BEFORE THE

OHIO ENVIRONMENTAL PROTECTION AGENCY

OHIO E.P.A.
DEC 28 2007
ENTERED DIRECTOR'S JOURNAL

In the Matter of:

Green Circle Growers, Inc. 15650 State Route 511 Oberlin, Ohio 44074-9644	:	Director's Final Findings and Orders
RESPONDENT	:	

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

By: _____ **Date:** 12/28/07

PREAMBLE

It is agreed by the parties hereto as follows:

I. JURISDICTION

These Director's Final Findings and Orders ("Orders") are issued to Green Circle Growers, 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 the Respondent or of the facility (as hereinafter identified) 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 greenhouses at its facility located at 15650 State Route 511, Oberlin (Lorain County), Ohio. The facility is identified by Ohio EPA as facility ID 0247101010. At this facility, Respondent operates thirteen natural gas or number two fuel oil, or on specification used oil fired boilers (emissions units B001 through B013) and one wood waste fired boiler (emissions unit B014) to produce steam to heat the greenhouses during the winter months. These boilers are identified in the following table along with their maximum heat input capacities and years of installation.

Emissions Unit ID Number	Boiler	Fuel	Maximum Capacity [millions of Btu per hour (mmBtu/hr)]	Year Installed
B001	1971 C1 North American	natural gas/no. 2 fuel oil/on-spec used oil	12.6	1994
B002	1971 C2 Superior Boiler	natural gas/no. 2 fuel oil/on-spec used oil	21	1994
B003	1968 C3 North American	natural gas/no. 2 fuel oil/on-spec used oil	21	1994
B004	1968 C4 North American	natural gas/no. 2 fuel oil/on-spec used oil	25.1	1994
B005	New C5 Burnham Boiler	natural gas/no. 2 fuel oil/on-spec used oil	21	2004
B006	1998 A3 Superior Boiler	natural gas/no. 2 fuel oil/on-spec used oil	21	1999
B007	1997 A4 Superior Boiler	natural gas/no. 2 fuel oil/on-spec used oil	21	1997
B008	1996 D1 Apache Boiler	natural gas/no. 2 fuel oil/on-spec used oil	21	1996
B009	1996 D2 Apache Boiler	natural gas/no. 2 fuel oil/on-spec used oil	21	1996
B010	1996 D3 Apache Boiler	natural gas/no. 2 fuel oil/on-spec used oil	21	1996

B011	1993 B1 Superior Boiler	natural gas/no. 2 fuel oil/on-spec used oil	21	1994
B012	1993 B2 Superior Boiler	natural gas/no. 2 fuel oil/on-spec used oil	21	1994
B013	2001 B3 Superior Boiler	natural gas/no. 2 fuel oil/on-spec used oil	21	2001
B014	CP1 Boiler	wood waste	70	2006

2. The "potential to emit," as defined in Ohio Administrative Code ("OAC") Rule 3745-77-01, of these boilers is greater than the Title V permit applicability threshold levels in OAC Chapter 3745-77. However, actual facility emission data prior to the installation of emissions unit B014 indicates that the individual pollutant emission rates for the facility are each less than 20 percent of the Title V permit applicability threshold levels. Therefore, in accordance with Ohio EPA's policy, the facility, prior to installation of emissions unit B014, was presumed to have inherent physical limitations that limited its potential to emit to below the major source classification threshold.

3. Each boiler emits products of combustion that include "oxides of nitrogen" ("NOx" expressed as NO_2), which is defined as an "air pollutant" or an "air contaminant" in OAC Rule 3745-15-01(C), and are "air contaminant sources" as defined in OAC Rules 3745-31-01(I) and 3745-35-01(B)(1).

4. OAC Rule 3745-31-02 requires that a person not allow the installation of a new air contaminant source, as defined in OAC Rule 3745-15-01, without first applying for and obtaining a permit to install ("PTI"), except as otherwise provided by rule or law.

5. OAC Rule 3745-31-01(TTT) defines, in part, a "new source" as any air contaminant source in which the owner or operator undertakes a continuing program of installation or modification on or after January 1, 1974, and is otherwise subject to the provisions of OAC Chapter 3745-31.

