

STATE OF FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION

STATE OF FLORIDA DEPARTMENT
OF ENVIRONMENTAL PROTECTION
AND CITY OF JACKSONVILLE
DEPARTMENT OF REGULATORY AND
ENVIRONMENTAL SERVICES,

Petitioners,

v.

Case No.: 94-3395

JEFFERSON SMURFIT CORPORATION, (U.S.)
d/b/a D-GRAPHICS,

Respondents.

CONSENT ORDER

This Consent Order is made and entered into between the Co-Petitioners, State of Florida Department of Environmental Protection (the "Department"), and the City of Jacksonville Department of Regulatory and Environmental Services ("RESD"), and Respondent, Jefferson Smurfit Corporation, (U.S.), d/b/a D-Graphics ("Respondent"). The Department and RESD make the following findings, which the Respondent neither admits nor denies:

1. The Department is the administrative agency of the State of Florida having the power and duty to protect Florida's air and water resources and to administer and enforce Chapter 403, Florida Statutes ("F.S."), and the rules promulgated thereunder in Chapter 62, Florida Administrative Code ("F.A.C."). The Department and RESD have jurisdiction over the matters addressed in this Consent Order.

2. RESD is an approved local program pursuant to Section 403.182, F.S., empowered to enforce the provisions of Chapter 403, F.S., the rules promulgated thereunder in Title 62 (formerly Title 17), F.A.C.; and the City of Jacksonville Ordinance Code (Ord. Code) Title X, Chapters 360 and 362, and the rules promulgated thereunder in the Jacksonville Environmental Protection Board ("JEPB") Rules.

3. Respondent is a corporation authorized to conduct business in the State of Florida, having a place of business known as D-Graphics in Jacksonville, County of Duval, Florida. The Respondent is a person within the meaning of Section 403.031(5), F.S., and Section 360.106, Ord. Code.

4. Respondent operates a catalytic incinerator with associated capture and transport system for a package rotogravure printing press, designated as Press No. 5 at its facility located at 3389 Powers Avenue, Jacksonville, Florida (the "Facility"). The Facility is authorized to operate Press No. 5 and associated emission control systems under Department Permit No. AC16-089528 (the "Permit"), which was issued on February 12, 1985. (Attachment 1).

5. Pursuant to a LAER determination, Specific Condition No. 3 of the Permit imposed a specific emission limiting standard for the capture and removal of volatile organic compounds ("VOC's"). The capture and removal system, as proposed in the Permit application, included the use of a plastic strip curtain enclosing the

operator's side of Press No. 5. The overall capture and transport system efficiency of the VOC's delivered to the substrate must meet or exceed 80%; and the catalytic incinerator must meet or exceed 95% destruction.

6. Specific Condition No. 2 of the Permit limited the maximum VOC's applied to the substrate to 178.55 lbs. per hour. This calculates to an annual VOC emission limit of no more than 90.5 tons.

7. Specific Condition No. 1 of the Permit limited operating hours for the Press to 4228 per year running time.

8. Respondent also operated rotogravure printing Press No. 4 at the facility until 1990 under Department Permit No. AC16-093347. The permit for Press No. 4 contained the same LAER determination and emission capture and removal system as the permit for Press No. 5, and authorized 6566 hours per year running time. Respondent was also issued Permit No. AC16-105518 for Press No. 2, with 8,760 hours per year running time authorized annually. Press No. 2 was dismantled and removed from the Facility on or about the first quarter of 1990.

9. On October 10, 1994, counsel for Respondent contacted counsel for the Department and City to arrange a meeting with their respective agencies to report possible violations of the permit. The meetings were held on October 17 and 18, 1994. (Attachment 2).

On October 17, 1994, representatives of Respondent met in Jacksonville, Florida with representatives of the technical and legal staffs of both agencies. On October 18, 1994, a similar meeting was held in Tallahassee, Florida at the Division of Air Resource Management with Respondent and both technical and legal representatives of the Department. (Attachment 3).

10. At those meetings the Company gave a preliminary report on the status of an investigation and orally reported substantially the matters disclosed later in a written report. The Company committed to provide a written report of its investigation in about two weeks.

