

BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

Invacare Corporation	:	<u>Director's Final Findings</u>
1200 Taylor Street	:	<u>and Orders</u>
Elyria, Ohio 44036	:	
RESPONDENT	:	

PREAMBLE

It is agreed by parties hereto as follows:

I. JURISDICTION

These Director's Final Findings and Orders ("Orders") are issued to Invacare Corporation ("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 relating to 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 OAC Chapter 3704 and the rules promulgated thereunder.

IV. FINDINGS

The Director of Ohio EPA has determined the following findings:

1. Respondent owns and operates a manufacturing facility located at 1200 Taylor Street, Elyria (Lorain County), Ohio, which is identified by Ohio EPA as facility ID 0247040179. At this facility, Respondent operates two paint spray booths to apply adhesive to wheelchair seat cushions. The spray booths are identified by Ohio EPA as "emissions units R001 and R002."

2. Both emissions units emit, in part, organic materials ("OM") as defined in Ohio Administrative Code ("OAC") Rule 3745-21-01(C)(4). Each emissions unit is an "air contaminant source" as defined in OAC Rules 3745-31-01(D) and 3745-15-01(C) and (W).

3. OAC Rule 3745-21-07(G)(2) prohibits, in part, an operation using photochemically reactive material ("PRM"), as defined in OAC Rule 3745-21-01(C)(5), from emitting into the atmosphere more than eight pounds per hour and forty pounds per day of OM, unless such emissions have been reduced by eight-five percent. OAC Rule 3745-21-07(G)(2) is part of the Ohio EPA's Division of Air Pollution Control's ("DAPC") state implementation plan ("SIP") to maintain the National Ambient Air Quality Standards ("NAAQS") for ozone.

4. OAC Rule 3745-21-07(G)(9)(f) states, in part, that the provisions of OAC Rule 3745-21-07(G)(2) (i.e., an applicable OM emission limitation) do not apply to the emissions of OM that have been demonstrated to the Director's satisfaction that they are not photochemically reactive.

5. OAC Rule 3745-21-01(B)(6) defines "volatile organic compound" as any organic compound that participates in atmospheric photochemical reactions. Further, the definition excludes certain organic compounds, such as acetone, that the USEPA has determined to have negligible photochemical reactivity.

6. OAC Rule 3745-21-07(G)(2) requirements were specified in both Respondent's PTI # 02-12200 and its Title V permit.

7. ORC § 3704.05(A) prohibits, in part, any person from violating an allowable emission limitation adopted by the Director of Ohio EPA to protect the NAAQS.

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

9. 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.

10. ORC § 3704.05(J)(2) prohibits, in part, any person from violating any requirement of a Title V permit or any permit condition, except for an emergency as defined in 40 C.F.R. 70.6(g).

11. Pursuant to Respondent's permit to install ("PTI") # 02-12200, issued on October 15, 1998, it was determined that emissions unit R001 would operate uncontrolled and employ PRMs. Therefore, this emission unit was subject to the requirements specified in OAC Rule 3745-21-07(G)(2) to not emit more than eight pounds per hour and forty pounds per day of OM.

12. On April 23, 2002, Northeast District Office ("NEDO") inspected Respondent's facility. During the inspection NEDO reviewed the coating records for emissions unit R001 and discovered that Respondent was not complying with the OM emission limitation specified

in Respondent's PTI and Title V permit and in OAC Rule 3745-21-07(G)(2). Specifically, on 49 days in years 2001 and 2002 (for specific days, see Attachment A of these Orders) Respondent emitted more than forty pounds per day of OM emissions, excluding acetone, in violation of OAC Rule 3745-21-07(G)(2), the special terms and conditions of PTI# 02-12200 and Respondent's Title V permit, and ORC § 3704.05(A), (C), (G) and (J)(2). Pursuant to OAC Rules 3745-21-07(G)(9)(f) and 3745-21-01(B)(6), acetone has been excluded because of its lack of participation in atmospheric photochemical reactions.

13. A Notice of Violation ("NOV") was mailed to Respondent on May 8, 2002, summarizing the violations discovered during NEDO's April 23, 2002 inspection. Additionally, the NOV requested Respondent to submit, within two weeks of receipt of the NOV, a compliance schedule that indicated how and when Respondent would comply with the applicable rules.

14. On May 23, 2002, Respondent submitted a response to the May 8, 2002 NOV. The response included a compliance schedule indicating the methods Respondent implemented to lower OM emissions to below the allowable rate. The compliance schedule included the installation of a fire-suppression system on emissions unit R002 to handle solvent-based materials (i.e., PRMs) and the redistribution of part of the coating operations from emissions unit R001 to emissions unit R002. By redistributing part of coating operations to emissions unit R002, Respondent immediately came into compliance with applicable OM emissions limitation. Additionally, the response included copies of the coating usage records, from June 24, 1999 through March 29, 2002, for emissions unit R001 that were reviewed during the April 23, 2002 inspection. These records were used to identify the 49 days that emissions unit R001 violated the 40 pounds per day of OM emission limitation.

