OHIO E.P.A.
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ENTERED DIRECTOR'S JOURNAL

BEFORE THE

OHIO ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

Materials Processing, Inc. **17423 W. Jefferson Avenue** **Riverview, MI 48192**	: : :	**Director's Final Findings and Orders**

PREAMBLE

It is agreed by the parties hereto as follows:

I. JURISDICTION

These Director's Final Findings and Orders ("Orders") are issued to Materials Processing, 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 Respondent or of the Facility (as hereinafter defined) 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 operated a plant, which painted metal parts for General Motors' trucks, at 110 Church Street in Bradner (Wood County), Ohio ("Facility"). At the Facility, Respondent operated a coating line consisting of two spray booths and a cure oven. This coating line was used to paint metal parts (brake rotors) for General Motors' trucks. Respondent's coating line employed a coating mixture that emitted volatile organic compounds ("VOCs") into the ambient air and, therefore, the coating line was an "air contaminant source" as defined in Ohio Administrative Code ("OAC") Rule 3745-15-01(C) and (W).

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

By _____ **Date:** 11/15/06

2. Specifically, the paint coating that Respondent used in its operation had a VOC content that varied between 2.60 to 2.80 pounds per gallon. The reducer (SC150") Respondent used had a VOC content of 7.5 pounds per gallon. The ratio of paint to reducer was approximately 2 gallons of paint to 1 gallon of reducer. Respondent began using this coating mixture in its coating process from March 1, 1999, and continued its use until the operation was dismantled in May 2005. Respondent claims that in May 2004, it began to use, in addition to the SC150 solvent, a VOC exempt solvent ("Oxsol") to thin the coating mixture.

3. On November 4, 1998, Respondent submitted a Permit to Install ("PTI") application for coating operations at the Bradner Facility and, on February 18, 1999, Respondent was issued PTI 03-13110 for this brake rotor coating line, Ohio EPA emission unit ("EU") K001.

4. The surface coating operations at Respondent's Facility were regulated under OAC Rule 3745-21-09(U) as well as the terms of Respondent's PTI. OAC Rule 3745-21-09(U)(1)(i) limits the VOC emissions from the coating material to 3.0 pounds of VOC per gallon of coating, excluding water and exempt solvents, on an "as applied" basis. Furthermore, OAC Rule 3745-21-10(B)(2) states:

> "Any determination of VOC content, solids content, or density of a coating shall be based on the coating as employed (as applied), including the addition of any thinner or viscosity reducer to the coating."

5. On September 10, 2003, a Notice of Violation ("NOV") letter was sent by Ohio EPA to Respondent. In the NOV, Ohio EPA detailed the violations associated with the VOC content in Respondent's coating materials, and requested a compliance plan from Respondent. Respondent was to provide the compliance plan by October 3, 2003.

6. On October 1, 2003, in response to the September 10, 2003 NOV, Respondent provided Ohio EPA with three options to bring EU K001 into compliance:

a. Replace the existing reducer with an exempt solvent or product which yields an as applied VOC content of less than 3.0 pounds per gallon.

b. Select and install emissions control technology that demonstrates through acceptable documentation that VOC emissions are in compliance with OAC Rule 3745-21-09(U) and subsequently pursue modification of the existing PTI.

c. Request revision of the existing PTI terms and conditions pursuant to a re-evaluation of the coating line operation under OAC Rule 3745-21-09(U).

In its response, Respondent failed to identify which compliance plan it was going to pursue. Rather, it committed to researching the issue and, if need be, submit a revised PTI application designed to reflect emission and content parameters under OAC Rule 3745-21-

09(U)(1)(i). The Respondent also noted that the Facility should have been subject to OAC Rule 3745-21-09(U)(1)(b), which specified a limit of 4.0 pounds per gallon for an operation such as EU K001.

7. On January 25, 2005, a NOV was issued to Respondent regarding the ongoing air violations at the Facility. Specifically, the NOV indicated that Respondent failed to provide and execute a compliance plan to address the emission exceedances associated with the coating materials for EU K001, resulting in a violation of the Respondent's PTI, OAC Rule 3745-21-09(U)(1)(i) and ORC § 3704.05(A), (C) and (G).

8. The January 25, 2005 NOV also indicated that Respondent was obligated to submit quarterly deviation reports based on the terms and conditions detailed in PTI 03-13110. Respondent failed to provide Ohio EPA with the first quarter report for year 2004, in violation of Respondent's PTI and ORC § 3704.05(C). Also, PTI 03-13110 and OAC Rule 3745-21-09(B)(3)(g) required Respondent to notify the Director of Ohio EPA, within 30 days following the end of the calender month, of any monthly record showing the use of the noncomplying coatings. Respondent failed to notify the Director of Ohio EPA of such noncompliance for the months of February 1999 through May 2005, in violation of the PTI, OAC Rule 3745-21-09(B)(3)(g) and ORC § 3704.05(C) and (G).

