

BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY

OHIO E.P.A.

DEC -2 2009

ENTERED DIRECTOR'S JOURNAL

In the Matter of:

Thermo-Rite Manufacturing Company, Inc.	:	<u>Director's Final Findings</u>
1355 Evans Avenue	:	<u>and Orders</u>
Akron, Ohio 44305	:	

PREAMBLE

It is agreed by the parties hereto as follows:

I. JURISDICTION

These Director's Final Findings and Orders ("Orders") are issued to Thermo-Rite Manufacturing Company, 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

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 regulations promulgated thereunder.

IV. FINDINGS

The Director of the Ohio EPA makes the following findings:

1. The Akron Regional Air Quality Management District ("ARAQMD") is an agent of Ohio EPA for the Division of Air Pollution Control in Summit County.
2. Respondent owns and operates a fireplace screen and cover manufacturing facility ("Facility") located at 1355 Evans Avenue, Akron, Summit County, Ohio. At the Facility, Respondent operated a conveyORIZED spray booth with a bake oven and an in-line halogenated solvent degreaser (emissions units K001 and L001), a batch vapor degreaser

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(emissions unit L002), and a paint booth (emissions unit K002). Each of these emissions units met the definition of an "air contaminant source" in Ohio Administrative Code ("OAC") Rule 3745-15-01(C) and (X), emitted volatile organic compounds ("VOCs") as defined in OAC Rule 3745-21-01(B)(14), and was subject to OAC Chapter 3745-21.

3. Emissions units K001 and L001 were issued permit to install ("PTI") #16-123 on October 2, 1980. Emissions unit K002 was issued PTI #16-1956 on July 21, 1999. Emissions unit L002 was issued PTI #16-02355 on August 12, 2004. On August 10, 2005, Respondent obtained a Title V permit for the facility that contained applicable emissions limitations, control requirements, operating restrictions, and monitoring, record-keeping, reporting, and testing requirements for each emissions unit.

4. ORC § 3704.05(C) states that no person who is the holder of a permit issued under division (F) or (G) of ORC § 3704.03 shall violate any of its terms and conditions. All permits issued by the Director of Ohio EPA are issued under division (F) or (G) of ORC § 3704.03. 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 Chapter 3704.

5. ORC § 3704.05(J)(2), in part, prohibits any person from violating any applicable requirement of a Title V permit or any permit condition.

Failing to return solvent level of the in-line cleaning machines to same fill-line each month:

6. Part III Term and Condition A.V.1. of Respondent's Title V permit and Section 63.465(b) of 40 CFR Part 63, Subpart T for emissions units L001 and L002, and PTI #16-02355 for emissions unit L002 require Respondent to return the solvent level of the in-line cleaning machines (emissions units L001 and L002) to the same fill-line each month, immediately prior to calculating monthly emissions as specified in Part III Term and Condition A.V.2. of Respondent's Title V permit and Part III Term and Condition A.V.1. of PTI #16-02355.

7. From April 10, 2007 to March 19, 2008, for 344 days for emissions unit L001, and from April 2, 2007 to March 19, 2008, for 352 days for emissions unit L002, Respondent failed to return the solvent level of the in-line solvent cleaning machines to the same fill-line each month, immediately prior to calculating monthly emissions as specified in Part III Term and Condition A.V.1. of Respondent's Title V permit and Part III Term and Condition A.V.1. of PTI #16-02355. The failures to perform this activity on these days were violations of Respondent's Title V permit, PTI #16-02355, Section 63.465(b) of 40 CFR Part 63, Subpart T, and ORC § 3704.05(C) and (J)(2).

Failure to maintain records of dates and amounts of solvent added to solvent cleaning machine L001:

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8. Part III Term and Condition A.III.1 and A.III.3.a. of Respondent's Title V permit and Sections 63.464(a)(1)(i) and 63.467(c)(1) of 40 CFR Part 63, Subpart T require Respondent to maintain records of the dates and amounts of solvent that is added to the solvent cleaning machine of emissions unit L001.

