

BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY

OHIO E.P.A.

OC 20 2005
ENTERED DIRECTOR'S JOURNAL

In the Matter of:

Holmes By-Products Co., Inc.

3175 Township Road 411, Route 1
Millersburg, Ohio 44654

Director's Final
Findings
and Orders

PREAMBLE

It is agreed by the parties hereto as follows:

JURISDICTION

These Director's Final Findings and Orders ("Orders") are issued to Holmes By-Products Co., Inc. ("Respondent") pursuant to the authority vested in the Director of 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 identified hereafter) shall in any way alter Respondent's obligations under these Orders.

III. DEFINITIONS

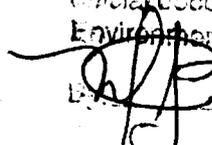
Unless otherwise stated, all terms used in these Orders shall have the same meaning as defined in ORC Chapter 3704 and the regulations promulgated thereunder.

IV. FINDINGS

The Director of Ohio EPA has determined the following findings:

1. Respondent owns and operates an animal rendering facility ("facility") that manufactures pet food ingredients and is located at 3175 Township Road 411 in Walnut Creek Township, Holmes County, Ohio, and is identified by Ohio EPA facility identification number 0238000004. At the facility, Respondent operates a wood waste-fired boiler, wood waste grinder/chipper, batch feather rendering operation, and a continuous meat and bone meal

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



Date: 2-20-05

rendering operation, which are identified by Ohio EPA as emissions units B007, F001, P001 and P002, respectively.

2. Emissions units B007, F001, P001 and P002 emit "air contaminants," as defined in OAC Rules 3745-31-01(H) and 3745-15-01(C) and ORC § 3704.01(B), and are "air contaminant sources," as defined in OAC Rules 3745-31-01(I) and 3745-15-01(C) and (W) and ORC § 3704.01(C).

3. ORC § 3704.05(C) prohibits any person from violating any term and condition of a permit issued by the Director of Ohio EPA. ORC § 3704.05 (G) states that no person shall violate any order, rule, or determination of the Director issued, adopted, or made under ORC Chapter 3704.

4. Respondent is a "person," as defined in OAC Rule 3745-15-01(U) and ORC § 3704.01(O).

5. On August 4, 1994, the Director of Ohio EPA issued Director's Final Findings and Orders ("August 4, 1994 Orders") to Respondent pursuant to ORC § 3704.03(R) to address certain violations of air pollution control rules and laws that had occurred due to the facility.

6. Order 5 of the August 4, 1994 Orders required Respondent, by not later than May 31, 1996, to move the batch feather rendering operation closer to the continuous meat and bone meal rendering operation, vent all the exhaust gases from the batch feather rendering operation to the condenser serving the continuous meat and bone meal rendering operation, and vent the noncondensable fumes from such condenser to the boiler firebox of emissions unit B007 for combustion.

7. From May 31, 1996 to December 1996, Respondent did not vent the exhaust gases from the batch feather rendering operation to the condenser serving the continuous meat and bone meal rendering operation and then vent the noncondensable emissions from such condenser to the boiler firebox of emissions unit B007, in violation of Order 5 of the August 4, 1994 Orders and ORC § 3704.05(G). In a letter dated May 7, 1996 to Ohio EPA, Respondent stated that it could not comply with the May 31, 1996 deadline for this requirement due to the lack of manpower and inclement weather conditions and that compliance with Order 5 of the August 4, 1994 Orders would be achieved by December 16, 1996. In a letter dated July 1, 1996, Ohio EPA informed Respondent that its delay in complying with the August 4, 1994 Orders was unacceptable and requested a detailed compliance schedule for the activities that had been completed and those to be completed. Respondent provided the compliance plan in a letter dated July 15, 1996. Respondent finally vented the exhaust gases from the batch feather rendering operation to a separate condenser that was installed in December 1996 and vented the noncondensable emissions from such condenser to the boiler firebox of emissions unit B007.

