

BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY

OHIO E.P.A.
JUN 24 2004

In the Matter of:

Forest City Technologies, Inc.
401 Magyar Street
P.O. Box 86
Wellington, Ohio 44090

ENTERED DIRECTOR'S JOURNAL

Director's Final Findings
and Orders

PREAMBLE

I certify this
official record
Environmental Protection Agency

copy of the
of the Ohio

It is agreed by the parties hereto as follows:

By: 

DATE: 24 JUNE 04

JURISDICTION

These Director's Final Findings and Orders ("Orders") are issued to Forest City Technologies, Inc. ("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 Respondent's facility as hereafter defined 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. However, nothing in the following findings shall be deemed to be an admission by Respondent of any matter of law or fact:

1. Respondent owns and operates a metal parts and fasteners coating facility, which is identified by Respondent as Plant 2/4 (a.k.a. Plant 2 and Plant 4) and is located at 401 Magyar Street, Wellington, Lorain County, Ohio.
2. At the above-referenced facility, Respondent owns and operates an index and plug coater/coating line-drying oven, stream coating line STR-2, bolt coating line #8, dip spin coating line #1, dip spin coating line #2, and an open top vapor degreaser, which are identified by Ohio EPA as "sources K005, K007, K008, K009, K010 and L001," respectively. Sources K005, K007, K008, K009, K010 and L001 were installed in March

1987, October 1997, September 1999, November 1988, October 1994, and March 1987, respectively. In early 1987, Respondent obtained permits to install ("PTIs") from Ohio EPA for the installation of sources K005 and L001; however, sources K007 through K010 were installed without PTIs.

3. Sources K005, K007, K008, K009, K010 and L001 were or are "air contaminant sources" as defined in Ohio Administrative Code ("OAC") Rules 3745-15-01(C) and (W), 3745-31-01(D), and 3745-35-01(B)(1), and ORC § 3704.01(C).

4. At the time that it submitted an application for a Title V permit electronically on June 26, 1996, Respondent's facility was a "major source" of air pollutants, as defined in OAC Rule 3745-77-01(W), based on information in the permit application which indicated that the facility's potential to emit ("PTE") of volatile organic compounds ("VOC") exceeded the threshold of 100 tons per year ("TPY").

5. Because Respondent's facility was a major source prior to and at the time of the initial Title V permit application deadline in 1996, the facility was a "Title V source," as defined in OAC Rule 3745-77-01(LL), and was subject to the Title V permit requirements of OAC Rule 3745-77-02.

6. OAC Rule 3745-31-02 prohibits any person from installing an air contaminant source unless a PTI has been applied for and obtained, except as provided by rule or law. OAC Rule 3745-35-02 prohibits any person from operating an air contaminant source unless a Permit to Operate ("PTO") has been applied for and obtained, except as provided by rule or law. OAC Rule 3745-77-02 prohibits the operation of a Title V source without either timely applying for a Title V permit or possessing a Title V permit from Ohio EPA.

7. ORC § 3704.05(C) prohibits any person from violating the terms and conditions of any permit issued by the Director of Ohio EPA. ORC § 3704.05(G) prohibits any person from violating any rule adopted by the Director of Ohio EPA. ORC § 3704.05(K) prohibits any person from operating a Title V source without either timely applying for a Title V permit or possessing a Title V permit from Ohio EPA.

8. On April 5, 1995, representatives of the Ohio EPA, Northeast District Office ("NEDO") conducted an inspection at Respondent's Plant 4. The inspection revealed: (1) source L001 was in compliance but its PTO would expire on May 8, 1995, and (2) source K005 had been modified in early 1995 without obtaining a PTI modification.

9. In May, 1995, Respondent submitted a renewal PTO application for source L001.

10. By a letter dated June 6, 1995 to Respondent, NEDO requested Respondent to submit a PTI modification application for source K005.

11. On June 30, 1995, Ohio EPA issued to Respondent a renewal PTO for source L001

12. By a letter dated July 17, 1995, NEDO reminded Respondent to submit the a PTI modification application for source K005.

