

BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

Bescast, Inc.
4600 East 355th Street
Willoughby, Ohio 44094

:
:
:

Director's Final Findings
and Orders

ENTERED DIRECTOR'S JOURNAL

JUL 20 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 Bescast, Inc. ("Respondent") pursuant to the authority vested in the Director of 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 small metal parts for the aerospace industry, with a facility located at 4600 East 355th Street, Willoughby, Lake County, Ohio. At this facility, Respondent employs a trichloroethylene ("TCE") degreaser, identified by Ohio EPA as "emissions unit L002," to clean metal parts. The operation of the degreaser 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 unit L002 constitutes as an "air contaminant source," as defined by OAC Rule 3745-15-01(C) and (W) and ORC § 3704.01(C).

3. 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.

4. 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 (i.e., September 29, 1996), 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.

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

6. 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 ("PTE"), ten tons per year ("TPY") or more of any HAP, or 25 TPY or more of any combination of HAPs.

7. 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.

8. OAC Rule 3745-77-02 prohibits the operation of a Title V source after the date that a complete and timely Title V permit application is required to be submitted under OAC Chapter 3745-77, unless such facility is in compliance with a Title V permit issued under this rule or a timely Title V permit application has been submitted for which the Director has not issued a final incompleteness determination. Respondent was required to submit a Title V permit application to Ohio EPA as required by OAC Rule 3745-77-02, by no later than March 28, 1996, as specified in OAC Rule 3745-77-04. The Respondent operated the facility after March 28, 1996 without submitting a complete and timely Title V permit application or possessing a Title V permit, and failed to submit the required Title V permit application to Ohio EPA by the above required deadline, in violation of OAC Rules 3745-77-02 and 3745-77-04 and ORC § 3704.05(G) and (K).

9. OAC Rule 3745-31-02 prohibits any person from allowing the installation of an air contaminant source without first applying for and obtaining a permit to install ("PTI"), unless otherwise provided by rule or law. Respondent began installation of emissions unit L002 in August 1996 prior to obtaining a PTI, in violation of OAC Rule 3745-31-02(A) and ORC § 3704.05(G).

10. OAC Rule 3745-35-02 requires any owner or operator of an air contaminant source to apply for and obtain a permit to operate ("PTO") prior to operating any air contaminant source, unless otherwise provided by rule or law. Emissions unit L002 began operation in November 1996 without obtaining a PTO, in violation of OAC Rule 3745-35-02(A) and ORC § 3704.05(G).

11. OAC Rule 3745-78-02(A) requires that Fee Emission Reports ("FERs") be submitted by June 15, 1994 for calendar year 1993, and by April 15 of each year thereafter for the previous calendar year. Respondent was in violation of OAC Rule 3745-78-02(A) and ORC § 3704.05(G) and (J)(2) for its failure to submit FERs for calendar years 1993 through 2002.

12. On May 20, 1987, the Respondent was issued a PTI for a 1,1,1-trichloroethane degreaser (emissions unit L001). The Respondent operated emissions unit L001 under Registration Status, pursuant to OAC Rule 3745-35-05, until in or about November 1996 when it was removed from the facility.

13. The Respondent was also considered to be a "major source" under Subpart T of 40 CFR, Part 63 and subject to the Title V program, since the PTE for emissions unit L001 was 10.5 TPY based on the equation for PTE in Subpart T.

14. In August 1996, the Respondent began installation of emissions unit L002 without applying for and obtaining a PTI, violation of OAC Rule 3745-31-02 and ORC § 3704.05(G). This emissions unit had a PTE of 15.8 TPY of HAPs, which kept the facility subject to the Title V program.

15. On May 29, 2003, NEDO sent a Notice of Violation ("NOV") to Respondent summarizing the violations for operating without a Title V permit, for installing an emissions unit without a PTI, and for failure to submit Title V FERs.

16. The May 29, 2003 NOV letter also stated that the Respondent failed to apply for a synthetic minor source status prior to the first Subpart T compliance deadline for emissions unit L001. The compliance deadline was December 2, 1997 for the first degreaser, as stated in 40 CFR, Part 63, Subpart T, and before installation of the new degreaser in November 1996. Additionally, by obtaining federally enforceable state operating permits ("FESOPs"), the Respondent could have avoided Title V permitting by requesting operating restrictions. Since all the deadlines had expired, the letter stated that Respondent cannot now opt out of the Title V permitting requirements, and Title V fees will have to be paid for calendar years 1993 through 2002. In this letter, NEDO informed the Respondent of the facility-wide PTE exceeding the Title V applicability threshold and that a Title V permit is required. The NOV also stated that emissions unit L002 has PTE of 15.7 TPY of TCE and, therefore, the Respondent continued to be subject to the Title V permitting program.

