

BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

Shearer's Foods, Inc. : Director's Final Findings
692 Wabash Avenue North : and Orders
Brewster, Ohio 44613 :

OHIO E.P.A.
DEC 20 2002
ENTERED DIRECTOR'S JOURNAL

PREAMBLE

It is agreed by the parties hereto as follows:

I. JURISDICTION

These Director's Final Findings and Orders ("Orders") are issued to Shearer's Foods, 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 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 owns and operates a snack food preparation facility located at 692 Wabash Avenue North, Brewster, Stark County, Ohio. At this facility, Respondent employs three deep fat fryers for producing potato chips (emissions units P001, P002, and P003); a natural gas-fired heat exchanger for heating frying oil (emissions unit B001); a gasoline dispensing facility ("GDF") for distributing fuel to route trucks and other vehicles (emissions unit G001); and associated unpaved roadways and parking areas (emissions unit F001) [see attached Table I]. Respondent also employs an additional 13 frying units which emit less than 10 pounds of air contaminant per day and are exempt from permitting.

2. Emissions units P001, P002, P003, B001, G001, and F001 are "air contaminant sources," as defined in Ohio Administrative Code ("OAC") Rule 3745-15-01(C) and (W).

3. OAC Rule 3745-31-02 states, in part, that no person shall allow the installation of a new air contaminant source without first applying for and obtaining a permit to install ("PTI") from the Director of Ohio EPA, unless otherwise specified by rule or law.

4. OAC Rule 3745-31-05(A)(3) states, in part, that the Director of Ohio EPA shall issue a PTI on the basis of the information appearing in the application if he determines that the air contaminant source will employ the best available technology ("BAT"), as defined in OAC Rule 3745-31-01(M) to control emissions.

5. OAC Rule 3745-35-02 states, in part, that no person may allow the operation of an air contaminant source without first applying for and obtaining a permit to operate ("PTO") from the Director of Ohio EPA, unless otherwise specified by rule or law.

6. ORC § 3704.05(A) states, in part, that no person shall allow the emission of an air contaminant in violation of any rule adopted by the Director of Ohio EPA unless the person is the holder of a variance permitting the emission of the contaminant in excess of that permitted by the rule or the person is the holder of an operating permit that includes a compliance schedule.

7. 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.

8. 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.

9. The Canton City Health Department, Air Pollution Control Division ("Canton APCD"), is Ohio EPA's contractual representative in Stark County.

10. On April 1, 2002, Canton APCD inspected Respondent's facility. The inspectors discovered that the emissions units identified in Table I had been installed and operated without Respondent first applying for and obtaining either PTIs or PTOs, in violation of OAC Rules 3745-31-02 and 3745-35-02, respectively.

11. On April 4, 2002, Canton APCD sent a Notice of Violation ("NOV") to Respondent, citing it with violations of the rules identified in Finding #10 and requesting that Respondent submit PTI and PTO applications for all emissions units at Respondent's facility (except those exempted by rule from being required to have a permit) within 30 days of receipt of the NOV. On April 18, 2002, Respondent requested a 30-day extension in which to submit the applications. Canton APCD agreed to this in a letter dated April 22, 2002.

12. On May 30, 2002, Canton APCD received PTI and PTO applications from Respondent for the six emissions units identified in Table I. Canton APCD performed a preliminary review of the applications and identified a significant deficiency regarding the application for emissions unit G001. Specifically, Canton APCD found that Respondent had installed emissions unit G001 without Stage I vapor control and submerged fill, as required by the BAT requirement in OAC Rule 3745-31-05(A)(3), in violation of ORC § 3704.05(G).

13. On June 6, 2002, Canton APCD sent a letter to Respondent, requesting that Respondent submit a revised PTI application for emissions unit G001, with a construction schedule for the installation of Stage I vapor control and submerged fill, within 30 days.

14. A revised Emissions Activity Category form for emissions unit G001 was submitted to Canton APCD. The Stage I vapor control and submerged fill were installed on the gasoline storage tank on August 15, 2002.

15. Ohio EPA issued PTI 15-01506 for the six emissions units on July 30, 2002. Ohio EPA issued the initial PTOs for the facility on November 7, 2002.

