OhioEPA

State of Ohio Environmental Protection Agency

STREET ADDRESS:

Lazarus Government Center
50 W. Town St., Suite 700
Columbus, Ohio 43215

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MAILING ADDRESS:

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

CERTIFIED MAIL

October 28, 2009

Re: Director's Final Findings & Orders
Aber's Garage, Inc. dba
Aber's Truck Center
OHD 987 030 368

Mr. Danny Aber
President
Aber's Garage, Inc. dba
Aber's Truck Center
1729 Claremont Avenue
Ashland, Ohio 44805

Dear Mr. Aber:

Here are the Director's Final Findings and Orders (Orders) issued to Aber's Garage, Inc. dba Aber's Truck Center on October 28, 2009. These Orders are effective today.

I have also enclosed invoices for the penalty payments as required by Order No. 1.a. thru 1.c. Please remember that your payments are due no later than November 27, 2009.

If you have any questions concerning compliance with these Orders, do not hesitate to contact John Pasquarette at (419) 352-8461.

Sincerely,

Harry E. Savis, Manager
Compliance Assurance Section
Division of Hazardous Waste Management

Attachments

cc: Michael A. Savage, Chief, DHWM
Jeremy Carroll, Manager, DHWM, Central File
ec: Todd Anderson, Legal
Heidi Greismer, PIC
John Pasquarette, Mgr., DHWM, NWDO

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

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OHIO E.P.A.
OCT 28 2009
ENTERED DIRECTOR'S JOURNAL

BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

Aber's Garage, Inc. dba
Aber's Truck Center
1729 Claremont Avenue
Ashland, Ohio 44805

Respondent

Director's Final Findings and Orders

PREAMBLE

It is agreed by the parties hereto as follows:

I. JURISDICTION

These Director's Final Findings and Orders (Orders) are issued to Aber's Garage, Inc. dba Aber's Truck Center (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 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.

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: [signature] Date: 10-28-09

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 OAC rule 3745-50-10(A).

2. Respondent operates a truck servicing center business located at 1729 Claremont Avenue, Ashland, Ashland County, Ohio (Facility)

3. At the Facility, Respondent generates hazardous waste as defined by ORC § 3734.01(J) and OAC rules 3745-50-10(A) and 3745-51-03. Respondent currently generates hazardous waste in amounts less than 1000 kilograms per month (also known as a conditionally exempt quantity generator). Respondent generated hazardous paint waste and parts cleaner - D001, F002, F003, and F005 - as defined in OAC rules 3745-51-21 and 3745-51-31 from cleaning and painting of parts during truck servicing operations. Additionally, Respondent generates used oil and universal waste.

4. Respondent notified Ohio EPA of its hazardous waste activities and was issued generator identification number OHD987030368.

5. On May 12, 2008, Ohio EPA received a complaint alleging Respondent disposed of used oil into the storm drains.

6. As a result of the May 12, 2008 complaint, Ohio EPA conducted a complaint investigation and compliance evaluation inspection on June 4, 2008, at the Facility. As a result of the investigation and inspection, Ohio EPA determined that the Respondent had, *inter alia*:

   a. Failed to evaluate wastes, including fifteen drums containing unknown waste, in violation of OAC rule 3745-52-11;

   b. Failed to properly manage universal waste, in violation of OAC rules 3745-273-14 and 3745-273-15; and

   c. Failed to properly manage used oil, including failure to clean up releases of used oil, in violation of OAC rule 3745-279-22.

7. By letter dated June 25, 2008, Ohio EPA notified Respondent of the violations referenced in Finding No. 6. of these Orders.

8. As a result of the complaint investigation and compliance inspection, Respondent conducted a sampling event on June 12, 2008, to evaluate the waste in the fifteen drums as described in Finding No. 6.a. Also during the June 12, 2008 sampling event, Ohio EPA observed stained soil underneath the containers.

9. On July 16, 2008, Respondent submitted analytical results from its June 12, 2008 sampling event to Ohio EPA. On August 18, 2008, Respondent submitted additional waste process information. Based upon the information submitted, fourteen drums stored at the Facility contained D001, F002, F003, and F005 hazardous waste, as defined in OAC rules 3745-51-21 and 3745-51-31.

10. Due to the staining observed during the June 12, 2008, sampling event referenced in Finding No. 8., Respondent conducted another sampling event on June 14, 2008, to determine if hazardous waste had been disposed to the ground where the stained soil was observed. During this event, approximately eight cubic yards of soil were removed and placed into a roll-off container and sampled. The soil which was removed was the area where the drums were stored and the stained soil was observed. No further staining of soil was visible after the soil was removed.

