BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY

OHIO E.P.A.

AUG 29 2007

ENTERED DIRECTOR'S JOURNAL

In the Matter of:

Pierre Foods, Inc.	:	**Director's Final Findings**
9990 Princeton Road	:	**and Orders**
Cincinnati, Ohio 45246	:	

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:** 8-29-07

PREAMBLE

It is agreed by the parties hereto as follows:

I. JURISDICTION

These Director's Final Findings and Orders ("Orders") are issued to Pierre Foods, 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

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 meanings as defined in ORC Chapter 3704 and the regulations promulgated thereunder.

IV. FINDINGS

The Director of the Ohio EPA has determined the following findings:

1. The Hamilton County Department of Environmental Services ("HCDES") acts as an agent of Ohio EPA for the Division of Air Pollution Control ("DAPC") in Butler County.

2. Respondent operates a meat processing facility ("Facility") located at 9990 Princeton Road, Cincinnati, Butler County. Specifically, Respondent cooks meat products that are later frozen and shipped to various clients, including schools and fast food restaurants. Respondent operates ten cook lines that are air contaminant sources and have been issued State of Ohio permits to install ("PTI"). Cook lines 1 through 8

(emissions units P001-P008) are subject to the terms and conditions of PTI #14-02305 issued by Ohio EPA on November 25, 1992. Cook lines 9 and 10 (emissions units P009 and P010) are subject to the terms and conditions of PTI #14-05341 issued on July 7, 2005.

3. On April 18, 2005, Local Findings and Orders (" Local Orders") were issued to Respondent by HCDES for violations of opacity and public nuisance standards. The Local Orders required Respondent to submit a PTI modification application for emissions units P009 and P010 which added to the air pollution control equipment as stated in the permit. Previously, emissions from emissions units P009 and P010 were controlled by only a rotoclone scrubber. Respondent planned to add two stainless steel filters for the oven line exhaust stacks to increase control efficiency of odors and particulate emissions. The PTI modification was issued as PTI #14-05341 on July 7, 2005. The modified PTI stated "if required" Respondent must conduct compliance testing.

4. In a letter dated June 8, 2005, HCDES issued a Warning Letter to Respondent regarding citizen complaints that had been received by HCDES in 2005. HCDES stated that, to date, they had received nine complaints in calendar year 2005 alleging excessively heavy smoke and odors were emanating from Respondent's facility. HCDES investigated the complaints and documented heavy smoke and odors that they believed were coming from Respondent's facility. HCDES also documented two instances where an oily film was found on vehicles parked in the vicinity of the Facility.

5. In a letter dated June 13, 2005, Respondent responded to the June 8, 2005 HCDES Warning Letter. In the letter, Respondent stated that it believes that weather plays a large part on the impact on the surrounding area of smoke and odors coming from the Facility. Respondent stated that it was planning on adding a third layer of stainless steel filters to emissions units P009 and P010 and would also be installing two layers of paper filters between the stainless steel filters.

6. On August 4, 2005, Shaw Environmental, Inc. ("Shaw") submitted a letter, on behalf of Respondent, dated July 15, 2005, outlining a proposal to conduct emission testing on emissions units P009 and P010 to complete the compliance testing requirement in PTI #14-05341. Respondent proposed to sample emissions unit P009 since both emissions units P009 and P010 are identical in size and contained identical treatment technology.

7. On August 11, 2005, Respondent submitted an intent to test ("ITT") notification to HCDES for emissions unit P009 proposing that the test be conducted beginning on September 28, 2005. The notification proposed to conduct emissions testing on both the sear stack and the oven stack. The result of both tests would be added together to give the total emissions from the emissions unit.

8. On September 23, 2005, HCDES and Respondent held a conference call to discuss preliminary compliance testing. Respondent indicated that there were

unexpected issues with the preliminary testing and that it was requesting that the one day compliance test be changed to a three-day engineering study. HCDES approved this change, but informed Respondent that the results of the engineering study would be used to determine compliance with the permit emissions limits. On September 28, 2005, Respondent conducted emissions testing on cook line 9.

9. In a letter dated November 4, 2005, HCDES requested that Respondent submit the results of the testing that took place on September 28, 2005 on cook line 9 (emissions unit P009). In the letter HCDES stated that although the results are not to be considered a formal compliance test as required by PTI #14-05341, the results could be used in determining whether or not emissions limits have been exceeded. HCDES also requested that Respondent submit an ITT notification for cook line 9 and/or 10 by November 10, 2005 to satisfy the terms and conditions of PTI #14-05341.

