

BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

Klosterman Baking Company
4760 Paddock Road
Cincinnati, Ohio 45229

: Director's Final Findings
: and Orders
:

ENTERED DIRECTOR'S JOURNAL

OHIO E.P.A.
OCT 26 2004

PREAMBLE

It is agreed by the parties hereto as follows:

I. JURISDICTION

These Director's Final Findings and Orders ("Orders") are issued to Klosterman Baking 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 identified) 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 § 3704 and the regulations promulgated thereunder.

IV. FINDINGS

The Director of Ohio EPA has determined the following findings:

1. Respondent's corporate offices are located at 4760 Paddock Road, Cincinnati, Ohio, and it owns and operates a baking factory ("facility") at 508 West Main Street, Springfield, Clark County, Ohio. At this facility, Respondent operates a bread oven (line #1) and a bakery oven (line #2), which are identified by Ohio EPA as emissions units P001 and P003, respectively, that are Title V sources, as defined in Ohio Administrative Code ("OAC") Rule 3745-77-01(LL), and are subject to the requirements of ORC Chapter 3704 and OAC Chapter 3745-77.

2. OAC Rule 3745-77-02(A) states, in part, that the owner or operator of a Title V source shall not operate such source after the date that a timely and complete Title V permit application is required, unless such an application has been timely submitted or the source is in compliance with a Title V permit.

3. OAC Rule 3745-77-04(E) requires that a Title V permit renewal application be filed no earlier than eighteen months and no later than six months prior to the expiration of any Title V permit.

4. OAC Rule 3745-77-06(A) states, in part, that if the owner or operator of Title V source submits a timely and complete application for permit renewal, the failure to have a Title V permit is not a violation of this Chapter until the Director takes final action on the application.

5. 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.

6. 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.

7. ORC § 3704.05(J)(2) states, in part, that no person shall violate any filing requirement of the Title V permit program.

8. ORC § 3704.05(K) states, in part, that no person shall operate a source that is required to obtain a Title V permit unless a Title V permit has been issued authorizing operation of the source or unless a complete and timely application for the issuance, renewal, or modification of a Title V permit for the source has been submitted to the Director.

9. ORC § 3704.06(C) provides, in part, that any person violating ORC § 3704.05 shall pay a civil penalty of not more than \$25,000 for each day of each violation.

10. On January 15, 1998, Ohio EPA issued a final Title V permit for Respondent's facility (Ohio EPA facility identification number 08-12-10-0106). The permit's expiration date of January 15, 2003 was given in the Final Issuance cover page of the permit, as well as a statement that Title V permit renewal applications are to be filed no earlier than eighteen months and no later than six months prior to the expiration of any Title V permit.

11. In a letter dated January 4, 2002, Ohio EPA sent a notice of Title V permit expiration to Respondent. This letter stated that Respondent's Title V permit was to expire on January 15, 2003, and provided a description of the renewal application requirements and procedures.

12. Respondent failed to submit an application to renew its Title V permit to Ohio EPA at least six months prior to the permit expiration date (i.e., by July 19, 2002), in violation of OAC Rule 3745-77-04(E) and ORC § 3704.05(G) and (J)(2). Also, as of

January 15, 2003, Respondent has operated its Title V source without possessing a Title V permit or timely filing of a Title V permit renewal application, in violation of OAC Rule 3745-77-02(A) and ORC § 3704.05(G) and (K).

13. On February 6, 2003, Respondent submitted a complete Title V permit renewal application to Ohio EPA.

14. On May 24, 2004, the contractual representative of Ohio EPA in Clark County, i.e., the Regional Air Pollution Control Agency ("RAPCA"), sent a Notice of Violation ("NOV") to Respondent. The NOV cited, in part, Respondent for the late submission of three quarterly deviation reports. The NOV requested Respondent to submit the compliance certification and deviation reports and annual production reports detailing the tons per year of baked goods for calendar years 2002 and 2003, within fifteen (15) days after receipt of the NOV.

15. On June 8, 2004, RAPCA received all the reports requested by the May 24, 2004 NOV.

16. On June 11, 2004, Ohio EPA, Division of Air Pollution Control ("DAPC") issued a NOV to Respondent, citing it with violations of OAC Rules 3745-77-04(E), for failing to submit a timely and complete application for renewal of its Title V permit, and OAC Rule 3745-77-02(A) and ORC § 3704.05(G)(2) and (K) for operation of a Title V source after the expiration date of the Title V permit without a valid Title V renewal permit being issued by the Director, or without filing a timely and complete Title V permit renewal application.

17. 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 Orders:

1. Within fourteen (14) days after the effective date of these Orders, Respondent shall pay the amount of twenty-seven thousand five hundred dollars (\$27,500) to Ohio EPA in settlement of Ohio EPA's claim for civil penalties, which may be assessed pursuant to ORC Chapter 3704. Payment shall be made by an official check made payable to "Treasurer, State of Ohio" for \$27,500. The official check shall be submitted to Brenda Case, or her successor, with a letter identifying the Respondent and the facility 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, Assistant Chief, Compliance and Enforcement, or his successor, at the following address:

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

2. Respondent shall continue to comply with all terms and conditions of its Title V permit, as issued on January 15, 1998, until the Director takes final action on the application submitted on February 6, 2003.

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 as defined in OAC Rule 3745-35-02(B)(1) for a corporation.

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 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 to be submitted by Respondent pursuant to these Orders shall be addressed to:

Regional Air Pollution Control Agency
117 South main Street
Dayton, Ohio 44522-1280
Attention: Curt Marshall

and to:

Ohio Environmental Protection Agency
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 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

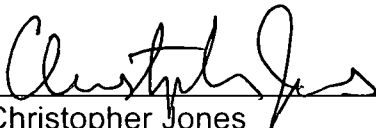
The effective date of these Orders is the date these Orders are entered into the Ohio EPA Director's journal.

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

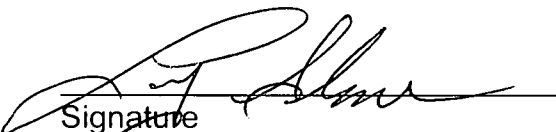


Christopher Jones
Director

10-20-04
Date

IT IS AGREED:

Klosterman Baking Company



Signature

10-19-04
Date

LARRY SLONE

Printed or Typed Name

Director of Env

Title