



State of Ohio Environmental Protection Agency

STREET ADDRESS:

Lazarus Government Center
50 W. Town St., Suite 700
Columbus, Ohio 43215

TELE: (614) 644-3020 FAX: (614) 644-3184
www.epa.state.oh.us

MAILING ADDRESS:

P.O. Box 1049
Columbus, OH 43216-1049

CERTIFIED MAIL

May 18, 2009

Re: **Director's Final Findings & Orders**
Superior Marine Ways, Inc.
U. S. EPA ID No.: OH0 000361840

Mr. Steve Greear, Vice-President
Human Resources/ Director H,S & E
95 Private Drive
Proctorville, Ohio 45669

Dear Mr. Greear:

Here are the Director's Final Findings and Orders (Orders) issued to Superior Marine Ways, Inc. on May 18, 2009. These Orders are effective today.

Enclosed are invoices for the penalty payments required by Order No. 1.a thru 1.g. Please remember your first payment is due no later than June 17, 2009.

If you have any questions concerning compliance with these Orders, do not hesitate to contact Dave Chenault at (740) 385-8501.

Sincerely,

Harry Sarvis, Manager
Compliance and Assurance Section
Division of Hazardous Waste Management

enf.SuperiorMarineWaysInc.SEDO.09.jams.doc

Attachments

c: Michael A. Savage, Chief, DHWM
Todd Anderson/Elissa Miller, Legal
Heidi Greismer, PIC
Dave Chenault, Mgr., DHWM, SEDO
L. Terry, RISS, DHWM, CO
Central File

Ted Strickland, Governor
Lee Fisher, Lieutenant Governor
Chris Korleski, Director

OHIO E.P.A.

MAY 18 2009

BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY

ENTERED DIRECTOR'S JOURNAL

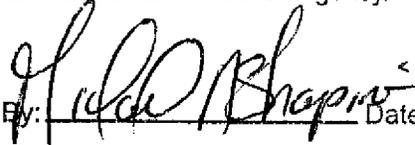
In the Matter of:

Superior Marine Ways, Inc.
95 Private Drive
Proctorville, Ohio 45669

Respondent

**Director's Final
Findings and Orders**

I certify this to be a true and accurate copy of the official documents as filed in the records of the Ohio Environmental Protection Agency.

By:  Date: 5/18/09

PREAMBLE

It is agreed by the parties hereto as follows:

I. JURISDICTION

These Director's Final Findings and Orders (Orders) are issued to Superior Marine Ways, Inc. (Respondent) pursuant to the authority vested in the Director of the Ohio Environmental Protection Agency (Ohio EPA) under Ohio Revised Code (ORC) §§ 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 facility that provides maintenance service for barges used for hauling products on the Ohio River. These services include barge repair and hull repair and painting. The facility is located at 95 Private Drive, Proctorville, Lawrence County, Ohio (Facility). Respondent was authorized to do business in Ohio on January 18, 1989.
3. Respondent notified Ohio EPA of its hazardous waste activity at the Facility and was issued generator identification number OH0000361840.
4. At the Facility, Respondent generates "hazardous waste" as that term is defined by ORC § 3734.01(J) and OAC rules 3745-50-10(A) and 3745-51-03. Respondent typically generates hazardous waste in amounts classifying it as a conditionally exempt small quantity generator. However, at the time of the inspection, Respondent was operating as a small quantity generator of waste due to the amount of hazardous waste on-site. Respondent generates spent paint and solvent which is a listed, ignitable hazardous waste (F003, F005, D001). Respondent also generates universal waste lamps and used oil.
5. On January 23, 2008, Ohio EPA performed a compliance evaluation inspection at the Facility. As a result of this inspection, Ohio EPA determined that Respondent had, *inter alia*:
 - a. Treated hazardous waste without a permit by burning spent paint and solvent, in violation of ORC §3734.02(E) and (F);
 - b. Failed to evaluate its wastes to determine if they are hazardous wastes, in violation of OAC rule 3745-52-11; and
 - c. Failed to label containers of used oil, in violation of OAC rule 3745-279-22(C)(1).
6. By letter dated February 5, 2008, Ohio EPA notified Respondent of the violations referenced in Finding No. 5. of these Orders.
7. By letter dated March 3, 2008, Respondent submitted a response to Ohio EPA's February 5, 2008 letter. This response included manifests demonstrating that seventeen 55-gallon drums of hazardous waste had been shipped off-site on January 28 and February 1, 2008 to a permitted hazardous waste facility.
8. On April 2, 2008, Ohio EPA conducted a follow-up inspection at the Facility. At the inspection, Respondent provided additional documentation in response to the violations set forth in Ohio EPA's February 5, 2008 letter.

