

BEFORE THE

ENTERED DIRECTOR'S JOURNAL

OHIO ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

Keim Lumber Company, Inc.	:	<u>Director's Final Findings</u>
4465 State Route 557	:	<u>and Orders</u>
P.O. Box 40	:	
Charm, Ohio 44617	:	

PREAMBLE

It is agreed by the parties hereto as follows:

I. JURISDICTION

These Director's Final Findings and Orders ("Orders") are issued to Keim Lumber Company ("Respondent") pursuant to the authority vested in the Director of 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 identified hereafter) 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 regulations promulgated thereunder.

IV. FINDINGS

The Director of Ohio EPA has determined the following findings:

1. Respondent owns and operates a facility located at 4465 State Route 557, Charm, Holmes County, Ohio, and is identified by Ohio EPA facility identification number 0238000141. At the facility, Respondent manufactures hardwood trim, molding, doors, and flooring.

2. At the facility, Respondent operates two emissions units (identified by Ohio EPA as "emissions units P001 and R001"). Emissions unit P001 is a wood millwork manufacturing shop with wood waste vented to a silo with waste recovery and particulate emission control provided by three parallel baghouses of 24,000, 39,400 and 60,000 actual cubic feet per minute air handling capacities. Emissions unit R001 is a wood parts spray coating operation including one manual high volume low pressure ("HLVP") spray gun/pump, one manual airless spray gun/pump, one booth with dry overspray filters and manual wiping. The parts are manually moved and the coatings are air dried.

3. Emissions unit R001 emits, in part, organic compounds ("OCs"), volatile organic compounds ("VOCs"), and hazardous air pollutants ("HAPs"), as defined in OAC Rules 3745-21-01(B)(4), 3745-21-01(B)(6) and 3745-77-01(V), respectively, and emissions unit P001 emits "particulate matter," as defined in OAC Rule 3745-17-01(B)(12); and each unit is an "air contaminant source," as defined in OAC Rules 3745-31-01(I) and 3745-15-01(C) and (W).

4. ORC § 3704.05(G) states, in part, that no person shall violate any order, rule, or determination of the Director issued, adopted, or made under ORC Chapter 3704. All Ohio EPA rules were adopted under ORC Chapter 3704.

5. OAC Rule 3745-31-02 states, in part, that, no person shall allow the installation or modification of an air contaminant source without first applying for and obtaining a permit to install ("PTI") from the Director of Ohio EPA, unless otherwise specified by rule or law. Emissions unit P001 was installed in 1990 and was modified in about September 2002 by the addition of new woodworking equipment. Emissions unit R001 was installed in March 2006. The modification to emissions unit P001 in about September 2002 and the installation of emissions unit R001 in March 2006 were performed prior to obtaining a PTI, in violation of OAC Rule 3745-31-02(A) and ORC § 3704.05(G). A PTI (# 02-6005) was issued by Ohio EPA for emissions unit P001 on June 19, 1991.

6. Prior to 2008, former OAC Rule 3745-35-02 now required in OAC Rule 3745-31-02, required 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, unless otherwise provided by rule or law. Emissions unit P001 was first operated in 1991 and emissions unit R001 was first operated in March 2006 prior to obtaining a PTO, in violation of OAC Rule 3745-35-02(A) and ORC § 3704.05(G).

7. On October 24, 2006, a NEDO representative inspected the facility. At the time of the inspection, no daily records of the coating usage were being maintained; however, the usage was estimated to be less than 5 gallons per day, which is the maximum usage level for exemption from permit requirements pursuant to OAC Rule 3745-

31-03. NEDO had requested the Respondent to submit complete PTI and PTO applications for emissions unit R001 if the coating usage ever equaled or exceeded 5 gallons per day.

8. On November 2, 2006, NEDO sent a Notice of Violation ("NOV") letter to the Respondent for installing emissions unit R001 and installation of additional woodworking equipment in September 2002 for emissions unit P001 without first applying for and obtaining a PTI. The letter also requested the Respondent to provide a list of the wood working equipment that comprises emissions unit P001, keep and submit a daily record that identifies all coatings and cleanup materials employed and the actual usage of each coating, in gallons, and to submit complete PTI and PTO applications for both emissions units P001 and R001 (if the coating usage ever equaled or exceeded 5 gallons per day) by November 30, 2006.

