

**BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY**

In the Matter of:

Tube City, Inc. :
12 Monongahela Avenue :
Glassport, Pennsylvania 15045 :
RESPONDENT :

Director's Final Findings
and Orders

INTER-DIRECTOR'S JOURNAL

OHIO E.P.A.
MAY 14 2003

PREAMBLE

It is agreed by parties hereto as follows:

I. JURISDICTION

These Director's Final Findings and Orders ("Orders") are issued to Tube City, 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 relating to 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 OAC Chapter 3704 and the rules promulgated thereunder.

IV. FINDINGS

The Director of Ohio EPA has determined the following findings:

1. Respondent, a Delaware Corporation, owns and operates a slag handling and processing facility located at 3024 Oxford State Road, Middletown (Butler County), Ohio, which is identified by Ohio EPA as facility ID 1409010908. At this facility, Respondent operates four processing lines identified by Ohio EPA as "emissions units F001 through F004" to process various iron and steel-making by-products and wastes generated from AK Steel Corporation's ("AK Steel") integrated steel mill located across the street. Specifically, emissions units F001 through F004 process AK Steel's steel by-products and waste as follows:

| Emissions unit ID # | Waste and by-product processed | Emissions unit |
|---------------------|------------------------------------|--|
| F001 | basic oxygen furnaces ("BOF") slag | BOF slag processing plant: conveyors and transfer points, screens, railcar and truck loading |
| F002 | blast furnace ("BF") slag | BF slag processing plant: crushers, conveyors and transfer points and screens |
| F003 | tundish skulls and mill scale | two lancing stations |
| F004 | kish and mill scale | conveyors and chutes, transfer points, hopper and screens |

Respondent also operates several support emissions units such as unpaved roads and parking areas identified by Ohio EPA as "emissions unit F010."

2. Emissions units F001 through F004 and F010 emit "particulate matter" ("PM") and particulate matter with an aerodynamic diameter of 10 microns or less ("PM₁₀"), which are defined as "air pollutants" or "air contaminants" in Ohio Administrative Code ("OAC") Rule 3745-15-01(C). Each emissions unit is an "air contaminant source" as defined in OAC Rules 3745-31-01(D) and 3745-35-01(B)(1).

3. OAC Rule 3745-17-07(B)(5) and (B)(6) requires, in part, that material storage piles and unpaved roads and parking lots, located in Butler County, not have more than thirteen minutes of visible particulate emissions ("VEs") in any sixty-minute observation period.

4. OAC Rule 3745-31-05(A) allows, in part, the Director to issue a permit to install ("PTI"), based on the information contained in the PTI application, if he determines that the installation will not result in a violation of any applicable laws and emission standards adopted by Ohio EPA. Further, OAC Rule 3745-31-06(D) states, in part, that the Director of Ohio EPA may impose special terms and conditions as are appropriate or necessary to ensure compliance with applicable laws and to ensure adequate protection of the environment.

5. ORC § 3704.05(A) prohibits, in part, any person from causing, permitting or allowing emissions of an air contaminant in violation of a rule adopted by the Director unless the person is the holder of a variance.

6. ORC § 3704.05(C) prohibits any person from violating any terms or conditions of any permit issued by the Director of Ohio EPA.

7. ORC § 3704.05(G) prohibits any person from violating any order, rule or determination of the Director of Ohio EPA issued, adopted, or made under R.C. Chapter 3704.

8. On November 18, 1999, Respondent submitted a PTI application to Hamilton County Department of Environmental Services ("HAMCO") for the installation of emissions units F001 through F003. In this application Respondent stated that dedicated water sprays would be used to assure compliance with application emission limitations (including VE limits). Also, to keep PM and PM₁₀ emission rates low, tundish skulls would not be cut to more than 50 percent of their width.

