OhioEPA

State of Ohio Environmental Protection Agency

STREET ADDRESS:

Lazarus Government Center
50 W. Town St., Suite 700
Columbus, Ohio 43215

TELE: (614) 644-3020 FAX: (614) 644-3184
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MAILING ADDRESS:

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

CERTIFIED MAIL

May 16, 2008

Re: Director's Final Findings & Orders
Hercules Polishing & Plating, Inc.
OHD 981 190 895

Mr. Nick M. Paxos
Hercules Polishing & Plating Inc.
4883 Southway SW
Canton, Ohio 44706

Dear Mr. Paxos:

Here are the Director's Final Findings and Orders (Orders) issued to Hercules Polishing & Plating Inc. on May 16, 2008. These Orders are effective today.

I have also enclosed invoices for the penalty payments as required by Order Nos. 1.a. through 1.d and Order No.2a. Please remember that your first payment is due no later than June 15, 2008.

If you have any questions concerning compliance with these Orders, do not hesitate to contact Natalie Oryshkewych at (330) 425-9171.

Sincerely,

David A. Sholtis, Assistant Chief
Division of Hazardous Waste Management

Attachments

cc: Michael A. Savage, Chief, DHWM
Harry Sarvis, Mgr., CAS, DHWM
Todd Anderson, Legal
Heidi Greismer, PIC
Natalie Oryshkewych, Mgr., DHWM, NEDO
Terry Finn, Roetzel & Andress

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OHIO E.P.A.
MAY 16 2003
ENTERED DIRECTOR'S JOURNAL

BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

Hercules Polishing & Plating, Inc.
4883 Southway SW
Canton, Ohio 44706

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: 5-16-03

PREAMBLE

It is agreed by the parties hereto as follows:

I. JURISDICTION

These Director's Final Findings and Orders (Orders) are issued to Hercules Polishing & Plating, 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 the 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

All of the findings necessary for the issuance of these Orders pursuant to ORC §§ 3734.13 and 3745.01 have been made and are outlined below. Nothing in the findings shall be considered to be an admission by Respondent of any matter of law or fact. The Director of Ohio EPA has determined the following findings:

1. Respondent owns and operates an electroplating facility located at 4883 Southway SW, in Canton, Stark County (Facility). Respondent is an Ohio corporation, licensed to do business on April 19, 1977.

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

3. Respondent notified Ohio EPA of its hazardous waste activities and was issued generator identification number OHD981190895.

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. Respondent is a large quantity generator of hazardous waste. The hazardous wastes generated by Respondent at the Facility include spent caustic alkali solutions (D002, D007), cyanide sludge (F008) and electroplating wastewater treatment sludge (F006).

5. On November 14, 2006, Ohio EPA conducted a compliance evaluation inspection at the Facility. As a result of this inspection, Ohio EPA determined that Respondent had, *inter alia*:

   a. Stored hazardous waste in a tank and containers for greater than 90 days without a permit, in violation of ORC § 3734.02 (E) and (F).

   b. Failed to comply with the hazardous waste tank system requirements, in violation of OAC rules 3745-66-92, 3745-66-93 and 3745-66-95;

   c. Failed to label and date containers and tanks of hazardous waste, in violation of OAC rule 3745-52-34 (A)(2) and (3);

   d. Failed to store hazardous waste in containers that were closed, in violation of OAC rule 3745-66-73;

   e. Failed to conduct inspections of emergency equipment and container accumulation areas, in violation of OAC rules 3745-65-33 and 3745-66-74;

   f. Failed to label containers of used oil, in violation of OAC rule 3745-279-22;

   g. Failed to properly manage universal waste lamps in containers or packages, in violation of OAC rule 3745-273-13(D)(1) and (2);

h. Failed to properly label universal waste lamps, in violation of OAC rule 3745-273-14(E);

i. Stored universal waste lamps on-site for greater than one year and failed to have a system for demonstrating how long universal waste lamps had been on-site, in violation of OAC rule 3745-273-15(A) and (C);

j. Failed to inform employees on the proper handling and emergency procedures associated with universal waste lamps, in violation of OAC rule 3745-273-16;

k. Failed to have an adequate hazardous waste contingency plan for the Facility and failed to provide all emergency services with a copy of the contingency plan, in violation of OAC rules 3745-65-52 and 3745-65-53;

l. Failed to have a personnel training program, in violation of OAC rule 3745-65-16; and

m. Failed to maintain all necessary land disposal restriction (LDR) forms on site, in violation of OAC rule 3745-270-07(A). On November 16, 2006, Respondent submitted copies of the missing LDR forms to Ohio EPA, therefore, this violation was abated.

