

BEFORE THE  
OHIO ENVIRONMENTAL PROTECTION AGENCY

OHIO E.P.A.

NOV 28 2011

ENTERED DIRECTOR'S JOURNAL

In the Matter of:

Smitty's Car Craft, Inc.  
747 Sugar Lane  
Elyria, OH 44035

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.

PREAMBLE

By Janet Cassler Date: 11-28-11

It is agreed by the parties hereto as follows:

I. JURISDICTION

These Director's Final Findings and Orders (Orders) are issued to Smitty's Car Craft, Inc. (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 thereunder.

#### 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 Ohio Administrative Code (OAC) rule 3745-50-10(A).
2. Respondent operates a collision repair facility located at 747 Sugar Lane, Elyria, Lorain County, Ohio 44035 (Facility).
3. At the Facility, 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 small quantity generator of hazardous waste and has been assigned EPA ID number OHD982419764. The hazardous wastes generated by Respondent at the Facility include spent solvents generated from cleaning spray guns (hazardous waste codes D001/D035/F003/F005). The spent solvents are stored in drums and subsequently placed into a solvent recycling unit. The resulting still bottoms from the solvent recycling unit are F005 listed hazardous waste derived from the treatment of F005 listed hazardous waste spent solvent.
4. On June 24, 2010, Ohio EPA DHWM conducted a compliance evaluation inspection at the Facility. As a result of this inspection Ohio EPA determined that Respondent had, *inter alia*:
  - a. Caused F005 hazardous waste still bottoms to be transported to an unpermitted facility, in violation of ORC §3734.02 (F);
  - b. Unlawfully stored at least nineteen drums of D001/D035/F003/F005 hazardous waste without a permit, in violation of ORC §3734.02 (E) and (F);
  - c. Failed to adequately evaluate wastes to determine if they are hazardous wastes, in violation of OAC rule 3745-52-11;
  - d. Failed to label and date containers of hazardous waste, in violation of OAC rule 3745-52-34(A)(2)and (3);
  - e. Failed to post emergency information by the phone, in violation of OAC rule 3745-52-34(D)(5)(b) and (c);

- f. Failed to operate the Facility in a manner to minimize the possibility of a fire, explosion, or any releases of hazardous waste to air, soil or surface water, in violation of OAC rule 3745-65-31;
  - g. Failed to conduct inspections of emergency equipment, in violation of OAC rule 3745-65-33;
  - h. Failed to store hazardous wastes in containers that are in good condition, in violation of OAC rule 3745-66-71;
  - i. Failed to store hazardous waste in closed containers, and manage them in a manner to prevent leaks, in violation of OAC rule 3745-66-73(A) and (B); and
  - j. Failed to conduct weekly inspections of the hazardous waste storage area, in violation of OAC rule 3745-66-74.
5. Respondent was notified of the violations referenced in Finding No. 4. of these Orders by letter dated July 12, 2010.
  6. By letter dated August 23, 2010, and by facsimile on August 31, 2010, Respondent submitted a response to the violations referenced in Finding No. 4. of these Orders.
  7. By letter dated September 2, 2010, Ohio EPA notified Respondent that the violations referenced in Finding Nos. 4.a., 4.c., 4.d., 4.e., 4.g., 4.h., 4.i. and 4.j. of these Orders were abated.
  8. Because the soil was stained in the unpermitted storage area referenced in Finding No. 4.b. of these Orders, Respondent conducted soil sampling in the unpermitted storage area on October 7, 2010, and submitted the results to Ohio EPA by letter dated October 28, 2010.
  9. On November 18, 2010, Ohio EPA conducted a follow up inspection at the Facility. Additionally, Ohio EPA provided comments concerning the October 7, 2010, soil sampling activities and proposed soil removal activities.
  10. Respondent conducted additional soil sampling and soil removal in the unpermitted storage area on January 12, 2011. Stained soil was removed and placed into two twenty-yard rolloff dumpsters and was properly transported off-site.

11. By letter dated January 26, 2011, Respondent submitted a report of the soil removal activities and sampling referenced in Finding No. 10. of these Orders to Ohio EPA.
12. Based upon the results of the soil sampling performed in conjunction with the soil removal activities referenced in Finding Nos. 8, 9, and 10. of these Orders, the Director has determined that Respondent has met the closure performance standard requirements of OAC rule 3745-55-11 for the areas referenced in Finding No. 4.b. of these Orders and no further action is required to abate the violations referenced in finding Nos. 4.b. and 4.f. of these Orders.
13. By letter dated March 25, 2011, Ohio EPA notified Respondent of the no further action determination referenced in Finding No. 12. of these Orders.
14. Based upon a review of financial information submitted by Respondent on July 26, 2011, Ohio EPA determined that Respondent does not possess the financial ability to pay the entire civil penalty settlement proposed in the Director's letter of April 21, 2011.

## **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 \$6,349.00 in settlement of Ohio EPA's claims for civil penalties, which may be assessed pursuant to ORC Chapter 3734. and 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 \$1,588.00;
  - b. Within 180 days after the effective date of these Orders, Respondent shall pay to Ohio EPA the amount of \$1,587.00;
  - c. Within 270 days after the effective date of these Orders, Respondent shall pay to Ohio EPA the amount of \$1,587.00; and

- d. Within 365 days after the effective date of these Orders, Respondent shall pay Ohio EPA the amount of \$1,587.00.

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.

#### **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 E. Aurora Road  
Twinsburg, Ohio 44087  
Attn: DMWM Manager

and Ohio EPA Central Office at the following address:

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 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 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**

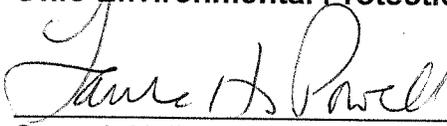
The effective date of these Orders is the date these Orders are entered into the Ohio EPA Director's journal.

**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:**

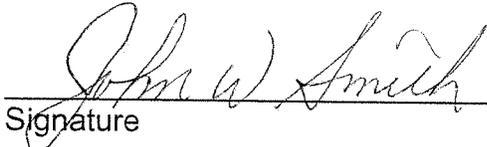
**Ohio Environmental Protection Agency**

  
\_\_\_\_\_  
Scott J. Nally  
Director

**NOV 28 2011**  
\_\_\_\_\_  
Date

**IT IS SO AGREED:**

**Smitty's Car Craft, Inc.**

  
\_\_\_\_\_  
Signature

**11-7-11**  
\_\_\_\_\_  
Date

**John W Smith**  
\_\_\_\_\_  
Printed or Typed Name

**owner**  
\_\_\_\_\_  
Title