

BEFORE THE  
OHIO ENVIRONMENTAL PROTECTION AGENCY

OHIO E.P.A.  
DEC 29 2003

ENTERED Environmental Journal

In the Matter of:

The Ohio Art Company : Director's Final Findings  
One Toy Street : and Orders  
Bryan, Ohio 43506 :

**PREAMBLE**

It is agreed by the parties hereto as follows:

**I. JURISDICTION**

These Director's Final Findings and Orders ("Orders") are issued to The Ohio Art Company ("Respondent") pursuant to the authority vested in the Director of the Ohio Environmental Protection Agency ("Ohio EPA") under Ohio Revised Code ("ORC") §§ 3704.04 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 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 OF FACT**

The Director of Ohio EPA has determined the following findings:

1. Respondent operates manufacturing facilities in Bryan, Ohio. At these facilities, the Respondent manufactures products including toys and plastic and lithographic metal items such as automobile parts, serving trays, signs, film canisters, and decorative cans.
2. Respondent filed as a for-profit corporation in the state of Ohio on February 13, 1930.
3. In 1965, Respondent installed a coating line which consisted of a printer and a lithographic coating operation for sheet metal, with an oven. This printer and coating

operation were placed at location #8 in Respondent's facility and identified as OART line #7.

4. A permit to operate (PTO) for the printer and lithographic coating operation at location #8 was issued by Ohio EPA on January 30, 1987 as emissions unit K007. This PTO required monthly record keeping, but no emission limitations were established in the permit because the coating line was installed prior to March 27, 1981 (OAC rule 3745-21-09 (U) applicability date) and the potential to emit (PTE) of the facility was thought to be less than 100 tons per year for volatile organic compounds (VOCs). This PTO expired on January 30, 1990, and an application for continued permission to operate was not submitted prior to the expiration date.

5. In 1992, the printer was moved to a new location and the lithographic coating operation remained at location #8 as emissions unit K007.

6. By letter dated August 2, 1995, Ohio EPA/NWDO requested Respondent submit a cost effectiveness study in order to determine the feasibility of installing control equipment on the coating lines.

7. A May 17, 1999 Notice of Violation (NOV) was sent from Ohio EPA/NWDO to the Respondent. This NOV indicated that Respondent modified K007 without first applying for and obtaining a PTI, in violation of OAC rule 3745-31-02. Further, NWDO believed that the increase in emissions would make it cost effective to install air pollution control equipment. The NOV requested the submission of a compliance plan and schedule to address the re-submission of the PTI application and also the cost effectiveness study for determining the feasibility of installing add-on controls that had previously been requested in August 1995.

8. As a result of ensuing communications between Respondent and Ohio EPA/NWDO regarding the May 17, 1999 NOV, the following clarification and corrections were established:

- a. The removal of the printer from the coating operation at location #8 (K007) did not increase the potential emissions from the emissions unit. The removal of the printer did not constitute a modification to the emissions unit as defined in OAC rule 3745-31-01 (VV); thus, no PTI was required and there were no PSD rule violations because the emissions unit was not a new emissions unit or modified emissions unit.
- b. VOC emissions from K007 emissions exceed 100 TPY and have done so since 1965. Because the PTE of the facility exceeds 100 TPY of VOCs, OAC rule 3745-21-09 (A)(3)(b)(ii) states that OAC rule 3745-21-09 (U) applies to

Respondent's facility. OAC rule 3745-21-09 (U)(1)(a) limits emissions to 4.3 pounds VOC/gallon of coating, minus water and exempt solvents, or if a control system is employed, 10.3 pounds of VOC per gallon of solids.

- c. According to usage records submitted by Respondent, and the 1999 Fee Emissions Report (FER) the actual emission rate from K007 was 6.7 pounds VOC/gallon of coating, minus water and exempt solvents, in violation of the allowable emission limit under OAC rule 3745-21-09(U)(1)(a).

9. Respondent is employing non-compliant coatings in K007. Respondent has reported to Ohio EPA that there are no compliant coatings for the type of coating operations it conducts and that, because there are no compliant coatings, Respondent informed Ohio EPA/NWDO that it wanted to obtain a variance from the VOC requirements in OAC rule 3745-21-09 (U)(1). A variance requires a demonstration that it would not be economically reasonable (cost-effective) to install a control system.

10. The cost analysis prepared by Respondent and sent to Ohio EPA/NWDO on June 15, 2000, indicated that an emissions control system is cost-effective.

11. Respondent has always employed non-compliant coatings in emissions unit K007. Respondent contends there are no coatings available that will withstand the forming operations and still meet the VOC content requirement of OAC rule 3745-21-09 (U)(1)(a). In order to achieve compliance with the emissions limitation, Respondent will have to install control equipment.

12. Pursuant to OAC rule 3745-21-04 (C)(28) Respondent should have achieved final compliance with the 4.3 pounds VOC/gallon emissions limitation mentioned in Finding 7, by December 31, 1982. Respondent has been, and continues to be, in violation of OAC Rule 3745-21-04 (C)(28).