11. At the October 17 and 18, 1994, meetings Respondent also reported to the Department and RESD that the Facility had likely operated for 4 years or longer without utilizing the curtains that comprised part of the enclosure for Press No. 5. Respondent further reported that some facility employees indicated the curtains had been placed in the proper position only during stack testing and during occasions such as inspections by the Department and RESD.

12. Also at the two meetings, the Company verbally reported the probable exceedance of the permit limit on their hours of operation (4228) for Press 5 for 1994. Respondent reported on the morning of October 18, 1994 that Press No. 5 had in fact exceeded its permitted hours for the calendar year 1994, and notified the

Department and RESD that the facility had been shut down.

(Attachment 4).

13. After consulting with Petitioners, Respondent on October 24, 1994 filed a Petition for Emergency Order (Attachment 5) to allow the plant to operate in the interim under a number of proposed additional measures to assure continual compliance with the permit and rules.

14. On October 24, 1994, the Secretary of the Department issued an Emergency Order authorizing the operation of Press No. 5 for a period of thirty (30) days from the date of issuance of the Order. (Attachment 6). The Emergency Order required Respondent to submit an application for an increase of hours of operation for Press No. 5 on or before October 25, 1994. The Emergency Order also required a written report, due on or before October 27, 1994, on the Respondent's internal investigation into the matter. The Emergency Order also contained other specific conditions for the continued operation of the facility. The plant was restarted late on October 24, 1994.

15. In conformance with the Department's Emergency Order, Respondent had its first inspection performed on October 25, 1994 and installed sweeps for additional VOC capture on October 30, 1994. (Attachment 7).

16. In conformance with the Department's Emergency Order, the written report of the Company's investigation was filed on October 27, 1994 with a supplement on October 28, 1994. (Attachment 8). The permit application was filed on October 25, 1994.

17. Outside counsel for the Company along with a Corporate representative met with the Department on October 28, 1994 to discuss the results of the investigation and answer questions. The City was present by teleconference. All questions of the Petitioners were answered at the meeting or by a following letter. (Attachment 9). An additional letter was provided to the Department providing information on use of alternative low-VOC printing process, which had also been requested by Petitioners. (Attachment 10).

18. The report of the investigation dated and filed October 27, 1994 (Attachment 8) confirmed that Respondent exceeded the Operating Hour Permit Limit for Press No. 5 (4228 hours) in 1990 (4712 hours); 1991 (4893 hours); 1992 (4968 hours); 1993 (5209 hours). In addition, the Respondent reported that they had exceeded the annual hourly operating limit for 1994 (4405.75 hours).

19. Several follow-up reports were provided to the Petitioners as other possible issues were identified. (Attachment 11).

20. The report also found that from 1990, and perhaps considerably before then, until September 22, 1994, the plastic strip curtains used for containment of VOC's for Press No. 5 were hung only during annual emission compliance tests and during occasions such as scheduled inspections by the Department and RESD.

21. Respondent also reported the results of compliance tests performed and filed between 1990 and 1993, and "pounds per hour" of VOC's applied to the substrate, calculated in two different ways, for those years. Facts concerning certain equipment-related work during 1992, replacement of the catalytic incinerator in 1994, and a change in the type of labels made during 1990, were also reported.

22. The matters reported by Respondent constitute violations of Construction Permit No. AC16-089528 for Press No. 5 and Construction Permit No. AC16-093347 for Press No. 4, Rule 62.210.650, F.A.C. and Chapter 403.161, F.S., and JEPB Rule 2 and Chapters 360 and 362, Ord. Code.

23. Having reached a resolution of this matter pursuant to F.A.C. Rule 62-103.110(3) and 360.114 Ord. Code, and without Respondent admitting liability, the Respondent, in an effort to resolve this matter expeditiously and without litigation mutually agrees with the Department and RESD pursuant to 62-103.110(3), F.A.C. and 360.114 Ord. Code, to the following, intended to upgrade

environmental performance at the Facility generally, and in particular to reduce air emissions.

