

OHIO E.P.A.
MAY 28 2002
ENTERED DIRECTOR'S JOURNAL

Date Issued: MAY 28 2002

Date Effective: MAY 28 2002

**BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY**

In the Matter Of:

United Care Corporation
105 McKnight Drive
Middletown, Ohio 45044

Director's Final Findings
and Orders

and

Middletown Regional Hospital
105 McKnight Drive
Middletown, Ohio 45044

Respondents.

I. JURISDICTION

These Director's Final Findings and Orders ("Orders") are hereby issued to United Care Corporation and Middletown Regional Hospital (collectively the "Respondents") pursuant to the authority vested in the Director of the Ohio Environmental Protection Agency ("Ohio EPA") under Sections 3734.13 and 3745.01 of the Ohio Revised Code ("ORC").

II. PARTIES

These Orders shall apply to and be binding upon the Respondents, and their assigns and successors in interest liable under Ohio law. No changes in ownership relating to the Premises, as hereinafter defined, will in any way alter the Respondents' responsibilities under these Orders. The Respondents' obligations under these Orders may be altered only by the written approval of the Director of Ohio EPA.

III. DEFINITIONS

Unless otherwise stated, all terms used in these Orders shall have the same meaning as used in ORC Chapter 3734. and the regulations promulgated thereunder.

IV. FINDINGS OF FACT

I certify this to be a true and accurate copy of the
official record of the proceedings of the Ohio
Environmental Protection Agency

 5/28/02

The Director has determined the following findings of fact:

1. Respondents are the registrants of the Middletown Regional Hospital located at 105 McKnight Drive, Middletown, Butler County, Ohio ("Premises").
2. Respondents are "generators" of "infectious waste" as those terms are defined in Ohio Revised Code ("ORC") Sections 3734.021(F) and 3734.01(R) respectively.
3. Respondents generate 50 pounds or more of infectious waste in any one month thus subjecting Respondents to the large generator standards as specified in the Ohio Administrative Code ("OAC") Rule 3745-27-30(B), et se.
4. Pursuant to OAC Rule 3745-27-36(A), Respondent United Care Corporation holds a valid Certificate of Registration as a Generator of Infectious Waste (Reg. No. 09-G-00022) as issued by Ohio EPA on June 19, 2001, and expiring on June 18, 2004. Respondent United Care Corporation is listed as the primary registrant while Respondent Middletown Regional Hospital is a large generator authorized pursuant to the Reg. No. 09-G-00022.
5. On July 1, 1999, Ohio EPA received information from the BFI Transfer Station, located in Hamilton County, stating infectious waste had been discovered in a load of solid waste which originated from the Premises.
6. On July 2, 1999, representatives of the Respondents reported to Ohio EPA and the Middletown City Health Department the presence of the infectious and solid waste contained in the July 1, 1999, load and proceeded to implement abatement procedures to remove the infectious waste from the transfer station. The Respondents' abatement efforts included contracting with a registered infectious waste transporter for the complete removal of all commingled solid and infectious waste material located at the BFI Transfer Station.
7. On July 8, 1999, representatives of the BFI Transfer Station discovered a second load of commingled infectious and solid waste which originated from the Premises.
8. The Middletown City Health Department ("MCHD") conducted an inspection of the Premises on July 9, 1999, as a result of the July 1, 1999, and July 8, 1999, events. On July 12, 1999, MCHD issued a Notice of Violation ("NOV") to the Respondents for violations of OAC Rule 3745-27-30(B)(I) which states that infectious waste must be segregated from other solid waste at the point of generation, OAC Rule 3745-27-30(B)(5) which states that infectious waste must be treated to render non-infectious before disposal at a solid waste disposal facility and OAC Rule 3745-27-30(B)(7) which states that shipments of untreated infectious waste must be transported in shipments consisting of only untreated infectious waste.

