

May 18, 2006

To: Utah Air Quality Board

From: Ernest Wessman, Appointed Hearing Officer

Re: Recommendation concerning resolution of Pine Factory's Request for Hearing, DAQC-1471-2005.

The Board appointed me as hearing officer to hear the appeal submitted by Mr. Doug Clark on behalf of Pine Factory of a Notice of Violation and Order for Compliance dated October 24, 2005. A letter was sent to Mr. Clark advising him the hearing was set for April 27, 2005. Mr. Clark did not appear at the hearing. I had Fred Nelson, Counsel to the Board, telephone Mr. Clark. Mr. Nelson reported that Mr. Clark indicated he had received the letter notifying him of the hearing, and he had also received a copy of the administrative record. Mr. Nelson reported that Mr. Clark stated he was not withdrawing his appeal but that Pine Factory would rely on the written submittals he had sent to the Executive Secretary that were part of the administrative record. Mr. Nelson said Mr. Clark told him that he would not be appearing at the hearing. As hearing officer, I went forward with the proceeding. I received into evidence the administrative record and heard testimony from Rob Leishman and Jeff Dean of the Division of Air Quality (see attached transcript and administrative record, Attachment 1).

**Recommendation:**

Based on the documents and evidence, I recommend that the Board approve the attached "Findings of Fact, Conclusions of Law, and Order" (Attachment 2) as the decision of the Board on this appeal. I found that the evidence supported the conclusion that a valid approval order had been issued by the Executive Secretary to Pine Factory. I also concluded that the evidence was sufficient to uphold the violations stated in the Notice of Violation and Order for Compliance dated October 24, 2005.

The purpose for the hearing was to consider the validity of the Notice of Violation and Order to Comply. The purpose was not to determine a penalty. I am advised by Mr. Nelson that determinations of penalty amounts can be resolved only by an agreed-to settlement with Pine Factory or as determined by a judge in a civil proceeding.

I would note that an issue was discussed at the hearing as to whether the current size of the Pine Factory operation would qualify it for de minimus status under UAC R307-413, and therefore make Pine Factory not subject to the requirements for an approval order. I concluded that the burden is on Pine Factory to request a change of status with supporting documentation, and that absent approval of such a request, the existing approval order continues to be enforceable.

1

## HEARING RECORD

### PINE FACTORY

April 27, 2006

Notice of Violation and Order Number 2005100508

1. Pine Factory Approval Order and inspection notes, November 4, 2004.
2. Pine Factory Visible Emissions Observation Form, November 4, 2004.
3. Compliance Inspection report sent to Pine Factory, November 16, 2004.  
Record of certified mail delivery attempts - 11/20/04, 12/02/04,  
12/12/04.  
Notes and signature from hand delivery to main shop and  
Riverdale store, 12/27/04.
4. Photographs of main shop, 12/27/2004.
5. Inspection Memorandum, 01/12/2005.
6. Compliance Advisory Sent to Pine Factory January 13, 2005.  
Record of certified mail delivery attempts - 01/18/05, 01/25/05,  
02/02/05  
Notes and signature from hand delivery to main shop and  
Riverdale store, 02/11/05.
7. e mail from Pine Factory to DAQ, February 15, 2005.  
VOC Report.  
Photograph of main shop.
8. Informal Conference Letter sent to Pine Factory March 30, 2005.  
Record of certified mail delivery attempts - 04/04/05, 04/12/05,  
04/19/05
9. Proposed Settlement agreement sent to Pine Factory May 13, 2005.  
Record of certified mail delivery attempts - 05/13/05, 05/20/05,  
05/30/05.  
Notes and signature from hand delivery to main shop 06/08/05.
10. Notes on telephone calls to Pine Factory 07/06/05 - 07/11/05.

11. Letter to Pine Factory from Attorney General's Office, August 15, 2005.  
Record of certified mail delivery attempts - 08/16/05, 08/24/05,  
08/31/05.
12. Notice of Violation and Order issued to Pine Factory October 24, 2005.  
Record of service on Pine Factory 11/02/05.
13. December 2, 2005 Request for a Hearing.
14. Letters from Attorney General's Office setting up a hearing on Notice of  
Violation and Order number 20051005008, 12/27/05, 01/23/06, 03/09/05,  
03/27/05.

