



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

Eval. 10/6

Enf. #53

June 5, 2013

CERTIFIED MAIL

Mr. Daniel McCabe
Environmental Enterprises, Inc.
10163 Cincinnati-Dayton Road
Cincinnati, OH 45241

**RE: Environmental Enterprises, Inc.
4650 Spring Grove Avenue
OHD083377010 / 05-31-0466
Notice of Violation**

Dear Mr. McCabe:

On April 17, 2013, Ohio EPA conducted a semi-annual compliance evaluation inspection (CEI) at Environmental Enterprises, Inc.'s (EEI) Cincinnati, Ohio facility. Warren Taylor and you represented EEI. Pam Hull and I represented Ohio EPA. The purpose of the inspection was to determine EEI's compliance with Ohio's hazardous waste laws and regulations and EEI's Ohio hazardous waste installation and operation permit issued September 30, 2009. Ohio EPA's inspection included an inspection of facility operations and a review of written documentation. During the inspection, Ohio EPA acquired additional information and documents pertaining to the incident that occurred on December 28, 2012, including training records for those employees involved with profiling and handling of wastes involved in the incident.

On February 27, 2013, Ohio EPA received documentation from EEI in response to the February 8, 2013, Notice of Violation (NOV). Documentation included manifests, waste profiles, written treatment methods, job descriptions, training records, and waste receipts records. Ohio EPA's review of the submittal revealed that the facility has neither reviewed nor changed procedures associated with the profiling process or the treatment process for oxidizer wastes, nor has EEI trained staff responsible for those duties.

Based on Ohio EPA's review of the documentation submitted on February 27, 2013, and the documentation acquired on April 17, 2013, **EEI continues to be in violation of the following permit conditions and rules cited in the February 8, 2013, NOV:**

- **Duty to Comply, Condition A.5 and Ohio Administrative Code (OAC) Rule 3745-50-58(A)**
- **Duty to Mitigate, Condition A.8 and OAC Rule 3745-50-58(D)**
- **Proper Operation and Maintenance, Condition A.9 and OAC Rule 3745-50-58(E)**
- **Design and Operation of Facility, Condition B.1(a) and OAC Rule 3745-54-31**
- **General Waste Analysis Plan, Condition B.3(b) and OAC Rule 3745-54-13**
- **General Requirements for Ignitable, Reactive, or Incompatible Wastes, Condition B.7(a) & (c) and OAC Rule 3745-54-17**
- **Special Container Provisions for Ignitable Waste, Condition C.10(a) & (c) and OAC Rule 3745-54-17(a)**

Furthermore, Ohio EPA has determined EEI is in violation of the following state hazardous waste regulations and conditions of its Ohio hazardous waste facility installation and operation permit that are specifically related to the December 28, 2012, incident. All violations of EEI's permit are violations of Ohio Revised Code 3734.11(B).

1. Unlawful Treatment of Hazardous Waste, ORC § 3734.02(E) and (F):

No person shall treat hazardous waste identified or listed under this chapter and rules adopted under it... without a hazardous waste facility installation and operation permit.

On December 28, 2012, EEI conducted hazardous waste treatment in the caustic storage area (Area #7) on a hazardous waste air pollution control filter that EEI is not authorized to treat pursuant to the permit. On December 28, 2012, EEI used a reciprocating saw to change the physical characteristic of the hazardous waste, i.e., remove the metal cage around the air pollution control filters. The purpose of this treatment is to facilitate the neutralization (reduction) of the hazardous waste, as described in EEI's January 11, 2013, correspondence. This unlawful treatment of the hazardous waste air pollution control filter initiated the hazardous waste incident, from either a spark, and/or the heat of friction from the sawing of the metal cage, which caused the hazardous waste to ignite.

Therefore, EEI is in violation of ORC § 3734.02(E) and (F).

Currently, EEI has ceased this treatment of hazardous waste by suspending receipt of this hazardous waste. EEI can only treat hazardous waste through methods approved in the current permit. For any new treatments, EEI must submit a modification for approval. Ohio EPA will only consider approval if the treatment complies with all applicable hazardous waste rules.

2. General Waste Analysis Plan (WAP), Conditions B.3(b) and (c) and OAC Rule 3745-54-13:

(b) The Permittee must follow the procedures described in the waste analysis plan found in Section C of the permit application and the terms and conditions of this permit.

(c) The Permittee must verify the analysis of each waste stream annually as part of its quality assurance program.

Page C-13, Section C.2a(1)(e) Update of Waste Profiles, of EEI's permit application states in part, "Customers are required by EEI, at a minimum to annually update their waste profiles. This is facilitated by an annual update form (Attachment C-14). This annual update is reviewed and approved by EEI's approval chemist and QA Director."