9. The July 12, 1999 NOV also documents corrective actions undertaken by Respondents. These actions included:
 - A) Inspecting all areas that generated infectious waste and training employees on proper infectious waste disposal; and
 - B) Inspecting all solid waste for the presence of infectious waste prior to placement in a dumpster for final disposal;
10. Ohio EPA and MCHD conducted a joint inspection of the Premises on July 19, 1999. During the inspection, it was noted that syringes were present in a solid waste container. This is a violation of ORC Section 3734.021(A)(1)(a) and OAC Rules 3745-27-30(B)(3) and 3745-27-34(B) which state that sharps must be placed in sharps containers before transporting off-site. It was also noted that blood-soaked materials, blood containing items and sharp infectious wastes were packaged in unmarked black plastic bags. This is a violation of ORC Section 3734.021(A)(2)(c) and OAC Rules 3745-27-30(B)(2) and 3745-27-34(A)(1) which state that untreated infectious waste must be placed into bags that are red or labeled with the international biohazard symbol and OAC Rules 3745-27-34(A)(4)(a)-(c) which states that bags containing infectious waste must be placed into a second sealed plastic bag or into a fully enclosed, rigid, sturdy container. These violations were documented and sent to Respondents in correspondence dated August 25, 1999.
11. On July 25, 1999, Stericycle, the registered transporter who contracted with Respondents to assist with the corrective measures, provided shipping papers to Ohio EPA demonstrating appropriate disposal of the infectious waste discussed in Findings #6 and #7 above. The shipping papers further indicate that the corrective measures had been completed on July 12, 1999.
12. Ohio EPA conducted a follow-up inspection of the Premises on September 21, 1999 and issued an October 21, 1999 NOV as a result of the inspection. Ohio EPA noted that infectious waste was present in the solid waste compactor. This is a violation of ORC Section 3734.021(A)(2)(e) which states that a large generator of infectious waste may not compact infectious waste until the waste is treated. Ohio EPA also noted that the truck that picked up the infectious waste was not a registered transporter of infectious waste. This is a violation of ORC Section 3734.021(A)(2)(g) which states that a large generator may only use a registered transporter to transport untreated infectious waste. The Respondents did not have shipping papers for the infectious waste that was removed from the Premises on July 1, 1999 and July 8, 1999. This is a violation of ORC Section 3734.021(A)(2)(k) which states that all infectious waste that is transported off site must be accompanied by shipping papers. Infectious waste was not being segregated from solid waste, which is a violation of OAC Rule 3745-27-30(B)(1). A bag of infectious waste was observed to be leaking onto an infectious waste container and several

red bags of infectious waste were stored on top of each other and on top of infectious waste containers, which are violations of OAC Rule 3745-27-35(A)(I). Ohio EPA inspected the Respondents' clean up procedure and found the procedure did not list the location of all spill kits and it did not include the name, address and telephone number for the facility contact. This is a violation of OAC Rule 3745-27-30(B)(10). These violations were documented and sent to Respondents in correspondence dated October 21, 1999.

13. Ohio EPA conducted an inspection of the Premises on February 14, 2000, and issued a February 17, 2000 NOV as a result of the inspection. Ohio EPA discovered intravenous tubing containing blood in a solid waste container, which is a violation of OAC Rules 3745-27-30(B)(I) and (B)(2). Ohio EPA also inspected the Respondents' treatment shipping papers and found that the papers were incomplete. This is a violation of **OAC** Rules 3745-27-33(B)(2) and (B)(6). An infectious waste sharps container had materials protruding from the opening. This is a violation of OAC Rules 3745-27-35(A)(I) and 3745-27-34(B)(1). This violation was in the process of being corrected before Ohio EPA left the Premises. An unlabeled and unlocked infectious waste storage area was observed, which is a violation of OAC Rule 3745-27-35(A)(3). This violation was also in the process of being corrected before Ohio EPA left the Premises.
14. In correspondence dated March 7, 2000, Respondents detailed to Ohio EPA the measures taken in response to the February 17, 2000 NOV. Respondents demonstrated that each violation cited was corrected.
15. Ohio EPA conducted an inspection of the Premises on March 20, 2000, and issued an NOV to the Respondents dated November 27, 2000 as a result of the inspection. During the inspection Ohio EPA discovered that not all access points to the laboratory storage area were locked or labeled. This is a violation of OAC Rule 3745-27-35(A)(3). This was a follow-up to the February 17, 2000 inspection and subsequent correspondence from the Respondents that indicated that each of the violations cited were corrected.
16. Ohio EPA conducted an inspection of the Premises on December 7, 2000, and sent an inspection letter to the Respondents dated December 12, 2000. Ohio EPA discovered that not all access points to the surgery storage area were locked or labeled. This is a violation of OAC Rule 3745-27-35(A)(3). Prior to the end of the inspection, Respondents' personnel were in the process of labeling the door.
17. Ohio EPA conducted an inspection of the Premises on August 21, 2001, and sent an inspection letter to the Respondents dated September 20, 2001. Ohio EPA determined that there were issues of non-compliance concerning shipping papers, and at the time of the inspection, Respondents were working to correct the

problems they had control over, but the remainder of the issues lie with the transporter the Respondents have hired.