15. 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 issues the following Orders:

1. Pursuant to ORC § 3704.06, the Respondent is assessed a civil penalty in the amount of twenty-four thousand dollars (\$24,000) in settlement of Ohio EPA's claim for civil penalties. Within thirty (30) days after the effective date of these Orders, Respondent shall pay to Ohio EPA the amount of nineteen thousand two hundred dollars (\$19,200) of the total penalty amount. Payment shall be made by official check made payable to "Treasurer, State of Ohio." The official check shall be submitted to Ohio EPA, Office of Fiscal Administration, P.O. Box 1049, Columbus, Ohio 43216-1049, together with a letter identifying the Respondent and site.

A copy of the official check shall be submitted to James A. Orlemann, Manager, Engineering Section, or his successor, Division of Air Pollution Control, Ohio EPA, P.O. Box

1049, Columbus, Ohio 43216-1049.

In lieu of payment to Ohio EPA of the remaining four thousand eight hundred dollars (\$4,800) of the total penalty amount, the Respondent shall perform the supplemental environmentally beneficial project identified in Order 2.

2. The Respondent shall perform the supplemental environmentally beneficial project consisting of funding urban area tree-planting projects in Ohio. Specifically, within thirty (30) days after the effective date of these Orders, Respondent shall deliver an official check in the amount of four thousand eight hundred dollars (\$4,800) and made payable to the Ohio Department of Natural Resources, Division of Forestry, State Forest Fund for this purpose. This check shall specify that such monies are to be deposited into Fund No. 509. The check shall be sent to John Dorka, Deputy Chief, or his successor, at the following address:

Division of Forestry
Ohio Department of Natural Resources
1855 Fountain Square Court, H-1
Columbus, Ohio 43224-1327

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

VI. TERMINATION

Respondent's obligations under these Orders shall terminate upon Ohio EPA's and the Ohio Department of Natural Resources' receipt of 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 Respondent.

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.

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

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

Ohio EPA Northeast District Office
2110 East Aurora Road
Twinsburg, Ohio 44087
Attention: 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

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 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 an appeal. In such event, Respondent shall continue to comply with these Orders notwithstanding such appeal and intervention unless said 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

Christopher Jones
Director

Date

IT IS AGREED:

Invacare Corporation

Signature

Date

Printed or Typed Name

Title

Attachment A

**Days of Violation of OAC Rule 3745-21-07(G)(2)
for Emissions Unit R001 at Invacare Corporation**

(as determined from the coating records for the period of 6/24/99 to 3/29/02)

Date	lbs/day of OM* Emitted	Cumulative No of Days
07/31/01	63.4 [^]	1
08/02/01	45.2	2
08/03/01	43.4	3
09/18/01	42.0	4
10/08/01	41.0	5
10/10/01	46.9	6
10/12/01	49.6	7
10/15/01	53.7	8
10/16/01	43.0	9
10/17/01	47.5	10
10/19/01	42.4	11
11/06/01	46.8	12
11/07/01	44.7	13
11/08/01	42.4	14
11/09/01	52.1	15
11/13/01	43.4	16
11/14/01	43.6	17
11/26/01	42.6	18
12/06/01	40.5	19
12/10/01	43.2	20
12/11/01	41.9	21
12/12/01	48.3	22

Date	lbs/day of OM* Emitted	Cumulative No. of Days
12/13/01	43.6	23
12/14/01	41.3	24
12/18/01	46.1	25
12/20/01	42.6	26
12/27/01	41.1	27
12/28/01	47.4	28
01/03/02	43.1	29
01/08/02	41.0	30
01/09/02	40.2	31
01/11/02	43.1	32
11/14/01	48.7	33
01/15/02	42.7	34
01/16/02	44.4	35
01/17/02	49.9	36
01/18/02	46.8	37
01/21/02	44.8	38
01/22/02	43.1	39
01/23/02	41.0	40
01/28/02	40.6	41
01/30/02	41.2	42
02/01/02	46.8	43
02/05/02	45.2	44
03/06/02	44.4	45
03/11/02	42.9	46
03/12/02	52.3	47

Date	lbs/day of OM* Emitted	Cumulative No of Days
03/21/02	40.4	48
03/22/02	48.0	49

* OM emissions exclude the emissions of acetone.

^ Highest OM emission rate in pounds per day.