



State of Ohio Environmental Protection Agency

Northeast District Office



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CERTIFIED MAIL

January 6, 2009

Mr. Kenneth Gray
Gray Container, LLC
2800 E. 90TH St.
Cleveland, OH 44104

RE: GRAY CONTAINER LLC, CUYAHOGA COUNTY, OHD980903827, NOV

Dear Mr. Gray:

Ohio EPA, Division of Hazardous Waste Management (DHWM) has conducted several hazardous waste compliance evaluation inspections (CEI) at the Gray Container, LLC (Gray Container) facility located at 2800 East 90TH Street in Cleveland, Ohio. The purpose of these inspections was to determine your facility's compliance with Ohio's hazardous waste laws as found in Chapter 3734 of the Ohio Revised Code (ORC) and the rules promulgated thereunder in Chapter 3745 of the Ohio Administrative Code (OAC). The following summarizes Ohio EPA-DHWM's recent involvement at your facility:

- On May 30, 2007, DHWM conducted an unannounced hazardous waste CEI. During the inspection, DHWM documented the presence of wastes in six trailers, as well as at locations G01 through G48.
- On June 19, 2007, DHWM issued a Notice of Violation (NOV) letter to you concerning the violations which were found during the May 30, 2007 CEI.
- On August 28, 2007, Gray Container submitted its response to DHWM's June 19, 2007 NOV letter.
- On October 7, 2007, DHWM met with you and your consultants to discuss your August 28, 2007 submittal.
- On January 7, 2008, DHWM conducted an unannounced hazardous waste CEI. During the inspection, DHWM documented the presence of wastes in five trailers, as well as at locations G01 through G50.
- On January 11, 2008, DHWM observed sampling activities conducted by your consultant at location G33. DHWM split samples with your consultant.
- On February 20, 2008, DHWM observed sampling activities conducted by your consultant at Trailer Five and Trailer Six. DHWM split samples with your consultant.
- On March 18, 2008, DHWM issued a NOV letter to you concerning the violations which were found during the January 7, 2008 CEI, as well as from information obtained in January, February and March 2008 regarding the facility.
- On April 14, 2008, DHWM met with you and your consultant to discuss the March 18, 2008 NOV letter.
- On May 5 and May 9, 2008, DHWM observed waste management activities conducted by you and your consultant at location G33. On May 9, 2008, DHWM obtained a soil sample from location G33.
- On June 2, 2008, DHWM issued a letter to you concerning the status of the unabated violations at your facility.



- On June 24, 2008, you shipped off-site 85 containers (4,675-gallons) of D001/D004/D007/D008/D035/F003/F005 hazardous waste to a permitted facility. These wastes originated from location G33.
- On July 30, 2008, Gray Container submitted its response to DHWM's March 18 and June 2, 2008 NOV letters.
- On July 30, 2008, DHWM observed sampling activities conducted by your consultant of the containers previously found in Trailer One, Trailer Seven and Trailer Eight. DHWM split samples with your consultant. Prior to this visit, you had relocated the containers from the G locations (G01-G50), Trailer One, Trailer Five, Trailer Six, Trailer Seven and Trailer Eight to the Old Process Building.
- On August 6, 2008, DHWM observed sampling activities conducted by your consultant of the containers previously found in Trailer One and Trailer Five.
- On August 14, 2008, DHWM observed sampling activities conducted by your consultant of the containers previously found in Trailer Six and the multiple G locations (G01-G53). DHWM split samples with your consultant.
- On September 4, 2008, DHWM met with you and your consultant to discuss the management of the wastes found at your facility. Additionally, DHWM conducted an inspection of your facility grounds. During the inspection, DHWM documented the presence of wastes at locations F01 through F22. DHWM obtained a sample from container F22.
- On September 12, 2008, you shipped off-site one roll-off box of F003/F005 hazardous waste to a permitted facility. The roll-off box contained contaminated soil/debris from location G33.
- On October 24, 2008, DHWM observed waste management activities, conducted by you and your consultant, of the containerized wastes located in the Old Process Building. With respect to these wastes, you shipped off-site one tanker truck (2,996-gallons) of D001/D004/D007/D008/D018/D035/D039/D040/F001/F002/F003/F005 hazardous waste to a permitted facility.
- On November 12, 2008, DHWM observed waste management activities, conducted by you and your consultant, of the containerized wastes located in the Old Process Building. Additionally, DHWM observed sampling activities conducted by your consultant of the containers previously found at location G05 and from beneath the RTA bridge. DHWM split samples with your consultant.
- On November 13, 2008, you shipped off-site 65 containers (3,575-gallons) of D001/D004/D007/D008/D018/D035/D039/D040/F001/F002/F003/F005 hazardous waste, three containers (165-gallons) of D001/D002/D004/D007/D008/D018/D035/D039/D040/F001/F002/F003/F005 hazardous waste and three containers (165-gallons) of F003/F005/D005/D007/D008/D035 hazardous waste to a permitted facility. These hazardous wastes were located in the Old Process Building.