SHEET 1

ADMINISTRATIVE HEARING OF PINE FACTORY  
 Utah Department of Environmental Quality  
 150 North 1950 West  
 P.O. Box 144820  
 Salt Lake City, Utah 84114-4099  
 April 27, 2006  
 1:30 p.m.

Reporter: Shantae Rindfleisch, RPR  
 Notary Public in and for the State of Utah

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1 APPEARANCES  
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 15 Attorneys at Law  
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 17 Salt Lake City, Utah 84114  
 18 (801) 366-0290  
 19 (801) 366-0292 (fax)  
 20  
 21 ALSO PRESENT:  
 22 Hearing Officer- Ernest E. Wessman  
 23 Jeff Dean  
 24  
 25

-oOo-

NO.	OFFERED	ADMITTED
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1 Violation and Order to Comply.  
 2 As I indicated earlier, the number is  
 3 2005100508 by the Executive Secretary to Pine  
 4 Factory. As required by the Utah Air Quality rules,  
 5 Utah Administrative Code R307-103-4(1), this hearing  
 6 is to be conducted as a formal hearing under the Utah  
 7 Administrative Procedures Act, Title 63, Chapter 46b  
 8 of the Utah Code.  
 9 Because Mr. Clark is not here, the hearing  
 10 as we would plan to give it can't really proceed, but  
 11 we do have some information that needs to be entered  
 12 into the record so that I, as the hearing officer,  
 13 can evaluate and make a recommendation to the Air  
 14 Quality Board.  
 15 And I understand that Ms. Hubbell has some  
 16 information to present.  
 17 MS. HUBBLE: I would like to ask that Mr.  
 18 Leishman be sworn so that he can testify.  
 19 MR. WESSMAN: Okay. So can you take care  
 20 of that?  
 21  
 22 ROB LEISHMAN,  
 23 called as a witness, being first sworn was  
 24 examined and testified as follows:  
 25

6

1 PROCEEDINGS

2  
 3 MR. WESSMAN: I am Ernest Wessman, member  
 4 of the Utah Air Quality Board and the hearing officer  
 5 appointed by the Board for the matter of the Pine  
 6 Factory. Notice of Violation and Order Number  
 7 2005100508. And I'm hereby convening this hearing.  
 8 I would like to have those who are present  
 9 at this time to announce who they are and their  
 10 affiliation. And we'll start with Fred Nelson.  
 11 MR. NELSON: My name is Fred Nelson, and  
 12 I'm representing the hearing officer and the Board in  
 13 this matter.  
 14 MS. HUBBELL: My name is Melissa Hubbell.  
 15 I'm with the Attorney General's office, and I'm  
 16 representing the Division of Air Quality.  
 17 MR. LEISHMAN: My name is Rob Leishman.  
 18 I'm with the state of Utah Division of Air Quality.  
 19 I'm an environmental scientist.  
 20 MR. WESSMAN: Thank you. And the only  
 21 other person present is the court reporter. And Mr.  
 22 Doug Clark, proprietor of Pine Factory has not  
 23 appeared. The proceeding was being held at the  
 24 request of Pine Factory, and was for the purpose of  
 25 hearing the appeal of the issuance of the Notice of

8

1 EXAMINATION

2 BY MS. HUBBELL:  
 3 Q. Mr. Leishman, you've already stated your  
 4 name and your position. I would like to go through  
 5 these documents.  
 6 The first document which is entitled  
 7 Exhibit 1 is a Pine Factory Approval Order and  
 8 Inspection note. What's an Approval Order?  
 9 A. An Approval Order is a document issued by  
 10 the Division of Air Quality. It is a permit for an  
 11 emissions producing facility to operate and to have  
 12 emissions.  
 13 Q. All right. Whose Approval Order is this?  
 14 A. This Approval Order was initially issued  
 15 to Doug Clark of C & C Manufacturing. At some point  
 16 they changed their name to Pine Factory. It was also  
 17 issued to a location 3150 Wall Avenue. They had  
 18 moved at some point to 2480 South 250 West in Ogden.  
 19 It was issued originally by the Executive Secretary,  
 20 Russell Roberts.  
 21 Q. What business do they run?  
 22 A. Pine Factory operates a pine furniture --  
 23 or wood furniture manufacturer and facility where  
 24 they use pine logs and other wood to fabricate  
 25 various pieces of wood furniture.

