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OHIO E.P.A.

NOV - 8 2007

ENTERED DIRECTOR'S JOURNAL

BEFORE THE

By: [Signature] Date: 11-8-07

OHIO ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

Alfred Nickles Bakery, Inc. : Director's Final Findings
26 North Main Street : and Orders
Navarre, Ohio 44662 :

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 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 is a corporation registered with the Ohio Secretary of State, and owns and operates a commercial bakery facility ("Facility") that produces breads and sandwich buns. The Facility is located at 1950 North Sugar Street, Lima, Allen County, Ohio.

2. At the Facility, Respondent operates four natural gas-fired bakery ovens. The addition of the initial yeast to the various recipes results in the formation of volatile organic compound ("VOC") emissions (ethanol) during the bread-making process. The majority of the VOC emissions at the Facility are emitted from the ovens during the baking. These ovens (emission units) are "air contaminant sources" as defined in Ohio

Administrative Code ("OAC") Rule 3745-15-01(C) and (W). The emissions units at the Facility are identified by Ohio EPA as: P001 (natural gas-fired 600 bun oven); P002 (natural gas-fired bread oven); P003 (natural gas-fired hearth oven); and P004 (natural gas-fired 400 bun oven). Respondent applied for, and was issued, a Title V permit for the Facility on May 15, 2002, in accordance with the requirements of OAC Chapter 3745-77.

3. ORC § 3704.05(C) prohibits any person from violating the terms and conditions of any permit issued by the Director of Ohio EPA.

4. ORC § 3704.05(J)(2) prohibits the violation of any term or condition of a Title V permit.

5. OAC Rule 3745-31-02(A)(1) provides, in part, that no person shall cause, permit, or allow the installation or modification of a new source of air contaminants without first applying for and obtaining a Permit to Install ("PTI") from the Director of Ohio EPA.

6. Respondent failed to submit a complete Title V compliance certification for calendar year 2002 by April 30, 2003, in violation of Part 1.A of the terms and conditions of Respondent's Title V permit and ORC § 3704.05(C) and (J)(2). Specifically, Respondent failed to complete Part IV (Significant Emissions Units Terms and Conditions) of the compliance certification. On June 25, 2003, Ohio EPA sent Respondent a warning letter in which Ohio EPA notified Respondent of its failure and requested that Respondent submit a complete certification that addressed Ohio EPA's concerns by July 25, 2003.

7. On July 21, 2003, Respondent submitted a revised Title V compliance certification for calendar year 2002 to Ohio EPA.

8. Respondent again failed to submit a complete Title V compliance certification for calendar year 2002 for its Facility. Specifically, Part IV (Significant Emissions Units Terms and Conditions) of Respondent's Title V permit contained a table of information where Respondent was required to indicate whether it operated its emission units in compliance with the provisions of its Title V permit and, if not, when excursions/deviations occurred. Respondent failed to provide any information in this section in its July 21, 2003 submittal. On August 1, 2003, Ohio EPA issued a second warning letter to Respondent indicating that Respondent had failed to submit a complete certification. Ohio EPA requested that Respondent submit a complete certification that addressed Ohio EPA's concerns by August 15, 2003.

9. On September 11, 2003, Respondent submitted a revised 2002 Title V compliance certification to Ohio EPA that satisfied the concerns raised by Ohio EPA in the warning letter sent to Respondent on August 1, 2003.

10. Respondent failed to submit the required 2003 Title V compliance certification for the Facility by April 30, 2004, in violation of the terms and conditions of Respondent's Title V permit for the Facility, and ORC § 3704.05(C) and (J)(2). On June 1,

2004, Ohio EPA sent Respondent a warning letter indicating that Respondent had failed to submit the Title V compliance certification.

11. On July 2, 2004, Respondent submitted the 2003 Title V compliance certification for the Facility to Ohio EPA.

12. Respondent failed to submit a complete 2003 Title V compliance certification for the Facility, in violation of its Title V permit and ORC § 3704.05(C) and (J)(2). Specifically, Respondent failed to certify whether each significant emission unit at the Facility was in compliance with all terms and conditions of the Title V permit. This must be done by submitting forms for each individual emissions unit ("EU") at the facility, i.e., EUs P001 through P004. The report submitted by Respondent on July 2, 2004 only contained a summary of compliance methods. On July 20, 2004, Ohio EPA sent Respondent a warning letter indicating that had failed to submit a complete Title V compliance certification.

