



State of Ohio Environmental Protection Agency

Northeast District Office

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

March 30, 2007

RE: **ZACLON LLC
CUYAHOGA COUNTY
OHD 004 184 768
LQG CEI PARTIAL RETURN TO
COMPLIANCE**

CERTIFIED MAIL

Mr. John Curry
Quality Assurance/Compliance Regulatory Manager
Zaclon LLC
2981 Independence Road
Cleveland, Ohio 44115-3699

Dear Mr. Curry:

On November 30, 2006, Ohio EPA received a letter dated November 29, 2006, from Zaclon LLC submitted in response to the Ohio EPA Notice of Violation (NOV) letter dated November 14, 2005 and Ohio EPA's Partial Return to Compliance letter dated October 23, 2006. The November 2006 response letter included the following attachments:

1. Attachment A - Revised LDR Form
2. Attachment B - Master Floors letter regarding brick sump and reactor area [Quilon]
3. Attachment C - Photograph of sealed concrete in reactor area.
4. Attachment D - Bill of Lading to American Landfill for C&D material
5. Attachment E - Sampling plan for accelerator waste
6. Attachment F - MSDS for Zep Power Solve 5000
7. Attachment G - MSDS for Zep Solv

Zaclon also faxed the manifests from Bldg. 13 on October 23, 2006.

Based on a review of the documentation, it appears that Zaclon has adequately addressed the following violations as noted in the November 2005 NOV/October 2006 PRTC:

2. *Waste Evaluation, OAC rule 3745-52-11 (however, please see violation 1f)*
27. *Testing, Tracking, and Recordkeeping Requirements for Generators, Treaters, and Disposal Facilities, OAC rule 3745-270-07(A)(7)*
40. *Waste Evaluation, OAC rule 3745-52-11*

However, additional actions and/or information is needed to abate the following violations. Please note, an additional unit has been added to violation 1 (see 1f); it is marked in this letter with an arrow (↔) in the margin. Also, some of the violation numbers have been revised from the previous correspondence.

Mr. John Curry
Zaclon LLC
March 30, 2007
Page 2

1. *Establishing and operating a hazardous waste facility without a permit and storing hazardous waste without a permit, Ohio Revised Code (ORC) § 3734.02 (E) and (F):*

Violation 1. a and b are in regards to the storage of hazardous waste on the SASH pad and the baghouse dust area near the SASH pad. On November 3, 2005, Susan L. Biro, Chief Administrative Law Judge noted in Section V. CONCLUSION of the "Order On Complainant's Motion for Accelerated Decision on Liability" Docket No. RCRA-05-2004-0019, that Zaclon "stored hazardous wastes, namely SASH and baghouse dust, at their facility without a permit or interim status, in violation of Section 3005(a) of RCRA, 42 U.S.C § 6925(a), and the state regulations implementing this provision, Ohio Administrative Code 3745-50-45."

Therefore these two violations of ORC § 3734.02 (E) and (F) shall remain outstanding until Zaclon has completed closure of the two units and the closure certification has been accepted by the Director of Ohio EPA.

Zaclon must prepare and submit for Ohio EPA's approval a closure plan in accordance with OAC rules 3745-55-11/3745-66-11 through 3745-55-20/3745-66-20 and specifically, OAC rule 3745-56-58(C) for both the waste pile area noted in 1.a and the baghouse area noted in 1.b.

Violation 1.c. is in regards to Zaclon's storage of hazardous waste spent stripping acid from off-site facilities. While this is the second count in US EPA's complaint against the facility, Ohio EPA maintains that the facility is in violation of this until such time that Zaclon takes one of the following actions: put this hazardous waste directly into the reclamation portion of the system without any prior storage; cease receiving this spent stripping acid hazardous waste permanently; or cease receiving this spent stripping acid hazardous waste until Zaclon obtains a hazardous waste installation and operation permit which allows you to receive and store hazardous waste in these tanks.

Additionally, you must submit a closure plan in accordance with OAC rules 3745-55-11/3745-66-11 through 3745-55-20/3745-66-20 and specifically OAC rule 3745-55-97 for Ohio EPA's approval for these two tanks.