13. On January 26, 2001, Ohio EPA issued an NOV to Respondent for failure to maintain records in accordance with the special terms and conditions of PTI numbers 03-3026 and 03-3250, and ORC 3704.05 (C). OEPA asked for a compliance plan and schedule to be submitted by no later than February 9, 2001. The plan and schedule was to address record keeping deficiencies for emissions units K001-K008, K010, and K011. Additionally, Respondent was requested to submit a compliance plan and schedule to address its failure to submit written excursion /deviation reports by February 2, 2001.

14. In its December 6, 2000 letter to Respondent, Ohio EPA requested this plan and schedule to be submitted by December 19, 2000. The December 6, 2000 letter also addressed Respondent's failure to conduct emissions testing for emissions unit K011

within three (3) months after startup of the emissions unit. Ohio EPA requested that Respondent submit in writing, its schedule for meeting its testing requirement. The January 26, 2001 letter also requested that Respondent submit a list of current emissions units, and additional information and calculations to substantiate its de minimis claims for the UV coater #4 (Z004).

15. By e-mail dated March 9, 2001, Ohio EPA again requested that Respondent submit an updated compliance plan and schedule to bring K007 into compliance. This request had previously been made during a January 9, 2001, meeting between Ohio EPA and Respondent. During the January 9, 2001 meeting, Respondent was advised it was not following the compliance plan that it submitted to Ohio EPA on June 17, 1999. The e-mail restated that a compliance plan and schedule that would detail the steps Respondent would take to achieve compliance with the record keeping and reporting requirements of the current PTOs was requested to be submitted by February 9, 2001.

16. By letter dated May 24, 2001, Respondent submitted a compliance plan and schedule for emissions unit K007. The plan outlined Respondents intention to purchase and install an oxidizer that would bring emissions unit K007 into compliance by March 1, 2003.

17. Respondent was issued a Title V permit on December 31, 2001, that established a time-line by which it was to bring emissions unit K007 into compliance. Respondent's failure to achieve compliance for K007 with those dates established in the Title V permit, constitutes a violation of its Title V permit.

18. By letter dated February 8, 2002, Respondent indicated that it had established a computerized record keeping system for each line to allow the company to comply with all the record keeping and reporting requirements established in its permits. Ohio EPA determined the submission of the exceedance reports was an adequate method to comply with the record keeping and reporting requirements established in PTIs # 03-3026 and # 03-3250.

19. Respondent submitted a revised compliance plan to Ohio EPA on July 15, 2002. Ohio EPA approved the revised plan. The plan requires Respondent to meet or to have met the following milestones:

- a. Select and order a thermal incinerator from a supplier by 9/1/02.
- b. Complete installation of the thermal incinerator by 1/15/03.
- c. Complete performance testing on the thermal incinerator serving the emissions unit and achieve final compliance by 4/21/03.

20. 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 Order:

1. Respondent shall achieve and maintain compliance with OAC rule 3745-21-09(U) for emissions unit K007 by installing a thermal incinerator. Respondent shall complete performance testing on the thermal incinerator and demonstrate final compliance by 4/1/04.

2. Respondent shall pay to Ohio EPA the amount of one hundred seventeen thousand dollars (\$117,000) 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:

- Twenty nine thousand two hundred fifty dollars (\$29,250) by February 1, 2004;
- Twenty nine thousand two hundred fifty dollars (\$29,250) by May 1, 2004;
- Twenty nine thousand two hundred fifty dollars (\$29,250) by August 1, 2004;
- Twenty nine thousand two hundred fifty dollars (\$29,250) by November 1, 2004;

Payment shall be made to Brenda Case by official check made payable to "Treasurer, State of Ohio" and sent to the following address:

Fiscal Administration  
Ohio Environmental Protection Agency  
P.O. Box 1049  
Columbus, Ohio 43216-1049

A copy of the check shall be sent to James A. Orlemann, Manager, Engineering Section, at the following address:

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

Default or other failure to make any payment by the scheduled date and in the scheduled amount will make the entire balance immediately due and payable to OEPA upon request of the Director.

#### **VI. TERMINATION**

Respondent's obligations under these Orders shall terminate upon Ohio EPA's receipt of the official check 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 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 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 by these Orders, unless otherwise specified in writing, shall be submitted to:

Don Waltermeyer  
Division of Air Pollution Control  
Northwest District Office  
347 North Dunbridge Road  
Bowling Green, Ohio 43402

and to:

Ohio Environmental Protection Agency  
Division of Air Pollution Control  
P.O. Box 1049  
Columbus, OH 43216-1049  
Attn: Paul Cree

#### **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**

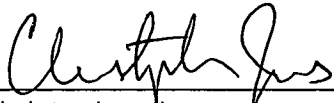
The effective date of these Orders is the date these Orders are entered into the Ohio EPA Director's journal.

#### **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

12-24-03  
Date

**IT IS AGREED:**

The Ohio Art Company

  
\_\_\_\_\_  
Signature

December 22, 2003  
Date

Jerry D. Kneipp  
Printed or Typed Name

Chief Financial Officer/Treasurer  
Title