

BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY

OHIO E.P.A.

DEC 22 2010

ENTERED DIRECTOR'S JOURNAL

In the Matter of:

Ward Trucking LLC
2800 Brecksville Road
Richfield, Ohio 44286

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.

PREAMBLE

By: Donna Cassler Date: 12-22-10

It is agreed by the parties hereto as follows:

I. JURISDICTION

These Director's Final Findings and Orders (Orders) are issued to Ward Trucking 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, 3734.02 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 owned by Respondent 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. 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 an over the road trucking terminal facility located at 2800 Brecksville Road, Richfield, Summit County, Ohio 44286 (Facility).
4. At the Facility, Respondent is a conditionally exempt small quantity generator (CESQG) of "hazardous waste" as that term is defined by ORC § 3734.01(J) and OAC rules 3745-50-10(A) and 3745-51-03 and has been assigned EPA ID number OHD101513984. At the Facility, Respondent has generated discarded hazardous waste chemical products damaged in transit or during loading/offloading, including D001, D002, D005, D007 and D035 hazardous wastes, as described in OAC rules 3745-51-21 through 3745-51-24.
5. On December 1, 2009 Ohio EPA conducted a complaint investigation and compliance evaluation inspection at the Facility. Respondent was inspected as a conditionally exempt small quantity generator. As a result of this inspection, Ohio EPA determined that Respondent had failed to evaluate wastes, in violation of OAC rule 3745-52-11. Specifically, thirty-six (36) containers, generally of fifty-five (55) gallon size, holding various wastes and totaling over one-thousand (1,000) kilograms, were stored in trailers numbered 48136 and 48023 at the Facility. Some of the wastes stored had been stored at the Facility for up to eight (8) years.
6. On January 5, 2010, Respondent conducted sampling of the wastes stored in trailers numbered 48136 and 48023 at the Facility.
7. Respondent submitted the analytical results from the sampling event referenced in Finding No. 6. of these Orders to Ohio EPA via electronic mail on January 26, 2010. These results demonstrated the wastes in trailers number 48136 and 48023 at the Facility were characteristically hazardous wastes D001, D002,

D005, D007 and D035, as described in OAC rules 3745-51-21 through 3745-51-24. Specifically, in trailer number 48023, one fifty-five (55) gallon container held corrosive hazardous waste, D002, as described in OAC rule 3745-51-22.

8. Due to the amount of hazardous waste and storage time of the hazardous waste in trailers numbered 48136 and 48023 at the Facility, it is Ohio EPA's position that Respondent, *inter alia*, established and operated a hazardous waste storage facility without a hazardous waste installation and operation permit, in violation of ORC 3734.02(E) and (F), as well as violated other hazardous waste generator requirements at the Facility. In accordance with OAC rules 3745-51-05(G)(2), a CESQG that accumulates more than one thousand (1,000) kilograms of hazardous waste on-site is subject to the applicable rules for generators of between one hundred (100) to one thousand (1,000) kilograms of hazardous waste in a calendar month, including the limitation of storing hazardous waste for one-hundred-eighty (180) days without a hazardous waste installation and operation permit. Since Respondent stored hazardous waste for years at the Facility, Respondent is in violation of ORC 3734.02(E) and (F).
9. Respondent was notified of the violations referenced in Finding Nos. 5. and 8., and the abatement of Finding No. 5. of these Orders by letter dated February 4, 2010.
10. Respondent submitted a response dated March 9, 2010, to the letter referenced in Finding No. 9. of these Orders. The response included documentation of the proper off-site removal of the hazardous waste.
11. Due to Respondent's establishment and operation of a hazardous waste storage facility as described in Finding No. 8. of these Orders, Respondent is required to have 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.
12. 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 for the Facility 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 according to the following compliance schedule:

1. The Respondent 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:
 - a. Within 60 days after the effective date of these Orders, Respondent shall submit to Ohio EPA for review and approval a Closure Plan for the trailers referenced in Finding No. 8. of these Orders.
 - b. 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.
 - c. 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 for approval addressing the deficiencies within 30 days of receiving such written statement. If Ohio EPA modifies the Closure Plan, the modified Closure Plan becomes the approved plan.
 - d. 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;