13. On September 2, 2004, Respondent submitted a revised 2003 Title V compliance certification for the Facility to Ohio EPA.

14. On September 17, 2004, Ohio EPA performed a compliance inspection of the Facility.

15. As of September 17, 2004, Respondent violated Term No. A.II.1 of its Title V permit. Term A.II.1 limits EU P003 to an average hourly production rate of 1,961 pounds of yeast-leavened products (as a daily average). Also, Term No. A.III.1 of its Title V permit requires that the hourly production, as a daily average, be computed daily and recorded. From May 15, 2002 to October 28, 2004, Respondent computed the hourly production as a quarterly average, in violation of the terms and conditions of its Title V permit and ORC § 3704.05(C) and (J)(2). Records maintained by Respondent indicated that from February 1, 2003 until October 31, 2003, Respondent's hourly production rates, as a quarterly average, from February 1, 2003 through April 30, 2003, from May 1, 2003 to July 31, 2003, and from August 1, 2003 to October 31, 2003, were 3,345 pounds per hour, 3,227 pounds per hour, and 2,164 pounds per hour, respectively. These values indicate that Respondent exceeded its hourly production limit, as a daily average, for EU P003. Records also indicate that, from August 1, 2004 until July 31, 2005, Respondent's hourly production rates, as a quarterly average, from August 1, 2004 through October 31, 2004, from November 1, 2004 to January 31, 2005, from February 1, 2005 to April 30, 2005 and from May 1, 2005 to July 31, 2005, were 2,012 pounds per hour, 2,232 pounds per hour, 2,074 pounds per hour, and 2,254 pounds per hour, respectively. These values indicate that Respondent exceeded its hourly production limit for EU P003, as a daily average, from August 1, 2004 to June 9, 2005. By exceeding the hourly production limit for EU P003, Respondent violated the terms and conditions of its Title V permit and ORC § 3704.05(C) and (J)(2).

16. From August 1, 2004 until June 9, 2005, Respondent was in violation of its allowable organic compound ("OC") emission limitation for EUs P003 and P004, based on the production rates over that time period, and the emissions factors used to determine compliance with the emission limitation in its Title V permit.

17. Respondent failed to notify Ohio EPA within five working days of the exceedances of the production limit of 1,961 pounds per hour for EU P003, between February 1, 2003 and October 31, 2003, and between May 1, 2004 and September 23, 2004. Respondent also failed to submit copies of such records submitted to Ohio EPA within 45 working days after the exceedances, in violation of the reporting requirement in Term No. A.IV.1 in Respondent's Title V permit and ORC § 3704.05(C) and (J)(2). Respondent provided Ohio EPA with reports of the exceedances associated with EU P003 on September 23, 2004.

18. Also, Respondent's Title V compliance certification for 2003, which was submitted on July 2, 2004, did not contain any identification of the average hourly production rate limit violations, or the reporting violations for the period of February 1, 2003 through October 31, 2003 for EU P003, in violation of Term No. A.12.d.ii.(b) of Respondent's Title V permit for the Facility, and ORC § 3704.05(C) and (J)(2).

19. Respondent maintained production records for EU P001 through P004 by recording total pounds of production for four-week periods, with operating hours on different data sheets, thus requiring Ohio EPA staff to hand calculate the average pounds per hour of production. Term No. A.III.1.c of Respondent's Title V permit requires Respondent to maintain daily records for each oven, of the amount of yeast-leavened products produced, in pounds; the number of hours the emissions unit was in operation; and the average hourly amount of yeast-leavened products produced per hour (as a daily average). Respondent's failure to properly maintain operations records was a violation of its Title V permit and ORC § 3704.05(C) and (J)(2). These violations were continuous from May 15, 2002 (date that the Title V permit was issued) until corrected by Respondent on October 28, 2004.

20. On October 1, 2004, Ohio EPA issued a Notice of Violation ("NOV") to Respondent for violations of Respondent's Title V permit and the air pollution laws and regulations arising out of Respondent's activities at the Facility

21. Ohio EPA requested that Respondent submit a written response that addressed the violations and compliance issues noted in the October 1, 2004 NOV and provide them to Ohio EPA by November 5, 2004.

