

BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY

OHIO E.P.A.

MAR -7 2012

ENTERED DIRECTOR'S JOURNAL

In the Matter of:

Delta Fuels, Inc.
40600 Grand River Avenue
Novi, Michigan 48375

Director's Final
Findings and Orders

Respondent

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.

PREAMBLE

By Donna Cassler Date: 3/7/12

It is agreed by the parties hereto as follows:

I. JURISDICTION

These Director's Final Findings and Orders (Orders) are issued to Delta Fuels, 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, 3734.02(G) 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

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. Pursuant to ORC § 3734.02(G) and rule 3745-50-31 of the Ohio Administrative Code (OAC), the Director may, by order, exempt any person generating, storing, treating, or disposing of hazardous waste in such quantities or under such circumstances that, in the determination of the Director, it is unlikely that the public health or safety or the environment will be adversely affected thereby, from any requirement to obtain a permit or comply with other requirements of ORC Chapter 3734. Any such exemption shall be consistent with and equivalent to rules promulgated under the Resource Conservation and Recovery Act of 1976, 90 Stat. 2806, 42 U.S.C. § 6921 et seq., as amended.
2. Respondent is a "person" as defined in ORC §3734.01(G) and Ohio Administrative Code (OAC) rule 3745-50-10(A).
3. Respondent operates a bulk gasoline terminal located at 1820 Front Street, Toledo, Lucas County, Ohio (Facility).
4. Ohio EPA has issued U.S. EPA identification number OHD000724278 for the Facility.
5. At the Facility, Respondent generated hazardous waste as that term is defined by OAC § 3734.01, and OAC rules 3745-50-10(A) and 3745-51-03. Respondent generated non-acute hazardous waste in amounts greater than 1000 kg/month and therefore was considered a large quantity generator (LQG) of hazardous waste and could accumulate hazardous waste for up to ninety (90) days as set forth in OAC rule 3745-52-34 without a hazardous waste installation and operation permit. The hazardous waste was generated from cleanup of releases of gasoline from a tank and malfunctioning equipment that occurred during the distribution of the gasoline.
6. On November 25, 2005, there was a release of approximately 103,000 gallons of gasoline into a secondary containment area at the Facility caused by overfilling a tank during a delivery from a gasoline pipeline.
7. Analytical results from soil samples collected by Respondent from inside the secondary containment area on December 14, 2005 and January 10, 2006, indicated the concentrations of benzene exceeded the hazardous waste regulatory limit for benzene (D018) as described in OAC rule 3745-51-24. Because Respondent had ceased further recovery of any gasoline remaining in the diked area and the analytical results indicated the presence of hazardous waste, Respondent had, *inter alia*, established and operated an unpermitted hazardous waste disposal facility, in violation of ORC § 3734.02(E) and (F).

8. Subsequent to the release of gasoline from the tank on November 25, 2005, absorbent booms were placed in key areas around the Facility to stop the migration of the untreated gasoline waste to the Maumee River. On or about November 29, 2005, the waste saturated absorbent booms were collected and placed in at least three, 20 cubic yard roll-off boxes located at the northwest corner of the Facility. On December 29 and 30, 2005, the waste was sampled and determined to be hazardous waste due to ignitability (D001) as described in OAC rule 3745-51-21, and toxic levels of benzene (D018) as described in OAC rule 3745-51-24. On or about August 17, 2006, the hazardous waste saturated absorbent booms were shipped offsite to an authorized facility. Ohio EPA determined Respondent stored these hazardous waste saturated absorbent booms for greater than ninety (90) days and therefore had, *inter alia*, established and operated an unpermitted hazardous waste storage facility, in violation of ORC § 3734.02(E) and (F).
9. On or about January 8, 2006, the Vapor Recovery Unit (VRU) on the fuel loading rack at the Facility malfunctioned and caused a release from the knock-out/water-recovery tank of the VRU. The United States Environmental Protection Agency (U.S. EPA) notified local authorities that approximately three hundred (300) gallons of unleaded gasoline were released at the Facility. Respondent collected soil samples from the area where the release occurred. The analytical results from these samples indicated the soils contained benzene in amounts greater than the levels indicated in OAC rule 3745-51-24. Respondent excavated the contaminated soil around the perimeter of the VRU and eventually, the contaminated soil was stockpiled along the southern fence line of the Facility and subsequently leveled out. Based on the concentration of total benzene in the stockpile of contaminated soil, Ohio EPA determined Respondent had, *inter alia*, established and operated an unpermitted hazardous waste disposal facility, in violation of ORC § 3734.02(E) and (F).
10. Respondent initiated repairs to the VRU, which generated spent ethylene glycol waste. On February 8, 2006, this waste was placed into nine 55-gallon drums which were staged immediately north of the VRU. The waste was sampled and analytical results were provided to Ohio EPA on April 20, 2006. These analytical results indicated the spent ethylene glycol waste was a hazardous waste due to ignitability (D001) as described in OAC rule 3745-51-21, and toxic levels of benzene (D018) as described in OAC rule 3745-51-24. Ohio EPA determined Respondent stored these drums of hazardous waste for greater than ninety (90) days and therefore had, *inter alia*, established and operated an unpermitted hazardous waste storage facility, in violation of ORC § 3734.02(E) and (F).

