

OHIO E.P.A.

BEFORE THE

DEC 30 2004

OHIO ENVIRONMENTAL PROTECTION AGENCY

ENTERED DIRECTOR'S JOURNAL

In the Matter of:

Marine Biotech, Inc.  
54A West Dane Street  
Beverly, Massachusetts 01915

Director's Final Findings  
and Orders

RESPONDENT

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

PREAMBLE

*Donna Jackson* on 12-30-04

It is agreed by the parties hereto as follows:

### I. JURISDICTION

These Director's Final Findings and Orders ("Orders") are issued to Marine Biotech, 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 OAC Chapter 3704 and the rules promulgated thereunder.

### IV. FINDINGS

The Director of Ohio EPA has determined the following findings:

1. Respondent, with corporate office located at 54A West Dane Street, Beverly Massachusetts, owns and operates the Helwig Division, a manufacturer of specialized aquatic tank systems. This facility is located at 5009 Cincinnati-Brookville Road, Shandon (Butler County), Ohio. The facility is identified by Ohio EPA as facility ID 1409000699. At this facility, Respondent operates two spray filament winding and hand lay-up stations for the fabrication of fiberglass parts. The two stations are identified by Ohio EPA as "emissions units R002 and R003." Previously, these two stations were permitted as one

station ("emissions unit P001"). Additionally, prior to September 1, 1999, the facility was owned and operated by Helwig Enterprises and Products, Inc. ("Helwig") of Shandon, Ohio.

2. Emissions units R002 and R003 emit, in part, organic compounds ("OC"), volatile organic compounds ("VOCs"), and hazardous air pollutants ("HAPs"), as defined in OAC Rules 3745-21-01(B)(4) and (B)(6) and 3745-77-01(V), respectively; and are each an "air contaminant source," as defined in OAC Rules 3745-31-01(I) and 3745-15-01(C) and (W). Further, Respondent's entire facility is classified as a "synthetic minor source," as defined in OAC Rule 3745-77-01(II).

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

4. 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 after January 1, 1974, and is otherwise subject to the provisions of OAC Chapter 3745-31.

5. 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.

6. OAC Rule 3745-31-02(A)(2) allows, in part, the owner or operator of any air contaminant source to voluntarily request a permit to install ("PTI") from Ohio EPA that would lower the allowable emissions from the air contaminant source. OAC Rule 3745-31-01(K) defines "allowable emissions," in part, as the emission rate of an air contaminant source calculated using the maximum rated capacity to emit, unless federally enforceable limitations restrict the operation rate or hours of operation. This type of permit is referred to as a "synthetic minor permit." Additionally, OAC Rule 3745-31-05(C) states, in part, that the Director of Ohio EPA may impose special terms and conditions as are appropriate or necessary to ensure compliance with applicable laws and to ensure adequate protection of the environment.

7. OAC Rule 3745-78-02(F) requires, by April 15, 2000 for calendar year 1999, and by April 15 following each year thereafter, the owner or operator of a synthetic minor source to submit fee emission reports ("FER") and pay fees on the facility's actual emissions of certain air pollutants.

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. On July 21, 1993, Ohio EPA issued PTI # 14-2443. The PTI required that daily records be kept of the company's identification of the resin and gelcoat employed at

the facility as well as the pounds of material employed and the hours of operation of the layup process.

11. On August 7, 2000, Hamilton County Department of Environmental Services ("HAMCO"), Ohio EPA's contractual representative in Butler County, inspected Respondent's facility and discovered that Respondent had purchased the facility's assets from Helwig (the prior owner and operator of Respondent's facility). HAMCO also discovered that Respondent was not keeping operational records identified in the facility's PTI and that the facility was operating under an expired PTO, in violation of ORC § 3704.05(C), and OAC Rule 3745-35-02 and ORC § 3704.05(G), respectively. The previous PTO had expired on September 3, 1996, and the former owner had failed to apply for and obtain a PTO renewal for emissions unit P001. Additionally, Respondent was practicing poor engineering techniques by not having a particulate filter in the fiberglass spray area and by allowing chopped fiberglass and overspray outside of the building.

