

BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

| | | |
|------------------------------|---|----------------------------------|
| Kimble Mixer Company | : | <u>Director's Final Findings</u> |
| 3406 Crooked Run Road | : | <u>and Orders</u> |
| New Philadelphia, Ohio 44663 | : | |

OHIO E.P.A.
MAR - 9 2004
RECEIVED 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 Kimble Mixer 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 Respondent's facility as hereafter 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. Respondent owns and operates a facility that manufactures concrete mixer trucks and chassis and is located at 3409 Crooked Run Road, New Philadelphia, Tuscarawas County, Ohio.
2. At the above-referenced facility, Respondent owns and operates two painting booths (known as "Prime Booth" and "Finish Booth") and a sandblasting operation, which are identified by Ohio EPA as "emissions units K001, K002 and X001," respectively. Emissions unit K001 was installed and began operation in June 1997. Emissions units K002 and X001 were installed and began operation in April 1996.
3. Emissions units K001, K002 and X001 are "air contaminant sources" as defined in OAC Rules 3745-15-01(C) and (W), 3745-31-01(D), and 3745-35-01(B)(1) and ORC § 3704.01(C).

4. ORC § 3704.05(A) prohibits any person from allowing any emission from any source in excess of that permitted in any rule adopted by the Director of Ohio EPA. ORC § 3704.05(C) prohibits any person from violating the terms and conditions of any permit issued by the Director of Ohio EPA. ORC § 3704.05(G) prohibits any person from violating any rule adopted by the Director of Ohio EPA.

5. OAC Rule 3745-21-09(U) requires any owner or operator of a coating operation for miscellaneous metals parts and products to only use coatings that do not exceed 3.5 pounds of volatile organic compounds ("VOC") per gallon of coating, excluding water and exempt solvents, unless otherwise specified in such rule. OAC Rule 3745-21-09(B)(1) specifies that compliance with such VOC limitations be based on a daily, volume-weighted average of all coatings employed in a coating operation.

6. OAC Rule 3745-78-02(F) requires owners or operators of a synthetic minor facility to submit annual fee emission reports that identify the actual emissions of specified air pollutants and to pay fees for such emissions upon receipt of invoices. The first fee emission report was due by April 15, 2000 for calendar year 1999, and subsequent reports were due by April 15 of each year thereafter.

7. On March 21, 1997, Respondent submitted to Ohio EPA, Southeast District Office ("SEDO") permit to install ("PTI") and permit to operate ("PTO") applications for emissions units K001 and K002.

8. On March 28, 1997, SEDO sent a letter to Respondent citing Respondent in violation of OAC Rule 3745-21-09(U) for exceeding the 3.5 pounds of VOC per gallon of coating limit and requesting documentation of compliance by June 1, 1997.

9. On April 17, 1997, Respondent sent a letter to SEDO with a commitment to use only compliant coatings in emissions units K001 and K002 by June 1, 1997.

10. On June 2, 1997, Respondent submitted updated PTI and PTO applications for emissions units K001 and K002 with a cover letter stating that Respondent would only use coatings containing less than 3.5 pounds of VOC per gallon of coating.

11. The synthetic minor PTI (# 06-5116) for emissions units K001 and K002 was issued to Respondent by Ohio EPA on November 5, 1997, pursuant to OAC Rule 3745-31-02. The Special Terms and Conditions in the PTI require Respondent to submit, on a quarterly basis, the rolling, 12-month summaries of total annual VOC emissions from emissions units K001 and K002 at Respondent's facility. The rolling, 12-month summaries are to be submitted by January 31, April 30, July 31, and October 31 of each year and are to cover the previous calendar quarter.

