

BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY

OHIO E.P.A.

DEC 31 2007

ENTERED DIRECTOR'S JOURNAL

In the Matter of:

Tekni-Plex, Inc., d.b.a.
Dolco Packaging
1261 Brukner Drive
Troy, Ohio 45273

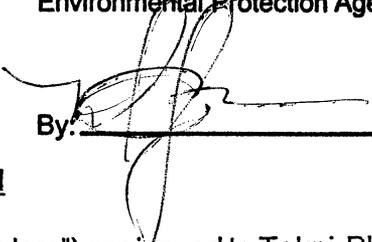
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Director's Final Findings
and Orders

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.

PREAMBLE

It is agreed by the parties hereto as follows:

By: 

Date: 12/31/07

I. JURISDICTION

These Director's Final Findings and Orders ("Orders") are issued to Tekni-Plex, Inc., d.b.a. Dolco Packaging ("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 Respondent's 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 owns a polystyrene products manufacturing facility located at 1261 Brukner Drive, Troy, Ohio, and is identified by Ohio EPA Facility ID 0855140332 (the "Facility"). The Facility is currently permitted as a "synthetic minor source," as defined in Ohio Administrative Code ("OAC") 3745-77-01(II).

2. The Facility's assets were purchased by Respondent on July 11, 2002, and the d.b.a. name was changed from Elm Packaging to Dolco Packaging on February 1, 2003. Respondent's headquarters are located at 201 Industrial Parkway, Somerville, New Jersey.

3. At the Facility (since the time of purchase in 2002), Respondent has owned and operated, among other equipment, a polystyrene foam repelletizer #27 with regenerative thermal oxidizer ("RTO"), identified by Ohio EPA as emissions unit ("EU") P007, polystyrene foam repelletizer #28 with RTO (EU P008), polystyrene foam extruder #1 (EU P009), polystyrene foam extruder #2 (EU P011), and polystyrene foam extruder #4 (EU P013). These EUs are "air contaminant sources" as defined by Ohio Administrative Code ("OAC") Rules 3745-15-01(C) and (W), 3745-31-01(I), and 3745-35-01(B)(4), and ORC § 3704.01(C).

4. ORC § 3704.05(C) prohibits any person from violating the terms and conditions of any permit issued by the Director of Ohio EPA. ORC § 3704.05(G) prohibits any person from violating any rule adopted by the Director of Ohio EPA. ORC § 3704.05(J)(2) prohibits, in part, any person from violating any applicable filing requirement of the Title V permit program of OAC Chapter 3745-77. ORC § 3704.05(K) prohibits any person from operating a Title V source without either timely applying for a Title V permit or possessing a Title V permit from Ohio EPA.

5. In October 2000, the Facility became a "major source" of air pollutants, as defined in OAC Rule 3745-77-01(W), when the blowing agent was changed from 1,1-difluoroethane to isopentane. This change in the blowing agent increased the potential to emit ("PTE") of volatile organic compounds ("VOC") and caused the Facility to exceed the threshold of 100 tons per year ("TPY").

6. Since the Facility was a major source, the Facility was a "Title V source," as defined in OAC Rule 3745-77-01(LL), and was subject to the Title V permit requirements of OAC Chapter 3745-77.

7. OAC Rule 3745-77-02 prohibits the operation of a Title V source after the date that a complete and timely Title V permit application is required to be submitted under OAC Rule 3745-77-04, unless such facility is in compliance with a Title V permit issued under this rule or a timely Title V permit application has been submitted for which the Director has not issued a final incompleteness determination.

8. OAC Rule 3745-77-04(D) requires the owner or operator of a Title V source to timely submit an application for a Title V permit for the first time within twelve months after the source becomes subject to the Title V permit program.

9. OAC Rule 3745-78-02(A) requires owners or operators of a facility that is subject to the Title V permit program to submit annual Title V fee emission reports that identify the actual emissions of specified air pollutants and to pay fees for such emissions upon receipt of invoices. The first fee emission report was due by June 15, 1994 for calendar year 1993, and subsequent reports were due by April 15 of each year thereafter.

