

OHIO E.P.A.

DEC - 8 2011

BEFORE THE

OHIO ENVIRONMENTAL PROTECTION AGENCY

ENTERED DIRECTOR'S JOURNAL

In the Matter of:

Air Enterprises, LLC
735 Glaser Parkway
Akron, Ohio 44306

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:

[Signature] Date: 12-8-11

I. JURISDICTION

These Director's Final Findings and Orders ("Orders") are issued to Air Enterprises, LLC ("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 identified) 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 makes the following findings:

1. Respondent owns and operates an air handling unit manufacturing operation located at 735 Glaser Parkway in Akron (Summit County), Ohio. At this facility, Respondent owns and operates a paint booth [emissions unit ("EU") K001]; a wall assembly process (EU K002); and a final unit assembly process (EU K003). Information provided by Respondent indicates that Respondent purchased the assets of the former Air Enterprises, Inc. on August 12, 2005.

2. Each of the above-mentioned EUs in Finding 1 is an "air contaminant source" as defined in OAC Rules 3745-31-01(I) and 3745-15-01(C) and (X).

3. ORC § 3704.05(G) prohibits any person from violating any rule adopted by the Director of Ohio EPA pursuant to ORC Chapter 3704. All rules referenced in these Orders were adopted by the Director of Ohio EPA pursuant to ORC Chapter 3704.

Failure to employ complying coatings for EU K003

4. OAC Rule 3745-21-09(U)(1)(d) prohibits any owner or operator of a coating line for miscellaneous metals parts and products from discharging into the ambient air of any volatile organic compounds ("VOC") from such coating line in excess of 3.5 pounds of VOC per gallon of coating, excluding water and exempt solvents, unless otherwise specified in such rule, for any coating that is dried at temperatures not exceeding 200 degrees Fahrenheit.

5. From August 12, 2005 until December 21, 2009, Respondent failed to employ complying coatings for EU K003, in violation of OAC Rule 3745-21-09(U)(1)(d) and ORC § 3704.05(G). During this time period, no records of dates of non-complying coatings employed were kept; however, Respondent was using coatings with 6.08 pounds of VOC per gallon of coating as reported in a permit application. Respondent ceased painting operations in EU K003 on December 21, 2009, until a permit was obtained for this emissions unit.

Failure to obtain permits to install and operate for EUs K001, K002 and K003

6. Prior to June 30, 2008, former OAC Rule 3745-35-02(A) required Respondent to apply for and obtain a permit to operate from Ohio EPA prior to operation of a emissions unit. On and after June 30, 2008, OAC Rule 3745-31-02(A)(1)(b) requires Respondent to apply for and obtain a permit to install and operate ("PTIO") from Ohio EPA prior to installation and operation of an emissions unit.

7. Respondent failed to apply for and obtain an operation permit from Ohio EPA prior to such operation of EUs K001, K002 and K003, in violation of former OAC Rule 3745-35-02(A), OAC Rule 3745-31-02(A)(1)(b), and ORC § 3704.05(G). EUs K001, K002 and K003 were installed and began operation in January 1973. PTIO applications for EUs K001, K002, and K003 were submitted by Respondent on September 30, 2009, December 9, 2009, and April 28, 2010, respectively. The PTIOs for EUs K001, K002, and K003 were issued on October 21, 2009, December 24, 2009, and May 17, 2010, respectively.

Failure to maintain the monthly records of volatile organic compounds ("VOC") for EU K003

8. OAC Rule 3745-21-09(B)(3)(f) requires the owner or operator of a coating line to collect and record each month the VOC content of each coating, excluding water and exempt solvents, as applied, and the name and identification number of each coating, as applied. Such information is required to be maintained for a period of three years.

9. From August 12, 2005 to December 21, 2009 (the date Respondent temporarily ceased painting operations) for EU K003, Respondent failed to maintain the monthly records of VOC content of each coating, excluding water and exempt solvents, as applied, and the name and identification number of each coating, as applied, in violation of OAC Rule 3745-21-09(B)(3)(f), and ORC § 3704.05(G). Respondent began to maintain the monthly records of VOC content of each coating employed in EU K003 upon issuance of the PTIO on May 17, 2010.