Accordingly, it is ORDERED:

24. Execution of this Consent Order does not relieve Respondent of the obligation to comply with all requirements set forth in the Emergency Order dated October 24, 1994.

25. Pursuant to paragraph 17 of the Emergency Order Respondent shall remain under an obligation to use its best efforts to address, to the extent practicable, any issues raised by its outside environmental consultant. All issues raised shall be brought to RESD within 30 days of execution of this Consent Order for discussion and approval. All RESD approvals shall be implemented by the Respondent within 90 days of approval. All disputes as to practicability shall be resolved by the Division of Air Resources Management in the Department.

26. For one year, Respondent, in lieu of the daily inspections required by Section 19 of the Emergency Order, shall arrange for the conduct of monthly inspections to insure that all air emission limiting standards or requirements in the Permit are met. Each monthly inspection shall be unannounced at random times and shall be followed by an inspection report to be submitted directly to RESD without the opportunity for prior comment from the Respondent.

27. Pursuant to paragraph 18 of the Emergency Order, "sweeps" have been installed at Press and floor level to capture additional VOC's and direct them to incinerators. These shall remain in place at the Facility in an approved configuration.

28. Respondent's employees shall be instructed, and warnings posted, that all press capture and control equipment must remain in place while any press at the Facility is running, until total enclosure of the presses takes place. This must be emphasized at least once each shift, and a log maintained to document that the instructions were given.

29. Within ninety (90) days of the execution of this Consent Order, Respondent shall provide the Department and RESD with a syllabus describing the training Respondent will provide to its plant manager and operators operating the Facility in compliance with Department and RESD permits and rules. Upon receipt of the Department's and RESD's approval of the syllabus, Respondent shall train its personnel accordingly and provide to the Department and RESD written verification that the plan and schedule for implementation of such training has been implemented.

30. The Respondent has withdrawn the permit application for modification of Presses No. 4 and No. 5, which was submitted on August 10, 1994 in conformance with the Department's Emergency Order.

31. The Respondent shall, within 10 days of issuance of Permit AC16-259725, surrender the Air Construction permit, AC16-105518 for Press No. 2. Respondent reserves any creditable emission reductions or offsets available from Press No. 2.

32. The Respondent shall, with any future modification as defined by F.A.C. Rule 62-212.200(46), configure the existing Press No. 5 and any other presses being installed in a total enclosure intended to achieve substantially 100% capture of all VOC emissions. No operation of the modified system shall be allowed in the new configuration without a design intended for substantially 100% capture as described above. Respondent reserves any creditable emission reductions or offsets available.

33. In the event that no further modifications are made to the Facility, the Respondent shall take action intended to achieve substantially 100% capture of all VOC emissions, not later than June 30, 1996. Respondent reserves any creditable emission reductions or offsets available.

34. Within 90 days of execution of this Consent Order, Respondent shall submit to RESD complete engineering drawings of the present capture, control (i.e., incinerator) airhandling and electrical systems.

35. Within 90 days of execution of this Consent Order, Respondent shall undertake a study of technology to reduce or eliminate VOC's

from all solvent based inks currently used in their process. Said study shall be completed within three (3) months. Within 10 days of completion of the study, Respondent shall provide RESD with a copy of the study and arrange a schedule to be approved by RESD to implement the results of the study to the extent practicable. Any dispute as to the practicability of implementing a particular result shall be resolved by the Division of Air Resources Management in the Department.

36. Respondent shall notify RESD prior to making any changes at the Facility related to the subject matter of Permit No. AC16-089528 or this Consent Order whether or not the changes meet the definition of modification under F.A.C. Rule 62-212.200(46).

37. Respondent shall pay to RESD \$1,543,284 in settlement of the violations addressed in paragraphs 18, 19, 20, 21 and 22 of this Consent Order. The payment of a minimum of \$500,000 shall be made at the time of execution of this Consent Order said payment can be made by company check made payable to the City of Jacksonville, Environmental Protection Fund. The remaining balance shall be tendered by a cashiers check, certified check or money order made payable to the City of Jacksonville, Environmental Protection Fund within 75 days of execution of this Consent Order. All money shall be refundable if the Consent Order does not become final.

