



John R. Kasich, Governor  
Mary Taylor, Lt. Governor  
Craig W. Butler, Director

July 16, 2015

**CERTIFIED MAIL**

William N Cowden  
Operations Manager  
Bi-Con Services, Inc.  
10901 Clay Pike Road  
Derwent, Ohio 43733

Re: Final Findings and Orders for violations of  
air pollution regulations at 10901 Clay  
Pike Road in Derwent, Ohio.

Dear Mr. Cowden:

Transmitted herewith are the Final Findings and Orders ("Orders") of the Director of Ohio EPA concerning the above-referenced matter.

Please note that the effective date of the Orders is the date that the Orders were entered into the Ohio EPA Director's journal, which is the date that is stamped on the first page of the Orders.

Sincerely,

A handwritten signature in black ink, appearing to read "James Kavalec", is written over a vertical line that serves as a separator between the signature and the typed name below.

James Kavalec, Manager  
Compliance/Enforcement Section  
Division of Air Pollution Control

xc: Heidi Griesmer, PIC  
Carol Butler, Fiscal Office  
Stephan Feldmann, Legal Office  
Patty Porter/Lee Tullis, DAPC

OHIO E.P.A.

JUL 16 2015

BEFORE THE

OHIO ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

Bi-Con Services, Inc.  
10901 Clay Pike Road  
Derwent, Ohio 43733

:  
:  
:

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: Jerry Lassiter Date: 7-16-15

**I. JURISDICTION**

These Director's Final Findings and Orders ("Orders") are issued to Bi-Con Services, 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 makes the following findings:

1. Respondent owns and operates a surface coating facility located at 10901 Clay Pike Road, Guernsey County, Derwent, Ohio. At the facility Respondent cleans and paints metal pipes, tanks and other miscellaneous metal parts for the oil and gas industry. Respondent operates two surface coating lines (identified by Ohio EPA as emissions units R001 and R002) and an abrasive blasting unit (identified by Ohio EPA as emissions unit P001) at the facility.

2. The surface coating operations (i.e., emissions units R001 and R002) identified in Finding No. 1 emit volatile organic compounds ("VOCs") and hazardous air

pollutants ("HAPs"), as defined in Ohio Administrative Code ("OAC") Rules 3745-21-01(B)(16) and 3745-77-01(W), respectively, and emissions unit P001 emits particulate matter ("PM") as defined in OAC 3745-31-01(OOOO). The VOCs, HAPs, and PM are defined as "air pollutants" or "air contaminants" in OAC Rule 3745-15-01(C). Additionally, these emissions units are "air contaminant sources" as defined in OAC Rules 3745-31-01(I).

3. OAC Rule 3745-31-02(A)(1) prohibits any person from installing or modifying a "new source" as defined in OAC Rule 3745-31-01(WWW) without first applying for and obtaining a permit-to-install ("PTI") or permit-to-install-and-operate ("PTIO") unless the new source is otherwise exempt from the requirement. OAC Rule 3745-31-01(WWW) defines a "new source" as any air contaminant source that is installed or modified after January 1, 1974, and at the time of installation or modification would have been subject to the provisions of the OAC Chapter 3745-31.

4. OAC Rule 3745-31-05(F) (formerly OAC Rule 3745-31-02(A)(2)) allows the owner or operator of an air contaminant source to voluntarily request a PTI from Ohio EPA that would lower the allowable emissions from the air contaminant source. This type of permit is referred to as a "synthetic minor permit." OAC Rule 3745-31-01(K) defines "allowable emissions," as the emission rate of an air contaminant source calculated using the maximum rated capacity to emit, unless federally enforceable limitations restrict the operating rate or hours of operation or an allowable standard is specified in an applicable law.

