

BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY

OHIO E.P.A.
JUN 13 2002
ENTERED DIRECTOR'S JOURNAL

In the Matter of:

American Rubber Products Company :
692 Alpha Drive :
Cleveland, Ohio 44143 :

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 American Rubber Products Company ("Respondent"), pursuant to the authority vested in the Director of the Ohio Environmental Protection Agency ("Ohio EPA") under R.C. 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 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 R.C. Chapter 3704 and the regulations promulgated thereunder.

IV. FINDINGS OF FACT

All of the findings of fact necessary for the issuance of these Orders pursuant to ORC 3704.03 and 3745.01 have been made and are outlined below. Nothing in the findings of fact shall be considered to be an admission by Respondent of any matter of law or fact.

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

1. Respondent, whose principal place of business is located at 692 Alpha Drive, Cleveland, Ohio, owned and operated the "Mespo Paint Shop," a facility as defined in Ohio Administrative Code ("OAC") Rule 3745-15-01(P), and located on Wilcox Road - East, Mesopotamia Township, Trumbull County, Ohio. At this facility, Respondent operated two paint lines, which were used for coating miscellaneous metal parts primarily used in the auto industry with coatings that allow rubber to be bonded to them (e.g., motor mounts). These coatings are "extreme performance coatings," as defined in OAC Rule 3745-21-01(D)(19). Each line consisted of a paint booth and oven.

2. OAC Rule 3745-31-02 ("Permits to install") states, in part, that no person shall cause, permit, or allow the installation of a new source of air pollutants, without first applying for and obtaining a Permit to Install ("PTI") from the Director of Ohio EPA. Furthermore, OAC Rule 3745-35-02 states, in part, that no person may cause, permit, or allow the operation or other use of any air contaminant source without applying for and obtaining a Permit to Operate ("PTO") from the Director in accordance with the requirements of this rule. The above are also a violation of R.C. 3704.05(G), which prohibits the violation of any rule adopted by the Director of Ohio EPA. OAC Rule 3745-21-09(U)(1) states, in part, that no owner or operator of a miscellaneous metal part or product coating line that employs extreme performance coatings may cause, allow or permit the discharge into the ambient air of any volatile organic compounds ("VOC") from such coating line in excess of 3.5 pounds of VOC per gallon of coating, excluding water and exempt solvents. Pursuant to OAC Rule 3745-21-09(B)(1), compliance with this limitation is based on a daily, volume-weighted average of the VOC contents of the coatings. Furthermore, OAC Rules 3745-21-09(B)(3)(f) through (B)(3)(i) require, in part, any owner or operator of a coating line subject to the VOC emission limitations of OAC Rule 3745-21-09(U) to collect and record certain coating information and to report deviations from the applicable VOC emission limitations.

3. On October 30, 2000, a representative of Ohio EPA, Northeast District Office ("NEDO") stopped by Respondent's facility on Wilcox Road - East after noticing a paint smell in the area. An inspection of the facility showed two paint lines, one of which was in use.

4. A letter dated November 6, 2000, was sent by certified mail by NEDO to Respondent as a follow-up to the inspection of October 30, 2000. The letter indicated that, during the inspection, the facility was operating one of two paint lines which was priming and coating metal parts that would eventually be rubber coated, and that 30 to 40 gallons of paint could be used per day. The letter stated that OAC Chapters 3745-31 and 3745-35 require owners and operators of all air contaminant or potential air contaminant sources

to apply for and obtain both a PTI and a PTO from Ohio EPA. Application forms (PTI, PTO) were enclosed along with an Emission Activity Category (EAC) form for Respondent to complete for the above paint lines. Respondent was requested to submit the applications/forms and information on coating usage within one month of receipt of the letter. A copy of OAC Rule 3745-21-09(U) was also attached to this letter. Respondent violated OAC Rule 3745-31-02 and R.C. 3704.05(G) when it installed the two paint lines prior to applying for and obtaining a PTI, and had been operating in violation of OAC Rule 3745-35-02 and R.C. 3704.05(G) since 1989, as Respondent had not applied for or obtained PTOs.

5. According to the Respondent, the two paint lines had been in operation for at least ten years (since late 1980's). Further, the facility used enough paint on an average daily basis to require permits and was operating both lines without a PTI or PTOs. The coatings used at Respondent's facility were higher in VOC content than OAC Rule 3745-21-09(U) allowed for the coating of miscellaneous metal parts. The facility did not have records showing past coating usages and from March 31, 1993, to the date of issuance of these Orders, Respondent had not submitted deviation reports, in violation of OAC Rule 3745-21-09(B)(3)(f) through (B)(3)(i) and R.C. 3704.05(G). Information obtained from the Respondent during the October 30, 2000 inspection indicated that VOC emissions for December 2000 were about 0.5 ton, daily VOC emissions were about 50 pounds, and annual VOC emissions were approximately seven tons. The VOC content of coatings used were in the range of 5.8 to 6.2 pounds of VOC per gallon (indicated on MSDS sheets at the facility during the October 30, 2000 inspection), excluding water and exempt solvents, compared to the 3.5 pounds of VOC per gallon, excluding water and exempt solvents, allowed pursuant to OAC rule 3745-21-09(U). Respondent violated OAC Rule 3745-21-09(U)(1) and R.C. 3704.05(A) and (G) as the coatings being used were in violation of the VOC content limit. According to information received from Respondent's facility personnel during the October 2000 inspection, the same coatings (noncompliant) had been used at the Mespo Paint Shop since the start of operations at that location.