38. This Consent Order resolves the dispute between the Department, RESD and Respondent concerning the matters set forth in paragraphs

18, 19, 20, 21 and 22 of this Consent Order and in reports submitted to the Department and RESD dated October 27, 1994, October 28, 1994, November 2, 1994, and November 4, 1994. The Department and RESD each reserves the right to take appropriate enforcement action against the Respondent for any violations unknown to the Department and/or RESD at the time of execution of this consent order, or future violations of the Department's and/or RESD's rules, permit conditions, or JEPB rule.

39. If any event occurs which causes delay, or the reasonable likelihood of delay, in complying with the requirements or deadlines of this Consent Order, Respondent shall have the burden of proving that the delay was, or will be, caused by the circumstances beyond the reasonable control of Respondent and could not have been or cannot be overcome by Respondent's due diligence. Economic circumstances shall not be considered circumstances beyond the control of Respondent, nor shall the failure of a contractor, subcontractor, materialman or other agent (collectively referred to as "contractor") to whom responsibility for performance is delegated to meet contractually imposed deadlines be a cause beyond the control of Respondent, unless the cause of the contractor's late performance was also beyond the contractor's control. Upon occurrence of an event causing delay, or upon becoming aware of a potential for delay, Respondent shall notify the Department orally within 24 hours or by the next working day and shall, within seven days of oral notification to the Department, notify the Department in writing of the anticipated length and cause of the delay, the

measures taken or to be taken to prevent or minimize the delay, and the timetable by which Respondent intends to implement these measures. If the parties can agree that the delay or anticipated delay has been or will be caused by circumstances beyond the reasonable control of Respondent, the time for performance hereunder shall be extended for a period equal to the agreed delay resulting from such circumstances. Such agreement shall adopt all reasonable measures necessary to avoid or minimize delay. Failure of Respondent to comply with the notice requirements of this paragraph in a timely manner shall constitute a waiver of Respondent's right to request an extension of time for compliance with the requirements or deadlines of this Consent Order.

40. Respondent shall allow all authorized representatives of the Department and/or RESD access to the property at reasonable times for purposes of determining compliance with this Consent Order and the rules of the Department and/or RESD.

41. Entry of this Consent Order does not relieve Respondent of the need to comply with applicable federal, state or local laws, regulations or ordinances.

42. The terms and conditions set forth in this Consent Order may be enforced in a court of competent jurisdiction pursuant to Sections 120.69, and 403.121, F. S., and Sections 362.109(a)(3) and 362.110(a)(2) Ord. Code. Failure to comply with the terms of this

Consent Order shall constitute a violation of Section 403.161(1)(b), F.S., and Section 362.104(d) Ord. Code.

43. Respondent is fully aware that a violation of the terms of this Consent Order may subject Respondent to judicial imposition of damages, civil penalties of up to \$10,000 per offense and criminal penalties.

44. Respondent shall publish the following notice in a newspaper of daily circulation in Duval County. The notice shall be published one time only within 30 days after execution of this Consent Order by the Department and RESD.

STATE OF FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION
NOTICE OF CONSENT ORDER

The Department of Environmental Protection gives notice of agency action of entering into a Consent Order with Jefferson Smurfit Corporation, (U.S.), d/b/a D-Graphics (Respondent) pursuant to Rule 62-103.110(3), Florida Administrative Code. The Consent Order addresses violations of the Department's rules, permit conditions and variance that are alleged to have occurred during Respondent's operation of its package rotogravure printing press. The Consent Order describes the new requirements that will be imposed upon Respondent to ensure that future violations of the Department's regulations do not occur. The Consent Order also describes the other actions the Department will take to address its concerns about the alleged violations. The Consent Order is available for public inspection during normal business hours, 8:00

a.m. to 5:00 p.m., Monday through Friday, except legal holidays, at the Department of Environmental Protection, 2600 Blair Stone Road, Twin Towers Office Building, Tallahassee, Florida 32399 and the Department's Northeast District Office, Suite 200 B, 7825 Baymeadows Way, Jacksonville, Florida 32256-7577.

