

BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

Clymer Enterprises, Inc.)	<u>Director's Final Findings</u>
407 East Washington Street.)	<u>and Order</u>
Pandora, Ohio 45877-0266)	

PREAMBLE

It is agreed by the parties hereto as follows:

I. JURISDICTION

These Director's Final Findings and Order ("Order") are issued to Clymer Enterprises, Inc. ("Respondent") pursuant to the authority vested in the Director of the Ohio Environmental Protection Agency ("Ohio EPA") under Ohio Revised Code ("O.R.C.") § 3745.01 and 3751.09.

II. PARTIES BOUND

This Order 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 shall in any way alter Respondent's obligations under this Order.

III. DEFINITIONS

Unless otherwise stated, all terms used in this Order shall have the same meaning as defined in O.R.C. Chapter 3751 and the rules promulgated thereunder.

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IV. FINDINGS

The Director of Ohio EPA has determined the following findings:

1. Respondent manufactures and paints industrial storage racks and shelving at its facility in Pandora, Ohio.
2. Pursuant to Ohio Administrative Code ("OAC") rules 3745-100-06 and 3745-100-07, the owner or operator of a facility that is classified within a covered Standard Industrial Classification ("SIC") code, has 10 or more full-time employees, and manufactures, processes, and/or uses a toxic chemical listed in OAC rule 3745-100-10 in excess of the applicable threshold, must file a TRI report with the Ohio EPA and U.S. EPA on or before July 1 of the following year.
3. Respondent's facility is classified within a covered Standard Industrial Classification code, specifically SIC 2542, office and store fixtures, partitions, shelving and lockers (except wood).
4. Respondent reported employment of 31 employees in 2000, 34 employees in 2001, and of 31 employees in 2002 at the Pandora facility.
5. Xylene (mixed isomers), Chemical Abstract Services (CAS) number 1330-20-7, toluene, CAS number 108-88-3 and lead compounds, EPCRA Chemical Category N420, are listed toxic chemicals in OAC rule 3745-100-10.
6. Respondent reported otherwise using 18,863 pounds of xylene in calendar year 2000, otherwise using 38,882 pounds of xylene and 11,196 pounds of toluene in 2001, otherwise using 25,428 pounds of xylene in 2002, processing 2,916 pounds of lead compounds in 2001 and processing 1,666 pounds of lead compounds in 2002.

7. On June 18, 2003, Ohio EPA inspected the Respondent's facility and reviewed TRI records keeping and reporting requirements. Though TRI related records keeping was deficient, limited paint use information was provided.
8. Respondent developed and provided toxic chemical specific annual use information subsequent to the inspection. Information provided by Respondent demonstrated that the facility had violated the toxic chemical reporting requirements contained in OAC rule 3745-100-07 and O.R.C. § 3751.07.

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9. Respondent failed to submit TRI reports for calendar years 2000, 2001 and 2002 to Ohio EPA on or before July 1, 2001, July 1, 2002 and July 1, 2003, respectively, in violation of OAC rule 3745-100-07 and O.R.C. § 3751.07. Respondent also failed to pay the filing fees as required by OAC rule 3745-100-12, in violation of that rule and O.R.C § 3751.07. (Respondent submitted delinquent reports and fees on October 21, 2003.)
10. Respondent failed to submit TRI reports for calendar years 2000, 2001 and 2002 to U.S. EPA on or before July 1, 2001, July 1, 2002, and July 1, 2003 respectively.
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 Order and their relation to benefits to the people of the State to be derived from such compliance.

V. ORDER

The Director hereby issues the following Order:

Within fourteen (14) days after the effective date of these Orders, Respondent shall pay the amount of two thousand one-hundred sixty-two dollars and fifty cents (\$2,162.50) in settlement of Ohio EPA's claims for civil penalties, which

may be assessed pursuant to O.R.C. § 3751.10. Payment shall be made by an official check made payable to "Treasurer, State of Ohio" and submitted to Ohio EPA, Office of Fiscal Administration, P.O. Box 1049, Columbus, Ohio 43216-1049, together with a letter identifying the Respondent and the facility.

A copy of the check shall be sent to James A. Orlemann, Manager, Engineering Section, or his successor, at the following address:

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

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VI. TERMINATION

Respondent's obligations under this Order shall terminate upon Ohio EPA's receipt of the total payment required by Section V of this Order.

VII. OTHER CLAIMS

Nothing in this Order 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 this Order, 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 this Order shall be undertaken in accordance with the requirements of all applicable local, state and federal laws and regulations. This Order does not waive or compromise the applicability and enforcement of any other statutes or regulations applicable to Respondent.

IX. MODIFICATIONS

This Order 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

Copies of all documents required to be submitted by Respondent pursuant to these Orders shall be provided and addressed 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
Attn: James A. Orlemann, Manager, Engineering 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 this Order.

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 this Order, Respondent consents to the issuance of this Order and agrees to comply with this Order. Compliance with this Order 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 this Order, and Respondent hereby waives any and all rights Respondent may have to seek administrative or judicial review of this Order either in law or equity.

Notwithstanding the preceding, Ohio EPA and Respondent agree that if this Order is 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 this Order notwithstanding such appeal and intervention unless this Order is stayed, vacated or modified.

XIII. EFFECTIVE DATE

The effective date of this Order is the date this Order is entered into the Ohio EPA Director's journal.

XIV. SIGNATORY AUTHORITY

Each undersigned representative of a party to this Order certifies that he or she is fully authorized to enter into this Order and to legally bind such party to this Order.

IT IS SO ORDERED AND AGREED:

Ohio Environmental Protection Agency

Christopher Jones
Director

Date

IT IS SO AGREED:

Clymer Enterprises, Inc.

Signature

Date

Printed or Typed Name

Title

