Ohio | Environmental Protection Agency

John R. Kasich, Governor
Mary Taylor, Lt. Governor
Scott J. Nally, Director

CERTIFIED MAIL

February 7, 2012

Erieview Metal Treating Company
4465 Johnston Parkway
Cleveland, OH 44128

Re: Director's Final Findings & Orders
Erieview Metal Treating Company
OHIO EPA ID No.OHD 981 195 233

Dear Sir or Madam:

Transmitted herewith are Final Findings & Orders of the Director concerning the matter indicated.

Enclosed are invoices for the penalty payments required by these Orders.

Sincerely,

Georgia Frakes, Management Analyst
Division of Materials and Waste Management

Enclosure: Director's Final Findings and Orders
Invoices

cc: Jeffrey M. Embleton, Mansour, Gavin, Gerlack & Manos, L.P.A.
Kelly Smith, DMWM, CO
Elissa Miller, Legal
Natalie Oryshkewych, Mgr., DMWM, NEDO
Suzanne Prusnek, DMWM, NEDO
Frank Popotnik, DMWM, NEDO
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BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY

OHIO E.P.A.
FEB - 7 2012
ENTERED DIRECTOR'S JOURNAL

In the Matter of:

Erieview Metal Treating Company
4465 Johnston Parkway
Cleveland, Ohio 44128

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: Lassiter Date: 2/7/12

PREAMBLE

It is agreed by the parties hereto as follows:

I. JURISDICTION

These Director's Final Findings and Orders (Orders) are issued to Erieview Metal Treating 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 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

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 an electroplating facility located at 4465 Johnston Parkway, Cleveland, Cuyahoga County, Ohio (Facility).

3. Respondent notified Ohio EPA of its hazardous waste activities and was issued generator identification number OHD981195233 on March 21, 1986.

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. Hazardous waste generated by Respondent at the Facility includes wastewater treatment sludge from electroplating operations (F006), sodium hydroxide sludge (D002, D006, D007), waste from line cleaning (D002), solvent based paint waste (D001), used oil and universal waste spent lamps.

5. On November 18, 2009, Ohio EPA conducted a compliance evaluation inspection at the Facility. As a result of this inspection, Ohio EPA determined that Respondent, *inter alia*:

    a. Established and operated a hazardous waste facility by storing, at a minimum, eighteen (18) 250 gallon totes of hazardous waste (D002) for greater than ninety (90) days without a hazardous waste installation and operation permit, in violation of ORC §3734.02(E) and (F);

    b. Failed to label containers of hazardous waste with the words "Hazardous Waste" and the date upon which each period of accumulation of hazardous waste began, in violation of OAC rule 3745-52-34(A)(2) and (3);

    c. Failed to maintain adequate aisle space to allow the unobstructed movement of personnel and/or emergency response equipment to respond to spills or releases of hazardous waste, in violation of OAC rule 3745-65-35;

    d. Failed to evaluate waste being generated at the Facility, in violation of OAC rule 3745-52-11;

    e. Failed to maintain and operate the facility in a way that minimizes the possibility of a fire, explosion or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents, in violation of OAC rule 3745-65-31;

f. Failed to label satellite accumulation containers of hazardous waste with the appropriate markings, in violation of OAC rule 3745-52-34(C)(1)(b);

g. Failed to conduct inspections of all areas where containers of hazardous waste are being accumulated, in violation of OAC rule 3745-66-74;

h. Failed to conduct inspections of emergency equipment and record the inspections in a log or summary, in violation of OAC rule 3745-65-33;

i. Failed to label containers used to store used oil with the words "Used Oil," in violation of OAC rule 3745-279-22(C)(1);

j. Failed to manage universal waste lamps in closed containers, in violation of OAC rule 3745-273-13(D);

k. Failed to properly label containers used to store universal wastes, in violation of OAC rule 3745-273-14(E);

l. Failed to demonstrate the length of time universal waste lamps had been accumulated, in violation of OAC rule 3745-273-15(C);

m. Failed to provide training for employees responsible for the management of universal waste, in violation of OAC rule 3745-273-16;

n. Failed to include a list of emergency equipment in the contingency plan for the Facility, in violation of OAC rule 3745-65-52(E);

o. Failed to have accurate information in the Facility contingency plan regarding the location of the hazardous waste accumulation areas and emergency equipment, in violation of OAC rule 3745-65-54;

p. Failed to make the necessary revisions to the Facility contingency plan and submit this revised contingency plan to all emergency authorities that may be requested to provide emergency services, in violation of OAC rule 3745-65-53(B);

q. Failed to retain required documentation for waste that is restricted from land disposal, in violation of OAC rule 3745-270-07(A)(2) and (8);

r. Failed to retain copies of manifests and test results, waste analyses and waste determinations, in violation of OAC rule 3745-52-40(A) and (C);

s. Failed to provide annual hazardous waste personnel training, in violation of OAC rule 3745-65-16(C); and

t. Failed to maintain a written description of the type and amount of both introductory and continuing hazardous waste training for those persons subject to the hazardous waste training requirements, in violation of OAC rule 3745-65-16(D)(3).

