

OHIO ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

Glen-Gery Corporation  
Caledonia Plant  
5692 Rinker Road  
Caledonia, Ohio 43314

Director's Final Findings and Orders

ENTERED DIRECTOR'S JOURNAL

AUG 10 2004

OHIO E.P.A.

PREAMBLE

It is agreed by the parties hereto as follows:

I. JURISDICTION

These Director's Final Findings and Orders ("Orders") are issued to Glen-Gery 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 of the facility 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 a plant in Caledonia, Ohio, that manufactures bricks. The facility consists of raw material (clay and shale) storage piles, paved and unpaved roadways, a grinding room that contains two grinding lines, a pug mill, two sand applicators, four brick dryers, and two tunnel kilns. In the process of manufacturing bricks, Respondent grinds and screens raw materials in the grinding room, manufactures the bricks (pug mill and brick extrusion), applies sand to the bricks, dries the bricks, and bakes the bricks in the kilns. Respondent operates two grinding lines at the facility. One of the lines, emissions unit P001, was installed in 1957. The second line, emissions unit P901, was installed in 1984.

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

*Donna Jackson* 8-10-04

2. Emission unit P901 was installed, and has been operated since installation, without a Permit to Install ("PTI"), in violation of Ohio Administrative Code (OAC) Rule 3745-31-02 and ORC §3704.05(G). Respondent submitted PTI application #03-13334 for emissions unit P901 on September 24, 1999.

3. Respondent was issued a Notice of Violation ("NOV") by Ohio EPA on October 14, 1999, for the violation of OAC Rule 3745-31-02. Ohio EPA determined that the application required submittal of a cost-effectiveness study to determine what level of control constituted the best available technology ("BAT"), pursuant to OAC Rule 3735-31-03(A)(5). PTI application #03-13334 was returned to Respondent by letter from Ohio EPA, dated October 14, 1999. Respondent was instructed to respond to the NOV by October 30, 1999. The response was to include the cost-effectiveness study needed to determine BAT.

4. By letter dated November 5, 1999, Respondent resubmitted its PTI application to Ohio EPA, along with a Title V permit revision application. The Title V permit revision application addressed the exclusion of emissions unit P901 from the original Title V permit application. Emissions unit P901 had been operated without a Permit to Operate ("PTO") from the date of installation in June 1984 until the date Respondent submitted its Title V application on November 10, 1999, in violation of OAC Rule 3745-35-02 and ORC §3704.05(G).

5. Respondent has argued that the building housing emissions unit P901 should be considered BAT and has, therefore, not submitted a cost-effectiveness study. Ohio EPA had agreed that a "total building enclosure with no visible emissions" could be accepted as BAT, but also determined that Respondent never installed a complete enclosure that could maintain no visible emissions.

6. Respondent resubmitted the PTI application to Ohio EPA on November 8, 1999, and May 6, 2000. On both occasions, Ohio EPA returned the applications to Respondent as incomplete.

7. Between October 14, 1999, and July 2002, Ohio EPA, the Ohio Attorney General's Office ("AGO") and Respondent have corresponded on several occasions regarding the BAT issue, as well as the applicability of the Prevention of Significant Deterioration ("PSD") regulations to emissions unit P901.

8. In a letter from the AGO, dated December 27, 2000, Glen-Gery was informed of the information that it was required to submit in order for Ohio EPA to process its PTI application.

9. By letter dated July 9, 2002, Ohio EPA informed Respondent that the PSD regulations were not applicable to the installation of emissions unit P901 in 1984, and consequently a PTI application could be processed. On August 5, 2002, Respondent submitted an updated PTI application for emissions unit P901.

10. On November 19, 2002, Respondent met with Ohio EPA to discuss the enforcement case. In particular, Respondent and Ohio EPA were interested in resolving the issue of BAT for emissions unit P901. Respondent provided Ohio EPA with recent stack test results for the baghouse that controls both emissions units P001 and P901 as well as the sand applicator ("emissions unit P007"). The stack tests were conducted under "worst case conditions" and showed actual particulate emissions from the baghouse of 0.039 grain per dry standard cubic foot ("gr/dscf") and 6.17 lbs/hr.

11. As a result of the discussions between Respondent and Ohio EPA during the November 19, 2002 meeting, Ohio EPA agreed to no longer require Respondent to submit a supplemental BAT cost-effectiveness study as part of the PTI application; consequently, the PTI application that Respondent previously submitted was deemed to be complete and ready for processing.

12. Ohio EPA issued Proposed Director's Final Findings and Orders to Respondent on March 11, 2003. In the Fall of 2003, Respondent requested a meeting with the Ohio EPA Director's Office to discuss Ohio EPA's BAT determination and associated penalty outlined in the Director's proposed Orders. As a result of this meeting, Ohio EPA committed to thoroughly review the Division of Air Pollution Control's BAT determination.

