

NOV 26 2001

BEFORE THE

OHIO ENVIRONMENTAL PROTECTION AGENCY

ENTERED DIRECTOR'S JOURNAL

In the Matter of:

The Toledo Hospital  
2142 North Cove Blvd.  
Toledo, Ohio 43606

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:  
:

Director's Final  
Findings and Orders

**PREAMBLE**

It is hereby agreed that:

**I. JURISDICTION**

These Director's Final Findings and Orders are issued to The Toledo Hospital ("Respondent"), pursuant to the authority vested in the Director of the Ohio Environmental Protection Agency ("Ohio EPA") under Ohio Revised Code ("RC") sections 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 liable under Ohio law. No change in ownership relating to N003 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 RC Chapter 3704 and the regulations promulgated thereunder.

**IV. FINDINGS OF FACT**

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

1. The Toledo Hospital ("Respondent") owned and operated a medical waste incinerator for disposal of infectious waste. Respondent's facility is located at 2141 North Cove Blvd., in Toledo and is identified by Ohio EPA as facility number 0448010037.

2. Respondent's medical waste incinerator is identified as emissions unit N003. Emissions unit N003 was an "air contaminant source" as defined by Ohio Administrative Code (OAC) rules 3745-35-01(B)(1) and 3745-15-01(W) and a "new source" as defined by OAC rule 3745-31-01(Y).

3. Emissions unit N003 was subject to OAC Chapter 3745-75 and the emission limitations delineated in permit to install ("PTI") #04-784 issued on January 27, 1993. Emissions unit N003 was equipped with air pollution control equipment which included a baghouse, limestone and carbon injection for the control of particulates, hydrochloric acid, sulfur dioxide and metal emissions. On November 9, 1995, a permit to operate ("PTO") emissions unit N003 was issued.

4. The permits referenced in Finding (3) also required Respondent to operate emissions unit N003 in such a manner to ensure compliance with OAC rule 3745-75-02, as well as the best available technology requirements established pursuant to OAC rule 3745-31-05. The emission limitations for emissions unit N003 are displayed, in part, below:

Emissions Unit N003 Emissions Limits

<u>Pollutant</u>	<u>Emissions Limit</u>
Hydrochloric acid	4.0 pounds per hour
Carbon monoxide	100 ppm

5. Respondent conducted performance testing on emissions unit N003 on May, 27, 1998. The test results failed to demonstrate that emissions unit N003 emitted hydrochloric acid ("HCl") and carbon monoxide ("CO") in compliance with the allowable emission rates.

6. On May 29, 1998, Respondent took the incinerator offline to determine why the emissions unit failed the test for CO and HCl. On June 8, 1998, adjustments were made to the incinerator and the associated air pollution control devices. On June 11, 1998, Respondent conducted another performance test on emissions unit N003 and demonstrated compliance with the emissions limitation for CO.

7. By letter dated July 28, 1998, the Toledo Environmental Services Division ("TESD") informed Respondent that they were operating emissions unit N003 in violation of OAC rule 3745-75-02(D) and its permit terms and conditions.

8. On August 4, 1998, Respondent conducted another performance test on emissions unit N003 for HCl. The test results indicated that Respondent again failed to demonstrate compliance with the HCl emissions limitation.

9. On August 7, 1998, Respondent took emissions unit N003 offline to perform necessary repairs.

10. On October 27, 1998, emissions unit N003 was brought back online after completion of the repair work and was retested for HCl. Emissions unit N003 was immediately taken back off-line after completion of the emissions tests to wait for the results.

11. On November 12, 1998, TESP received the test report, and the report indicated that emissions unit N003 was in compliance with the 4.0 pounds per hour allowable emissions rate.

12. On August 31, 1999, Respondent informed TESP that emissions unit N003 had been permanently shut down and that the last day of operation was June 20, 1999.