6. Respondent's legal representative met with staff of Ohio EPA's NEDO on November 28, 2000, to discuss the letter of November 6, 2000. His belief was that Respondent's facility was operating with VOC emission levels that were "de minimis" and did not require permits pursuant to OAC Rule 3745-15-05. Ohio EPA agreed to have Respondent maintain detailed records of usage in the future and to contact NEDO in one month with December coating usages and emissions. The resulting VOC emissions were 0.5 ton as described in Finding 5 and therefore not at levels considered "de minimis."

7. Respondent came to NEDO on January 4, 2001, to discuss compliance coatings that could be used at the facility. Rather than purchasing new equipment to accommodate these coatings, Respondent was considering moving this painting operation

to Cuyahoga County, near the manufacturing operation that uses the painted products. As the compliance coatings would be more costly than the current coatings, the savings in transportation cost by eliminating the parts transfer from Trumbull County back to Cuyahoga County would be a cost offset.

8. NEDO submitted a follow-up letter, dated February 14, 2001, to the meeting of January 4, 2001, which initially summarized the current compliance issues of operating without a PTI or PTOs and use of non-compliance coatings. The letter further reviewed the option being considered by Respondent of closing the Mespo Paint Shop and starting to paint at the Cleveland location, with new equipment and low VOC coatings. This change would result in less than ten pounds per day of total emissions and qualify the source for "de minimis" status under OAC Rule 3745-15-05. NEDO informed Respondent that if it chose to keep the existing facility in Trumbull County open, Respondent was required to file PTI and PTO applications within 30 days of receipt of the February 14, 2001 letter. Furthermore, the letter stated that if Respondent planned to close the Mespo Paint Shop by June 1, 2001, there would be no need to apply for permits; Respondent would only need to send NEDO a letter, within 30 days, to that effect.

9: Respondent replied by letter dated March 12, 2001, to NEDO's letter of February 14, 2001, and indicated the following:

- a. It planned to eliminate the painting operation presently being performed at the Mespo Paint Shop using solvent-based adhesives (coatings) over the next 30 - 45 days, or at the very latest, 60 days.
- b. It was moving forward on the plan to relocate the painting operation to its Cuyahoga County facility using exclusively an aqueous-based coating with no VOC content (and therefore would have no measurable emissions requiring permits).

10. On July 3, 2001, NEDO conducted an inspection of the Mespo facility and found that the paint shop was still in operation. Respondent's representative indicated that a new paint line was being built in Cleveland as planned but was behind schedule. Respondent's representative also indicated that when the new paint line was completed, all business from the Mespo Paint Shop would be taken to Cleveland. At the December 6, 2001 settlement meeting between Ohio EPA and representatives of the Mespo Paint Shop facility, Ohio EPA was informed that the Mespo facility closed by August 1, 2001.

11. 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. Except as otherwise provided by rule or law, Respondent shall maintain compliance with OAC Rules 3745-31-02 and 3745-35-02, or OAC Rule 3745-15-05 for any air contaminant sources it owns or operates in the State of Ohio.

2. Pursuant to R.C. 3704.06, Respondent is assessed a civil penalty in the amount of twenty-two thousand three hundred and forty-seven dollars (\$22,347.00) in settlement of Ohio EPA's claim for civil penalties. Within thirty (30) days after the effective date of these Orders, Respondent shall pay to Ohio EPA the amount of seventeen thousand eight hundred and seventy-eight dollars (\$17,878.00) 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:

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

The remaining four thousand four hundred and sixty-nine dollars (\$4,469.00) 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 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 area 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 Respondent's facility.

VII. NOTICE

All documents required by these Orders, unless otherwise specified in writing, shall be submitted to:

Ohio EPA, NEDO, Air Unit
2110 East Aurora Road
Twinsburg, OH 44078-1107
Attention: Dennis Bush

and to:

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

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 Respondent for noncompliance with these Orders. Nothing contained herein prevents Ohio EPA from exercising its lawful authority to require Respondent to perform additional activities at the facility pursuant to R.C. Chapter 3704 or any other applicable law in the

future. Nothing herein restricts the right of Respondent to raise any administrative, legal or equitable claim or defense with respect to such further actions that Ohio EPA may seek to require of Respondent.

IX. 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.

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.

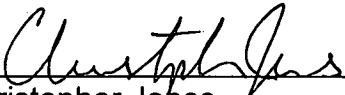
XI. WAIVER

In order to resolve disputed claims, without admission of fact, violation or liability, Respondent agrees to comply with these Orders. Compliance with these Orders shall be a full accord and satisfaction for Respondent's civil liability for the specific violations cited herein. Respondent 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 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 these Orders are stayed, vacated, or modified.

IT IS SO ORDERED AND AGREED:

Ohio Environmental Protection Agency





Christopher Jones
Director

6-12-02
Date

IT IS AGREED:

American Rubber Products Company


By _____

Title

6/6/02
Date