

BEFORE THE  
OHIO ENVIRONMENTAL PROTECTION AGENCY

OHIO E.P.A.

OCT - 9 2013

ENTERED DIRECTOR'S JOURNAL

In the Matter of:

Vitran Express, Inc.  
30520 Tracy Road  
Walbridge, Ohio 43465

Respondent

Director's Final  
Findings and Orders

PREAMBLE

It is agreed by the parties hereto as follows:

I. JURISDICTION

These Director's Final Findings and Orders (Orders) are issued to Vitran Express, Inc. (Respondent) pursuant to the authority vested in the Director of the Ohio Environmental Protection Agency (Ohio EPA) under Ohio Revised Code (ORC) §§ 3734.02, 3734.13 and 3745.01.

II. PARTIES BOUND

These Orders shall apply to and be binding upon Respondent and successors in interest liable under Ohio law. No change in ownership of Respondent or of the Facility shall in any way alter Respondent's obligations under these Orders.

III. DEFINITIONS

Unless otherwise stated, all terms used in these Orders shall have the same meaning as defined in ORC Chapter 3734. and the rules promulgated thereunder.

IV. FINDINGS

----- The Director of Ohio EPA has determined the following findings:

1. Respondent is a "person" as defined in ORC § 3734.01(G) and Ohio Administrative Code (OAC) rule 3745-50-10(A).
2. Respondent operates a hub for expedited freight services located at 30520 Tracy Road, Walbridge, Wood County, Ohio (Facility).

3. Respondent notified Ohio EPA of its hazardous waste activities at the Facility and has been assigned U.S. EPA identification number OHD982065567.
4. At the time of the inspection, Respondent was a conditionally exempt small quantity generator (CESQG) of "hazardous waste" as that term is defined by ORC § 3734.01(J) and OAC rules 3745-50-10(A) and 3745-51-03. From time to time, Respondent generates hazardous waste at the Facility when freight is damaged while being handled. At the Facility, Respondent has generated D001, D002, F003, and F005 hazardous wastes, as described in OAC rules 3745-51-21, 3745-51-22 and OAC rule 3745-51-31. Respondent is also a generator of used oil as defined in OAC rule 3745-279-01 and a small quantity handler of universal waste lamps as defined in OAC rule 3745-273-09.
5. On September 5, 2012, Ohio EPA conducted a complaint investigation at the Facility. At the time of the investigation, Ohio EPA observed approximately twenty (20) containers of waste in two stationary tractor trailers at the Facility. Most of the containers had been previously overpacked and it did not appear that any of the containers were leaking. During the investigation, Respondent provided a list of the waste that was being stored in the tractor trailers. This list was contained in an electronic mail dated July 29, 2011, from Respondent's files and included an estimated cost to dispose of the waste, however, Respondent had not removed the waste from the Facility by the time the complaint investigation occurred. As a result of this investigation, Ohio EPA determined Respondent had failed to evaluate this waste to determine if the waste was hazardous waste, in violation of OAC rule 3745-52-11.
6. On September 14, 2012, Ohio EPA conducted a compliance evaluation inspection at the Facility to more fully evaluate Respondent's hazardous waste, used oil and universal waste management practices.
7. On September 20, 2012, Respondent submitted an inventory of all waste at the Facility that would be evaluated in accordance with OAC rule 3745-52-11. As a result of this waste evaluation, Respondent determined that some of the waste in the tractor trailers was hazardous waste.
8. On September 25, 2012, Respondent shipped the hazardous waste that had been stored in the two tractor trailers, to an authorized facility. This hazardous waste included ignitable paint related waste (D001), flammable liquids (D001, F003 and F005) and corrosive liquids (D002). Based on the date the hazardous waste was shipped, Respondent stored the hazardous waste at the Facility from at least July 29, 2011, to September 25, 2012, for a total of 425 days.

