



**Environmental
Protection Agency**

John R. Kasich, Governor
Mary Taylor, Lt. Governor
Scott J. Nally, Director

March 7, 2011

Via Hand Delivery

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

RE: GRAY CONTAINER LLC, CUYAHOGA COUNTY, OHD 980903827, 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 involvement at the Gray Container facility since 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.
- On 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 26, 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.

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- 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.
- On October 15, 2009, DHWM issued a letter to Gray Container concerning the status of the unabated violations at the facility.
- On November 5, 2009, Gray Container submitted documentation that employees were trained on the contingency plan and empty drum acceptance procedures.
- On November 8, 2009, Gray Container submitted documentation that the facility's contingency plan was distributed to emergency authorities.
- On November 11, 2009, DHWM conducted a follow-up inspection at the Gray Container facility. Additionally, DHWM met with you and your consultant to discuss waste evaluation and management activities.
- On December 15, 2009, a Preliminary Injunction Order concerning the Gray Container facility was filed in the Cuyahoga County Court of Common Pleas.
- On January 7, 2010, DHWM conducted a follow-up inspection at the Gray Container facility.
- On February 9, 2010, DHWM issued a letter to Gray Container concerning the status of the unabated violations at the facility.
- On March 11, 2010, Gray Container's consultant submitted a status report concerning the containers located in the Old Process Building.
- On July 7, 2010, DHWM conducted a follow-up inspection at the Gray Container facility.
- On August 18, 2010, DHWM conducted a follow-up inspection at the Gray Container facility.
- On February 28, 2011, DHWM conducted a follow-up inspection at the Gray Container facility.

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 observed by DHWM during the February 28, 2011 inspection, Gray Container continues to unlawfully store hazardous wastes at the facility. Reportedly, liquid hazardous wastes present in the Old Process Building were transferred into totes and placed into trailer 7221. Additionally, solid hazardous wastes present in the Old Process Building were transferred into the roll-off box located west of the Incinerator Unit. **In accordance with the August 26 (received for filing on September 8, 2009) and December 15, 2009 Preliminary Injunction orders (State of Ohio v. Gray Container, LLC, et. al., Case No. CV-09-699288), Gray**

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Container was required to ship the aforementioned hazardous wastes to a permitted facility. Gray Container must immediately comply with the Preliminary Injunction orders through shipping the aforementioned hazardous wastes to a permitted facility. Submit documentation (i.e., hazardous waste manifests) that verifies the totes and roll-off box were shipped to a permitted facility.

- B. As previously documented, 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, Receiving Building and 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 Preliminary Injunction orders, Gray Container was required to submit the Closure Plan by December 7, 2009. Currently, DHWM has not received the Closure Plan. Gray Container must submit the Closure Plan 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.

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.

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2. **General Waste Analysis, OAC rule 3745-54-13 and OAC rule 3745-52-11, Waste Evaluation:**
- A. In accordance with the Preliminary Injunction orders, 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. **Currently, Gray Container has not completed these actions in violation of the Preliminary Injunction orders. Gray Container must immediately comply with the Preliminary Injunction orders and submit documentation verifying compliance with it.**
- B. During the February 28, 2011 inspection, DHWM observed that wastes were present at the following locations of the facility:
- Six totes in Trailer 7721;
 - Floor trenches, pit and an above-ground storage tank in the Process Building;
 - Five, 55-gallon drums at the hazardous waste storage area located east of the Incinerator Unit;
 - Roll-off box located west of the Incinerator Unit;
 - Containers located around the Incinerator Unit; and
 - Other areas of the facility not specifically mentioned.

In accordance with the Preliminary Injunction orders, Gray Container must evaluate and lawfully ship all wastes to a permitted facility. **Gray Container must immediately comply with the Preliminary Injunction orders and submit documentation (i.e., analytical results, waste evaluation information, hazardous waste manifests, etc.) verifying compliance with it.**

Please carefully review the August 26 and December 15, 2009 Preliminary Injunction orders. For reference purposes, I have enclosed a copy of each.

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

1. OAC rule 3745-54-14, Security
2. OAC rule 3745-54-15, General Inspection Requirements
3. OAC rule 3745-54-16, Personnel Training
4. OAC rule 3745-54-17, Requirements for Wastes
5. OAC rules 3745-54-30 to 3745-54-37, Emergency Preparedness & Prevention

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6. OAC rule 3745-54-31, Maintenance & Operation
7. OAC rules 3745-55-70 to 3745-55-77, Use and Management of Hazardous Waste Containers
8. OAC rules 3745-55-40 through 3745-55-51, Closure Cost Estimate, Financial Assurance and Liability Requirements

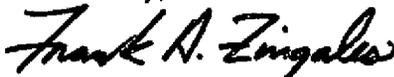
Within 14 days of receipt of this letter, submit a written response to the undersigned addressing each violation appearing in this letter. Pertinent documentation to address each violation must accompany your response.

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:cl

Enclosures: August 26 and December 15, 2009 Preliminary Injunction orders

- cc: Thaddeus Driscoll, AGO
Marlene Kinney, DHWM, NEDO
- ec: Niall McKenna, DHWM, NEDO
Natalie Oryshkewych, DHWM, NEDO
Kelly Smith, DHWM, CO
Harry Sarvis, DHWM, CO
Cpt. Michael Dziak, Cleveland Fire Department
Lt. Michael Kelley, Cleveland Fire Department