

OHIO E.P.A.

MAY -8 2002

BEFORE THE

ENTERED DIRECTOR'S JOURNAL

OHIO ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

**The Mills Company
11500 River Street
Upper Sandusky, Ohio**

:
:
:

**Director's Final
Findings and Orders**

PREAMBLE

It is hereby agreed that:

I. JURISDICTION

These Director's Final Findings and Orders ("Orders") are issued to The Mills Company (Mills), pursuant to the authority vested in the Director of the Ohio Environmental Protection Agency (Ohio EPA) under Sections 3704.03 and 3745.01 of the Ohio Revised Code (ORC).

II. PARTIES BOUND

These Orders shall apply to and be binding upon Mills and its assigns and successors in interest.

III. DEFINITIONS

Unless otherwise stated, all terms used in these Orders shall have the same meaning as used in ORC Chapter 3704 and the regulations promulgated thereunder.

IV. FINDINGS OF FACT

The Director of Ohio EPA has determined the following findings of fact:

1. Mills is a company duly organized under the laws of the State of Ohio, which operates a bathroom partition manufacturing facility located in Upper Sandusky, Ohio (facility premise #03-88-01-0029).
2. At the Upper Sandusky facility, Mills operates a paint line bake oven identified by

Ohio EPA as "source P001," and a conveyor controlled paint spray booth identified by Ohio EPA as "source R001." Both sources are "air contaminant sources" as defined by Ohio Administrative Code ("OAC") rules 3745-35-01(B)(1) and 3745-15-01(C) and (W) and "new sources" as defined by OAC rule 3745-31-01(NN).

3. 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 the source, unless otherwise specified by rule or law. Mills operated sources P001 and R001 from July 5, 1973 until December 22, 1990 without obtaining PTOs, in violation of OAC rule 3745-35-02 and ORC section 3704.05(G).

4. Renewal applications for the PTOs issued to sources P001 and R001, that had expired on December 14, 1993, were not received until December 1994, and were revised in December 1995, requesting Federally Enforceable State Operating Permits (FESOPS) to avoid the Title V permitting program. Ohio EPA accepts the submission of this FESOP application as a timely and complete Title V application for which Mills is entitled to the application shield until Mills receives either a valid permit or denial of its FESOP application.

5. The PTOs issued to Mills in December 1995, expired in December 1998. A renewal application dated October 27, 2000 for sources P001 and R001 was received by Ohio EPA Northwest District Office (NWDO). Mills operated sources P001 and R001 from December 1998 until October 27, 2000, without timely applying for and renewing the PTOs, in violation of OAC rule 3745-35-02 and ORC section 3704.05 (G).

6. The PTOs previously issued to Mills required Mills to submit annual records of the following:

- a. a summary of the annual emissions from the coatings and cleanup materials employed;
- b. total hours of operation for the paint booth; and
- c. coating and cleanup material identification, gallons used, and solids/solvents compositions in percent by weight and percent by volume, on an as applied basis.

Mills failed to submit any of this documentation to Ohio EPA. Failure to submit this information is a violation of the terms and conditions of the PTOs and ORC Section 3704.05 (C).

7. In December 1994 and January 1995, Ohio EPA provided Mills with information that indicated that the company had the potential to emit ("PTE") greater than 100 tons per Year ("TPY") of volatile organic compounds ("VOC") and was a Title V source as defined in OAC rule 3745-77-01 (W). However, Mills and Ohio EPA jointly concluded that Mills could obtain a synthetic minor permit instead of going through the Title V permit process. At that time, neither Ohio EPA nor Mills had studied the facility's PTE for hazardous air

pollutants ("HAPs"). A letter from Mills dated January 17, 1995, requested a synthetic minor permit.

8. Mills was required to submit a FESOP application or a Title V permit application by September 30, 1996, and in accordance with OAC rule 3745-78-02, by April 15 of each year (beginning April 15, 1995), Mills was required to submit electronically a fee emission report (FER) for the previous year's emissions. Mills' failure to submit the FERs is a violation of OAC rule 3745-78-02, respectively, and ORC 3704.05 (G).

9. On November 8, 1999, Ohio EPA Northwest District Office (NWDO) received notification from Foley and Lardner, attorneys for Mills, that Mills was in possible non-compliance with State and federal air permitting requirements. At that time, Mills, through Foley and Lardner, requested that a meeting be held between Mills and Ohio EPA.