9. On February 9, 2007, NEDO received completed PTI and PTO applications for emissions unit R001 from Respondent.

10. On February 13, 2007, NEDO sent a NOV to the Respondent to request immediate action on the remaining items requested in the November 2, 2006 NOV. On March 2, 2007, the Respondent submitted a list of woodworking equipment that comprises emissions unit P001, and the material usage for the coating operation for December 6, 2006 to March 1, 2007. On March 5, 2007, Respondent faxed to NEDO a PTO application for emissions unit P001. Upon review, the PTO application was found to be incomplete, and the PTI application for emissions unit P001 was still not submitted.

11. On April 11, 2007, NEDO received an e-mail response from the Respondent, providing Material Safety Data Sheets and Certified Products Data Sheets for materials used in the coating operation, and a confirmation that the stack height for emissions unit R001 was scheduled to be increased by eight feet on April 4, 2007 as part of the PTI application review. On May 2, 2007, NEDO received complete PTI and PTO applications for modified emissions unit P001.

12. PTI # 02-22607 was issued final by Ohio EPA on June 7, 2007 for modified emissions unit P001.

13. PTI # 02-22505 was issued final by Ohio EPA on July 26, 2007 for emissions unit R001.

14. Based on the above findings and Ohio EPA's further investigation, Ohio EPA finds that Respondent violated the following OAC rules and ORC laws:

- a. Modification of emissions unit P001 in about September 2002 without first applying for and obtaining a PTI, in violation of OAC Rule 3745-31-02(A) and ORC § 3704.05(G).

- b. Installation of emissions unit R001 in March 2006 without first applying for and obtaining a PTI, in violation of former OAC Rule 3745-31-02(A) and ORC § 3704.05(G).
- c. Operating a modified emissions unit P001 in about September 2002 without first applying for and obtaining a PTO, in violation of former OAC Rule 3745-35-02(A), current OAC Rule 3745-31-02, and ORC § 3704.05(G).
- d. Operation of emissions unit R001 from March 2006 to July 26, 2007, without first obtaining a PTO, in violation of former OAC Rule 3745-35-02(A), current OAC Rule 3745-31-02, and ORC § 3704.05(G).

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. Pursuant to ORC § 3704.06, Respondent is assessed a civil penalty in the amount of twelve thousand four hundred and forty dollars (\$12,440) in settlement of Ohio EPA's claims for civil penalties. Within thirty (30) days after the effective date of these Orders, Respondent shall pay Ohio EPA the amount of nine thousand nine hundred and fifty-two dollars (\$9,952) of the total penalty amount. Payment shall be made by an official check made payable to "Treasurer, State of Ohio" for \$9,952. The official check shall be submitted to Brenda Case, or her successor, together with a letter identifying the Respondent, to:

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

2. In lieu of paying the remaining two thousand four hundred and eighty-eight dollars (\$2,488) of the civil penalty, Respondent shall, within thirty (30) days after the effective date of these Orders, fund a supplemental environmental project ("SEP") by making a contribution in the amount of \$2,488 to the Ohio EPA Clean Diesel School Bus Program Fund (Fund 5CD0). Respondent shall tender an official check made payable to "Treasurer, State of Ohio" for \$2,488. The official check shall be submitted to Brenda Case, or her successor, together with a letter identifying the Respondent and Fund 5CD0, to the above-stated address.

3. A copy of the above-mentioned check shall be sent to James A. Orlemann, 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 \$2,488 of the remaining 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

All documents required to be submitted by Respondent pursuant to these Orders shall be addressed to:

Ohio Environmental Protection Agency
Northeast District Office
2110 E. Aurora Road
Twinsburg, Ohio 44087
Attention: Amysue O'Reilly, Environmental Specialist

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, Manager, Enforcement Section

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.

IT IS SO ORDERED AND AGREED:

Ohio Environmental Protection Agency



Chris Korleski
Director

4/2/09
Date

IT IS SO AGREED:

Keim Lumber Company, Inc.



Signature

3-16-09
Date

Bill Keim

Printed or Typed Name

president

Title