OHIO E.P.A.

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ENTERED DIRECTOR'S JOURNAL

BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

Flat's Industrial Services, Inc.
d.b.a. Dubro Oil Corporation
2400 Mulberry Avenue
Cleveland, Ohio 44113

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: Dorothy Lasseter Date: 7-6-11

PREAMBLE

It is agreed by the parties hereto as follows:

I. JURISDICTION

These Director's Final Findings and Orders (Orders) are issued to Flat's Industrial Services, Inc. d.b.a. Dubro Oil Corporation (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 owns and operates a used oil processing plant at 2400 Mulberry Avenue, Cleveland, Cuyahoga County, Ohio (Facility). At the Facility, Respondent separates, filters, cleans and reconditions used oil and also blends and re-packages virgin and reconditioned oil.

2. Respondent is a "person" as defined in ORC § 3734.01(G) and Ohio Administrative Code (OAC) rule 3745-50-10(A).

3. Respondent notified Ohio EPA of its hazardous waste activities and was issued U.S. EPA identification number OHD058383126.

4. 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 conditionally exempt small quantity generator of hazardous waste. Respondent is also a used oil transporter and used oil processor as those terms are defined by OAC rule 3745-279-01(A).

5. On August 17, 2010, Ohio EPA conducted a hazardous waste compliance evaluation inspection at the Facility. As a result of the inspection, Ohio EPA determined that Respondent had, *inter alia*,

   a. Transported hazardous waste spent kerosene (D008) from Duffin Manufacturing Company to the Facility, and subsequently caused the hazardous waste spent kerosene to be transported to an out-of-state facility, both of which do not hold a hazardous waste facility installation and operation permit nor are authorized to receive hazardous waste, in violation of ORC §3734.02(F);

   b. Stored the hazardous waste spent kerosene referenced in Finding No. 5.a. prior to its shipment off-site and thereby unlawfully 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). While the hazardous waste was stored at the Facility, no releases of hazardous waste occurred.

   c. Failed to adequately evaluate waste generated at the Facility to determine if the waste was hazardous waste, in violation of OAC rule 3745-52-11;

d. Failed to comply with the requirements of the rebuttable presumption for used oil transporters by demonstrating that the used oil being transported is not a hazardous waste, in violation of OAC rule 3745-279-44(A) and (B);

e. Failed to keep a record of each used oil shipment accepted for transport, in violation of OAC rule 3745-279-46(A);

f. Failed to maintain the Facility in a manner to minimize the release of used oil to the environment, in violation of OAC rule 3745-279-52(A)(1);

g. Failed to equip the Facility with an internal communication or alarm system capable of providing immediate emergency instruction to Facility personnel, in violation of OAC rule 3745-279-52(A)(2);

h. Failed to test and maintain emergency equipment at the Facility, in violation of OAC rule 3745-279-52(A)(3);

i. Failed to develop, maintain and distribute a contingency plan for the Facility, in violation of OAC rule 3745-279-52(B);

j. Failed to comply with the requirements for the rebuttable presumption for used oil processors, in violation of OAC rule 3745-279-53(A) and (B);

k. Failed to label tanks and containers of used oil with the words "Used Oil," in violation of OAC rule 3745-279-54(F)(1);

l. Failed to develop and implement a used oil analysis plan, in violation of OAC rule 3745-279-55(A);

m. Failed to keep a record of each used oil shipment accepted for processing and/or shipped to a used oil burner and failed to retain these records, in violation of OAC rule 3745-279-56(A) and (C);

n. Failed to maintain the operating record required for used oil processors, in violation of OAC rule 3745-279-57(A);

o. Failed to submit the required biennial report to the Director by March 1st of each even numbered year, which is to provide information concerning

used oil activities at the Facility, in violation of OAC rule 3745-279-57(B); and

p. Failed to evaluate the residues generated from the storage, processing or re-refining of used oil, in violation of OAC rule 3745-279-59.

6. By letter dated August 23, 2010, Ohio EPA notified Respondent of the violations referenced in Finding No. 5. of these Orders.

7. By letter dated September 22, 2010, Ohio EPA received information from Respondent to address the violations referenced in Finding No. 5. of these Orders.

8. By electronic mail on October 7, 2010, Ohio EPA received additional information from Respondent's consultant, including analytical results for purposes of waste characterization, a daily product inventory, and a copy of a SPCC plan for the Facility.

9. On December 7, 2010, Ohio EPA conducted a follow up hazardous waste compliance evaluation inspection at the Facility. During this inspection Ohio EPA reviewed the status of violations found during the inspection conducted on August 17, 2010, including, but not limited to, reviewing Respondents' Facility contingency plan, used oil profiles and used oil shipping papers.

10. By letter dated January 5, 2011, Ohio EPA notified Respondent it had abated the violations referenced in Finding Nos. 5.f., 5.k., 5.o. and 5.p. of these Orders.

11. By letter dated February 8, 2011, Ohio EPA received information from Respondent to address the remaining violations referenced in Finding No. 5. of these Orders. This information included copies of used oil profile forms, shipping records, security and fire suppression information, and emergency equipment inspection records.

12. By letter dated February 16, 2011, Ohio EPA received information from Respondent concerning implementation of Respondent's used oil analysis plan.

13. By letter dated February 24, 2011, Ohio EPA notified Respondent it had abated the violations referenced in Finding Nos. 5.c., 5.d., 5.e., 5.g., 5.h., 5.i., 5.j., 5.l., 5.m. and 5.n. of these Orders.

14. Based upon the temporary period of time the hazardous waste was stored, that there were no releases of hazardous waste, and the information in Respondent's September 22, 2010, letter to Ohio EPA referenced in Finding No. 7., the Director has determined that Respondent has met the closure performance standard of OAC rule 3745-55-11 for the hazardous waste storage unit described in Finding No. 5.b. and no further action is required by Respondent to abate the violations referenced in Finding Nos. 5.a. and 5.b.

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 $6,400.00 in settlement of Ohio EPA's claims for civil penalties, which may be assessed pursuant to ORC Chapter 3734. $5,120.00 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 $1,280.00;
    b. Within 180 days after the effective date of these Orders, Respondent shall pay to Ohio EPA the amount of $1,280.00;
    c. Within 270 days after the effective date of these Orders, Respondent shall pay to Ohio EPA the amount of $1,280.00; and
    d. Within 365 days after the effective date of these Orders, Respondent shall pay to Ohio EPA the amount of $1,280.00.

    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 $1,280.00 of the civil penalty to Ohio EPA, Respondent shall fund a supplemental environmental project (SEP) by making a contribution in the amount of $1,280.00 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 $320.00;
    b. Within 180 days after the effective date of these Orders, Respondent shall pay to Ohio EPA the amount of $320.00;
    c. Within 270 days after the effective date of these Orders, Respondent shall pay to Ohio EPA the amount of $320.00; and
    d. Within 365 days after the effective date of these Orders, Respondent shall pay to Ohio EPA the amount of $320.00.

    Respondent shall make each payment by tendering an official check made payable to "Treasurer, State of Ohio." 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 Respondent. A copy of each check shall be submitted in accordance with Section X. of these Orders, and an additional copy of this check shall be sent to Thomas Kalman, Manager, Compliance and Enforcement Section, or his successor, Ohio EPA, Division of Air Pollution Control, 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. through 2.d., 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: DHWM 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 and 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 the right 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 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

Scott J. Nally
Director

JUL 06 2011
Date

IT IS SO AGREED:

Flat's Industrial Services, Inc.
d.b.a. Dubro Oil Corporation

Signature

6-21-11
Date

Printed or Typed Name

OWNER
Title