

**BEFORE THE**  
**OHIO ENVIRONMENTAL PROTECTION AGENCY**

In the Matter of:

|                        |   |                                  |
|------------------------|---|----------------------------------|
| Effox Incorporated     | : | <u>Director's Final Findings</u> |
| 9759 Inter Ocean Drive | : | <u>and Orders</u>                |
| Cincinnati, Ohio 45246 | : |                                  |
|                        | : |                                  |
| RESPONDENT             | : |                                  |

**PREAMBLE**

It is agreed by the parties hereto as follows:

**I. JURISDICTION**

These Director's Final Findings and Orders ("Orders") are issued to Effox Incorporated ("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 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**

The Director of Ohio EPA has determined the following findings:

1. Respondent owns and operates a manufacturing facility located at 9759 Inter Ocean Drive, West Chester Township (Butler County), Ohio, which is identified by Ohio EPA as facility ID 1409030906. At this facility, Respondent operates a paint spray booth to coat metal structural components such as metal dampers and expansion joints. This spray booth is identified by Ohio EPA as "emissions unit K001."

2. Emissions unit K001 emits “volatile organic compounds” (“VOC”) and “particulate emissions” as defined in Ohio Administrative Code (“OAC”) Rules 3745-21-01(B)(6) and 3745-17-01(B)(11), respectively. This emissions unit is an “air contaminant source” as defined in OAC Rules 3745-31-01(D) and 3745-35-01(B)(1), and is a “coating line” as defined in OAC Rule 3745-21-01(D)(10).

3. OAC Rule 3745-21-09(U)(1) requires, in part, the owner or operator of a miscellaneous metal part or product coating line, constructed or modified on or after March 27, 1981, to comply with applicable VOC emission limitations (expressed as pounds of VOC emitted to ambient air per gallon of applied coating) unless otherwise exempted under OAC Rule 3745-21-09(U)(2).

4. OAC Rule 3745-21-09(U)(2)(e) exempts, in part, miscellaneous metal part or product coating lines, located in Butler County, that never use more than three gallons of applied coating per day, from the requirement to comply with the applicable VOC emission limitation in OAC Rule 3745-21-09(U)(1).

5. OAC Rule 3745-21-09(B)(3)(d) requires, in part, the owner or operator of a coating line that is exempt from the emission limitations, pursuant to OAC Rule 3745-21-09(U)(2)(e), to collect and record each day the following information, which must be maintained at the facility for a period of three years:

- f) the name and identification number of each coating employed;
- g) the volume, in gallons, of each coating employed; and
- h) the total volume, in gallons, of all the coatings employed.

6. OAC Rule 3745-21-09(B)(3)(e), requires, in part, the owner or operator of a coating line to notify the Director of Ohio EPA of any day the coating line exceeds the three gallons per day exemption threshold. Copies of the record must be mailed to the Director within forty-five (45) days of the exceedance.

7. OAC Rule 3745-31-02 requires that a person not allow the installation or modification of an air contaminant source without first applying for and obtaining a permit to install (“PTI”), except as otherwise provided by rule or law.

8. OAC Rule 3745-31-06(D) states, in part, that the Director of Ohio EPA may impose special terms and conditions as are appropriate or necessary to ensure compliance with applicable laws and to ensure adequate protection of the environment.

9. OAC Rule 3745-35-02 requires any owner or operator of an air contaminant source to apply for and obtain a permit to operate (“PTO”) prior to operating any air contaminant source, except as otherwise provided by rule or law.

10. ORC § 3704.05(A) prohibits, in part, any person from causing, permitting or allowing emissions of an air contaminant in violation of any rule adopted to achieve and/or maintain the National Ambient Air Quality Standards.

11. ORC § 3704.05(C) prohibits any person from violating any terms or conditions of a permit issued by the Director of Ohio EPA.

12. ORC § 3704.05(G) prohibits any person from violating any order, rule or determination of the Director of Ohio EPA that is issued, adopted, or made under ORC Chapter 3704.

13. On August 16, 1999, Ohio EPA's Division of Air Pollution Control ("DAPC") received a PTI application that requested permission to install emissions unit K001. The application stated that emissions unit K001 was installed in 1993 without a PTI. Respondent installed emissions unit K001 prior to applying for and obtaining a PTI, in violation of OAC Rule 3745-31-02 and ORC § 3704.05(G). Likewise, Respondent operated emissions unit K001 without applying for and obtaining a PTO, in violation of OAC Rule 3745-35-02 and ORC § 3704.05(G). The PTO violation occurred from the start-up of emissions unit K001 (June 1993) until the PTO was issued on August 1, 2001, but excluding the period from November 10, 1999 through November 10, 2000.

14. A Notice of Violation ("NOV") was mailed to Respondent on September 29, 1999, for the failure to apply for and obtain a PTI prior to the start of construction.