13. 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 RC 3704.06, Respondent agrees to pay a civil penalty in the amount of eighteen thousand five hundred dollars (\$18,500) in settlement of Ohio EPA's claim for civil penalties. Within twenty-one (21) days after the effective date of these Orders, Respondent shall pay in the amount of eighteen thousand five hundred dollars (18,500). Payment shall be made by 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  
Lazarus Government Center

P.O. Box 1049  
Columbus, Ohio 43216-1049

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  
Lazarus Government Center  
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 RC 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 she or he is fully authorized to enter into these Orders and to legally bind such party to this document.

#### **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 Ohio EPA.

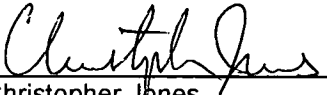
#### **X. WAIVER**

In order to resolve disputed claims, without admission of fact, violation or liability, Respondent agrees to comply with these Orders. Satisfaction of these Orders shall be a full accord and satisfaction for Respondent's alleged liability for the alleged 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 appeal. In such event, Respondent shall continue to comply with these Orders unless said Orders are stayed, vacated, or modified.

**IT IS ORDERED AND AGREED**

Ohio Environmental Protection Agency

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

11-20-01  
Date

**IT IS AGREED:**

The Toledo Hospital

  
\_\_\_\_\_  
By

10/31/01  
Date

  
\_\_\_\_\_  
Title

**BEFORE THE  
OHIO ENVIRONMENTAL PROTECTION AGENCY**

In the Matter of:

Republic Powdered Metals, Inc.  
2628 Pearl Road  
Medina, OH 44258-0724

RESPONDENT

Director's Final Findings  
and Orders

OHIO E.P.A.  
DEC 31 2001  
ENTERED DIRECTOR'S JOURNAL

**PREAMBLE**

It is hereby agreed that:

**I. JURISDICTION**

These Director's Final Findings and Orders ("Orders") are issued to Republic Powdered Metals, 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 located at 2628 Pearl Road, Medina, Ohio, which is identified by Ohio EPA as facility ID 1652050077. At this facility, Respondent operates three process lines, which are involved in the manufacturing of oil and latex-based paints and roof coatings. The oil-based paint process line employs three area mixing vats (identified by Ohio EPA as "P005, P006 and P007") along with two area filling apparatuses (identified by Ohio EPA as "P008 and P009"). The oil-based paint process line was previously identified by Ohio EPA as "P001." The roof coating process line employs eight area mixing vats (identified by Ohio EPA as "P010, P016 through P022," and previously identified by Ohio EPA as part of group "P003"). The latex-based paint process line employs four area mixing vats (identified by Ohio EPA as

Director's Final Findings and Orders  
Republic Powdered Metals, Inc.  
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"P012 through P015") along with one area filling apparatus (identified by Ohio EPA as "P011"). The latex-based paint process line was previously identified by Ohio EPA as "P002."

2. Emissions unit P010 emits "volatile organic compounds" ("VOC") and "particulate emissions" as defined in Ohio Administrative Code ("OAC") Rules 3745-21-01(B)(6) and 3745-17-01(B)(12), respectively. P010 is an "air contaminant source" as defined in OAC Rules 3745-31-01(D) and 3745-35-01(B)(1).

3. 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, 100 tons per year ("TPY") of any air pollutant, 10 TPY or more of any hazardous air pollutant ("HAP"), 25 TPY or more of any combination of HAPs) shall not operate such source after the date that a timely and complete Title V permit application is required to be submitted, unless a timely and complete Title V permit application has been submitted or such operation is in compliance with a Title V permit issued pursuant to this rule.

4. OAC Rule 3745-77-04(B) requires, in part, Title V sources located in Medina County to submit initial Title V permit applications no later than sixty days after the United States Environmental Protection Agency ("U.S. EPA") approves Ohio's Title V permit program (i.e., approved on October 1, 1995). An extension of ninety days, or until February 28, 1996, was automatically granted to permittees by Ohio EPA.

5. OAC Rule 3745-78-02 requires, by June 15, 1994 and April 15 of each year thereafter, the owners or operators of sources subject to the Title V permit program to submit fee emission reports and pay fees on the facility's actual emissions of certain air pollutants.

