BEFORE THE

OHIO ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

Alfred Nickles Bakery, Inc.
26 Main Street
Navarre, Ohio 44662

Director's Final Findings and Orders

OHIO E.P.A.
AUG 24 2005
ENTERED DIRECTOR'S JOURNAL

PREAMBLE

It is agreed by the parties hereto as follows

I. JURISDICTION

These Director's Final Findings and Orders ("Orders") are issued to Alfred Nickles Bakery, 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 ORC Chapter 3704 and the regulations promulgated thereunder.

IV. FINDINGS

The Director of Ohio EPA has determined the following findings:

1. Respondent operates a bakery located at 26 Main Street, Navarre, Stark County, Ohio, that is a Title V source, as defined in Ohio Administrative Code ("OAC") Rule 3745-77-01(LL), and is subject to the requirements of ORC Chapter 3704 and OAC Chapter 3745-77.

2. OAC Rule 3745-77-02(A) states, 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.

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.
By: _____ Date AUG. 24 2005

3. OAC Rule 3745-77-04(E) requires that a Title V permit renewal application be filed no earlier than eighteen months and no later than six months prior to the expiration of any Title V permit.

4. OAC Rule 3745-77-06(A) states, in part, that if the owner or operator of Title V source submits a timely and complete application for permit renewal, the failure to have a Title V permit is not a violation of this Chapter until the Director takes final action on the application.

5. ORC § 3704.05(C) states, in part, that no person who is a holder of a permit issued under ORC § 3704.03(F) or (G) shall violate any of its terms or conditions.

6. ORC § 3704.05(G) states, in part, that no person shall violate any order, rule or determination of the Director issued, adopted, or made under ORC Chapter 3704.

7. ORC § 3704.05(J)(2) states, in part, that no person shall violate any filing requirement of the Title V permit program.

8. ORC § 3704.05(K) states, in part, that no person shall operate a source that is required to obtain a Title V permit unless a Title V 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.

9. ORC § 3704.06(C) provides, in part, that any person violating ORC § 3704.05 shall pay a civil penalty of not more than $25,000 for each day of each violation.

10. On November 19, 1998, Ohio EPA issued a final Title V permit for Respondent's facility (Ohio EPA facility identification number 15-76-16-0364). The permit's expiration date of November 19, 2003, was given in the Final Issuance cover page of the permit, as well as a statement that Title V permit renewal applications are to be filed no earlier than eighteen months and no later than six months prior to the expiration of any Title V permit.

11. In a letter dated December 18, 2002, Ohio EPA sent a notice of Title V permit expiration to Respondent. This letter stated that Respondent's Title V permit was to expire on November 19, 2003, and provided a description of the renewal application requirements and procedures.

12. Respondent failed to submit an application to renew its Title V permit to Ohio EPA by no later than six months prior to the permit expiration date (i.e., by May 23, 2003), in violation of OAC Rule 3745-77-04(E) and ORC § 3704.05(G) and (J)(2).

13. Respondent's Title V permit expired on November 19, 2003. Respondent continued to operate a Title V source without a Title V permit or a timely filed and complete renewal application, in violation of OAC Rule 3745-77-02(A) and ORC § 3704.05(G) and (K).

14. On November 20, 2003, Respondent submitted a complete Title V permit renewal application to Ohio EPA.

15. On April 30, 2004, Canton City Health Department, Air Pollution Control Division issued a Notice of Violation to Respondent, citing it with violations of OAC Rules 3745-77-04(E), for failing to submit a timely and complete application for renewal of its Title V permit, and 3745-77-02(A), for operating a Title V facility without a Title V permit or a timely filed and complete application.

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 relation to 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 thirty-seven thousand and eight hundred dollars ($37,800) in settlement of Ohio EPA's claim for civil penalties. Within thirty (30) days after the effective date of these Orders, Respondent shall pay Ohio EPA the amount of ten thousand two hundred and forty dollars ($10,240) of the total penalty amount. Payment shall be made by an official check made payable to "Treasurer, State of Ohio" for $10,240. 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, Ohio 43216-1049

2. In lieu of paying the remaining twenty-seven thousand five hundred and sixty dollars ($27,560) of the civil penalty, Respondent shall fund the supplemental environmentally beneficial projects ("SEPs") identified in Orders 3 and 4. Of the $27,560, $7,560 shall be used to fund the project in Order 3, and $20,000 shall be used to fund the project in Order 4. In the event Respondent defaults or otherwise fails to complete any of

the projects as specified in Orders 3 and 4, the $7,560 for the project in Order 3 and/or the $20,000 for the project in Order 4, whichever is (are) applicable, 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.

