



State of Ohio Environmental Protection Agency

STREET ADDRESS:

Lazarus Government Center
50 W. Town St., Suite 700
Columbus, Ohio 43215

TELE: (614) 644-3020 FAX: (614) 644-3184
www.epa.state.oh.us

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OHIO EPA

MAY 05 2009

MAILING ADDRESS:

Southwest District

P.O. Box 1049
Columbus, OH 43216-1049

CERTIFIED MAIL

May 1, 2009

**Re: Director's Final Findings & Orders
Exemption Pursuant to R.C. 3747.02(G)
U. S. EPA Test and Evaluation Facility
U. S. EPA ID No.: OH3 680 090 005**

Mr. John C. Ireland, Manager
U. S. EPA Test and Evaluation Facility
1600 Gest Street
Cincinnati, Ohio 45268-0521

Dear Mr. Ireland:

Here are the Director's Final Findings and Orders (Orders) exempting U. S. EPA Test and Evaluation Facility from hazardous waste transportation and permitting requirements under Ohio Revised Code 3747.02(G), 3747.13, 3747.14 and 3745.01. These Orders are effective today.

If you have any questions concerning compliance with these Orders, do not hesitate to contact Paul Pardi at (937) 285-6357.

Sincerely,

Harry Sarvis, Manager
Compliance and Assurance Section
Division of Hazardous Waste Management

enf.USEPA Test&EvaluationFac.SWDO.09.jms.doc

Attachments

c: Michael A. Savage, Chief, DHWM
Todd Anderson, Legal
Heidi Greismer, PIC
Paul Pardi, Mgr., DHWM, SWDO

Ted Strickland, Governor
Lee Fisher, Lieutenant Governor
Chris Korleski, Director



OHIO E.P.A.

MAY - 1 2009

ENTERED DIRECTOR'S JOURNAL

In the matter of:

United States Environmental Protection Agency : Director's Final
Test and Evaluation Facility : Findings and Orders
1600 Gest Street
Cincinnati, Ohio 45268-0521

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

By: John Lassiter Date: 5-1-09

It is hereby agreed by the parties hereto as follows:

I. JURISDICTION

These Director's Final Findings and Orders (Orders) are issued to the United States Environmental Protection Agency (U.S. EPA) (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 of 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 rules promulgated thereunder.

IV. FINDINGS

The Director of Ohio EPA has determined the following findings:

1. Pursuant to ORC § 3734.02(G) and Ohio Administrative Code (OAC) Rule 3745-50-31, the Director may, by order, exempt any person generating, storing, treating, disposing, or transporting hazardous waste in such quantities or under such circumstances that, in the determination of the Director, it is unlikely that the

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public health, safety, or the environment will be adversely affected thereby, from any requirement to obtain a permit or license, comply with the manifest system or 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, except as otherwise provided by ORC Chapter 3734.

2. Respondent owns and operates the Test and Evaluation facility located at 1600 Gest Street, Cincinnati, Hamilton County, Ohio (Facility). At the Facility, the Respondent operates a research laboratory which is used to conduct a variety of innovative bench and pilot-scale experiments, including numerous hazardous waste treatment studies. Respondent's activities at this Facility vary regularly and Respondent's main emphasis is to support U.S. EPA's research and regulatory responsibilities.
3. At this Facility, Respondent typically stores and treats hazardous waste that is excluded from hazardous waste permitting requirements pursuant to Ohio's treatability studies exclusion in OAC Rule 3745-51-04.
4. At various times, however, Respondent stores and/or treats hazardous waste in volumes greater than that allowed by Ohio's treatability studies exclusion rule, and Respondent therefore becomes subject to hazardous waste permitting requirements for these storage and treatment activities.
5. On May 13, 1987, the former Ohio Hazardous Waste Facility Board issued a Hazardous Waste Facility Installation and Operation Permit (Permit) to the Respondent. The Permit authorized Respondent to store hazardous waste in twenty (20) fifty-five (55) gallon containers, as well as two (2) 2,500 gallon tanks and one (1) 5,000 gallon tank. In addition, the Permit authorized Respondent to conduct hazardous waste treatment activities in support of research conducted at the Facility. On November 8, 1991, Respondent submitted a Permit renewal application to Ohio EPA.
6. Ohio EPA and Respondent discussed what mechanism, a hazardous waste permit or other authorizing document (e.g., a Director's exemption issued pursuant to ORC § 3734.02(G)), is most appropriate for Respondent's regulated hazardous waste activities at the Facility. During these discussions, Ohio EPA

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indicated that the uncertainties associated with the scope and type of Respondent's future hazardous waste storage and/or treatment activities made it difficult for Ohio EPA to approve Respondent's Permit renewal application for this Facility.