5. OAC Rule 3745-31-01(BBBBB) defines potential-to emit ("PTE") as the maximum capacity of an emissions unit or stationary source to emit an air pollutant under its physical and operational design. Any physical or operational limitation on the capacity of the emissions unit or stationary source to emit an air pollutant shall be treated as part of its design if the limitation or the effect it would have on emissions is federally enforceable or legally and practicably enforceable by the state.

6. OAC Rule 3745-77-01(X) states that a major source is a stationary source or group of stationary sources located within a contiguous area and under common control that emits or has the PTE, in the aggregate, 100 tons per year ("TPY") or more of any air pollutant, 10 TPY or more of any single HAP, 25 TPY or more of any combination of HAPs.

7. OAC Rule 3745-77-02(B) states that major sources are subject to the permitting requirements of OAC Chapter 3745-77 (i.e., Title V program) unless otherwise exempt.

8. OAC Rule 3745-77-02(C)(4) states that synthetic minor sources are exempt from the requirements of the Title V rules. OAC Rule 3745-77-01(MM) defines a "synthetic minor source" as a stationary source that would be classified as a major source in the absence of federally enforceable restrictions on the PTE of the source.

9. OAC Rule 3745-77-04(B) requires "existing" Title V sources (i.e., Title V sources who commence operation prior to Ohio's approval date) that are located in Guernsey County to submit initial Title V permit applications no later than 60 days after USEPA approves Ohio's Title V permit program (i.e., approved on October 1, 1995). Similarly, OAC Rule 3745-77-04(C) requires all initial Title V permit application to be submitted no later than one year after the effective date of this rule. OAC Rule 3745-77-04(D) requires sources not subject to OAC Rule 3745-77-04(B) to submit a Title V permit application within twelve months after the source becomes subject to the Title V permit program.

10. Coating lines that use 250 gallons per year, or more, of coatings that contain HAPs in the surface coating of miscellaneous metal parts and products and are a major source, or are located at a major source, or are part of a major source of emissions of HAP are subject to the National Emission Standards for Hazardous Air Pollutants ("NESHAP") for "Surface Coating of Miscellaneous Metal Parts and Products" [40 CFR Part 63, Subpart Mmmm ("Subpart Mmmm")]. Subpart Mmmm specifies emission standards based on maximum achievable control technology ("MACT") for defined affected sources.

11. In a memorandum titled "Potential to Emit for MACT Standards - Guidance on Timing Issues," dated May 16, 1995, USEPA states that "facilities may switch to area source status [i.e., a minor HAP source] at any time until the first compliance date of the MACT standard." In other words, to avoid being classified as a major HAP source and the applicability of major source MACT standard, a federally enforceable permit with synthetic minor limits must be obtained before the first compliance date of the applicable MACT standard. This USEPA policy is referred to as the "Once-In-Always-In" ("OIAI") policy.

12. ORC § 3704.05(G) prohibits any person from violating any OAC rule adopted by the Director of Ohio EPA. OAC Chapters 3745-31 and 3745-77 were adopted by the Director pursuant to ORC Chapter 3704.

13. ORC § 3704.05(K) states that no person shall operate a source that is required to obtain a Title V permit unless a Title V permit has been issued authorizing operation of the source or unless a complete and timely application for the issuance, renewal, or modification of a Title V permit for the source has been submitted to the Director.

**Installation of EUs R001 and R002 without a PTI:**

14. As a result of a complaint, Ohio EPA's Southeast District Office ("SEDO") inspected Respondent's facility on October 12, 2011 and discovered that Respondent had installed and was operating emissions units R001, R002 and P001 without applying for and obtaining a PTIO or a PTI. The abrasive blasting unit and the first coating line

coating line (i.e., emissions units P001 and R001) were installed and operated around January and August 1975. Respondent installed and began operation of the second coating line in March 1999 and on November 1, 2012, Respondent replaced the existing the abrasive blasting unit. SEDO sent a letter to Respondent requesting it to evaluate the facility's air contaminant sources and the facility's PTE. Based on Respondent's evaluation, it was determined that Respondent was required to obtain a PTI or PTIO prior to the installation of emissions units R001, R002 and P001. Respondent's failure to obtain a PTI or PTIO before the installation of the coating lines and abrasive blasting unit are violations of OAC Rule 3745-31-02(A)(1) and ORC § 3704.05(G). Additionally, Respondent's evaluation showed the facility's PTE exceeded the major source classification threshold levels for single and combined HAPs.