V. ORDERS

The Respondents shall achieve compliance with ORC Chapter 3734. and the regulations promulgated thereunder according to the following:

2. Within one hundred five (105) days after the effective date of these Orders, Respondents shall provide training to all employees that handle infectious waste, as detailed in Attachment A, attached hereto and incorporated herein, The Respondents shall continue with annual' retraining and conduct training for new personnel whenever they are assigned to the infectious waste program,
2. Within one hundred five (105) days after the effective date of these Orders, the Respondents shall provide documentation to Ohio EPA certifying that all persons designated in Order Number 1 have received the training required by Order No. █, The certification shall be signed by a responsible official of the Respondents.
3. Within thirty (30) days after the effective date of these Orders, Respondents shall pay Ohio EPA the amount of \$7,000.00 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 created under ORC Section 3734.28. Payment shall be made by tendering a certified check in the stated amount to Ohio EPA, Attention: Vicki Galilei, Office of Fiscal Administration, P.O. Box 1049, Columbus, Ohio 43216-1049, made payable to "Treasurer, State of Ohio," and by submitting a copy of the check to Jeff Hurdley, Legal, Ohio EPA.
4. Within one hundred and twenty (120) days after the effective date of these Orders, Respondents shall begin implementation of a Community Mercury Thermometer Exchange Program (the "Program"). The purpose of the Program will be to inform and encourage people who have liquid mercury fever thermometers at home to bring those thermometers to Respondents and exchange them for digital thermometers. Liquid mercury thermometers received by Respondents pursuant to the Program will be disposed or recycled in accordance with applicable law, thus removing the mercury from the home environment and reducing the risk of mercury spills and accidental mercury poisoning. Within seven (7) days after terminating the Program, Respondents shall provide a written report to Ohio EPA documenting on a monthly basis: the quantity of liquid mercury thermometers collected under the Program, the date and location of disposal and/or recycling of the liquid mercury thermometers collected under the Program, a copy of all manifests relating to liquid mercury thermometers shipped for disposal and/or recycling under the Program, and a copy of all receipts for disposal and/or recycling of liquid mercury

thermometers collected under the Program. Within fifteen (15) months after the effective date of these Orders or within thirty (30) days of terminating the Program, whichever occurs earlier, Respondents shall pay Ohio EPA the amount of \$10,320.00 minus the amount of money spent by Respondents for disposal and/or recycling of liquid mercury thermometers collected under the Program and the amount spent for the purchase of digital fever thermometers actually used to replace liquid mercury thermometers collected under the Program. Respondents shall not receive credit against the \$10,320.00 owed under these Orders to Ohio EPA for costs incurred by Respondents for labor, advertising, collection, management or transportation costs related to the Program. Payment shall be made by tendering a certified check in the stated amount to Ohio EPA, Attention: Vicki Galilei, Office of Fiscal Administration, P.O. Box 1049, Columbus, Ohio 43216-1049, made payable to "Treasurer, State of Ohio," and by submitting a copy of the check to Jeff Hurdley, Legal, Ohio EPA.

VI. TERMINATION AND SATISFACTION

Respondents' obligations under these Orders shall terminate when the Respondents certify in writing and demonstrate to the satisfaction of Ohio EPA, Division of Solid and Infectious Waste Management, that all obligations under these Orders have been performed and Ohio EPA, Division of Solid and Infectious Waste Management, acknowledges, in writing, Ohio EPA's acceptance of this certification and demonstration.

This certification shall be submitted by the Respondents and shall be signed by responsible officials of the Respondents. The certification shall make the following attestation: "I certify that the information contained in or accompanying this certification is true, accurate and complete."

For purposes of these Orders, a responsible official is a corporate officer who is in charge of a principal business function of the Respondents.

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 out of or relating to the operation of Respondents' Premises.

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 federal, state, and local laws and

regulations. Nothing in these Orders shall be construed as waiving or compromising in any way the applicability and enforcement of any other statutes or regulations applicable to the Respondents' operation of the Premises. Ohio EPA reserves all rights and privileges except as specified herein.

IX. NOTICE

All documents demonstrating compliance with these Orders and all other documents required under these Orders to be submitted to Ohio EPA shall be addressed to:

Ohio Environmental Protection Agency
Southwest District Office
Division of Solid and Infectious Waste Management
Attn: Group Leader, DSIWM
401 East Fifth Street
Dayton, OH 45402-2911

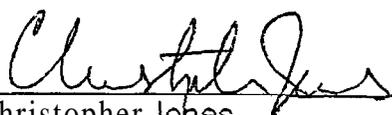
or to such persons and addresses as may hereafter be otherwise specified in writing by Ohio EPA.

X. RESERVATION OF RIGHTS

Nothing contained herein shall **be** construed to prevent Ohio EPA from seeking legal or equitable **relief** to enforce the terms of these Orders or from taking other administrative, legal or equitable action as deemed appropriate and necessary, including penalties against the Respondents for noncompliance with these Orders.

