

BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY

OHIO E.P.A.

DEC 20 2005

ENTERED DIRECTOR'S JOURNAL

In the Matter of:

The Longaberger Company
1500 East Main Street
Newark, Ohio 44055-8847

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Director's Final Findings
and Orders

RESPONDENT

PREAMBLE

It is agreed by parties hereto as follows:

I. JURISDICTION

These Director's Final Findings and Orders ("Orders") are issued to The Longaberger Company ("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 OAC Chapter 3704 and the rules promulgated thereunder.

IV. FINDINGS

The Director of Ohio EPA has determined the following findings:

1. Respondent owns and operates a facility that manufactures decorative wooden baskets. The facility is located at 224 East Maple Street, Hartville (Stark County), Ohio, and is identified by Ohio EPA as facility identification number 1576080056. This facility employs a waste wood-fired boiler (identified by Ohio EPA as "emissions unit B003") to generate steam for space heating and industrial processing and is classified as a "major source," as defined in OAC Rule 3745-77-01(W).

2. Emissions unit B003 emits, in part, products of combustion that include particulate emissions ("PE"), particulate matter ("PM"), and particulate matter with an aerodynamic diameter of 10 microns or less ("PM₁₀"), which are defined as "air pollutants" or "air contaminants" in Ohio Administrative Code ("OAC") Rule 3745-15-01(C). The PE, PM and PM₁₀ from emissions unit B003 are vented through multi-cyclones for air pollution control. Additionally, emissions unit B003 is an "air contaminant source" as defined in OAC Rules 3745-31-01(I) and 3745-15-01(C) and (W).

3. OAC Rule 3745-77-02(B) states, in part, that major sources are subject to the permitting requirements of OAC Chapter 3745-77 (i.e., Title V).

4. OAC Rule 3745-77-07(A)(1) requires, in part, that a Title V permit include emission limitations and standards, including those operational requirements and limitations that assure compliance with all applicable requirements at the time of issuance. OAC Rule 3745-77-07(A)(3) requires, in part, that a Title V permit contain emission monitoring and analysis procedures or test methods sufficient to yield reliable representative data to determine the source's compliance with the permit and applicable emission limitations.

5. OAC Rule 3745-77-01(H) defines, in part, an applicable requirement as any standard or other requirement in the approved state implementation plan ("SIP").

6. OAC Rule 3745-17-10(C)(1) is part of Ohio's approved SIP and establishes, in part, PE limitations for fuel burning equipment located in Stark County that produce heat or power by indirect heat transfer. The PE limitation is based on the equipment manufacturer's or designer's guaranteed maximum heat input, in million Btu per hour ("MM Btu").

7. ORC § 3704.05(A) prohibits, in part, any person from violating an allowable emission limitation adopted by the Director of Ohio EPA pursuant to ORC § 3704.03.

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

9. ORC § 3704.05(J)(2) prohibits, in part, any person from violating any applicable requirement of a Title V permit or any permit condition, except for an emergency as defined in 40 CFR 70.6(g).

10. On December 18, 1996, and pursuant to OAC Chapter 3745-31, Ohio EPA issued a permit to install ("PTI") to Respondent authorizing the installation of emissions unit B003. The PTI contained the requirements of OAC Rule 3745-17-10(C)(1) including a PE limitation of 0.3 pound of PE per MM Btu of actual heat input.

11. Pursuant to OAC Rule 3745-77-07(A)(1) and (A)(3), Ohio EPA issued a Title V permit to Respondent on December 18, 2002, with the following special terms and conditions to ensure emissions unit B003 complies with applicable rules and laws:

- a) a requirement to comply with the PE limitation of 0.3 pound of PE per MM Btu of heat input, as specified in OAC Rule 3745-17-10(C)(1); and
- b) a requirement to conduct compliance tests, within six months of the issuance of the Title V permit, to demonstrate compliance with the PE limitation. The performance tests were required to be conducted when the boiler operated at or near its maximum heat input capacity ("maximum load") and at or near one-half its maximum heat input capacity ("one-half of maximum load").

12. On April 28, 2003, Respondent conducted the compliance tests for emissions unit B003 that were required by the Title V permit. The compliance test measured the average PE at 0.46 pound per MM Btu while the boiler operated at its maximum load, and 0.57 pound per MM Btu while it operated at one-half of maximum load. These results revealed exceedances of the 0.3 pound of PE per MM Btu limitation specified in Respondent's Title V permit, PTI, and OAC Rule 3745-17-10(C)(1). These exceedances also constituted violations of ORC § 3704.05(A), (C) and (J)(2).

