

**BEFORE THE**  
**OHIO ENVIRONMENTAL PROTECTION AGENCY**

In the Matter of:

Mitchellace, Inc.  
P.O. Box 89  
830 Murray Street  
Portsmouth, Ohio 45662-0089

Director's Final Findings  
and Orders

ENTERED DIRECTOR'S JOURNAL

FEB 17 2005

OHIO E.P.A.

**PREAMBLE**

It is agreed by the parties hereto as follows:

**I. JURISDICTION**

These Director's Final Findings and Orders ("Orders") are issued to Mitchellace, 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's 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 has determined the following findings:

1. Respondent operates tipper machines that fuse an acetate tip on the end of a shoelace with facility located at 830 Murray Street, Portsmouth, Scioto County, Ohio, that is a Title V source, as defined in Ohio Administrative Code ("OAC") Rule 3745-77-01(LL), and is subject to the requirements of ORC Chapter 3704 and OAC Chapter 3745-77.
2. OAC Rule 3745-77-02(A) states, in part, that the owner or operator of a Title V source shall not operate such source after the date that a timely and complete Title V permit application is required, unless such an application has been submitted or the source is in compliance with a Title V permit.

3. OAC Rule 3745-77-04(E) requires that a Title V permit renewal application be filed no earlier than eighteen months and no later than six months prior to the expiration of any Title V permit.

4. OAC Rule 3745-77-06(A) states, in part, that if the owner or operator of Title V source submits a timely and complete application for permit renewal, the failure to have a Title V permit is not a violation of this Chapter until the Director takes final action on the application.

5. ORC § 3704.05(C) states, in part, that no person who is a holder of a permit issued under ORC § 3704.03(F) or (G) shall violate any of its terms or conditions.

6. ORC § 3704.05(G) states, in part, that no person shall violate any order, rule, or determination of the Director issued, adopted, or made under ORC Chapter 3704.

7. ORC § 3704.05(J)(2) states, in part, that no person shall violate any filing requirement of the Title V permit program.

8. ORC § 3704.05(K) states, in part, 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.

9. ORC § 3704.06(C) provides, in part, that any person violating ORC § 3704.05 shall pay a civil penalty of not more than \$25,000 for each day of each violation.

10. On March 25, 1999, Ohio EPA issued a final Title V permit for Respondent's facility (Ohio EPA facility identification number 07-73-01-0120). The permit's expiration date of March 25, 2004, was given in the Final Issuance cover page of the permit, as well as a statement that Title V permit renewal applications are to be filed no earlier than eighteen months and no later than six months prior to the expiration of any Title V permit.

11. In a letter dated February 10, 2003, Ohio EPA sent a notice of Title V permit expiration to Respondent. This letter stated that Respondent's Title V permit was to expire on March 27, 2004, and provided a description of the renewal application requirements and procedures.

12. Respondent failed to submit an application to renew its Title V permit to Ohio EPA at least six months prior to the permit expiration date (i.e., by September 27, 2003), in violation of OAC Rule 3745-77-04(E) and ORC § 3704.05(G) and (J)(2). Therefore, Respondent lost the application shield provided by OAC Rule 3745-77-06(A).

13. On March 15, 2004, Respondent submitted a complete Title V permit renewal application to Ohio EPA.

14. After its Title V permit expired on March 24, 2004, Respondent operated its Title V source without a Title V permit or a timely filed Title V permit renewal application, in violation of OAC Rule 3745-77-02(A) and ORC § 3704.05(G) and (K).

15. On June 11, 2004, Ohio EPA issued a Notice of Violation to Respondent, citing it with a violation of OAC Rule 3745-77-04(E), for failing to submit a timely and complete application for renewal of its Title V permit.

16. 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 continue to comply with all terms and conditions of its Title V permit, as issued on March 25, 1999, until the Director takes final action on the application submitted on March 15, 2004.

2. Pursuant to ORC § 3704.06, Respondent is assessed a civil penalty in the amount of twenty-two thousand and two hundred dollars (\$22,200) in settlement of Ohio EPA's claims for civil penalties. Respondent shall pay Ohio EPA the amount of seventeen thousand and five hundred dollars (\$17,500) of the total penalty amount pursuant to the following schedule:

- four thousand and five hundred dollars (\$4,500) due within ninety (90) days after the effective date of these Orders;
- four thousand and five hundred dollars (\$4,500) due within one hundred and eighty (180) days after the effective date of these Orders;
- four thousand and five hundred dollars (\$4,500) due within two hundred and seventy (270) days after the effective date of these Orders; and
- four thousand dollars (\$4,000) due within three hundred and sixty (360) days after the effective date of these Orders.