Persons whose substantial interests are affected by this Consent Order have a right to petition for an administrative hearing on the Consent Order. The Petition must contain the information set forth below and must be filed (received) in the Department's Office of General Counsel, 2600 Blair Stone Road, Tallahassee, Florida 32399-2400 within 21 days of receipt of this notice. Failure to file a petition within 21 days constitutes a waiver of any right such person has to an administrative hearing pursuant to Section 120.57, F.S.

The petition shall contain the following information:

(a) The name, address, and telephone number of each petitioner, the Department's identification number for the Consent Order and the county in which the subject matter or activity is located; (b) A statement of how and when each petitioner received notice of the Consent Order; (c) A statement of how each petitioner's substantial interests are affected by the Consent order; (d) A statement of the material facts disputed by petitioner, if any; (e) A statement of facts which petitioner contends warrant reversal or modification of the Consent Order; (f) A statement of which rules or statutes petitioner contends require reversal or modification of the Consent Order; (g) A statement of the relief sought by

petitioner, stating precisely the action petitioner wants the Department to take with respect to the Consent Order.

If a petition is filed, the administrative hearing process is designed to formulate agency action. Accordingly, the Department's final action may be different from the position taken by it in this Notice. Persons whose substantial interests will be affected by any decision of the Department with regard to the subject Consent Order have the right to petition to become a party to the proceeding. The petition must conform to the requirements specified above and be filed (received) within 21 days of receipt of this notice in the Office of General Counsel at the above address of the Department. Failure to petition within the allowed time frame constitutes a waiver of any right such person has to request a hearing under Section 120.57, F.S., and to participate as a party to this proceeding. Any subsequent intervention will only be at the approval of the presiding officer upon motion filed pursuant to Rule 60Q-2.010, F.A.C. Appeals to JEPB Orders are governed by Section 360.406, Ord. Code and JEPB Rule 1.

45. The Department and RESD each expressly reserves the right to initiate appropriate legal action to prevent or prohibit any violations of applicable statutes, or the rules promulgated thereunder that are not specifically addressed in this Consent Order.

46. The Department and RESD, for and in consideration of the complete and timely performance by Respondent of the obligations

agreed to in this Consent Order, each hereby waives its right to seek the judicial imposition of additional civil penalties for the matters outlined in this Consent Order. Respondent waives its right to an administrative hearing pursuant to Section 120.57, Florida Statutes, of the terms of this Consent Order. Respondent acknowledges its right to appeal the terms of this Consent Order pursuant to Section 120.68, Florida Statutes and Section 360.112, Ord. Code, but waives that right upon signing this consent Order.

47. With regard to any agency action taken by the Department with regard to this Consent Order, Respondent may file a Petition for Formal or Informal Administrative Hearing. If Respondent objects to the Department's agency action pursuant to Section 120.57, Florida Statutes, and Chapter 62-103, Florida Administrative Code, Respondent shall have the burden to establish the inappropriateness of the Department's agency action. The petition must be filed (received) at the Department's Office of General Counsel, 2600 Blair Stone Road, Tallahassee, Florida 32399-2400, within 21 days of receipt of the Department's agency action that Respondent intends to challenge and must conform with the requirements of Florida Administrative Code Sections 62-103 and 60Q-2.004. Failure to file a petition within this time period shall constitute a waiver by Respondent of its right to request an administrative proceeding under Section 120.57, Florida Statutes. The Department's determination, upon expiration of the 21 day time period if no petition is filed, or the Department's Final Order as a result of the filing of a petition, shall be incorporated by reference into

this Consent Order and made a part of it. All other aspects of this Consent Order shall remain in full force and effect at all times. If Respondent seeks an administrative proceeding pursuant to this paragraph, the Department may file suit against Respondent in lieu of or in addition to holding the administrative proceeding to obtain judicial resolution of all the issues unresolved at the time of the request for administrative proceeding.