6. OAC Rule 3745-77-02(C)(4) states, in part, that synthetic minor sources are exempt from the requirements of the Title V rules. OAC Rule 3745-77-01(II) defines a "synthetic minor source" as a stationary source that would be classified as a major source in the absence of federally enforceable restrictions on the potential to emit of the source.

7. OAC Rule 3745-31-02 requires that a person not allow the installation or modification of an air contaminant source without first applying for and obtaining a permit to install ("PTI"), except otherwise provided by rule or law.

8. 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 any air contaminant source, except as otherwise provided by rule or law.

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9. R.C. 3704.05(G) prohibits any person from violating any order, rule or determination of the Director of Ohio EPA issued, adopted, or made under R.C. Chapter 3704.

10. R.C. 3745.05(J) prohibits, in part, any person from failing to pay fees assessed under R.C. 3745.11, such as Title V emission fees.

11. R.C. 3704.05 (K) states, in part, that on or after the three hundred sixty-sixth day following the USEPA's approval of Ohio's Title V program no person shall operate any source required to obtain a Title V permit unless a Title V permit has been issued authorizing the operation of the source or a complete and timely Title V permit application for the source has been submitted to the Director.

12. In a letter dated July 17, 1998, Respondent disclosed to Ohio EPA possible violations of multimedia environmental law, that were discovered during a voluntary audit, and requested immunity from civil and administrative penalties pursuant to R.C. 3745.72.

13. Ohio EPA informed Respondent, in a letter dated August 24, 1998, that it had jurisdiction over the violations disclosed in Respondent's July 17, 1998 letter.

14. On September 1, 1998, Respondent submitted proposed steps and a projected schedule for implementing the facility's permitting program, including submittal of a Title V permit application or Federally Enforceable State Operating Permit ("FESOP") application pursuant to OAC Rule 3745-35-07 within six weeks of ARAQMD's acceptance of a PTI application for emissions unit P003.

15. On September 25, 1998, ARAQMD met with Respondent concerning its permitting strategy and the possibility of obtaining FESOP.

16. On October 28, 1998, Respondent submitted draft summary documents of emission estimates, a list of permit applications, and detailed descriptions of proposed restrictions to limit PTE.

17. R.C. 3745.72(B)(5) states, in part, that a disclosure of information is voluntary with respect to an alleged violation of environmental laws only if it is not required by law. OAC Rule 3745-77-03(C)(9) required Respondent to include in its Title V permit application a description of the compliance status of each emissions unit with respect to all applicable requirements and a compliance plan for any emissions unit that is not in compliance. Because Title V required Respondent to disclose all air noncompliance, the disclosure of alleged air violations can not be considered voluntary and is not eligible for immunity under R.C. 3745.72. Ohio EPA informed Respondent of the denial in a letter dated February 2, 2001.

**Director's Final Findings and Orders  
Republic Powdered Metals, Inc.  
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18. On June 30, 1999, Respondent submitted a FESOP application to change its classification to a synthetic minor source and to request federal enforceable limitations to lower its facility's PTE to below the Title V major source levels as defined in OAC Rule 3745-77-01.

19. Based on PTE calculations, Respondent's air pollutant emission rates (over 100 tons of VOC per year, over 10 tons of xylene and over 25 tons of combined HAPs) exceed the Title V major source threshold rates; therefore, Respondent was required to submit a timely and complete Title V permit application. By failing to submit a timely and complete Title V permit application (or a FESOP application) Respondent operated the facility since February 28, 1996 without a Title V permit, in violation of OAC Rules 3745-77-02 and 3745-77-04 and R.C. 3704.05(G) and (K).

20. Respondent failed to submit emission fees for 1993 through 1999, in violation of OAC Rule 3745-78-02 and R.C. 3704.05(G) and (J).