6. By e-mail on December 9, and 14, 2009 and by letters dated December 16 and 19, 2009, Respondent submitted information to Ohio EPA as a follow-up to the November 18, 2009 inspection at the Facility.

7. By letter dated January 27, 2010, Ohio EPA notified Respondent of the violations referenced in Finding No. 5. of these Orders and also that Respondent had abated the violations referenced in Finding Nos. 5.m., 5.n., 5.s. and 5.t. of these Orders.

8. By letter dated March 4, 2010, Respondent submitted documentation in response to the January 27, 2010 letter referenced in Finding No.7. of these Orders. Documentation submitted by Respondent indicated at least an additional fifteen (15) 250 gallon totes containing hazardous waste at the Facility that had been stored for greater than ninety (90) without a hazardous waste installation and operation permit. Furthermore, this documentation demonstrated that the hazardous waste onsite at the Facility at the time of the November 18, 2009 inspection was treated through the onsite wastewater treatment unit on several occasions in October, November and December, 2009.

9. On March 31, 2010, Ohio EPA conducted a follow-up inspection at the Facility.

10. By letter dated May 25, 2010, Ohio EPA summarized the information and documentation submitted by Respondent to address the violations discovered during the November 18, 2009 inspection. Ohio EPA also notified Respondent that the violations referenced in Finding Nos. 5.b., 5.c., 5.d., 5.e., 5.f., 5.g., 5.h., 5.i., 5.j., 5.k., 5.l., 5.o., 5.p., 5.q. and 5.r. of these Orders were abated.

11. Because there were no releases observed in the area where the hazardous waste was stored, and the Respondent will continue to accumulate hazardous waste in this area, the Director has determined that no further action is required of Respondent at this time regarding the violation of ORC §3734.02(E) and (F) 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 there under according to the following compliance schedule:

1. Respondent shall pay Ohio EPA the amount of $50,000.00 in settlement of Ohio EPA's claims for civil penalties, which may be assessed pursuant to ORC Chapter 3734. $40,000.00 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 15 days after the effective date of these Orders, Respondent shall pay to Ohio EPA the amount of $20,000.00; and

    b. Within 90 days after the effective date of the Orders, Respondent shall pay to Ohio EPA the amount of $20,000.00.

    Respondent shall make each payment by tendering an official check made payable to "Treasurer, State of Ohio." The official checks shall be submitted to Ohio EPA, Office of Fiscal Administration, P.O. Box 1049, Columbus, Ohio 43216-1049, together with a letter identifying Respondent and the Facility. A copy of each check shall be submitted in accordance with Section X. of these Orders.

2. In lieu of paying the remaining $10,000.00 of civil penalty to Ohio EPA, Respondent shall fund a supplemental environmental project (SEP) by making a contribution in the amount of $10,000.00 to the Ohio EPA Clean Diesel School Bus Program (Fund 5CD) pursuant to the following schedule:

    a. Within 15 days after the effective date of these Orders, Respondent shall pay to Ohio EPA the amount of $5,000.00; and

    b. Within 90 days after the effective date of these Orders, Respondent shall pay to Ohio EPA the amount of $5,000.00.

    Respondent shall make each payment by tendering an official check made payable to "Treasurer, State of Ohio." The official checks shall be submitted to Akia Smith, 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 each check shall be sent to Ohio EPA Division

of Materials and Waste Management, Supervisor, Processing Records Management Unit, P.O. Box 1049, Columbus, Ohio 43216-1049 and to Ohio EPA, Division of Air Pollution Control, Manager, Compliance and Enforcement Section, P.O. Box 1049, Columbus, Ohio 43216-1049.

3. Should Respondent fail to fund the SEP within the required time frames established in Order Nos. 2.a. and 2.b., Respondent shall pay to Ohio EPA the missed payment amount no later than 7 days after the missed payment due date. Payment shall be made in accordance with the procedures established 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 Materials and Waste Management
2110 East Aurora Road
Twinsburg, Ohio 44087
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 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 closure and 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 and corrective action at the Facility by Respondent, 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

Scott J. Nally
Director

February 7, 2012
Date

IT IS SO AGREED:

Erieview Metal Treating Company

Signature

1/30/12
Date

ALEXANDER G. KAPPOS
Printed or Typed Name

PRESIDENT
Title