

BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY

OHIO E.P.A

DEC 27 2005

ENTERED DIRECTOR'S JOURNAL

In the Matter of:

B-way Corporation
8200 Broadwell Road
Cincinnati, Ohio 45244

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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 B-way Corporation ("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 Respondent or of the facility (as hereinafter 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:

1. Respondent owns and operates a can manufacturing plant ("the facility") where Respondent shears, coats and prints plate that is fabricated into metal cans. The facility is located at 8200 Broadwell Road in Cincinnati, Ohio, and is identified by Ohio EPA facility identification number 14-31-34-0460.

2. As part of the plate coating process at the facility, Respondent operates three conventional coaters, which are identified by Ohio EPA as emissions units K041, K044 and K046; and three conventional printing presses identified by Ohio EPA as emissions units K007, K008 and K009. Emissions units K007, K008, K009 and K044 were vented to a

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

Dorey Jackson Date 12-27-05

catalytic oxidizer identified by the facility as "Smith #1," while emissions units K041 and K046 are vented to a catalytic oxidizer identified by the facility as "Smith #2." Emissions units K007, K008, K009, K041, K044 and K046 each constitute an "air contaminant source" as defined in OAC Rule 3745-15-01(C) and (W), and emit volatile organic compounds ("VOC") as defined in OAC Rule 3745-21-01(B)(6).

3. On June 20, 2001, Ohio EPA issued a Title V permit to the facility pursuant to OAC Chapter 3745-77. The permit, in part, requires that:

- a. Respondent conduct emission testing for these emissions units to determine compliance with OAC Rule 3745-21-09(B)(6) within one year from the issuance of this permit and within 2.5 years after the issuance date of this permit.
- b. Not later than thirty (30) days prior to the proposed test date(s), Respondent submit an "Intent to Test" notification to Ohio EPA's contractual representative in Hamilton County, the Hamilton County Department of Environmental Services ("HCDES").
- c. Respondent conduct the emission testing (when non-compliant coatings are employed) to demonstrate compliance with an overall VOC emission control efficiency of not less than 81%, by weight, a VOC emission capture efficiency of not less than 90%, by weight, and a destruction efficiency of not less than 90%, by weight, of all VOC emissions entering each catalytic oxidizer.
- d. When not employing a catalytic oxidizer, the Respondent limit the VOC content of each coating employed to not exceed 2.8 pounds per gallon, excluding water and exempt solvents.
- e. Respondent submit a comprehensive written test report to HCDES, within thirty (30) days from the final date of the tests.

4. On August 26 and 27, 2002, GE Mostardi Platt, Inc. performed emission tests at the facility for Smith #1 and Smith #2. Respondent's failure to perform the emission tests on or before the June 20, 2002 deadline constituted a violation of ORC § 3704.05(C) and (J)(2).

5. On August 27, 2002, the emissions tests were aborted by the Respondent on Smith #1 and Smith #2 due to field data that indicated airflow discrepancies and potential bypass of the oxidizer catalyts.

6. On September 19, 2002, HCDES sent an e-mail to Respondent requesting the

August 26 and 27, 2002 aborted test results, a description of the oxidizer problems during the testing, what corrections were made, and what steps have been taken to prevent the problem from occurring again in advance of the Respondent's upcoming proposed retest in October 2002. HCDES made such request to allow for a review of the aborted test data and corrective actions prior to any retesting.

7. In a letter to HCDES dated October 7, 2002, Respondent outlined the oxidizer problems that caused the August 2002 aborted emissions testing and the steps it took to correct them and prevent any recurrence for future emissions testing. Specifically, Smith #1 had its catalyst frame improperly installed to the oxidizer wall and this allowed the uncontrolled VOC emissions to bypass the catalyst. The problem was corrected by properly welding the frame to the oxidizer wall. The problem with Smith #2 was reported to be loose fitting catalysts. To correct the problem, spare catalysts, specific for the oxidizer, were reconditioned, insulated and installed, and emissions unit K044 was shut down.

8. On October 10, 2002, Mr. Bob Lien, a Field Service Engineer with Anguil Environmental Systems, at the request of Respondent, performed in-house tests on the oxidizers to evaluate the destruction rate efficiency ("DRE") using a Flame Ionization Detector ("FID"). Those measurements indicated destruction rate efficiencies of 89.3% for Smith #1 and 85.9% for Smith #2.