6. 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.

7. OAC Rule 3745-78-02(D) requires the owner or operator of a facility whose sum of actual annual criteria air pollutants (excluding carbon monoxide) are less than fifty tons per year, and the facility is not subject to the Title V permit program, to attest, by April 15, 1996, and by April 15 every two years thereafter, that the facility is not

subject to Title V and that the facility's actual annual emissions are less than 50 tons per year. Furthermore, OAC Rule 3745-78-02(D) requires the owner or operator to also pay fees pursuant to ORC § 3745.11(D) by April 15, 2000 for calendar year 1999, and by April 15 following each year thereafter.

8. OAC Rule 3745-78-02(F) requires the owner or operator of a synthetic minor to submit, by April 15, 2000 and each year thereafter, a fee emission report that quantifies the actual emissions data for certain air pollutants and to pay fees as specified in ORC § 3745.11(D).

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

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

11. On October 7, 2004 and November 22, 2004, a consultant for Respondent contacted Ohio EPA, Northeast District Office ("NEDO") regarding emissions units B001 through B013. These conversations concentrated on the potential emissions, Title V applicability, and the need to submit PTI applications as soon as possible for these boilers. These contacts were the first time that NEDO knew about the replacement of the previously exempt boilers with emissions units B001 through B013.

12. On December 6, 2004, Respondent submitted synthetic minor PTI application for emissions units B001 through B013 reportedly to avoid being classified as a major source under the provisions of the Title V program, and permit to operate applications for emissions units B001 through B013. At that time, the facility's potential to emit for oxides of nitrogen and sulfur dioxide exceeded 100 tons per year per pollutant. (Respondent was not required to obtain a Title V permit for the facility since actual emissions were less than 20 percent of the major source thresholds.) The cover letter for the application, dated December 1, 2004, stated that the facility started operation in 1968. At that time, the facility operated boilers that were exempt from the permitting requirements due to their small size. Over the years, starting in 1994, Respondent had replaced the boilers with units of slightly larger heating capacities. The letter also stated that in 2004 Respondent hired a consultant to develop future growth plans for the facility. As part of the development of the plan, the letter stated Respondent became aware that the boilers needed to be permitted and voluntarily came forth and worked with NEDO to resolve the situation. Respondent stated that it was committed to achieving compliance with all environmental regulations and requested Ohio EPA's consideration on the administrative oversight (i.e., failure to timely apply for and obtain PTIs and PTOs for the boilers).

Based on the information in the application, Respondent installed emissions units B001 through B013 on or after January 1, 1973 and prior to obtaining a PTI, each resulting

in a violation of OAC Rule 3745-31-02 and ORC § 3704.05(G).

13. Respondent operated emissions units B001 through B013 without applying for and obtaining a PTO, in violation of OAC Rule 3745-35-02 and ORC § 3704.05(G). The violations began from the commencement of operation of the individual emissions units sometime during the year of installation identified in the table of Finding 1, and continued until Respondent obtained a PTI for the emissions units.

14. On June 24, 2005, Ohio EPA sent a Notice of Violation letter to Respondent, which identified the violations of OAC Rules 3745-31-02 and 3745-35-02, and ORC § 3704.05(G). This NOV corrected two earlier NOVs dated February 9 and 28, 2005 that were sent to Respondent by NEDO.

15. On August 16, 2005, PTI #02-20222 was issued by Ohio EPA to Respondent. This permit was a synthetic minor PTI for emissions units B001 through B013.

16. On July 20, 2006, PTI #02-21970 was issued by Ohio EPA to Respondent for the installation of a new boiler identified by Ohio EPA as emissions unit B014. The PTI was a synthetic minor and specified that Respondent install, calibrate, maintain and operate a continuous opacity monitor ("COM") to measure the opacity of the emissions and to record the output of the system. Furthermore, the PTI specified that the COM be operated in accordance with the applicable procedures under Performance Specification 1 ("PS1") of Appendix B of 40 CFR Part 60. As of the issuance date of the PTI until March 29, 2007 (the COM certification test date), Respondent has failed to operate the COM in compliance with the requirements of PS1, in violation of the PTI and ORC § 3704.05(C).