13. On June 13, 2003, Canton Health Department, Air Pollution Control Division ("CAPCD"), the contractual representative for Ohio EPA in Stark County, sent Respondent a notice of violation ("NOV") for the failure to comply with the terms and conditions of Respondent's Title V permit. Additionally, the NOV requested Respondent to submit a plan to bring emissions unit B003 into compliance ("compliance plan") and to retest the unit to demonstrate compliance after the plan was implemented.

14. Respondent worked with the supplier of the boiler, the supplier of the boiler's PE control equipment (i.e., multi-cyclones) and an additional boiler expert to develop and implement a plan to bring emissions unit B003 into compliance. The compliance plan was implemented between June 26, 2003 and July 3, 2003, and consisted of repairs to the boiler's fuel feed chute to allow for more consistent feeding of fuel, the installation of an access panel in the air heater duct to allow for improved inspection and maintenance, the vacuuming of the entire boiler to remove any build-up, and the blanking off tubes in each dust collector to increase the pressure drop across the collector.

15. On July 14, 2003, Respondent informed CAPCD of the actions taken to return the boiler to compliance (i.e., compliance plan) that are mentioned in Finding 14.

Additionally, on July 14, 2003, Respondent retested the PE from emissions unit B003 and sent the results of the retest to CAPCD. The measured average PE rates were 0.403 and 0.207 pound per MM Btu at the maximum and one-half of maximum boiler loads, respectively. The retest confirmed that at maximum boiler load the boiler was out of compliance with the PE limitation in OAC Rule 3745-17-10(C)(1) and as specified in Respondent's Title V permit and PTI, in violation of ORC § 3704.05(A), (C), (G) and (J)(2). The retest showed compliance with the applicable PE limitation at one-half of the maximum boiler load.

16. On August 19, 2003, Respondent informed CAPCD, through electronic mail, that it had incurred \$49,672 of expenditures for the compliance tests and the actions (to date) to bring emissions unit B003 into compliance.

17. On September 8, 2003, Respondent sent a plan to return emissions unit B003 to compliance. The plan proposed the replacement of the bark grinder grates with grates that match the boiler manufacturer's recommended grates and to evaluate the influence the size of waste wood fuel has on the generation of PE. Once the optimum fuel size was determined, Respondent would conduct a compliance test. If the fuel sizing did not result in compliance, Respondent proposed requesting a PTI and Title V modification to authorize operating the boiler as a co-fired unit, using both natural gas and waste wood. If the co-fired operation did not comply, Respondent stated it would consider derating the boiler or adding additional control equipment and modifying the permits accordingly.

18. On December 4, 2003, Respondent conducted a compliance test on the waste wood-fired boiler after the bark grinder's grates were replaced and the fuel size increased to the boiler manufacturer's recommended size. The compliance test measured PE of 0.274 pound per MM Btu of actual heat input while the boiler operated at or near its maximum load, which is in compliance with the terms and conditions of Respondent's PTI and Title V permit and the PE limitation specified by OAC Rule 3745-17-10(C)(1).

19. Respondent violated ORC § 3704.05(A), (C), (G) and (J)(2) by allowing the boiler's PE to exceed the 0.3 pound of PE per MM Btu emission limitation specified in Respondent's PTI and Title V permit and OAC Rule 3745-17-10(C)(1). Because Respondent demonstrated compliance with the applicable PE limitation at one-half of the maximum boiler load on July 14, 2003 and because Respondent voluntarily restricted its operation of emissions unit B003 to boiler levels below one-half of the maximum boiler load from that date forward until compliance was demonstrated on December 4, 2003, the length of the violation shall be from the date of the first compliance test on April 28, 2003 until the July 14, 2003 compliance test.

20. 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. Pursuant to ORC § 3704.06, Respondent is assessed a civil penalty in the amount of thirty-nine thousand two hundred dollars (\$39,200) in settlement of Ohio EPA's claim for civil penalties. Within fourteen (14) days after the effective date of these Orders, Respondent shall pay Ohio EPA the amount of twenty-five thousand two hundred dollars (\$25,200) of the total penalty amount. Payment shall be made by official check made payable to "Treasurer, State of Ohio." The official check shall be submitted to Brenda Case, or her successor, at Ohio EPA, Office of Fiscal Administration, P.O. Box 1049, Columbus, Ohio 43216-1049, together with a letter identifying the Respondent and facility.

A copy of the official check shall be submitted to James A. Orlemann, Assistant Chief, SIP Development and Enforcement, or his successor, at Division of Air Pollution Control, Ohio EPA, P.O. Box 1049, Columbus, Ohio 43216-1049.