9. On October 16, 2002, HCDES received the August 26 and 27, 2002 test results from Respondent. While Respondent had not completed the tests, HCDES' review of the results of the aborted test indicated that the tests were valid in its belief and that the VOC emission capture, destruction, and overall control efficiencies for Smith #2 were 81%, 67.7% and 54.8%, by weight, respectively, while emissions units K041 and K046 were in operation. For Smith #1, the VOC emission destruction efficiency was 63%, by weight, while emissions units K007, K008, K009 and K044 were in operation. Capture and overall destruction efficiency for Smith #1 were not determined since the test was aborted prior to these determinations. The test was terminated on the second day due to airflow discrepancies, which were causing the destruction, capture, and overall control efficiencies to be below the limits specified in the Title V permit. Respondent's failure to demonstrate and maintain compliance with the destruction, capture, and overall control efficiency limits for the oxidizers, as specified in the Title V permit, constituted violations of OAC Rule 3745-21-09(B)(6) and ORC § 3704.05(A), (C), (G) and (J)(2).

10. In a letter dated October 21, 2002, to Respondent, Mr. Bob Lien made various recommendations to the Respondent for further adjustment and inspection of the oxidizers, based on his October 10, 2002 service visit and FID DRE tests. In particular, Mr. Lien recommended that the operating temperature set points of the oxidizers be increased in 25 degree increments (while staying within the manufacturer's recommended temperature limits to avoid damaging the catalysts) up to its threshold because higher operating temperatures

can increase the DRE.

11. On October 25, 2002, Mr. Darren Haines, a Field Service Engineer with Anguil Environmental Systems, at the request of Respondent, ran in-house FID DRE tests again on the oxidizers to evaluate the adjustments made to the oxidizers in response to Mr. Lein's October 21, 2002 recommendations. In Mr. Haines' letter dated October 28, 2002, to Respondent, he recommended, in part, based on his October 25, 2002 FID DRE test results, that the replacement of the two existing catalytic oxidizers with a regenerative thermal oxidizer ("RTO") is a more effective and cost-effective solution to the non-compliance. Mr. Haines also cautioned the Respondent that even though the increased operating temperature of the oxidizers appeared to have improved the DRE to compliance levels (>90%), line operating conditions at the time of the testing may impact this compliance demonstration.

12. On October 29 through 31, 2002, GE Mostardi Platt, Inc. performed the second VOC emission capture and destruction efficiency tests on the oxidizers Smith #1 and Smith #2.

13. On April 23, 2003, HCDES received from Respondent the October 29 and 31, 2002 test report dated April 16, 2003. The test report was about five months past the due date of November 30, 2002, as specified by the Title V permit. Respondent has provided information to the director in support of its position that it made all reasonable efforts to have the report submitted by the November 30, 2002 due date. The test results were validated by HCDES and are shown in the following table:

Oxidizer	Emissions Units in Operation	Destruction Efficiency (x)	Capture Efficiency (y)	Overall Control Efficiency (x)·(y)
Smith #1	K007, K008, K009 and K044	79.1%	86.1%	68.1%
Smith #2	K041 and K046	85.2%	85.1%	72.5%

14. While Smith #1 controls emissions units K007, K008, K009, and K044, compliant coatings have always been used on emissions units K007, K008 and K009, and as such, the control of those emissions units was not required. However, Respondent has always controlled the emissions from those emissions units as a voluntary means to reduce overall emissions.

15. Respondent's failure to submit the test reports to HCDES on or before the

November 30, 2002 deadline specified in the Title V permit, constitutes a violation of ORC § 3704.05(C) and (J)(2).

16. The test results in the tables above show destruction, capture and overall control efficiencies lower than the limits (90%, 90% and 81%, by weight, respectively) specified in the Title V permit, in violation of OAC Rule 3745-21-09(B)(6) and ORC § 3704.05(A), (C), (G) and (J)(2).

17. On May 27, 2003, HCDES sent a Notice of Violation ("NOV") to Respondent. The NOV cited Respondent for the violations of OAC Rule 3745-21-09(B)(6) for failure to maintain the limits specified in the Title V permit and, subsequently, ORC § 3704.05(C) for failure to comply with the terms and conditions of the permit. The NOV requested Respondent to submit a compliance plan and schedule for bringing the facility into compliance with the applicable rules and laws. The NOV further requested Respondent to submit an Intent-to-Test ("ITT") form for emissions units K008, K009, K041, K044 and K046, within thirty (30) days prior to the test date.

18. On June 24, 2003, HCDES received the response to the May 27, 2003 NOV. Respondent enumerated the problems it encountered throughout the series of emissions tests and the cost associated with the tests. It provided the following plan of action and schedule for addressing the May 27, 2003 NOV:

<u>Activity</u>	<u>Date</u>
Receive all bids for repairing Smith #1 and Smith #2 as well as bids for replacing the two with thermal oxidizers by	June 30, 2003
Reach decision with upper management on whether to repair or replace the oxidizers by	July 16, 2003
Submit schedule for implementing the selected option to HCDES by	August 1, 2003

In addition to the above plan and schedule, Respondent also stated its intention to install permanent total enclosures ("PTEs") on all of the six lines vented to the oxidizers. The PTEs, in conjunction with the replaced oxidizers, would enable the facility to achieve and even exceed the capture, destruction and overall control efficiency limits in the Title V permit.