1 Q. And why are they required to have an  
2 Approval Order?

3 A. They are required to have an Approval  
4 Order because their calculated emissions rates are  
5 such that -- that they would exceed the minimum  
6 requirements in the state rules which require them to  
7 have an Air Quality Approval Order.

8 Q. Okay. I noticed that there are notes all  
9 over this Approval Order. Could you tell me what  
10 those are?

11 A. The notes are -- they were put there by  
12 me. Those are notes that I take while I'm on an  
13 inspection just to remind me what happened, what went  
14 on, what records that I looked at, what items I  
15 closed. Just kind of general notes taken during the  
16 inspection.

17 Q. Did you notice any violations during this  
18 inspection?

19 A. Yeah. At the time of the initial  
20 inspection, it was noted that the -- that the paint  
21 booth was missing filters, or at least one or several  
22 filters missing in the center of the paint booth, as  
23 well as there was a container holding Volatile  
24 Organic Compound, which was observed to be opened at  
25 that time.

1 are part of the record, that he did not see a need to  
2 appear, and declined to appear, and indicated that we  
3 should just go forward with the proceeding.

4 MR. WESSMAN: Okay. On that basis then,  
5 unless there's any objection, why don't we continue  
6 with the discussion that we were in before. And you  
7 asked me, Melissa, a few minutes ago if I had any  
8 questions.

9 MS. HUBBLE: Yes.

10 MR. WESSMAN: One thing that you  
11 mentioned, Rob, is that an Approval Order was issued  
12 because the calculated emissions from Pine Factory  
13 were sufficiently high enough to require an Approval  
14 Order.

15 THE WITNESS: Yes.

16 MR. WESSMAN: Is that an accurate  
17 paraphrase of what you said?

18 THE WITNESS: Yes.

19 MR. WESSMAN: Can you tell me what those  
20 limits are that trigger the need for an Approval  
21 Order and an air permit?

22 THE WITNESS: Currently the levels of  
23 emissions are five tons a year. At the time of the  
24 1995 Air Quality Approval Order, it was calculated  
25 that the actual VOC emissions or the calculated VOC

1 Q. And those are violations?

2 A. Those are violations of the Air Quality  
3 Approval Order.

4 Q. All right. If you have any questions,  
5 just interrupt at any time.

6 UNIDENTIFIED SPEAKER: Fred, he's on the  
7 phone now.

8 MS. HUBBLE: Off the record.  
9 (A break was taken.)

10 MR. WESSMAN: Just to set for the record  
11 here, we've had a brief intermission in order to take  
12 a phone call from Mr. Doug Clark who has failed to  
13 appear in person so far in the meeting. And Mr.  
14 Nelson's been talking to him. And so do you have a  
15 report?

16 MR. NELSON: Yes. Mr. Clark indicated  
17 that he had made a decision not to come to the  
18 hearing. That he is relying on the information that  
19 he's submitted that is part of the documents that  
20 were sent to him. I believe there are a couple of  
21 exhibits --

22 MS. HUBBLE: 7 and 13, I believe, yes.

23 MR. NELSON: 7 and 13 are the documents  
24 that he is relying on as his response to the Notice  
25 of Violation and Order, and that if those documents

1 emissions would be 15 tons a year.

2 MR. WESSMAN: Okay. As I look through the  
3 Approval Order requirements, are each of these  
4 requirements consistent with the Utah Administrative  
5 Code for the Utah Air Quality Rules?

6 THE WITNESS: Yeah. These requirements  
7 are very consistent with other Air Quality Approval  
8 Orders that I've used in my inspections of various  
9 other woodworking facilities. They're very  
10 consistent with those.

11 MR. WESSMAN: Okay. For example, the  
12 requirement number 6, which is one of the  
13 requirements that is at issue here, says that, "The  
14 paint spray booth shall be equipped with paint  
15 arrestor particulate filters," and, "All air exiting  
16 the booth shall pass through this control system."  
17 Is that consistent with Utah Air Quality Rules?

