

BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

Automated Packaging Systems	:	<u>Director's Final</u>
13555 McCracken Road	:	<u>Findings and Orders</u>
Garfield Heights, Ohio 44125	:	

PREAMBLE

It is agreed by the parties hereto as follows:

I. JURISDICTION

These Director's Final Findings and Orders ("Orders") are issued to Automated Packaging Systems ("Respondent") pursuant to the authority vested in the Director of the Ohio Environmental Protection Agency ("Ohio EPA") under Ohio Revised Code ("ORC") §§ 3704.03 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 the facility as identified in Finding 1 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 3704 and the rules promulgated thereunder.

IV. FINDINGS

All of the findings necessary for the issuance of these Orders pursuant to ORC §§ 3704 and 3745.01 have been made and are outlined below. Nothing in the findings shall be an admission by Respondent of any matter of law or fact. The Director of Ohio EPA has determined the following findings. The Director of Ohio EPA has determined the following findings:

1. Respondent owns and operates a manufacturing facility located at 13555 McCracken Road in Garfield Heights, Ohio and is identified by Ohio EPA premise number 13-18-22-6136.

2. At the facility, Respondent extrudes plastic bags from polyethylene beads. The facility operates eight (8) flexographic printing presses (emissions units K001, K002, K005, K006, K007, K012, K013, and K014) that enable the bags to be printed in up to six colors. These emissions units are "air contaminant sources" as defined by Ohio Administrative Code ("OAC") Rules 3745-35-01(B)(1) and 3745-15-01(C) and (W) and emit "volatile organic compounds" ("VOCs") as defined by OAC Rule 3745-21-01(B)(6). The emissions units are subject to the terms and conditions of PTI#s 13-3562 and 13-2946, which were issued pursuant to OAC Chapter 3745-31. VOC emissions that are captured from these units are vented to catalytic oxidizers for combustion. Emissions units K001, K002 and K005 are vented to catalytic oxidizer #1, emissions units K012 and K013 are vented to catalytic oxidizer #2, emissions units K006 and K007 are vented to catalytic oxidizer #3, and emissions unit K014 is vented to catalytic oxidizer #4.

3. ORC § 3704.05(A) states that no person shall cause, permit or allow emission of an air contaminant in violation of any rule adopted by the Director of Ohio EPA. ORC § 3704.05(C) states that no person, who is the holder of a permit issued by the Director of the Ohio EPA, shall violate any of its terms or conditions.

4. Stack tests for both emissions units K012 and K013 were required to have been conducted by no later than March 29, 1996 pursuant to PTI# 13-2946, which was issued on March 29, 1995. The stack tests were not conducted for either of these units until October 9 and 10, 2001. Consequently, Respondent failed to timely test, in violation of ORC § 3704.05(C). The results of these tests showed Respondent to be in compliance with the 90% by weight VOC emission destruction efficiency requirement in its PTI and OAC Rule 3745-21-09(Y). Both emissions units K012 and K013 had a VOC destruction efficiency greater than the required 90%.

5. PTI # 13-3562, which was issued to Respondent for emissions unit K014 on November 17, 1999, required that catalytic oxidizer #4 (serving emissions unit K014) be tested within 12 months of issuance of the PTI, or by November 17, 2000. Emissions unit K014 was tested late on June 26 and 27, 2001, in violation of ORC § 3704.05(C). Both PTI # 13-3562 and OAC Rule 3745-21-09(Y)(1)(b)(ii) require emissions unit K014 to comply with a 90%, by weight, VOC emission destruction efficiency requirement.

6. By letter dated April 17, 2001, Cleveland informed Respondent that in order to determine compliance with all the terms and conditions of Respondent's air permits, stack testing was necessary to be performed for emissions units K001, K002, K005, K006, K007, K012, K013 and K014. Emissions units K012, K013 and K014 were required to be tested pursuant to PTI #s 13-2946 and 13-3562. Cleveland requested the testing of K001, K002, K005, K006 and K007 to determine the compliance status of the emissions units. Respondent was informed that it needed to submit an Intent-To-Test ("ITT") notification to Cleveland within

60 days of receipt of the letter.

7. By letter dated April 24, 2001, Respondent replied to Cleveland's April 17, 2001 letter indicating that it had contracted with Air Compliance Inc. to conduct the required stack tests. Respondent also faxed, on May 25, 2001, a copy of an ITT notification for emissions unit K014. Respondent failed to submit a plan and schedule for completion of all the required stack tests. Additionally, stack tests for catalytic oxidizers #1, #2 and #3, as of the date of these Orders, have not been conducted.