Violation 1.d. is in regards to Zaclon's storage of hazardous waste brass fines and rolling mill fines in the mid 1990's that was involved in a fire in 2005. This violation of ORC § 3734.02 (E) and (F) shall remain outstanding until Zaclon has completed closure of the unit and the closure certification has been accepted by the Director of Ohio EPA.

Mr. John Curry
Zaclon LLC
March 30, 2007
Page 3

Please note: In your November 2006 response, you posed the question “when does the clock start?” in regards to calculating the 90 day period. If Zaclon had recycled 75% of the material in the calendar year in which it was received, there would not have been a violation cited. Since there was no recycling, the material was a waste since it was accumulated speculatively and the 90 day accumulation period began on the first day the waste was accepted.

Violation 1e [Formerly violation 42 from the October 2006 PRTC] is in regards to the 14 drums behind Bldg. 25 that were determined to be hazardous waste, either for ignitability or corrosivity. The drums had been on site for greater than 90 days. Per discussions between Ohio EPA and Zaclon during the August 2005 inspection, some of the drums may have been on site for at least five years. This violation of ORC § 3734.02 (E) and (F) shall remain outstanding until Zaclon has completed closure of the unit and the closure certification has been accepted by the Director of Ohio EPA.

Please note: In your November 2006 response, you also posed the question “when does the clock start?” in regards to calculating the 90 day period of the drums. Based on the appearance of the condition of the drums (poor) and the fact that Zaclon could not identify the contents of most of the drums, Ohio EPA does not believe the argument that the material was a usable product and a valuable commodity to Zaclon. The drums were essentially abandoned at the rear of the property and the accumulation period would have started at that time. While neither Zaclon nor Ohio EPA can definitively ascertain the specific date, Zaclon indicated that the material had been on site for at least five years as stated above.

Zaclon must submit a closure plan in accordance with OAC rules 3745-55-11/3745-66-11 through 3745-55-20/3745-66-20 for the areas specified above in 1d and 1e.

⇒ **NEW Violation 1f *Establishing and operating a hazardous waste facility without a permit and storing hazardous waste without a permit, Ohio Revised Code (ORC) § 3734.02 (E) and (F)*:** [Based on the information submitted in the facsimile sent in October 2006 in response to Violation 2]. Based on the manifest submitted, it appears that there was at least 23 containers of hazardous waste shipped off site from Building 13. Waste codes included: D001 (ignitability), D002 (corrosivity), D003 (reactivity), D004 (arsenic), D005 (barium), D006 (cadmium), D007 (chromium), D008 (lead), D009 (mercury), D011 (silver), U122 (formaldehyde), P022 (carbon disulfide), P106 (sodium cyanide), U134 (hydrofluoric acid), and U226 (ethane, 1,1,1-trichloro). A total of 1634 pounds of hazardous waste was disposed from Building 13.

Based on information Zaclon gave Ohio EPA at the time of the initial inspection, the lab had not been used since the 1996-1998 time period. Therefore it appears the material had been on site, abandoned, since that time period, in excess of the allowable 90 day accumulation period. Zaclon was not treating the material as if it

Mr. John Curry
Zaclon LLC
March 30, 2007
Page 4

had any value, in fact, Zaclon had initially told Ohio EPA the building was empty, leading Ohio EPA to conclude Zaclon was unaware of the material in the building. You must submit a closure plan in accordance with OAC rules 3745-55-11/3745-66-11 through 3745-55-20/3745-66-20 for the building. This violation of ORC § 3734.02 (E) and (F) shall remain outstanding until Zaclon has completed closure of the unit and the closure certification has been accepted by the Director of Ohio EPA.

Since Zaclon violated ORC §3734.02(E) and (F), Zaclon is subject to all applicable general facility standards found in OAC chapters 3745-54 and 55. Additionally, at any time Ohio EPA may assert its right to have Zaclon begin a facility-wide cleanup pursuant to the Corrective Action process under Ohio law.

2. ***Maintenance/Design and Operation of Facility, OAC rule 3745-65-31/OAC rule 3745-54-31:*** [Formerly violation 11] Facilities shall be operated to minimize the possibility of a fire, explosion, or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to air, soil, or surface water which could threaten human health or the environment.