9. The January 25, 2005 NOV also indicated that from the beginning of Respondent's operation of EU K001, Respondent submitted quarterly reports stating that "the operations have not deviated from the specified operational parameters of PTI 03-13110, including excursions from emissions limitations, operational restrictions and control device operating parameter limitations." Yet, Respondent consistently exceeded the 3.0 pounds of VOC per gallon limitation set out in Respondent's PTI as well as the 4.0 pounds of VOC per gallon limitation in OAC Rule 3745-21-01(U)(1)(b), which should also be the appropriate limitation in the PTI. The failure to submit complete deviation reports to Ohio EPA constituted violations of the PTI and ORC § 3704.05(C).

10. Based on OAC Rule 3745-21-10(B)(2), the coating employed (as applied) by Respondent amounted to 4.2 to 4.4 pounds of VOC per gallon of coating as applied, excluding water and exempt solvents. This exceeded the 4.0 pounds of VOC per gallon limit provided by OAC Rule 3745-21-09(U)(1)(b) and violated Respondent's PTI as well as ORC § 3704.05(A), (C) and (G).

11. PTI 03-13110 and OAC Rule 3745-35-02(B)(5) required that Respondent, no more than 30 days after commencement of operations of EU K001, submit a completed permit to operate ("PTO") application to Ohio EPA for EU K001. Operation of EU K001 commenced on or about March 31, 1999, and Respondent failed to submit a complete PTO application to Ohio EPA until March 29, 2001, in violation of the terms of Respondent's PTI, OAC Rule 3745-35-02(B)(5) and ORC § 3704.05(C) and (G). Also, Respondent operated EU K001 from March 31, 2000 to May 2005 without obtaining a PTO, in violation of OAC Rule 3745-35-02(A) and ORC § 3704.05(G).

12. PTI 03-13110 and OAC Rule 3745-78-02(C) required that Respondent, as a non-Title V facility, submit a fee emission report every two years and submit payment for

emission-based fees upon receipt of an invoice from Ohio EPA's Central Office. Respondent failed to submit fee emission reports and failed to pay emission-based fees for years 1998/1999 and 2000/2001, in violation of PTI 03-13110, OAC Rule 3745-78-02(C) and ORC § 3704.05(C) and (G). Respondent submitted a non-Title V fee emissions report for 2002/2003 to Ohio EPA on April 15, 2004.

13. In May 2005, Respondent shut down the operations associated with EU K001 and dismantled EU K001.

14. 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 twenty thousand dollars ($20,000) in settlement of Ohio EPA claims for civil penalties. Within 120, 210, 300 and 390 days after the effective date of these Orders, Respondent shall pay Ohio EPA four quarterly amounts of four thousand dollars ($4,000) for a total of sixteen thousand ($16,000) of the total penalty amount. Payment shall be made by four official checks made payable to "Treasurer, State of Ohio" for $4,000 each. The official checks shall be submitted to Brenda Case, Fiscal Specialist, or her successor, together with a letter identifying the Respondent, to:

Ohio EPA
Office of Fiscal Administration
Lazarus Government Center
P.O. Box 1049
Columbus, Ohio 43216-1049

A copy of each 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
Lazarus Government Center
P.O. Box 1049
Columbus, Ohio 43216-1049

2. In lieu of paying the remaining four thousand dollars ($4,000) of civil penalty, Respondent shall fund the supplemental environmental project ("SEP") identified in Order 3. In the event Respondent defaults or otherwise fails to complete the payment as specified in Order 3, the $4,000 for the project in Order 3 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 four thousand dollars ($4,000) to Ohio EPA's Clean Diesel School Bus Program 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 $4,000. 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 also shall be sent to James A. Orlemann, or his successor, at the above-stated address.

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 operations 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. 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

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

Ohio EPA
Northwest District Office
Division of Air Pollution Control
347 North Dunbridge Road
Bowling Green, Ohio 43402-9398
Attn: Don Waltermeyer

and to:

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

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 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.

IV. 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

11/13/06
Date

IT IS SO AGREED:

Materials Processing, Inc.

Signature

11-3-06
Date

EMMETT L. WINDISCH III
Printed or Typed Name

PRESIDENT
Title