9. From July 17, 2007 to March 19, 2008, for 246 days for emissions unit L001, Respondent failed to record the addition of 55 gallons of solvent to the solvent cleaning machine, in violation of Respondent's Title V permit, Sections 63.464(a)(1)(i) and 63.467(c)(1) of 40 CFR Part 63, Subpart T, and ORC § 3704.05(J)(2).

Failure to calculate the average halogenated HAP solvent emissions on first operating day of each month:

10. Part III Term and Condition A.V.2. of Respondent's Title V permit and Section 63.465(c) of 40 CFR Part 63, Subpart T for emissions units L001 and L002, and PTI #16-02355 for emissions unit L002 require Respondent to calculate the average halogenated HAP solvent emissions on the first operating day of each month for emissions units L001 and L002.

11. From February 1, 2007 to March 19, 2008, for 412 days for emissions units L001 and L002, Respondent failed to calculate the average halogenated HAP solvent emissions on the first operating day of each month, in violation of Respondent's Title V permit, PTI #16-02355, Section 63.465(c) of 40 CFR Part 63, Subpart T, and ORC § 3704.05(C) and (J)(2).

Failure to keep the daily coating usage in K002 at or below 3 gallons:

12. Part III Term and Condition A.II.1. of Respondent's Title V permit requires Respondent to keep the daily coating usage in emissions unit K002 at or below 3 gallons.

13. On December 15, 2007 and January 5, 2008, Respondent failed to keep the daily coating usage in emissions unit K002 at or below 3 gallons, in violation of the Title V permit and ORC § 3704.05(J)(2). The daily coating usages on December 15, 2007 and January 5, 2008 were reported as 3.61 gallons and 3.125 gallons, respectively.

Exceedance of the VOC emission limitation for K002:

14. Part III Term and Condition A.I.1. of Respondent's Title V permit and Part III Term and Condition B.I.1. of PTI #16-1956 require Respondent to not exceed a VOC emission limitation of 19.3 pounds per day from coatings employed in emissions unit K002.

15. On December 15, 2007, and January 5, 2008, Respondent's VOC emission rate from the use of coatings in emissions unit K002 exceeded the limitation of 19.3 pounds of VOC per day, in violation of Respondent's Title V permit, PTI #16-1956, and ORC § 3704.05(C) and (J)(2). The VOC emission rates for December 15, 2007, and January 5, 2008, were reported as 19.75 pounds per day and 19.9 pounds per day,

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respectively.

Failure to collect and record information each month on the cleanup materials used in K002:

16. Part III Term and Condition A.III.3. of Respondent's Title V permit and Part III Term and Condition B.III.2. of PTI #16-1956 require Respondent to collect and record information each month on the cleanup materials employed in emissions unit K002.

17. From on or about January 1, 2007 to November 2008, for about 670 days, Respondent failed to collect and record each month the following information on the cleanup materials employed in emissions unit K002:

- (a) the name and identification of each cleanup material employed;
- (b) the number of gallons of each cleanup material employed;
- (c) the VOC content of each cleanup material, in pounds per gallon; and
- (d) the total VOC emissions from all cleanup materials employed, in pounds or tons.

The failure to perform the collection and recording of the above information were violations of Respondent's Title V permit, PTI #16-1956, and ORC § 3704.05(C) and (J)(2). These violations ended when Respondent shut down the operation of emissions unit K002 in November 2008.

Failure to timely submit semi-annual exceedance reports for the trichloroethylene emission limitation for L001 and L002:

18. Part III Term and Condition A.IV.2. of Respondent's Title V permit and Section 63.468(h) of 40 CFR Part 63, Subpart T for emissions units L001 and L002, and Part III Term and Condition A.IV.2. of PTI #16-02355 for emissions unit L002 require Respondent to submit semi-annual exceedance reports to ARAQMD for any exceedance of the 3-month, rolling average trichloroethylene emission limitation of 150 kilograms per square meter per month (30.7 pounds per square foot per month) and if no exceedance occurred during the reporting period. The reports are due by July 30 and January 30 for the first and last semi-annual periods of each year, respectively.