While Zaclon has addressed the issues in the accelerator area, Zaclon must control the ongoing releases of hazardous waste from the hazardous waste pile (SASH pile). Zaclon must containerize or somehow remove the material from the pad to eliminate the tracking, run off and wind dispersal of the hazardous waste.

You state in your November 2006 response letter that the waste has been pulled back from the berm area and that the waste has been shoveled off the tops of the walls as requested by Ohio EPA in the October 2006 PRTC letter. You also state that the pipe-like opening under the grizzly had no staining indicating SASH washed through this pipe and that the pipe had been sealed with concrete.

You also state in your November 2006 letter that the proposed SASH pad revision submitted in April 2006 will be revised to include a raised berm on the northwest side of the pad at the existing ramp. If this plan is implemented, Zaclon does not anticipate vehicles entering or leaving the pad.

Ohio EPA requests that this revision to the SASH pad be submitted to Ohio EPA. Once this plan is implemented, documentation (*e.g.* photographs, *etc.*) demonstrating that this waste area is now being maintained and operated to minimize run on and run off should be submitted.

As stated in the rule citation, run on and run off are only one of the factors which needs to be mitigated. Two other concerns remain. First is the integrity of the pad itself and whether or not releases have occurred through any cracks which may exist in the pad. Second, a demonstration that hazardous constituents are not becoming airborne has not been made. Please indicate how Zaclon will minimize the potential

Mr. John Curry
Zaclon LLC
March 30, 2007
Page 5

for releases through the pad and to the air from the SASH hazardous waste pile. Ohio EPA maintains the best way to manage the waste is in containers. Ohio EPA recognizes you're contention that containerizing the waste is unreasonable, but the violation will remain until all actions are taken to minimize releases to the environment. Ohio EPA would encourage Zaclon to mitigate releases, as much as possible, by addressing the condition of the pad and controlling air borne releases.

Please note: In your letter you state that the waste in the SASH pile may be sent to a recycler to be used in either a fertilizer ingredient or in the manufacture of another zinc containing chemical. Zaclon needs be aware that the material in the SASH pile is considered by Ohio and US EPA to be a hazardous waste and depending on how the waste is managed at the receiving facility, it may need to be shipped on a hazardous waste manifest and the receiving facility may need a valid hazardous waste permit or its equivalent. The new zinc fertilizer exemption found in 40 CFR § 261.4 (a) (20) has not been adopted by Ohio EPA and is not an option for this waste.

Ohio EPA also had the following concerns from the November 14, 2005 NOV:

35. The sludge generated at BLDG #39 has been determined to be non-hazardous. While Zaclon states that the process may change, please note that the generator closure requirements found in OAC rule 3745-66-11 and 14 for the accumulation area do apply to this area.

While the rules do not impose a schedule as to when this generator closure must be complete, this concern will remain until documentation is received documenting the generator closure requirements have been met. You state that this will occur before the closing of the facility. Until the closure is completed, no further information is required.

37. During the inspection, Ohio EPA noted that there were definite signs of disintegration of the concrete pad under this waste water system at the Quilon building.

Based on the information submitted, it appears that Zaclon has adequately repaired the sump area. No further action is required at this time.

Failure to list specific deficiencies and/or violations in this communication does not relieve Zaclon from the responsibility of complying with all applicable laws, rules and regulations.

Further be advised that any instances of non-compliance can continue as subjects of pending or future enforcement actions.

Mr. John Curry
Zaclon LLC
March 30, 2007
Page 6

In accordance with OAC rule 3745-50-30, if Zaclon takes the position that records of Ohio EPA, including correspondence such as this letter, contain trade secret information, Zaclon must provide a request to Ohio EPA which is accompanied by sufficient supporting documentation.

Please respond to this letter in writing by April 30, 2007, and provide all of the information requested above. Should you have any questions or require additional information, please contact Frank Popotnik, my supervisor, or me at (330) 963-1200.

Sincerely,



Karen L. Nesbit
Division of Hazardous Waste Management

KLN:cl

ec: Frank Popotnik, DHWM, NEDO
Harry Sarvis, DHWM, CO

cc: Natalie Oryshkewych, DHWM, NEDO
Mitch Mathews, DHWM, CO
Mike Cunningham, USEPA, Region V