10. On November 9, 2005, HCDES conducted a conference call with Respondent to discuss the emissions testing conducted on September 28, 2005. Respondent stated that the data collected for cook line 9 is valid for uncontrolled emissions, but not valid for controlled emissions due to the diameter of the stack on cook line 9 allowing for too much turbulence during testing because of the presence of the strobic fans on the stack. The test results indicated higher outlet readings than inlet readings. Respondent stated that installing a stack on cook line 9 high enough to eliminate turbulence may be practically impossible and would be very dangerous. Respondent requested that HCDES withdraw its request for an intent to test for cook line 9 and instead accept the data collected from cook line 8 as representative of emissions from cook line 9. Respondent proposed to retrofit cook line 8 so that the emissions control equipment was identical to cook line 9. HCDES approved this request.

11. During October, November, and December 2005, Respondent conducted additional stack tests of cook, lines 5, 8 and 9 including emissions from various product lines, including tests showing emissions from Angus beef, all beef, pork and chicken, to be used in its engineering study.

12. On February 23, 2006, HCDES met with Respondent to discuss the results of the emissions testing conducted during September, October, and November 2005. Respondent reported particulate emissions from cook line P008 of 6.52 tons per year ("tpy"), from cook line 9 of 22.03 tpy, and from cook line 10 of 17.68 tpy. The emissions represent total particulate emissions from all products processed on each line. The emissions reported by Respondent for cook line 9 and 10 exceeded the emissions limits of 2.23 tpy specified in PTI #14-05341. Respondent stated that during the emissions testing there were problems with some of the data that resulted from temperature spikes due to a flush fire in the stack in the oven during testing, one of which melted the test probe rendering the test run void. Respondent stated that the data were not representative of normal operating levels and was not included in the emissions summary. During the meeting Respondent proposed a plan of corrective action which would bring the facility back into compliance with air quality regulations. Respondent proposed and began a comprehensive evaluation of additional emission control

technology to reduce particulate emissions.

13. On March 3, 2006, HCDES received an audit disclosure pursuant to Ohio Revised Code Section 3745.72. Respondent used data collected from the above-mentioned engineering study in their disclosure. In submitting the audit disclosure, Respondent was seeking immunity from penalties from violations of environmental regulations including, but not limited to, violations of the particulate emissions limits for cook line 8, exhaust configuration problem on cook line 7, and failing to submit quarterly deviation reports. Respondent stated that results of the engineering study indicated that emissions factors used to develop the emissions limits in the PTI #14-02305 were not representative of actual emissions at the facility. Respondent stated that it does not believe that emissions from cook line 8 should be considered to be in violation of the terms and conditions of the PTI because the emissions factors used in the PTI, which were proposed initially by Respondent, were not correct. On October 18, 2006, Ohio EPA rejected Respondent's immunity request because the emissions testing was initially required by the PTI.

14. PTI #14-02305 limits particulate matter emissions from cook line 8 to 2.51 pounds per hour ("lbs/hr"). PTI #14-05341 limits particulate matter emissions from cook lines 9 and 10 to 0.51 lbs/hr. Ohio Administrative Code ("OAC") Rule 3745-17-11 limits emissions based the total filterable amount of uncontrolled particulate emissions from the unit. Cook lines 8, 9, and 10 all have actual uncontrolled emission rates greater than ten lbs/hr and have the ability to be controlled by one control device, therefore they were grouped together to determine the maximum allowable emissions rate for the three units. Based on combined actual uncontrolled emissions of 56.22 lbs/hr from cook lines 8, 9, and 10, the maximum allowable particulate emission rate from the combined three cook lines is 7.79 lbs/hr according to Figure II from OAC Rule 3745-17-11. The actual controlled emissions rate from the three cook lines is 31.24 lbs/hr. The actual emissions exceeded both the allowable limits in PTI #s 14-02305 and 14-05341 and also the allowable limits in OAC Rule 3745-17-11 and, as a result, Respondent was operating in violation of the terms and conditions of PTI #s 14-02305 and 14-05341 and also OAC Rule 3745-17-11. The HCDES evaluation of the engineering study determined that actual controlled emissions from cook lines 8, 9, and 10 were as follows when cooking Angus beef, which produces the highest level of particulate matter emissions.

Cook Line 8 - 8.80 lbs/hr

Cook Line 9 - 11.22 lbs/hr

Cook Line 10 - 11.22 lbs/hr

15. On March 20, 2006, HCDES sent a notice of violation ("NOV") to Respondent for violations of particulate emission limits on cook lines 8, 9, and 10 as established by PTI #s 14-02305 and 14-05341. In addition, HCDES acknowledged the receipt of a corrective action plan from Respondent during a February 23, 2006 meeting between HCDES and Respondent. However, the proposed action plan did not provide specific control technology to be employed to reduce emissions from Respondent's

facility, as Respondent was evaluating whether any control technology would be technically feasible given the unique nature of the Respondent's emissions.

