



State of Ohio Environmental Protection Agency

Northeast District Office



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Chris Korteski, Director

**CERTIFIED MAIL**

October 15, 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 90<sup>TH</sup> 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 involvement at the Gray Container facility in 2009:

- On January 6, 2009, DHWM issued a Notice of Violation (NOV) letter to you concerning the unabated violations at your facility. These violations were documented by Ohio EPA in 2007 and 2008.
- On February 11, 2009, DHWM conducted an inspection at your facility due to a release of oil and other wastes.
- On March 2, 2009, Gray Container submitted its response to DHWM's January 6, 2009 NOV letter.
- On March 30, 2009, DHWM issued a letter to Gray Container concerning the status of the unabated violations at the facility.
- On April 20, 2009, Gray Container submitted its response to DHWM's March 30, 2009 letter.
- On April 30, 2009, DHWM issued a letter to Gray Container concerning the status of the unabated violations at the facility.
- July 9 and July 10, 2009, DHWM observed visible emissions from the incinerator unit at the Gray Container facility.
- On July 22, 2009, a Temporary Restraining Order (TRO) concerning the Gray Container facility was filed in the Cuyahoga County Court of Common Pleas.
- On July 27, 2009, DHWM observed the operation of the incinerator unit at the Gray Container facility. Further, DHWM observed that Gray Container had accepted containers that were not empty as specified in OAC rule 3745-51-07.
- On July 28, 2009, DHWM obtained a sample of the waste from the non-empty containers discovered on July 27, 2009. The analytical results revealed the presence of ignitable hazardous waste in these containers.

- On August 3, August 4 and August 5, 2009, DHWM observed the operation of the incinerator unit at the Gray Container facility. Further, DHWM observed that Gray Container had accepted containers that were not empty.
- On August 10, 2009, the Cuyahoga County Court of Common Pleas extended the conditions of the TRO. Additionally, Gray Container submitted an empty drum acceptance procedure and an outline for a contingency plan.
- On August 12, 2009, the contents of the non-empty containers discovered on July 27, 2009, were shipped off-site as hazardous waste to a permitted facility.
- On August 19, 2009, DHWM split a sample with your consultant of the waste found in the roll-off box located east of the incinerator unit. Additionally, DHWM provided Gray Container with comments on the drum acceptance procedure and contingency plan submitted on August 10, 2009.
- On August 27, 2009, a Preliminary Injunction Order concerning the Gray Container facility was filed in the Cuyahoga County Court of Common Pleas.
- On August 28, 2009, DHWM met with you and your consultant to discuss the August 19, 2009 comments concerning the drum acceptance procedure and contingency plan.
- On September 3, 2009, DHWM observed the operation of the incinerator unit at the Gray Container facility. Further, DHWM observed that Gray Container had accepted containers that were not empty.
- On September 14, 2009, DHWM observed the operation of the incinerator unit at the Gray Container facility. Further, DHWM observed that Gray Container had accepted containers that were not empty. In particular, these containers were labeled as "hazardous waste."
- On September 17, 2009, DHWM conducted a follow-up inspection at the Gray Container facility concerning the non-empty containers discovered on September 14, 2009.
- On September 18 and September 21, 2009, Gray Container submitted a revised drum acceptance procedure and a contingency plan.
- On September 28, 2009, DHWM provided Gray Container with comments on the revised drum acceptance procedure and contingency plan.
- On September 30, 2009, nine of the non-empty containers, discovered on September 14 and September 17, 2009, were removed from the Gray Container facility. The containers were manifested off-site as hazardous waste to a permitted facility.
- On October 6, 2009, Gray Container submitted a revised drum acceptance procedure and a revised contingency plan.
- On October 7, 2009, DHWM provided Gray Container with comments on the revised contingency plan. On the same day, Gray Container submitted a revised page for the contingency plan to address DHWM's comments.

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. As previously documented through inspections in 2007 and 2008, Gray Container unlawfully accepted, stored and disposed of hazardous wastes, in violation of ORC § 3734.02(E)&(F), at the following locations: G05, G33, F22, Trailer 1, Trailer 5, Trailer 6, Trailer 7, Trailer 8, Old Process Building and the Receiving Building.

