OHIO E.P.A.

DEC 27 2010

ENTERED DIRECTOR'S JOURNAL

BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

Howden North America, Inc. : Director's Final Findings
338 South Broadway Street : and Orders
New Philadelphia, Ohio 44663 :

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.

Date: 12.27.2010

PREAMBLE

It is agreed by the parties hereto as follows:

I. JURISDICTION

These Director's Final Findings and Orders ("Orders") are issued to Howden North America, 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 makes the following findings:

1. Respondent operates a metal fabricating and coating facility ("Facility") located at 338 South Broadway in New Philadelphia, Tuscarawas County, Ohio. The facility was purchased in 1997 from Joy Technologies Inc./New Philadelphia Fan Company. The Facility consists of plant operations with emissions units that include three paint booths identified as emissions units ("EUs") R004, HB009 and HB010.

2. EUs R004, HB009 and HB010 are "air contaminant sources" as that term is defined in Ohio Administrative Code ("OAC") Rules 3745-15-01(C) and (X), 3745-31-01(I) and former Rule 3745-35-01(B)(4); and they emit "volatile organic compounds" ("VOCs"), which are defined as an "air pollutant" or "air contaminant" in OAC Rule 3745-15-01(C).

3. ORC §3704.05(G) prohibits any person from violating any order, rule or determination of the Director of Ohio EPA issued, adopted, or made under ORC Chapter 3704. Any OAC rule identified in these Orders was adopted by the Director of Ohio EPA pursuant to ORC Chapter 3704.

4. On August 16, 1972, Permit-to-Install ("PTI") applications were received from Respondent's predecessor by Ohio EPA for EUs R001 and R003. On January 29, 1974, a PTI was issued for these EUs. On April 21, 1977, EUs R001 and R003 were placed on registration status.

5. On February 20, 1976, Respondent's predecessor applied for a PTI for EU R004. On May 5, 1976, PTI 06-209 was issued for EU R004. On October 22, 1976, a registration status was issued for EU R004. The PTI application submitted in 1976 indicated that the Facility had annual emissions of less than 5 tons of organic compounds.

6. Between the installation of EUs R001, R003, and R004 and October 24, 1996, when Respondent purchased the Facility, the potential annual emissions for the Facility either increased substantially or may not have been accurately reflected in the original PTI applications. Because of this increase in potential emissions and Respondent's predecessor's failure to submit new PTI applications, Respondent was required to apply for and obtain a modified PTI pursuant to OAC Rule 3745-31-02 for EUs R001, R003, and R004 at the time the Facility was purchased by Respondent, since they no longer qualified for registration status.

7. Based on recent coating usage data, it appears that actual VOC emissions from the Facility may have consistently been less than 20% of the major source threshold for the Title V operating permit requirements of OAC Chapter 3745-77. According to Ohio EPA Engineering Guide ("EG") #61, facilities with actual emissions less than 20% of the major source threshold are presumed to have inherent physical limitations on the potential to emit ("PTE"). Despite the failure to submit the notification specified in EG #61, under the Title V operating permit program Respondent initially may have qualified for treatment as a minor source with presumed inherent physical limitations.

8. On January 2, 2004, USEPA promulgated the Maximum Achievable Control Technology ("MACT") Standards for Miscellaneous Metal Parts Coating, 40 CFR Part 63, Subpart MMMM. 40 CFR 63.3881(b) applies to facilities that use 250 gallons or more of hazardous air pollutants ("HAPs")-containing coatings per year for the surface coating of metal parts and that are "major sources" under the MACT. Pursuant to 40 CFR 63.3883(b), the compliance date for existing sources was January 2, 2007.

9. Because Respondent did not have federally enforceable restrictions on the PTE for the Facility, the PTE for HAPs has been greater than 10 TPY for a single HAP and 25 TPY for a combination of HAPs, the major source thresholds for HAPs, since the MACT was promulgated. Therefore, Respondent's Facility is an affected source subject to the MACT.