15. On November 10, 1999 and August 1, 2001, Ohio EPA issued PTI # 14-04798 and corresponding PTO # 14-09-03-0906 K001, respectively, to Respondent authorizing the installation and operation of emissions unit K001. The permits required Respondent to:

- a. maintain the records required by OAC Rule 3745-21-09(B)(3)(d) and identified in Finding 5;
- b. submit annual deviation (excursion) reports to the Hamilton County Department of Environmental Services ("HAMCO"), by January 31 of each year, that identify all exceedances of the annual coating and cleanup material usage limitations and/or the VOC content limitation (these reports were required even if no exceedance occurred during the reporting period);
- c. submit, within 45 days of the occurrence, a written notification of any daily record showing that the coating line employed more than the stipulated maximum daily coating and/or cleanup material usage limitations; and
- d. limit emissions unit K001's coating usage rate to not more than three gallons per day, as applied, to preclude the applicability of OAC Rule 3745-21-09(U)(1).

16. On June 22, 2001, HAMCO received a request from Mr. Dave Thrasher of

Environmental Risk Management, a consultant for Respondent, for copies of the facility's files. During the file review, HAMCO noticed that Respondent had failed to submit the required annual deviation reports for the years 1999 and 2000, in violation of the special terms and conditions of PTI# 14-04798 and ORC § 3704.05(C). The violation occurred from the date the first annual report was due (January 31, 2000) to November 20, 2001 (the date the deviation reports were submitted). HAMCO informed Mr. Thrasher, via telephone, that Respondent's required annual reports had not been received. Mr. Thrasher replied that he had become aware of Respondent's failure to submit the required annual reports and that the reports would be submitted soon.

17. On October 19, 2001, a letter was sent to Respondent reminding it of the PTI reporting requirements which had not been met. Specifically, Respondent was informed that it had not submitted annual reports for the years 1999 and 2000. Respondent was also informed of the June 22, 2001 telephone conversation that informed Mr. Thrasher of Respondent's non-compliance for failure to submit the required annual reports.

18. On November 1, 2001, Mr. Thrasher on behalf of Respondent, responded by telephone to the October 19, 2001 letter. Mr. Thrasher stated that Respondent had not paid close attention to its PTI terms and conditions and recently discovered it had been exceeding the daily usage and VOC emission limitations. Further, he said that Respondent's current production schedule did not allow it to operate within the PTI limitations. Mr. Thrasher asked what needed to be done to bring the facility into compliance. He was informed that Respondent needed to report the extent of the non-compliance and, if needed, to submit a PTI modification application requesting workable terms and conditions. Also, during the telephone conversation, Mr. Thrasher mentioned that Respondent had lost several records during a roof fall last year.

19. On November 20, 2001, a prearranged inspection of Respondent's facility was performed by HAMCO to determine the degree of non-compliance and to assist Respondent in returning to compliance. During the inspection, Respondent stated that it had not kept daily coating or cleanup records prior to October 29, 2001. Further, Respondent acknowledged that daily limitations had been exceeded; however, due to the lack of records, the frequency or the extent of the exceedances could not be determined. Respondent estimated that it used between 1 to 5 gallons of coating per day. Records that were currently being kept could not be used to determine exceedances because it recorded the amount of coatings placed in the paint pots rather than actual usage. Respondent exceeded the three gallon per day exemption specified in PTI# 14-04798 and the PTO. Also, pursuant to OAC Rule 3745-21-09(U)(2)(e)(ii), since emissions unit K001 exceeded the three gallons per day coating usage exemption level, it is required thereafter to comply with the applicable VOC emission limitation specified in OAC Rule 3745-21-09(U)(1). Compliance with OAC Rule 3745-21-09(U)(1) could not be determined prior to October 29, 2001 because Respondent failed to maintain the required records. Respondent failed to collect, record and maintain the required coating information, in violation of the record keeping requirements of the special terms and conditions of its PTI and PTO, OAC Rule 3745-21-09(B)(3)(d) and ORC § 3704.05(C) and

(G). Additionally, Respondent failed to notify the Director of Ohio EPA of the exceedance of the three gallon per day exemption, in violation of the special terms and conditions of the PTI and PTO, OAC Rule 3745-21-09(B)(3)(e), and of ORC § 3704.05(C) and (G). The starting date of these violations is not known; however, the violations continued until Respondent notified HAMCO on November 1, 2001 that it exceeded the three gallon per day exemption threshold.

20. A letter dated November 20, 2001, was submitted to HAMCO by Environmental Risk Management, Inc., on behalf of Respondent. The letter confirmed the findings that were discovered during the inspection and mentioned in Finding 18. Additionally, based on purchase records, Respondent determined that it had not exceeded the PTI annual emission limitations; however, the annual coating usage limitation was exceeded. Respondent did not comply with the coating usage limitations specified in the PTI, in violation of ORC § 3704.05(C). Further, the letter stated that Respondent would submit new PTI/PTO applications to address changes that were needed to bring the facility into compliance.

21. On November 28, 2001, a NOV was sent to Respondent citing the violations identified during the November 1, 2001 inspection and subsequent letter.

