

OHIO E.P.A.  
BEFORE THE  
OHIO ENVIRONMENTAL PROTECTION AGENCY

AUG 22 2008

DIRECTOR'S JOURNAL

In the Matter Of:

Browning-Ferris Industries of Ohio, Inc :  
43502 Oberlin-Elyria Rd. :  
Oberlin, Ohio 44074 :

Director's Final Findings  
and Orders

Respondent

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**

It is agreed by the parties hereto as follows:

By: M. Shapiro Date: 8/22/08

**I. JURISDICTION**

These Director's Final Findings and Orders ("Orders") are issued to Browning-Ferris Industries of Ohio, Inc. ("Respondent") pursuant to the authority vested in the Director of the Ohio Environmental Protection Agency ("Ohio EPA") under Ohio Revised Code ("ORC") Sections 3734.13 and 3745.01.

**II. PARTIES BOUND**

These Orders shall apply to and be binding upon Respondent and its successors in interest liable under Ohio law. No change in ownership of Respondent or of the Facility (as hereinafter defined) 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. Browning-Ferris Industries of Ohio, Lorain County II municipal solid waste landfill ("Facility") is located at 43502 Oberlin-Elyria Road, Oberlin, Lorain County, Ohio.
2. Respondent is the "owner" and the "operator" of the Facility as those terms are defined in Ohio Administrative Code ("OAC") Rule 3745-27-01(O)(7) and (O)(5), respectively, and is also the license holder for the Facility.

3. The Facility is a "sanitary landfill facility" as that term is defined under OAC Rule 3745-27-01(S)(4) and is authorized to accept "solid waste" as that term is defined under ORC Section 3734.01(E) and OAC Rule 3745-27-01(S)(24).
4. Respondent is a "person" as that term is defined in ORC Section 3734.01(G) and in OAC Rule 3745-27-01(P)(3).

### **Violations related to the acceptance and disposal of hazardous waste**

#### ***Semper Quality Industries***

5. On February 20, 2007, Ohio EPA, Division of Hazardous Waste Management ("DHWM") conducted an inspection of Semper Quality Industries ("Semper") in Mentor, Ohio and found that Semper had failed to manage its still bottom waste as a hazardous waste and had thus caused the transportation of an F005 hazardous waste to a solid waste facility.
6. By electronic correspondence dated April 9, 2007, Ohio EPA-DHWM notified Ohio EPA Division of Solid and Infectious Waste Management ("DSIWM") that hazardous waste had been transported to an Ohio Landfill.
7. Following the notification outlined above, Ohio EPA received correspondence from Respondent dated April 23, 2007, stating that from December 2006 to February 2007 Respondent provided solid waste collection and disposal services to Semper. Respondent further indicated that the waste collected from Semper was sent to Glenwillow Transfer Station where it was combined with waste from other generators and subsequently sent for disposal to Carbon Limestone Sanitary Landfill and to the Facility. Respondent estimated approximately ninety-five percent of the waste was sent to the Facility.
8. Ohio EPA received correspondence from Respondent on December 3, 2007 providing additional information regarding the waste accepted from Semper. This information included, in part, copies of the following:
  - a. Service agreement with Semper;
  - b. Inbound truck tickets and matching inbound daily logs showing when Semper waste would have been collected;
  - c. Copies of Glenwillow outgoing daily logs;
  - d. Summary sheet showing volumes transferred to Carbon Limestone Landfill and the Facility from Glenwillow Transfer Station when Semper waste would have been managed.

9. Ohio EPA reviewed the information, and in correspondence dated December 21, 2007, informed Respondent that based on the information submitted, it appeared that the Facility had accepted F001 (sic<sup>1</sup>) hazardous waste "still bottoms" from Semper on several occasions between December 21, 2006 and March 2, 2007. Ohio EPA further informed Respondent that it was in violation of OAC Rule 3745-27-19(E)(8)(c), and 3734.02(F) for acceptance and disposal of hazardous waste.
10. In response to the December 21, 2007, NOV, Ohio EPA received correspondence from Respondent dated January 11, 2008, stating in part, the following:
  - a. Due to the fact that the situation involved a relatively small volume of waste that was then mixed with other waste prior to receipt by the Facility, and the time elapsed since disposal, there is no way to locate and remove the material;
  - b. Respondent acknowledged that under Ohio regulations a violation did occur due to the acceptance of the waste. However, Respondent then noted that under the regulations of USEPA and most other states, conditionally exempt small quantity generators are allowed to dispose of their hazardous wastes in municipal solid waste landfills.

