

BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

Howard Industries, Inc.)	<u>Director's Final Findings</u>
1840 Progress Ave.)	<u>and Orders</u>
Columbus, Ohio 43207)	

PREAMBLE

It is agreed by the parties [Parties] hereto as follows:

I. JURISDICTION

These Director's Final Findings and Orders ("Orders") are issued to Howard Industries, Inc. ("Respondent") pursuant to the authority vested in the Director of the Ohio Environmental Protection Agency ("Ohio EPA") under Ohio Revised Code ("O.R.C.") § 3745.01 and 3751.09.

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 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 O.R.C. Chapter

3751 and the rules promulgated thereunder.

IV. FINDINGS

The Director of Ohio EPA has determined the following findings:

1. Howard Industries, Inc. owns and operates equipment used for the processing of chemicals and neutraceuticals at its facility in Columbus, Ohio.

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2. Pursuant to Ohio Administrative Code ("OAC") rules 3745-100-06 and 3745-100-07, the owner or operator of a facility that is classified within a covered Standard Industrial Classification ("SIC") code, has 10 or more full-time employees, and manufactures, processes, and/or uses a toxic chemical listed in OAC rule 3745-100-10 in excess of the applicable threshold, must file a TRI report with the Ohio EPA and U.S. EPA on or before July 1 of the following year.
3. Howard Industries, Inc.'s facility is classified within a covered Standard Industrial Classification ("SIC") code, specifically SIC code number 2821.
4. Howard Industries, Inc. employed approximately 32 employees in 1998, 34 employees in 1999, and 28 employees in 2000 at the Columbus facility.
5. Antimony compounds, U.S. EPA, Emergency Planning and Community Right to Know (EPCRA) chemical category, N010 and zinc compounds, chemical category N982, are listed chemical categories in OAC rule 3745-100-10.
6. Howard Industries, Inc. processed approximately 40,000 pounds of antimony compounds and 240,000 pounds of zinc compounds in calendar year 1998, 35,000 pounds of antimony compounds and 200,000 pounds of zinc compounds in calendar year 1999, and 25,000 pounds of antimony compounds in calendar year 2000.
7. On May 22, 2002, Ohio EPA inspected the Howard Industries, Inc. facility and found that Howard Industries, Inc. had

not maintained annual toxic chemical use records required by way of OAC rule 3745-100-03.

8. Howard Industries, Inc. developed and provided annual chemical processing information subsequent to the inspection. Information provided by Howard Industries, Inc. demonstrated that the facility had violated the toxic chemical reporting requirements contained in OAC rule 3745-100-07 and O.R.C. § 3751.07.
9. Howard Industries, Inc. failed to submit TRI reports for calendar years 1998, 1999 and 2000 to Ohio EPA on or before July 1, 1999, July 1, 2000, and July 1, 2001, respectively. Howard Industries, Inc. submitted the reports on June 11, 2002. (Form A reports were submitted. No fees are collected with Form A reports.)

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10. Howard Industries, Inc. failed to submit TRI reports for calendar years 1998, 1999, and 2000 to U.S. EPA on or before July 1, 2000, July 1, 2001, and July 1, 2002, respectively, in violation of OAC rule 3745-100-07 and O.R.C. § 3751.07.
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. Pursuant to O.R.C. § 3751.10, Respondent is assessed a civil penalty in the amount of two thousand dollars (\$2,000) in settlement of Ohio EPA's claims for civil penalties. Payment shall be made in four installments in accordance with the payment schedule in Order 2. Payment shall be made by official checks made payable to "Treasurer, State of Ohio" and submitted to Ohio EPA, Office of Fiscal Administration, P.O. Box 1049, Columbus, Ohio 43216-1049, together with a letter identifying the Respondent and the facility.

A copy of each check shall be sent to James A. Orlemann, Manager, Engineering Section, or his successor, at the following address:

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

2. Respondent shall comply with the following payment schedule for the civil penalty identified in Order 1:

<u>Payment Deadline</u>	<u>Amount Due</u>
within 14 days of the effective date of these orders	\$500
within 60 days of the effective date of these orders	\$500
within 120 days of the effective date of these orders	\$500
within 180 days of the effective date of these orders	\$500

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VI. TERMINATION

Respondent's obligations under these Orders shall terminate upon Ohio EPA's receipt of the total payment 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

Copies of all documents required to be submitted by Respondent pursuant to these Orders shall be provided and addressed to:

Ohio Environmental Protection Agency
Lazarus Government Center
Division of Air Pollution Control
122 South Front Street, P.O. Box 1049
Columbus, Ohio 43216-1049
Attn: James A. Orlemann, Manager, Engineering Section.

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

Christopher Jones
Director

Date

IT IS SO AGREED:

[Name of Respondent]

Signature

Date

Printed or Typed Name

Title