48. No modifications of the terms of this Consent Order shall be effective until reduced to writing and executed by Respondent and the Department and RESD.

49. The provisions of this Consent Order shall apply to and be binding upon the parties, their successors, and assigns.

50. All plans, surveys, reports, or recommendations for corrective action, or other documents required by this Consent Order shall be submitted to RESD and shall be sent to RESD, Air Quality Division, Attn: Dana L. Brown, 421 W. Church Street, Suite 412, Jacksonville, FL 32202-4111.

51. If the requirements of this Consent Order have not been fully satisfied, Respondent shall, at least 14 days prior to a sale or conveyance of the property, (1) notify the Department and/or RESD of such sale or conveyance, and (2) provide a copy of this Consent Order with all attachments to the new owner.

52. This Consent Order settles only the civil and administrative matters specifically addressed herein pursuant to Chapter 403, Florida Statutes, and RESD's civil and administrative authority arising from Chapters 360 and 362, Ord. Code.

53. This Consent Order shall not be binding and effective until executed by all parties. In the event one or more parties does not execute this Consent Order, it shall be deemed null and void and the provisions contained herein shall be given no legal effect whatsoever.

54. This Consent Order is final agency action of the Department pursuant to Section 120.69, Florida Statutes, and Florida Administrative Code Rule 62-103.110(3), and it is final and effective on the date filed with the Clerk of the Department unless a Petition for Administrative Hearing is filed in accordance with Chapter 120, Florida Statutes. Upon timely filing of a petition this Consent Order will not be effective until further order of the Department. With regard to RESD, this Consent Order is final agency action upon execution by the Chairman for JEPB unless a petition is timely filed pursuant to Section 360.112, Ord. Code. This Consent Order, once effective, shall remain in effect until satisfaction of all obligations by the Respondent, as determined by the Department and RESD. Upon satisfaction of all obligations of this Consent Order, as determined by the Department and RESD, this Consent Order shall be closed.

Date: _____

FOR THE RESPONDENT

Terry Cole for
Michael C. Farrar,
Vice President, Environmental
and Governmental Affairs
Jefferson Smurfit
Corporation, (U.S.)
8182 Maryland Avenue
St. Louis, MO 63105

Date: _____

Alton W. Yates, Director
Department of Regulatory and
Environmental Services, City
Of Jacksonville
421 West Church Street
Suite 412
Jacksonville, FL 32202-4111

Adopted at open meeting this _____ day of _____, 1994 in
Jacksonville, Florida.

Chairman
Environmental Protection Board
City of Jacksonville, FL

DONE AND ORDERED this 14th day of November, 1994 in Tallahassee,
Florida.

STATE OF FLORIDA DEPARTMENT
OF ENVIRONMENTAL PROTECTION

FILING AND ACKNOWLEDGEMENT
FILED, on this date, pursuant to S120.52
Florida Statutes, with the designated
Department Clerk, receipt of which
is hereby acknowledged.

[Signature]
Clerk
11/14/94
Date

[Signature]
Daniel H. Thompson
Deputy Secretary
Florida Department Of
Environmental Protection
3000 Commonwealth Blvd.
Tallahassee, FL 32303

Date: 11/14/94

FOR THE RESPONDENT

Michael C. Farrar
Terry Cole for
Michael C. Farrar,
Vice President, Environmental
and Governmental Affairs
Jefferson Smurfit
Corporation, (U.S.)
8182 Maryland Avenue
St. Louis, MO 63105

Date: 11/14/94

Alton W. Yates
Alton W. Yates, Director
Department of Regulatory and
Environmental Services, City
Of Jacksonville
421 West Church Street
Suite 412
Jacksonville, FL 32202-4111

Adopted at open meeting this 14th day of November, 1994 in
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[Signature]
Chairman
Environmental Protection Board
City of Jacksonville, FL

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OF ENVIRONMENTAL PROTECTION

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[Signature]
Clerk 11/14/94
Date

[Signature]
Daniel H. Thompson
Deputy Secretary
Florida Department Of
Environmental Protection
3000 Commonwealth Blvd.
Tallahassee, FL 32303