

**BEFORE THE**  
**OHIO ENVIRONMENTAL PROTECTION AGENCY**

In the Matter of:

The Ruscoe Company 485 Kenmore Boulevard Akron, Ohio 44301	: : :	<u>Director's Final Findings</u> <u>and Orders</u>
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OHIO E.P.A.  
DEC 28 2001  
REGISTERED DIRECTOR'S JOURNAL

**PREAMBLE**

It is hereby agreed that:

**I. JURISDICTION**

These Director's Final Findings and Orders ("Orders") are issued to The Ruscoe 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 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 facility, known as "Plant II," located at 219 East Miller Avenue in Akron, Ohio, which produces several adhesive, sealant and coating products. At this facility, Respondent employs a lamination process, a mixing booth, and a degreaser (identified by Ohio EPA as "K001, P012, and L002," respectively). Also, Respondent operates 17 mixers (identified by Ohio EPA as "P017 through P033") at the facility.

2. K001, P012, L002 and P017 through P033 are each an "air contaminant source," as defined by Ohio Administrative Code ("OAC") Rule 3745-15-01(C) and (W).

Permits to operate ("PTOs") were issued by Ohio EPA to Respondent for K001 and P012 on August 26, 1997 and October 7, 1997, respectively, pursuant to OAC rule 3745-35-02. Permit to install ("PTI") # 16-1850 was issued by Ohio EPA to Respondent for L002 on March 10, 1999. A PTO has not been issued for L002. L002 is also subject to the Maximum Achievable Control Technology ("MACT") requirements of 40 CFR, Part 63, Subpart T, but in a manner that does not trigger a Title V permit.

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, ten tons per year ("TPY") or more of any individual "hazardous air pollutant" ("HAP"), twenty-five TPY or more of any combination of HAPs, and/or one hundred TPY or more of any criteria 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 or pursuant to a Title V permit.

4. During a review of the Toxic Release Inventory reports for the years 1993 through 1997, the Akron Regional Air Quality Management District ("Akron RAQMD") observed that Respondent reported methyl ethyl ketone ("MEK") emissions in the range of 14 to 22 TPY. MEK is identified as a HAP. Since reported emissions were greater than the ten TPY cutoff for a single HAP, Akron RAQMD concluded that Respondent's facility was a "major source" subject to Title V permitting requirements.

5. Pursuant to OAC Rule 3745-78-02(A), any owner or operator subject to OAC Rule 3745-77-02 is required to submit an annual fee emission report that quantifies actual emissions for particulate matter, sulfur dioxide, organic compounds, nitrogen oxides, and lead. This fee emissions report was required to be submitted by owners or operators of affected facilities starting April 15, 1994, and each April 15 thereafter, indicating actual emissions for the previous calendar year.

6. Ohio EPA makes the following determinations: 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), and has continued to operate Plant II without a Title V permit or a complete and timely filed Title V permit application. 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).

7. On July 19, 1999, Akron RAQMD issued a letter to Respondent containing

a discussion and notification of the requirements of OAC Rules 3745-77-02 and 3745-78-02(A) and the estimated emissions of MEK. Akron RAQMD indicated that its records show that Respondent had not submitted a complete and timely Title V application, nor fee emission reports covering the last 6 months of 1993, and calendar years 1994 through 1998. Akron RAQMD requested a response from Respondent within 14 days of receipt with either a PTE analysis or other documents showing non-major source status, a plan and schedule for the submission of both delinquent fee emission reports and a Title V application. Respondent submitted a partial response to Akron RAQMD on July 21, 1999.

8. On May 23, 2000, the Director requested Respondent's submittal of various documents, support documentation, applications, and delinquent fee emission reports. Respondent's response indicated that its PTE was being quantified, and that stack testing for HAPs and volatile organic compound (VOC) emissions from the coating mixing area would be completed by August 2000. It appears that the stack testing and analysis of its results were completed sometime in late summer of 2000.

9. Information supplied by Respondent's contractor during a subsequent phone conversation with the Ohio EPA, Division of Air Pollution Control ("DAPC"), Engineering Section, indicated that the stack test results revealed that emissions from the coating mixing area would trigger Title V permitting requirements for MEK, a HAP.

10. On April 6, 2001 Ohio EPA's Legal Office requested that Respondent submit all the above requested information and updates to Akron RAQMD; and to submit a Title V permit application, if applicable, to Ohio EPA within 30 days. Fee emission reports reflecting Title V applicability were also requested to be submitted.

11. Respondent's contractor responded in behalf of Respondent on April 18, 2001. The response contained a summary of the work activities incorporated in quantifying the air emissions from all of Respondent's air emissions units and supported the MEK usage data contained in the Toxic Release Inventory reports (Finding 4) from 1993 through 1997. Since October 2000, Respondent and its contractor have been in the process of calculating the actual and potential emissions from each of Respondent's 22 sealant mixers.