### ***Day Glo Color Corporation***

11. On February 6, 2008, Respondent notified Ohio EPA that hazardous waste may have been disposed at the Facility. This verbal communication was followed up by a February 8, 2008, letter from Respondent stating that four steel drums containing hazardous waste from Day Glo Color Corporation ("Day Glo") had been disposed at the Facility.
12. In correspondence dated March 5, 2008, Ohio EPA notified Respondent that the acceptance and disposal of hazardous waste at the Facility is a violation of ORC Rule 3734.02(F) and OAC Rule 3745-27-19(E)(8)(c), and that failure to notify the Ohio EPA that hazardous waste had been disposed at the Facility within 24 hours of the discovery is a violation of OAC Rule 3745-27-19(L)(5)(a).
13. In correspondence dated March 5, 2008, Lorain County General Health District notified Respondent that that it was in violation of OAC Rule 3745-27-19(L)(5)(a) for failure to notify the Lorain County General Health District that hazardous waste had been disposed at the Facility within 24 hours of the discovery.
14. In response to the March 5, 2008 NOV, Ohio EPA received correspondence from Respondent dated March 12, 2008, stating in part, the following:

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<sup>1</sup> This waste code was incorrectly identified as D001 in the December 21, 2007 correspondence.

- a. Respondent conceded that OAC Rule 3734.02(F) and OAC Rule 3745-27-19(E)(8)(c) were violated;
  - b. Respondent does not agree with the violation of OAC Rule 3745-27-19(L)(5)(a) for failure to notify Ohio EPA within 24 hours of discovery because Respondent did not receive confirmation that the waste from Day Glo was hazardous until February 4, 2008.
  - c. A report outlining of the efforts of Respondent to retrieve and remove the Day Glo material was being prepared and would be sent to Ohio EPA.
15. On March 18, 2008, Ohio EPA received a report from Respondent dated March 7, 2008, titled "*Report to the Ohio EPA on the Remediation of a Non-Conforming Waste from Day Glo Color Corporation.*" The report included, in part, the following information:
- a. It was determined that four black 55-gallon drums containing ash from Day Glo's onsite incinerator had been disposed at the Facility. According to analytical results obtained by Day Glo, the ash had tested high in cadmium. The drums contained approximately 4.62 mg/L of leachable cadmium resulting in a total of 8.5 grams of leachable cadmium total in the four 55-gallon drums.
  - b. Respondent contracted with Chemtron Corporation to find and remove the Drums. Chemtron spent approximately one week searching for the drums, moving approximately 3,000 cubic yards of waste in the process only to find one empty drum.
  - c. On February 29, 2008, Ohio EPA officials arrived at the Facility to examine the search area. Based on the examination Respondent and Ohio EPA officials came to the determination that further excavation would be fruitless.

**Violation related to the installation of leachate storage tanks.**

16. Ohio EPA received correspondence from Respondent dated June 5, 2007, requesting an alteration to its current permit to install ("PTI") to allow for the relocation and construction of new leachate storage tanks at the Facility.
17. Ohio EPA reviewed Respondent's request, and in correspondence dated July 2, 2007, notified Respondent of six deficiencies in the request that would need to be addressed before Ohio EPA could grant the alteration.