9. On April 3 and April 8, 2008, Respondent submitted additional information addressing the violations set forth in Ohio EPA's February 5, 2008 letter.
10. By letter dated May 12, 2008, Ohio EPA notified Respondent that based on a review of the information submitted by Respondent and the follow-up inspection of the Facility on April 2, 2008, the violations set forth in Finding Nos. 5.b. and 5.c. were abated.
11. On June 6, 2008, Respondent submitted a response to Ohio EPA's May 12, 2008 letter.
12. By letter dated August 13, 2008, Ohio EPA notified Respondent that upon review of the information submitted, Respondent remained in violation of ORC § 3734.02(E) and (F) for treating hazardous waste without a permit by burning spent paint and solvent in the hazardous waste storage area. In addition, the letter notified Respondent that Respondent had stored hazardous waste in excess of 180 days without a permit, in violation of ORC § 3734.02(E) and (F).
13. Because no releases of hazardous waste were observed in the area where hazardous waste was treated and stored, and Respondent will continue to use this area to accumulate hazardous waste, the Director has determined that closure of the unpermitted hazardous waste storage area referenced in Finding Nos. 5.a. and 12. of these Orders is not required of Respondent at this time.

V. ORDERS

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

1. Respondent shall pay to Ohio EPA the amount of \$12,200.00 in settlement of Ohio EPA's claims for civil penalties, which may be assessed pursuant to ORC Chapter 3734., in accordance with the following provisions:
 - a. Within 30 days after the effective date of these Orders, Respondent shall pay Ohio EPA \$7,320.00 of the above civil penalty amount in settlement of Ohio EPA's claims for civil penalties, which may be assessed pursuant to ORC Chapter 3734. and 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 \$7,320.00. 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 the Respondent and the Facility. A copy of this check shall be submitted in accordance with Section X. of these Orders.

- b. Within 30 days after the effective date of these Orders and in lieu of paying \$2,440.00 of the \$12,200.00 civil penalty amount to Ohio EPA, Respondent shall fund a supplemental environmental project (SEP) by making a contribution in the amount of \$2,440.00 to the Ohio EPA Clean Diesel School Bus Program (Fund 5CD). Respondent shall make the payment by tendering an official check made payable to "Treasurer, State of Ohio" for \$2,440.00. The official check shall be submitted to Brenda Case, or her successor, Ohio EPA, Office of Fiscal Administration, Department L-2711, Columbus, Ohio 43260-2711, together with a letter identifying Respondent. A copy of this check shall be submitted in accordance with Section X. of these Orders, and an additional copy of this check shall be sent to James A. Orlemann, Assistant Chief, SIP Development and Enforcement, or his successor, Ohio EPA, Division of Air Pollution Control, P.O. Box 1049, Columbus, Ohio 43216-1049.
- c. Should Respondent fail to fund the SEP within the required time frame established in Order No. 1.b., Respondent shall pay to Ohio EPA, within 7 days after failing to comply with Order No. 1.b., the amount of \$2,440.00 in accordance with the procedures in Order No. 1.a.
- d. In lieu of paying the remaining \$2,440.00 of the \$12,200.00 civil penalty amount to Ohio EPA, and as a SEP, Respondent shall purchase, install and operate a Safety-Kleen® Minimizer III Recycling System-110V at the Facility. Within 30 days after the effective date of these Orders, Respondent shall purchase the Safety-Kleen® Minimizer III Recycling System-110V and shall submit to Ohio EPA a copy of the invoice for the purchase in accordance with Section X. of these Orders.
- e. Within 120 days after the effective date of these Orders, Respondent shall install the Safety-Kleen® Minimizer III Recycling System-110V at the Facility. Within 30 days after the installation of the Safety-Kleen® Minimizer III Recycling System-110V at the Facility, Respondent shall provide written and photographic documentation of its installation to Ohio EPA in accordance with Section X. of these Orders.
- f. Within 365 days after the effective date of these Orders, Respondent shall submit to Ohio EPA, a report that details the amount of hazardous waste generated at the Facility that has been processed in the Safety-Kleen® Minimizer III Recycling System-110V.
- g. Should Respondent fail to purchase, install, and/or operate the Safety-Kleen® Minimizer III Recycling System-110V within the time frames established in Order Nos. 1.d., 1.e., and 1.f., Respondent shall pay to