12. Akron RAQMD indicated that L002 was installed to replace L001, a vapor degreaser, in the first quarter of 1997. The PTI application to cover this replacement was not submitted until September 18, 1998, and the PTI was not issued until March 10, 1999. OAC Rule 3745-31-02 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 PTI

from the Director of Ohio EPA. Respondent violated OAC Rule 3745-31-02 and R.C. 3704.05(G) by installing L002 before applying for and obtaining a PTI.

13. At various times beginning on and after 1997, Respondent installed ten (10) sealant mixers identified by Ohio EPA as P018 and P025 through P033 without obtaining a PTI prior to installation, in violation of OAC Rule 3745-31-02 and R.C. 3704.05(G). On October 19, 2001, Respondent submitted a PTI application (#16-02179) to Akron RAQMD for sources P018 and P025 through P033) at Plant II.

14. At various times beginning on and after 1972, Respondent operated sources P017 through P033 without obtaining a PTO, in violation of OAC Rule 3745-35-02 and R.C. 3704.05(G). On October 19, 2001, Respondent submitted FESOP applications to Akron RAQMD for sources P017 through P033, so that FESOPs could ultimately be issued to make the facility not subject to Title V permitting requirements.

15. 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. Respondent shall comply with the terms and conditions of draft PTI # 16-02179, until Ohio EPA issues final PTI # 16-02179 for sources P018 and P025 through P033, at which time Respondent shall comply with such final PTI, including any modifications.

2. Respondent shall comply with the terms and conditions of any draft FESOPs until final FESOPs are issued, at which time Respondent shall comply with such final permits and any modifications or renewals. Issuance of any FESOPs for sources P017 through P033 will make such facility not subject to the Title V permit requirements of OAC Chapter 3745-77 unless later modifications at the facility or new regulatory requirements trigger Title V applicability.

3. Pursuant to R.C. 3704.06, Respondent is assessed a civil penalty in the amount of sixty thousand dollars (\$60,000) 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 fifteen thousand dollars (\$15,000) of the total penalty amount. 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:

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

In lieu of payment to Ohio EPA of the remaining forty-five thousand dollars (\$45,000) of the total penalty amount, Respondent shall perform the supplemental environmentally beneficial projects identified in Orders 3, 4, and 6. Of the \$45,000, \$10,000 shall be used to fund the project in Order 3, \$12,000 shall be used to fund the project in Order 4, and \$23,000 shall be used to fund the project in Order 6. In the event Respondent defaults or otherwise fails to complete the project as specified in Order 3 and/or Order 6, the \$10,000 and/or \$23,000, respectively, shall immediately become due and payable to Ohio EPA. Such payment shall be made by certified check made payable to "Treasurer, State of Ohio" and sent to Vicki Galilei at the above-stated address. A copy of the check shall be sent to James A. Orlemann, or his successor, at the following address:

Ohio Environmental Protection Agency  
Division of Air Pollution Control  
P.O. Box 1049  
Columbus, Ohio 43216-1049

3. As outlined below, and with reference to the chapters described in Ohio EPA's 1993 "Ohio Pollution Prevention and Waste Minimization Planning Guidance Manual" (the Manual), Respondent shall conduct a pollution prevention study ("P2 Study") at the facility located at 219 East Miller Avenue, Akron, Ohio. The P2 Study is an assessment of selected facility processes to identify and evaluate specific source reduction and environmentally sound recycling opportunities.

- a. Within ninety (90) days after the effective date of these Orders, Respondent shall submit a detailed narrative report to Ohio EPA for review and approval containing the following:
  - i. a list of the members of a cross-functional team for the P2 Study, including the name of a designated team leader;
  - ii. an identification of the processes selected for study and the methods used to select the processes; and

- iii. a description of the processes being studied, including types and quantities of raw materials used, waste generated (i.e., air emissions, hazardous waste, solid waste, wastewater), and the intermediate or final products.

The above items shall be completed following the guidance provided in Chapters 8 and 9 of the Manual.

- b. Within one hundred eighty (180) days after the effective date of these Orders, Respondent shall submit a detailed narrative report to Ohio EPA for review and approval containing the following:
  - i. an analysis of the process-related factors contributing to waste generation;
  - ii. a description of the specific pollution prevention opportunities identified; and
  - iii. a discussion of the approach used in screening and prioritizing pollution prevention opportunities for future implementation.

The above items shall be completed following the guidance provided in Chapters 11 and 12 of the Manual.

- c. Within two hundred seventy (270) days after the effective date of these Orders, Respondent shall submit a detailed narrative final report to Ohio EPA for review and approval containing the following:
  - i. an evaluation of the cost considerations and feasibility analysis of the identified pollution prevention opportunities;
  - ii. a discussion of those projects that have been eliminated as well as those that have been implemented, planned for implementation, or under consideration for possible implementation; and
  - iii. a description of the other items bulleted in Table 7 of Chapter 15 of the Manual.

