

BEFORE THE

OHIO E.P.A.

OHIO ENVIRONMENTAL PROTECTION AGENCY MAY 14 2009

In the Matter of:

ENTERED DIRECTOR'S JOURNAL

Magnesium Elektron North America, Inc. :
1001 College Street :
Madison, Illinois 62060 :

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 Magnesium Elektron North America, Inc. ("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 identified hereinafter) 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 has determined the following findings:

1. Respondent owns and operates a facility located at 115 Stanford Parkway, Findlay, Hancock County, Ohio ("Facility"). On September 2, 2003, Respondent notified Ohio EPA that the ownership of this Facility had been transferred from Spectrulite Consortium, Inc. ("SCI") to Respondent. At the Facility, Respondent cleans and coats magnesium plates used for photoengraving.

2. On July 27, 1988, Ohio EPA issued Permit-to-Install ("PTI") 03-3645 for two coating lines and two vapor degreasers, which are identified by Ohio EPA as emissions units ("EUs") K002, K003, L001, L002 and L003. The EUs listed in PTI 03-3645 are "air contaminant sources" as defined in Ohio Administrative Code ("OAC") Rule 3745-15-01(C) and (W). EUs L001 and L002 employ trichloroethylene as a solvent, and emit trichloroethylene into the ambient air. Trichloroethylene is a "hazardous air pollutant" as defined in OAC Rule 3745-31-01(WW).

3. On May 19, 1995, Ohio EPA issued a Permit-to-Operate ("PTO") for EU K003. On June 2, 1995, Ohio EPA issued a PTO for EU K002. On August 7, 1997, Ohio EPA issued PTOs for EUs L001, L002 and L003. The terms and conditions of the PTOs contain applicable emission limitations and operational control and reporting requirements for these EUs. Specifically, Special Term and Condition II.C.2. of the August 1997 PTO states that the permittee shall maintain monthly records for the combined solvent usage in EUs L001, L002 and L003. In addition, the terms and conditions of the 1997 PTOs established federally enforceable limitations on the combined potential to emit for EUs L001, L002 and L003 pursuant to OAC Rule 3745-35-07. Also, the terms and conditions of the August 7, 1997 PTOs required compliance with the Maximum Achievable Control Technology ("MACT") standards contained in 40 CFR Part 63, Subpart T by December 2, 1997. The PTOs for EUs K002, K003 and L001, L002 and L003 expired on June 1, 1998, May 18, 1998, and August 7, 2000, respectively; however, their requirements remain in effect pursuant to ORC § 119.06(C) until renewal PTOs are issued by Ohio EPA. Renewal permit applications were timely submitted by SCI to Ohio EPA on March 9, 1998 for EU K002; on February 13, 1998 for EU K003; and on May 18, 2000 for EUs L001, L002 and L003. EU L003 is no longer in operation.

4. Respondent has chosen to comply with the Alternative Standards listed in 40 CFR § 63.464, which, in part, state that the applicable emissions limit for each solvent cleaning machine shall not exceed 150 kilograms of solvent/square meter/month ("kg/m²/m") on a 3-month rolling average basis.

5. On August 14, 2007, Ohio EPA conducted a compliance inspection at the Facility. As a result of this inspection, Ohio EPA determined that Respondent had, *inter alia*:

a. For 38 months between April 1, 2004 and August 14, 2007, exceeded the solvent emissions limit of 150 kg/m²/m as a 3-month rolling average for each of EUs L001 and L002, in violation of the terms and conditions of the 1997 PTOs, 40 CFR § 63.464(a)(1)(ii) and ORC § 3704.05(C);

b. Failed to properly report the exceedances of the 150 kg/m²/m solvent emissions limit from July 30, 2004 until October 1, 2007, in violation of the terms and conditions of the 1997 PTOs, 40 CFR § 63.464(c), 40 CFR § 63.468(h) and ORC § 3704.05(C). However, Respondent had been submitting timely quarterly reports for these emissions units, however, until October 1, 2007, the information being submitted for those months in which exceedances occurred was incorrect. In the quarterly reports, Respondent was incorrectly combining the 3-month rolling average emissions for EUs L001 and L002 and not reporting them separately, thus not reporting when each emissions unit exceeded the 150 kg/m²/m emissions limit. This was the same method that had been used by SCI since at least 2000.