12. On June 16, 1998, Ohio EPA issued PTOs to Respondent for emissions units K001 and K002.

13. On November 18, 1999, SEDO issued a notice of violation ("NOV") to Respondent as a follow-up to its inspection of Respondent's facility on November 15, 1999. In this NOV, SEDO cited Respondent for its violation of the Special Terms and Conditions of the PTI and PTOs for emissions units K001 and K002 since the date of issuance of its PTI by not submitting the rolling, 12-month summaries of total annual VOC emissions from emissions units K001 and K002. Also, in this NOV, SEDO advised Respondent to cease the operation of emissions unit X001 or to obtain both a PTI and PTO for it if Respondent decided to continue with the operation.

14. On December 9, 1999, SEDO received a letter from Respondent as a response to SEDO's November 18, 1999 NOV, stating that past VOC emission reports were being compiled and the permit applications for emissions unit X001 were enclosed. However, there were no permit applications enclosed except for an Emissions Activity Category form for emissions unit X001.

15. On February 16, 2001, Ohio EPA issued Respondent a warning letter for its failure to submit the Synthetic Minor Title V fee emission report for 1999, which was due on April 15, 2000.

16. On June 26, 2001, Ohio EPA issued Respondent a warning letter for its failure to submit the Synthetic Minor Title V fee emission report for 2000, which was due on April 15, 2001.

17. On October 9, 2001, Respondent submitted to Ohio EPA the fee emission reports for the years 1999 and 2000.

18. On February 27, 2002, Ohio EPA sent a letter to Respondent requesting the submission of the 2001 fee emission report by April 15, 2002.

19. On March 8, 2002, SEDO sent a NOV to Respondent, citing Respondent with violations of the Special Terms and Conditions of its PTI by not submitting quarterly reports of the rolling, 12-month summaries of total annual VOC emissions from each of emissions units K001 and K002, throughout calendar year 2001. SEDO also cited Respondent for its violations of the terms and conditions of its PTI for Respondent's failure to use compliant coatings that have VOC contents equal to or less than 3.5 pounds of VOC per gallon of coating for emissions unit K002.

20. On May 6, 2002, Respondent sent a letter to SEDO stating that primers with VOC contents of greater than 3.5 pounds per gallon were no longer being used in emissions unit K002 and that Respondent was trying to change to a low-VOC primer.

21. On August 19, 2002, Respondent submitted the 2001 fee emission report to Ohio EPA.

22. On June 5, 2003, SEDO confirmed with Ohio EPA, Division of Air Pollution Control that Respondent began to comply with the 3.5 pounds of VOC per gallon of coating limit for emissions unit K002 on March 5, 2003.

23. Respondent violated OAC Rule 3745-78-02 and ORC § 3704.05(G) for its failure to timely submit the fee emission reports for the years 1999, 2000 and 2001 by the corresponding deadlines.

24. From November 5, 1997 through November 1999, Respondent failed to maintain the coating records required by its PTI, in violation of the Special Terms and Conditions of its PTI and ORC § 3704.05(C). From November 5, 1997 through the present, Respondent failed to submit quarterly reports containing all of the information required by its PTI, in violation of the Special Terms and Conditions of its PTI and ORC § 3704.05(C). The reports submitted by Respondent lacked the rolling, 12-month summaries of the total annual VOC emissions for each of emissions units K001 and K002.

25. From April 1996 through March 5, 2003, Respondent exceeded the 3.5 pounds of VOC per gallon of coating limit for emissions unit K002, in violation of OAC Rule 3745-21-09(U)(1) and ORC § 3704.05(A), (C) and (G). SEDO has estimated based on Respondent's reports that there were 450 days during the above-mentioned time period that Respondent has violated OAC Rule 3745-21-09(U)(1) by using coatings with VOC contents from 3.6 to 5.4 pounds of VOC per gallon of coating, excluding water and exempt solvents.

26. Respondent installed emissions unit K001 in June 1997 without first applying for and obtaining a PTI from Ohio EPA, in violation of OAC Rule 3745-31-02 and ORC § 3704.05(G). Also, Respondent has operated emissions unit K001 from June 1997 through November 5, 1997 without first applying for and obtaining a PTO from Ohio EPA, in violation of OAC Rule 3745-35-02 and ORC § 3704.05(G).