- e. Within 30 days after the approval of the Closure Plan pursuant to Order No. 1.d., above, Respondent shall submit to Ohio EPA for review, comment and approval a closure cost estimate. Within 30 days after approval of the closure cost estimate, Respondent shall establish 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; and
 - f. Within 60 days after completion of closure, Respondent shall submit certification of closure to Ohio EPA in accordance with OAC rules 3745-55-15. Closure certification of the area(s) described in Order No. 1. will abate the violations referenced in Finding No.8. of these Orders.
2. Respondent shall pay Ohio EPA the amount of \$80,000.00 in settlement of Ohio EPA's claims for civil penalties, which may be assessed pursuant to ORC Chapter 3734. \$64,000.00 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 \$6,400.00;
 - b. Within 180 days after the effective date of these Orders, Respondent shall pay to Ohio EPA the amount of \$6,400.00;
 - c. Within 270 days after the effective date of these Orders, Respondent shall pay to Ohio EPA the amount of \$6,400.00;
 - d. Within 360 days after the effective date of these Orders, Respondent shall pay to Ohio EPA the amount of \$6,400.00;
 - e. Within 450 days after the effective date of these Orders, Respondent shall pay to Ohio EPA the amount of \$6,400.00;
 - f. Within 540 days after the effective date of these Orders, Respondent shall pay to Ohio EPA the amount of \$6,400.00;
 - g. Within 630 days after the effective date of these Orders, Respondent shall pay to Ohio EPA the amount of \$6,400.00;

- h. Within 720 days after the effective date of these Orders, Respondent shall pay to Ohio EPA the amount of \$6,400.00;
- i. Within 810 days after the effective date of these Orders, Respondent shall pay to Ohio EPA the amount of \$6,400.00; and
- j. Within 900 days after the effective date of these Orders, Respondent shall pay to Ohio EPA the amount of \$6,400.00.

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.

- 3. In lieu of paying the remaining \$16,000.00 of the civil penalty to Ohio EPA, Respondent shall fund a supplemental environmental project (SEP) by making a contribution in the amount of \$16,000.00 to the Ohio EPA Clean Diesel School Bus Program (Fund 5CD) 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 \$1,600.00;
 - b. Within 180 days after the effective date of these Orders, Respondent shall pay to Ohio EPA the amount of \$1,600.00;
 - c. Within 270 days after the effective date of these Orders, Respondent shall pay to Ohio EPA the amount of \$1,600.00;
 - d. Within 360 days after the effective date of these Orders, Respondent shall pay to Ohio EPA the amount of \$1,600.00;
 - e. Within 450 days after the effective date of these Orders, Respondent shall pay to Ohio EPA the amount of \$1,600.00;
 - f. Within 540 days after the effective date of these Orders, Respondent shall pay to Ohio EPA the amount of \$1,600.00;
 - g. Within 630 days after the effective date of these Orders, Respondent shall pay to Ohio EPA the amount of \$1,600.00;

- h. Within 720 days after the effective date of these Orders, Respondent shall pay to Ohio EPA the amount of \$1,600.00;
- i. Within 810 days after the effective date of these Orders, Respondent shall pay to Ohio EPA the amount of \$1,600.00; and
- j. Within 900 days after the effective date of these Orders, Respondent shall pay to Ohio EPA the amount of \$1,600.00.

Payments shall be made by official checks made payable to "Treasurer, State of Ohio." The official checks 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 these checks 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.

- 4. Should Respondent fail to fund the SEP within the required time frames established in Order Nos. 3.a. through 3.j., 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. 2.

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:

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
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 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

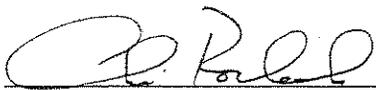
The effective date of these Orders is the date these Orders are entered into the Ohio EPA Director's journal.

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



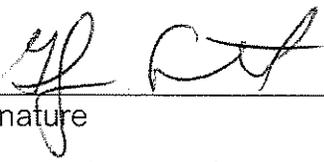
Chris Korleski
Director

DEC 22 2010

Date

IT IS SO AGREED:

Ward Trucking LLC



Signature

12/6/10

Date

Glynn Stewart

Printed or Typed Name

Executive VP / CFO

Title