9. On September 26, 2012, Respondent submitted hazardous waste manifests to Ohio EPA which indicated a total of 6,110 pounds of hazardous waste was shipped offsite for disposal.
10. Based upon the results of the investigation and inspection and documentation submitted by Respondent, Ohio EPA has determined that Respondent, *inter alia*, established and operated a hazardous waste storage facility without a hazardous waste installation and operation permit, in violation of ORC § 3734.02(E) and (F). In accordance with OAC rule 3745-51-05(G)(2), a CESQG that accumulates more than one thousand (1,000) kilograms of hazardous waste on-site is subject to the applicable rules for generators of between one hundred (100) to one thousand (1,000) kilograms of hazardous waste in a calendar month and is limited to storing hazardous waste for only one hundred eighty (180) days without a hazardous waste installation and operation permit. Respondent stored approximately 6,110 pounds (2,771 kilograms) of hazardous waste in the two tractor trailers at the Facility for at least 425 days.
11. By letter dated October 13, 2012, Ohio EPA notified Respondent of the violations referenced in Findings Nos. 5. and 10. of these Orders. Ohio EPA also notified Respondent that it had abated the violation of OAC rule 3745-52-11 referenced in Finding No. 5. of these Orders.
12. On approximately September 18, 2013, Respondent contacted Ohio EPA and provided Ohio EPA with information demonstrating Respondent had limited financial resources. Upon a review of this information, the Director has determined that the Respondent does not possess the ability to pay the entire civil penalty in the Director's Final Findings and Orders proposed to Respondent on September 4, 2013.
13. On approximately September 19, 2013, Respondent contacted Ohio EPA by telephone to inform Ohio EPA that one of the tractor trailers discovered during the September 5, 2012, investigation referenced in Finding No. 5. of these Orders had been sold. At the time of the investigation there was no evidence of containers leaking in either of the tractor trailers, most of the containers were overpacked, and Respondent shipped off the waste within two weeks of the September 14, 2012, inspection.
14. By electronic mail dated September 27, 2013, Respondent notified Ohio EPA that the remaining trailer had been washed out, that the wash water had been contained in two 55-gallon drums and the wash water was in the process of being tested.

15. By electronic mail on October 1, 2013, Respondent provided documentation including photographs of the tractor trailer identified by Respondent as 28437, being power-washed and analytical results of the waste that was collected during the decontamination process.
16. Based upon the integrity of the containers and the fact that no releases were observed in the trailer that was sold, and based on the decontamination activities described in Findings Nos. 14. and 15., of these Orders and a review of the analytical results submitted by Respondent, the Director has determined that Respondent has met the closure performance standard requirements of OAC rule 3745-55-11 for the trailers, and no further action is required to abate the violations referenced in Finding No. 10. of these Orders.

#### **V. ORDERS**

Respondent shall achieve compliance with Chapter 3734. of the ORC and the regulations promulgated thereunder according to the following compliance schedule:

- a. Respondent shall pay to Ohio EPA the amount of \$14,868.00 in settlement of Ohio EPA's claims for civil penalties, which may be assessed pursuant to ORC Chapter 3734. Within 30 days after the effective date of these Orders, Respondent shall pay the amount of \$14,868.00 which will be deposited into the hazardous waste cleanup fund established pursuant to ORC § 3734.28. Payment shall be made by an official check made payable to "Treasurer, State of Ohio" for \$14,868.00. The official check shall be submitted to Ohio EPA, Office of Fiscal Administration, Department L-2711, Columbus, Ohio 43260-2711, together with a letter identifying Respondent and the Facility. A copy of this check shall be sent to Ohio EPA Division of Materials and Waste Management, Supervisor, Processing Records Management Unit, P.O. Box 1049, Columbus, Ohio 43216-1049.

#### **VI. TERMINATION**

Respondent's obligations under these Orders shall terminate upon Ohio EPA's receipt of the official check required by Section V. of these Orders.

#### **VII. OTHER CLAIMS**

Nothing in these Orders shall constitute or be construed as a release from any claim, cause of action or demand in law or equity against any person, firm, partnership or corporation, not a party to these Orders, for any liability arising from, or related to, the operation of Respondent's Facility.