19. On July 17, 2003, Respondent met with HCDES officials to discuss the aforementioned plan and schedule. Respondent's plan, in part, was to replace Smith #2 with a RTO; and eliminate Smith #1 by using compliant coatings on the emissions units controlled

by Smith #1. Respondent continues to voluntarily utilize Smith #1 to control emissions units K007, K008, and K009, all of which use compliant coatings.

20. On July 18, 2003, Respondent temporarily shut down emissions unit K044 (which was controlled Smith #1) until compliant coatings or alternative compliance methods, such as an alternative daily emission limitation pursuant to OAC Rule 3745-21-09(D)(3), were in place.

21. In a letter dated July 23, 2003, to HCDES, Respondent summarized the current plan and schedule as discussed at the July 17, 2003 meeting as follows:

- a. Emissions units K007, K008 and K009 ran only compliant coatings and so were never out of compliance.
- b. Respondent will be replacing Smith #2 oxidizer with a RTO. The RTO would have a VOC emission destruction efficiency of 99.2%, by weight, and the capacity of controlling VOC emissions from emissions units K041 and K046.
- c. The oxidizer in conjunction with the PTE will make emission units K041 and K046 compliant well in advance of the forthcoming MACT standards of 40 CFR Part 63.
- d. Emissions unit K044 will run only compliant coatings, thereby eliminating the need for Smith #1.
- e. By October 3, 2003, the PTEs would be installed on emissions units K041 and K046.
- f. By October 17, 2003, a RTO unit assembly would be installed and, by October 24, 2003, emissions units K041 and K046 would be hooked into the RTO.
- g. PTE and oxidizer testing would be completed by October 31, 2003.
- h. Emissions units K041 and K046 would be in compliance with the limits established in the Title V permit by November 3, 2003.

22. In a letter to HCDES dated August 26, 2003, Respondent requested that the changes it desired to be made in the Title V permit be classified as a "minor permit modification" for the following reasons:

- a. The RTO being installed is a direct replacement for the existing catalytic oxidizer in order to comply with the VOC emission control requirements of OAC Rule 3745-21-09(B).
- b. Any resulting changes in the Title V Monitoring and Record-keeping Requirements ("MRR") are necessary to properly monitor the effectiveness of the RTO.
- c. The revised MRR will be equivalent to the existing MMR as contained in the Title V permit.
- d. The addition of alternative compliance options to the existing Title V permit will not change the allowable VOC emissions and is an approved alternative for can coating lines under OAC Rules 3745-21-09(D)(2) and 3745-21-09(D)(3).

Respondent also stated that installation of the RTO would have a net environmental benefit because the RTO has a higher overall VOC emission control efficiency of 94.4%, by weight, which is greater than the limitation stated in the Title V permit.

23. In a letter dated September 30, 2003, HCDES agreed with Respondent's approach to implement the proposed Title V permit changes as a "minor modification." Therefore, on October 9, 2003, and pursuant to OAC Rule 3745-77-08(C)(1)(c)(ii), Respondent submitted the minor permit modification application for its Title V permit to HCDES.

24. On October 2, 2003, HCDES received from Respondent, an ITT form for the RTO which was designated to replace Smith #2 and the installed PTEs. The ITT stated that the RTO and PTEs would be tested on November 18, 2003.

25. In a phone conversation on October 27, 2003, Respondent told HCDES that the November 18th test date would need to be changed due to unavailability of the testing contractor. Respondent indicated the company contracted with to do the testing scheduled for November 18, 2003, had a misunderstanding regarding the agreed upon test date.

26. On October 31, 2003, HCDES received from Respondent, a revised ITT form for the RTO. The ITT stated the RTO would be tested on November 13, 2003. Further, the Respondent stated that the PTE installation would not be completed prior to the November 13, 2003 test date; therefore, determination of capture efficiency would not be performed.

27. On January 8, 2004, a meeting was held with representatives of HCDES at the request of the Respondent. At the meeting, the Respondent was advised of its delay in meeting the dates contained in the plan submitted on July 23, 2003. Further, Respondent

was advised of failure to notify HCDES of changes to the plan. The Respondent contended at this meeting that destruction efficiency testing performed on November 13, 2003 and capture efficiency testing performed in October of 2002 should be considered acceptable for demonstration of compliance with overall reduction efficiency requirements. HCDES disagreed with Respondent's position. The Respondent and HCDES agreed that a revised plan and schedule would be submitted.

28. On January 20, 2004, HCDES sent an e-mail to the Respondent requesting that the revised plan and schedule be submitted to HCDES no later than February 2, 2004.