10. From January 2, 2007 to the present, except for the initial notification, Respondent has failed to comply with the following MACT requirements: 40 CFR 63.3900(a)(1) (general requirements), 40 CFR 63.3920(a) semi-annual compliance reports, 40 CFR 63.3930 and 63.3931 (recordkeeping), 40 CFR 63.3940, 63.3941 and 63.3942 (compliance demonstration). From January 2, 2005 to the present, Respondent has failed to comply with the initial notification requirements under 40 CFR 63.3910(c).

11. Respondent did not have in place federally enforceable restrictions for PTE by the first substantive compliance date (January 2, 2007) in the MACT standards. As such, the Facility was defined as a "major source" under OAC Rule 3745-77-01(X)(1)(a) and subject to the Title V operating permit program. Pursuant to OAC Rule 3745-77-02(A), the owner or operator of a Title V source (as defined by OAC Rule 3745-77-01(PP)) shall not operate such source after the date that a timely and complete Title V permit application is required to be submitted.

12. By not having an effective Title V permit or a timely filed Title V permit application, Respondent has been in violation of OAC Rules 3745-77-02 and 3745-77-04 and ORC § 3704.05(G), (J)(2) and (K) since at least January 2, 2005, when Respondent became subject to the MACT standards. In addition, Respondent has been in violation of OAC Rule 3745-78-02(A) since at least April 15, 2006 for failing to submit Title V fee emission reports each calendar year.

13. In April of 2009, Respondent replaced EUs R001 and R003 with EUs HB009 and HB010. Pursuant to OAC Rule 3745-31-01(UUU), the replacement of an entire air contaminant source is considered a "new source." From April 2009 to the present, Respondent installed and operated EUs HB009 and HB010 without first applying for and obtaining a PTI, in violation of OAC Rule 3745-31-02 and ORC § 3704.05(G).

14. OAC Rule 3745-21-09(U) establishes VOC content limitations for miscellaneous metal parts coating operations. For extreme performance coatings (as defined by OAC Rule 3745-21-09(U)), that are used at Respondent's Facility, OAC Rule 3745-21-09(U)(1)(c) restricts coatings to 3.5 pounds of VOC per gallon of coating, excluding water and exempt solvents.

15. From at least the purchase of the Facility on October 24, 1996 until November 1, 2010, Respondent had, at times, used coatings in EUs R001, R003, R004, HB009, and HB010 containing VOC contents up to and including 6.37 pounds of VOC per gallon of coating, excluding water and exempt solvents, in violation of OAC Rule 3745-21-09(U).

16. Respondent contends that because of the low coating rate at the Facility, the Facility was exempt from the VOC content limits pursuant to OAC Rule 3745-21-09(U)(2)(e)(iii), which exempts EUs that use less than 10 gallons per day of coatings. However, until December 1, 2010, Respondent did not maintain the daily records required under OAC Rule 3745-21-09(B)(3)(d). Respondent now maintains daily records demonstrating that the coating usage rate for each EU is less than 10 gallons per day; and, thus, each EU is exempt from the VOC content limitations of OAC Rule 3745-21-09(U).

17. The PTE of the Facility prior to Respondent's purchase of the Facility increased by more than 250 TPY for VOC, the applicability threshold for the Prevention of Significant Deterioration ("PSD") rules in OAC Chapter 3745-31 and 40 CFR Part 52. To the extent the increase occurred as a result of a project that involved a physical change or change in the method of operation, Respondent was in violation of those rules from the date Respondent purchased the Facility on October 24, 1996. Respondent contends that the Facility's PTE has never exceeded 250 TPY because of several factors, including a bottleneck presented by the shot blast machine and other inherent limitations. In addition, Respondent has not identified any records of the predecessor owner that provide any information on any physical changes or changes in the method of operation that may have occurred which would have resulted in the increase in PTE of more than 250 TPY.