9. On December 29, 1999, Ohio EPA's Division of Air Pollution Control ("DAPC") issued PTI 14-4853 to Respondent authorizing the installation of emissions units F001 through F003. To assure continuous compliance with applicable regulations and emission limitations, the PTI stipulated certain operating restrictions and required parametric monitoring, record keeping and reporting. The operating restrictions included a requirement for the cone and jaw crushers (part of emissions unit F002) to be equipped with dedicated water sprays, and a requirement that Respondent not cut any piece of a tundish skull more than 50 percent across its width (emissions unit F003). Additionally, the PTI required Respondent to keep the following daily records on the days emissions unit F003 operated: the amount of carbon dioxide ("CO₂") used (a control measure to suppress particulate emissions) and the number of hours the emissions unit operated. Further, the PTI required Respondent to maintain monthly records of the amount of material lanced in emissions unit F003. The PTI required Respondent to submit quarterly deviation (excursion) reports that identified any exceedance or noncompliance with certain special terms and conditions listed in the PTI. If no deviations occurred during a calendar quarter, Respondent was required to submit a quarterly report stating that no deviation had occurred. The PTI also required Respondent to submit a Construction Compliance Certification ("CCC") for each emissions unit certifying that the emissions unit had been constructed in accordance with the terms and conditions of the PTI and the corresponding PTI application. The CCC was required to be submitted to Ohio EPA upon the completion of construction but prior to start-up of the emissions unit.

10. On May 16, 2000, as a result of a citizen's complaint, HAMCO inspected Respondent's facility and discovered that tundish skulls were being cut more than 50 percent across their widths in emissions unit F003, in violation of the special terms and

conditions in PTI 14-4853 and ORC § 3704.05(C). This violation occurred from the date of the inspection and continued until PTI 14-05037 was issued on December 12, 2000, removing this operational restriction. HAMCO also discovered that the required dedicated water sprays for the cone and jaw crushers for emissions unit F002 were not installed. Further, although requested during the inspection, Respondent did not provide the daily records of the hours of operation and the amount of CO₂ used by emissions unit F003 as required by PTI 14-4853, in violation of ORC § 3704.05(C). Respondent indicated that the records were not available because the person responsible for maintaining the records was on vacation.

11. A Notice of Violation ("NOV") was mailed to Respondent by HAMCO on June 22, 2000, summarizing the violations discovered during HAMCO's May 16, 2000 inspection. Additionally, the NOV informed Respondent that it had failed to submit quarterly deviation (excursion) reports required by PTI 14-4853 and identified in Finding 10 above. The NOV requested Respondent to submit a written explanation and corrective action plan for the failure to comply with the required operating restrictions, and monitoring, record keeping and reporting requirements in the PTI. The NOV also solicited the required deviation reports and the total tons of tundish skulls lanced in emissions unit F003 from February 1, 2000 through June 30, 2000.

12. On July 26, 2000, Respondent's corporate-wide director of environmental health and safety, Mr. James J. Shewell, responded to the June 22, 2000 NOV stating in part, that to his knowledge the daily inspections were being performed and continued to be performed. Further, the response stated that Respondent read the PTI special terms and conditions as a requirement to submit the quarterly deviation reports only when there was a deviation. Respondent overlooked the language in the PTI's general terms and conditions that required the submittal of the quarterly deviation reports even if no deviations occurred. Respondent's failure to submit the required deviation (excursion) reports was a violation of the terms and conditions of PTI 14-4853 and of ORC § 3704.05(C). The violation occurred from the date the first deviation report was due (i.e., April 30, 2000) until Respondent started to comply with the reporting requirements on August 1, 2000 (submittal date of the required quarterly deviation reports). The response further stated when Mr. Shewell visited the plant on a June 5, 2000, all the dedicated water sprays were operational. However, the response did not state if the cone or jaw crushers of emissions unit F002 had been installed with dedicated water sprays. The response also confirmed that plant operators had been cutting some of the larger pieces of tundish skulls greater than 50 percent of their widths.

13. On August 1, 2000, Respondent submitted, in response to the June 22, 2000 NOV, the required quarterly deviation reports for the first two quarters of 2000 and the requested total tons of tundish skulls processed from February through June 2000.

14. On August 10, 2000, HAMCO sent a letter asking, in part, for clarification on the information Respondent submitted in regard to the June 22, 2000 NOV. Specifically, the letter

asked who performed the required daily inspections in absence of the person responsible for the inspections, if the required dedicated water sprays for the cone and jaw crushers had been installed, and if any deviations had occurred (i.e., that all required inspections had been performed). Additionally, the letter requested copies of the records of the hours emissions unit F003 operated and the amount of CO₂ used daily. This letter also answered some questions that Respondent had regarding the requirements stated in the PTI and informed Respondent of possible violations.