18. Following the issuance of the Notice of Deficiency ("NOD"), Respondent and Ohio EPA exchanged correspondence via electronic mail ("e-mail") to discuss the outstanding issues with the alteration request. In the e-mail dated August 2, 2007, Ohio EPA specifically informed Respondent that, "As for the alteration request, BFI is required to have written approval prior to relocating the tanks. Due to potential enforcement ramifications, BFI should not be making and executing decisions which are classified as PTI alterations prior [to] DSIWM-NEDO approval."
19. Ohio EPA and the Lorain County General Health District conducted an inspection of the Facility on September 7, 2007. During the inspection, Ohio EPA and the Lorain County General Health District noted that the new leachate tanks were being constructed and installed at the Facility.
20. In correspondence dated September 26, 2007, Ohio EPA informed Respondent that the installation of the new tanks was a violation of OAC 3745-27-19(B)(2) for failure to conduct all operations at the Facility in strict compliance with all applicable authorizing documents. In this case, Respondent was not in compliance with the PTI for the Facility.
21. In response to the September 26, 2007 NOV, Ohio EPA received correspondence from Respondent dated October 16, 2007, wherein Respondent maintained that it felt that as the existing PTI indicated the Facility would be relocating tanks in the future, it was under the impression it could construct the new tanks, but just not operate them. Respondent went on to state that upon reviewing the PTI it agreed that the alteration request should have been approved prior to beginning construction of the tanks.
22. Following a discussion held with Respondent at the Facility on November 8, 2007, regarding the construction of the leachate collection tanks, Ohio EPA received correspondence from Respondent dated November 19, 2007, outlining the reasons Respondent constructed the leachate tanks. The reasons included the following:
  - a. Respondent needed to abandon and demolish the existing tanks because the tanks are located in the footprint of the next cell to be constructed;
  - b. Respondent needed to begin construction in August to avoid or minimize costs associated with construction in winter;
  - c. Miscommunication;
  - d. Condition of the existing tanks.

### General Operational Violations

23. Ohio EPA received correspondence from Respondent on February 23, 2007, regarding a compliance incident at the Facility. The correspondence indicated that on November 30, 2006, nine loads of solid waste were unloaded and stored overnight at the Facility.

The area where the waste was stored is not an area where waste is permitted according to the PTI for the Facility. Therefore, in correspondence dated April 12, 2007, Ohio EPA notified Respondent that the storage of waste outside a permitted area of the Facility is a violation of OAC Rule 3745-27-19(B)(2) for failure to operate the Facility in strict compliance with all applicable authorizing documents.

24. Lorain County General Health District conducted an inspection of the Facility on March 30, 2007. In correspondence dated April 13, 2007, Lorain County General Health District notified Respondent it was in violation of OAC Rule 3745-27-19(F) for failure to apply adequate daily cover.
25. Lorain County General Health District and Ohio EPA conducted an inspection of the Facility on September 7, 2007. In correspondence dated September 7, 2007, Lorain County General Health District notified Respondent it was in violation of OAC Rule 3745-27-19(E)(10)(a) for failure to keep a daily log of operations that contains all information specified by the Director. Specifically, the section titled "Waste Type" was left blank on the Facility's daily logs.
26. Lorain County General Health District conducted an inspection of the Facility on October 29, 2007. In correspondence dated November 8, 2007, Lorain County General Health District notified Respondent it was in violation of OAC Rule 3745-27-19(E)(8)(i) for acceptance and disposal of semi-solid material containing free liquids. Specifically, during the inspection, Lorain County General Health District observed the unloading and partial disposal of waste from Chemtron, Inc. that contained a mixture of solids, semi-solid, and liquid solids.
27. Ohio EPA and the Lorain County General Health District conducted an inspection of the Facility on May 12, 2008. In correspondence dated May 28, 2008, Ohio EPA notified Respondent it was in violation of OAC Rule 3745-27-19(F) for failure to apply adequate daily cover. Lorain County General Health District notified Respondent of this same violation in correspondence dated May 22, 2008.
28. Between November 27, 2006, and June 9, 2009, Ohio EPA has received 42 separate citizen complaints regarding odors emanating from the Facility.