c. Failed to properly maintain a log of solvent additions and deletions for each vapor degreaser from September 2, 2003 until August 20, 2007, in violation of the 1997 PTOs, 40 CFR § 63.464(a)(1)(i) and ORC § 3704.05(C). However, Respondent subsequently demonstrated to Ohio EPA that separate logs were being kept.

d. For EUs K002 and K003, failed to timely submit the 2006 annual report for volatile organic compound emissions and coating usages, in violation of Special Term and Condition No. 4 of the 1995 PTOs and ORC § 3704.05(C). The 2006 annual report was due January 15, 2007 and received by Ohio EPA on October 5, 2007, two hundred and sixty-three days late.

6. By letter dated August 30, 2007, Ohio EPA notified Respondent of the violations referenced in Finding No. 5.

7. On October 1, 2007, Respondent submitted, to Ohio EPA, revised MACT quarterly exceedance reports for EUs L001 and L002, for the period from January 1, 2002 until December 31, 2006.

8. On January 9, 2008, Respondent submitted, to Ohio EPA, the 2007 annual solvent emissions report for the facility as required by 40 CFR § 63.468(f) and (g). This report also fulfilled the MACT quarterly exceedance reporting requirements for the fourth quarter of 2007, for EUs L001 and L002. In this report, Respondent notified Ohio EPA that it had exceeded the 3-month rolling average emissions limit for EU L001 for eight months in 2007, in violation of the terms and conditions of the 1997 PTO, 40 CFR § 63.464(a)(1)(ii) and ORC § 3704.05(C).

9. On April 24, 2008, July 28, 2008, October 21, 2008 and January 13, 2009, Respondent submitted, to Ohio EPA, the MACT quarterly exceedance reports for 2008, for EUs L001 and L002. In these reports, Respondent notified Ohio EPA that it had exceeded the 3-month rolling average emissions limit for EUs L001 and L002. Specifically, for EU L001, the 3-month rolling average emissions limit was exceeded for

the last six months of 2008; and for EU L002, Respondent exceeded this limit for September and October of 2008, in violation of the terms and conditions of the 1997 PTOs, 40 CFR § 63.464(a)(1)(ii) and ORC § 3704.05(C). In the January 13, 2009 report, Respondent notified Ohio EPA that in order to correct the violations it would decrease the amount of solvent being used in these EUs.

10. In order to enhance procedures for the tracking and reporting pursuant to the permit terms and conditions and MACT standards, Respondent has installed a new solvent storage cage and implemented additional procedures.

11. 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. Respondent shall pay the amount of twenty-four thousand dollars (\$24,000) in settlement of Ohio EPA's claims for civil penalties, which may be assessed pursuant to ORC Chapter 3704. Within thirty (30) 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 nineteen thousand two hundred dollars (\$19,200) of the total amount. 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 four thousand eight hundred dollars (\$4,800) of the civil penalty to Ohio EPA, Respondent shall fund a Supplemental Environmental Project ("SEP") by making a contribution in the amount of \$4,800 to Ohio EPA's Clean Diesel School Bus Program Fund (Fund 5CD0). Respondent shall make payment on or within thirty (30) days after the effective date of these Orders by tendering an official check made payable to "Treasurer, State of Ohio" for \$4,800. 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 each of the above checks 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
50 West Town Street, Suite 700
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 \$4,800 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 in 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, operations by Respondent.

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
347 North Dunbridge Road
Bowling Green, Ohio 43402
Attn: Don Waltermeyer

and to:

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

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 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

Date 5/13/09

IT IS SO AGREED:

Magnesium Elektron North America, Inc.


Signature

Date 5/4/09

David C. Dubé
Printed or Typed Name

General Manager, Findlay Division
Title

مجلس

مجلس

مجلس

مجلس