10. By letter dated December 10, 1999, Mills submitted a voluntary audit disclosure to Ohio EPA relating to Title V applicability, and requested immunity pursuant to ORC section 3745.72. In addition to the audit disclosure, Mills submitted detailed PTE calculations and outlined modifications under consideration to restrict VOC emissions below the Title V major facility thresholds.

11. On March 22, 2000, Ohio EPA issued a notice of violation (NOV) to Mills regarding the violation included in the audit disclosure.

12. Ohio EPA alleges that, prior to July 2000, Mills had a HAPs PTE of more than 25 TPY of combined HAPs as defined by OAC rule 3745-77-01(W) and, therefore, was subject to the requirements of OAC Chapters 3745-77 (Title V permits) and 3745-78 (Title V FERs). A letter dated July 24, 2000 from Mills indicated that it had changed coatings to a low VOC paint, and was using a water-based cleanup operation instead of the previous toluene wipe operation. As a result of these changes, Mills had lowered its PTEs below the Title V thresholds for both VOCs and HAPs.

13. On July 31, 2000, Mills submitted to NWDO, complete PTI applications to modify the emissions limits for R001 and P001. Review of the applications by NWDO concluded that Mills was not required to obtain a PTI, and the application was withdrawn.

14. On October 27, 2000, Mills submitted to NWDO a complete PTO application for sources R001 and P001. NWDO has yet to act on this application.

14. 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. Within 30 days from the effective date of these Orders, Mills shall submit its Title V FERs for 1994, 1995, 1996, 1997, 1998, and 1999.

3. Pursuant to R.C. 3704.06, Mills is assessed a civil penalty in the amount of thirty one thousand five hundred dollars (\$31,500) in settlement of Ohio EPA's claim for civil penalties. Within fourteen (14) days after the effective date of these Orders, Mills shall pay to Ohio EPA the amount of twenty five thousand two hundred dollars (\$25,200) of the total penalty amount. Payment shall be made by certified check made payable to "Treasurer, State of Ohio" and sent to Vicki Galilei, Fiscal Specialist, or her successor, at the following address:

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

A copy of the check shall be sent to Jim Orlemann at the following address:

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

The remaining six thousand three hundred dollars (\$6,300) shall be paid to fund a supplemental environmentally beneficial project. Specifically, within thirty (30) days after the effective date of these Orders, Mills shall deliver a certified 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 tree-planting projects in Ohio. 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

VI. 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 Mills' Cleveland facility.

VII. 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 Rd.
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

VIII. RESERVATION OF RIGHTS

Nothing contained herein prevents Ohio EPA from seeking legal or equitable relief to enforce the terms of these Orders or from taking other administrative, legal, or equitable action as deemed appropriate and necessary, including seeking penalties against Mills for noncompliance with these Orders. Nothing contained herein prevents Ohio EPA from exercising its lawful authority to require Mills to perform additional activities at the facility pursuant to ORC Chapter 3704 or any other applicable law in the future. Nothing herein restricts the right of Mills to raise any administrative, legal or equitable claim or defense with respect to such further actions that Ohio EPA may seek to require of Mills.

IX. SIGNATORIES

Each undersigned representative of a party to these Orders certifies that she or he is fully authorized to enter into these Orders and to legally bind such party to this document.

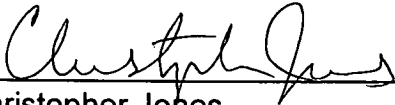
X. WAIVER

In order to resolve disputed claims, without admission of fact, violation or liability, Mills agrees to comply with these Orders. Compliance with these Orders shall be a full accord and satisfaction for Mills' civil liability for the specific violations cited herein. Mills hereby waives the right to appeal the issuance, terms and service of these Orders and it hereby waives any and all rights it might have to seek administrative or judicial review of these Orders either in law or equity.

Notwithstanding the preceding, Ohio EPA and Mills agree that if these Orders are appealed by any other party to the Environmental Review Appeals Commission, or any court, Mills retains the right to intervene and participate in such an appeal. In such event, Mills shall continue to comply with these Orders unless these Orders are stayed, vacated, or modified.

IT IS ORDERED AND AGREED:

Ohio Environmental Protection Agency



Christopher Jones
Director

5-1-02

Date

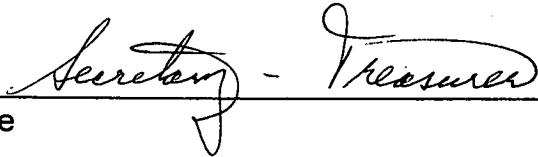
IT IS AGREED:



Mills Company

4/8/02

Date



Title