22. On October 28, 2004, Ohio EPA received Respondent's response to Ohio EPA's October 1, 2004 NOV. In its response, Respondent detailed hourly, daily, weekly, and yearly production rates for EUs P001 through P004. Respondent proposed changing the production rate limit for EU P003 from 1,961 pounds per hour to 3,750 pounds per hour. Respondent also submitted a revised Title V compliance certification for 2003. The

revised compliance certification addressed the production exceedances associated with EU P003 and the record-keeping violations cited by Ohio EPA in the October 1, 2004 NOV.

23. On October 28, 2004, Respondent submitted a PTI modification application for EU P003. In the PTI application, Respondent sought to increase the average hourly production rate for EU P003. The PTI modification application called for increasing the production limit for EU P003 from 1,961 pounds per hour to 3,750 pounds per hour, as a daily average. The final PTI was issued by the Director of Ohio EPA on June 9, 2005, and contained a new hourly production limit for EU P003 of 3,750 pounds per hour, as a daily average.

24. Respondent exceeded the average hourly production rate for EU P004 (400 bun oven) The average hourly production rate was in the range of 2,825 to 3,384 pounds per hour, as a weekly average, which would indicate that respondent also exceeded the 2,817 pounds per hour limit (as a daily average) contained in Respondent's Title V permit as operational restriction No. A.II.1. This was reported by Respondent in its deviation report submitted to Ohio EPA on June 30, 2005, consistent with the terms and conditions of Respondent's Title V permit for the Facility. In the deviation report, Respondent reported that EU P004 exceeded its production limit from February 1, 2005 through April 30, 2005, in violation of ORC § 3704.05(C) and (J)(2).

25. Respondent violated operational restriction No. A.II.1 of Respondent's Title V permit for EU P004. Ohio EPA requested a written response from Respondent by August 31, 2005 that addressed the violations raised in an NOV issued to Respondent on July 27, 2005. In that request, Ohio EPA directed Respondent to submit a PTI modification application to address the increased production rate for EU P004.

26. On August 11, 2005, Respondent submitted a PTI modification application to address the increased production rate of EU P004. A PTI modification was issued on March 28, 2006, and contained a new hourly production limit for EU P004 of 4,250 pounds per hour as a daily average.

27. 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 seventy thousand two hundred and fifty dollars (\$70,250) in settlement of Ohio EPA's claims for civil penalties. Within thirty (30) days after the effective date of these Orders, Respondent shall pay Ohio EPA the amount of forty-six thousand two hundred

dollars (\$46,200) of the total penalty amount. Payment shall be made by an official check made payable to "Treasurer, State of Ohio" for \$46,200. The official check shall be submitted to Brenda Case, or her successor, together with a letter identifying the Respondent, to the following address:

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-four thousand and fifty dollars (\$24,050) of the civil penalty to Ohio EPA, Respondent shall fund the supplemental environmental projects ("SEPs") identified in Orders 3 and 4. Of the \$24,050, \$14,050 shall be used to fund the project identified in Order 3, and \$10,000 shall be used to fund the project identified 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 \$14,050 for the project in Order 3 and/or the \$10,000 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 \$14,050 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 \$14,050. 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.

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 its Martins Ferry, Ohio facility as a SEP in lieu of paying \$10,000 of the civil penalty. 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:
 - i. 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:
 - i. 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:
 - i. 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 Study. If the total cost of the P2 Study is less than \$10,000, 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 \$10,000 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 the 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 3745-77-01(GG).

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.

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 Environmental Protection Agency
Northwest District Office
347 North Dunbridge Road
Bowling Green, Ohio 43402
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

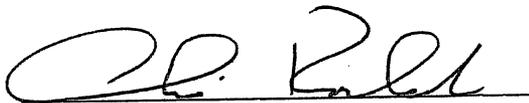
The effective date of these Orders is the date these Orders are entered into the Ohio EPA Director's journal.

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

11/7/08
Date

IT IS SO AGREED:

Alfred Nickles Bakery, Inc.


Signature

October 15, 2007
Date

Christian Gardner
Printed or Typed Name

Vice President, Purchasing
Title