19. The semi-annual exceedance reports for the above trichloroethylene emission limitation for the first half of 2007 and for the second half of 2007 were submitted late by Respondent on August 16, 2007 and February 11, 2008, respectively. The failure to timely submit such exceedance reports were violations of Respondent's Title V permit, PTI #16-02355, Section 63.468(h) of 40 CFR Part 63, Subpart T, and ORC § 3704.05(C) and (J)(2).

Failure to timely submit quarterly exceedance reports, which identify all exceedances of daily VOC emission limitation of 19.3 pounds per day for coatings for K002:

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20. Part III Term and Condition A.IV.2. of Respondent's Title V permit and Part III Term and Condition B.IV.1. of PTI #16-1956 require Respondent to submit quarterly deviation reports to ARAQMD for all exceedances of the VOC emission limitation of 19.3 pounds per day for emissions unit K002 and that contain the actual daily VOC emissions for each such day. The reports are required to be submitted by not later than January 31, April 30, July 31 and October 31 of each calendar year for the previous calendar quarters.

21. The quarterly exceedance reports for the above emissions limitation for emissions unit K002 for the second, third and fourth quarters of calendar year 2007 were submitted late by Respondent on August 16, 2007, November 6, 2007 and February 11, 2008, respectively. The failure to timely submit such exceedance reports were violations of Respondent's Title V permit, PTI #16-1956, and ORC § 3704.05(C) and (J)(2). Additionally, the quarterly deviation report submitted by Respondent on February 11, 2008 did not mention the deviation of the daily VOC emission limitation that occurred on December 15, 2007 for emissions unit K002, in violation of Respondent's Title V permit, PTI #16-1956, and ORC § 3704.05(C) and (J)(2). Respondent corrected this violation by submitting a complete quarterly deviation report for the fourth quarter of 2007 on March 6, 2008.

Failure to timely submit quarterly exceedance reports, which identify all exceedances of the coating usage limitation for K001 and K002:

22. Part I Term and Condition A.1. of Respondent's Title V permit requires Respondent to submit quarterly exceedance reports that identify all exceedances of the rolling, 12-month coating usage limitation of 249 gallons for emissions units K001 and K002 combined, to avoid being subject to 40 CFR Part 63, Subpart M. The reports are required to be submitted by no later than January 31, April 30, July 31 and October 31 of each year for the previous calendar quarters.

23. The quarterly exceedance reports for the above coating usage limitation for emissions units K001 and K002 for the second, third and fourth quarters of calendar year 2007 were submitted late by Respondent on August 16, 2007, November 6, 2007 and February 11, 2008, respectively. The failure to timely submit such exceedance reports were violations of Respondent's Title V permit and ORC § 3704.05(J)(2).

Failure to timely submit quarterly exceedance reports, which identify each month during which organic compound emission from L002 exceeded the limitation of 0.3 ton per month:

24. Part III Term and Condition A.IV.4. of Respondent's Title V permit and Part III Term and Condition A.IV.3. of PTI #16-02355 require Respondent to submit quarterly exceedance reports that include an identification of each month during which the organic compound ("OC") emissions from emissions unit L002 exceeded the limitation of 0.3 ton per month and the actual monthly OC emissions for each such month. The reports are required to be submitted by no later than January 31, April 30, July 31, and October 31 of each year for the previous calendar quarters.

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25. The quarterly exceedance reports for the above OC emission limitation for emissions unit L002 for the second, third and fourth quarters of calendar year 2007 were submitted late by Respondent on August 16, 2007; November 6, 2007 and February 11, 2008, respectively. The failure to timely submit such exceedance reports were violations of Respondent's Title V permit, PTI #16-02355, and ORC § 3704.05(C) and (J)(2).

Failure to timely submit annual reports that specify the total VOC emissions from K002:

26. Part III Term and Condition A.IV.3. of Respondent's Title V permit and Part III Term and Condition B.IV.2. of PTI #16-1956 require Respondent to submit, by January 31 of each year, annual reports that specify the total VOC emissions from emissions unit K002 for the previous calendar year.