7. On September 16, 1997, Respondent submitted to Ohio EPA an exemption request, pursuant to ORC § 3734.02(G) and OAC Rule 3745-50-31, to exempt Respondent from Ohio's hazardous waste permitting requirements for those activities requiring a hazardous waste storage and/or treatment permit at the Facility. On October 2, 1997 and March 4, 1998, Respondent submitted to Ohio EPA revisions to this exemption request.
8. Ohio EPA reviewed Respondent's exemption request dated September 16, 1997 and subsequent revisions dated October 2, 1997 and March 4, 1998, and concluded that the information was complete and technically adequate.
9. Ohio EPA and Respondent agreed that Respondent would withdraw its hazardous waste Permit renewal application within five (5) days of the effective date of exemption orders issued by the Director. Upon Ohio EPA's concurrence that Respondent's withdrawal request had met the requirements of OAC Rule 3745-50-47, Respondent's Permit would expire.
10. On November 4, 1998, the Director issued Director's Final Finding and Orders (1998 Orders) exempting Respondent from Ohio's hazardous waste permitting requirements for those activities requiring a hazardous waste storage and/or treatment permit at the Facility, pursuant to ORC § 3734.02(G) and OAC Rule 3745-50-31, provided that Respondent comply with the 1998 Orders. The Director determined that if the Respondent operated its Facility in compliance with the 1998 Orders, it was unlikely that the public health or safety or the environment would be adversely affected. The 1998 Orders were consistent with and equivalent to the rules promulgated under the Resource Conservation and Recovery Act of 1976, 90 Stat. 2906, 42 U.S.C 6921 *et seq.*, as amended, except as otherwise provided by ORC Chapter 3734.
11. The exemption from the State of Ohio's hazardous waste permitting requirements provided by the 1998 Orders terminated on November 4, 2003. An extension to the exemption could be granted by the Director of Ohio EPA if

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Respondent applied to Ohio EPA for such extension in writing at least sixty (60) days before the expiration date of the exemption, and provided sufficient justification for the extension.

12. On August 26, 2003 and at least sixty (60) days prior to the expiration date of November 4, 2003, Respondent applied in writing to Ohio EPA for an extension of the exemption granted by the 1998 Orders.
13. Upon review of the August 26, 2003 application, Ohio EPA requested minor revisions to the application.
14. On October 2, 2003, Respondent submitted to Ohio EPA a revised application.
15. Ohio EPA reviewed Respondent's extension request dated August 26, 2003 and revised application dated October 2, 2003 and concluded that the information was complete and technically adequate.
16. Respondent entered into Director's Final Findings and Orders on December 23, 2003 (2003 Orders), which exempted Respondent from the requirement to have a hazardous waste permit for its storage and/or treatment of hazardous waste in volumes or quantities exceeding the capacity limitation of Ohio's treatability studies exclusion rule (OAC Rule 3745-51-04). The 2003 Orders also required, *inter alia*, that Respondent conduct all storage and/or treatment of hazardous waste in containers and tanks in accordance with Respondent's August 26, 2003 exemption request, as revised on October 2, 2003.
17. During a March 9, 2004 inspection, Ohio EPA staff noticed a physical change in the Facility that warranted a change in the October 2, 2003, revised exemption request application.
18. On April 12, 2004, Respondent submitted a revised exemption request application to Ohio EPA updated to reflect the current conditions at the Facility.
19. Ohio EPA reviewed Respondent's revised application dated April 12, 2004, and concluded that the information was complete and technically adequate.

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20. Respondent entered into Director's Final Findings and Orders on May 13, 2004 (2004 Orders), which modified the 2003 Orders to follow the exemption application dated April 12, 2004, in lieu of the revised exemption request application of October 2, 2003.
21. The exemption from the State of Ohio's hazardous waste permitting requirements provided by the 2004 Orders terminated on December 23, 2008. An extension to the exemption could be granted by the Director of Ohio EPA if Respondent applied to Ohio EPA for such extension in writing at least sixty (60) days before the expiration date of the exemption, and provided sufficient justification for the extension.
22. On October 08, 2008, Ohio EPA received Respondent's permit exemption request dated September 30, 2008 which was at least sixty (60) days prior to the expiration date of December 23, 2008.
23. Ohio EPA reviewed Respondent's extension request dated September 30, 2008, and concluded that the information was complete and technically adequate.
24. Pursuant to ORC § 3734.02(G) and OAC Rule 3745-50-31, the Director has decided to grant an extension to exempt the Respondent from Ohio's hazardous waste permitting requirements for those activities requiring a hazardous waste storage and/or treatment permit at the Facility provided that Respondent complies with the Orders contained herein. The Director has determined that if Respondent operates its Facility in compliance with these Orders, it is unlikely that the public health or safety or the environment will be adversely affected. These Orders are consistent with and equivalent to the rules promulgated under the Resource Conservation and Recovery Act of 1976, 90 Stat. 2906, 42 U.S.C. 6921 et seq., as amended, except as otherwise provide by ORC Chapter 3734.