15. On September 6, 2000, Respondent replied to HAMCO's August 10, 2000 letter requesting clarification of information previously submitted. Respondent provided the name of the person who assumed the responsibilities for conducting the daily inspections when the person who normally conducts the inspections was absent. Respondent stated that the dedicated water sprays were installed on May 1, 2000, and that the requested records were being kept and would be mailed under separate cover. Failure to equip the cone and jaw crushers with dedicated water sprays, prior to operating (i.e., start-up) the emissions units, is a violation of the special terms and conditions of PTI 14-4853 and ORC § 3704.05(C). The violation occurred from start-up of emissions unit F002 (assumed to be January 28, 2000, which is the date that construction was completed as indicated in the CCC) and continued until the date the sprays were installed (May 1, 2000).

16. On September 8, 2000, HAMCO inspected Respondent's facility and discovered that Respondent was still cutting the tundish skulls more than 50 percent of their widths, in violation of the special terms and conditions of PTI 14-4853 and ORC § 3704.05(C). Again, HAMCO requested copies of the required records of the amount of CO₂ used and the hours that emissions unit F003 operated. HAMCO was told that the records for July and August had been misplaced. Further, HAMCO was informed that Respondent started cutting the tundish skulls on March 15, 2000, and Respondent started to keep the required records at the end of July.

17. On September 20, 2000, during a telephone conversation with Respondent, HAMCO again requested emissions unit F003's required daily records. HAMCO was informed that the misplaced records had not been found. HAMCO requested copies of September's daily records.

18. On September 20, 2000, Respondent faxed HAMCO the required daily records for emissions unit F003 for September. The records contained question marks in the column for the weight of material cut. Respondent violated the special terms and conditions specified in PTI 14-4853 by failing to keep the required records. This is also a violation of ORC § 3704.05(C). The violation occurred from March 15, 2000, the start-up of the emissions unit, to September 1, 2000, the date the records were kept.

19. On October 11, 2000, Respondent met with HAMCO and stated it could not find the required daily records for emissions unit F003 from March 15, 2000 through August 31, 2000. Respondent said that the kish pot dumping is done by AK Steel and the pot is

normally recharged by Respondent. During rainy days AK Steel recharges the pots inside a building. However, most of the recharging material is located at Respondent's facility and has to be transported to AK Steel for the rainy days.

20. On October 19, 2000, Respondent submitted a PTI application for the installation of a new Kish and Mill Scale Processing Plant (emissions unit F004) and to modify PTI 14-4853 by deleting the operational limitation that prohibited the cutting of tundish skulls greater than 50 percent across their widths.

21. On December 12, 2000, PTI 14-05037 was issued for the installation of emissions unit F004 and deletion of the operation limitation mentioned in Finding 20. The modified permit limited the VEs from emissions unit F004 to not more than ten percent opacity, averaged over a six-minute period.

22. On October 3, 2001, HAMCO received a citizen's complaint regarding fugitive dust emissions from Respondent's facility.

23. On October 3, 2001, as a result of the citizen's complaint, HAMCO inspected Respondent's facility. During the inspection, HAMCO determined the VEs from the Kish and Mill scale processing plant and roadways and parking area, i.e., emissions units F004 and F010, respectively. Using Reference Method 9, it was determined that emissions unit F004 exceeded the ten percent opacity, averaged over a six-minute period, limitation specified in PTI 14-05037 for one time in a fifteen minute block of observation. Exceeding the VE limitation is a violation of the special terms and conditions of PTI 14-05037 and ORC § 3704.05(C). Likewise, it was determined, using Reference Method 22, that the roadway and parking areas had more than thirteen minutes of VEs in a sixty-minute observation period, in violation of OAC Rule 3745-17-07(B) and ORC § 3704.05(A) and (G).

24. On October 24, 2001, a NOV was mailed to Respondent summarizing the VE violations discovered during HAMCO's October 3, 2001 inspection. The NOV also required Respondent to submit, by November 9, 2001, a plan to bring the facility into compliance with all applicable requirements.

25. On November 28, 2001, HAMCO telephoned Respondent to inquire about the status of the compliance plan required by the October 24, 2001 NOV. Respondent informed HAMCO that the response "slipped through the cracks" and the response would be submitted as soon as possible. HAMCO requested the compliance plan to be submitted by December 7, 2001.