18 THE WITNESS: Yeah. That requirement is  
19 also considered best available controlled technology  
20 for the service company history.

21 MR. WESSMAN: Okay. And then the 7.5  
22 percent by weight requirement in Condition Number 7,  
23 is that something that's spelled out again through  
24 the Utah Air Quality Rule, or Code, or EPA Rules, or  
25 anything?

13

1 THE WITNESS: Yeah. I believe that would  
2 be either in the State of Utah Rules or the federal  
3 requirements for these types of industries. The  
4 Federal Resource Performance Standards, that would be  
5 in one or both of those rules.

6 MR. WESSMAN: Do we know for sure if they  
7 are?

8 THE WITNESS: I don't know.

9 MR. WESSMAN: Okay. Anybody else know?

10 MR. DEAN: It would be in the general  
11 rules under --

12 MR. NELSON: We probably ought to have  
13 Jeff sworn in.

14 MR. DEAN: Jeff Dean.

15 JEFF DEAN,  
16 was sworn as a witness.

17 MR. DEAN: Those requirements for VOC  
18 limits in different paint solvents, the type of  
19 solutions that Mr. Clark is using, those are in the  
20 general rules that govern Ozone nonattainment  
21 maintenance-type areas and attainment areas.

22 MR. WESSMAN: Okay. But a 7.5 percent by  
23 weight is the requirement in some of those?  
24  
25

15

1 referenced in the Approval Order which are required  
2 to be kept by the owner/operator shall be made  
3 available, is that a condition that is required under  
4 the Utah Administrative Code and the Air Quality  
5 Rules?

6 THE WITNESS: Yes.

7 MR. WESSMAN: And then Number 13, to  
8 properly and adequately maintain installations to  
9 facilities, they shall all be installed, maintained,  
10 and operated, and "Instructions from the vendor or  
11 established maintenance practices that maximize  
12 pollution control shall be used." Is that consistent  
13 with the Utah Administrative Code and Rules?

14 THE WITNESS: Yes.

15 MR. WESSMAN: Okay. Thank you. That's  
16 what I needed on that.

17 Q. (By Ms. Hubbell) Thank you.

18 Did you leave a copy of this document with  
19 someone at the Pine Factory?

20 A. Yes. I left a copy of the Air Quality  
21 Approval Order with Doug Clark's father, Rulon Clark,  
22 who said that he would get the information to Doug  
23 about what I needed and when I needed it.

24 Q. Okay. Would you look at Exhibit Number 2.  
25 Is this a document you made?

14

1 MR. DEAN: Yes.

2 MR. WESSMAN: Okay. And then on Number 8  
3 the -- where it talks about not exceeding 15 tons per  
4 12-month period, and then basically compliances  
5 demonstrated by maintaining of records of VOC  
6 containing materials used each month. Is that  
7 requirement consistent with what other industries and  
8 permittees are required to have?

9 THE WITNESS: Yes. The amount may vary  
10 from company to company. Fifteen tons a year was  
11 probably the amount that Mr. Clark at the time  
12 applied to have as his emissions limit.

13 MS. HUBBELL: Perhaps you could explain  
14 what these two "Rs" mean.

15 THE WITNESS: The "R" notation next to  
16 those conditions indicates that that was an item  
17 where I needed to gather records to complete the  
18 inspection. I would have -- at the time of the  
19 inspection, I left Mr. Clark -- well, I left Mr.  
20 Clark's father, Rulon Clark, a copy of this Air  
21 Quality Approval Order. I circled those conditions  
22 indicating that those were the conditions that I  
23 needed to get records for from Mr. Clark.

24 MR. WESSMAN: Okay. Thank you.  
25 On Condition 12, that all records

16

1 A. Yeah. Exhibit Number 2 is a Visible  
2 Emission Observation Form. It's a form that we use  
3 to record our visible emissions observation in  
4 accordance with EPA reference Method 9. It's also a  
5 place where we can take down additional notes. And  
6 then, of course, we signed the document indicating  
7 that we observed whatever it was we wrote down, and  
8 then we also get somebody on site. We get their  
9 signature, as well, so that they have proof that we  
10 left a copy. There's a carbon copy to this and all  
11 of that. All their signature means is that they've  
12 received a copy of this particular document.