16. 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 sources without first applying for and obtaining a PTI, in violation of OAC Rule 3745-31-02 and ORC § 3704.05(G). Specifically, Respondent installed the six emissions units identified in Table I without first applying for and obtaining PTIs.
- b. Operation of air contaminant sources without first applying for and obtaining a PTO, in violation of OAC Rule 3745-35-02 and ORC § 3704.05(G). Specifically, Respondent operated the six emissions units identified in Table I without first applying for and obtaining PTOs.
- c. Installed emissions unit G001 without Stage I vapor control and submerged fill, as required by BAT, in violation of ORC § 3704.05(G).

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 benefits to the people of the State to be derived from such compliance.

V. ORDERS

The Director hereby issues the following Orders:

1. Respondent shall maintain and operate the Stage I vapor control and submerged fill in accordance with PTI 15-01506.

2. Respondent shall pay the amount of thirty-eight thousand, three hundred, and sixty-eight dollars (\$38,368) in settlement of Ohio EPA's claim for civil penalties, which may be assessed pursuant to ORC Chapter 3704. Within fourteen (14) days after the effective date of these Orders, Respondent shall pay to Ohio EPA the amount of thirty thousand, six hundred, and ninety-four dollars (\$30,694) of the total amount. Payment shall be made by an official check made payable to "Treasurer, State of Ohio" and shall be submitted, with a letter identifying the Respondent and emissions units B001, F001, G001, P001, P002, and P003, to:

Ohio EPA, Office of Fiscal Administration
P.O. Box 1049
Columbus, Ohio 43216-1049

The remaining seven thousand, six hundred, and seventy-four dollars (\$7,674) shall be paid to fund a supplemental environmentally beneficial project. Specifically, within thirty (30) days after the effective date of these Orders, Respondent shall deliver an official check in this amount and made payable to the Ohio Department of Natural Resources, Division of Forestry, State Forest Fund for the purpose of funding urban area tree-planting projects within the Village limits of Brewster, Ohio, or within the nearest municipality near Brewster that has an approved urban area tree-planting grant from the Ohio Department of Natural Resources. 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 both checks shall be sent to James A. Orlemann, Manager, Engineering Section, or his successor, at the following address:

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

VI. TERMINATION

Respondent's obligations under these orders shall terminate upon Ohio EPA's and 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's operation of its facility, as specified in these Orders.

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 :

Canton City Health Department
Air Pollution Control Division
420 Market Avenue North
Canton, Ohio 44702-1544
Attention: Daniel J. Schiltz, APC Engineer Technician I

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, Supervisor, Engineering Section

XI. RESERVATION OF RIGHTS

Ohio EPA and Respondent each reserve all rights, privileges, and cause 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 an appeal. In such event, Respondent shall continue to comply with these Orders 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

12-19-07
Date

IT IS AGREED:

Shearer's Foods, Inc.

Robert Shearer
By

12-17-07
Date

ROBERT J. SHEARER
Printed or Typed Name

PRESIDENT
Title

TABLE I

SUMMARY OF FACILITY EMISSIONS UNITS

**SHEARER'S FOODS, INC.
 692 WABASH AVENUE N., BREWSTER, OHIO**

Emissions Unit	Date Installed	Emissions Unit Name	Average Operating Schedule	Days Operated Without Permit ¹
B001	12/98	12.5 mmBTU natural gas-fired heat exchanger	5,000 hours/year (250 days/year)	916 days
F001	1988	Unpaved roadways and parking areas	250/365 days/year	3,924 days ²
G001	07/97	Gasoline Dispensing Facility	250 days/year	1,270 days
P001	12/98	Continuous Fryer PC 2100	5,000 hours/year (250 days/year)	916 days
P002	06/88	PC #6 Chip Fryer	4,000 hours/year (250 days/year)	3,544 days
P003	06/88	Continuous Fryer #7	4,000 hours/year (250 days/year)	3,544 days

1. Total number of days Respondent operated emissions unit, from initial start-up to May 30, 2002 (date of PTO application submittal), to July 30, 2002 (date of PTI issuance). Installation dates and operating schedules provided by Respondent.

2. For the purpose of calculating the number of days emissions unit F001 operated without a permit, a conservative initial operating date of 12/31/88 was assumed. It was also assumed that the roadways and parking areas were only used 250 days per year until plant expansion occurred in 1998. After that date, it was assumed that the areas were used continuously 365 days per year. For all other emissions units, it was assumed the initial operating date was at the first of the month.