27. Respondent installed emissions unit K002 in April 1996 without first applying for and obtaining a PTI from Ohio EPA, in violation of OAC Rule 3745-31-02 and ORC § 3704.05(G). Also, Respondent has operated emissions unit K002 from April 1996 through November 5, 1997 without first applying for and obtaining a PTO from Ohio EPA, in violation of OAC Rule 3745-35-02 and ORC § 3704.05(G).

28. Respondent installed emissions unit X001 in April 1996 without first applying for and obtaining a PTI from Ohio EPA, in violation of OAC Rule 3745-31-02 and ORC § 3704.05(G). Also, Respondent has been operating emissions unit X001 since April 1996 until present without first applying for and obtaining a PTO from Ohio EPA, in violation of OAC Rule 3745-35-02 and ORC § 3704.05(G).

29. On February 3, 2004, Respondent informed Ohio EPA that the usage of emissions unit X001 has been greatly reduced due to some of the sandblasting works being performed at another facility in Ohio and that Respondent will permanently discontinue the operation of this emissions unit by May 30, 2004.

30. 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:

1. By not later than May 30, 2004, Respondent shall permanently cease operation of emissions unit X001.

2. Pursuant to ORC § 3704.06, Respondent is assessed a civil penalty in the amount of forty thousand five hundred dollars (\$40,500) in settlement of Ohio EPA's claim for civil penalties. Respondent shall pay to Ohio EPA the amount of thirty thousand five hundred dollars (\$30,500) of the total penalty amount pursuant to the following schedule:

- five thousand dollars (\$5,000) due within fourteen (14) days after the effective date of these Orders;
- five thousand dollars (\$5,000) due within forty-four (44) days after the effective date of these Orders;
- five thousand dollars (\$5,000) due within seventy-four (74) days after the effective date of these Orders;
- five thousand dollars (\$5,000) due within one hundred and four (104) days after the effective date of these Orders;
- five thousand dollars (\$5,000) due within one hundred and thirty-four (134) days after the effective date of these Orders; and
- five thousand and five hundred dollars (\$5,500) due within one hundred and sixty-four (164) days after the effective date of these Orders.

Payments shall be made by an official checks made payable to "Treasurer, State of Ohio." Each official check shall be 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 the official checks 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
P.O. Box 1049
Columbus, Ohio 43216-1049

In lieu of payment to Ohio EPA of the remaining ten thousand dollars (\$10,000) of the total penalty amount, Respondent shall perform the supplemental environmentally beneficial project identified in Order 3. In the event Respondent defaults or otherwise fails to complete the project as specified in Order 3, the \$10,000 shall immediately become due and payable to Ohio EPA. Such payment shall be made by 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, Assistant Chief, Enforcement Section, or his successor, at the above-stated address.

3. 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 Kimble Mixer Company (located at 3409 Crooked Run Road, New Philadelphia, Ohio) and at Kimble Fabricating Company (located at 3211 Brightwood Road, Midvale, Ohio). 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, 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.

4. Within thirty (30) days of the completion and approval by Ohio EPA of the project identified in Order 3, 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 3, and in the manner described in Order 2, an official check to Ohio EPA for the difference in cost between \$10,000 and the total cost of the P2 Study.

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."

The 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 a corporate officer who is in charge of a principle business function of Respondent.

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.

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

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

Ohio EPA, Southeast District Office
Attn: Glen Greenwood or successor
2195 Front Street
Logan, Ohio 43138

and to:

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

or to such persons and addressees 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 specially 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 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 an appeal. In such 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

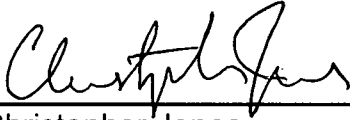
The effective date of these Orders is the date these Orders are entered into the Ohio EPA Director's journal.

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

 3-5-04
Christopher Jones Date
Director

IT IS SO AGREED:

Kimble Mixer Company

 2-16-04
Signature Date
JAMES C. CAHILL
Printed or Typed Name
PRESIDENT
Title