26. On December 12, 2001, Respondent electronically mailed a response to the November 28, 2001 NOV. Respondent stated that it was under the impression that the requirement to submit the compliance plan had been satisfied through verbal and written communication between Respondent and HAMCO. Respondent stated that on the day the VE violations occurred, it had tried to maintain VE control through the mandated control

measures and that wind conditions at the facility site were variable and gusting to 40 miles per hour. Respondent also stated it had developed a contingency plan for infrequent weather conditions. The plan called for having a backup water truck available on exceptionally windy days to service the maintenance building/office complex area, thus allowing the primary water truck to make more frequent applications to the plant roads and storage piles. HAMCO accepted Respondent's compliance plan.

27. 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 the 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 forty thousand dollars (\$40,000) in settlement of Ohio EPA's claim for civil penalties. Of this amount, Respondent shall pay to Ohio EPA the amount of thirty-two thousand dollars (\$32,000) in accordance with the payment schedule in Order 3. Payments shall be made by official checks made payable to "Treasurer, State of Ohio." The official checks 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.

Copies of the official checks shall be submitted to James A. Orlemann, Manager, Engineering Section, or his successor, Division of Air Pollution Control, Ohio EPA, P.O. Box 1049, Columbus, Ohio 43216-1049.

In lieu of payment to Ohio EPA of the remaining eight thousand dollars (\$8,000) of the total penalty amount, Respondent shall perform the supplemental environmentally beneficial project identified in Order 2 .

2. Respondent shall perform the supplemental environmentally beneficial project consisting of funding urban area tree-planting projects in Ohio. Specifically, within thirty (30) days after the effective date of these Orders, Respondent shall deliver an official check in the amount of eight thousand dollars (\$8,000) made payable to the Ohio Department of Natural Resources, Division of Forestry, State Forest Fund for this purpose. This check shall specify that such monies are to be deposited into Fund No. 509. The check shall be sent to John Dorka, Deputy Chief, or his successor, at the following address:

Division of Forestry
Ohio Department of Natural Resources
1855 Fountain Square Court, H-1
Columbus, Ohio 43224-1327

A copy of the check shall be sent to James A. Orlemann, Manager, Engineering Section, or his successor, at the above-stated address.

3. Respondent shall comply with the following payment schedule for the civil penalty identified in Order 1, which is payable to Ohio EPA:

| <u>Payment Deadline</u> | <u>Amount Due</u> |
|--|-------------------|
| within 60 days after the effective date of these Orders | \$8,000 |
| within 90 days after the effective date of these Orders | \$8,000 |
| within 120 days after the effective date of these Orders | \$8,000 |
| within 150 days after the effective date of these Orders | \$8,000 |

VI. TERMINATION

Respondent's obligations under these Orders shall terminate upon Ohio EPA's and the Ohio Department of Natural Resources' receipt of the official checks 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 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 the 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 provided in these Orders, all documents required to be submitted by Respondent pursuant to these Orders shall be addressed to:

Hamilton County, Department of Environmental Services
Air Quality Programs
250 William Howard Taft Road
Cincinnati, Ohio 45219-2660
Attention: Harry Schwietering

and to:

Ohio Environmental Protection Agency
Lazarus Government Center
Division of Air Pollution Control
122 South Front Street, P.O. Box 1049
Columbus, Ohio 43216-1049
Attention: Thomas Kalman

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 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

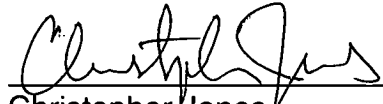
The effective date of these Orders is the date these Orders are entered into the Ohio EPA Director's journal.

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

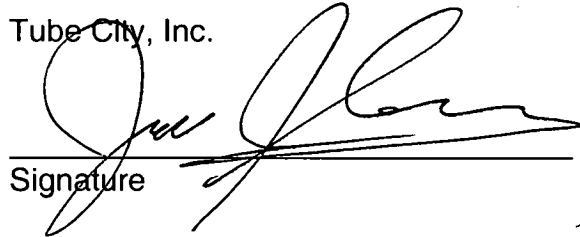


Christopher Jones
Director

5-13-03
Date

IT IS SO AGREED:

Tube City, Inc.



Signature

MAY 7, 2003
Date

JAMES J. SHEWELL
Printed or Typed Name

VP - TECHNICAL SERVICES
Title