8. On August 22, 2001, Cleveland received and reviewed the stack test results from the June 26 and 27, 2001 tests for emissions unit K014. The results showed that catalytic oxidizer #4, serving emissions unit K014, had a destruction efficiency of 78.99% by weight for VOC emissions. The terms and conditions of PTI# 13-3562 and OAC Rule 3745-21-09(Y) specify that the catalytic oxidizer is to have a destruction efficiency of at least 90% by weight for VOC emissions. This constituted violations of OAC Rule 3745-21-09(Y) and ORC § 3704.05 (A), (C) and (G).

9. On August 30, 2001, Cleveland issued a Notice of Violation ("NOV") for violations of the destruction efficiency limitation for emissions unit K014 as described in Finding 8. Respondent was instructed to bring emissions unit K014 into compliance with PTI # 13-3562 and to submit a plan of corrective action within 30 days of receipt of the NOV.

10. Respondent replied via fax copy of a letter dated October 25, 2001. In its response, Respondent stated that catalytic oxidizer #4 was to be replaced, and that this would take at least 28 weeks to complete. Respondent also stated it would submit a time line for completion of the installation of the new catalytic oxidizer and for performing another stack test. Cleveland and Respondent discussed these issues during a telephone conversation on December 6, 2001, and Cleveland accepted the schedule that was proposed.

11. By letter dated July 31, 2002, Respondent informed Cleveland that it purchased two (2) Regenerative Thermal Oxidizer units, and they had been delivered to Respondent on July 18, 2002. Cleveland was notified on October 15, 2002, that installation was complete and the systems were operating as of September 16, 2002. Captured VOC emissions from emissions units K001, K002, K005, K006, K007 and K014 are now exhausted into these oxidizers. Emissions units K001, K002 and K005 are exhausted through one of the oxidizers, and emissions units K006, K007 and K014 are exhausted through the other oxidizer.

12. During October 2002, Cleveland met with Respondent to establish a testing protocol that would allow Respondent to be able to conduct the stack testing to determine VOC emission capture and destruction efficiencies on every individual emissions unit, while allowing the company to continue "normal" production. Cleveland and Respondent have tentatively agreed to commence testing in spring 2003, with the goal of showing compliance

by June 1, 2003.

13. The Director has given consideration to, and based his determination on the evidence relating to the technical feasibility and economic reasonableness of complying with the following Orders and their benefits to the people of the State to be derived from such compliance.

V. ORDERS

The Director hereby issues the following Orders:

1. Pursuant to ORC § 3704.06, Respondent is assessed a civil penalty in the amount of twenty-five thousand seven hundred fifty dollars (\$25,750), in settlement of Ohio EPA's claim for civil penalties. Within thirty (30) days after the effective date of these Orders, Respondent shall pay to Ohio EPA the amount of twenty thousand six hundred dollars (\$20,600) of the total penalty amount. Payment shall be made by official check made payable to "Treasurer, State of Ohio" and sent to Brenda Case, Fiscal Specialist, or her successor, at the following address:

Brenda Case
Fiscal Administration
Ohio Environmental Protection Agency
P.O. Box 1049
Columbus, OH 43216-1049

A copy of the check shall be sent to Jim Orlemann at the following address:

Division of Air Pollution Control
Ohio Environmental Protection Agency
P.O. Box 1049
Columbus, OH 43216-1049

The remaining five thousand one hundred fifty dollars (\$5,150) shall be paid to fund a supplemental environmentally beneficial project. Specifically, within thirty (30) days after the effective date of these Orders, Respondent shall deliver an official check in this amount and made payable to the Ohio Department of Natural Resources, Division of Forestry, State Forest Fund for the purpose of funding urban area tree-planting projects in Ohio. This check shall specify that such monies are to be deposited into Fund No. 509. The check shall be sent to John Dorka, Deputy Chief, or his successor, at the following address:

Division of Forestry
Ohio Department of Natural Resources

1855 Fountain Square Court, H-1
Columbus, Ohio 43224-1327

A copy of the check shall be sent to Jim Orlemann at the following address:

Division of Air Pollution Control
Ohio Environmental Protection Agency
P.O. Box 1049
Columbus, OH 43216-1049

VI. TERMINATION

Respondent's obligations under these Orders shall terminate upon Ohio EPA's receipt of the official checks 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. 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 by these Orders, unless otherwise specified in writing, shall be submitted to:

City of Cleveland
Department of Public Health and Welfare

1925 St. Clair Avenue
Cleveland, OH 44114
Attn: Michael Krzywicki

and to:

Ohio Environmental Protection Agency
Division of Air Pollution Control
P.O. Box 1049
Columbus, OH 43216-1049
Attn: Paul Cree

XI. RESERVATION OF RIGHTS

Ohio EPA and Respondent each reserve all 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

Christopher Jones
Director

Date

IT IS SO AGREED:

Automated Packaging Systems

Signature

Date

Printed or Typed Name

Title