11. In letters dated January 19, 2006, June 9, 2006 and May 3, 2007, Ohio EPA notified Respondent of the violations referenced in Finding Nos. 7., 8., 9. and 10. of these Orders.
12. On April 4, 2007, the Director of Environmental Protection referred enforcement of the violations referenced in Finding Nos. 7., 8., 9. and 10. of these Orders to the Office of the Attorney General, seeking, *inter alia*, closure of the hazardous waste units and payment of a civil penalty to address the violations. On November 24, 2010, the Attorney General filed Case No. CI 0201007960 in the Lucas County Court of Common Pleas.
13. As a result of Respondent's establishment and operation of a hazardous waste storage and disposal facility as described in Finding Nos. 7. through 10. of these Orders, Respondent is required to have a hazardous waste facility installation and operation permit and is subject to all general facility standards found in OAC Chapters 3745-54 and 55, including but not limited to, closure in accordance with OAC rules 3745-55-11 through 3745-55-20, the financial assurance for closure requirements contained in OAC rules 3745-55-42 through 3745-55-51 and corrective action for waste management units in accordance with OAC rule 3745-54-101. To obtain a hazardous waste facility installation and operation permit, Respondent is required to submit "Parts A and B" of the application in accordance with OAC Chapter 3745-50.
14. The submittal of a Closure Plan which complies with the administrative requirements of OAC Chapters 3745-65 and 66 and the substantive requirements of OAC Chapters 3745-54 and 55 including but not limited to the groundwater protection program in accordance with OAC rules 3745-54-90 through 3745-54-100 in lieu of the submittal of an application for a hazardous waste facility installation and operation permit is unlikely to adversely affect the public health or safety or the environment. Therefore, the Director finds that the issuance to Respondent of an exemption from the requirement to submit an application for a hazardous waste facility installation and operation permit is unlikely to adversely affect the public health or safety or the environment within the meaning of ORC § 3734.02(G).

V. ORDERS

Respondent shall achieve compliance with Chapter 3734. of the ORC and the regulations promulgated there under and is hereby exempted from the requirement to submit an application for a hazardous waste facility installation and operation permit for the Facility, provided that Respondent complies with the following:

1. Within 60 days after the effective date of these Orders, Respondent shall submit to Ohio EPA for review and approval a Closure Plan(s) for all hazardous waste storage and/or disposal areas at the Facility including but not limited to:
 - a. The secondary containment area, as described further in Finding No. 7. of these Orders;
 - b. The roll-off storage area, as described further in Finding No. 8. of these Orders;
 - c. The stockpile area, as described further in Finding No. 9. of these Orders; and
 - d. The VRU drum storage area, as described further in Finding No. 10. of these Orders.
2. This Closure Plan shall comply with the administrative requirements of OAC Chapters 3745-65 and 3745-66 and the substantive requirements of OAC Chapters 3745-54 and 3745-55, including but not limited to, the groundwater protection program in accordance with OAC rules 3745-54-90 through 54-100.
3. The Closure Plan is subject to approval by Ohio EPA. If Ohio EPA does not approve the Closure Plan and provides Respondent with a written statement of deficiencies, Respondent shall submit a revised Closure Plan(s) for approval addressing the deficiencies within 30 days of receiving such written statement. If Ohio EPA modifies the Closure Plan(s), the modified Closure Plan becomes the approved plan.
4. Upon Ohio EPA's written approval of the Closure Plan, Respondent shall implement the approved Closure Plan in the manner and pursuant to the time frames set forth in the approved Closure Plan and OAC rules 3745-55-13/3745-66-13.
5. Within 30 days after approval of the Closure Plan pursuant to Order No. 3, Respondent shall submit a closure cost estimate and documentation demonstrating that Respondent has established financial assurance and liability coverage for the areas of the Facility subject to closure, in accordance with OAC rules 3745-55-42 through 3745-55-47.
6. Within 60 days after completion of closure, Respondent shall submit certification of closure to Ohio EPA in accordance with OAC rule 3745-55-15. Closure certification of the area(s) described in Order No. 1. will abate the violations referenced in Finding Nos. 7., 8., 9., and 10. 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 Materials and 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 shall 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 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:

Ohio Environmental Protection Agency
Northwest District Office
Division of Materials and Waste Management
347 North Dunbridge Road
Bowling Green, Ohio 43402
Attn: DMWM Manager

and Ohio EPA Central Office at the following addresses:

For mailings, use the post office box number:

Scott J. Nally, Director
Ohio Environmental Protection Agency
Lazarus Government Center
Division of Materials and Waste Management
P.O. Box 1049
Columbus, Ohio 43216-1049
Attn: Manager, Compliance Assurance Section

For deliveries to the building:

Scott J. Nally, Director
Ohio Environmental Protection Agency
Lazarus Government Center
Division of Materials and 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 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 also reserves its rights to seek civil or administrative penalties against Respondent for violations specifically cited in these Orders, as is being sought through the Office of the Attorney General, as described in Finding No. 12. 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 initiate and complete closure of hazardous waste units at the facility, 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 civil or administrative penalties and corrective action against Respondent for violations specifically cited in these Orders, 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

3/2/12

Date

IT IS SO AGREED:

Delta Fuels, Inc.



Signature

2/16/12

Date

Carroll L Knight

Printed or Typed Name

President

Title