13. On April 17, 2003, PTI #03-13881 for emissions unit P901 was issued by Ohio EPA. The PTI specified, in part, particulate emission limitations for emissions unit P901 of 4.06 lbs/hr and 10% opacity (as a six-minute average) for the baghouse and 10% opacity (as a six-minute average) for any fugitive emissions from building openings.

14. In a letter dated March 16, 2004, from Joe Koncelik, Assistant Director, to Respondent, Ohio EPA confirmed its position that BAT in 1984 would have been a baghouse. Also included in this letter was a revised penalty calculation and an invitation for Respondent to meet with Ohio EPA in an effort to resolve the case.

15. On April 28, 2004, the parties met at Ohio EPA in Columbus and were able to reach resolution on all issues.

16. 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. Pursuant to ORC §3704.06, Respondent is assessed a civil penalty in the amount of one hundred thirty-four thousand eight hundred ninety-five dollars (\$134,895) 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 forty-one

thousand two hundred and nine dollars (\$41,209) of the total penalty amount. Payment shall be made by official check made payable to "Treasurer, State of Ohio" and sent to Brenda Case, Fiscal Specialist, or her successor, at the following address:

Fiscal Administration  
Ohio Environmental Protection Agency  
P.O. Box 1049  
Columbus, Ohio 43216-1049

A copy of the check shall be sent to Jim Orlemann at the following address:

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

In lieu of payment of eighty-three thousand, three hundred and eighty-six dollars (\$83,386) of the total penalty amount, Respondent shall perform the penalty credit project outlined in Order 2.

The remaining ten thousand three hundred dollars (\$10,300) shall be paid to fund a supplemental environmentally beneficial project. Specifically, within thirty (30) days after the effective date of these Orders, Respondent shall deliver an official check in this amount and made payable to the Ohio Department of Natural Resources, Division of Forestry, State Forest Fund for the purpose of funding urban area tree-planting projects in Ohio. 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 Jim Orlemann at the following address:

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

2. As a penalty credit pursuant to Order 1, Respondent shall continue to capture particulate emissions from emissions unit P001 and vent such emissions to the baghouse that also serves emissions units P901 and P007. Capture equipment for particulate emissions from emissions unit P001 shall continue to, at a minimum, include hooding over the partial enclosure around the grinding equipment and over the transfer point between the shale conveyor and the entrance to the grinding equipment, and shall

continue to be operated using good engineering practice. The combined particulate emissions from emissions units P001, P901 and P007 from the stack of the baghouse shall not exceed 0.050 gr/dscf and the opacity of such emissions shall not exceed 10 percent, as a six-minute average. Particulate emissions from the stack at the baghouse due solely to emissions unit P001 shall not exceed 4.06 lbs.hr. Any remaining fugitive emissions from emissions unit P001 shall not exceed an opacity of 10 percent, as a six-minute average, as read at building openings into the ambient air. The test method for any compliance determination with respect to the particulate emission limitation shall be Methods 1 through 5 of 40 CFR, Part 60, Appendix A. The test method for any compliance determination with respect to the opacity limitations shall be Method 9 of 40 CFR, Part 60, Appendix A. Pursuant to OAC Rule 3745-15-04, Ohio EPA reserves its right to request Respondent to have emission testing performed to show continuing compliance with the above limitations. The baghouse serving emissions units P001, P007 and P901 shall be operated in compliance with the pressure drop restriction of PTI #03-13881 while any of those units are in operation. Furthermore, Respondent shall comply with the pressure drop recordkeeping and reporting requirements of PTI #03-13881.

## **VI. TERMINATION**

Except for the specific requirements outlined in Order 2, 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, except for Order 2, and the Chief of Ohio EPA's Division of Air Pollution Control acknowledges, in writing, the termination of all Orders, except for Order 2. If Ohio EPA does not agree that all obligations, except for Order 2, 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 Respondent.

### **IX. NOTICE**

All documents required by these Orders, unless otherwise specified in writing, shall be submitted to:

Division of Air Pollution Control  
Northwest District Office  
347 North Dunbridge Road  
Bowling Green, Ohio 43402  
Attn: Don Waltermeyer

and to:

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

or to any such persons and addresses as may hereafter be otherwise specified in writing by Ohio EPA.

### **X. 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.

### **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 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

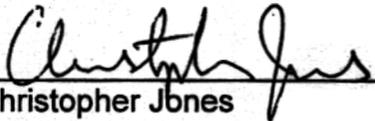
The effective date of these Orders is the date these Orders are entered into the Ohio EPA Director's journal.

### XIV. SIGNATORY AUTHORITY

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

IT IS SO ORDERED AND AGREED:

Ohio Environmental Protection Agency

  
\_\_\_\_\_  
Christopher Jones  
Director

8-6-04  
Date

IT IS SO AGREED:

Glen-Gery Corporation

  
\_\_\_\_\_  
Signature

7/30/04  
Date

GEORGE ROBINSON  
\_\_\_\_\_  
Printed or Typed Name

VICE PRESIDENT PRODUCTION  
\_\_\_\_\_  
Title