21. In June of 1979, Respondent modified the air contaminant source identified as part of emissions unit P003, prior to obtaining a PTI, resulting in a violation of OAC Rule 3745-31-02 and R.C. 3704.05(G). The modification consisted of a change in the method of operation that resulted in an increase in allowable emissions. Respondent submitted a PTI application for this emission unit on November 13, 1999. PTI #16-1879 was issued to Respondent by Ohio EPA on February 18, 1999, which assigned a new identification number of P010.

22. Respondent operated the air contaminant source identified as emissions unit P010 without applying for and obtaining a PTO, in violation of OAC Rule 3745-35-02 and R.C. 3704.05(G). The violation occurred from the date emissions unit P010 commenced operation (i.e., after the modification in June 1979) to the date Respondent was required to submit a Title V application (February 28, 1996).

23. These findings are not to be construed as an admission of fact or liability by Respondent. It is Respondent's position that this facility does not require a Title V permit. Respondent is willing to comply with these Orders in order to settle the disputed permit status of this facility.

24. 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 the benefits to the people of the State to be derived from such compliance.

## **V. ORDERS**



Director's Final Findings and Orders  
Republic Powdered Metals, Inc.  
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The Director hereby issues the following Orders:

1. Respondent shall comply with the proposed terms and conditions of the FESOP application submitted by Respondent until a draft FESOP is issued.

2. Respondent shall comply with the terms and conditions of any draft FESOP until the final FESOP is issued, at which time Respondent shall comply with the final permit and modifications and renewals. Issuance of the FESOP will make such a facility not subject to the Title V requirements of OAC Chapter 3745-77 unless modifications at the facility or new requirements trigger Title V applicability.

3. Pursuant to R.C. 3704.06, Respondent is assessed a civil penalty in the amount of forty thousand dollars (\$40,000) 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-two thousand dollars (\$32,000) 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

In lieu of payment to Ohio EPA of the remaining eight thousand dollars (\$8,000) of the total penalty amount, the Respondent shall perform the supplemental environmentally beneficial project consisting of funding urban area tree-planting projects in Ohio. Specifically, within thirty (30) days after the effective date of these Orders, Respondent shall deliver a certified check made payable to the Ohio Department of Natural Resources, Division of Forestry, State Forest Fund for this purpose. 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 both checks shall be sent to James A. Orlemann, Manager, Engineering Section, or his successor, at the following address:

Division of Air Pollution Control

Director's Final Findings and Orders  
Republic Powdered Metals, Inc.  
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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 the Respondent's facility.

## **VII. NOTICE**

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

Akron Regional Air Quality Management District  
146 South High Street, Room 904  
Akron, Ohio 44308  
Attention: Frank Markunas

and to:

Ohio Environmental Protection Agency  
Division of Air Pollution Control  
P.O. Box 1049  
Columbus, OH 43216-0149  
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 its facility pursuant to R.C. Chapter 3704 or any other applicable law in the future. Nothing herein restricts the right of the 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.

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Republic Powdered Metals, Inc.  
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**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.

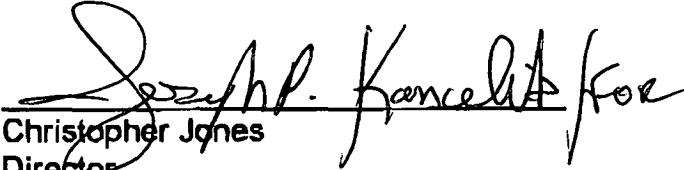
**X. WAIVER**

In order to resolve disputed claims, without admission of fact, violation or liability, Respondent agrees to comply with these Orders. Compliance with these Orders shall be a full accord and satisfaction and settlement 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 may 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 Orders are stayed, vacated, or modified.

**IT IS SO ORDERED AND AGREED:**

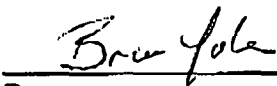
Ohio Environmental Protection Agency

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

12/31/01  
Date

**IT IS AGREED:**

Republic Powdered Metals, Inc.

  
\_\_\_\_\_  
By

11-27-01  
Date

DIRECTOR OF OPERATIONS  
\_\_\_\_\_  
Title