18. In lieu of further litigation, and in recognition of the small actual emissions from the Facility (5-6 TPY), the parties have agreed that Respondent will submit a top-down Best Available Control Technology ("BACT") study in order to demonstrate that EUs R004, HB009, and HB010, with a restriction of 10 gallons per day of coatings and compliance with the MACT coating limits, is representative of BACT. Because Respondent's actual emissions do not appear to have ever exceeded PSD thresholds, are on average 5-6 TPY, and provided the BACT study demonstrates BACT is being achieved, these requirements will be incorporated into a synthetic minor PTI for the Facility.

19. 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. Within fourteen (14) days after the effective date of these Orders, Respondent shall submit a complete and approvable PTI application for EUs R004, HB009, and HB010. Included in the application shall be a demonstration that the limitations requested in the PTI application for R004, HB009, and HB010 satisfy the Best Available Control Technology (OAC Rule 3745-31-01(S)) requirements of OAC Rule 3745-31-15.

2. Within thirty (30) days after the effective date of these Orders, Respondent shall submit to Ohio EPA and USEPA the initial MACT notification and continue to maintain EUs R004, HB009, and HB010 in compliance with the requirements of the MACT Standards for Miscellaneous Metal Parts Coating, 40 CFR Part 63, Subpart MMMM.

3. Respondent shall continue to maintain EUs R004, HB009, and HB010 in compliance with the 10 gallons per day usage restriction specified in OAC Rule 3745-21-09(U)(2)(e), as well as the associated recordkeeping and reporting requirements in the OAC Rule 3745-21-09(B)(3)(d).

4. Within sixty (60) days after receiving the synthetic minor PTI for EUs R004, HB009, and HB010, Respondent shall a submit complete Title V permit application for the Facility.

5. By April 15, 2011, Respondent shall file Title V fee emission reports for calendar years 1997 through 2010 using Ohio EPA's eBusiness Center: Air Services and thereafter pay the fees in accordance with the invoices received from Ohio EPA.

6. Respondent shall pay the amount of one hundred nine thousand three hundred and fifty dollars ($109,350) in settlement of Ohio EPA's claims for civil penalties, which may be assessed pursuant to ORC Chapter 3704. Within fourteen (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-seven thousand four hundred and eighty dollars ($87,480). The official check shall be submitted to Brenda Case, or her successor, together with a letter identifying Respondent, to:

Ohio EPA
Office of Fiscal Administration
P.O. Box 1049
50 West Town Street
Suite 700
Columbus, OH 43216-1049

7. In lieu of paying the remaining twenty-one thousand eight hundred and seventy dollars ($21,870) of the civil penalty, Respondent shall, within fourteen (14) days of the effective date of these Orders, fund a Supplemental Environmental Project (SEP) by making a contribution in the amount of $21,870 to the Ohio EPA's Clean Diesel School Bus Program Fund (Fund 5CD0). Respondent shall tender an official check made payable to "Treasurer, State of Ohio" for $21,870. 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.

8. 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
Office of Fiscal Administration
P.O. Box 1049
50 West Town Street
Suite 700
Columbus, OH 43216-1049

9. Should Respondent fail to fund the SEP within the required time frame set forth in Order 7, Respondent shall immediately pay to Ohio EPA $21,870 of the civil penalty in accordance with the procedures in Order 6.

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 the purposes of these Orders, a responsible official is a principal executive officer of at least the level of vice president or his duly authorized representative.

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, operations by 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
Southeast District Office
2195 Front Street
Logan, Ohio 43138
Attn: Bruce Weinberg

and to:

Ohio Environmental Protection Agency
Division of Air Pollution Control
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 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.

ORDERED AND AGREED:

Ohio Environmental Protection Agency

Chris Korleski — Date: 12/22/10

Director

AGREED:

Howden North America, Inc.

Signature — Date: 12/17/2010

KARL KIMMERLING
Printed or Typed Name

PRESIDENT & CEO
Title