

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

In the Matter of:

YSD Industries, Inc.	:	<u>Director's Final Findings</u>
3710 Hendricks Road	:	<u>and Orders</u>
Youngstown, Ohio 44515	:	

**PREAMBLE**

It is agreed by the parties hereto as follows:

**I. JURISDICTION**

These Director's Final Findings and Orders ("Orders") are issued to YSD Industries, 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.

OHIO E.P.A.  
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**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's facility 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 is a manufacturer of railcar doors and sides and also fabricates material-handling equipment, with a facility located at 3710 Hendricks Road, Austintown Township, Mahoning County, Ohio. At this facility, Respondent employs cleaning and coating equipment including a paint dip tank used to coat railroad car parts (Ohio EPA emissions unit K011) that releases emissions containing volatile organic compounds ("VOCs"), as defined in Ohio Administrative Code ("OAC") Rule 3745-21-01(B)(6), and hazardous air pollutants ("HAPs"), as defined in OAC Rule 3745-77-01(V) and Section 112(b) of the Clean Air Act. Emissions unit K011 is an "air contaminant source," as defined in OAC Rule 3745-15-01(C) and (W).

2. OAC Rule 3745-15-03 states, in part, that the Director of Ohio EPA may

require the keeping and periodic submission of records and reports, including but not limited to, information on air contaminants, emissions, or fuel from any or all potential sources, for purposes of maintaining an air pollution emissions inventory. Such information shall be recorded, compiled and submitted on forms furnished by the Director.

3. OAC Rule 3745-31-02 states, in part, that no person shall allow the installation of a new air contaminant source without first applying for and obtaining a permit to install ("PTI") from the Director of Ohio EPA, unless otherwise specified by rule or law.

4. Paragraphs (W)(1) and (2) of OAC Rule 3745-77-01 state, in part, that a major source of air pollutants is defined as any stationary source that emits, or has the potential to emit, 10 tons per year or more of any HAP, or 25 tons per year or more of any combination of HAPs, or that emits, or has the potential to emit, 100 tons per year or more of any air pollutant.

5. OAC Rule 3745-77-02 identifies any source meeting the definition of "major source," as defined in OAC Rule 3745-77-01(W), as a Title V source and, as such, subject to the requirements of OAC Chapter 3745-77. This rule prohibits the operation of a Title V source without the timely filing of a complete Title V permit application or possessing a Title V permit.

6. OAC Rule 3745-77-04 specifies the dates by which sources required to obtain a Title V permit shall submit a timely application. Notwithstanding the deadline in OAC Rule 3745-77-04(B), OAC Rule 3745-77-04(D) specifies that a Title V application shall be submitted within twelve months after a source becomes subject to the Title V permit program.

7. OAC Rule 3745-78-02 states, in part, that any owner and operator of a source subject to the Title V permit program must submit an annual fee emission report to Ohio EPA that quantifies the actual emissions from the facility, and pay the associated fees.

8. 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.

9. ORC § 3704.05(K) states, in part, that on or after the three hundred and sixty-sixth day following USEPA's final approval of Ohio EPA's Title V permit program, no person shall operate any source that is required to obtain a Title V permit without first obtaining a Title V permit, or submitting to Ohio EPA a timely and complete application for a Title V permit.

10. On January 22, 1996, Respondent, having determined that its actual air contaminant emissions were less than 50 percent of the major thresholds for Title V applicability, submitted a request to Ohio EPA to be considered as a two-year transitional Title V facility.

11. On August 22, 1996, and pursuant to OAC Rule 3745-35-07, Respondent submitted an application to Ohio EPA for a Federally Enforceable State Operating Permit ("FESOP") to restrict its facility's emissions to levels less than the major thresholds for Title V applicability.

12. In December, 2000, Respondent installed emissions unit K011 without first applying for and obtaining a PTI from Ohio EPA, in violation of OAC Rule 3745-31-02 and ORC § 3704.05(G).

13. On January 24, 2001, Ohio EPA, Northeast District Office, Division of Air Pollution Control ("NEDO"), after learning of the installation of emissions unit K011 from discussion with Respondent and a site visit to its facility, sent a warning letter by certified mail to Respondent, advising it of the requirement of OAC Rule 3745-31-02 to obtain a PTI prior to installing a new air contaminant source. NEDO requested that Respondent submit a PTI application for emissions unit K011.

14. On February 26, 2001, Respondent submitted a PTI application (Ohio EPA application number 02-14848) for emissions unit K011. PTI 02-14848 was issued by Ohio EPA as a final permit on May 17, 2001. The permit allowed VOC emissions from emissions unit K011 of up to 61.3 tons per year. Combined with the emissions from the remainder of the facility, the installation and operation of this emissions unit caused the facility to exceed Title V applicability thresholds for both HAPs and VOCs. Per OAC Rule 3745-77-04(D), a Title V application was required to be submitted within twelve months after the facility became subject to the Title V permit program, resulting in a December 2001 application deadline in this instance. In addition, OAC Rule 3745-78-02 requires that owners and operators of sources subject to the Title V permit program must submit an annual fee emission report to Ohio EPA that quantifies the actual emissions from the facility, and pay the associated fees.

