

BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY

OHIO E.P.A.
MAY 28 2010

ENTERED DIRECTOR'S JOURNAL

In the Matter of:

Air Port Taxi Service Inc.
1579 Joyce Avenue
Columbus, Ohio 43219

Respondent

**Director's Final
Findings & 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

It is agreed by the parties hereto as follows:

By: 

Date: 5.28.10

I. JURISDICTION

These Director's Final Findings and Orders (Orders) are issued to Air Port Taxi Service Inc. (Respondent) pursuant to the authority vested in the director of the Ohio Environmental Protection Agency (Ohio EPA) under Ohio Revised Code (ORC) §§ 3734.02 (G), 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

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, are unlikely to adversely affect the public health or safety or the environment, 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 OAC rule 3745-50-10(A).
3. Respondent owns the facility located at 1555 Joyce Avenue, Columbus, Franklin County, Ohio (Facility).
4. At the Facility, the former owner, Unico Alloys, Inc., operated a scrap metal business and generated "hazardous waste" as that term is defined by ORC § 3734.01(J) and OAC rules 3745-50-10(A) and 3745-51-03. At the Facility, Unico Alloys, Inc. generated hazardous waste trichloroethylene (TCE) (F001, F002).
5. Unico Alloys, Inc. notified the United States Environmental Protection Agency (U.S. EPA) of its hazardous waste activity at the Facility and was issued U.S. EPA identification number OHD081315863.
6. During a July 12, 1985, investigation, Ohio EPA concluded that Unico Alloys, Inc., by disposing of spent TCE onto the soil and overfilling a TCE product tank, disposed of hazardous waste on the ground at the Facility without a permit, in violation of ORC § 3734.02(E) and (F).
7. On March 20, 1987, the Attorney General of Ohio, on behalf of the director of Ohio EPA, filed a complaint in the Franklin County Court of Common Pleas against Unico Alloys, Inc. due to the violations referenced in Finding No. 6.
8. Between 1986 and 1995, Unico Alloys, Inc. conducted soil excavation, groundwater monitoring well installation and soil and groundwater sampling at the Facility.
9. Ohio EPA has concluded that the areas of the Facility where TCE hazardous waste was disposed of without a permit are hazardous waste management units subject to applicable hazardous waste facility requirements, including OAC rule 3745-55-11.
10. Unico Alloys, Inc. has held the position that the mid-1980s release of TCE came from a product holding tank and thus is not subject to the closure standards of

OAC rules 3745-55-11 through 3745-55-20. Nevertheless, Unico Alloys, Inc. has worked with Ohio EPA to investigate, remediate, and assess the risk associated with the TCE release at the Facility.

11. On August 5, 1998, Unico Alloys, Inc. submitted to Ohio EPA a Site Investigation Work Plan for the Facility, which presented the scope of work for further soil and ground water investigation at the Facility. Ohio EPA approved the Site Investigation Work Plan on September 22, 1998.
12. On December 21, 1998, Unico Alloys, Inc. submitted a Site Investigation Report (Report) detailing the findings of Unico Alloys, Inc.'s Site Investigation Work Plan referenced in Finding No. 11. The Report concluded that Unico Alloys, Inc. should conduct a risk assessment for the Facility using industrial scenario assumptions. In addition, the Report concluded that Unico Alloys, Inc. did not need to conduct a ground water assessment since it was not a viable drinking source. Ohio EPA did not approve the Report.
13. By letter dated December 21, 1999, Ohio EPA responded to Unico Alloys Inc.'s December 12, 1998, Report. Ohio EPA concluded that it could not accept Unico Alloys Inc.'s proposal to use an industrial scenario risk assessment for the Facility because of the existing contamination of TCE in the upper bearing water zone and the concern of possible vertical migration of TCE into the lower aquifer. Ohio EPA then proposed to Unico Alloys, Inc. that it do the following:
 - a. Continue manual bailing of monitoring well No. 8, the well in which TCE has historically been found, in an effort to reduce the potential for downward migration of TCE into the lower aquifer;
 - b. Investigate possible TCE contamination near the foundation of the main building at the Facility, and remediate of any TCE waste that may be discovered; and
 - c. Implement a long-term groundwater monitoring program for both the shallow and deep saturated zones at the Facility.
14. On February 18, 2000, Ohio EPA and Unico Alloys, Inc. met to discuss Ohio EPA's December 12, 1999, response as described in Finding No. 13. During the meeting, Unico Alloys, Inc. informed Ohio EPA that the manual bailing of monitoring well No. 8 was no longer removing TCE. Ohio EPA stated that if Unico Alloys, Inc. conducted additional ground water sampling and if a risk

assessment demonstrates, to Ohio EPA's satisfaction, that the TCE in the soil at the Facility does not pose a threat to human health and the environment and is not leaching toward the lower useable aquifer, long term ground water monitoring may not be necessary.

