

BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

PET Processors, LLC	:	<u>Director's Final Findings:</u>
1350 Bacon Road	:	<u>and Orders</u>
Painesville, Ohio 44077	:	

OHIO E.P.A.
APR 29 2004
DIRECTOR'S JOURNAL

PREAMBLE

It is agreed by the parties hereto as follows:

I. JURISDICTION

These Director's Final Findings and Orders ("Orders") are issued to PET Processors, 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 identified hereafter) 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 plastic polymers, with a facility located at 1350 Bacon Road, Painesville, Lake County, Ohio. At this facility, Respondent employs 21 rotating dryers and a pre-crystallizer (Ohio EPA emissions units P010 through P015; P022 through P024; P027 and P028; P031 through P040; and P026, respectively), to mix and dry solid pelletized polymers to create the necessary colors and plastic properties to manufacture solid pelletized polymers. The process releases emissions from the use of hazardous air pollutants ("HAPs"), as defined in Ohio Administrative Code ("OAC") Rule 3745-77-01(V) and Section 112(b) of the Clean Air Act.

2. Emissions units P010 through P015, P022 through P024, P027, P028, P031 through P040, and P026 each constitute an "air contaminant source," as defined by Ohio

Administrative Code ("OAC") Rule 3745-15-01(C) and (W) and ORC § 3704.01(C).

3. OAC Rule 3745-77-01(W)(1) states, in part, that a "major source" of air pollutants is defined as any stationary source that emits, or has the potential to emit, ten tons per year or more of any HAP, or 25 tons per year or more of any combination of HAPs.

4. OAC Rule 3745-77-02 identifies any source meeting the definition of "major source," as defined in OAC Rule 3745-77-01(W)(1), 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.

5. Respondent's facility is a "major source" and a "Title V source" pursuant to OAC Chapter 3745-77. Respondent submitted a Title V permit application to Ohio EPA on June 21, 1999 and was issued a Title V permit by Ohio EPA on October 31, 2000.

6. Respondent's Title V permit issued on October 31, 2000 by Ohio EPA specified, in part, the following requirements:

- a. the submission of annual compliance certifications by no later than April 30 of each year for the previous calendar year;
- b. the submission of quarterly reports of deviations for emission limitations and operational restrictions by no later than 30 days after each quarterly period of each year;
- c. the submission of semi-annual reports of deviations for monitoring, record keeping, and reporting requirements 30 days after each semi-annual period of each year;
- d. the operation and maintenance of a temperature monitor and recorder that records temperature of the exhaust gases from the condenser serving emissions unit P028 (keep records of average temperature for each of the eight 3-hour blocks during the day and record the operating times of the condenser); and
- e. maintain the average temperature of the condenser exhaust gases to not exceed 75 degrees Fahrenheit (°F) for any 3-hour block of time.

7. OAC Rule 3745-77-08(C) specifies the requirements for a permit modification to a Title V permit that cannot be accomplished under the administrative permit amendment provisions. OAC Rule 3745-77-08(C)(3)(d) states, in part, that all required permit modifications shall be filed within twelve months after commencing operation of the modified source.

8. 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.

9. 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.

10. ORC § 3704.05(J)(2) states, in part, that no person shall violate any applicable requirement of a Title V permit or any permit condition, except for an emergency as defined in Chapter 40 of the Code of Federal Regulations ("40 CFR") 70.6(g).

11. On April 3, 1996, NEDO issued PTI 02-9964 for emissions units P029 and P030 at the facility. Additionally, the Respondent requested an eighteen month PTI extension due to business/financial problems which slowed the project installation.

12. On October 16, 2002, NEDO phoned the Respondent to request the past due compliance certification for calendar year 2001 be submitted to Ohio EPA as required by the Title V permit issued to the Respondent on October 31, 2000. The failure to timely submit a compliance certification is a violation of the Title V permit and ORC § 3704.05(G) and (J)(2). The compliance certification for calendar year 2001 was due by April 30, 2002.

13. On October 25, 2002, NEDO received an incomplete submittal of the compliance certification for calendar year 2001. On November 1, 2002, NEDO sent the Respondent a Notice of Violation ("NOV") notifying it of the violations of ORC § 3704.05(G) and (J)(2). The NOV also requested the Respondent to submit a complete compliance certification for calendar year 2001. Furthermore, the NOV requested the Respondent to submit the delinquent 2000 through 2002 quarterly and semi-annual deviation reports for the emissions units at the facility. The first of these reports were due by January 31, 2001 for both the fourth quarter 2000 and second half 2000 semiannual reports. The NOV requested that the Respondent submit all the requested information within twenty-one (21) days of receipt of the letter. The failure to submit quarterly and semiannual deviation reports is a violation of the Title V permit and ORC § 3704.05(C) and (J)(2). See attached Table I for the deviation reports requested, report submittal deadlines, and date the reports were submitted to NEDO.