The following violations have been documented at the Gray Container facility:

1. ORC § 3734.02(E)&(F), Unlawful Storage and Disposal of Hazardous Waste:
 - A. During the May 30, 2007 CEI, DHWM documented approximately 120 containers at location G33. Subsequently, on January 7, 2008, DHWM documented these same containers at location G33. Several of these containers were open and in poor condition as evidenced by the release(s) of waste material, as well as the visible sheen observed on ponded precipitation amongst the containers.

On January 11, 2008, your consultant obtained samples from the containers found at location G33. The analytical results revealed the presence of ignitable hazardous waste, as defined by OAC rule 3745-51-21, in these containers. On June 24, 2008, you shipped off-site 85 containers (4,675-gallons) of D001/D004/D007/D008/D035/F003/F005 hazardous waste from location G33 to a permitted facility. Therefore, Gray Container unlawfully stored hazardous waste since these wastes were on-site for greater-than-ninety (>90) days.

On January 11, 2008, your consultant obtained a sample of the released waste and ponded precipitation found amongst the containers at location G33. The analytical results revealed hazardous constituents consistent with the type of hazardous waste present inside the containers at location G33. Therefore, Gray Container conducted unlawful disposal of hazardous waste as evidenced by the release of hazardous waste constituents to the environment. On September 12, 2008, you shipped off-site one roll-off box of F003/F005 hazardous waste to a permitted facility. The roll-off box contained contaminated soil from location G33.

- B. During the May 30, 2007 CEI, DHWM documented three containers at location G05. On August 14, 2008, DHWM documented 10 containers at location G05. Subsequently, on September 4 and October 24, 2008, DHWM documented an additional container at location G05. Several of these containers were open and in poor condition as evidenced by the release(s) of waste material. These containers were then re-located to the Old Process Building from their original location. On August 14 and November 12, 2008, your consultant obtained samples from the containers found at location G05. The analytical results revealed the presence of ignitable and corrosive hazardous waste, as defined by OAC rules 3745-51-21 and 3745-21-22, in these containers. On October 24 and November 13, 2008, you shipped four of these containers off-site as hazardous waste. Therefore, Gray Container unlawfully stored hazardous waste since these wastes were on-site for greater-than-ninety (>90) days. Please note that at least one container (GCS-05) remains on-site and contains corrosive hazardous waste. **Submit documentation (i.e., manifest) documenting the lawful, off-site disposal of all wastes from location G05.**

- C. During the May 30, 2007 CEI, DHWM documented approximately 70 containers in Trailer One, approximately 50 containers in Trailer Five and approximately 20 containers in Trailer Six. On February 20, 2008, DHWM documented 52 containers from Trailer Five and 22 containers from Trailer Six. On July 30, 2008, DHWM documented 70 containers from Trailer One, three containers from Trailer Seven and 11 containers from Trailer Eight. All of these containers had been re-located to the Old Process Building from their original trailer locations.

On February 20, July 30, August 6, and August 14, 2008, your consultant obtained samples from the containers found in Trailer One, Trailer Five, Trailer Six, Trailer Seven and Trailer Eight that were being stored in the Old Process Building. The analytical results revealed the presence of ignitable and corrosive hazardous waste, as defined by OAC rules 3745-51-21 and 3745-51-22, in these containers. On October 24, 2008, you shipped off-site one tanker truck (2,996-gallons) of D001/D004/D007/D008/D018/D035/D039/D040/F001/F002/F003/F005 hazardous waste to a permitted facility. On November 13, 2008, you shipped off-site 71 containers

(3,905-gallons) of D001/D002/D004/D005/D007/D008/D018/D035/D039/D040/F001/F002/F003/F005 hazardous waste to a permitted facility.

On September 4, 2008, DHWM documented the presence of one container at the Receiving Building. The container was marked by DHWM as F22. Analytical results revealed the presence of ignitable hazardous waste, as defined by OAC rule 3745-51-21, in this container. Please note that container F22 remains on-site. **Submit documentation (i.e., manifest) documenting the lawful, off-site disposal of the hazardous waste.**

You indicated that the contents of the containers found in Trailer One, Trailer Five, Trailer Six, Trailer Seven, Trailer Eight and F22 originated from off-site generators. Specifically, the contents of these containers originated from when Gray Container received containers that were not empty as specified in OAC rule 3745-51-07. Gray Container does not have a permit to accept or store hazardous waste from off-site generators. Therefore, Gray Container unlawfully accepted and stored hazardous waste.