29. On February 2, 2004, HCDES received a revised plan and schedule, dated January 29, 2004, from the Respondent. In the revised plan and schedule, Respondent re-stated its position that the capture test from October 2002 and the destruction test from November 13, 2003, adequately demonstrated that emissions units K041 and K046 were back in compliance; therefore, no additional testing was included in the Respondent's revised compliance plan. The revised compliance plan stated that Respondent disassembled the RTO in Dallas, Texas, on September 19, 2003, hooked it to emissions units K041 and K046 at the Cincinnati facility on November 9, 2003, and completed the oxidizer testing on November 13, 2003. Respondent stated the PTE installation and testing was dropped from the compliance plan because it was required only for the forthcoming MACT standards and not for the Title V permit. However, it planned to continue working with its consultant to design the PTE in readiness for the MACT requirement.

30. In a letter dated March 8, 2004, HCDES rejected the Respondent's revised plan and schedule dated January 29, 2004. Due to the installation of the new RTO since the October 2002 capture test, HCDES disagreed with the Respondent's position that the October 2002 capture testing combined with the November 2003 destruction efficiency testing adequately demonstrated compliance. Therefore, HCDES requested Respondent re-submit a plan and schedule for capture efficiency and destruction efficiency testing, including appropriate ITT forms, by no later than March 19, 2004.

31. On March 16, 2004, Respondent submitted an acceptable plan and schedule as follows:

<u>Activity</u>	<u>Date</u>
The installation of hoods (PTEs) on emissions units K041 and K046 to be completed by	Fourth full week in April 2004
Testing using Method 204 on the hoods and Method 25A on the RTO by	First week in May 2004

32. On May 28, 2004, Respondent performed the final emissions test on emissions units K041 and K046 with the new RTO that was installed in 2003, and with the PTE now in

place. The capture efficiency was 100% in accordance with the Method 204 procedure for evaluating enclosures. The destruction efficiency using Method 25A was 99%. This testing demonstrated compliance with the Title V Operating Permit requirements, i.e., the actual overall VOC control efficiency was 99% versus the allowable of 81%.

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 benefits to the people of the State to be derived from such compliance.

V. ORDERS

The Director hereby issues the following Orders:

1. Respondent shall pay the amount of ninety-five thousand dollars (\$95,000) in settlement of Ohio EPA's claims for civil penalties, which may be assessed pursuant to ORC Chapter 3704. Within fourteen (14) days after the effective date of these Orders, payment to Ohio EPA shall be made by an official check made payable to "Treasurer, State of Ohio" for seventy-six thousand dollars (\$76,000). The official check shall be submitted to Brenda Case, or her successor, together with a letter identifying Respondent, to:

Ohio EPA
Office of Fiscal Administration
P.O. Box 1049
Columbus, Ohio 43216-1049

2. In lieu of paying the remaining nineteen thousand dollars (\$19,000) of the civil penalty, Respondent shall, within fourteen (14) days after the effective date of these Orders, fund a Supplemental Environmental Project ("SEP") by making a contribution in the amount of \$19,000 to the Ohio EPA's Clean Diesel School Bus Fund (Fund 5CD). Respondent shall tender an official check made payable to "Treasurer, State of Ohio" for \$19,000. The official check shall be submitted to Brenda Case, or her successor, together with a letter identifying the Respondent, to the above-stated address.

3. A copy of each of the above checks shall be sent to James A. Orlemann, Assistant Chief, SIP Development and Enforcement, or his successor, at the following address:

Ohio EPA
Division of Air Pollution Control
P.O. Box 1049
Columbus, Ohio 43216-1049

4. Should Respondent fail to fund the SEP within the required timeframe set forth in Order 2, Respondent shall immediately pay to Ohio EPA \$19,000 of the civil penalty in accordance with the procedures in Order 1.

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 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:

Hamilton County, Department of Environmental Services
250 William Howard Taft Road
Cincinnati, Ohio 43138
Attention: Kerri Castlen

and to:

Ohio Environmental Protection Agency
Division of Air Pollution Control
P.O. Box 1049
Columbus, Ohio 43216-1049
Attention: Thomas Kalman, Manager, Enforcement Section

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

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

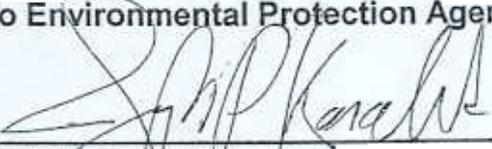
The effective date of these Orders is the date these Orders are entered into the Ohio EPA Director's journal.

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



Joseph P. Koncelik
Director

12-20-05
Date

IT IS SO AGREED:

B-way Corporation


Signature

12-8-05
Date

RICHARD A. FORTI
Printed or Typed Name

VP Mfg + Eng