

OHIO ENVIRONMENTAL PROTECTION AGENCY THE OHIO DIRECTOR'S JOURNAL

In the Matter of:

The Hygenic Corporation
1245 Home Avenue
Akron, Ohio 44310

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:
:

Director's Final Findings
and Orders

PREAMBLE

It is agreed by the parties hereto as follows:

I. JURISDICTION

These Director's Final Findings and Orders ("Orders") are issued to The Hygenic Corporation ("Respondent") pursuant to the authority vested in the Director of the Ohio Environmental Protection Agency ("Ohio EPA") under Ohio Revised Code ("ORC") §§ 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 of the Respondent or of the facility (as hereinafter defined) 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 defined in ORC Chapter 3704 and the rules promulgated thereunder.

IV. FINDINGS

The Director of Ohio EPA makes the following findings:

1. Respondent manufactures synthetic and natural latex rubber sheeting and tubing at its facility located at 1245 Home Avenue, Summit County, Akron, Ohio. At the facility, Respondent operates, among other emissions units, eleven braiders [(previously 18, then 9 and now 11) which are all "de minimis" under OAC Rule 3745-15-05 according to Respondent and its record-keeping], a natural latex rubber processing line, a Banbury mixer and four synthetic extrusion lines.

2. The emissions units identified in Finding 1 emit, in part, volatile organic compounds ("VOCs"), particulate matter ("PM"), and hazardous air pollutants ("HAPs"), which are defined as "air pollutants" or "air contaminants" in Ohio Administrative Code ("OAC") Rule 3745-15-01(C) and 3745-31-01(H), respectively. Additionally, these emissions units, as well as other emissions units at the facility, are "air contaminant sources" as defined in OAC Rules 3745-31-01(I) and 3745-15-01(C) and (X).

3. OAC Rule 3745-31-02(A)(1)(b) (formerly OAC Rules 3745-31-02(A) and 3745-35-02(A)) prohibits the installation or modification, and subsequent operation of any new source, not subject to the Title V program, without first obtaining a permit-to-install-and-operate ("PTIO") from the Director. Similarly, OAC Rule 3745-31-02(A)(1)(a) prohibits the installation or modification of any new source that is, or will be, part of a Title V facility without first obtaining a permit-to-install ("PTI").

4. OAC Rule 3745-31-01(UUU) defines, in part, a "new source" as any air contaminant source in which the owner or operator undertakes a continuing program of installation or modification after January 1, 1974, and is otherwise subject to the provisions of OAC Chapter 3745-31.

5. Unless otherwise required by law or regulation, OAC Rule 3745-15-05(B) and ORC § 3704.011 exempt air contaminant sources whose potential emissions are less than or equal to ten pounds per day of an air pollutant or air contaminant from the requirements of ORC Chapter 3704 and the rules adopted thereunder. OAC Rule 3745-15-05(D) states that the exemption contained in ORC § 3704.011 does not apply if the air contaminant source's potential emissions [e.g., potential to emit ("PTE")] are greater than ten pounds per day (or one ton per year of one or more HAPs) unless the owner or operator of the source maintains records to adequately demonstrate that the actual emissions did not exceed ten pounds per day (or one ton per year of one or more HAPs) and unless the source is not otherwise prohibited from the exemption by law or regulation. Emissions units qualifying for these exemptions are referred to as being "de minimis." OAC Rule 3745-15-05(H) states that nothing in OAC Rule 3745-15-05 shall be construed to exempt a source from the requirements of the Clean Air Act, including being considered for purposes of determining whether a facility constitutes a major source or is otherwise regulated under OAC Chapter 3745-77 (i.e., Title V program) or any requirement to identify insignificant activities and emissions levels in a Title V permit application.

6. OAC Rule 3745-31-05(F) (formerly OAC Rule 3745-31-02(A)(2)) allows, in part, the owner or operator of any air contaminant source to voluntarily request a PTI or PTIO from Ohio EPA that would lower the allowable emissions from the air contaminant source. OAC Rule 3745-31-01(K) defines "allowable emissions," in part, as the emission rate of an air contaminant source calculated using the maximum rated capacity to emit, unless federally enforceable limitations restrict the operation rate or hours of operation. This type of permit is referred to as a "synthetic minor permit."

