

BEFORE THE  
OHIO ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

United Musical Instruments, U.S.A., Inc. :  
34199 Curtis Blvd. :  
Eastlake, Ohio 44705 :

Director's Final Findings  
and Orders

ENTERED DIRECTOR'S JOURNAL

JUL - 9 2002

OHIO E.P.A.

**PREAMBLE**

It is hereby agreed that:

**I. JURISDICTION**

These Director's Final Findings and Orders ("Orders") are issued to United Musical Instruments, U.S.A., Inc. pursuant to the authority vested in the Director of the Ohio Environmental Protection Agency ("Ohio EPA") under Ohio Revised Code ("ORC") sections 3745.01 and 3751.09.

**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 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 used in ORC Chapter 3751 and the regulations promulgated thereunder.

**IV. FINDINGS OF FACT**

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

1. United Musical Instruments, U.S.A., Inc., hereafter "United Musical Instruments", manufactures brass musical instruments, producing in excess of 1,100 instruments in a typical week at its facility in Eastlake, Ohio.
2. Pursuant to Ohio Administrative Code ("OAC") rules 3745-100-06 and 3745-100-07, the owner or operator of a facility that is classified within Standard Industrial Classification (hereinafter "SIC") code numbers listed in OAC rule 3745-100-05, has 10 or more full time employees, and uses a toxic chemical listed in OAC rule 3745-100-10 in excess of 10,000 pounds in a calendar year or manufactures or processes a toxic chemical in excess of 25,000 pounds in a calendar year, must file a TRI report with the Ohio EPA and U.S. EPA on or before July 1 of the following year.

3. United Musical Instruments is classified within SIC Code range 20 through 39, specifically code 3499, fabricated metal products, not elsewhere classified.
4. United Musical Instruments employed 305 people in 1998, 294 people in 1999 and 312 people in 2000 at the Eastlake facility.
5. Copper, Chemical Abstracts Services (CAS) number 7440-50-8, is listed in OAC rule 3745-100-10.
6. United Musical Instruments processed 329,007 pounds of copper in 1998, 332,538 pounds of copper in 1999 and 357,616 pounds of copper in 2000. (The facility reported trichloroethylene use through 1998.)
7. On February 27, 2002, Ohio EPA personnel conducted an inspection, subsequent to a January 10, 2002 notification.
8. United Musical Instruments failed to submit 1998, 1999 and 2000 TRI reports to Ohio EPA for copper, on or before July 1, for each of the subsequent years, as required by OAC rule 3745-100-07. United Musical Instruments also failed to pay the filing fees as required by OAC 3745-100-12, in violation of the rule and ORC Section 3751.07. United Musical Instruments endorsed contractor provided summary information on April 3, 2002, demonstrating that copper was processed in excess of the 25,000 pound reporting threshold. The company submitted 1998, 1999 and 2000 TRI reports for copper on May 31, 2002 (received June 3, 2002).
9. 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. By no later than 21 days following the effective date of these orders, United Musical Instruments shall submit a fee calculation worksheet with appropriate fees, as required under OAC rule 3745-100-12.

2. Pursuant to R. C 3704.06, United Musical Instruments is assessed a civil penalty of fourteen thousand three hundred seventy-seven dollars (\$14,377) in settlement of Ohio EPA's claim for civil penalties. Within fourteen (14) days from the effective date of these Orders, United Musical Instruments shall pay to Ohio EPA the amount of eleven thousand five hundred two (\$11,502) of the total penalty amount. Payment shall be made by certified check made payable to "Treasurer, State of Ohio" and sent to the following address:

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

The remaining two thousand eight hundred seventy-five dollars (\$2,875) shall be paid to fund a supplemental environmentally beneficial project. Specifically, within thirty (30) days after the effective date of these Orders, United Musical Instruments 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

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. 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 United Musical Instruments.

## **VII. RESERVATION OF RIGHTS**

Nothing contained herein prevents the 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 United Musical Instruments for noncompliance with these Orders. Nothing contained herein prevents the Ohio EPA from exercising its lawful authority to require United Musical Instruments to perform additional activities pursuant to ORC Chapter 3751 or any other applicable law in the future. Nothing herein restricts the rights of United Musical Instruments to raise any administrative, legal or equitable claim or defense with respect to such further actions which the Ohio EPA may seek to require of United Musical Instruments.

## **VIII. MODIFICATIONS**

These Orders may be modified by mutual agreement of the Parties. Modifications shall be in writing and shall be effective on the date entered in the Journal of the Director of the Ohio EPA.

## **IX. TERMINATION AND SATISFACTION**

These Orders shall terminate when Ohio EPA and the Ohio Department of Natural Resources, Division of Forestry receive the payments specified in Section V of these Orders.

## **X. SIGNATORIES**

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 this document.

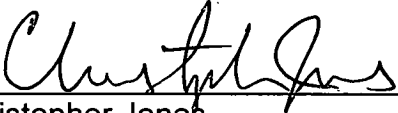
## **XI. WAIVER**

In order to resolve disputed claims, without admission of fact, violation or liability, United Musical Instruments agrees to comply with these Orders. Compliance with these Orders shall be full accord and satisfaction for United Musical Instruments' liability for the specific violations cited herein. United Musical Instruments hereby waives any and all rights it may have to seek administrative and/or judicial review of these orders either in law or equity.

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

**IT IS SO ORDERED AND AGREED :**

Ohio Environmental Protection Agency

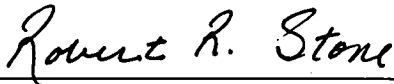


\_\_\_\_\_  
Christopher Jones  
Director

7-5-02  
Date

**IT IS AGREED :**

United Musical Instruments, U.S.A., Inc.



By

6-27-02  
Date

PLANT MANAGER

Title