13 MS. HUBBELL: Do you have any questions  
14 about that?

15 MR. WESSMAN: Not on this one.

16 Q. (By Ms. Hubbell) All right. What is  
17 Exhibit Number 3?

18 A. Exhibit Number 3 is a written request for  
19 records based on my inspection.

20 Q. Are these the same records you had  
21 requested at the earlier inspection?

22 A. Yes.

23 Q. Did you have this document sent to the  
24 Pine Factory?

25 A. Yes.

1 Q. And what happened?  
 2 A. We sent the document -- what had happened  
 3 was I never received records after the November 4,  
 4 2004 inspection. So we sent the written request for  
 5 records on November 16 of 2004. We sent that  
 6 certified mail and the Pine Factory failed to pick up  
 7 the Request for Records.  
 8 Q. The certified mail?  
 9 A. Yeah. They refused to receive the  
 10 certified mail.  
 11 Q. All right. So what did you do?  
 12 A. After we received a copy -- or after we  
 13 received the certified mail, after three attempts to  
 14 deliver, the last attempt being made on December 12th  
 15 of 2004, I went up on December 27th and hand-  
 16 delivered the documents to the main shop, as well as  
 17 the store on Riverdale Road.  
 18 Q. Is that a requirement of Utah law that you  
 19 hand-deliver it?  
 20 A. No.  
 21 Q. What is the requirement?  
 22 A. The requirement is that Pine Factory make  
 23 the records available.  
 24 Q. No. But I mean, how are you required to  
 25 send things to them?

19  
 1 had told the facility personnel that the filters  
 2 needed to be replaced, that they were excessively  
 3 caked with material and the filters were missing. I  
 4 had told them at the time of the initial inspection  
 5 that they needed to fix those items and to keep their  
 6 VOC containing materials in tight-fitting covered  
 7 containers.  
 8 At the time of the delivery of the  
 9 documents, I went back to the paint booth and found  
 10 again a container holding VOC containing materials,  
 11 as well -- sitting there open and not in use, as well  
 12 as the paint booth filters still missing and still  
 13 excessively caked with material.  
 14 Q. Did you take photographs while you were  
 15 there on the 27th?  
 16 A. Yes.  
 17 Q. Are those photographs the ones listed here  
 18 as Exhibit 4?  
 19 A. Yes, they are. The first photograph is a  
 20 picture of the paint booth in the condition that I  
 21 observed it in. It was in a similar condition as the  
 22 November inspection.  
 23 And then the second picture is another  
 24 opened container of VOC containing materials.  
 25 MS. HUBBELL: Do you have any questions?

1 A. I don't know if I understand the question.  
 2 Q. Are you required to send them by certified  
 3 mail?  
 4 A. No, we are not.  
 5 Q. Okay. But you did that anyway?  
 6 A. Yes.  
 7 MR. WESSMAN: Excuse me on that one. Is  
 8 there a prescribed means by which notices and  
 9 requests for information must be delivered to a  
 10 permittee?  
 11 THE WITNESS: No. We generally use  
 12 certified mail only because we receive a card that  
 13 shows when they received the document, that they in  
 14 fact did receive the document. But there's no --  
 15 there's no statute that -- that specifies how we  
 16 request records.  
 17 MR. WESSMAN: Thank you.  
 18 Q. (By Ms. Hubbell) On what day did you  
 19 hand-deliver these documents?  
 20 A. I hand delivered them on December 27th of  
 21 2004.  
 22 Q. And did you visit the factory area again?  
 23 A. Yeah. At the time of the hand delivery of  
 24 the written request for records, we -- I went back  
 25 into the shop area, observed the paint booth, which I