13. On February 21, 1996, Respondent requested a 90-day extension for the submission of its Title V permit application.

14. On March 1, 1996, Ohio EPA informed Respondent that it was granted an extension until June 26, 1996 to file a Title V permit application.

15. On June 26, 1996, Respondent electronically submitted a Title V application for its Plant 2/4.

16. On July 9, 1998, Ohio EPA issued a Title V permit to Respondent for Plant 2/4.

17. On April 29, 1999, Ohio EPA received from Respondent the Ohio EPA Title V Compliance Certification ("Certification") for the period from July 9 through December 31, 1998. In this Certification, Respondent revealed that it could need additional PTIs due to changes at its facility.

18. By a letter dated August 9, 2000 to the United States Environmental Protection Agency, Region 5 ("USEPA"), Respondent claims to have voluntarily disclosed permit violations associated with Respondent's Plant 2/4. Specifically, Respondent revealed that there were no PTIs for sources K007 through K010. By letter dated November 30, 2000, USEPA advised Respondent that its voluntary disclosure qualified for 100% mitigation of any gravity-based penalty under USEPA's "Incentives for Self-Policing: Discovery, Disclosure, Correction and Prevention of Violations" policy issued in December 1995.

19. By a letter dated August 31, 2000 to Ohio EPA, Respondent claims to have voluntarily disclosed the permit violations that had been mentioned in Respondent's August 9, 2000 letter to USEPA and requested immunity from any civil penalties for the permit violations associated with Respondent's Plant 2/4. In a schedule attached to this letter, Respondent indicated that it would submit PTI applications by December 15, 2000 for nonexempt emissions units that did not have permits.

20. On October 11, 2000, Ohio EPA, NEDO issued a NOV to Respondent for its failure to obtain PTIs for its modified and new sources at its facility. Specifically, Respondent was requested to, within 30 days of Respondent's receipt of the NOV, submit a new PTI application for the dip spin coating line #1 (source K009, which originally was identified as source Z001 in the current Title V permit) due to higher VOC content coatings being used, and to submit PTI applications for dip spin coating line #2 (source K010), stream coating line STR-2 (source K007), and bolt coating line #8 (source K008).

21. In November, 2000, Respondent submitted to Ohio EPA PTI applications for sources K007, K008, K009 and K010 as requested in the October 11, 2000 NOV by NEDO and consistent with Respondent's August 31, 2000 letter to Ohio EPA.

22. By a letter dated September 28, 2001, Ohio EPA informed Respondent that the Agency could not grant the immunity requested in Respondent's August 31, 2000 audit disclosure for violations at Plant 2/4 because based on the Title V rules (OAC Chapter 3745-77), Respondent was required to disclose or report all violations of applicable air pollution control regulations.

23. On October 16, 2001, Ohio EPA issued PTI # 02-15400 for sources K007, K009 and K010. Source K008 was taken out of service on July 20, 2001.

24. On March 15, 2002, Respondent submitted a revised Title V permit application for Plant 2/4, which included modified source K005 and sources K007, K009 and K010.

25. On April 17, 2002, Respondent applied to Ohio EPA for a PTI modification (application #02-16464) for emissions units at the facility. In the application, it was discovered that emissions unit K005 no longer existed as identified in the original PTI (#02-5902) issued by Ohio EPA on June 19, 1991 and as observed during NEDO's 1995 inspection. Emissions unit K005's components had been included into other emissions unit at the facility.

26. Respondent is no longer a "major source" of VOCs or hazardous air pollutants because the PTEs of such pollutants are restricted to below Title V applicability thresholds by rule or by permit. Nonetheless, Respondent has decided to maintain its Title V permit.