15. Upon consultation with the SEDO, Respondent submitted a synthetic minor PTIO application on March 5, 2012 to lower the facility's PTE to below the major source status. Around March of 2013, Respondent installed spray painting booths to satisfy the requirements of Ohio EPA best available technology requirements and resubmitted a synthetic minor PTIO application upon SEDO request.

16. During a telephone conversation in June of 2013, SEDO informed Respondent that the facility is possibly subject to Subpart M MMMM due to the evaluation showing that the PTE of HAP emissions classified the facility as a major HAP source and the facility used more than 250 gallons per year of HAP coatings to surface coat miscellaneous metal parts and products. Respondent requested and was given the opportunity to reanalyze the facility's PTE for HAPs to determine if there were any "inherent limitations" that would reduce the PTE of HAPs to below the major source classification.

17. On August 27, 2013, Respondent submitted a revised PTE analysis that shows the facility as an area source of HAPs without synthetic minor restrictions. The facility's change in PTE for HAPs was associated with the installation of new spray booth coating gun tips whose maximum short term flow rates were much less than the prior gun tips. During an email exchange with Respondent, SEDO discovered that the gun tips were changed in May 2013, after the first compliance date of Subpart M MMMM.

18. During a telephone conversation with Respondent on October 4, 2013, SEDO explained their interpretation and impact of USEPA's OIAI policy. Specifically, because Respondent's PTE for HAPs classified the facility as a major source of HAPs on the first substantive compliance date of Subpart M MMMM, the facility could not use the change in coating gun tips to lower the facility's PTE to an area source status to avoid the applicability of the NESHAP and the requirements of the Title V permitting program. Similarly, the OIAI policy prohibited Respondent from receiving a synthetic minor permit with federally enforceable limitations.

19. On January 28, 2014, Respondent submitted a PTI application without a request for synthetic minor limitations for emissions units R001 and R002. On April 24,

2014, Ohio EPA issued the PTI.

**Failure to apply for a Title V permit:**

20. OAC Rule 3745-77-04(B) requires "existing" Title V sources located Guernsey County to submit their initial Title V permit applications by no later than October 1, 1996. Prior to October 1, 1996 Respondent operated emissions units P001 and R001. It is evident from Respondent's evaluation; the facility's PTE of HAPs exceeded the Title V major source applicability threshold. However, USEPA's December 20, 1999 policy memorandum entitled "Third Extension of January 25, 1995 Potential to Emit Transition Policy" allowed sources whose actual emissions were less than 50 percent of applicable major source threshold since 1994 to avoid obtaining enforceable PTE limitations until December 31, 2000; provided the source maintained adequately records to demonstrate its actual emissions. Similarly, Ohio EPA's Engineering Guide 61 states that very small emitting facilities are presumed to have inherent physical limitations if their actual emissions are below twenty percent of any major regulated pollutant Title V threshold and such facilities maintain actual emission records showing that emissions are less than twenty percent of the major threshold. Although Respondent did not provide Ohio EPA with detailed actual emission rates of regulated air pollutants from 1994 forward, Respondent's current actual emission rates indicate that it is highly unlikely that the facility exceeded 20 percent of any major threshold level. Respondent has also indicated that their business and coating usage rates have increased over the years; again indicating that in the past the facility's actual emission rates were less than its current rates. Therefore, it is assumed, for enforcement purposes, Respondent qualified for USEPA's transitional policy to delay obtaining a Title V permit or a synthetic minor permit unit the policy expired on December 31, 2000. Similarly, it assumed Respondent qualified for Ohio's presumed inherent physical limitation until the first substantive compliance date of Subpart MMMM.