15. In a letter to Ohio EPA dated March 16, 2001, Respondent acknowledged that as a result of the installation of the new dip tank, as well as other production considerations, a Title V permit would be required for the facility and that it would no longer continue with efforts to finalize the earlier FESOP application.

16. On June 25, 2002, NEDO sent a Notice of Violation ("NOV") to Respondent for failure to submit a Title V application for the facility, and for failure to submit the annual Ohio EPA Fee Emission Report, and associated fees, for reporting year 2001, in violation of OAC Rules 3745-77-04 and 3745-78-02, respectively. NEDO requested that Respondent provide a compliance plan to address these violations within 30 days of receipt of the letter.

17. On July 16, 2002, Ohio EPA, Permit Management Unit, sent a NOV to Respondent, citing it for violation of OAC Rule 3745-78-02 for failure to submit either an annual Fee Emission Report and an Emissions Report Summary (as required by OAC Rule 3745-15-03) for calendar year 2001 by the due date of April 15, 2002. Respondent was given 30 days to file the reports.

18. After further discussion and correspondence between Ohio EPA, NEDO, and Respondent, on September 13, 2002, Respondent submitted a Title V application and the required Fee Emission Report and Emissions Report Summary to Ohio EPA.

19. Based on the above Findings, the Director of Ohio EPA finds that Respondent violated the following OAC rules and ORC laws:

- a. OAC Rule 3745-31-02 and ORC § 3704.05(G), for installing a new air contaminant source without first applying for and obtaining a PTI from the Director of Ohio EPA;
- b. OAC Rules 3745-77-02 and 3745-77-04(D), and ORC §§ 3704.05(G) and (K), for operating a major source, as defined in OAC Rule 3745-77-01(W), without timely applying for or possessing a Title V permit; and
- c. OAC Rule 3745-78-02 and ORC § 3704.05(G), as a source subject to the Title V permit program effective December 1, 2000, for failing to submit to an Ohio EPA annual fee emission report, and associated fees, for reporting year 2001.

20. On October 31, 2003, LaSalle Bank N.A., a principal lender to Respondent, demanded immediate payment on the outstanding principal balance of Respondent's loan with the bank due to Respondent's default on said loan. Subsequently, the bank began foreclosure proceedings intended to result in a sale of Respondent's assets. On March 25, 2004, Respondent submitted an offer to Ohio EPA to resolve this enforcement case and settle Ohio EPA's claim for civil penalties prior to completion of the foreclosure sale.

21. 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 Order:

Pursuant to ORC § 3704.06, Respondent is assessed a civil penalty in the amount of ten thousand dollars (\$10,000) in settlement of Ohio EPA's claim for civil penalties. Within fourteen (14) days after the effective date of these Orders, Respondent shall pay to Ohio EPA the total amount. Payment shall be made by an official check made payable to "Treasurer, State of Ohio" and shall be submitted to Brenda Case, or her successor, with a letter identifying the Respondent and emissions unit K011, to:

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

Columbus, Ohio 43216-1049

A copy of the check shall be sent to James A. Orlemann, Manager, Engineering Section, or his successor, at the following address:

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

#### **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 Respondent's operation of the facility specified in these Orders.

#### **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 :

Ohio Environmental Protection Agency  
Northeast District Office  
Division of Air Pollution Control

2110 E. Aurora Road  
Twinsburg, Ohio 44087  
Attention: Jana Gannon, Environmental Specialist

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, Supervisor, Enforcement Section

### **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 an appeal. In such event, Respondent shall continue to comply with these Orders unless said Orders are stayed, vacated, or modified.

### **XIII. EFFECTIVE DATE**

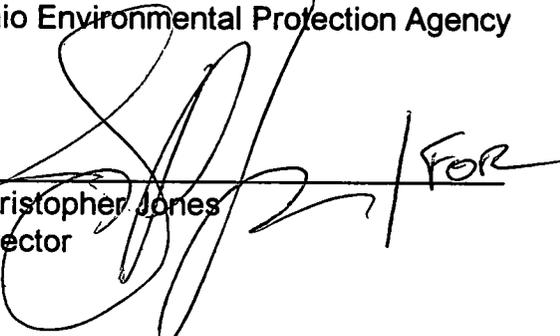
The effective date of these Orders is the date these Orders are entered into the Ohio EPA Director's journal.

### **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

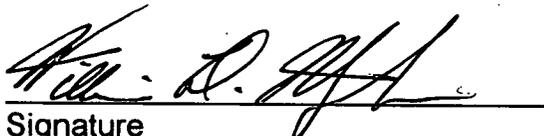
  
\_\_\_\_\_  
Christopher Jones  
Director

Date

9/7/09

**IT IS SO AGREED:**

YSD Industries, Inc.

  
\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

WILLIAM D. MUNDINGER  
Printed or Typed Name

PRESIDENT  
Title