

BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

Hawklinc, LLC	:	<u>Director's Final Findings</u>
200 Front Street	:	<u>and Orders</u>
Mt. Orab, Ohio 45154-8964	:	

PREAMBLE

It is agreed by the parties hereto as follows:

I. JURISDICTION

These Director's Final Findings and Orders ("Orders") are issued to Hawklinc, LLC ("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 facility located at 200 Front Street, Mt. Orab, Brown 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, unless such an application has been timely submitted or the source is in compliance with a Title V permit.

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 date 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. The Portsmouth City Health Department, Air Pollution Unit ("Portsmouth"), is Ohio EPA's contractual representative in Adams, Brown, Lawrence, and Scioto Counties in Ohio.

11. On August 27, 1998, Ohio EPA issued a final Title V permit for this facility to Trinity Industries, Inc. ("Trinity"), the owner and operator of the facility at that time, with corporate offices located at 2525 Stemmons Freeway, Dallas, Texas. The permit's expiration date of August 27, 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 date of any Title V permit. Trinity ceased operations at the facility by 2000, but retained equipment at the site and maintained the Title V permit for the facility. The Village of Mt. Orab assumed ownership of the buildings of the facility.

12. In a letter dated September 6, 2002, Ohio EPA sent a notice of Title V permit expiration to Trinity. This letter stated that the Title V permit was to expire on August 27, 2003, and provided a description of the renewal application requirements and procedures.

13. Respondent purchased the facility equipment from Trinity and rented the

buildings of the facility from the Village of Mt. Orab in November 2002. On December 6, 2002, Portsmouth received from Trinity a notice of transfer of ownership of the facility, dated November 25, 2002, transferring the Title V permit, to Respondent. Portsmouth verbally authorized Respondent to operate the facility after the permit transfer and prior to Respondent beginning operations at the facility in January 2003.

14. Respondent failed to submit an application to renew its Title V permit to Ohio EPA at least six months prior to the permit expiration date (i.e., by February 28, 2003), in violation of OAC Rule 3745-77-04(E) and ORC § 3704.05(G) and (J)(2).

15. Respondent's Title V permit expired on August 27, 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).

16. In a telephone conversation on January 22, 2004, Portsmouth informed Respondent that it had missed the due date to submit a Title V permit renewal application, that its 2002 emission fee report was past due, and that its Title V permit had expired. At that time, Portsmouth requested that Respondent submit its Title V permit renewal application and its 2002 emission fee report as soon as possible. This discussion was summarized in an electronic mail message sent by Portsmouth to Respondent on January 26, 2004. The 2002 emission fee report was subsequently submitted to Portsmouth on April 15, 2004.

17. Respondent submitted a complete Title V permit renewal application to Ohio EPA on April 15, 2004, four hundred and twelve (412) days after the filing due date.

18. On June 11, 2004, Ohio EPA issued a notice of violation ("NOV") to Respondent, citing it with violations of OAC Rule 3745-77-04(E), for failing to submit a timely and complete application for renewal of its Title V permit, and OAC Rule 3745-77-02(A), for operating a Title V facility without a Title V permit or a timely filed and complete application.

19. In June 2004, Respondent acquired the buildings of the facility from the Village of Mt. Orab.

20. 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. Respondent shall pay the amount of twenty thousand dollars (\$20,000) in settlement of Ohio EPA's claims for civil penalties, which may be assessed pursuant to ORC Chapter 3704. Within thirty (30) days after the effective date of these Orders,

payment to Ohio EPA shall be made by an official check made payable to "Treasurer, State of Ohio" for four thousand dollars (\$4,000) of the total amount. 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

Twelve thousand dollars (\$12,000) of the total assessment above shall be paid to Ohio EPA pursuant to the following schedule:

Four thousand dollars (\$4,000) due within sixty (60) days after the effective date of these Orders; and

Four thousand dollars (\$4,000) due within ninety (90) days after the effective date of these Orders; and

Four thousand dollars (\$4,000) due within one hundred and twenty (120) days after the effective date of these Orders.

Payments shall be made by an official check made payable to "Treasurer, State of Ohio" for the amount due. Each official check shall be submitted to Brenda Case, or her successor, together with a letter identifying the Respondent, to the above-stated address.

2. In lieu of paying the remaining four thousand dollars (\$4,000) of civil penalty, Respondent shall fund a Supplemental Environmental Project ("SEP") by making a contribution in the amount of \$4,000 to the Ohio EPA's fund for Clean Diesel School Bus Program. The official check shall specify that such monies are to be deposited into the fund established by Ohio EPA for the Clean Diesel School Bus Program. Respondent shall make payment on or within one hundred and fifty (150) days after the effective date of these Orders, but not earlier than July 1, 2005, by tendering an official check made payable to "Treasurer, State of Ohio" for \$4,000. The official check shall be submitted to Brenda Case, or her successor, together with a letter identifying the Respondent, to the above-stated address.

3. A copy of each of the above checks 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

4. Should Respondent fail to fund the SEP within the required time frame set forth in Order 2, Respondent shall immediately pay to Ohio EPA \$4,000 of the civil penalty in accordance with the procedures in Order 1.

5. Respondent shall continue to comply with all terms and conditions of its Title V permit, as issued on August 27, 1998, until the Director takes final action on the application submitted on April 15, 2004.

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)(1) for a corporation.

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:

Portsmouth City Health Department
Air Pollution Unit
605 Washington Street, Third Floor
Portsmouth, Ohio 45662
Attention: Cindy Charles, Permit Supervisor

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

Joseph P. Koncelik
Director

Date

IT IS SO AGREED:

Hawkline, LLC

Signature

Date

Printed or Typed Name

Title