10. A modification to Permit to Install ("PTI") #08-04085 was issued on April 2, 2002 for EUs P007, P008 and P009, allowing organic compounds ("OC") emissions of 5.96 tons per year ("TPY") for EU P007, 5.96 TPY for EU P008, and 1.20 TPY for EU P009. This PTI also states that fugitive OC emissions from final products during the waiting period (unrelated to any emissions unit), prior to shipping out, had been estimated to be 32.85 TPY, giving a total PTI allowable OC emissions rate of 45.97 TPY. On August 26, 2003, Ohio EPA issued to Respondent PTI #08-04529 for EU P011, which has an allowable of 1.45 TPY for OC emissions. In addition, PTI #08-04160 was issued on April 26, 2000 for EU P013 giving an allowable OC emissions rate of 1.46 TPY. Facility-wide, the total combined allowable OC emissions rate is, therefore, 48.88 TPY.

11. In October of 2000, prior to Respondent purchasing the Facility, the blowing agent used in EUs P009, P011 and P013 was switched from 1,1-difluoroethane to isopentane. The emissions factor used for OC was determined by Elm Packaging, at the time, using data obtained from a similar facility's foam aging test.

12. In 2004, Respondent began researching information to switch the blowing agent used from isopentane to butane. This research led Respondent to the conclusion that the original emission factors determined for the Facility were not consistent with other facilities operated by Respondent and an OC emissions assessment was performed. From this research, Respondent formulated revised emission factors which account for the change in the blowing agent and allowed Respondent to better quantify the actual annual OC emissions for the Facility.

13. Based on the revised emission factors, actual VOC emissions from the Facility have exceeded the Title V applicability threshold (i.e., a PTE of 100 TPY or more) since the blowing agent was switched in October 2000 and, therefore, the facility would no longer qualify for synthetic minor Title V status that it originally obtained via PTI #08-4085 and a Title V permit should have been obtained and Title V fee emission reports should have been submitted. Operation of a Title V source without a Title V permit or a timely filed application is a violation of OAC Rule 3745-77-02(A) and ORC § 3704.05(K). Failure to timely submit an annual Title V fee emission report is a violation of OAC Rule 3745-78-02(A) and ORC § 3704.05(J)(2). Additionally, the Facility's potential emissions calculated at 402.91 tons per year using the revised emission factors qualified the Facility as a major new source. As such, a prevention of significant deterioration ("PSD") permit should have been obtained when the Facility became a major new source in 2000, in accordance with OAC Rules 3745-31-11 through 3745-31-20. Since a PSD permit has not been obtained by Respondent since the purchase of the Facility, Respondent was in violation of PSD requirements. In addition, Respondent failed to timely submit an application for a Title V permit for the first time within twelve months after its source became subject to the Title V permit program, in violation of OAC Rule 3745-77-04(D) and ORC § 3704.05(K).

14. The 2004 synthetic minor Title V facility fee emission report submitted to the Regional Air Pollution Control Agency ("RAPCA"), Ohio EPA's contractual representative in Miami County, by Respondent, dated April 14, 2005, reported the 2004 annual actual emissions of OC to be 177.46 TPY and was calculated using revised emissions factors

determined by Respondent. OC emissions at the level reported on the 2004 synthetic minor Title V facility fee emission report were in violation of the combined allowable OC emissions obtained from PTI #08-04085, PTI #08-04160 and PTI #08-04529, and ORC § 3704.05(C).

15. On March 7, 2005, Dewling Associates, Inc. ("DAI"), a consultant hired by Respondent, sent RAPCA a letter to inform RAPCA that the previous emission factors were inaccurate. According to DAI, the maximum potential VOC emissions at Respondent's facility can be maintained at a level below 100 tons per year by obtaining a synthetic minor PTI and using emissions control.

16. On July 13, 2005, RAPCA received a synthetic minor PTI application from Respondent which was assigned number 08-04715. The synthetic minor PTI application requested a total facility-wide VOC emission limit of 88.9 TPY. The VOC emission limit proposed in PTI #08-04715 would restrict emissions below 100 TPY and, therefore, would avoid Title V permitting status and major New Source Review ("NSR").

17. On August 19, 2005, RAPCA issued a Notice of Violation ("NOV") letter to Respondent for failure to comply with the combined OC emission limit that was calculated from the individually listed limits in PTI #08-04085, PTI #08-04160 and PTI #08-04529, OAC Rules 3745-31-05(A)(3), 3745-77-02(A), 3745-77-04(B), 3745-78-02(A), 3745-31-11 through 3745-31-20, and ORC § 3704.05(G) and (J)(2). The NOV letter required Respondent to resubmit the synthetic minor Title V facility fee emission reports for the years 2000 through 2003 using the revised emission factors for OC. RAPCA also requested a thorough compliance plan and schedule be submitted to indicate that the return to compliance and the installation of control equipment will be accomplished in the most expeditious manner possible.