22. On December 12, 2001, Respondent submitted a PTI modification application and daily records for the period of October 29, 2001 through December 6, 2001, for emissions unit K001. The daily records confirmed that Respondent is subject to the VOC emission limitations specified in OAC Rule 3745-21-09(U)(1) because the daily coating usage rate exceeded the three gallon per day exemption threshold. Further, the records demonstrated that Respondent exceeded the applicable VOC emission limitation of 3.5 pounds of VOC per gallon of applied coating, excluding water and exempt solvents, based on a daily weighted average, for seven days between October 29, 2001 through December 6, 2001 (for exact days see attached table). Exceedance of the VOC emission limitation is a violation of OAC Rule 3745-21-09(U)(1)(c) and ORC § 3704.05(A) and (G).

23. On January 29, 2002, Ohio EPA issued PTI # 14-05248 with terms and conditions that will bring Respondent into compliance. In order to bring the Respondent into compliance PTI # 14-05248 authorized installation of three emissions units at the facility to handle the coating requirements that previously was performed by emissions unit K001. Emissions unit K001 will still be used for the coating of miscellaneous metal parts; however, the higher VOC content coatings will be applied within emissions unit K002. PTI # 14-05248 authorized emissions unit K001 to use more than three gallons per day of applied coatings and requires the use of compliance coatings as specified in OAC Rule 3745-21-09(U)(1)(c) (3.5 pounds of VOC per gallon of applied coating, excluding water and exempt solvents).

24. The Director has given consideration to, and based his determination on, evidence relating to the technical feasibility and economic reasonableness of complying with the following Orders and the 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 fifteen thousand dollars (\$15,000) in settlement of Ohio EPA's claim for civil penalties. Of this amount, Respondent shall pay to Ohio EPA the amount of twelve thousand dollars (\$12,000) in accordance with the payment schedule in Order 3. Payments shall be made by official checks made payable to "Treasurer, State of Ohio." The official checks shall be submitted to Brenda Case at Ohio EPA, Office of Fiscal Administration, P.O. Box 1049, Columbus, Ohio 43216-1049, together with a letter identifying the Respondent and the facility.

Copies of the official checks shall be submitted to James A. Orlemann, Manager, Engineering Section, or his successor, Division of Air Pollution Control, Ohio EPA, P.O. Box 1049, Columbus, Ohio 43216-1049.

In lieu of payment to Ohio EPA of the remaining three thousand dollars (\$3,000) of the total penalty amount, Respondent shall perform the supplemental environmentally beneficial project identified in Order 2.

2. Respondent shall perform the supplemental environmentally beneficial project consisting of funding urban area tree-planting projects in Ohio. Specifically, within thirty (30) days after the effective date of these Orders, Respondent shall deliver an official check in the amount of three thousand dollars (\$3,000) made payable to the Ohio Department of Natural Resources, Division of Forestry, State Forest Fund for this purpose. 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 James A. Orlemann, Manager, Engineering Section, or his successor, at the above-stated address.

3. Respondent shall comply with the following payment schedule for the civil penalties identified in Order 1:

| <u>Payment Deadline</u>                              | <u>Amount Due</u> |
|--|-------------------|
| within 60 days of the effective date of these Orders | \$4,000 (to OEPA) |

|   |                   |
|---|-------------------|
| within 90 days of the effective date of these Orders  | \$4,000 (to OEPA) |
| within 120 days of the effective date of these Orders | \$4,000 (to OEPA) |

#### **VI. TERMINATION**

Respondent's obligations under these Orders shall terminate upon Ohio EPA's and the Ohio Department of Natural Resources' receipt of all of the official checks required by Section V of these Orders on or by the dates specified.

#### **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 operations 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 the 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 to be submitted by Respondent pursuant to these Orders shall be addressed to:

Hamilton County Department of Environmental Services  
Air Quality Programs  
250 William Howard Taft Road  
Cincinnati, Ohio 45219-2660  
Attn: Harry Schwietering

and to:

Ohio Environmental Protection Agency  
Lazarus Government Center  
Division of Air Pollution Control  
122 South Front Street, P.O. Box 1049  
Columbus, Ohio 43216-1049

Attn: Thomas Kalman

### **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 the Respondent's liability for the violations specifically cited herein.

Respondent hereby waives the right to appeal the issuance, terms 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 an appeal. In such event, Respondent shall continue to comply with these Orders notwithstanding such appeal and intervention unless said 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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Christopher Jones  
Director

Date

**IT IS SO AGREED:**

Effox Incorporated

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

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

\_\_\_\_\_  
Title

Table 1

**Summary of the days of violation of the daily average VOC applied coating content limitation of 3.5 pounds per gallon**

| Days of violation | Daily average VOC content* |
|-------------------|----------------------------|
| 10/29/01          | 5.3 lbs/gal                |
| 11/02/01          | 5.3 lbs/gal                |
| 11/27/01          | 3.61 lbs/gal               |
| 11/30/01          | 3.55 lbs/gal               |
| 12/01/01          | 3.64 lbs/gal               |
| 12/05/01          | 3.67 lbs/gal               |
| 12/06/01          | 5.28 lbs/gal               |

\* Excluding water and exempt solvents.