V. ORDERS

1. Respondent is hereby exempted from the requirement to have a hazardous waste permit for its storage and/or treatment of hazardous waste in volumes or quantities exceeding the capacity limitation of Ohio's treatability studies exclusion rule (OAC Rule 3745-51-04) provided that the following conditions are satisfied:

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- a. Respondent shall conduct all storage and/or treatment of hazardous waste in containers and tanks in accordance with Respondent's September 30, 2008, exemption request. The exemption authorizes storage of hazardous waste within two (2) container storage areas with capacity of 550 gallons each, as well as two (2) 2,500 gallon tanks and one (1) 5,000 gallon tank.
- b. Respondent shall comply with all hazardous waste regulations set forth in the OAC applicable to storage and/or treatment of hazardous waste in containers and tanks.
- c. Respondent shall comply with all storage and treatment volume limitations set forth in Finding No.5.
- d. Within seven (7) days before or after the commencement of storage and/or treatment of hazardous waste in volumes or quantities exceeding the capacity limitation of Ohio's treatability studies exclusion rule at Respondent's Facility, Respondent shall submit a notification that includes the following information:

For storage: the volume, type (e.g., waste codes), unit(s) (e.g., tank or container), and estimate of time that the material will be stored;

For treatment: the volume, type (e.g., waste codes), and description of the treatment process.

- e. Within thirty (30) days after the completion of a storage and/or treatment activity conducted under Order No. 1.d, Respondent shall submit a Completion of Project report to Ohio EPA. The report shall address the following information needs of Ohio EPA:
 - i. General description of the project activity;
 - ii. Regulated units (e.g., storage and/or treatment) involved in the activity;
 - iii. the volume and type(e.g. waste codes) of hazardous wastes involved in the activity;
 - iv. total duration of time in which the activity occurred; and
 - v. current disposition of wastes involved in the activity.

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The Director of Ohio EPA will review the report to determine compliance with the requirements herein.

2. Any hazardous waste storage or treatment activities at the Facility conducted under Order No. 1 shall be subject to OAC Rules 3745-55-11 and 3745-55-14. All information pertaining to such closures shall be maintained on-site as part of Respondent' operating record.
3. Upon cessation of operations at the Facility or upon revocation or termination of these Orders, whichever first occurs, Respondent shall conduct closure of the Facility in accordance with OAC Rules 3745-55-10 through 3745-55-20.
4. The exemption from the State of Ohio's hazardous waste permitting requirement provided by these Orders shall terminate ten (10) years from the effective date of these Orders. An extension to the exemption may be granted by the Director of Ohio EPA if Respondent applies to Ohio EPA for such extension in writing at least sixty (60) days before the expiration date of the exemption, and provides sufficient justification for the additional time.
5. The Director may revoke these Orders for any reason, including but not limited to, a determination that Respondent's activities at the Facility adversely affect public health or safety or the environment, and/or activities are not being conducted in accordance with these Orders.
6. The issuance of these Orders by the Director does not release Respondent of any liability it may have incurred for any violations which may have occurred at the Facility prior to the effective date of these Orders. The issuance of these Orders does not release Respondent of any obligation it has to comply with the State of Ohio's environmental laws, except as otherwise specifically provided herein.
7. These Orders do not exempt Respondent from any other local, state, or federal laws or regulations which are otherwise applicable.

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VI. 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.

VII. 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.

VIII. RESERVATION OF RIGHTS

Ohio EPA and Respondent each reserve all rights, privileges and causes of action, except as specifically waived in Section IX. of these Orders.

IX. WAIVER

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.

X. EFFECTIVE DATE

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

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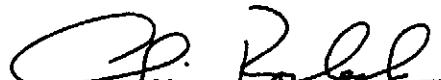
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XI. SIGNATORY AUTHORITY

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 ORDERED AND AGREED:

Ohio Environmental Protection Agency



Chris Korleski
Director

May 1, 2009

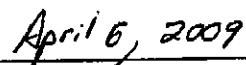
Date

IT IS SO AGREED:

United States Environmental Protection Agency
Test and Evaluation Facility



Signature



Date

JOHN IRELAND

Printed or Typed Name

Facility Manager

Title