12. On September 1, 2000, HAMCO sent Respondent a NOV for the violations identified in Finding 11. The NOV requested Respondent to submit, by August 28, 2000, a compliance plan that would correct the poor engineering practices and explained that Respondent was required to keep records as specified in PTI # 14-2443. Further, the NOV requested that the compliance plan include the submittal of records of operation required by the facility's PTI for every day the facility operated from April 1, 2000 to December 31, 2000. The NOV also requested Respondent to submit a transfer of ownership notice, as required by OAC Rule 3745-35-02(D)(3), and specified the dates the operational data outlined in PTI # 14-2443 were required to be submitted.

13. On September 27, 2000, Helwig sent HAMCO a letter stating the facility's assets had been purchased by Respondent on September 1, 1999. The former President of Helwig became the manager and environmental contact person for Respondent.

14. On September 29, 2000, Respondent submitted a compliance plan to bring the facility into compliance including the installation of particulate wall panel filters. The compliance plan stated records were not being kept from September 1, 1999 to December 31, 2000. Additionally, Respondent submitted a PTO renewal application for emissions unit P001 on September 29, 2000. However, the PTO application was incomplete. Respondent violated the requirements of ORC § 3704.05(C) and its PTI and PTO by failing to keep the required records from the purchase date (September 1, 1999) until January 1, 2001.

15. On October 26, 2000, HAMCO informed Respondent, by telephone, that the PTO renewal application was incomplete.

16. On December 6, 2000, HAMCO sent a letter to Respondent telling Respondent the PTO renewal application was incomplete and needed to be fully completed. Additionally, the letter informed Respondent that the required operational records for the period of August 1, 2000 through October 31, 2000 were required to be

submitted by November 30, 2000 and were past due. The NOV included a blank PTI application for Respondent's use in applying for a synthetic minor PTI.

17. On January 10, 2001, Respondent submitted a synthetic minor PTI application to avoid being classified as a major source under the provisions of the Title V program. (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.) This application requested that the PTI divide emissions unit P001 into two emissions units to represent how the facility was being operated.

18. On July 3, 2001, synthetic minor PTI # 14-05081 was issued to Respondent that divided emissions unit P001 into two emissions units (emissions units R002 and R003). The PTI required Respondent to record and maintain the identity of the resin and gelcoat employed, the pounds per day of material employed and the hours per day the fiberglass spray processes operated (emissions units R002 and R003). The PTI also required Respondent to submit quarterly deviation (excursion) reports of any exceedance of OC emission limitations, usage limitations and of any day photochemically reactive cleanup material was employed. These quarterly reports were required to be submitted in accordance with the PTI's general terms and conditions. The general terms and conditions required the quarterly deviation reports be submitted to the appropriate Ohio EPA District Office or local air agency by January 31, April 30, July 31, and October 31 of each year for the previous calendar quarter. Additionally, the PTI general terms and conditions required the quarterly deviation reports be submitted even if no exceedance occurred. Similarly, the PTI required Respondent to submit annual reports identifying all exceedances of the HAP emission limitations and the summation of OC emissions for the previous year. The annual reports are required to be submitted by January 31 of the year following the reporting period. The PTI required Respondent to submit a HAP emission limitation exceedance report even if no exceedance occurred during the reporting period.

19. On December 14, 2001, HAMCO received complete PTO applications from Respondent for emissions units R002 and R003.

20. On April 18, 2002, Respondent submitted to HAMCO a report with the daily operational records and OC emission report for the 2001 calendar year. The OC emission report was submitted late, in violation of OAC § 3704.05.

21. On April 3, 2003, HAMCO conducted an announced inspection of Respondent's facility and discovered:

the facility had been totally destroyed by fire in April 2002, and did not resume operation until October 2002;  
the fire had destroyed records of prior submitted reports;  
new low pressure/low emission spray systems had been installed on emissions units R002 and R003; and

the required records were being kept since October 2002.