In lieu of payment to Ohio EPA of the remaining fourteen thousand dollars (\$14,000) of the total penalty amount, Respondent shall perform the supplemental environmentally beneficial project identified in Order 2 and the project identified in Order 4. Of the \$14,000, \$10,000 shall be used to fund the project in Order 2 and \$4,000 shall be used to fund the project in Order 4. In the event Respondent defaults or otherwise fails to complete or perform any of the projects as specified in Orders 2 and 4, the \$10,000 for the project in Order 2 and/or the \$4,000 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, at the above-stated address. A copy of the check shall be sent to James A. Orlemann, or his successor, at the above-stated address.

2. 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 the facility and/or at any other of Respondent's facilities located in Ohio that contain any air contaminant source. The P2 Study is an assessment of selected facility processes to identify and evaluate specific source reduction and environmentally sound recycling opportunities.

- a. Within one hundred twenty (120) 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.

3. Within thirty (30) days of the completion and approval by Ohio EPA of the project identified in Order 2, 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 2 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.

4. Upon the effective date of these Orders and as a penalty credit in lieu of paying \$4,000 of the total penalty amount, Respondent shall operate and maintain an oxygen ("O₂") analyzer for the exhaust gases from emissions unit B003 for the purpose of optimizing combustion conditions in such unit. The O₂ analyzer shall be operated and maintained in accordance with the manufacturer's specifications and good operating practices.

5. Respondent shall conduct, or have conducted, emission testing for emissions unit B003 accordance with the following requirements:

- a. The emission testing shall be conducted by not later than July 1, 2006.
- b. The emission testing shall be conducted to demonstrate compliance with the PE limitation of 0.3 pound per MM BTU of heat input.
- c. The following test methods shall be employed to demonstrate compliance with the PE limitation: USEPA Reference Methods 1 through 5 of 40 CFR, Part 60; Appendix A. Alternative USEPA approved test methods may be used with prior approval from CAPCD.
- d. The tests shall be conducted while emissions unit B003 is operating at or near its maximum capacity and at or near its lowest normal operating load that results in worst case emissions, using a representative wood waste/bark

fuel mixture. The lowest normal operating load that results in worst case emissions shall not exceed one-half of the maximum capacity of the boiler.

- e. Not later than thirty (30) days prior to the proposed test date(s), Respondent shall submit an "Intent to Test" notification to CAPCD. The "Intent to Test" notification shall describe in detail the proposed test methods and procedures, the emissions unit's operating parameters, the time(s) and date(s) of the tests, the person(s) who will be conducting the tests. Failure to submit such notification for review and approval prior to the tests may result in CAPCD's refusal to accept the results of the emission tests.

Personnel from CAPCD shall be permitted to witness the tests, examine the testing equipment, and acquired data and information necessary to ensure that the operation of the emissions unit and the testing procedures provide a valid characterization of the emissions from the emissions unit and/or the performance of the control equipment.

A comprehensive written report on the results of the emissions tests shall be signed by the person or persons responsible for the tests and submitted to CAPCD within thirty (30) days following completion of the tests. Respondent may request additional time for the submittal of the written report, where warranted, with prior approval from CAPCD.

6. Nothing contained herein shall be construed as to limit the authority granted to the Director by OAC Rule 3745-15-04 and ORC Chapter 3704 to require Respondent to perform or have performed tests to determine the emission of air contaminants from any emissions unit at the facility whenever the Director has reason to believe that an emission in excess of that allowed by the OAC regulations is occurring or has occurred from time to time.

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 Orders 1 through 3 and 5, the requirements of Order 6 have been included into Respondent's Title V permit, 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 of the above have occurred, then Ohio EPA will notify Respondent, 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 the person authorized to sign 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-reference 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 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

Except as otherwise provided in these Orders, all documents required to be submitted by Respondent pursuant to these Orders shall be addressed to:

Air Pollution Control Division
Canton City Health Department
420 Market Avenue, North
Canton, Ohio 44702-1544
Attention: Dan Aleman

and to:

Ohio Environmental Protection Agency
Lazarus Government Center
Division of Air Pollution Control
122 South Front Street, P.O. Box 1049
Columbus, Ohio 43216-1049
Attention: 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 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 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

Joseph P. Koncelik

Joseph P. Koncelik
Director

12-15-05
Date

IT IS SO AGREED:

The Longaberger Company

James J. Gimeson
Signature

12/20/05
Date

James J. Gimeson
Printed or Typed Name

Chief Operating Officer
Title