### VIII. OTHER APPLICABLE LAWS

All actions required to be taken pursuant to these Orders shall be undertaken in accordance with the requirements of all applicable local, state and federal laws and regulations. These Orders do not waive or compromise the applicability and enforcement of any other statutes or regulations applicable to Respondent.

### IX. MODIFICATIONS

These Orders may be modified by agreement of the parties hereto. Modifications shall be in writing and shall be effective on the date entered in the journal of the Director of Ohio EPA.

### X. NOTICE

All documents required to be submitted by Respondent pursuant to these Orders shall be addressed to:

Ohio Environmental Protection Agency  
Northwest District Office  
Division of Materials and Waste Management  
347 North Dunbridge Road  
Bowling Green, Ohio 43402-9398  
Attn: DMWM Manager

and Ohio EPA Central Office at the following address:

For mailings, use the post office box number:

Enforcement Supervisor  
Ohio Environmental Protection Agency  
Lazarus Government Center  
Division of Materials and Waste Management  
P.O. Box 1049  
Columbus, Ohio 43216-1049

For deliveries to the building:

Enforcement Supervisor  
Ohio Environmental Protection Agency  
Lazarus Government Center  
Division of Materials and Waste Management  
50 West Town Street  
Columbus, Ohio 43215

or to such persons and addresses as may hereafter be otherwise specified in writing by Ohio EPA.

#### **XI. RESERVATION OF RIGHTS**

Ohio EPA reserves its rights to exercise its lawful authority to require Respondent to perform corrective action at the Facility at some time in the future, pursuant to ORC Chapter 3734. or any other applicable law. Respondent reserves its rights to raise any administrative, legal or equitable claim or defense with respect to any final action of the Director regarding such corrective action. Ohio EPA and Respondent each reserve all other rights, privileges and causes of action, except as specifically waived in Section XII. of these Orders.

#### **XII. WAIVER**

In order to resolve disputed claims, without admission of fact, violation or liability, and in lieu of further enforcement action by Ohio EPA for only the violations specifically cited in these Orders, Respondent consents to the issuance of these Orders and agrees to comply with these Orders. Compliance with these Orders shall be a full accord and satisfaction for Respondent's liability for the violations specifically cited herein.

Respondent hereby waives the right to appeal the issuance, terms and conditions, and service of these Orders, and Respondent hereby waives any and all rights Respondent may have to seek administrative or judicial review of these Orders either in law or equity.

Notwithstanding the preceding, Ohio EPA and Respondent agree that if these Orders are appealed by any other party to the Environmental Review Appeals Commission, or any court, Respondent retains the right to intervene and participate in such appeal. In such an event, Respondent shall continue to comply with these Orders notwithstanding such appeal and intervention unless these Orders are stayed, vacated or modified.

**XIII. EFFECTIVE DATE**

The effective date of these Orders is the date these Orders are entered into the Ohio EPA Director's journal.

**XIV. SIGNATORY AUTHORITY**

Each undersigned representative of a party to these Orders certifies that he or she is fully authorized to enter into these Orders and to legally bind such party to these Orders.

**IT IS SO ORDERED AND AGREED:**

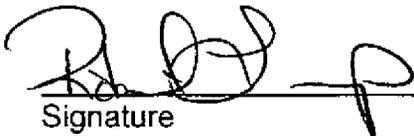
**Ohio Environmental Protection Agency**

  
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Scott J. Nally  
Director

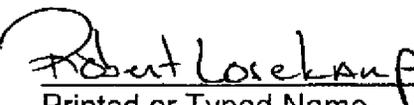
October 9, 2013  
Date

**IT IS SO AGREED:**

**Vitran Express, Inc.**

  
\_\_\_\_\_  
Signature

10-3-2013  
Date

  
\_\_\_\_\_  
Printed or Typed Name

Corporate Director of Safety  
Title