



State of Ohio Environmental Protection Agency

STREET ADDRESS:

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

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MAILING ADDRESS:

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

CERTIFIED MAIL

July 10, 2008

**Re: Director's Final Findings & Orders
Baerlocher USA, LLC
OHR 000 031 567**

Mr. Larry A. Kandel
Director of Manufacturing
Baerlocher USA, LLC
3676 Davis Road, NW
Dover, Ohio 44622

Dear Mr. Kandel:

Here are the Director's Final Findings and Orders (Orders) issued to Baerlocher USA, LLC on July 10, 2008. These Orders are effective today.

We are in receipt of your payments as required by Order No. 3.a and 3.b

If you have any questions concerning compliance with these Orders, do not hesitate to contact Dave Chenault at (740) 385-8501.

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
Dave Chenault, Mgr., DHWM, SEDO

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Ted Strickland, Governor
Lee Fisher, Lieutenant Governor
Chris Korleski, Director

Ohio EPA is an Equal Opportunity Employer



BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

Baerlocher USA, LLC
3676 Davis Road NW
Dover, Ohio 44622

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: 7-10-08

PREAMBLE

It is agreed by the parties hereto as follows:

I. JURISDICTION

These Director's Final Findings and Orders (Orders) are issued to Baerlocher USA, LLC (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 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 liquid, mixed metal stabilizer manufacturing facility for the vinyl industry located at 3676 Davis Road, Dover, Tuscarawas County, Ohio

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OHIO E.P.A.

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 liquid, mixed metal stabilizer manufacturing facility for the vinyl industry located at 3676 Davis Road, Dover, Tuscarawas County, Ohio 44622 (Facility).
3. 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 and has been assigned EPA ID number OHR000031567. The hazardous wastes generated by Respondent at the Facility include hazardous waste condensate from carbon tower, drippings, scrap water, etc. (D001/D005/D006), filter press filters (D005/D006), process samples (D001/D005/D006), and waste water (D005/D006).
4. On February 25, 2008, Ohio EPA performed a compliance evaluation inspection at the Facility. As a result of this inspection, Ohio EPA has determined that Respondent, *inter alia*:
 - a. Stored hazardous waste on-site greater than 90 days without a permit, in violation of ORC § 3734.02(E) and (F);
 - b. Failed to provide annual hazardous waste training to employees within 365 days of the previous training, in violation of OAC rule 3745-65-16(C);
 - c. Failed to have on-site a contingency plan that complies with OAC rules 3745-65-50 through 3745-65-56, in violation of OAC rule 3745-65-51(A);
 - d. Failed to label all containers of hazardous waste with the words "hazardous waste" in violation of OAC rule 3745-52-34(A)(3);
 - e. Failed to keep containers of hazardous waste closed except when adding or removing waste, in violation of OAC rule 3745-66-73(A);
 - f. Failed to have tank assessments for the hazardous waste tanks at the Facility, in violation of OAC rule 3745-66-92(A); and
 - g. Failed to inspect and record the inspections of the hazardous waste tanks, in violation of OAC rules 3745-66-95(A) and (C).

5. Ohio EPA notified Respondent of the violations referenced in Finding No. 4. by letter dated March 11, 2008.
6. Respondent provided responses to Finding Nos. 4.a. through 4.e. and 4.g. by letter dated April 11, 2008, and a response to Finding No. 4.f. by correspondence dated April 22, 2008.
7. Based upon a review of these responses, Ohio EPA has determined that Respondent has abated the violations referenced in Finding Nos. 4.b., 4.d. and e., and 4.g, but remains in violation of Finding Nos. 4.a., 4.c., and 4.f. of these Orders.
8. Ohio EPA notified Respondent of the determination referenced in Finding No. 7 by letter dated May 8, 2008.
9. Because no sign of leakage was observed in the drum that was storing hazardous waste without a permit, and it was part of a manufacturing process, the Director has determined that no additional action is required of Respondent regarding the violation referenced in Finding No. 4.a. 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. Within 30 days of the effective date of these Orders, Respondent shall submit to Ohio EPA for review and approval, a contingency plan for the Facility that complies with OAC rules 3745-65-50 through 3745-65-56. Approval of the contingency plan by Ohio EPA shall abate the violation referenced in Finding No. 4.c. of these Orders.
2. Within 60 days of the effective date of these Orders, Respondent shall submit to Ohio EPA for review and approval, tank assessments for tanks 213T, 214T and 341, including all elements of OAC rule 3745-66-92. Approval of the tank assessments shall abate the violation referenced in Finding No. 4.f. of these Orders.

3. Respondent shall pay Ohio EPA the amount of \$23,025.00 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 30 days after the effective date of these Orders, Respondent shall pay Ohio EPA the amount of \$18,420.00 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 \$18,420.00. 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 the Respondent and the Dover Facility. A copy of each check shall be submitted in accordance with Section X. of these Orders.
 - b. In lieu of paying the remaining \$4,605.00 of civil penalty to Ohio EPA, Respondent shall fund a supplemental environmental project (SEP) by making a contribution in the amount of \$4,605.00 to the Ohio EPA Clean Diesel School Bus Program (Fund 5CD). Respondent shall make the payment within 30 days after the effective date of these Orders by tendering an official check made payable to "Treasurer, State of Ohio" for \$4,605.00. 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 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.
 - b. Should Respondent fail to fund the SEP within the required time frame established in Order No. 3.b., Respondent shall pay to Ohio EPA, within 7 days after failing to comply with Order No. 3.b., the amount of \$4,605.00 in accordance with the procedures in Order No. 3.a.

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 [e.g., corporate officer] 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'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:

Director's Final Findings and Orders
Baerlocher USA, LLC
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Ohio Environmental Protection Agency
Southeast District Office
Division of Hazardous Waste Management
2195 Front Street
Logan, Ohio 43138
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
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 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 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

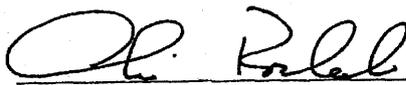
The effective date of these Orders is the date these Orders are entered into the Ohio EPA Director's journal.

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



Chris Korleski
Director

July 10, 2008

Date

IT IS SO AGREED:

Baerlocher USA, LLC



Signature

6-16-08

Date

Larry A. Kaedel

Printed or Typed Name

Director of Manufacturing

Title