Ohio EPA's August 18, 2005 letter.

10. By letter dated January 3, 2006, Respondent submitted a hazardous waste manifest to Ohio EPA in order to demonstrate that the hazardous wastes referenced in Finding No. 6.a. of these Orders were properly disposed.

11. On January 24, 2006, Ohio EPA conducted a follow-up inspection at the Facility. During this inspection, Ohio EPA observed that Respondent had changed its paint cleaning operations so that F003/F005 hazardous waste spent paint filters were no longer being generated. As a result of this inspection and the facsimiles referenced in Finding No. 8. of these Orders, Ohio EPA determined that Respondent had abated the violation referenced in Finding No. 6.b. of these Orders.

12. Based upon a review of financial information submitted by Respondent, Ohio EPA determined that Respondent does not possess the financial ability to pay the entire civil penalty settlement proposed in the Director's letter of March 2, 2006.

## 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 90 days after the effective date of these Orders, Respondent shall submit to Ohio EPA, for review and approval, a sampling and analysis plan (SAP) for sampling activities to determine the rate and extent of contamination, if any, for the hazardous waste disposal areas, referenced in Finding No. 6. of these Orders.

2. The SAP is subject to Ohio EPA review and approval. If Ohio EPA does not approve the SAP and provides Respondent with a written statement of deficiencies, Respondent shall revise the SAP or submit a new SAP for approval that corrects the stated deficiencies within 30 days after receipt of such written statement. Ohio EPA may approve the SAP with modifications. If Ohio EPA modifies the SAP, the modified SAP becomes the approved SAP. Upon Respondent's receipt of approval from Ohio EPA of the SAP, Respondent shall implement the approved SAP in accordance with the terms, conditions and schedules contained therein.

3. Following receipt of the analytical results generated by the implementation of the approved SAP, Respondent shall, pursuant to the schedule in the approved SAP, submit to Ohio EPA a report ("SAP Report") that includes the laboratory analysis and evaluation of data generated from implementing the approved SAP. Using the format found in OAC rule 3745-50-42(D), Respondent shall certify that the sampling and analysis was conducted in

accordance with the approved SAP. The certification shall be signed by Respondent and shall be included in the SAP Report.

4. The SAP Report is subject to Ohio EPA review and approval. If Ohio EPA approves the SAP Report and it indicates that soil, but not ground water, has been contaminated by hazardous waste or hazardous waste constituents above the remediation levels identified in Ohio EPA's "Closure Plan Review Guidance" dated June 2005, as supplemented, as a result of hazardous waste disposed at the Facility without a permit, in violation of ORC § 3734.02(E) and (F) and the rules promulgated thereunder, Respondent shall prepare a Remediation Plan and comply with Order Nos. 5. through 8.

5. The Remediation Plan shall be submitted to Ohio EPA within 30 days after Ohio EPA's approval of the SAP Report. The Remediation Plan shall propose methods of and a schedule for remediation of the areas at the Facility where hazardous waste was disposed without a permit, in violation of ORC § 3734.02(E) and (F) and the rules promulgated thereunder.

6. The Remediation Plan is subject to Ohio EPA review and approval. If Ohio EPA does not approve the Remediation Plan and provides Respondent with a written statement of deficiencies, Respondent shall revise the Remediation Plan or submit a new Remediation Plan for approval that corrects the stated deficiencies within 30 days after receipt of such written statement.

7. Upon receipt of Ohio EPA's approval of the Remediation Plan, Respondent shall implement the Remediation Plan in accordance with the requirements of OAC rules 3745-55-11/3745-66-11 and OAC rules 3745-55-14/3745-66-14 and the specifications and schedules contained in the approved Remediation Plan and any conditions attached thereto.

8. Within 60 days after the completion of work required by the approved Remediation Plan, Respondent shall submit to Ohio EPA, for review and approval, a certification that the remediation work was conducted in accordance with the approved Remediation Plan. The certification shall be signed by Respondent using the format found in OAC rule 3745-50-42(D).

9. If Ohio EPA accepts the SAP Report and it indicates that both soil and ground water have been contaminated by hazardous waste, hazardous waste constituents or hazardous waste decomposition products above the remediation levels identified in Ohio EPA's "Closure Plan Review Guidance" dated June 2005, as supplemented, as a result of hazardous waste disposed at the Facility without a permit, in violation of ORC § 3734.02(E) and (F) and the rules promulgated thereunder, Respondent shall submit to Ohio EPA a closure plan prepared in accordance with OAC rules 3745-55-11/3745-66-11

through 3745-55-20/3745-66-20, and comply with Order Nos. 10. through 13.

10. The closure plan shall be submitted to Ohio EPA within 30 days after Respondent's receipt of Ohio EPA's approval of the SAP Report. The closure plan is subject to Ohio EPA approval. If Ohio EPA does not approve the closure plan and provides Respondent with a written statement of deficiencies, Respondent shall, within 30 days after receipt of such written statement, revise the closure plan or submit a new closure plan to Ohio EPA addressing the deficiencies. Upon receipt of Respondent's new or revised closure plan, Ohio EPA will notify Respondent in writing that Ohio EPA either approves the closure plan or approves the closure plan with modifications. If Ohio EPA modifies the closure plan, the modified closure plan shall become the approved closure plan.

11. Upon receiving Ohio EPA's written approval of the closure plan, Respondent shall implement the approved closure plan pursuant to OAC rules 3745-55-11/3745-66-11 through 3745-55-20/3745-66-20, the specifications and schedules contained in the approved closure plan, and any modifications attached to the approved closure plan.

12. Within 60 days after completion of closure, Respondent shall submit to Ohio EPA a closure certification in accordance with OAC rules 3745-55-15/3745-66-15.

13. Within 30 days after submitting the closure plan referenced in Order No. 9., Respondent shall submit to Ohio EPA a closure cost estimate and documentation demonstrating that Respondent has established financial assurance and liability coverage for the area of the Facility subject to closure in accordance with OAC rules 3745-55-42/3745-66-42 through 3745-55-47/3745-66-47. Completion of Order Nos. 1. through 13. will abate the violation referenced in Finding No. 6.a. of these Orders.

14. Respondent shall pay Ohio EPA the amount of $2,000.00 in settlement of Ohio EPA's claims for civil penalties, which may be assessed pursuant to ORC Chapter 3734. $2,000.00 of this amount 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 $500.00;

    b. Within 180 days after the effective date of these Orders, Respondent shall pay to Ohio EPA the amount of $500.00;

c. Within 270 days after the effective date of these Orders, Respondent shall pay to Ohio EPA the amount of $500.00; and

d. Within 360 days after the effective date of these Orders, Respondent shall pay to Ohio EPA the amount of $500.00.

Each of the payments above shall be made by 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. A copy of this check shall be submitted in accordance with Section X. of these Orders.

## 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 business 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.

## 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 Hazardous Waste Management
347 North Dunbridge Road
Bowling Green, Ohio 43402
Attn: DHWM Manager

and Ohio EPA Central Office at the following address:

For mailings, use the post office box number:

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:

Director
Ohio Environmental Protection Agency
Lazarus Government Center
Division of Hazardous Waste Management
50 West Town Street, Suite 700
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 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 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 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, Respondent agrees 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**

Director

APR 23 2007
Date

**IT IS SO AGREED:**

**Abrivo APS, Inc., dba Hardwood Connection**

John D. Jackson, G.M.
Signature

3.28-2007
Date

John D. Jackson
Printed or Typed Name

General Manager
Title