27. The annual VOC emissions report for emissions unit K002 for calendar year 2007 was submitted late by Respondent on February 11, 2008, in violation of Respondent's Title V permit, PTI #16-1956, and ORC § 3704.05(C) and (J)(2).

Failure to timely submit semi-annual deviation reports for all deviations of the Title V permit's monitoring, record-keeping, reporting, testing, and miscellaneous requirements for the facility:

28. Part I Term and Condition A.1.c.iii. of Respondent's Title V permit requires Respondent to submit semi-annual deviation reports to ARAQMD for all deviations of the Title V permit's monitoring, record-keeping, reporting, testing, and miscellaneous requirements for the facility. The reports are required to be submitted by no later than July 31 and January 31 for the two semi-annual periods in each year.

29. The semi-annual reports for the deviations from the above-mentioned requirements for the first and second halves of calendar year 2007 were submitted late by Respondent on August 16, 2007 and February 11, 2008, in violation of Respondent's Title V permit, PTI #16-1956, PTI #16-02355 and ORC § 3704.05(C) and (J)(2). The semi-annual deviation report of February 11, 2008 did not mention the testing deviations for emissions units L001 and L002, the monitoring deviations for emissions units L001, L002 and K002, and the reporting deviations, and the reporting time period stated in the report was incorrect, in violation of Respondent's Title V permit and ORC § 3704.05(J)(2). Respondent corrected these violations by resubmitting the February 11, 2008 semi-annual deviation report on March 6, 2008.

Failure to timely submit an annual solvent emission report by February 1 of every year for L001 and L002:

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30. Part III Term and Condition A.IV.1. of Respondent's Title V permit and Section 63.468(g) of 40 CFR Part 63, Subpart T for emissions units L001 and L002, and Part III Term and Condition A.IV.1. of PTI # 16-02355 for emissions unit L002 require Respondent to submit, by February 1 of every year, an annual solvent emission report.

31. The annual solvent emission report for emissions units L001 and L002 for calendar year 2007 was submitted late on March 6, 2008, by Respondent, in violation of Respondent's Title V permit, Section 63.468(g) of 40 CFR Part 63, Subpart T, PTI #16-02355, and ORC § 3704.05(C) and (J)(2).

Failure to notify in writing of any daily record showing that the coating line of emissions unit K002 employed more than three gallons per day of coating:

32. Part III Term and Condition A.IV.1. of Respondent's Title V permit, Part III Term and Condition A.IV.1. of PTI #16-1956, and OAC Rule 3745-21-09(B)(3)(e) require Respondent to notify ARAQMD in writing of any daily record showing that the coating line of emissions unit K002 employed more than three gallons per day of coating. Also, copies of such records are to be sent to ARAQMD within 45 days after each exceedance occurs.

33. The deviation reports for the coating usage exceedances occurring on December 15, 2007 and January 8, 2008 were not submitted by Respondent within 45 days of their occurrence, i.e., by January 29, 2008 and February 22, 2008, in violation of Respondent's Title V permit, PTI #16-1956, OAC Rule 3745-21-09(B)(3)(e), and ORC § 3704.05(C), (G) and (J)(2). Respondent corrected these violations by submitting all the exceedance reports on March 6, 2008.

Failure to timely submit Title V annual compliance certifications for 2007 and 2008:

34. Part I Term and Condition A.12.d. of Respondent's Title V permit requires Respondent to submit annual compliance certifications for the facility on a calendar year basis and by no later than April 30 of the succeeding year.

35. The annual compliance certification for the facility for calendar year 2007 was submitted by Respondent on March 6, 2008. However, the certification submitted by Respondent on March 6, 2008 was deficient in the following manner:

- (a) An emission limitation and several permit term numbers were not identified;
- (b) The late reports on page 3 contained a description, not a permit term number;
- (c) The method used to determine compliance, the report that was used to document any deviation/excursion, and an explanation of nature, duration and probable cause of any excursion/deviation, as well as any corrective action, were not provided; and

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- (d) Any intermittent compliance with State or Federally enforceable terms and conditions was not identified as such pursuant to Part I, Term and Condition A.6.