6. By letter dated December 14, 2006, Ohio EPA notified Respondent of the violations referenced in Finding No. 5. of these Orders. In this letter, Ohio also notified Respondent that due to the unpermitted storage of hazardous waste, Respondent was subject to all applicable general facility standards found in OAC chapters 3745-54 and 3745-55, including but not limited to, closure of the unpermitted hazardous waste storage areas in accordance with OAC rules 3745-55-11 through 3745-55-20 and the financial assurance requirements in OAC rules 3745-55-42 through 3745-55-51.

7. By letter dated January 31, 2007, Respondent submitted a response to Ohio EPA's December 14, 2006 letter.

8. By letter dated March 6, 2007, Ohio EPA notified Respondent that based upon the information submitted to Ohio EPA in the January 31, 2007 letter, Respondent had abated the violations referenced in Finding Nos. 5.b., 5.c., 5.d., 5.e., 5.g., 5.h. and 5.i. of these Orders.

9. On March 8, 2007, Respondent submitted a response to Ohio EPA's March 6, 2007 letter.

10. By letter dated April 3, 2007, Ohio EPA notified Respondent that based upon the information submitted to Ohio EPA on March 8, 2007 letter, Respondent had abated the violation referenced in Finding Nos. 5.f. of these Orders.

11. By letter dated May 1, 2007, Respondent submitted another response to Ohio EPA's March 6, 2007 letter.

12. On May 30, 2007, Ohio EPA notified Respondent that based upon the information submitted to Ohio EPA in the May 1, 2007 letter, Respondent had abated the violations referenced in Finding No. 5.j. and 5.l. of these Orders.

13. On July 17, 2007, Respondent submitted a response to Ohio EPA's May 30, 2007 letter. Based upon Ohio EPA's review of this documentation, the Director has determined that no further action is required to abate the violations referenced in Finding No. 5.k. of these Orders.

14. Because Ohio EPA did not observe any releases of hazardous waste at the time of the inspection referenced in Finding No. 5. of these Orders, the unpermitted storage areas are inside and still being used to accumulate hazardous waste and the hazardous waste storage tank has been scraped, the Director has determined that closure of the unpermitted storage areas is not required at this time. Therefore, no further action is required at this time to abate the violation referenced in Finding No. 5.a. of these Orders.

V. ORDERS

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

1. Respondent shall pay Ohio EPA a total amount of $75,000.00 in settlement of Ohio EPA's claims for civil penalties, which may be assessed pursuant to ORC Chapter 3734. Of this total amount, $60,000.00 will be deposited into the hazardous waste cleanup fund established pursuant to ORC § 3734.28, in accordance with the following schedule:

    a. Within 30 days after the effective date of these Orders, Respondent shall pay to Ohio EPA the amount of $18,750.00;

b. Within 180 days after the effective date of these Orders, Respondent shall pay Ohio EPA the amount of $18,750.00;

c. Within 270 days after the effective date of these Orders, Respondent shall pay to Ohio EPA the amount of $18,750.00; and

d. Within 360 days after the effective date of these Orders, Respondent shall pay to Ohio EPA the amount of $3,750.00.

Payments shall be made by an official checks 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 each check shall be submitted in accordance with Section X. of these Orders.

2. In lieu of paying the remaining $15,000.00 of civil penalty to Ohio EPA, Respondent shall fund a supplemental environmental project (SEP) by making a contribution in the amount of $15,000.00 to the Ohio EPA Clean Diesel School Bus Program (Fund 5CD) in accordance with the following schedule:

a. Within 360 days after the effective date of these Orders, Respondent shall pay to Ohio EPA the amount of $15,000.00.

Payment shall be made by an official check made payable to "Treasurer, State of Ohio." 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 the check shall be submitted in accordance with Section X. of these Orders, and an additional copy of this check shall be sent to James A. Orlemann, Assistant Chief, SIP Development and Enforcement, or his successor, Ohio EPA, Division of Air Pollution Control, P.O. Box 1049, Columbus, Ohio 43216-1049.

3. Should Respondent fail to fund the SEP within the time frame established in Order No. 2.a., Respondent shall pay to Ohio EPA, within 7 days after failing to comply with Order No. 2.a., the amount of $15,000.00 in accordance with the procedures in Order No. 1.

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 Hazardous Waste Management
2110 East Aurora Road
Twinsburg, Ohio 44087
Attn: DHWM Manager

and Ohio EPA Central Office at the following address:

For mailings, use the post office box number:
Chris Korleski, 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:

Chris Korleski, 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 closure 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 units 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

Chris Korleski
Director

MAY 1 6 2008
Date

IT IS SO AGREED:

Hercules Polishing & Plating, Inc.

Signature

4-28-08
Date

NICK M PAXOS
Printed or Typed Name

President
Title