



State of Ohio Environmental Protection Agency

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

CERTIFIED MAIL

May 26, 2009

**Re: Director's Final Findings & Orders
ASHTA Chemicals, Inc.
US EPA ID No.: OHD 980 793 301**

Mr. Richard L. Jackson
Executive Vice President
ASHTA Chemicals, Inc.
3509 Middle Road
P.O. Box 848
Ashtabula, Ohio 44005

Dear Mr. Jackson:

Here are the Director's Final Findings and Orders (Orders) issued to ASHTA Chemicals, Inc. on May 26, 2009. These Orders are effective today.

If you have any questions concerning compliance with these Orders, do not hesitate to contact Natalie Oryshkewych at (330) 425-9171.

Sincerely,

Harry Sarvis, Manager
Compliance and Assurance Section
Division of Hazardous Waste Management

enf.ASHTAchemicalsinc.NEDO.09.jams.doc

Attachments

c: Michael A. Savage, Chief, DHWM
Todd Anderson, Legal
Heidi Greismer, PIC
Natalie Oryshkewych, Mgr., DHWM, NEDO
Frank Popotnik/Suzanne Prusnek, DHWM, NEDO

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

BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY

OHIO E.P.A.

MAY 26 2009

ENTERED DIRECTOR'S JOURNAL

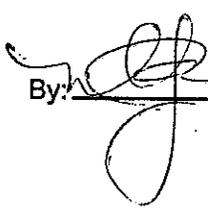
In the Matter of:

ASHTA Chemicals Inc.
3509 Middle Road
P.O. Box 848
Ashtabula, Ohio 44005

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: 5-26-09

PREAMBLE

It is agreed by the parties hereto as follows:

I. JURISDICTION

These Director's Final Findings and Orders (Orders) are issued to ASHTA Chemicals 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 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. Respondent is the owner and operator of a facility that manufactures chlorine gas, potassium hydroxide and chloropicrin. The facility is located at 3509 Middle Road, Ashtabula County, Ashtabula, Ohio (Facility).
2. Respondent is a "person" as defined in ORC § 3734.01(G) and OAC rule 3745-50-10(A) and is a foreign corporation authorized to do business in Ohio.
3. Respondent notified Ohio EPA regarding its hazardous waste activities and was issued generator identification number OHD980793301.
4. Respondent is a large quantity generator and 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 generates mercury contaminated debris (D009), brine purification muds (K071), wastewater treatment sludge (K106), potassium hydroxide filter sludge (D009), chloropicrin dryer sludge (D001), barium lab waste (D005) and various lab packs (D001, D002, F002).
5. In a letter dated October 1, 2008, Ulmer & Berne LLP, on behalf of Respondent, submitted a voluntary disclosure pursuant to ORC §§ 3745.70 through 3745.72. In accordance with ORC § 3745.72, this voluntary disclosure contained a summary of the findings of an environmental audit conducted at the Facility. As a result of this environmental audit, Respondent identified potential non-compliance with Ohio environmental laws and rules as a result of the storage and the disposal of mercury contaminated hazardous waste (D009) concrete roof panels.
6. On October 30, 2008, Ohio EPA conducted an investigation at the Facility for purposes of verifying the information included in Respondent's audit disclosure. As a result of the investigation and the environmental audit findings included in the October 1, 2008, disclosure, Ohio EPA determined that Respondent had:
 - a. For approximately two years, from July, 2005, until July, 2007, stored hazardous waste mercury contaminated concrete roof panels in a pile adjacent to the cell building, without a hazardous waste facility installation and operation permit, in violation of ORC § 3734.02(E) and (F);
 - b. Sometime after July, 2007, disposed of hazardous waste as a result of using mercury contaminated concrete roof panels as fill material to construct an earthen berm at the Facility, without a hazardous waste facility installation and operation permit, in violation of ORC § 3734.02(E) and (F);

- c. Failed to properly evaluate the waste concrete roof panels generated at the Facility to determine if they were hazardous waste, in violation of OAC rule 3745-52-11;
 - d. Disposed of mercury contaminated concrete debris on the land, in violation of OAC rule 3745-270-34(A);
 - e. Disposed of mercury contaminated concrete roof panels without prior treatment for the toxicity characteristic, in violation of OAC rule 3745-270-45; and
 - f. Failed to include the mercury contaminated concrete roof panels in the Facility's 2005 Annual Hazardous Waste Report, in violation of OAC rule 3745-52-41.
7. By letter dated November 13, 2008, Ohio EPA notified Respondent of the violations referenced in Finding No. 6. of these Orders.
 8. In electronic correspondence to Ohio EPA dated November 18, 2008, Respondent requested an amendment to its 2005 Annual Hazardous Waste Report. Based on this information, Ohio EPA has determined Respondent has abated the violation set forth in Finding No. 6.f. of these Orders.
 9. By letter dated December 4, 2008, Ohio EPA notified Respondent that the October 1, 2008 voluntary audit disclosure met the requirements for immunity from administrative and civil penalties set forth in ORC § 3745.72.
 10. On December 15, 2008, HzW Environmental Consultants, LLC, on behalf of Respondent, submitted to Ohio EPA, a Soil Sampling and Analysis Plan (SAP) for the Facility to characterize the contamination resulting from the waste pile and disposal of mercury contaminated concrete debris described in Finding Nos. 6.a. and 6.b. of these Orders.
 11. By letter dated December 24, 2008, Ohio EPA requested that within 30 days from the date of the letter, certain revisions be made to the SAP for the Facility. With this letter, Ohio EPA conditionally approved the SAP for the Facility.
 12. In electronic correspondence to Ohio EPA dated January 26, 2009, HzW Environmental Consultants, LLC., on behalf of Respondent, submitted the revisions to the SAP.
 13. Due to Respondent's establishment and operation of a hazardous waste storage and disposal Facility as described in Finding Nos. 6.a. and 6.b. 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 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 all areas referenced in Ohio EPA's November 13, 2008 letter and Finding Nos. 6.a. and 6.b. of these Orders where hazardous waste was stored or disposed of at the Facility.
 - 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. 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. 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;

- c. Within 30 days after approval of the Closure Plan pursuant to Order No. 1.a, Respondent shall submit a closure cost estimate and documentation demonstrating that Respondent has established financial assurance and liability coverage for the area(s) of the Facility subject to closure, in accordance with OAC rules 3745-55-42 through 3745-55-47; and
- d. 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.a. will abate the violations referenced in Finding Nos. 6a. through 6.e. 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 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 corrective action. Ohio EPA and Respondent each reserve all 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.

IV. 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 26, 2009
Date

IT IS SO AGREED:

ASHTA Chemicals Inc.



Signature

3/12/2009
Date

RICHARD L. JACKSON
Printed or Typed Name

EXECUTIVE VICE PRESIDENT
Title