On July 27, 2009, DHWM observed that Gray Container had accepted containers that were not empty as specified in OAC rule 3745-51-07. The contents of these containers were then thermally treated in the incinerator unit. Subsequent sampling of the contents of these containers revealed the presence of ignitable hazardous waste as defined in OAC rule 3745-51-21. Further, DHWM observed that waste materials had been released from the incinerator unit. As a result of these activities, Gray Container has unlawfully accepted, stored, treated and disposed of hazardous waste in violation of ORC § 3734.02(E)&(F) at the incinerator unit area.

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.

**In accordance with the September 8, 2009 Preliminary Injunction order (State of Ohio v. Gray Container, LLC, et. al., Case No. CV-09-699288), paragraph 20, Gray Container must submit the Closure Plan by December 7, 2009 to the attention of the undersigned.** An additional copy should be sent to: Ohio Environmental Protection Agency, Lazarus Government Center, Division of Hazardous Waste Management, Attn: Manager, Compliance Assurance Section, P.O. Box 1049, Columbus, Ohio 43216-1049. Additionally, to aid in the development of the Closure Plan, Gray Container and their technical consultants must meet with DHWM as described in paragraph 20.

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.

- B. Gray Container continues to unlawfully store hazardous wastes from locations G05 and F22 in the Old Process Building. **In accordance with the Preliminary Injunction order, paragraph 18, Gray Container must lawfully ship all wastes off-site to a permitted facility by December 31, 2009.**
  
- C. To address the unlawful acceptance and storage of containers that are not empty as specified in OAC rule 3745-51-07, Gray Container submitted an empty drum acceptance procedure. The procedure was originally submitted on August 10, 2009 and last revised on October 6, 2009. DHWM has no further comments concerning the procedure. In accordance with the Preliminary Injunction order, paragraph 13, Gray Container must immediately implement the empty drum acceptance procedure. **By November 8, 2009, submit documentation to the attention of the undersigned, documenting that all employees were trained on the empty drum acceptance procedure.**

2. General Waste Analysis, OAC rule 3745-54-13 and OAC rule 3745-52-11, Waste Evaluation:
  - A. In accordance with the Preliminary Injunction order, paragraph 15, Gray Container must conduct an inspection of the Gray Container facility and adjacent properties to identify any container or tank of waste that is present. Refer to paragraph 15 for specific details. Gray Container was required to complete the actions identified in paragraph 15 by September 29, 2009. Currently, Gray Container has not completed these actions in violation of the Preliminary Injunction order, paragraph 15. **Gray Container must immediately comply with the Preliminary Injunction order and submit documentation verifying compliance with paragraph 15.**
  - B. As required by the Preliminary Injunction order, paragraph 17, Gray Container must complete the evaluation of all wastes in accordance with OAC rule 3745-54-13 and OAC rule 3745-52-11 by November 1, 2009. **By November 1, 2009, submit documentation, to the attention of the undersigned, documenting that all waste have been adequately evaluated.**
  - C. **In accordance with the Preliminary Injunction order, paragraph 18, Gray Container must lawfully ship all wastes off-site to a permitted facility by December 31, 2009.**

Please carefully review the September 8, 2009 Preliminary Injunction order to ensure compliance with it. For reference purposes, I have enclosed a copy of the September 8, 2009 Preliminary Injunction order.

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 3745-55-70 to 3745-55-77, Use and Management of Hazardous Waste Containers
10. OAC rules 3745-55-40 through 3745-55-51, Closure Cost Estimate, Financial Assurance and Liability Requirements

GRAY CONTAINER, LLC  
OCTOBER 15, 2009  
PAGE - 5 -

To address the violations of OAC rules 3745-54-50 to 3745-54-52 (Contingency Plan), OAC rule 3745-54-55 (Emergency Coordinator) and OAC rule 3745-54-56 (Emergency Notification Procedures) and as required by the Preliminary Injunction order, paragraph 11, Gray Container submitted a contingency plan on September 18, 2009. The contingency plan was subsequently revised on October 7, 2009. DHWM has no further comments concerning the contingency plan. **By November 8, 2009, submit documentation, to the attention of the undersigned, documenting that all employees were trained on the contingency plan. Additionally, submit documentation verifying that the contingency plan was distributed to emergency authorities.**

Please be aware that Gray Container will remain in violation until the appropriate documentation is received by the undersigned.

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: Nyall McKenna, DHWM, NEDO  
Kelly Smith, DHWM, CO  
Harry Sarvis, DHWM, CO  
cc: Natalie Oryshkewych, DHWM, NEDO  
Daniel Martin, AGO



10