

BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

The Garland Company, Inc.
3800 East 91st Street
Cleveland, Ohio 44105

: Director's Final Findings
: and Orders
:

ENTERED DIRECTOR'S JOURNAL

AUG 24 2004

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 The Garland Company, 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 has determined the following findings:

1. The City of Cleveland, Division of Air Quality ("CDAQ") acts as an agent of Ohio EPA for the Division of Air Pollution Control in Cuyahoga County.

2. Respondent owns and operates a roofing coating manufacturing plant at 3800 E. 91st Street in Cleveland, Ohio ("Facility"). At the Facility, Respondent operates five emissions units: an asphalt coating machine ("emissions unit P002"), two 10,000 gallon hot asphalt storage tanks ("emissions unit T008" and "emissions unit T009"), one 30,000 gallon hot asphalt storage tank ("emissions unit T015") and one 20,000 gallon cutback asphalt tank ("emissions unit T014"). Each of these emissions units is an "air contaminant source" as defined in Ohio Administrative Code ("OAC") Rule 3745-15-01(C) and (W).

3. Respondent operated emissions units T008 and T009 under the requirements of Permit-to-Install ("PTI") 13-1935, issued on February 15, 1989. The terms and conditions of PTI 13-1935 required Respondent to operate these emissions units in compliance with the requirements of 40 CFR Part 60, Subpart UU.

4. On April 17, 2002 and June 20, 2002, CDAQ conducted an inspection of the Facility. The following violations were discovered during the inspection:

- a. Respondent had installed three emissions units without first applying for and obtaining a PTI, in violation of OAC Rule 3745-31-02(A) and ORC § 3704.05(G). Respondent had also operated these units without applying for and obtaining a permit-to-operate ("PTO"), in violation of OAC Rule 3745-35-02(A) and ORC § 3704.05(G). These units were emissions unit P002, the saturator line, which was installed and began operation in August 2000; emissions unit T014, a 20,000 gallon cutback asphalt storage tank, which was installed and began operation in May 1977; and emissions unit T015, a 30,000 gallon heated asphalt storage tank, which was installed and begun operation in June 1998.
- b. Respondent failed to conduct initial performance tests on emissions units T008 and T009 within 180 days of commencement of operation, in violation of 40 CFR 60.472(c) [Subpart UU] and ORC § 3704.05(C).
- c. Respondent failed to provide notice of initial startup of emissions unit T015, in violation of 40 CFR 60.115b(a)(1) [Subpart Kb], and failed to keep records of the dimensions and storage capacity of emissions unit T015, in violation of 40 CFR 60.116b(b).

5. On July 11, 2002, CDAQ sent a Notice of Violation ("NOV") to Respondent identifying the violations discovered during the April 17, 2002 and June 20, 2002 inspections.

6. On July 26, 2002, Respondent submitted a corrective action plan to CDAQ identifying the actions it would take to remedy the violations identified in the July 11, 2002 NOV.

7. On September 26, 2002, Respondent submitted a notice of initial startup for emissions unit T015.

8. On October 10, 2002, Respondent submitted records of the dimensions and storage capacity of the 30,000 gallon heated asphalt storage tank.

9. On October 23, 2002, Respondent submitted PTI and PTO applications for emissions units P002, T014 and T015. On July 10, 2003, PTI 13-04047 was issued for these emissions units. The PTOs for these units have not yet been issued.

10. On November 20, 2002, Respondent conducted the initial performance tests on emissions units T008 and T009. All performance tests indicated compliance.

11. 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 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-two thousand two hundred and seventy dollars (\$32,270) in settlement of Ohio EPA's claims for civil penalties. Respondent shall pay Ohio EPA the amount of seventeen thousand two hundred and seventy dollars (\$17,270). Payment shall be made in four equal installments of four thousand three hundred seventeen dollars and fifty cents (\$4,317.50) by official checks made payable to "Treasurer, State of Ohio." The first payment shall be submitted to Ohio EPA within thirty (30) days after the effective date of these Orders. The second payment shall be submitted to Ohio EPA within one hundred and twenty (120) days after the effective date of these Orders. The third payment shall be submitted within two hundred and ten (210) days after the effective date of these Orders. The fourth payment shall be submitted within three hundred (300) days after the effective date of these Orders. The official checks shall be submitted to Brenda Case, Fiscal Specialist, together with a letter identifying the Respondent and the Facility at the following address:

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

A copy of each check shall be sent to James A. Orlemann, Assistant Chief, Enforcement Section, or his successor, at the following address:

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

In lieu of payment to Ohio EPA of the remaining fifteen thousand dollars (\$15,000) of the total penalty amount, Respondent shall perform the supplemental environmentally beneficial project identified in Order 2. This fifteen thousand dollars (\$15,000) shall be used to fund the project in Order 2. In the event Respondent defaults or otherwise fails to complete the project as specified in Order 2, the fifteen thousand dollars (\$15,000) 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 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. The P2 Study is an assessment of selected Facility processes to identify and evaluate specific source reduction and environmentally sound recycling opportunities.

- a. Within ninety (90) 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, and 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.

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 the person authorized to sign in OAC Rule 3745-35-02(B)(1) for a corporation or a duly authorized representative 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 Respondent's activities at the 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. 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 to be submitted by Respondent pursuant to these Orders shall be addressed to:

City of Cleveland
Division of Air Quality
1925 St. Clair Ave.
Cleveland, Ohio 44144
Attn: Andrew Shroads

and to:

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

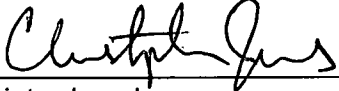
The effective date of these Orders is the date these Orders are entered into the Ohio EPA Director's journal.

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



Christopher Jones
Director

8-20-04

Date

IT IS SO AGREED:

The Garland Company, Inc.



Signature

Date

Printed or Typed Name

Title