Failure to notify Ohio EPA of the monthly record showing the use of noncomplying coatings for EU K003

10. OAC Rule 3745-21-09(B)(3)(g) requires the owner or operator of a coating line to notify the Director of Ohio EPA of any monthly record showing the use of noncomplying coatings. A copy of such record must be sent to the Director within 30 days following the end of the calendar month.

11. From September 12, 2005 to December 21, 2009 (the date Respondent temporarily ceased painting operations), Respondent failed to notify Ohio EPA of monthly records showing the use of noncomplying coatings in EU K003, in violation of OAC Rule 3745-21-09(B)(3)(g), and ORC § 3704.05(G).

Failure to maintain the daily coating usage records for EU K001

12. OAC Rule 3745-21-09(B)(3)(d) requires that the owner or operator of a coating line, which is exempted from the emission limitations specified in OAC Rule 3745-21-09(U)(1), pursuant to OAC Rule 3745-21-09(U)(2)(e), to maintain daily coating usage records identified therein for a period of three years.

13. From October 21, 2009 to November 17, 2009, Respondent failed to maintain the required daily coating usage records, in violation of OAC Rule 3745-21-09(B)(3)(d), and ORC § 3704.05(G).

Notices of violation

14. On February 10, 2010, the Akron Regional Air Quality Management District ("ARAQMD"), Ohio EPA's contractual representative in Summit County, issued a notice of violation ("NOV") letter to Respondent addressing the violations described in the above Findings. On April 28, 2010, Respondent replied to ARAQMD's February 10, 2010 NOV letter and informed ARAQMD that it no longer used non-complying coatings as of December 21, 2009 (the date Respondent temporarily ceased painting operations). According to ARAQMD, Respondent's facility is in compliance with all applicable air pollution rules.

15. 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. Respondent shall pay the amount of forty-five thousand dollars (\$45,000) in settlement of Ohio EPA's claim 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 thirty-six thousand dollars (\$36,000) 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
50 West Town Street, Suite 700
P.O. Box 1049
~~Columbus, Ohio 43216-1049~~

2. In lieu of paying the remaining nine thousand dollars (\$9,000) of civil penalty to Ohio EPA, Respondent shall fund a Supplemental Environmental Project ("SEP") by making a contribution in the amount of \$9,000 to the Ohio EPA's Clean Diesel School Bus Program Fund (Fund 5CD0). Respondent shall make payment on or within thirty (30) days after the effective date of these Orders by tendering an official check made payable to "Treasurer, State of Ohio" for \$9,000. 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.

3. 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
Division of Air Pollution Control
50 West Town Street, Suite 700
P.O. Box 1049
Columbus, Ohio 43216-1049

4. Should Respondent fail to fund the SEP within the required timeframe in Order 2, Respondent shall immediately pay to Ohio EPA \$9,000 of the civil penalty in accordance with the procedures in Order 1.

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 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:

Akron Regional Air Quality Management District
146 South High Street
Akron, Ohio 44308
Attention: Laura Miracle

and to:

Ohio EPA
Lazarus Government Center
Division of Air Pollution Control
P.O. Box 1049
Columbus, Ohio 43216-1049
Attention: Thomas Kalman, Acting Assistant Chief, SIP
Development and Enforcement

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 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 the 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 said Orders are stayed, vacated, or modified.~~

XIII. EFFECTIVE DATE

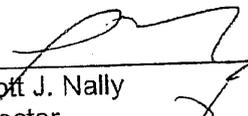
The effective date of these Orders is the date these Orders are entered into the Ohio EPA Director's journal.

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



Scott J. Nally
Director

12/2/11
Date

AGREED:

Air Enterprises, LLC



Signature

11/17/11
Date

THOMAS G. ELMORE
Printed or Typed Name

PRESIDENT
Title