## V. ORDERS

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

1. Not later than fourteen (14) days after the effective date of these Orders, Respondent shall designate an employee to verify prior to the closure of the Facility each day, that adequate daily cover has been applied, and that all containers holding waste have been covered.
2. Not later than fourteen (14) days after the effective date of these Orders, Respondent shall begin taking daily photographs of the working face to clearly document that adequate daily cover has been applied. Photographs shall be taken both before the application of daily cover and immediately following the application of daily cover. Respondent shall continue to take photographs to document the application of adequate daily cover for one year after the effective date of these Orders.
3. All photographs required by Order No. 2 shall be maintained at the Facility for two years after the effective date of these Orders and be made available to Ohio EPA and the Lorain County General Health District upon request. The photographs shall be marked with the date and time that the photograph was taken on the front of the photograph. The photograph shall also be marked on the back of the photograph with the name of the photographer and a description of the general area in which the photograph was taken.
4. Respondent shall pay to Ohio EPA the amount of eighteen thousand three hundred fifty-eight dollars (\$18,358.00) in settlement of Ohio EPA's claim for civil penalties, which may be assessed pursuant to ORC Chapter 3734. in accordance with the following provisions:
  - a. Within thirty (30) days after the effective date of these Orders, Respondent shall pay the amount of fourteen thousand six hundred eighty-six dollars (\$14,686.00) of the total amount which will be deposited into the environmental protection remediation fund established pursuant to ORC Section 3734.281. Payment to Ohio EPA shall be made by an official check made payable to "Treasurer, State of Ohio" for fourteen thousand six hundred eighty-six dollars (\$14,686.00). The official check shall be submitted to Ohio EPA, Office of Fiscal Administration, P.O. Box 1049, Columbus, Ohio 43216-1049, together with a letter identifying the Respondent and the Facility. A copy of the check shall be sent to Ohio EPA, Division of Solid and Infectious Waste Management, Supervisor, Systems Management Unit, P.O. Box 1049, Columbus, Ohio 43216-1049.

- b. In lieu of paying the remaining three thousand six hundred seventy two dollars (\$3,672.00) of the civil penalty identified in Order No. 8-a above, Respondent shall fund a Supplemental Environmental Project (SEP) by making a contribution in the amount of three thousand six hundred seventy two dollars (\$3,672.00) to the Ohio EPA Clean Diesel School Bus Program. Respondent shall make payment within thirty (30) days after the effective date of these Orders by tendering an official check made payable to "Treasurer, State of Ohio" for three thousand six hundred seventy two dollars (\$3,672.00). The official check shall be submitted to Ohio EPA, Office of Fiscal Administration, P.O. Box 1049, Columbus, Ohio 43216-1049, together with a letter identifying the Respondent and the Facility. A copy of the check shall be sent to Ohio EPA, Division of Solid and Infectious Waste Management, Supervisor, Systems Management Unit, P.O. Box 1049, Columbus, Ohio 43216-1049 and to Ohio EPA, Division of Air Pollution Control, Assistant Chief, SIP Development and Enforcement, P.O. Box 1049, Columbus, Ohio 43216-1049.
- c. Should Respondent fail to fund the Diesel Bus SEP in accordance with Order No. 8-b above, Respondent shall pay Ohio EPA three thousand six hundred seventy two dollars (\$3,672.00) of the civil penalty in accordance with the procedures in Order No. 8-a.

## **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 the Enforcement Coordinator of Ohio EPA's Division of Solid and Infectious 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 principal executive officer of at least the level of vice president or his duly authorized representative, if such a representative is responsible for the overall operation of the Facility.

## **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, 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 or the Facility.

## **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 Solid and Infectious Waste Management  
Attn: Unit Supervisor, DSIWM  
2110 East Aurora Road  
Twinsburg, Ohio 44087

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

## **XI. RESERVATION OF RIGHTS**

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, and in lieu of further enforcement action by Ohio EPA for only the violations specifically cited in these Orders, Respondent consents to the issuance of these Orders and agrees to comply with these Orders. 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 the 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

**IT IS SO AGREED:**

**Browning-Ferris Industries of Ohio, Inc.**

Heath Edlley                      8/15/08  
Signature    Date

Market VP  
Title