

**BEFORE THE OHIO
ENVIRONMENTAL PROTECTION AGENCY**

In the Matter of:

Tembec BTL SR Inc.	:	<u>Director's Final Findings</u>
2112 Sylvan Avenue	:	<u>and Orders</u>
Toledo, Ohio 43606	:	

PREAMBLE

It is agreed by the parties hereto as follows:

I. JURISDICTION

These Director's Final Findings and Orders ("Orders") are issued to Tembec BTL SR Inc. ("Respondent") pursuant to the authority vested in the Director of the Ohio Environmental Protection Agency ("Ohio EPA") under Ohio Revised Code ("ORC") §§ 3753.08 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 owned by the Respondent 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 3753 and the rules promulgated thereunder.

IV. FINDINGS

The Director of Ohio EPA has determined the following findings:

1. Respondent is a resin manufacturing facility located at 2112 Sylvan Avenue in Toledo, Ohio. Formaldehyde (45% solution, by weight) is reacted with melamine, urea, or both in one of five reactors. Formaldehyde is a regulated substance listed in Ohio Administrative Code ("OAC") Rule 3745-104-04 and has a threshold of 15,000 pounds for applicability of OAC Chapter 3745-104. The quantity of formaldehyde reported by Respondent in the Risk Management Plan ("RMP") submitted to Ohio EPA on August 5, 1999 is 210,000 pounds.
2. An owner or operator of a stationary source that has more than a threshold quantity of

- a regulated substance in a process, as determined by OAC Rule 3745-104-02, shall comply with the requirements of this rule by submitting a Risk Management Plan ("RMP") and implementing a prevention program no later than June 21, 1999. (On January 3, 2000, Ohio EPA, DAPC received delegation of the RMP program from U.S. EPA).
3. On May 6, 2004, an RMP audit of Tembec was conducted by Ohio EPA, DAPC. Ten deficiencies were discovered during the inspection, and it was determined that an RMP program essentially did not exist at the facility.
 4. Ohio EPA, DAPC sent a deficiency letter outlining the deficiencies to Respondent on May 13, 2004. Since there was essentially no prevention program being implemented, the deficiency letter required Respondent to submit a six-month compliance schedule within thirty days.
 5. A letter from Tembec including a six-month compliance schedule was dated June 14, 2004. On August 24, 2004, a meeting was held with Tembec and its consultant, Malcolm-Pirnie. (Respondent came to the conclusion that it could not comply with the RMP regulations without hiring a consultant.) During the meeting, it was determined that the facility would be in full compliance with the RMP regulations by December 2004. It was agreed that a compliance schedule would be submitted by the end of September 2004.
 6. A warning letter was sent on October 15, 2004 by Ohio EPA, DAPC indicating that a compliance schedule had not been received. Respondent replied via e-mail on October 21, 2004 with the compliance schedule.
 7. Respondent submitted off-site consequence analysis data on November 12, 2004, the process hazard analysis and the RMP audit report (conducted by the consultant in mid-September 2004) on December 3, 2004. The remaining documentation to be reviewed by Ohio EPA DAPC was submitted on December 17, 2004.
 8. Ohio EPA, DAPC reviewed all the documentation and determined that it was incomplete. A conference call was held on January 14, 2005 with Respondent and Malcolm-Pirnie to discuss the remaining deficiencies in the process safety information, process hazard analysis, and operating procedures.
 9. The documentation to resolve the remaining deficiencies was submitted on January 31, 2005 and appeared to be complete. However, a follow-up RMP audit was conducted on June 1, 2005 to determine whether Respondent was implementing the RMP Program Level 3 prevention program. After the audit, it was determined that the RMP program was not being fully implemented. Respondent was not in compliance

with the following rules:

- a. Respondent failed to address process hazard recommendations, as required by OAC Rule 3745-104-25.
 - b. Respondent failed to implement written mechanical integrity procedures and document inspections and tests, as required by OAC Rule 3745-104-28.
 - c. Respondent failed to address deficiencies in the RMP compliance audit, as required by OAC Rule 3745-104-31.
 - d. Respondent failed to implement the contractor safety program, as required by OAC Rule 3745-104-35.
10. Tembec indicated that it would be submitting additional information to resolve the deficiencies. The documentation to resolve the deficiencies was received in October 2005, which brought the company into compliance.
 11. The Director has given consideration to, and based on his determination on, evidence relating to the technical feasibility and economic reasonableness of complying with the following Orders and 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 fifteen thousand five hundred forty dollars (\$15,540) in settlement of Ohio EPA's claims for civil penalties, which may be assessed pursuant to ORC Section 3753.09. Respondent shall pay to Ohio EPA the amount of twelve thousand four hundred thirty-two dollars (\$12,432) pursuant to the following schedule:

Three thousand one hundred eight dollars (\$3108) due no later than ninety days after the effective date of these orders;

three thousand one hundred eight dollars (\$3108) due no later than one hundred eighty days after the effective date of these orders;

three thousand one hundred eight dollars (\$3108) due no later than two hundred seventy days after the effective date of these orders; and

three thousand one hundred eight dollars (\$3108) due no later than three hundred sixty days after the effective date of these orders;

The civil penalty shall be credited to the risk management plan reporting fund created in section 3753.05 of the Revised Code. The official check 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 three thousand one hundred eight dollars (\$3,108) of the civil penalty, Respondent shall fund a Supplemental Environmental Project ("SEP") by making a contribution in the amount of three thousand one hundred eight dollars (\$3,108) to the Ohio EPA's fund for the Clean Diesel School Bus Fund (Fund 5CD). Respondent shall tender an official check made payable to "Treasurer, State of Ohio" for \$3,108. Within thirty (30) days after the effective date of these orders, the official check shall be submitted to Brenda Case, or her successor, together with a letter identifying the Respondent, to:

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

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

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:

Ohio Environmental Protection Agency
Division of Air Pollution Control
P.O. Box 1049
Columbus, Ohio 43216-1049
Attention: Sherri Swihart

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, defenses 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:

Tembec BTL SR Inc.

Signature

Date

Printed or Typed Name

Date

Title