1 MR. WESSMAN: I have no questions.  
 2 Q. (By Ms. Hubbell) Let's go on to Exhibit  
 3 5. What is that document?  
 4 A. Exhibit 5 is a copy of the Pine Factory  
 5 inspection report that I wrote. That document  
 6 contains all of the particulars about the inspection  
 7 based on every single condition of the Air Quality  
 8 Approval Order.  
 9 Q. Okay. Exhibit 6, what is this document?  
 10 A. Document 6 is the Compliance Advisory that  
 11 was issued to Pine Factory on January 13th of 2005.  
 12 The Compliance Advisory is a citation of conditions  
 13 that the company had failed to comply with.  
 14 Q. Okay. What is the purpose of the  
 15 document?  
 16 A. The purpose of the document is to notify  
 17 the company that they are not in compliance with  
 18 various conditions of the Air Quality Approval Order,  
 19 and to get them to initiate corrective action, as  
 20 well as to respond and to demonstrate to the Division  
 21 of Air Quality that they are doing something about  
 22 the problems noted during the inspections.  
 23 Q. Okay. How did you get this delivered to  
 24 the Pine Factory?  
 25 A. We again attempted to send it certified

1 mail. Again, there were three attempts by the U.S.  
2 Post Office to deliver the documents. The Compliance  
3 Advisory is dated January 13, 2005. The last attempt  
4 to deliver this certified mail was February 2, 2005.  
5 And so again, I had to hand deliver the document on  
6 February 11th of 2005 to both the shop and the store  
7 locations.

8 Q. Okay.

9 MR. WESSMAN: I have no questions.

10 Q. (By Ms. Hubbell) Do you recognize Exhibit

11 7?

12 A. Exhibit 7 is an e-mail submitted to me on  
13 the state of Utah e-mail system by Doug at Pine  
14 Factory on February 15th of 2005. The document is  
15 Doug Clark's response to the Compliance Advisory. It  
16 indicates various reasons as to why he couldn't  
17 comply or didn't comply with the requirements in the  
18 Air Quality Approval Order, as well as providing a  
19 record that Mr. Clark thought was sufficient to  
20 demonstrate compliance with the requirements of the  
21 Approval Order. It also -- attached to the e-mail  
22 was a photograph that Mr. Clark took of the paint  
23 booth with new filters in place.

24 Q. Okay. I have a question on Page 2 of his  
25 letter. Mr. Clark says, "Now I submit to you that if

1 there is no visible particulates coming from the  
2 outside ductwork, how can missing filters be a  
3 deficiency?" I mean, can you answer that?

4 A. Yeah. There are two separate requirements  
5 in the Air Quality Approval Order. There is a  
6 visible emissions requirement, as well as a  
7 requirement to have filters in the paint booth. The  
8 requirements to have filters in the paint booth are  
9 independent of the requirement to comply with visible  
10 emissions standards.

11 Q. Okay. And I also wanted to ask you about  
12 the attached VOC Report for the Pine Factory  
13 2003/2004.

14 A. Okay.

15 Q. Is this an adequate VOC Report?

16 A. No. This report is very vague. The  
17 records required by the company to demonstrate  
18 compliance with their -- with Air Quality approval or  
19 limits needs to be a lot more involved than this.  
20 There's no way to verify where these numbers came  
21 from. There's really no statement as to where --  
22 what time period this is, whether it's one month, or  
23 ten months, or 12 months. There's -- the record is  
24 really incomplete with respect to the requirements of  
25 the approval.

1 Q. Do you have any way of knowing how  
2 accurate these records are?

3 A. No. I have no information. There was  
4 never any backup information provided other than this  
5 summary sheet.

6 Q. Would that normally be required?

7 A. Yeah.

8 MS. HUBBELL: Okay. Do you have any  
9 questions?

10 MR. WESSMAN: Yes. I would like to ask a  
11 couple of follow-ups to that.

12 THE WITNESS: Okay.

13 MR. WESSMAN: When I look at the  
14 requirements under Requirement Number 8, the  
15 sub-points here, there are a number of things listed  
16 here under A, B, and C, D, and E.

17 First of all, the name of the VOC  
18 material, has that been listed?

19 THE WITNESS: The name of the -- it could  
20 be. That could be the names. I don't know  
21 necessarily that all of the names of the VOC  
22 admitting materials are included in this.