7. 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 PTE, in the aggregate, 100 tons per year ("TPY") or more of any air pollutant, 10 TPY or more of any HAP, or 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.

8. OAC Rule 3745-77-04(D) requires, in part, Title V sources to submit an initial Title V permit application no later than twelve months after the source becomes subject the Title V program.

9. 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(MM) 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 PTE of the source.

10. ORC § 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. Similarly, ORC § 3704.05(J)(2) prohibits, in part, any person from violating the filing requirements of the Title V program.

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

12. Information contained in Respondent's annual Toxic Release Inventory ("TRI") reports for 2005 and 2006 implied that the facility's PTE of toluene, a HAP, would classify the facility as a major source for the Title V permit program. On March 13, 2009, Akron Regional Air Quality Management District ("Akron"), a contractual representative of Ohio EPA in Summit County, sent Respondent a Notice of Violation ("NOV") letter, asking Respondent to either submit a PTE analysis and/or other documentation demonstrating non-major source status or to submit a plan and schedule for the submission of a Title V permit application.

13. In a letter dated May 8, 2009, Respondent replied to March 13, 2009, NOV letter, stating that due to a high turnover of Environmental, Health and Safety ("EHS") Managers, it was possible that the TRI reports overestimated the amount of toluene (i.e., HAP) emissions. The letter also said that two main operations at the facility emit toluene; the synthetic extrusion lines and the braiding machines, with the

braiding machines emitting the majority of the toluene emissions. Information contained in the letter, as well as the supporting calculations, indicate the facility's PTE to be below the Title V permit applicability threshold levels. Respondent also stated in the letter that it believes the braiding machines, eighteen in total, qualify for the "de minimis" exemption contained in OAC Rule 3745-15-05 and were not required to apply for and obtain a PTIO/PTI and/or permit to operate ("PTO").

14. On June 3, 2009, Akron sent a letter to Respondent requesting that PTE calculations more accurately be based on the maximum amount of adhesive that the braiding machines could employ in one hour. On August 17, 2009, Akron received a letter from Respondent indicating that the PTE of both a single HAP (i.e., toluene) and the combined HAPs exceeded the ten TPY and twenty-five TPY Title V permit applicability threshold levels, respectively. On September 11, 2009, Respondent's Director of Corporate Compliance contacted Akron by telephone regarding inaccuracies in the PTE determinations contained in the August 17, 2009, letter and requested more time to obtain more accurate information.

15. On November 17, 2009, Respondent met with Akron to discuss the March 13, 2009, NOV letter. During the meeting Respondent explained that in the past it had relied on an environmental consulting firm to provide air emissions and permitting information. The consulting firm told Respondent that all emissions units at the facility were classified as "de minimis" and did not require any air permits. Additionally, Respondent stated that the information contained in the August 17, 2009, mass balance analysis, and the resulting PTE calculations were believed to contain inaccurate information. The consulting firm and EHS Manager were released in September 2009 and replaced by a new consulting firm, Partners Environmental ("Partners"), and a new Compliance Coordinator. Respondent also requested additional time to prepare the PTE calculations requested in the June 3, 2009, letter.

16. In a letter dated January 21, 2010, Partners submitted, on behalf of Respondent, a response to the March 13, 2009, NOV letter. The letter provided the following information regarding the facility's PTE and actual emissions of criteria pollutants, total HAPs and toluene:

- From 1997 until the present, all the emissions units at the facility, except the latex rubber processing line (equipped with electric and gas curing ovens) and the Banbury mixer (equipped with a dust collector) were classified as "de minimis" and did not need a PTI and/or PTIO.
- The latex rubber processing line was installed in 1991 and had actual emissions of ammonia (a non-HAP) of greater than ten pounds per day (i.e., 10.8 pounds per day); therefore, it may need a PTIO.
- The Banbury mixer was installed in 1982 and had actual uncontrolled emissions of PM of greater than ten pounds per day (i.e., 86 pounds per day uncontrolled; 2.78 pounds per day actual); therefore, it may need a PTIO.