15. On April 17, 2000, Unico Alloys, Inc. submitted to Ohio EPA a Site Investigation Work Plan for additional activities to be conducted at the Facility consistent with Ohio EPA's comments as noted in Finding No. 14.
16. On July 11, 2000, Ohio EPA met with Unico Alloys, Inc.'s environmental consultants to discuss Unico Alloys, Inc.'s April 17, 2000, submittal. By letter dated July 18, 2000, Ohio EPA provided Unico Alloys, Inc. with comments on the April 17, 2000, Site Investigation Work Plan.
17. On July 18, 2001, Unico Alloys, Inc. submitted a revised Site Investigation Work Plan that incorporated the comments provided by Ohio EPA in its July 18, 2000, letter as referenced in Finding No. 16.
18. On July 19, 2001, the Attorney General of Ohio referred the 1987 case referenced in Finding No. 7 back to Ohio EPA. The Attorney General's Office informed Ohio EPA that the complaint had been deactivated by the court.
19. On July 23, 2001, Ohio EPA approved Unico Alloys, Inc.'s Site Investigation Work Plan as referenced in Finding No. 17.
20. On November 26, 2001, Unico Alloys, Inc. entered into Director's Final Findings and Orders for the implementation of the approved Site Investigation Work Plan.
21. Between 2001 and 2007, Unico Alloys, Inc. developed a conceptual site model and conducted two rounds of high vacuum dual phase extraction combined with chemical oxidation at the Facility.
22. On May 9, 2007, Unico Alloys, Inc. submitted to Ohio EPA a Remedial Action Report. The Remedial Action Report described the remedial actions taken at the Facility as referenced in Finding No. 21 and presented a risk assessment that demonstrated the residual TCE in soils, perched water and soil gas did not pose an unacceptable risk to site workers or construction workers.
23. On November 8, 2007, Ohio EPA and Unico Alloys, Inc. met to discuss the Remedial Action Report referenced in Finding No. 22. Two pathways of

exposure were identified at the Facility that required further evaluation: on-site indoor air vapor intrusion and off-site soil gas migration. During this meeting, Ohio EPA explained that the work completed to date as presented in the Remedial Action Report would meet the closure performance standard in accordance with OAC Chapters 3745-54, 55, 65 and 66 and that additional post-closure activities would be required at the Facility to meet the post-closure performance standard in accordance with OAC Chapters 3745-54, 55, 65 and 66.

24. On May 23, 2008, Unico Alloys, Inc. submitted to Ohio EPA a Post-Closure Care and Monitoring Plan for the Facility to address the on-site indoor air vapor intrusion and off-site soil gas migration pathways referenced in Finding No. 23. The Post-Closure Care and Monitoring Plan included a draft Environmental Covenant to impose land use and activity limitations at the Facility pursuant to ORC §§5301.80 through 5301.92.
25. Ohio EPA found the May 23, 2008 submittal deficient and met with Unico Alloys, Inc. on October 31, 2008 to discuss the deficiencies. Unico Alloys, Inc. agreed to assess the migration of contaminated ground water and submit a revised Post-Closure Care and Monitoring Plan.
26. On July 9, 2008, ownership of the Facility was transferred from Unico Alloys, Inc. to the Respondent.
27. On July 17, 2009, Unico Alloys, Inc. submitted a revised draft Post-Closure Care and Monitoring Plan. The July 17, 2009 submittal included a revised draft Environmental Covenant.
28. In August 2009, Ohio EPA and Unico Alloys, Inc. discussed needed revisions to the July 17, 2009 submittal referenced in Finding No. 27.
29. By electronic mail, Ohio EPA received a revised draft Post-Closure Care and Monitoring Plan dated November 20, 2009.
30. By electronic mail dated December 8, 2009, Ohio EPA provided to Unico Alloys, Inc. and Respondent comments on the draft Post-Closure Care and Monitoring Plan referenced in Finding No. 29.
31. On December 21, 2009, Unico Alloys, Inc. and Respondent submitted to Ohio EPA a revised draft Post-Closure Care and Monitoring Plan.

32. By electronic mail dated December 30, 2009, Ohio EPA provided to Unico Alloys, Inc. and Respondent comments on the draft Post-Closure Care and Monitoring Plan referenced in Finding No. 31.
33. On January 7, 2010, Unico Alloys, Inc. and Respondent submitted to Ohio EPA a revised draft Post-Closure Care and Monitoring Plan which addressed the comments provided to Unico Alloys, Inc. and Respondent in Ohio EPA's December 30, 2009 electronic mail.
34. The Director's Final Findings and Orders of November 26, 2001 are hereby terminated.
35. Due to the establishment and operation of an unpermitted hazardous waste facility as described in Finding No. 6. 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, 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.
36. Pursuant to ORC § 3734.02(G) and rule 3745-50-31 of the Ohio Administrative Code, 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. The Director finds that the issuance to Respondent of an exemption from the installation and operation permit for the Facility is unlikely to adversely affect the public health or safety or the environment with 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.
2. The Post-Closure Care and Monitoring Plan referenced in Finding No. 33 is hereby approved. Respondent shall implement the Post-Closure Care and Monitoring Plan in the manner and pursuant to the timeframes set forth in the approved Post-Closure Care and Monitoring Plan.
3. Within 60 days after completion of post-closure, Respondent shall submit certification of post-closure to Ohio EPA in accordance with OAC rule 3745-55-20.

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 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 signatory to these Orders, for any liability arising from, or relating to, the operations 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 demonstrating compliance with these Orders, and other documents required under these Orders to be submitted to Ohio EPA, shall be addressed to:

Ohio Environmental Protection Agency
Central District Office
Division of Hazardous Waste Management
Attn: DHWM Manager
P.O. Box 1049
Columbus, Ohio 43216-1049

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
Attn: Manager, Compliance Assurance Section
P.O. Box 1049
Columbus, Ohio 43216-1049

For deliveries to the building and courier services:

Chris Korleski, Director
Ohio Environmental Protection Agency
Lazarus Government Center
Division of Hazardous Waste Management
Attn: Manager, Compliance Assurance Section
50 W. Town Street, Suite 700
Columbus, Ohio 43215

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 additional post-closure activities 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 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 act, violation or liability, Respondent consents to the issuance of these Orders and agrees to comply with these Orders. Except for the rights to require additional post-closure activities 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 28, 2010
Date

Air Port Taxi Service Inc.



Signature

5-19-10
Date



Printed or Typed Name



Title