14. On November 22, 2002, NEDO received a complete annual compliance certification for calendar year 2001 and all outstanding deviation reports for the emissions units located at the facility.

15. On December 11, 2002, NEDO conducted an inspection at the facility of all the emissions units. The purpose for this inspection was to conduct a full compliance evaluation of the facility.

16. On December 24, 2002, NEDO sent the Respondent a NOV. The NOV informed the Respondent that the annual certificate of compliance for calendar year 2001 indicated that the required temperature monitor and recorder for dryer #22 (emissions unit P028) had not been installed, and the necessary temperature records for this emission unit had not been maintained since the issuance of the Title V permit on October 31, 2000, in violation of ORC § 3704.05(C) and (J)(2).

17. Additionally, during the December 11, 2002 inspection, NEDO discovered that two emissions units had been installed and operated without the Respondent submitting a complete application for a significant Title V permit modification to Ohio EPA

within twelve months after commencing operation of the modified source per OAC Rule 3745-77-08(C)(3)(d). Emissions unit P029 (dryers # 24 and #25) was installed in January 2000 and emissions unit P030 (dryers # 26 and #27) was installed in October 1999, without an amended Title V permit application being submitted by January 3, 2001 and October 4, 2000 (12 months after commencement of operation of emissions units P029 and P030, respectively), in violation of OAC Rule 3745-77-08(C)(3)(d) and ORC § 3704.05(G).

18. On January 31, 2003, NEDO received an amended Title V permit application for the facility, which included emissions units P029 and P030, from the Respondent. As of February 4, 2004, an amended Title V permit has not been issued by Ohio EPA.

19. On November 22, 2002, NEDO received the deviation reports for the years 2000 through 2002 from the Respondent. Upon review of the deviation reports, NEDO noted that the Respondent was reporting exceedances for emissions unit P028. NEDO reviewed the original Title V permit and discovered that emissions unit P028 is a direct contact condenser. The permit listed the inlet cooling air temperature at 75°F permit restriction and the outlet cooling air at 75°F. According to NEDO, since this is a direct contact condenser, listing a 75°F operational limit was incorrect. Additionally, the Respondent did not conduct temperature monitoring and record keeping until November 2003.

20. Based on the above findings, Ohio EPA finds that Respondent violated the following OAC rules and ORC laws:

a. ORC § 3704.05(C) and (J)(2), for not complying with the applicable requirements of a Title V permit (i.e., late submission of quarterly and semiannual deviation reports, late submission of a compliance certification, and failure to employ temperature monitoring and record keeping for the condenser serving emissions unit P028); and

b. OAC Rule 3745-77-08(C) and ORC § 3704.05(G) and (J)(2), for failing to submit amended Title V applications by no later than 12 months after commencement of operation of emissions units P029 and P030.

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:

Respondent shall pay to Ohio EPA the amount of fifty-six thousand dollars (\$56,000) in settlement of Ohio EPA's claim for civil penalties which may be assessed pursuant to ORC Chapter 3704. Payment shall be made pursuant to the following schedule:

- Fourteen thousand dollars (\$14,000) by June 1, 2004;
- Fourteen thousand dollars (\$14,000) by September 1, 2004;
- Fourteen thousand dollars (\$14,000) by December 1, 2004;
- Fourteen thousand dollars (\$14,000) by March 1, 2005;

Payment shall be made by official checks made payable to "Treasurer, State of Ohio". The official checks 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 the facility. A copy of each 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 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 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
2110 E. Aurora Road
Twinsburg, Ohio 44087-1969
Attention: Ken Djukic, Air Quality Engineer

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 unless said Orders are stayed, vacated, or modified.

XIII. EFFECTIVE DATE

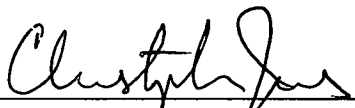
The effective date of these Orders is the date these Orders are entered into the Ohio EPA Director's journal.

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

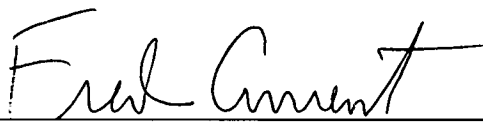


Christopher Jones
Director

4-28-04
Date

IT IS SO AGREED:

PET Processors, LLC



Signature

April 22, 2004
Date

FRED CURRENT
Printed or Typed Name

President - PET Processors
Title