

OHIO E.P.A.

JUN 28 2010

ENTERED DIRECTOR'S JOURNAL

BEFORE THE  
OHIO ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

**The Wm. Powell Company**  
2503 Spring Grove Avenue  
Cincinnati, Ohio 45214

**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 The Wm. Powell Company (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.

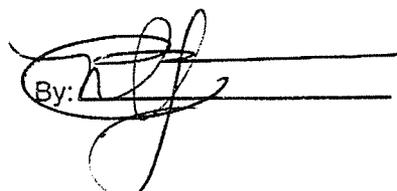
**II. PARTIES BOUND**

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 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 regulations 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:  \_\_\_\_\_ Date: 6-28-2010

#### **IV. FINDINGS**

All of the findings necessary for the issuance of these Orders pursuant to ORC §§ 3734.02(G), 3734.13 and 3745.01 have been made and are outlined below. Nothing in the findings shall be considered to be an admission by Respondent of any matter of law or fact. 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 to 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 owns and operates a foundry located at 2503 Spring Grove Avenue, Cincinnati, Hamilton County, Ohio (Facility).
4. Respondent notified Ohio EPA of its hazardous waste activities and was issued generator identification number OHD 004 253 704.
5. At the Facility, Respondent manufactures industrial bronze valves and associated parts. As part of this process, Respondent poured liquid bronze into sand casts. When the liquid bronze cooled and solidified, Respondent would remove the sand casts, leaving bronze valves and associated parts. Over time, the sand became contaminated with lead. Periodically, Respondent would remove the lead-contaminated sand from the casting process and replace it with clean sand. Prior to 2005, for a period of time, Respondent would place the lead-contaminated sand onto concrete outdoors.
6. At the Facility, Respondent also operated a foundry ventilation system consisting of fans, vents, duct work, a bag house, and a hopper to collect dust and remove it from the foundry. Respondent's foundry dust was also contaminated with lead. Prior to 2005, for a period of time, Respondent would drop the lead-contaminated dust from its bag house into an open hopper outdoors. Respondent's lead-contaminated

dust fell onto the concrete and asphalt under and around the open hopper. Respondent would add the lead-contaminated dust to the lead-contaminated sand on the concrete outdoors.

7. On September 27, 2004, the United States Environmental Protection Agency (US EPA) conducted an investigation at the Facility. As a result of this investigation, US EPA determined that Respondent had, *inter alia*, stored, treated or disposed of hazardous waste at the Facility without a permit, in violation of ORC Chapter 3734 and the rules promulgated thereunder.
8. On December 9, 2004, Respondent's analysis of a sample of both the lead-contaminated sand and lead-contaminated dust found both to be hazardous for lead, D008.
9. On June 3, 2005, US EPA issued a notice of violation letter to Respondent.
10. By July 11, 2005, Respondent contracted with Vanguard Environment, Inc. to assist Respondent in environmental matters such as personnel training, documentation, and compliance issues.
11. Under a February 19, 2008 Consent Agreement and Final Order (CAFO) with US EPA, Respondent is required to submit a closure plan to Ohio EPA for the Concrete Area at the Facility for Ohio EPA's approval. The Concrete Area was defined in the CAFO, and is defined in these Orders, as an area approximately 30' by 34' and adjacent to the eastern wall of the old Showroom building and to the northern wall of the old Pipeshop Building.
12. Due to Respondent's establishment and operation of a hazardous waste facility as described in Finding No. 7 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.
13. The submittal of a Closure Plan for the Concrete Area which complies with the applicable administrative requirements of OAC Chapters

3745-65 and 66 and the applicable substantive requirements of OAC Chapters 3745-54 and 55 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 thereunder 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 30 days after the effective date of these Orders, Respondent shall submit to Ohio EPA a Closure Plan for the Concrete Area of the Facility referenced in Finding Nos. 5, 6, and 11 of these Orders. The Closure Plan shall comply with the applicable administrative requirements of OAC Chapters 3745-65 and 3745-66 and the applicable substantive requirements of OAC Chapters 3745-54 and 3745-55;
  - b. The Closure Plan is subject to approval by Ohio EPA. If Ohio EPA modifies the Closure Plan, the modified Closure Plan becomes the approved plan;
  - c. Upon Ohio EPA approval of the Closure Plan, Respondent shall implement the approved Closure in the manner and pursuant to the timeframes set forth in the approved Closure Plan and OAC rules 3745-55-13/3745-66-13, as applicable;
  - d. In the event that work in the approved Closure Plan has not been completed within 180 days after Ohio EPA's approval of the Closure Plan for the Concrete Area referenced in Order No. 1.a. of these Orders, Respondent shall submit closure cost estimates and documentation demonstrating that Respondent has established financial assurance and liability coverage for the Concrete Area, in accordance with OAC rules 3745-55-42 through 3745-55-47.

## **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 required to be submitted by Respondent pursuant to these Orders shall be addressed to:

Ohio Environmental Protection Agency  
Southwest District Office  
Division of Hazardous Waste Management  
401 East 5<sup>th</sup> Street  
Dayton, Ohio 45402  
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 W. Town St., 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 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, causes of action, and defenses 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.

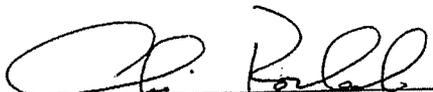
## **XIII. EFFECTIVE DATE**

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

## **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:**

  
\_\_\_\_\_

Chris Korleski  
Director

JUN 28 2009  
Date

**IT IS SO AGREED:**

**The Wm. Powell Company**

  
\_\_\_\_\_

Signature

5/19/10  
Date

Jeffrey E. Thompson  
Printed or Typed Name

Sr. V-P Finance  
Title