17. Furthermore, the May 29, 2003 NOV requested that the Respondent submit a complete Subpart T compliance certification for calendar year 2002. The NOV requested that the Respondent submit all the requested information within twenty-one (21) days of receipt of the letter.

18. On June 8, 2003, the Respondent responded to the NOV and indicated a willingness to meet most action items by the completion date of June 20, 2003 and requested an extension for the remaining items to July 28, 2003. On June 13, 2003, the facility submitted a compliance plan and schedule claiming it would submit the outstanding PTI application, Title V permit application, and Title V FERs by July 28, 2003. On June 17, 2003, NEDO received the PTI application, initial notification report and initial statement of compliance required by Subpart T, and recordkeeping from the Respondent.

19. On July 3, 2003, NEDO received an Emissions Activity Category form for emissions unit L002. According to the form submitted by the Respondent, emissions unit L002 uses approximately 278 lbs/month of TCE. Also, on July 31, 2003, NEDO received a Title V permit application from the Respondent.

20. On December 26, 2003, a Draft Title V Permit was issued for the facility by Ohio EPA. On January 31, 2004, NEDO received an amended Title V permit application for the facility from the Respondent. On February 4, 2004, a Preliminary Proposed Title V Permit was issued to the Respondent by Ohio EPA.

21. After reviewing the facts of the case, Ohio EPA has determined that the following violations of OAC rules and ORC laws occurred as a result of the Respondent's installation and operation of the emissions units at its facility:

- a. Installation of air contaminant source without first applying for and obtaining a PTI, in violation of OAC Rule 3745-31-02 and ORC § 3704.05(G). Specifically, Respondent installed emissions unit L002 without first applying for and obtaining a PTI.
- b. Respondent was required to submit a Title V permit application to Ohio EPA by no later than March 28, 1996. The Respondent operated the facility after March 28, 1996 without submitting a complete and timely Title V permit application or possessing a Title V permit and failed to submit the required Title V permit application to Ohio EPA by the above required deadline, in violation of OAC Rules 3745-77-02 and 3745-77-04 and ORC § 3704.05(G) and (K).
- c. Respondent was in violation of OAC Rule 3745-78-02(A) and ORC § 3704.05(G) for its failure to submit FERs for calendar years 1993 through 2002.

22. In a letter dated June 16, 2004, the Respondent submitted a copy of the original PTI and PTO applications for emissions unit L002, which Respondent indicated were sent to Ohio EPA. The PTI application was dated received by NEDO on June 17, 1998. The copy of the PTO application is unsigned and has no date received stamped by NEDO. NEDO returned the PTI application thinking it was in reference to emissions unit L001 and was not needed. NEDO did not have the original documentation on file for the facility. The Final Title V Permit for the facility was issued in June 2004.

23. 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-four thousand and five hundred dollars (\$34,500) in settlement of Ohio EPA's claims for civil penalties. Of this amount, twenty-four thousand and five hundred dollars (\$24,500) shall be paid to Ohio EPA in four equal payments over a period of three hundred (300) days from the date of these Orders in accordance with the following schedule:

Within thirty (30) days after the effective date of these Orders, Respondent shall pay to Ohio EPA the amount of six thousand, one hundred and twenty-five dollars (\$6,125) of the total penalty amount.

Within one hundred and twenty (120) days after the effective date of these Orders, Respondent shall pay to Ohio EPA the amount of six thousand, one hundred and twenty-five dollars (\$6,125) of the total penalty amount.

Within two hundred and ten (210) days after the effective date of these Orders, Respondent shall pay to Ohio EPA the amount of six thousand, one hundred and twenty-five dollars (\$6,125) of the total penalty amount.

Within three hundred (300) days after the effective date of these Orders, Respondent shall pay to Ohio EPA the amount of six thousand, one hundred and twenty-five dollars (\$6,125) of the total penalty amount.

Payments 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, 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

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 2. In the event Respondent defaults or otherwise fails to complete the project as specified in Order 2, 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, Compliance and Enforcement, 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, 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.

3. Within thirty (30) days of the completion and approval by Ohio EPA of the project identified in Order 2, 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 2, and in the manner described in Order 1, 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."

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 of Respondent 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 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 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: Tim Fischer, 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, 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 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



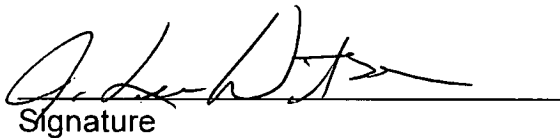
Christopher Jones
Director

7/14/04

Date

IT IS SO AGREED:

Bescast, Inc.



Signature

7-8-2004

Date

J. Lee Watson

Printed or Typed Name

President

Title