21. Subpart MMMM § 63.3940 states that the initial compliance period for existing affected sources begins with the applicable compliance date specified in § 63.3883 (i.e., January 2, 2007) and ends on the last day of the 12th month following the compliance date. If the compliance date occurs on any day other than the first day of a month, then the initial compliance period extends through the end of that month plus the next 12 months. Therefore, Subpart MMMM first substantive compliance date for existing sources was February 1, 2008. Since Respondent's affected sources are classified as existing for Subpart MMMM and the facility uses more than 250 gallons per year of HAP coatings, the OIAI policy prevented Respondent from obtaining federally enforceable limits on the facility's PTE of HAPs after February 1, 2008. Therefore, Respondent is classified as a major source of HAPs and subject to the Title V permitting requirements.

22. OAC Rule 3745-77-02(B) prohibits a major source (i.e., Title V source) from operating after the date that a timely and complete Title V permit application is

required except in compliance with its Title V permit. In accordance with OAC Rule 3745-77-04(D), Respondent would have had to submit a complete Title V permit application within twelve months after the facility became subject to the Title V permit program (i.e., by February 1, 2009, 12 months after the first substantive compliance date for Subpart MMMM) for the application to be timely and grant authority for the facility to operate without a Title V permit.

23. On September 14, 2014, SEDO sent a notice of violation letter ("NOV") to Respondent for the failure to timely obtain PTIs, failure to obtain a Title V permit, failure to submit Title V fee reports, and for the failure to timely demonstrate compliance with Subpart MMMM.

24. On September 30, 2014, Respondent submitted its Title V permit application.

25. In a letter dated October 13, 2014, Respondent replied to the September 14, 2014 NOV. In the reply Respondent stated it was in full compliance with Subpart MMMM as of September 2, 2014, a Title V permit application had been submitted and the PTIs had been obtained. On April 1 and 6, 2015, Respondent submitted all outstanding Title V fee reports.

26. Respondent failed to submit a timely and complete Title V application from February 1, 2009 until September 30, 2014, in violation of OAC Rule 3745-77-04(D) and ORC §§ 3704.05(G) and (J)(2). Respondent operated the facility since February 1, 2009 without a Title V permit or a timely filed and complete Title V permit application, in violation of OAC Rule 3745-77-02(A) and ORC §§ 3704.05(G) and (K).

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 the 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 fifteen thousand dollars (\$15,000) in settlement of Ohio EPA's claims for civil penalties, which may be assessed pursuant to ORC Chapter 3704. 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 twelve thousand dollars (\$12,000). The official check shall be submitted to Carol Butler, or her successor, together with a letter identifying Respondent, to:

## **X. NOTICE**

Except as otherwise provided in these Orders, 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 St  
Logan, OH 43138  
Attention: Melisa Witherspoon

and to:

Ohio Environmental Protection Agency  
Lazarus Government Center  
Division of Air Pollution Control  
P.O. Box 1049  
Columbus, Ohio 43216-1049  
Attention: James Kavalec; 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 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 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



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

2. In lieu of paying the remaining three thousand dollars (\$3,000) of the civil penalty, Respondent shall, within thirty (30) days of the effective date of these Orders, fund a Supplemental Environmental Project ("SEP") by making a contribution in the amount of \$3,000 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 \$3,000. The official check shall be submitted to Carol Butler, or her successor, together with a letter identifying the Respondent and Fund 5CD0, to the above-stated address.

3. Should Respondent fail to fund the SEP within the required time frame set forth in Order 3, Respondent shall immediately pay to Ohio EPA \$3,000 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 check 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.

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**




Craig W. Butler  
Director

7/14/15  
Date

**AGREED:**

**Bi-Con Services**

  
Signature

7/8/15  
Date

William N. Cowden  
Printed or Typed Name

Operations Manager  
Title