

**BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY**

In the Matter of:

The Thermo-Rite Mfg. Company
1355 Evans Ave.
P.O. Box 1108
Akron, Ohio 44309

:
:
:
:

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 Thermo-Rite Mfg. Company ("Thermo-Rite") 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 Thermo-Rite, 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 the Ohio EPA has determined the following findings of fact:

1. Thermo-Rite is a fireplace enclosure manufacturing facility located at 1355 Evans Avenue, Akron, Summit County, Ohio. At this facility, Thermo-Rite owns and operates two solvent degreasers and a coating line identified by Ohio EPA as emission units L001, L002 and K001, respectively.

2. Thermo-Rite is a "major source" of air pollutants as defined in Ohio Administrative Code ("OAC") Rule 3745-77-01(W) based upon process information that indicates that the potential to emit any individual hazardous air pollutant exceeds the threshold level of 10 tons per year. The potential to emit trichloroethylene, a hazardous air pollutant, from this facility is approximately 134.3 tons per year.

OHIO E.P.A.
MAY 17 2001
ENTERED DIRECTOR'S JOURNAL

3. Since Thermo-Rite's facility is a major source, the facility is a "Title V source" as defined in OAC Rule 3745-77-01(LL) and is subject to OAC Rules 3745-77-02 and 3745-78-02.

4. OAC Rule 3745-77-02 prohibits the operation of a Title V source after the date that a complete and timely Title V permit application is required to be submitted under OAC Chapter 3745-77, unless such facility is in compliance with a Title V permit issued under this rule or a timely Title V permit application has been submitted for which the Director has not issued a final incompleteness determination. Thermo-Rite was required to submit a Title V permit application to Ohio EPA as required by OAC Rule 3745-77-02, by no later than September 30, 1996 as specified in OAC Rule 3745-77-04. R.C. 3704.05(G) prohibits any person from violating any rule adopted by the Director of Ohio EPA. Thermo-Rite failed to submit the required Title V permit application to Ohio EPA by the above required deadline, in violation of OAC Rules 3745-77-02 and 3745-77-04 and R.C. 3704.05(G) and (K).

5. OAC Rule 3745-78-02(A) requires owners or operators of sources that are subject to OAC Rule 3745-77-02 to submit a fee emission report that quantifies actual emissions for particulate matter, sulfur dioxide, organic compounds, nitrogen oxides, and lead. This required fee emission report is to be submitted by owners or operators of affected facilities by April 15, 1994 and each April 15 thereafter, indicating actual emissions for the previous calendar year. Thermo-Rite failed to submit the required fee emission reports for the calendar years 1993 through 1996 by the required deadlines and was late in submitting its 1997 report, in violation of OAC Rule 3745-78-02(A) and R.C. 3704.05(G).

6. During a brief meeting with Thermo-Rite in August, 1998, the Akron Regional Air Management District ("ARAQMD") recommended that Thermo-Rite apply for and obtain a Federally Enforceable State Operating Permit ("FESOP"), pursuant to OAC Rule 3745-35-07, instead of a Title V permit if it chose to restrict potential or actual emissions to less than the Title V threshold. Actual emissions of trichloroethylene from Thermo-Rite's facility were 5.9, 2.6, 3.3, 6.1 and 2.9 tons for calendar years 1993 through 1997, respectively. Consequently, on September 17, 1998, Thermo-Rite submitted a FESOP application because it planned to restrict the actual emissions of its facility to less than the Title V threshold of 10 tons per year for any hazardous air pollutant. However, Thermo-Rite was not eligible to be considered as a two-year transitional facility (i.e., facilities with actual emissions between 20 and 50 percent of the Title V Threshold level) and obtain additional time until December 31, 1999 to obtain a FESOP since actual emissions in 1996 were above 50 percent of the Title V threshold level. It should have submitted a Title V permit application by September 30, 1996 or obtained a FESOP by December 2, 1997 (the initial compliance deadline under the Maximum Achievable Control Technology requirements for solvent degreasers).