23 MR. WESSMAN: Right.

24 THE WITNESS: But there are names of some  
25 VOC materials in these.

1 MR. WESSMAN: For a typical shop of this  
2 facility, what kind of records do you normally see?

3 THE WITNESS: Normally what we'll see is  
4 some sort of a summary sheet similar to this where  
5 we'll have various materials that they consume.

6 In this case, he indicates that there's  
7 Akso sander sealer, Akso top coat, and Akso stain.  
8 In a typical company, there's usually a lot more than  
9 three materials consumed in a company. But then  
10 they'll have the totals from each of those materials  
11 for each month for the period that I requested, or  
12 that an inspector requests on the rolling 12-month  
13 total as of the date of the inspection.

14 A rolling 12-month total is a total, based  
15 on the month prior to the inspection, back 12 months.  
16 And then it's summed up so that you can see where  
17 their consumption was, what their emissions were for  
18 each month, for each compound, for each material for  
19 the 12-month period.

20 MR. WESSMAN: Okay. And this summary here  
21 then does not provide you the means to determine what  
22 the rolling 12-month total was?

23 THE WITNESS: The document is very vague.

24 It specifies that it's for "Total VOC for year  
25 2003-2004." I highly doubt that even a small company

1 would consume this little of material in a two-year  
2 period. So I'm left to assume that, or at least hope  
3 that it's a 12-month period, but it's not specified.  
4 These numbers could have come from anywhere. There's  
5 never been any backup information. In any of my  
6 visits to the Pine Factory, I've never actually had  
7 anybody offer up MSDS sheets, purchase orders, or  
8 anything like that. This is the best that I've ever  
9 gotten from Doug.

10 MR. WESSMAN: Okay. And typically do you  
11 require purchase orders, or MSDS, or other items to  
12 verify the level of -- or the amounts of materials  
13 used in a similar organization?

14 THE WITNESS: Yes. Oftentimes we do that,  
15 yes.

16 MR. WESSMAN: Okay. Let's see. Under  
17 Item 8(E), "Records of consumption shall be kept for  
18 all periods when the plan is in operation ... made  
19 available upon request, and include a period of two  
20 years ending with date of request."

21 I understand from what you've said that  
22 that has not been made available to you?

23 THE WITNESS: Right. What that  
24 requirement would specify is that the -- that he be  
25 able to provide at least two years' worth of data to

1 had been issued an Approval Order on the basis of  
2 calculations showing that they would exceed five tons  
3 per year of the criteria pollutants, as you mentioned  
4 earlier, and then later operations and what other  
5 conditions might have changed, result in a revised  
6 calculation or actual operational experience showing  
7 that the level is below five tons a year, what should  
8 an entity do?

9 THE WITNESS: That's actually a common  
10 situation. When the state of Utah issued rules under  
11 the de minimus requirements, it's in the permitting  
12 rules where if they have actual emissions calculated  
13 to be well under five tons a year, they can then  
14 apply for a de minimus determination where the  
15 Executive Secretary, if they are found to indeed have  
16 actually emissions well below the thresholds to  
17 require a permit, that then they will issue a de  
18 minimus letter and rescind the Air Quality Approval  
19 Order. And then that facility only becomes  
20 accountable to the rule and not the Air Quality  
21 Approval Order.

22 MR. WESSMAN: Becomes accountable to the  
23 what?

24 THE WITNESS: The rule. The items in the  
25 rule. You know, pass the standards for any company

1 show what the company is doing to comply with this  
2 requirement.

3 In this case, he should be able to show  
4 12 or 24 rolling -- 12-month periods in order to  
5 demonstrate compliance. And then we'll -- you know,  
6 we'll see business fluctuations in there where they  
7 have high months, they have low months, and that  
8 affects the rolling 12-month total to -- you know,  
9 what we have here is we have one total of some sort.

10 MR. WESSMAN: Okay. If this represented a  
11 full and complete listing of the amounts used and the  
12 VOC produced for the two years, would he require an  
13 air permit?

14 THE WITNESS: If the information in this  
15 report were true and accurate, it is plausible under  
16 today's rules that no, he would not require an Air  
17 Quality Permit.