16. On July 7, 2006, HCDES sent a NOV to Respondent for continuing to violate the terms and conditions of PTI #s 14-02305 and 14-05341 by exceeding both the hourly limits and tons per year particulate emission limits for emission units P008, P009, and P010. Additionally, HCDES requested a detailed, updated compliance plan, along with milestone dates for completion of the action items. HCDES also requested in the NOV that Respondent submit any cost effectiveness determinations that have been made by Respondent when control options have been excluded from consideration.

17. In a letter dated July 21, 2006, Shaw, on behalf of Respondent, responded to the July 7, 2006 NOV from HCDES. In the letter, Shaw provided the updated time line as requested by HCDES. Shaw stated that Respondent has chosen to install high-pressure venturi scrubbers with cyclone separators on each of four cook lines (lines 7, 8, 9, and 10). Shaw stated that the control systems will provide at least a 95 percent particulate control efficiency for each cook line given inlet particulate emissions as measured during the engineering study. Shaw stated that Respondent expected to sign a contract to purchase the control technology by August 1, 2006 and expected to complete installation by April 1, 2007. The new scrubbers were installed in February 2007.

18. ORC. 3704.05(K) provides, in part, that no person shall operate any source that is required to obtain a Title V permit unless such a permit has been issued authorizing operation of the source or unless a complete and timely application for the issuance, renewal, or modification of a Title V permit for the source has been submitted to the Director.

19. OAC Rule 3745-77-02(A) was adopted under ORC 3704.03(E) and provides, in part, that the owner or operator of a Title V source shall not operate such source after the date that a timely and complete Title V permit application is required to be submitted under Ohio Adm. Code 3745-77, unless a timely and complete Title V permit application has been submitted or such operation is in compliance with a Title V permit issued pursuant to Ohio Adm. Code Chapter 3745-77.

20. The stack test data collected by Respondent in September, October, and November 2005 showed that the actual emission factors were higher than those used to develop emission limits in PTI #s 14-02305 and 14-05341 and that Respondent's potential to emit for both particulate emissions and volatile organic compounds ("VOCs") exceeded 100 tons per year beginning in June 2003 with the addition of cook lines P009 and P010. Therefore, the Facility is considered to be a "major source" in accordance with OAC Rule 3745-77-01(W)(2) and was required to submit a Title V permit application by July 2004. Respondent continued to operate without a Title V permit until October 20, 2006 when it submitted a synthetic minor PTI application that included the new venturi scrubbers as best available technology to control emissions. Respondent

therefore violated OAC Chapter 3745-77 by failing to submit a Title V application by July 2004.

21. Since Respondent was a Title V source from June 2003 through October 2006, it was subject to the annual fee emission reporting requirements of OAC Rule 3745-78-02(A). From June 2003 through October 2006, Respondent failed to file fee emission reports in violation of OAC Rule 3745-78-02(A), ORC 3704.05(G), and ORC 3704.05(J)(2).

22. 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. Within 60 days of the effective date of these Orders, Respondent shall submit the required fee emission reports to Ohio EPA for 2003 through 2006.

2. Respondent shall pay the amount of one hundred twenty-five thousand dollars ($125,000) in settlement of Ohio EPA's claims for civil penalties, which may be assessed pursuant to ORC Chapter 3704. Within thirty (30) 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 one hundred thousand dollars ($100,000.00) 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

A copy of the check 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, OH 43216-1049

3. In lieu of paying the remaining twenty-five thousand dollars ($25,000) of the civil penalty, Respondent shall fund the supplemental environmental project ("SEP") identified in Orders 4. In the event Respondent defaults or otherwise fails to complete

the project as specified in Order 4, the $25,000 for the project in Order 4 shall immediately become due and payable to Ohio EPA. Such payment shall be made by an official check made payable to "Treasurer, State of Ohio" and sent to Brenda Case, or her successor, together with a letter identifying the Respondent, to the above-stated address. A copy of the check shall be sent to James A. Orlemann, or his successor, at the above-stated address.

4. Respondent shall fund a SEP by making a contribution in the amount of $25,000 to Ohio EPA's fund for the Clean Diesel School Bus Program (Fund 5CD). Respondent shall make payment within thirty (30) days after the effective date of these Orders by an official check made payable to "Treasurer, State of Ohio" for $25,000. The official check shall be submitted to Brenda Case, or her successor, together with a letter identifying the Respondent, to the above-stated address. A copy of this check also shall be sent to James A. Orlemann, or his successor, at the above-stated address.

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 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 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:

Hamilton County Environmental Services
250 William Howard Taft Road
Cincinnati, Ohio 45219

Attn: Kerri Castlen

and to:

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

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 Respondent's admission of any 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

Chris Korleski
Director

8/27/07
Date

IT IS SO AGREED:

Pierre Foods, Inc.

Signature

August 3, 2007
Date

Gary Sluss
Printed or Typed Name

V.P. Engineering
Title