7. On October 2, 1998, ARAQMD notified Thermo-Rite by letter of the violations of OAC Rules 3745-77-02 and 3745-78-02 for its failure to timely submit the required Title V permit application and the fee emission reports for the calendar years 1993 through 1997, respectively. ARAQMD requested Thermo-Rite to submit either a potential to emit

analysis or other documentation showing non-major source status, or a plan and schedule for the submission of both delinquent fee emission reports and Title V permit application within fourteen (14) days of receipt of the letter.

8. On April 15, 1999, ARAQMD notified Thermo-Rite by letter that its facility was no longer eligible for a FESOP because the initial compliance deadline (December 2, 1997) under MACT requirements for solvent degreasers such as those of Thermo-Rite had passed. ARAQMD indicated to Thermo-Rite that it should proceed with obtaining a Title V permit for its facility.

9. On December 21, 1998 and April 15, 1999, Thermo-Rite submitted to ARAQMD the required fee emission reports for calendar years 1997 and 1998, respectively.

10. On November 27, 1998, Thermo-Rite, by certified mail, submitted a Title V application to Ohio EPA. Thereafter, Ohio EPA attempted to review Thermo-Rite's application but was unable to locate it.

11. On April 26, 1999, Thermo-Rite resubmitted its Title V application for Ohio EPA's review.

12. On November 12, 1998, Thermo-Rite, by certified mail, submitted to Ohio EPA the company's fee emission reports for the years 1993 through 1997. Fee emission reports for years 1998, 1999 and 2000 were subsequently submitted on time.

13. All fees associated with Thermo-Rite's fee emission reports, which have been invoiced by Ohio EPA, have been paid by Thermo-Rite.

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 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. Pursuant to R.C. 3704.06, Thermo-Rite is assessed a civil penalty in the amount of twenty-three thousand dollars (\$23,000) in settlement of Ohio EPA's claim for civil penalties. Thermo-Rite shall pay to Ohio EPA the amount of eighteen thousand and four hundred dollars (\$18,400) of the total penalty pursuant to the following schedule:

- six thousand and nine hundred dollars (\$6,900) due within fourteen (14) days after the effective date of these Orders; and

- eleven thousand and five hundred dollars (\$11,500) due within three hundred and sixty-five (365) days after the effective date of these Orders.

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 and six hundred dollars (\$4,600) shall be paid to fund a supplemental environmentally beneficial project. Specifically, within thirty (30) days after the effective date of these Orders, Thermo-Rite 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 the check 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 Thermo-Rite.

VII. NOTICE

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

Akron Regional Air Quality Management District
Attn: Frank J. Markunas or successor
146 South High Street
Akron, Ohio 44308

and to:

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

VIII. 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 Thermo-Rite for noncompliance with these Orders. Nothing contained herein prevents the Ohio EPA from exercising its lawful authority to require Thermo-Rite to perform additional activities pursuant to R.C. Chapter 3704 or any other applicable law in the future. Nothing herein restricts the right of Thermo-Rite to raise any administrative, legal, or equitable claim or defense with respect to such further actions that the Ohio EPA may seek to require of Thermo-Rite.

IX. 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.

X. WAIVER

In order to resolve disputed claims, without admission of fact, violation or liability, Thermo-Rite agrees to comply with these Orders. Compliance with these Orders shall be a full accord and satisfaction for Thermo-Rite's civil liability for the specific violations cited herein. Thermo-Rite 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, the Ohio EPA and Thermo-Rite agree that if these Orders are appealed by any other party to the Environmental Review Appeals Commission,

or any court, Thermo-Rite retains the right to intervene and participate in such an appeal. In such event, Thermo-Rite 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 5/17/01
Christopher Jones Date
Director

IT IS AGREED:

The Thermo-Rite Mfg. Company

Keith E. Kleva 5/3/01
By KEITH E. KLEVA Date

PRESIDENT
Title