17. Respondent failed to submit the required FERs for years 1994/1995 by April 15, 1996, years 1996/1997 by April 15, 1998, years 1998/1999 by April 15, 2000, years 2000/2001 by April 15, 2002, years 2002/2003 by April 15, 2004, and year 2004 by April 15, 2006, in violation of OAC Rule 3745-78-02(D) and ORC § 3704.05(G). For year 2005, Respondent's facility was subject to the requirement for the submission of a FER pursuant to OAC Rule 3745-78-02(F). Respondent failed to timely submit a Title V synthetic minor FER for 2005 by April 15, 2006, in violation of OAC Rule 3745-78-02(F) and ORC § 3704.05(G). A Title V synthetic minor FER for 2005 was submitted by Respondent to Ohio EPA on August 28, 2006.

18. On June 12, 2007, PTI #02-22434 was issued to Respondent for the emissions units at the facility. The PTI contains requirements for a quality assurance/quality control plan for the COM serving emissions unit B014 and for excess emissions reporting based on the COM data. This PTI is not a synthetic minor permit.

19. In a letter dated June 20, 2007, to Respondent, Ohio EPA informed Respondent that this letter constituted a determination by Ohio EPA that the COM serving emissions unit B014 was certified as of the June 12, 2007 completion of the certification

test. The letter requested the Respondent to maintain an adequate quality assurance/quality control program for the COM and to begin submitting excess emissions reports based on the certified COM data to NEDO.

20. 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 makes the following Orders:

1. Respondent shall pay the amount of fifty-two thousand dollars ($52,000) in settlement of Ohio EPA's claim 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 forty-one thousand and six hundred dollars ($41,600) of the total amount. 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 ten thousand and four hundred dollars ($10,400) of civil penalty, Respondent shall within fourteen (14) days of the effective date of these Orders, fund a Supplemental Environmental Project ("SEP") by making a contribution in the amount of $10,400 to Ohio EPA's Clean Diesel School Bus Program Fund (Fund 5CD0). Respondent shall tender an official check made payable to "Treasurer, State of Ohio" for $10,400. The official check shall be submitted to Brenda Case, or her successor, together with a letter identifying the Respondent and Fund 5CD0, 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

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

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

Ohio Environmental Protection Agency
Northeast District Office
2110 E. Aurora Road
Twinsburg, Ohio 44087
Attn: Dennis Bush

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
Attention: 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 the 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

4. Should Respondent fail to fund the SEP within the required timeframe set forth in Order 2, Respondent shall immediately pay to Ohio EPA $10,400 of the civil penalty in accordance with the procedures in Order 1.

5. Within thirty (30) days after the effective date of these Orders and pursuant to OAC Rule 3745-78-02(D), Respondent shall submit the required FERs to Ohio EPA for the years 2002/2003, and 2004, and shall timely pay the corresponding fees assessed by invoices issued by Ohio EPA.

VI. TERMINATION

Respondent's obligations under these Orders shall terminate when Respondent certifies in writing and demonstrates to the satisfaction of Ohio EPA that Respondent has performed all obligations under these Orders and the Chief of Ohio EPA's Division of Air Pollution Control acknowledges, in writing, the termination of these Orders. If Ohio EPA does not agree that all obligations have been performed, then Ohio EPA will notify Respondent of the obligations that have not been performed, in which case Respondent shall have an opportunity to address any such deficiencies and seek termination as described above.

The certification shall contain the following attestation: "I certify that the information contained in or accompanying this certification is true, accurate and complete."

This certification shall be submitted by Respondent to Ohio EPA and shall be signed by a responsible official of Respondent. For purposes of these Orders, a responsible official is the person authorized to sign in OAC Rule 3745-35-02(B)(1) for a corporation or a duly authorized representative of Respondent as that term is defined in the above-referenced rule.

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 the 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

Chris Korleski
Director

12/27/07
Date

IT IS SO AGREED:

Green Circle Growers, Inc.

Signature

11/26/07
Date

JOHN VAN WINGERDEN
Printed or Typed Name

PRESIDENT
Title