The above items shall be completed following the guidance provided in Chapters 13, 14 and 15 of the Manual.

- d. Within three hundred and thirty (330) days after the effective date of these Orders, Respondent shall submit an approvable detailed narrative final report to Ohio EPA, unless the report submitted to Ohio EPA pursuant to the above paragraph c is approved by Ohio EPA.

Ohio EPA shall provide Respondent with its comments and an indication of approval or disapproval of the reports submitted pursuant to this Order in a timely manner.

4. 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 check in the amount of twelve thousand dollars (\$12,000) 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 check shall be sent to James A. Orlemann, Manager, Engineering Section, or his successor, at the above-stated address.

5. Within thirty (30) days of the completion and approval by Ohio EPA of the project identified in Order 3, Respondent shall submit documentation to Ohio EPA of the total cost of the P2 Study. These costs may include internal resources allocated to this project, if documented. If the total cost of the P2 Study is less than \$10,000, Respondent shall submit, along with the final report identified in Order 3 and in the manner described in Order 2, a certified check to Ohio EPA for the difference in cost between \$10,000 and the total cost of the P2 Study.

6. By no later than April 1, 2002, Respondent shall implement a supplemental environmentally beneficial project ("SEP") that consists of purchasing, installing and operating a Polyurethane ("PUR") Hotmelt Filling machine at the Plant II facility located at 219 East Miller Avenue in Akron, Ohio. The PUR Hotmelt Filling Machine shall be used to package a non-VOC polyurethane-based sealant. This PUR sealant will replace a portion of the VOC-based sealants that Respondent currently packages. Respondent anticipates that commencing in calendar year 2002, a total of at least 6,500 gallons of the PUR sealant will be packaged using the new PUR Hotmelt Filling Machine and sold, which will conversely result in at least 6,500 gallons of VOC-based sealant not being employed

by the end user. Given that the average density of Respondent's VOC-based sealants is 8.25 pounds per gallon, and the average VOC content is 55.97%, it is anticipated there will be a total reduction of at least 15 tons of VOC in year 2002 and each calendar year thereafter due to the use of the PUR Hotmelt Filling Machine. It has been determined that virtually all of the VOC reduction will come from the application/settling of the new sealant product at the jobsite.

Beginning with calendar year 2002 and continuing each year thereafter, the SEP shall achieve a minimum VOC reduction per calendar year of 15 tons of VOC, when compared to the amount of VOC emissions from VOC-based sealants that would have been employed in its place and using their average densities and VOC contents.

7. In order to document compliance with the above VOC emission reduction in Order 6, Respondent shall collect and record the following information for the non-VOC polyurethane-based sealant packaging operation for each calendar year:

- a. the total volume, in gallons, of non-VOC-based sealant packaged using the PUR Hotmelt Filling Machine and sold by the facility;
- b. total volume, in gallons, of VOC-based sealant packaged and sold by the facility; and
- c. the VOC emission reduction that resulted from the packaging and selling of non-VOC-based sealants that replaced the packaging and selling of VOC-based sealants.

8. Respondent shall submit annual reports to Akron RAQMD that document the annual VOC emission reduction for the previous calendar year from the packaging and selling of non-VOC-based sealants pursuant to the record keeping in Order 7. Such reports shall be submitted by February 1.

9. Respondent shall submit a certification of implementation of the SEP in Order 6 to Akron RAQMD and Ohio EPA by no later than May 1, 2002.

10. By no later than May 1, 2002, Respondent shall provide documentation of the expenditure of at least twenty-three thousand dollars (\$23,000) for the SEP in Order 6 to Ohio EPA or, in the event that Respondent completes the SEP at an expenditure of less than \$23,000 by April 1, 2002, Respondent shall remit to Ohio EPA, in the same manner as described in Order 2, an amount equal to the difference between \$23,000 and the actual expenditure. Respondent shall provide documentation of the actual expenditure to Ohio EPA.



11. In the event Respondent does not meet a minimum reduction of 15 tons (i.e., at least 6,500 gallons packaged and sold) per year of VOC emissions as a result of packaging and selling the non-VOC sealants, in the manner described above for its new PUR Hotmelt Filling Machine, Respondent shall pay to Ohio EPA the full amount of the credit given to the SEP in Order 6, equal to \$23,000, by no later than January 31 of the succeeding year and in the manner described in Order 2. In addition, if Respondent does not purchase, install, and operate the PUR Hotmelt Filling Machine by April 1, 2002, Respondent shall pay to Ohio EPA the above credit of \$23,000 by May 1, 2002.

## **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:

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

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. 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 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

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

12/27/01  
\_\_\_\_\_  
Date

Director's Final Findings and Orders  
The Ruscoe Company  
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**IT IS AGREED:**

The Ruscoe Company

By Paul Michalec

Date 12/20/01

Title PRESIDENT