Gray Container is prohibited from accepting and storing hazardous waste from off-site generators. Submit a plan to DHWM which describes in detail how Gray Container will prevent acceptance and storage of containers that are not empty as specified in OAC rule 3745-51-07.

Submit a legible, return to generator copy of the hazardous waste manifests for the June 24, September 12, October 24 and November 13, 2008 shipments of hazardous waste.

In accordance with OAC rule 3745-55-10 through 3745-55-20, Gray Container must conduct closure activities for all areas where hazardous wastes were unlawfully stored and/or disposed. Closure activities will entail the following: removing and disposing of all waste and residues, removing or decontaminating contaminated equipment and structures, remediating contaminated soils and groundwater if necessary, and managing all wastes generated from these activities in accordance with the hazardous waste laws and rules. You must submit a closure plan which ensures that the closure performance standards set forth in OAC rule 3745-55-11 are met. The closure performance standards require you to remove and remediate contamination in these areas to prevent it from posing a risk to human health and the environment. The closure plan should be prepared in accordance with Ohio EPA's Closure Plan Review Guidance for RCRA Facilities. Additionally, Gray Container must comply with the closure cost estimate, financial assurance and liability requirements found in OAC rules 3745-55-40 to 3745-55-51.

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

2. General Waste Analysis, OAC rule 3745-54-13 and OAC rule 3745-52-11, Waste Evaluation:

Gray Container failed to obtain a detailed chemical and physical analysis of the wastes found in Trailer One, Trailer Five, Trailer Six, Trailer Seven and Trailer Eight. On February 20, July 30, August 6, and August 14, 2008, your consultant obtained samples from these containers. Based on the analytical results, the contents of these containers were shipped off-site as a hazardous waste to a permitted facility.

On September 4, 2008, DHWM observed an estimated 40 containers of waste at your facility. Individual containers and groups of containers were identified as F01 through F22. Several of these containers were open and in poor condition as evidenced by the release(s) of waste material. Additionally, on October 24, 2008, DHWM observed 10 containers beneath the RTA bridge.

You must conduct an inspection of your facility to identify any container or tank of waste that is present. Report your findings to DHWM.

Gray Container must evaluate the contents of all containers (locations F01-F22), as well as any newly identified wastes. Submit the following information for all wastes:

- **Waste evaluation results,**
- **Identify in writing how the contents of the container or tank will be lawfully disposed, and**
- **Submit documentation (i.e., manifest) documenting the lawful, off-site disposal of the waste.**

As an unlawful hazardous waste facility, Gray Container remains in violation of:

3. OAC rule 3745-54-14, Security
4. OAC rule 3745-54-15, General Inspection Requirements
5. OAC rule 3745-54-16, Personnel Training
6. OAC rule 3745-54-17, Requirements for Wastes
7. OAC rules 3745-54-30 to 3745-54-37, Emergency Preparedness & Prevention
8. OAC rule 3745 54 31, Maintenance & Operation
9. OAC rules 3745-54-50 to 3745-54-52, Contingency Plan
10. OAC rules 3745-54-55 & 3745-54-56, Emergency Coordinator & Procedures
11. OAC rules 3745-55-70 to 3745-55-77, Use and Management of Hazardous Waste Containers
12. OAC rules 3745-55-40 through 3745-55-51, Closure Cost Estimate, Financial Assurance and Liability Requirements

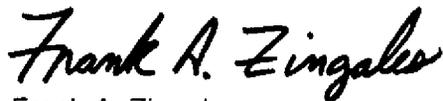
Please be aware that your facility will remain in violation until the appropriate documentation is received by the undersigned. **Within 30 days of receipt of this letter, submit a written response to the undersigned addressing each violation appearing in this letter. Pertinent documentation to address each violation must accompany your response.**

GRAY CONTAINER, LLC
JANUARY 6, 2009
PAGE - 6 -

Due to the nature of the aforementioned violations, Ohio EPA has referred this matter to the Ohio Attorney General's Office for consideration of escalated enforcement actions. Ohio EPA's failure to list specific deficiencies or violations in this letter does not relieve your facility from having to comply with all applicable regulations.

Should you have any questions, please contact me at (330) 963-1108.

Sincerely,



Frank A. Zingales
Environmental Specialist
Division of Hazardous Waste Management

FAZ:ddw

ec: Nyal McKenna, DHWM, NEDO
cc: Kelly Smith, DHWM, CO
Daniel Martin, AGO