27. Respondent failed to apply for and obtain a PTI for a modification in early 1995 for source K005, in violation of OAC Rule 3745-31-02 and ORC § 3704.05(G). From early 1995 to June 27, 1996, Respondent operated modified source K005 without applying for and obtaining a PTO from Ohio EPA, in violation of OAC Rule 3745-35-02 and ORC § 3704.05(G), and from June 27, 1996 to March 15, 2003, Respondent operated modified source K005 without applying for and/or obtaining a Title V permit for such source from Ohio EPA, in violation of OAC Rule 3745-77-02 and ORC § 3704.05(G) and (K).

28. Respondent installed source K007 in October 1997 without applying for and obtaining a PTI from Ohio EPA, in violation of OAC Rule 3745-31-02 and ORC § 3704.05(G). From October 15, 1997 to October 16, 2001, Respondent operated source K007 without applying for and/or obtaining a Title V permit for such source from Ohio EPA, in violation of OAC Rule 3745-77-02 and ORC § 3704.05(G) and (K).

29. Respondent installed source K008 in September 1999 without applying for and obtaining a PTI from Ohio EPA, in violation of OAC Rule 3745-31-02 and ORC § 3704.05(G). From October 16, 2001 to July 20, 2001, Respondent operated source K008 without applying for and/or obtaining a Title V permit for such source from Ohio EPA, in violation of OAC Rule 3745-77-02 and ORC § 3704.05(G) and (K).

30. Respondent installed source K009 on November 11, 1988 without applying for and obtaining a PTI from Ohio EPA, in violation of OAC Rule 3745-31-02 and ORC § 3704.05(G). From November 11, 1988 to October 16, 2001, Respondent operated source K009 without applying for and/or obtaining a Title V permit for such source from Ohio EPA, in violation of OAC Rule 3745-77-02 and ORC § 3704.05(G) and (K).

31. Respondent installed source K010 in October 1994 without applying for and obtaining a PTI from Ohio EPA, in violation of OAC Rule 3745-31-02 and ORC § 3704.05(G). From October, 1994 to October 16, 2001, Respondent operated source K010 without applying for and/or obtaining a Title V permit for such source from Ohio EPA, in violation of OAC Rule 3745-77-02 and ORC § 3704.05(G) and (K).

32. The October 11, 2000 NOV erroneously stated that Respondent's failure to apply for and obtain a PTI for sources K005, K007, K008 and K009 constituted a violation of OAC Rule 3745-31-05. OAC Rule 3745-31-05 only outlines the criteria the Director uses to determine if a permit to install shall be issued. Ohio EPA acknowledges that Respondent did not violate OAC Rule 3745-31-05.

33. 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 their relation to 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 fifty-four thousand dollars (\$54,000) 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 forty-three thousand and two hundred dollars (\$43,200) of the total penalty amount. Payment shall be made by official check made payable to "Treasurer, State of Ohio." The official check 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 Respondent and the facility.

A copy of the official check shall be submitted to James A. Orlemann, Assistant Chief, Enforcement Section, or his successor, Division of Air Pollution Control, Ohio EPA, P.O. Box 1049, Columbus, Ohio 43216-1049.

2. The remaining ten thousand and eight hundred dollars (\$10,800) 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 official check shall specify that such monies are to be deposited into Fund No. 509. The official check shall be submitted 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 official check shall be submitted to James A. Orlemann, Assistant Chief, Enforcement Section, or his successor, at the above-stated address.

VI. TERMINATION

Respondent's obligations under these Orders shall terminate upon Ohio EPA's and the Ohio Department of Natural Resources' 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.

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's facility.

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

Except as otherwise specified in these Orders, all documents required to be submitted by Respondent pursuant to these Orders shall be addressed to:

Ohio EPA, Northeast District Office
2110 E. Aurora Road
Twinsburg, Ohio 44087-1969
Attn: Kristen Switzer

and to:

Ohio Environmental Protection Agency
Division of Air Pollution Control
Lazarus Government Center
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 specially 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 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

Christopher Jones
Christopher Jones
Director

6-21-04
Date

IT IS SO AGREED:

Forest City Technologies, Inc.

R. Gary Thomas
Signature

6/1/04
Date

R. GARY THOMAS
Printed or Typed Name

VP HUMAN RESOURCES
Title