- Due to the removal of eight braiders in 2009, the facility's PTE of toluene, as of January 1, 2010, was below the 10 tons per year Title V applicability threshold level, assuming the exclusion of non-operating days for maintenance.
- Calculations of the annual PTE of toluene and combined HAPs for the year 2008 and part of 2009 (prior to the removal of the eight braiders) were 17.7 and 30 tons per year, respectively, indicating the facility was subject to the requirements of the Title V program. However, the actual emissions of the single HAP, toluene, and the combined HAPs from 1997 to 2009 were below the 10 and 25 tons per year Title V applicability threshold levels.
- All PTE and actual emissions of all criteria pollutants were below the Title V major source threshold levels.

17. From January 28, 2010 to April 29, 2010, correspondence was exchanged between Akron and Respondent regarding the PTE calculations and whether the use of 18 days per year for when the facility did not operate, due maintenance requirements, qualified as an operational restriction to limit the facility's PTE. Ultimately, Ohio EPA determined that the PTE calculations could not rely on the facility's non-operating days because the 18 days were not federally enforceable as required by OAC Rules 3745-31-05(D) and 3745-77-01(MM). Akron informed Respondent of this determination via electronic mail on April 29, 2010. As result of this determination, the facility-wide annual PTE of toluene, with ten braiders, was estimated to be 10.08 tons per year; therefore, the facility continued to be subject to the Title V permitting requirements.

18. On May 10, 2010, Akron received a letter (dated May 7, 2010) from Partners regarding the April 29, 2010, electronic mail. In the letter, Partners indicated that on April 29, 2010, Respondent removed one additional braider and placed it in storage; therefore, Respondent lowered the facility's PTE of HAPs to below the Title V applicability thresholds.

19. Respondent's PTE's of toluene exceeded the Title V major source threshold of 10 tons per year for a single HAP; therefore, Respondent was required to submit a timely and complete Title V permit application within one year of becoming subject to the Title V permit requirements. Respondent failed to submit a timely and complete application from July 1998 (one year from the estimated 1997 installation of the 18 braiders) until April 29, 2010, in violation of OAC Rule 3745-77-04(D) and ORC § 3704.05(G) and (J)(2). Respondent operated the facility since July 1998 without a Title V permit or a timely filed and complete Title V permit application, in violation of OAC Rule 3745-77-02(A) and ORC § 3704.05(G) and (K). The violation continued until the facility's PTE was below the Title V applicability threshold (i.e., April 29, 2010, as identified in Finding 18). Additionally, based on the 2008 calendar year emission calculations provided by Respondent, the latex rubber processing line and the Banbury mixer, which were installed and began operation on or about January 1, 1991 and January 1, 1982, respectively, exceeded the ten pounds per day "de minimis" exemption level provided by OAC Rule 3745-15-05, subjecting the emissions units to the requirements of applying for and obtaining a PTIO. Respondent failed to apply for

and obtain a PTIO, in a violation of OAC Rule 3745-31-02 and ORC § 3704.05(G). On November 17, 2010, Respondent submitted PTIO applications to Akron for the latex rubber processing line and Banbury mixer. On January 13, 2011, and March 3, 2011, Ohio EPA issued PTIOs to Respondent for the Banbury mixer and the latex rubber processing line, respectively.

20. In a letter dated August 16, 2010, Partners informed Akron that the facility had completely eliminated the use of toluene and that replacement solvent-based adhesives did not contain any HAPs.