18. On September 20, 2005, RAPCA received the revised synthetic minor Title V facility fee emission reports for the years 2000 through 2003. The revised reports stated that VOC emissions were 50.8 TPY for the year 2000 (only includes emissions from October to December), 203.1 TPY for 2001, 151.5 TPY for 2002, and 146.0 TPY for 2003. A compliance plan and schedule was also submitted which estimated Respondent would return to compliance by October of 2006, when the installation and testing of a new RTO would be completed.

19. In December 2005, revisions to the emission factors for OC were proposed by Respondent, which increased the total VOC emissions to 136.15 TPY for 2000, 272.31 TPY for 2001, 203.15 TPY for 2002, 195.81 TPY for 2003, and 225.51 TPY for 2004.

20. On April 20, 2006, Ohio EPA issued to Respondent the final synthetic minor PTI #08-04715 which restricts the allowable annual VOC emissions from the sources listed below to 76.5 TPY. The PTI included the following emissions units at the Facility (EUs P009, P011 and P013 were deemed "de minimis" in accordance with OAC Rule 3745-15-05 and were not included in the PTI):

Emissions Unit Number	Emissions Unit Description
P005	Outside Regrind Storage Silos
P007	Pelletizer #27
P008	Pelletizer #28
P014	Roll Stock Storage Warehouse
P015	Finished Product Storage Warehouse
P016	Scrap Sheet Grinding
P017	Trim Scrap Grinding

21. On March 27, 2007, Ohio EPA confirmed that the Facility is currently in compliance with all applicable air rules and regulations. Respondent installed a new RTO, which controls VOC emissions from EUs P005, P007, P008, P014, P016, and P017, and tested successfully in October 2006 after switching to butane as a blowing agent.

22. 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 one hundred ten thousand dollars (\$110,000) in settlement of Ohio EPA's claims for civil penalties. Of that amount, Respondent shall pay Ohio EPA the amount of eighty-eight thousand dollars (\$88,000) in accordance with the following payment schedule:

- Twenty-nine thousand three hundred and thirty-three dollars (\$29,333) due within one hundred and twenty (120) days after the effective date of these Orders;
- Twenty-nine thousand three hundred and thirty-three dollars (\$29,333) due within two hundred and ten (210) days after the effective date of these Orders; and
- Twenty-nine thousand three hundred and thirty-four dollars (\$29,334) due within three hundred (300) days after the effective date of these Orders.

Payments shall be made by official checks made payable to "Treasurer, State of Ohio." The official checks 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 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
P.O. Box 1049
Columbus, Ohio 43216-1049

2. In lieu of paying the remaining twenty-two thousand dollars (\$22,000) of the civil penalty to Ohio EPA, Respondent shall fund the supplemental environmentally beneficial project ("SEP") identified in Order 3. In the event Respondent defaults or otherwise fails to complete the project as specified in Order 3, the \$22,000 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 twenty-two thousand dollars (\$22,000) to Ohio EPA's Clean Diesel School Bus Program Fund (Fund 5CD0). 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 \$22,000. The official check shall specify that such monies are to be deposited into Fund 5CD0 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 and Fund 5CD0, 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 operation of the 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

Except as otherwise specified in these Orders, all documents required to be submitted by Respondent pursuant to these Orders shall be addressed to:

Regional Air Pollution Control Agency
117 South Main Street
Dayton, Ohio 45422-1280
Attn: Jefferis Canan

and to:

Ohio Environmental Protection Agency
Division of Air Pollution Control
Lazarus Government Center
P.O. Box 1049
Columbus, Ohio 43216-1049
Attn: 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 specially 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

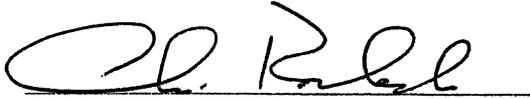
The effective date of these Orders is the date these Orders are entered into the Ohio EPA Director's journal.

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



Chris Korleski
Director

12/31/07
Date

IT IS SO AGREED:

Tekni-Plex, Inc., d.b.a. Dolco Packaging



Michael W. Zelenty
Senior Vice President and General Counsel

12-31-07
Date