Nothing contained herein shall be construed to prevent Ohio EPA from exercising **its** lawful authority to require the Respondents to perform additional activities pursuant to ORC Chapter 3734 or any other applicable law in the future. Nothing herein shall restrict the right of the Respondents to raise any administrative, legal or equitable claim or defense with respect to such further actions which Ohio EPA may seek to require of the Respondents. Nothing in these Orders shall be construed to limit the authority of Ohio EPA to seek **relief** for violations not addressed in these Orders.

IT IS SO ORDERED:



Christopher Jones

5-28-02
Date

Director

XI. WAIVER

In order to resolve disputed claims, without admission of fact, violation or liability, and in lieu of further enforcement action by Ohio EPA for only those violations addressed in these Orders, the Respondents agree that these Orders are lawful and reasonable, that the items and time frames provided for compliance herein are reasonable and that the Respondents agree to comply with these Orders. Compliance with these Orders shall be a full accord and satisfaction for the Respondents' liability for the violations cited herein.

The Respondents hereby waive the right to appeal the issuance, terms and service of these Orders, and the Respondents hereby waive any and all rights it may have to seek administrative or judicial review of these Orders either in law or equity.

Notwithstanding the preceding, Ohio EPA and the Respondents agree that in the event that these Orders are appealed by any other party to the Environmental Review Appeals Commission, or any court, the Respondents retain the right to intervene and participate in such appeal. In such an event, the Respondents shall continue to comply with these Orders notwithstanding such appeal and intervention unless these Orders are stayed, vacated, or modified.

XII. SIGNATORIES

Each undersigned representative of a signatory to these Orders certifies that he or she is fully authorized to enter into the terms and conditions of these Orders and to legally bind such signatory to this document.

IT IS SO AGREED:

United Care Corporation, Respondent

By: *Doris M. McPhee*
Title: *President*

5/20/02
Date

Middletown Regional Hospital, Respondent

By: Carl Jones

5-20-2002
Date

Title: Executive Vice President
Chief Operating Officer

Ohio Environmental Protection Agency

Christopher Jones
Christopher Jones
Director

Attachment A

Statement of Purpose

This outline is intended to be used as a guide to provide personnel that handle infectious waste employed by Middletown Regional Hospital with a working knowledge of the current rules for operation of a large infectious waste generator currently authorized by Ohio EPA.

Proposed Trainina Program Outline

A. Regulations

1. Definitions

Provide a review of the current infectious waste definitions as used in OAC Chapters **3745-27** and **3745-37**. Discuss infectious waste definitions, including, but not limited to:

- a. Infectious waste
- b. Municipal solid waste
- c. Sharps and sharps containers
- d. Infectious waste handling area

- e. Premises
- f. Large generator of infectious waste
- g. Treatment shipping papers

2. Operating Regulations

- a. Standards for large generators of infectious wastes [OAC Rule 3745-27-30(B)]
- b. Standards for all generators of infectious waste [3745-27-30(C)]
- c. Standards for transporters of infectious waste [3745-27-31]
- d. Standards for the shipping paper system [3745-27-33]
- e. Standards for the packaging of infectious waste [3745-27-34]
- f. Standards for the handling of infectious wastes [3745-27-35]

B. Records

Provide an overview of the Premises' records location and housekeeping:

- 1. Location of shipping papers (completed and blank).
- 2. Location of the spill containment and clean-up procedure.
- 3. Location of complete OAC Chapter 3745-27.

C. Facility Requirements

Provide guidance and describe procedures to be utilized by personnel responsible for day-to-day management:

- 1. Describe the current waste segregation process to ensure that infectious waste (as defined in OAC 3745-27-01(B)(15)) does not commingle with solid waste.
- 2. Describe the procedure to ensure that bags which meet performance and labeling requirements are used for infectious waste. Also describe the procedure that ensures that infectious waste is properly packaged for shipment.
- 3. Discussion of shipping procedures:
 - a. Describe the procedure that ensures that only a registered transporter is used for untreated infectious waste.
 - b. Describe the procedure to ensure that complete shipping papers are maintained for all infectious waste shipments.
 - c. Describe the procedure that ensures that untreated infectious waste is shipped in separate loads from solid waste.

- d. Describe the procedure to ensure infectious waste is treated prior to disposal.
4. Discussion of infectious waste storage and handling procedures
- a. Describe the procedure used to properly store infectious waste prior to shipment.
 - b. Describe the procedure used to maintain locks and/or labels on all infectious waste storage areas.
 - c. Describe the procedure used when handling infectious waste to ensure that infectious waste is not compacted and the packaging is not torn, ripped, punctured, or otherwise compromised.
5. Describe the current spill procedure including all required spill kit locations and contact person(s).