8. From December 1996 to the present, Respondent did not vent the exhaust gases from the batch feather rendering operation to the condenser

servicing the continuous meat and bone meal rendering operation and did not vent the noncondensable fumes from such condenser to the boiler firebox of emissions unit B007, in violation of Order 5 of the August 4, 1994 Orders and ORC § 3704.05(G). Respondent instead vented the exhaust gases from the batch feather rendering operation to a separate condenser in December 1996 that vented the noncondensable emissions to the boiler firebox of emissions unit B007. Along with a letter dated November 3, 2003 from Respondent's legal counsel, Respondent submitted information to Ohio EPA that it was technically infeasible to vent the exhaust gases from the batch feather rendering operation to the condenser servicing the continuous meat and bone meal rendering operation. The two operations were identified as being incompatible using the one condenser at the continuous meat and bone meal rendering operation.

9. From April 15 to May 5, 2003, Respondent failed to vent the noncondensable emissions from the new separate condenser installed on April 15, 2003 and servicing the batch feather rendering operation, to the boiler firebox of emissions unit B007, in violation of Order 5 of the August 4, 1994 Orders and ORC § 3704.05(G). As of May 5, 2003, Respondent vented the noncondensable emissions from such new separate condenser to the boiler firebox of emissions unit B007. In a letter dated July 29, 2003, Respondent's counsel informed Ohio EPA that the new condensing unit was not vented to the boiler firebox because it is more efficient than the previous unit and no odors were emitted from it. Furthermore, counsel stated that Respondent vented the emissions from the new condenser to the boiler firebox to alleviate Ohio EPA concerns.

10. From May 31, 1996 to March 27, 1997, Respondent failed to move the batch feather rendering operation closer to the continuous meat and bone meal rendering operation by May 31, 1996, in violation of Order 5 of the August 4, 1994 Orders and ORC § 3704.05(G). In a letter dated May 7, 1996 to Ohio EPA, Respondent stated that it could not comply with the May 31, 1996 deadline for this requirement due to the lack of manpower and inclement weather conditions and that compliance with Order 5 of the August 4, 1994 Orders would be achieved by December 16, 1996. In a letter dated July 1, 1996, Ohio EPA informed Respondent that its delay in complying with the August 4, 1994 Orders was unacceptable and requested a detailed compliance schedule for the activities that had been completed and those to be completed. Respondent provided the compliance plan in a letter dated July 15, 1996. As of March 27, 1997, Respondent moved the batch feather rendering operation closer to the continuous meat and bone meal rendering operation.

11. On December 5, 2000, Ohio EPA issued PTI #02-14306 to Respondent for emissions unit F001. PTI #02-14306 required Respondent to employ a building enclosure to minimize emissions from this wood waste grinder/chipper, which reflects a best available technology determination pursuant to OAC Rule 3745-31-05(A)(3).

12. Respondent operated emissions unit F001 from December 5, 2000 to January 7, 2004 without employing a building enclosure, in violation of PTI #

02-14306 and ORC § 3704.05(C). In a letter dated June 30, 2003, Respondent indicated to Ohio EPA that it was not aware it was required to notify Ohio EPA that it was operating without an enclosure, and that emissions from this unit were very minimal since a low speed grinder is now used. Respondent installed and began operation of a building enclosure for emissions unit F001 by January 7, 2004.

13. On November 5, 2003, Ohio EPA issued a PTO for emissions unit B007. The PTO required Respondent to submit quarterly reports of specified information. The reports were due by April 30, July 31, October 31, and January 31 for the first, second, third and fourth quarters, respectively, of each year. Furthermore, the PTO required Respondent to submit annual reports of specified information regarding the operation of emissions unit B007 by January 31 of each year.

14. Respondent failed to timely file the quarterly reports for the fourth quarter of 2003 and the first quarter of 2004 by January 31, 2004 and April 30, 2004, respectively, and the annual report for 2003 by January 31, 2004, in violation of the PTO issued for emissions unit B007 on November 5, 2003 and ORC § 3704.05(C).