Ohio EPA, within 7 days after failing to comply with Order Nos. 1.d., 1.e. and 1.f., respectively, the remaining balance of \$2,440.00 of the \$12,200.00 civil penalty amount in accordance with the procedures in Order No. 1.a.

VI. TERMINATION

Respondent's obligations under these Orders shall terminate when Respondent certifies in writing and demonstrates to the satisfaction of Ohio EPA that Respondent has performed all obligations under these Orders and Ohio EPA's Division of Hazardous Waste Management acknowledges, in writing, the termination of these Orders. If Ohio EPA does not agree that all obligations have been performed, then Ohio EPA will notify Respondent of the obligations that have not been performed, in which case Respondent shall have an opportunity to address any such deficiencies and seek termination as described above.

The certification shall contain the following attestation: "I certify that the information contained in or accompanying this certification is true, accurate and complete."

This certification shall be submitted by Respondent to Ohio EPA and shall be signed by a responsible official of Respondent. For purposes of these Orders, a responsible official is a corporate officer who is in charge of a principal business function of Respondent.

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
Southeast District Office
Division of Hazardous Waste Management
2195 Front Street
Logan, Ohio 43138
Attn: DHWM Manager

and Ohio EPA Central Office at the following address:

For mailings, use the post office box number:

Chris Korleski, Director
Ohio Environmental Protection Agency
Lazarus Government Center
Division of Hazardous Waste Management
P.O. Box 1049
Columbus, Ohio 43216-1049
Attn: Manager, Compliance Assurance Section

For deliveries to the building:

Chris Korleski, Director
Ohio Environmental Protection Agency
Lazarus Government Center
Division of Hazardous Waste Management
50 West Town Street
Columbus, Ohio 43215
Attn: Manager, Compliance Assurance Section

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 closure of the unpermitted hazardous waste treatment and storage area and 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 closure and 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, Respondent consents to the issuance of these Orders and agrees to comply with these Orders. Except for the rights to seek closure of the unpermitted hazardous waste treatment and storage area and corrective action at the Facility by Respondent, which rights Ohio EPA does not waive, 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

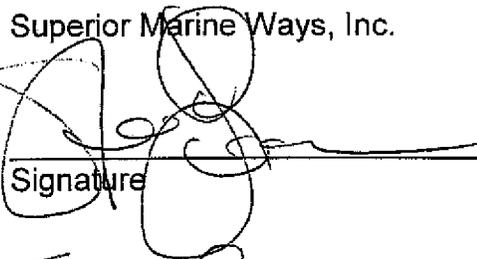


Chris Korleski
Director

May 18, 2009
Date

IT IS SO AGREED:

Superior Marine Ways, Inc.



Signature

4/28/2009
Date

STEVE GIESAR

Printed or Typed Name

VP, HUMAN RESOURCES / DIRECTOR H, S + E.
Title