11. On July 16, 2008, Respondent submitted to Ohio EPA analytical results of sampling described in Finding No. 10. These results indicated that hazardous waste had been disposed of to the ground.

12. Based upon the information described in Finding No. 11., the Director has determined that Respondent established and operated a hazardous waste disposal facility without a permit, in violation of ORC § 3734.02(E) and (F).

13. By letter dated December 12, 2008, Ohio EPA notified Respondent based upon the information described in Finding No. 9, Respondent had, *inter alia*:

    a. Established and operated a hazardous waste storage facility without a permit, in violation of ORC § 3734.02(E) and (F).

    b. Failed to properly manage containers of hazardous waste in violation of OAC rule 3745-52-34(D); and

    c. Failed to receive an U.S. EPA Identification number, in violation of OAC rule 3745-52-12.

14. By letters dated June 25, 2008 and December 12, 2008, Ohio EPA notified Respondent that the violations in Findings Nos. 6.a., 6.b., and 6.c. had been abated.

15. On March 16, 2009, Respondent caused the transportation of the hazardous waste containing soil (F003, F005) as described in Findings Nos. 10 and 11 off-site for disposal at a hazardous waste landfill.

16. By letter dated July 14, 2009, Ohio EPA notified Respondent that the violations in Finding Nos. 13.b. and 13.c. had been abated.

17. By letter dated August 7, 2009, Respondent submitted to Ohio EPA for approval a sampling and analysis plan (SAP) in order to determine if any additional clean up/soil removal of the area, referenced in Fining No. 10., was required.

18. By letter dated August 28, 2009, Ohio EPA approved Respondent's SAP.

19. On September 10, 2009, Respondent implemented, with Ohio EPA oversight, the approved SAP as referenced in Finding No. 18.

20. In a facsimile letter dated October 7, 2009, Respondent submitted to Ohio EPA analytical results from the approved SAP.

21. Based upon the removal of the soil referenced in Finding No. 10. and a review of the analytical results submitted to Ohio EPA as referenced in Finding No. 20., the Director has determined that Respondent has met the closure performance standard requirements of OAC rule 3745-55-11 for the area referenced in Finding No. 10 and no further action is required to abate the violation referenced in Finding No. 12.

V. ORDERS

Respondent shall achieve compliance with Chapter 3734. of the ORC and the regulations promulgated thereunder according to the following compliance schedule:

1. Respondent shall pay Ohio EPA the amount of $26,600.00 in settlement of Ohio EPA's claims for civil penalties, which may be assessed pursuant to ORC Chapter 3734., in accordance with the following provisions:

   a. Within 30 days after the effective date of these Orders, Respondent shall pay

Ohio EPA the amount of $21,000.00 in settlement of Ohio EPA's claims for civil penalties, which may be assessed pursuant to ORC Chapter 3734. and which will be deposited into the hazardous waste cleanup fund established pursuant to ORC § 3734.28. Payment shall be made by an official check made payable to "Treasurer, State of Ohio" for $21,000.00. The official check shall be submitted to Ohio EPA, Office of Fiscal Administration, Department L-2711, Columbus, Ohio 43260-2711, together with a letter identifying the Respondent and the Facility. A copy of each check shall be submitted in accordance with Section X. of these Orders.

b. In lieu of paying $5,600.00 of civil penalty to Ohio EPA, Respondent shall fund a supplemental environmental project (SEP) by making a contribution in the amount of $5,6000.00 to the Ohio EPA Clean Diesel School Bus Program (Fund 5CD). Respondent shall make the payment within 30 days after the effective date of these Orders by tendering an official check made payable to "Treasurer, State of Ohio" for $5,600.00. The official check shall be submitted to Brenda Case, or her successor, Ohio EPA, Office of Fiscal Administration, P.O. Box 1049, Columbus, Ohio 43216-1049, together with a letter identifying Respondent. A copy of this check 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.

c. Should Respondent fail to fund the SEP in Order No. 1.b. within the required time frame established in Order No. 1.b of these Orders, Respondent shall pay to Ohio EPA, within 7 days after failing to comply with Order No. 1.b. of these Orders, the amount of $5,600.00 in accordance with the procedures in Order No. 1.a. of these Orders.

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
Northwest District Office
Division of Hazardous Waste Management
347 North Dunbridge Road
Bowling Green, Ohio 43402-9398
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, Suite 700
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 Facility, at some time in the future, pursuant to ORC Chapter 3734. or any other applicable law. Respondent reserves the right to raise any administrative, legal or equitable claim or defense with respect to performing 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 Respondents 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

OCT 28 2009
Date

IT IS SO AGREED:

Aber's Garage, Inc. dba
Aber's Truck Center

Danny R. Aber
Signature

10/16/09
Date

Danny R. Aber
Printed or Typed Name

President
Title