3. Respondent shall fund a SEP by making a contribution in the amount of $7,560 to Ohio EPA's Clean Diesel School Bus Fund (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 $7,560 dollars. The official check shall specify that such monies are to be deposited into Fund 5CD established by Ohio EPA for the Clean Diesel School Bus Program. 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 shall also be sent to James A. Orlemann, or his successor, at the above-stated address.

4. As outlined below, and with reference to the chapters described in Ohio EPA's 1993 "Ohio Pollution Prevention and Waste Minimization Planning Guidance Manual" (the Manual), Respondent shall conduct a pollution prevention study ("P2 Study") at each of Respondent's facilities as SEPs in lieu of paying $20,000 of the civil penalty ($10,000 for a P2 Study SEP at the Navarre facility and $10,000 for a P2 Study SEP at the Lima facility). The P2 Study is an assessment of selected facility processes to identify and evaluate specific source reduction and environmentally sound recycling opportunities.

a. Within ninety (90) days after the effective date of these Orders, Respondent shall submit a detailed narrative report to Ohio EPA for review and approval containing the following:

   a list of the members of a cross-functional team for the P2 Study, including the name of a designated team leader;

   ii. an identification of the processes selected for study and the methods used to select the processes; and

   iii a description of the processes being studied, including types and quantities of raw materials used, waste generated (i.e., air emissions, hazardous waste, solid waste, wastewater), and the intermediate or final products.

   The above items shall be completed following the guidance provided in Chapters 8 and 9 of the Manual.

b. Within one hundred eighty (180) days after the effective date of these Orders, Respondent shall submit a detailed narrative report to Ohio EPA for review and approval containing the following:

an analysis of the process-related factors contributing to waste generation;

ii a description of the specific pollution prevention opportunities identified; and

iii. a discussion of the approach used in screening and prioritizing pollution prevention opportunities for future implementation.

The above items shall be completed following the guidance provided in Chapters 11 and 12 of the Manual.

c. Within two hundred seventy (270) days after the effective date of these Orders, Respondent shall submit a detailed narrative final report to Ohio EPA for review and approval containing the following:

an evaluation of the cost considerations and feasibility analysis of the identified pollution prevention opportunities;

ii. a discussion of those projects that have been eliminated as well as those that have been implemented, planned for implementation, or under consideration for possible implementation; and

iii a description of the other items bulleted in Table 7 of Chapter 15 of the Manual.

The above items shall be completed following the guidance provided in Chapters 13, 14 and 15 of the Manual.

d. Within three hundred and thirty (330) days after the effective date of these Orders, Respondent shall submit an approvable detailed narrative final report to Ohio EPA, unless the report submitted to Ohio EPA pursuant to the above paragraph c is approved by Ohio EPA.

Ohio EPA shall provide Respondent with its comments and an indication of approval or disapproval of the reports submitted pursuant to this Order in a timely manner.

5. Within thirty (30) days of the completion and approval by Ohio EPA of the project identified in Order 4, Respondent shall submit documentation to Ohio EPA of the total cost of the P2 Studies. If the total cost of the P2 Studies is less than $20,000, Respondent shall submit along with the final report identified in Order 4, and in the manner described in Order 1, an official check to Ohio EPA for the difference in cost between $20,000 and the total cost of the P2 Study.

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 as defined in OAC Rule 3745-35-02(B)() 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 the Respondent.

IX. MODIFICATIONS

These Orders may be modified by mutual 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

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

Canton City Health Department
Air Pollution Control Division
420 Market Avenue North
Canton, Ohio 44702-1544
Attention: Pat Petrella

and to:

Ohio Environmental Protection Agency
Lazarus Government Center
Division of Air Pollution Control
P.O. Box 1049
Columbus, Ohio 43216-1049
Attention: Thomas Kalman, Manager, Enforcement Section

or to such persons and addresses as may hereinafter 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 the 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 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~~ Joseph P. Koncelik
Director

8/23/05
Date

IT IS SO AGREED:

Alfred Nickles Bakery, Inc.

By

AUGUST 16, 2005
Date

CHRISTIAN GARDNER
Printed or Typed Name

VICE PRESIDENT, PURCHASING
Title