Payments shall be made by official checks made payable to "Treasurer, State of Ohio" and submitted to Brenda Case at Ohio EPA, Office of Fiscal Administration, P.O. Box 1049, Columbus, Ohio 43216-1049, together with a letter identifying the Respondent and the facility. A copy of each check shall be sent to James A. Orlemann, Enforcement Coordinator, Compliance and Enforcement, or his successor, at the following address:

Division of Air Pollution Control  
Ohio Environmental Protection Agency  
P.O. Box 1049  
Columbus, Ohio 43216-1049

In lieu of payment to Ohio EPA of the remaining four thousand and seven hundred dollars (\$4,700) of the total penalty amount, Respondent shall perform the supplemental environmentally beneficial projects identified in Order 3. In the event Respondent defaults or otherwise fails to complete and/or perform any of the projects as specified in Order 3, the following amount(s) for such project(s) shall immediately become due and payable to Ohio EPA:

Project #1:	\$2,200	(Fuse Tipper Retrofit)
Project #2:	\$1,000	(Oil Water Separation System)
Project #3:	\$1,500	(Recycling Program)

3. Respondent shall implement the following supplemental environmentally beneficial projects at its facility:

Project #1 (Fuse Tipper Retrofit): Respondent shall replace the two existing Duclose type fuse tippers, which utilize a nylon tipping solution, with Lincoln type tippers that are retrofitted for fuse tipping. Such retrofitted tippers shall be fully operational by not later than ninety (90) days after the effective date of these Orders. The retrofitted Lincoln type fuse tippers will not require the use of the nylon tipping solution, thus eliminating the use of this chemical in the operations. It is estimated that this project will eliminate the use of approximately 130 gallons per year of such solution and reduce the emission of volatile organic compounds into the air by about 0.43 ton per year. The estimated cost for this project is \$7,600.

Within fifteen (15) days after such tippers are fully operational, Respondent shall submit a report to Ohio EPA confirming implementation of this project.

Project #2 (Oil/Water Separation System): Within forty-five (45) days after the effective date of these Orders, Respondent shall install and employ an oil/water separation system to allow for the recycle of wastewater that is currently being generated from cleaning operations at the facility and discharged into a publicly owned wastewater treatment plant. It is estimated that this project will result in the reduction in wastewater of approximately 1,500 gallons per year. The estimated cost of this project is \$8,000.

Within fifteen (15) days after the oil/water separation system is fully operational, Respondent shall submit a report to Ohio EPA confirming implementation of this project.

Project #3 (Recycling Program): Within six (6) weeks after the effective date of these Orders, Respondent shall implement and maintain a plant wide recycling program to reduce the amount of trash/scrap that currently goes to a landfill. Containers shall be purchased and placed strategically throughout the facility to facilitate the segregation and collection of all recyclable materials including, but not limited to, aluminum cans, glass, paper, magazines, and corrugated material. The estimated cost for this project is approximately \$1,500 for the purchase of collection containers, training, and allocation of personnel to implement the program.

Within fifteen (15) days after the recycling program is fully functional, Respondent shall submit a report to Ohio EPA confirming the implementation of this project.

4. Respondent may terminate any of the projects identified in Order 3 by payment to Ohio EPA of the full amount of credit given to the project(s) to be terminated as specified in Order 2.

5. Respondent may terminate a SEP or a portion of a SEP identified in Order 3, without penalty, by the permanent shutdown of the equipment upon which such SEP or portion of such SEP is employed. Furthermore, Respondent may terminate a SEP or portion of a SEP identified in Order 3, without penalty, when any modification of the equipment upon which such SEP or portion of such SEP is employed, results in a equivalent emission reduction as that provided by the SEP or portion of the SEP.

## **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 purposes of these Orders, a responsible official is as defined in OAC Rule 3745-35-02(B)(1) for a corporation or a duly authorized representative of Respondent as that term is defined in the above-referenced rule.

## **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 the Respondent.

## **IX. MODIFICATIONS**

These Orders may be modified by mutual 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 by these Orders, unless otherwise specified in writing, shall be addressed to:

Portsmouth City Health Department  
Air Pollution Unit  
605 Washington Street, 3<sup>rd</sup> Floor  
Portsmouth, Ohio 45662  
Attention: Phillip H. Thompson, Director

and to:

Ohio Environmental Protection Agency  
Lazarus Government Center  
Division of Air Pollution Control  
P.O. Box 1049  
Columbus, Ohio 43216-1049  
Attention: Thomas Kalman, Manager, Enforcement Section

or to such persons and addresses as may hereinafter 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.

**IT IS SO ORDERED AND AGREED:**

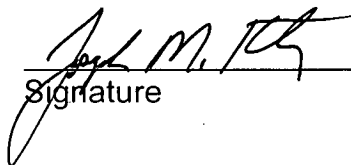
Ohio Environmental Protection Agency

  
\_\_\_\_\_  
Joseph P. Koncelik  
Director

2-16-05  
Date

**IT IS SO AGREED:**

Mitchellace, Inc.

  
\_\_\_\_\_  
Signature

1-28-05  
Date

Joseph M. Keating  
Printed or Typed Name

Chief Operating Officer  
Title