

BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

Russell Products Company, Inc.	:	<u>Director's Final Findings</u>
1745 Middletown Road	:	<u>and Orders</u>
Hudson, Ohio 44236	:	

PREAMBLE

It is agreed by the parties hereto as follows:

I. JURISDICTION

These Director's Final Findings and Orders ("Orders") are issued to Russell Products Company, 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 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 four spray booths, which are identified by Ohio EPA as "sources R001 (formerly known as K004), R002, R003 and R004," at its FCS Division that is located at 275 N. Forge Street, Akron, Summit County, Ohio. Sources K004, R002, R003 and R004 were installed in February 1998, October 2000, October 2000, and July 2001, respectively, and began to operate in September 1998, December 2000, December 2000, and August 2001, respectively. Source K004 was modified and renamed as source R001 in October 2000. Respondent was issued a permit to install ("PTI") by Ohio EPA on February 25, 1998 and a permit to operate ("PTO") on December 3, 1998 for source K004.

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2. Sources R001, R002, R003 and R004 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).

3. OAC Rule 3745-21-07(G)(2) prohibits any person from discharging more than 40 pounds of organic compound ("OC") emissions per day or 8 pounds of OC emissions per hour in an operation using liquid organic materials and containing any photochemically reactive material, as defined in OAC Rule 3745-21-01(C)(5). OAC Rule 3745-31-02 prohibits any person from installing an air contaminant source unless a PTI has been applied for and obtained, except as provided by rule or law. OAC Rule 3745-35-02 prohibits any person from operating an air contaminant source unless a PTO has been applied for and obtained, except as provided by rule or law.

4. ORC § 3704.05(A) prohibits any person from exceeding an applicable emission limitation established by the Director. 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. On October 10, 2000, Respondent submitted a PTI application to Akron Regional Air Quality Management District ("ARAQMD"), a contractual representative of Ohio EPA in Summit County, for source R001, which had been renamed and modified from source K004 due to a change in coating formulation, and for the addition of new sources R002 and R003. As a consequence, PTI #16-02082 was issued to Respondent by Ohio EPA on January 9, 2001. Also, on October 10, 2000, Respondent submitted to ARAQMD a PTO application for sources R001, R002 and R003.

6. On May 21, 2001, Respondent submitted a PTI modification application to ARAQMD for sources R002 and R003 due to some changes in coating formulations. As a result, PTI #16-02137 was issued by Ohio EPA to Respondent on June 12, 2001.

7. In June 2001, a representative of ARAQMD conducted an investigation at Respondent's facility and discovered that Respondent had failed to submit quarterly deviation reports for exceeding the daily OC emission limits as required in PTIs #16-02082 and #16-02137. By not timely submitting the quarterly deviation reports, Respondent was in violation of the Terms and Conditions of its PTIs and ORC § 3704.05(C).

8. On July 1, 2001, Respondent submitted a PTI application to ARAQMD for the installation of source R004. On July 12, 2001, PTI #16-02144 was issued to Respondent by Ohio EPA for source R004.

9. On July 31, 2001, Respondent submitted the quarterly deviation reports for the period from December 2000 through June 2001. Based on these reports, Respondent revealed that there had been approximately 147 days (see Attachment A of these Orders)

during which Respondent did not comply with the daily limit for OC emissions of 40 pounds for sources R002 and R003, in violation of OAC Rule 3745-21-07(G)(2), the Terms and Conditions of the above-mentioned PTIs and ORC § 3704.05(A), (C) and (G). Respondent explained these daily exceedances were due to two or more painters operating in the same booth. Further, Respondent indicated that the facility would be able to comply with the daily limit for OC emissions by limiting operation to only one painter per booth.

10. On August 2, 2001, Respondent submitted another PTI modification application to ARAQMD for sources R002, R003 and R004 due to changes in coating formulations. This PTI modification application was for a second modification for sources R002 and R003 and the first modification for source R004. As a result, PTI #16-02155 was issued by Ohio EPA to Respondent on December 6, 2001.

11. On September 9, 2001, a representative of ARAQMD conducted an inspection of the facility for the purpose of reviewing the required record keeping related to the subject emissions units. During this inspection, ARAQMD was able to confirm the daily OC exceedances that were outlined in Respondent's July 31, 2001 quarterly deviation reports.

12. On September 19, 2001, ARAQMD issued a notice of violation ("NOV") to Respondent. In this NOV, ARAQMD cited Respondent for its failure to comply with the daily limit for OC emissions based on its quarterly deviation reports. ARAQMD also requested Respondent to submit in writing the exact beginning installation and operation dates for sources R001, R002 and R003 by no later than fourteen days from its receipt of the NOV.

13. On September 21, 2001, Respondent provided ARAQMD in writing the beginning installation and operation dates for sources R001, R002 and R003.

14. Based on the information provided by Respondent, Respondent installed sources R002 and R003 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 modified source R001 from an existing source K004 in December 2000 without first applying for and obtaining a PTI modification from Ohio EPA, in violation of OAC Rule 3745-31-02 and ORC § 3704.05(G).

15. From December 2000 through January 9, 2001 and from December 5, 2002 to present, Respondent has operated and is continuing to operate source R002 and R003 without obtaining a PTO from Ohio EPA, in violation of OAC Rule 3745-35-02 and ORC § 3704.05(G). Also, from December 5, 2002 to present, Respondent has been operating source R004 without obtaining a PTO from Ohio EPA, in violation of OAC Rule 3745-35-02 and ORC § 3704.05(G).

16. On January 7, 2003, a representative of ARAQMD informed Ohio EPA that ARAQMD would request Respondent to submit a revised PTO modification application for sources R002 and R003, and a PTO application for source R004.

17. On June 24, 2003, a representative of ARAQMD informed Ohio EPA that Respondent submitted a revised PTO modification application for sources R002 and R003 and a PTO application for source R004 on February 5, 2003.

18. 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. Pursuant to ORC § 3704.06, Respondent is assessed a civil penalty in the amount of twenty-eight thousand three hundred and seventy dollars (\$28,370) in settlement of Ohio EPA's claim for civil penalties. Within fourteen (14) days after the effective date of these Orders, Respondent shall pay to Ohio EPA the amount of twenty-three thousand three hundred and seventy dollars (\$23,370) of the total penalty amount. Payment shall be made by official check made payable to "Treasurer, State of Ohio." The official check shall be submitted to Brenda Case or successor at Ohio EPA, Office of Fiscal Administration, P.O. Box 1049, Columbus, Ohio 43216-1049, together with a letter identifying Respondent and the facility.

A copy of the official check 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 five thousand dollars (\$5,000) 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 \$5,000 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 submitted to Brenda Case or successor at Ohio EPA, Office of Fiscal Administration at the above-stated address. A copy of the official check shall be submitted to James A. Orlemann, 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 after 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 \$5,000, 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 \$5,000 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's facility.

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:

Akron Regional Air Quality Management District
146 S. High Street, Suite 904
Akron, Ohio 44308
Attn: Frank Markunas

and to:

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

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

Christopher Jones
Christopher Jones
Director

7-21-03
Date

IT IS SO AGREED:

Russell Products Company, Inc.

Robert E Evans
Signature

7-15-03
Date

Robert E Evans
Printed or Typed Name

President
Title

