

BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

North Coast Office Furniture Services, Inc.	:	<u>Director's Final Findings</u>
13000 Athens Avenue	:	<u>and Orders</u>
Lakewood, Ohio 44107	:	

PREAMBLE

It is agreed by the parties hereto as follows:

I. JURISDICTION

These Director's Final Findings and Orders ("Orders") are issued to North Coast Office Furniture Services, 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 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. The City of Cleveland, Division of Air Quality ("CDAQ") acts as an agent of Ohio EPA for the Division of Air Pollution Control in Cuyahoga County.
2. Respondent owns and operates a wood and metal furniture restoration business at 13000 Athens Avenue in Lakewood, Ohio ("Facility"). At the Facility, Respondent operates four emissions units: one stationary spray booth ("K001") used to paint metal furniture; one

stationary spray booth ("K002") used to paint wood furniture; and two mobile spray booths used to paint furniture. Each of these emissions units is an "air contaminant source" as defined in Ohio Administrative Code ("OAC") Rules 3745-15-01(C) and (W) and emit volatile organic compounds ("VOC") as defined in OAC Rule 3745-21-01(B)(6) and/or organic compounds as defined in OAC Rule 3745-21-01(B)(4).

3. On August 8, 2003, a representative from CDAQ conducted an inspection at the Facility and found the following violations of air pollution control rules and laws:

a. sometime in 1998, Respondent installed the four emissions units identified in Finding 2 without first receiving a permit-to-install ("PTI"), in violation of OAC Rule 3745-31-02(A) and ORC § 3704.05(G), and had been operating these emissions units without applying for or obtaining a permit-to-operate ("PTO"), in violation of OAC Rule 3745-35-02(A) and ORC § 3704.05(G);

b. for emissions unit K001, Respondent had been using non-compliant coatings (i.e., greater than 3.0 lbs/gallon of VOC), in violation of OAC Rule 3745-21-09(I)(1) and ORC § 3704.05(A) and (G); and

c. for emissions unit K001, Respondent failed to keep records for the previous three years of the amount and type of coatings used and failed to report exceedances of the VOC limitation, in violation of OAC Rule 3745-21-09(B) and ORC § 3704.05(G).

4. In a Notice of Violation dated August 21, 2003, CDAQ notified Respondent of the violations discovered during the August 8, 2003 inspection and requested Respondent submit a corrective action plan identifying how the violations would be remedied.

5. In a letter to CDAQ dated November 18, 2003, Respondent submitted a corrective action plan indicating that on October 1, 2003, it had begun the use of compliant coatings and record keeping of coating usage for emissions unit K001. Respondent also submitted applications for a PTI and PTO for emissions unit K001.

6. On March 23, 2004, PTI 13-04273 was issued to Respondent for emissions unit K001.

7. On February 20, 2004, Respondent submitted a PTI application for emissions unit K002. PTI 13-04325 was issued to Respondent for emissions unit K002 on July 1, 2004.

8. Respondent has not submitted PTI and PTO applications for its mobile spray painting operations; however, on January 27, 2005, Respondent informed Ohio EPA that it

no longer intends to perform these painting operations.

9. The Director finds that violations cited in the August 21, 2003 NOV are violations of the respective rules of the Ohio Administrative Code cited and are also violations ORC § 3704.05(A) and (G).

10. With letters to Ohio EPA dated July 11, August 10, and October 19, 2005, Respondent submitted documentation alleging an inability to pay the civil penalty proposed by Ohio EPA, primarily due to a major internal embezzlement of funds. Mitigation of the civil penalty was provided by Ohio EPA in response to this documentation.

11. 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 twelve thousand dollars (\$12,000) in settlement of Ohio EPA's claims for civil penalties, which may be assessed pursuant to ORC Chapter 3704. Payment shall be made by official checks made payable to "Treasurer, State of Ohio" for nine thousand six hundred dollars (\$9,600) of the total amount, which shall be paid in nine monthly installments of one thousand dollars (\$1,000) due within 30, 60, 90, 120, 150, 180, 210, 240, and 270 days after the effective date of these Orders and one payment of six hundred dollars (\$600) due within 300 days after the effective date of these Orders. The official checks shall be submitted to Brenda Case, or her successor, together with a letter identifying the Respondent, to:

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

2. In lieu of paying the remaining two thousand four hundred dollars (\$2,400) of civil penalty, Respondent shall fund a Supplemental Environmental Project ("SEP") by making a contribution in the amount of \$2,400 to the Ohio EPA's Clean Diesel School Bus Program Fund (Fund 5CD). Respondent shall tender official checks in the amount of four hundred dollars (\$400) due within 300 days after the effective date of these Orders and one thousand dollars (\$1,000) each due within 330 and 360 days after the effective date of these Orders. The official checks shall be submitted to Brenda Case, or her successor, together

with a letter identifying the Respondent and Fund 5CD, 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:

Division of Air Pollution Control
Ohio Environmental Protection Agency
Lazarus Government Center
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 \$2,400 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 Respondent's activities at the 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 to be submitted by Respondent pursuant to these Orders shall be addressed to:

City of Cleveland
Division of Air Quality
1925 St. Clair Ave.
Cleveland, Ohio 44144
Attn: Andrew Shroads or successor

and to:

Ohio Environmental Protection Agency
Lazarus Government Center
Division of Air Pollution Control
P.O. Box 1049
Columbus, Ohio 43216-1049
Attn: Thomas Kalman

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

Date

IT IS SO AGREED:

North Coast Office Furniture Services, Inc.

Signature

Date

Printed or Typed Name

Title