

**BEFORE THE**

OHIO E.P.A.

JAN 17 2001

**OHIO ENVIRONMENTAL PROTECTION AGENCY** DIRECTOR'S JOURNAL

**In the Matter of:**

<b>Ferriot Inc.</b>	:	<b><u>Director's Final Findings</u></b>
<b>2685 Mogadore Road</b>	:	<b><u>and Orders</u></b>
<b>Akron, Ohio 44312-0248</b>	:	

**PREAMBLE**

It is hereby agreed that:

**I. JURISDICTION**

These Director's Final Findings and Orders ("Orders") are issued to Ferriot Inc. ("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 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 R.C. Chapter 3704 and the regulations promulgated thereunder.

**IV. FINDINGS OF FACT**

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

1. Respondent owns and operates a manufacturing facility at 2685 Mogadore Road in Akron, Ohio, which involves the painting of plastic parts. Also, minor foundry operations are used for the manufacture of molds. Six Binks paint spray paint booths (identified by Ohio EPA as "R001 through R006") and two Protictaire paint spray booths (identified by Ohio EPA as "R008") are used for the painting. An automated booth, R007, was decommissioned (1986) and Respondent plans to install another manual booth, identified as R007, after the facility is moved to a new location.

2. R001 through R006 and R008 are each an "air contaminant source," as

defined by Ohio Administrative Code ("OAC") Rule 3745-35-01(B)(1). The facility constitutes a "major source" as defined by OAC Rule 3745-77-01(W). R001 through R006 and R008 emit "hazardous air pollutants" ("HAPs"), as defined by OAC Rule 3745-77-01(V).

3. Respondent was issued Permits to Operate ("PTOs") on July 15, 1997 by Ohio EPA for R001 through R006 pursuant to OAC Rule 3745-35-02. A Permit to Install ("PTI") (#16-180) was issued on April 27, 1982 by Ohio EPA to Respondent for R007 and withdrawn on September 13, 1990. A PTO was issued on December 3, 1998 by Ohio EPA to Respondent for R008.

4. Respondent indicated that the facility was operating six (6) spray booths (R001 through R006) until January of 2000 when a seventh booth (R008) was put back into service and operated. Respondent plans to move all 7 booths to a new facility location pursuant to a PTI.

5. OAC Rule 3745-77-02 provides, in part, that the owner or operator of a major source (i.e., any stationary source or group of stationary sources located within a contiguous area and under common control that emits or has the potential to emit ("PTE"), in the aggregate, ten tons per year ("TPY") or more of any individual HAP, twenty-five TPY or more of any combination of HAPs and/or one hundred TPY or more of any pollutant) shall not operate such source after the date that a timely and complete Title V permit application is required to be submitted, unless a complete Title V permit application has been submitted. Because the PTE for Respondent's facility was approximately 155 tons of organic compounds (OC) per year and 26 TPY of a single HAP, Respondent was required to submit a complete Title V permit application. Respondent failed to submit a Title V permit application from the time that one was required to be submitted (March 28, 1996, pursuant to OAC Rule 3745-77-04(B)(2)), to the present date of operation. Thus, Respondent has been in violation of OAC Rules 3745-77-02 and 3745-77-04 and R.C. 3704.05(K) from March 28, 1996 to present. A violation of any OAC rule also constitutes a violation of R.C. 3704.05(G).

6. Fee emission reports are required to be submitted on April 15 of each year by any owner or operator of sources subject to the Title V permit program, pursuant to OAC Rule 3745-78-02 ("Fee emission reports"). Respondent failed to timely submit Title V fee emission reports for 1995 through 1998, in violation of OAC Rule 3745-78-02 and R.C. 3704.05(G). The fee emission report for 1995 was received by Ohio EPA's Central Office on May 1, 2000. In addition, fee emission reports for 1993 and 1994 appear to have included organic compound ("OC") totals for coatings usage only and did not consider the OC content of the cleanup materials used during those two years. As of May 1, 2000, all fee emission reports have been submitted and invoiced.

7. By letter dated June 3, 1999, Respondent indicated that facility will be relocating (now tentatively in summer 2000) and plans to reconstruct the existing sources at the new location and completed PTI applications and supporting documents were attached for Ohio EPA's review. Respondent stated in this letter that its current facility "is a Title V facility, based on potential emissions of individual HAP's [primarily methyl ethyl ketone ("MEK") used for cleanup and spray gun/line purging] of over 10 tons per year and actual emissions of MEK in 1998 of 7.28 tons. Ferriot Inc. does not wish to be subject to the Title V program and is requesting and applying for a "synthetic minor" Permit to install, with federally enforceable limits on HAP emissions, for 7 spray booths at the facility relocation."

8. Per Ohio EPA Engineering Guide #61, Ohio EPA informed the regulated community that facility-wide actual emissions less than 20 percent of Title V threshold emission levels would not be considered as "major sources" and would not be required to obtain a Title V permit. Also, the guide indicated that facilities with facility-wide actual emissions less than 50 percent, but greater than or equal to 20 percent, of Title V thresholds emission levels, who obtained a final federally enforceable state operating permit ("FESOP") by January 25, 1997, did not need to obtain a Title V permit. Ohio EPA's two-year transition period policy allowed these qualifying facilities to delay obtaining a FESOP for up to three and one half years (i.e., until July 31, 1998) and operate as a non-Title V facility. Based on facility information, actual emissions of MEK, an individual HAP, have consistently been over 50 percent of the Title V threshold of 10 TPY for an individual HAP. Therefore, it appears that the Respondent has been operating as a "major source" subject to the Title V permitting requirements and was never eligible for a FESOP or for the two-year transition status. Respondent's letter dated March 14, 1996 to Ohio EPA indicated that based on Guide #61, its facility was not subject to the requirements of Title V permitting, as actual OC emissions for 1995 were 13.6 tons. In the letter, Respondent failed to report emissions of HAPs, which as described above would trigger the requirements for a Title V permit.

9. On June 14, 1999, the Akron Regional Air Quality Management District issued a notice of violation ("NOV") to Respondent. The NOV informed Respondent of the Title V permit requirement as well as the late fee emission reports. The NOV requested that Respondent submit a plan and schedule for the submission of delinquent fee reports. Since Respondent has requested and applied in a timely manner for a PTI with federally enforceable restrictions on emissions of OC, individual HAP's, and combined HAP's for an anticipated facility relocation in the summer of 2000, it was not necessary to apply for a Title V permit at the current facility location. Respondent did not respond to the letter as requested within 14 days of its receipt. As stated in Finding 7, as of May 1, 2000, all delinquent fee emission reports have been submitted and invoiced.

10. 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. Pursuant to R. C. 3704.06, Respondent is assessed a civil penalty in the amount of forty-five thousand dollars (\$45,000) 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 thirty-six thousand dollars (\$36,000) 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 nine thousand dollars (\$9,000) 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. 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.

## **VIII. 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.

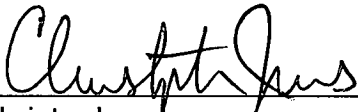
## **IX. WAIVER**

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:**

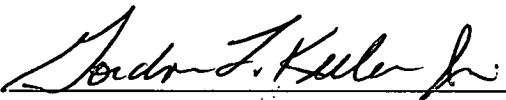
Ohio Environmental Protection Agency

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

1-12-01  
Date

**IT IS AGREED:**

Ferriot Inc.

  
\_\_\_\_\_  
By  
PRESIDENT / C.E.O.  
Title

1-3-01  
Date