EEI failed to comply with Conditions B.3(b) and (c) and OAC Rule 3745-54-13 by not properly updating waste profile #X86194 - PPE contaminated with sodium chlorate as required by EEI's WAP. Profile #X86194 was created on August 18, 2011, with the first shipment received by EEI on October 5, 2011. Additional shipments were received on December 30, 2011, March 19, 2012, May 30, 2012, September 10, 2012, November 5, 2012, and December 12, 2012. EEI did not require the generator to update profile #X86194 and did not complete the annual update form. **Therefore, EEI is in violation of Conditions B.3(b) and (c) and OAC Rule 3745-54-13.**

To return to compliance, EEI must properly update all profiles. Please submit documentation to Ohio EPA on steps EEI will take to ensure all profiles are updated annually as required by EEI's WAP. At a minimum, this should include retraining staff responsible for profiling wastes.

3. Personnel Training, Condition B.6 and OAC Rule 3745-54-16: The Permittee must conduct personnel training, as required by OAC Rule 3745-54-16. This training program must contain at least the elements set forth in Section H of the permit application. The Permittee must maintain training documents and records as required by OAC Rule 3745-54-16(D) and (E).

EEI has five (5) provisions of the personnel training program that each employee must complete and maintain to conduct hazardous waste management operations at EEI. These provisions are 1) initial 40-hour classroom training, 2) receive a Protective Measures Determination review, 3) receive a Job Hazard Analysis review, 4) receive On the Job training, and 5) receive annual classroom refresher training. Each one of these provisions is further described below.

Page H-6, Subsection A.1, Personnel Training Program, of EEI's permit application states in part, "Facility personnel must successfully complete a program of classroom instruction. Personnel assigned to operate Hazardous Waste Treatment Units are further instructed by an assigned supervisor on the operating procedures for each of the Units. The Protective Measures Determination and Job Hazard Analysis (JHA) is reviewed, acknowledged and signed by the employee and supervisor. The on the job training (OJT) continues under direct supervision until the employee is deemed to be competent to perform the operation without direct supervision. The dates of OJT are recorded on the JHA and filed in the employees training file."

Page H-6, Subsection B of EEI's permit application states in part, "All new employees receive 40 hours classroom training prior to working in the facility."

Page H-6, Subsection C of EEI's permit applications states in part, "Facility personnel must take part in an annual review of the initial training"

During the inspection, Ohio EPA requested training records for ten (10) employees: the four (4) employees associated with the December 28, 2012, incident; and the other six (6) employees involved in the waste profiling and waste acceptance for the waste involved in the December 28, 2012, incident.

| Employee | Start date | 40 hour classroom training | Refresher training conducted annually | Protective Measures Determination | Job Hazard Analysis | On-the-Job training documentation |
|-------------------|------------|----------------------------|--|-----------------------------------|---------------------|-----------------------------------|
| Zach Henzerling | 11/28/2012 | No | N/A | None | None | None |
| Brian Alexander | 6/4/2012 | No | N/A | None | None | None |
| Timothy Fisher | 11/2/2008 | No | No -missed 2009 | None | None | None |
| Kyle Duffens | 10/21/2002 | No | No - missed 2008, 2010 | None | None | None |
| Gary Brunner | ? | 1992 | No - missed 2010 | None | None | None |
| Jeff Tucker | 1992 | 10/30/1992 | No - missed 1994, 1999, 2002, 2003, 2010 | None | None | None |
| Clifford Campbell | 7/16/1990 | 10/30/1992 | No - missed 2008, 2009 | None | None | None |
| Jerrett Freeman | 10/11/2004 | No | No - missed 2008, 2010 | None | None | None |
| Sara Pratte | 1/4/2010 | No | Yes | None | None | None |
| Rickii Moore | 9/12/2011 | No | Yes | None | None | None |

As the chart illustrates, EEI did not provide appropriate training for the ten (10) employees whose records were requested. EEI failed to comply with condition B.6 and OAC Rule 3745-54-16 by not conducting and documenting training in accordance with Section H of the permit application. **Therefore, EEI is in violation of Condition B.6 and OAC Rule 3745-54-16.**

To return to compliance, EEI must immediately conduct and document employee training at the facility per EEI's approved permit. Please submit documentation to Ohio EPA on steps EEI will take to achieve compliance with the permit.

- 4. Anticipated Noncompliance, Condition A.17 and OAC Rule 3745-50-58(L)(2):**
The Permittee must give advance notice to the Director of any planned changes in the permitted facility or operations that may result in noncompliance with the terms and conditions of this permit. Such notification does not waive the Permittee's duty to comply with this permit pursuant to Permit Condition A.5.