21. 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

The Director hereby issues the following Orders:

1. Respondent shall pay the amount of twenty-six thousand and seven hundred dollars (\$26,700) in settlement of Ohio EPA's claims for civil penalties, which may be assessed pursuant to ORC Chapter 3704. Within fourteen (14) days after the effective date of these Orders, payment to Ohio EPA shall be made by an official check made payable to "Treasurer, State of Ohio" for twenty-one thousand three hundred and sixty dollars (\$21,360). The official check shall be submitted to Akia Smith, or her successor, together with a letter identifying Respondent, to:

Ohio EPA
Office of Fiscal Administration
P.O. Box 1049
Columbus, Ohio 43216-1049

2. In lieu of paying the remaining five thousand three hundred and forty dollars (\$5,340) of the civil penalty, Respondent shall, within fourteen (14) days of the effective date of these Orders, fund a Supplemental Environmental Project ("SEP") by making a contribution in the amount of \$5,340 to the Ohio EPA's Clean Diesel School Bus Program Fund (Fund 5CD0). Respondent shall tender an official check made payable to "Treasurer, State of Ohio" for \$5,340. The official check shall be submitted to Akia Smith, or her successor, together with a letter identifying the Respondent and Fund 5CD0, to the above-stated address.

3. A copy of each of the above checks shall be sent to Thomas Kalman, Acting Assistant Chief, SIP Development and Enforcement, or his successor, at the following address:

Ohio EPA
Division of Air Pollution Control
P.O. Box 1049
Columbus, Ohio 43216-1049

4. Should Respondent fail to fund the SEP within the required time frame set forth in Order 2, Respondent shall immediately pay to Ohio EPA \$5,340 of the civil penalty in accordance with the procedures in Order 1.

VI. TERMINATION

Respondent's obligations under these Orders shall terminate upon Ohio EPA's receipt of the official checks required by Section V of these Orders.

VII. OTHER CLAIMS

Nothing in these Orders shall constitute or be construed as a release from any claim, cause of action or demand in law or equity against any person, firm, partnership or corporation, not a party to these Orders, for any liability arising from, or related to, the operation of Respondent's facility.

VIII. 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.

IX. MODIFICATIONS

These Orders may be modified by agreement of the parties hereto. Modifications shall be in writing and shall be effective on the date entered in the journal of the Director of Ohio EPA.

X. NOTICE

Except as otherwise provided in these Orders, all documents required to be submitted by Respondent pursuant to these Orders shall be addressed to:

Akron Regional Air Quality Management District
146 South High Street, Suite 904
Akron, Ohio 44308
Attention: Laura Miracle

and to:

Ohio Environmental Protection Agency
Lazarus Government Center
Division of Air Pollution Control
P.O. Box 1049
Columbus, Ohio 43216-1049
Attention: Thomas Kalman, Acting Assistant Chief,
SIP Development and Enforcement

or to such persons and addresses as may hereafter be otherwise specified in writing by Ohio EPA.

XI. RESERVATION OF RIGHTS

Ohio EPA and Respondent each reserve all rights, privileges and causes of action, except as specifically waived in Section XII of these Orders.

XII. WAIVER

In order to resolve disputed claims, without admission of fact, violation or liability, and in lieu of further enforcement action by Ohio EPA for only the violations specifically cited in these Orders, Respondent consents to the issuance of these Orders and agrees to comply with these Orders. Compliance with these Orders shall be a full accord and satisfaction for the Respondent's liability for the violations specifically cited herein.

Respondent hereby waives the right to appeal the issuance, terms and conditions, and service of these Orders and Respondent hereby waives any and all rights Respondent 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 appeal. In such an event, Respondent shall continue to comply with these Orders notwithstanding such appeal and intervention unless these Orders are stayed, vacated, or modified.

XIII. EFFECTIVE DATE

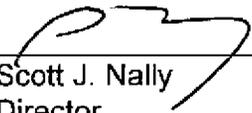
The effective date of these Orders is the date these Orders are entered into the Ohio EPA Director's journal.

XIV. SIGNATORY AUTHORITY

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 these Orders.

ORDERED AND AGREED:

Ohio Environmental Protection Agency



Scott J. Nally
Director

3/12/12

Date

AGREED:

The Hygenic Corporation



Signature

Feb. 14, 2012

Date

Marshall Dahneke

Printed or Typed Name

President & CEO

Title