During the inspection, HAMCO informed Respondent that it had failed to submit quarterly and annual deviation and emission reports for 2002. Respondent stated that the annual emission report had not been submitted because the PTI specified that an emission factor be used to estimate OC and HAP emissions that did not represent the lower emissions emitted by the new spray systems. HAMCO informed Respondent to use the appropriate emission factor. Respondent stated it would file the fourth quarter deviation and annual reports as soon as possible. Further, on the same day of the inspection, HAMCO sent Respondent an electronic mail message advising it of the proper emission factors to be used to estimate OC and HAP emissions and guidance on the appropriate deviation and annual reports. The message also contained the dates the reports were required to be submitted.

22. On April 18, 2003, HAMCO sent a letter to Respondent indicating that enforcement action may be taken for non-compliance with past reporting and fee payments. On this same day, HAMCO talked with Respondent by telephone. During the conversation, Respondent stated it would take care of the emission and deviation reports "today" (i.e., April 18, 2003) and would be submitting the FERs for 2001 and 2002 "today" to Ohio EPA's Central Office.

23. On April 29, 2003, HAMCO sent Respondent a NOV for failure to timely submit 2001 and 2002 FERs, 2002 annual OC emission report, 2001 and 2002 annual HAP limitation deviation reports, and any quarterly deviation report. The NOV requested Respondent to submit, by May 16, 2003, the required quarterly and annual reports and a plan to bring the facility into compliance. Additionally, the NOV requested Respondent to immediately submit the 2001 and 2002 FERs to Ohio EPA's Central Office.

24. In summary, Respondent did not timely submit the required annual HAP limitation deviation reports for 2001 through 2003, the annual OC emissions reports for 2002 and 2003 (the 2003 report was due January 31, 2004) and the 2001 and 2002 FERs. Respondent failed to comply with the terms and conditions of its PTI by failing to submit the required quarterly and annual deviation reports and annual OC emissions summary reports for 2001, 2002 and 2003, in violation of ORC § 3704.05(C). The start of the violation is October 31, 2001 (the date the first quarterly deviation report was due) and ended when Respondent submitted the required reports. Additionally, Respondent violated the requirements of OAC Rule 3745-78-02(F) and ORC § 3704.05(G) by failing to submit the required FERs for the years 2001 and 2002.

25. Respondent subsequently submitted the requested compliance plan and required reports specified in the April 29, 2003 NOV.

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26. 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 Order:

Respondent shall pay Ohio EPA the amount of twenty-one thousand dollars (\$21,000) in six quarterly payments of three thousand five hundred dollars (\$3,500) in settlement of Ohio EPA's claims for civil penalties, which may be assessed pursuant to ORC Chapter 3704.06. The first payment shall be due within thirty (30) days after the effective date of these Orders and subsequent payments shall be due within 120, 210, 300, 390, and 480 days after the effective date of these Orders. Payments shall be made by official checks made payable to "Treasurer, State of Ohio" in the amount of \$3,500. The official checks shall be submitted to Brenda Case, or her successor, at Ohio EPA, Office of Fiscal Administration, P.O. Box 1049, Columbus, Ohio 43216-1049, together with a letter identifying the Respondent and facility.

A copy of each official check shall be submitted to James A. Orlemann, Assistant Chief, Compliance and Enforcement, or his successor, at Division of Air Pollution Control, Ohio EPA, P.O. Box 1049, Columbus, Ohio 43216-1049.

## **VI. TERMINATION**

Respondent's obligations under these Orders shall terminate upon Ohio EPA's receipt of the 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, 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.

## **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:

Hamilton County Department of Environmental Services  
Air Quality Programs  
250 William Howard Taft Road  
Cincinnati, Ohio 45219-2660  
Attention: Kerri Castlen

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 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**

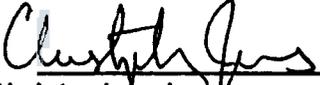
The effective date of these Orders is the date these Orders are entered into the Ohio EPA Director's journal.

**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

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

Date 12/30/04

**IT IS SO AGREED:**

Marine Biotech, Inc.

  
\_\_\_\_\_  
Signature

Date 12/21/04

Stephen Aldrich  
Printed or Typed Name

President  
Title

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