15. Respondent was notified of the above-mentioned violations in warning letters dated April 25, 2002, April 28, 2003, July 14, 2003, and February 15, 2005 from the Northeast District Office of Ohio EPA. Respondent replied to the warning letters in letters dated June 30, 2003, July 29, 2003, November 3, 2003, wherein it denied any violations.

16. Prior to the October 2005 settlement meeting Ohio EPA believed that from January to April 2003, due to a June 3, 2002 fire Respondent stored raw materials outside of the buildings at the facility for reasons not resulting from equipment breakdown or due to unusable materials being mistakenly delivered, in violation of Order 3(e) of the August 4, 1994 Orders. During the October 2005 settlement meeting Respondent described the measures it took regarding the replacement of the fire damaged equipment in satisfaction of Ohio EPA's claim on this matter.

17. Due to information and materials provided to Ohio EPA by Respondent following the June 3, 2002 fire at Respondent's facility, Ohio EPA believed that Respondent modified emissions unit P002 by installing a second evaporator without applying for and obtaining a PTI, in violation of OAC Rule 3745-31-02(A) and ORC § 3704.05(G). During and following the October 2005 settlement meeting, in satisfaction of Ohio EPA's claim on this matter, Respondent submitted subsequent informational materials to Ohio EPA to demonstrate that a PTI was not needed for work performed on emissions unit P002 following the June 3, 2002 fire.

18 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:

50704. Respondent shall pay the amount of eleven thousand dollars (\$11,000) in settlement of Ohio EPA's claims for civil penalties, which may be assessed pursuant to ORC § 3704.06. 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 eight thousand eight hundred dollars (\$8,800) 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

50705. In lieu of paying the remaining two thousand two hundred dollars (\$2,200) of civil penalty, Respondent shall within thirty (30) days of the effective date of these Orders, fund a Supplemental Environmental Project ("SEP") by making a contribution in the amount of \$2,200 to the Ohio EPA's Clean Diesel School Bus Fund (Fund 5CD). Respondent shall tender an official check made payable to "Treasurer, State of Ohio" for \$2,200. The official check shall be submitted to Brenda Case, or her successor, together with a letter identifying the Respondent and Fund 5CD, to the above-stated address.

50706. A copy of each check shall be sent James A. Orlemann, Assistant Chief, SIP Development and Enforcement, together with a letter identifying the Respondent, to:

Ohio EPA
Division of Air Pollution Control
P.O. Box 1049
Columbus, Ohio 43216-1049

50707. Should Respondent fail to fund the SEP within the required timeframe set forth in Order 2, Respondent shall pay to Ohio EPA \$2,200 of the civil penalty in accordance with the procedures in Order 1.

5. Upon the effective date of these Orders, Order 5 of the August 4, 1994 Orders is hereby rescinded and replaced with the following new Order:

"By May 31, 1996, Holmes By-Products shall move the existing batch cookers

and dryers closer to the continuous cooker building, vent all the exhaust gases from such cookers and dryers to an additional condenser serving the feather plant, and vent the noncondensable emissions from such condenser to the boiler firebox of emissions unit B007 for combustion.”

VI. 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.

VII. 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.

VIII. 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.

IX NOTICE

All documents required to be submitted by Respondent pursuant to these Orders shall be addressed to:

Ohio Environmental Protection Agency
Northeast District Office
2110 E. Aurora Road
Twinsburg, Ohio 44087
Attention: Amy O'Reilly, Environmental Specialist

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 hereafter be otherwise specified in

writing by Ohio EPA.

X. RESERVATION OF RIGHTS

Ohio EPA and Respondent each reserve all rights, privileges and causes of action, except as specifically waived in Section XI of these Orders.

XI. 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.

XII. EFFECTIVE DATE

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

XIII. 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 F. Koncelik

12-16-05
Date

Director

IT IS SO AGREED:

Holmes By-Products Co., Inc.

Dennis K. Kosmider
Signature

12-13-05
Date

DENNIS K. KOSMIDER
Printed or Typed Name

VICE PRESIDENT
Title