EEI failed to comply with Condition A.17 and OAC Rule 3745-50-58(L)(2) in the following instances:

- a) During the April 17, 2013, inspection and May 9, 2013, meeting, EEI stated they are conducting and documenting training in a manner different from what is in section H of the approved permit. Ohio EPA has not received or approved a modification request for these changes.
- b) In the February 27, 2013, response EEI submitted an updated procedure for "Oxidizer reduction procedure for chlorates, perchlorates and perchloric acid" dated January 10, 2013. Ohio EPA has not received or approved a modification request for changes to this procedure.

OAC Rule 3745-50-51(A) defines a "modification" as "a change or alteration to a hazardous waste facility or its operation that is inconsistent with or not authorized by its existing permit or authorization to operate." Upon issuance of a permit, the approved Part B application is incorporated by reference and is, therefore, an essential component of the "existing permit or authorization to operate."

Therefore, EEI is in violation of Condition A.17 and OAC Rule 3745-50-58(L)(2). To return to compliance, EEI must operate the facility in accordance with its approved Ohio hazardous waste installation and operation permit issued September 30, 2009. The two instances listed above would be considered class 2 modifications and would require approval by Ohio EPA prior to implementation by EEI. Any changes to EEI's permit application must comply with OAC 3745-50-51.

- 5. Information to be Maintained at the Facility, Conditions A.28 (a) (i) & (v):**
Unless otherwise specified by the hazardous waste rules, the Permittee must maintain at the facility, until closure is completed and certified by an independent, registered professional engineer, pursuant to OAC Rule 3745-55-15, and until the Director releases the Permittee from financial assurance requirements pursuant to OAC Rule 3745-55-43, the following documents (including amendments, revisions and modification):

- (i) Waste analysis plan, developed and maintained in accordance with OAC Rule 3745
- (v) Personnel training plan and the training records developed and maintained in accordance with OAC Rule 3745-54-16 and the terms and conditions of this permit

E EI failed to comply with Condition A.28 by not complying with EEI's WAP and personnel training plan in EEI's approved permit. See violations #1 and #4. **Therefore, EEI is in violation of Conditions A.28.**

To return to compliance, EEI must immediately begin complying and maintaining their WAP and personnel training plan per EEI's approved permit. Please submit documentation to Ohio EPA on steps EEI will take to achieve compliance with this condition.

EEI must immediately take the necessary measures to return to compliance with Ohio's hazardous waste laws and its Ohio hazardous waste installation and operation permit issued September 30, 2009. Within 14 days of receipt of this letter, EEI is required to provide documentation to this office including the steps taken to abate the violations cited above and those cited in the February 8, 2013, NOV. Documentation of steps taken to return to compliance includes, but is not limited to, written correspondence, updated policies, and photographs, as appropriate, and may be submitted via the postal service or electronically to pam.hull@epa.ohio.gov and jeff.smith@epa.ohio.gov. Ohio EPA is available to meet to discuss any concerns EEI may have with regard to these violations.

Please be advised that violations cited above will continue until properly abated. Failure to comply with Chapter 3734. of the Ohio Revised Code and rules promulgated thereunder may result in a civil penalty of up to \$10,000 per day for each violation. It is imperative that you return to compliance. If circumstances delay the abatement of violations, EEI is requested to submit written correspondence of the steps that will be taken to attain compliance.

As stated in the February 8, 2013, NOV the investigation into the December 28, 2012, incident at EEI is ongoing. Ohio EPA will continue to review all pertinent information to determine EEI's compliance with all state hazardous waste regulations and conditions of its Ohio hazardous waste facility installation and operation permit. Due to the nature and extent of the violations, we will be referring EEI to the Division of Materials and Waste Management's Central Office for escalated enforcement.

Failure to list specific deficiencies in this communication does not relieve EEI from the responsibility of complying with the approved permit and all applicable hazardous waste regulations. This letter does not relieve EEI from liability for any past or present violations of Ohio's hazardous waste laws.

Mr. Daniel McCabe
Environmental Enterprises, Inc.
June 5, 2013
Page 7

Should you have any questions, please call me at (937) 285-6070.

Sincerely,

A handwritten signature in black ink, appearing to read "Jeff Smith", written in a cursive style.

Jeff Smith
District Representative
Division of Materials and Waste Management

JS/uf

ec: Bonnie Buthker, SWDO, District Chief
Todd Anderson, Legal
Bruce McCoy, CO-DMWM
Russ Brown, SWDO-DMWM
George Strobel, SWDO-DMWM
Robyn Winstead, SWDO-DMWM/SWDO Facility File

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MR DANIEL MCCABE
 ENVIRONMENTAL ENTERPRISES, INC.
 10163 CINCINNATI-DAYTON ROAD
 CINCINNATI, OH 45241

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