An inaccurate Title V compliance certification for calendar year 2007 was submitted to ARAQMD by Respondent on June 16, 2008.

A Title V compliance certification for calendar year 2008 was not submitted by Respondent by April 30, 2009.

The complete Title V compliance certifications for calendar years 2007 and 2008 were submitted on August 14, 2009.

Therefore, Respondent failed to submit a complete Title V compliance certification for calendar year 2007 by April 30, 2008 and failed to submit a Title V compliance certification for calendar year 2008 by April 30, 2009, in violation of Respondent's Title V permit and ORC § 3704.05(J)(2).

36. On February 21, 2008, ARAQMD sent a Notice of Violation ("NOV") letter to Respondent for the violations identified in Findings 6 to 33 and requested a plan and schedule for achieving compliance.

37. On March 6, 2008, Respondent replied to ARAQMD's February 21, 2008 NOV.

38. On May 29, 2008, ARAQMD sent another NOV to Respondent for the violations identified in Findings 34 and 35, which informed the Respondent of the incomplete submittal of the annual Title V compliance certification for 2007.

39. On February 10, 2009, Respondent sent ARAQMD a letter which informed ARAQMD of the permanent shutdown of emissions units K001, K002, L001 and L002.

40. On August 14, 2009, Respondent submitted to Ohio EPA complete Title V compliance certifications for calendar years 2007 and 2008.

41. 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:

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1. Respondent shall pay the amount of thirty-six thousand dollars (\$36,000) in settlement of Ohio EPA's claims for civil penalties, which may be assessed pursuant to ORC Chapter 3704. Of this amount, Respondent shall pay to Ohio EPA the amount of twenty-eight thousand and eight hundred dollars (\$28,800) in accordance with the payment schedule in Order 4. Payments shall be made by official checks made payable to "Treasurer, State of Ohio." The official checks 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 seven thousand and two hundred dollars (\$7,200) of the civil penalty, Respondent shall fund a Supplemental Environmental Project ("SEP") by making a contribution to the Ohio EPA's Clean Diesel School Bus Program Fund (Fund 5CD0). Respondent shall make payments pursuant to the payment schedule in Order 4 by tendering official checks made payable to "Treasurer, State of Ohio" totaling \$7,200. The official checks 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 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
P.O. Box 1049
Columbus, Ohio 43216 - 1049

4. Respondent shall pay the civil penalties identified in Orders 1 and 2 in 18 equal monthly installments of \$2,000 each by no later than the deadlines specified in the following payment schedule:

- 1st three monthly payments of \$2,000 each due to SEP bus fund pursuant to Order 2 and beginning on December 1, 2009;
- 4th payment of \$2,000 shall be split into two checks, with \$1,200 due to SEP bus fund pursuant to Order 2 and \$800 due to Ohio EPA pursuant to Order 1 and payable by March 1, 2010; and
- the remaining 14 monthly payments of \$2,000 each due to Ohio EPA pursuant to Order 1 and beginning on April 1, 2010.

5. Should Respondent fail to fund the SEP within the required time frame set forth in Order 4, Respondent shall immediately pay to Ohio EPA \$7,200 or the remaining balance of the civil penalty in accordance with the procedures in Order 1.

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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:

Akron Regional Air Quality Management District
146 S. High Street, Room 904
Akron, Ohio 44308
Attn: Laura Miracle

and to:

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

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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.

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IT IS SO ORDERED AND AGREED:

Ohio Environmental Protection Agency



Chris Korleski
Director

12/1/09
Date

IT IS SO AGREED:

Thermo-Rite Manufacturing Company, Inc.


Signature

11-24-09
Date

ROY K ALLEN
Printed or Typed Name

CHAIRMAN THERMO-RITE MFB-60
Title