18 MR. WESSMAN: Okay.

19 Q. (By Ms. Hubbell) Is that for a one-year  
20 period or a two-year period?

21 A. A one-year period.

22 MR. WESSMAN: So if this were two years --

23 THE WITNESS: He would be well under it  
24 yes, if the information was accurate.

25 MR. WESSMAN: Okay. If an organization

1 in the state, VOC minimization requirements for any  
2 company in the state, those types of rules, which are  
3 not nearly as specific as the requirements in the Air  
4 Quality Approval Order.

5 MR. WESSMAN: Okay. And if a company has  
6 had an Approval Order issued and then they decide  
7 they should come under the de minimus rules, do they  
8 have to apply for it or can the Executive Secretary  
9 make that determination?

10 THE WITNESS: If they want the Executive  
11 Secretary to make that determination, they have to  
12 apply for it.

13 MR. WESSMAN: Okay. So the Executive  
14 Secretary will not rescind an Approval Order for  
15 something like that or withdraw it or cancel it  
16 without a request from the organization?

17 THE WITNESS: Exactly.

18 MR. WESSMAN: Okay. That's all I have.

19 Q. (By Ms. Hubbell) Okay. Let's go on to  
20 Exhibit 8. What is this document?

21 A. Exhibit 8 is an -- it is a written  
22 notification that an informal settlement conference  
23 or an informal conference related to the Compliance  
24 Advisory would be held on behalf of Pine Factory.  
25 There had been several attempts to contact Doug Clark

1 by telephone, which I was unable to contact him.  
2 So the way that the Division of Air  
3 Quality handles settlement of Compliance Advisories,  
4 they give the company a chance to provide conditional  
5 information to show whether the items cited in the  
6 Compliance Advisory are actual non-compliant items or  
7 whether they have information contrary to that to  
8 show what they've done to comply with the  
9 requirements. To show -- you know, it's an  
10 opportunity to make sure that the records are  
11 straight between the Division of Air Quality and Pine  
12 Factory.

13 Q. Did Mr. Clark show up to this meeting?

14 A. No. This document we, again, attempted to  
15 deliver it by certified mail. And, again, the  
16 document was returned to the Division of Air Quality  
17 on May 6th of 2005, which it was originally mailed  
18 March 30th of 2005. The meeting was -- the meeting  
19 date was arbitrarily set at April 29, 2005 at 2:00  
20 p.m. And when we received the document, three  
21 attempts had been made to deliver it up until April  
22 19th, and then the Division of Air Quality received  
23 it May 6th and the Post Office so -- as  
24 undeliverable. So Mr. Clark didn't even know that  
25 the meeting was held.

1 Q. If Mr. Clark had shown up at the April  
2 29th meeting and shown and had records that you could  
3 actually find reliable, could he have then applied  
4 for the de minimus exemption?

5 A. Yeah. The de minimus exemption would have  
6 been outside of the scope of the inspection, but he  
7 could have definitely applied for that. He could  
8 have applied for that at any time. He can still  
9 apply for that today if he wanted. That is all --  
10 that's outside of the scope of the inspection and the  
11 compliance actions that were taken against him.

12 Q. But at that point, if he had come in and  
13 met with you, would you have still issued a Notice of  
14 Violation and Order?

15 A. No. I don't think that the Notice of  
16 Violation would have been necessary at that point.  
17 If he would have come in to work on closing out the  
18 Compliance Advisory, given me information that I  
19 needed in order to work toward an acceptable  
20 resolution of the items, I think that we probably  
21 could have come up with a deal.

22 Q. Okay. Thank you.

23 Do you have any questions about that?

24 MR. WESSMAN: No. Excuse me, I do have  
25 one question.

1 To your knowledge, has Mr. Clark ever  
2 requested reconsideration of whether he needs an air  
3 permit?

4 THE WITNESS: Yes. In several phone  
5 conversations in -- I -- possibly even in the two  
6 items of the correspondence that he's sent to us by  
7 e-mail, he has -- he's made statements to me that  
8 reflect that he shouldn't even be regulated under the  
9 Division of Air Quality rules. That if it wasn't --  
10 his statement to me at one point on the phone was if  
11 it wasn't for one compound being eight pounds over  
12 the limit, that he wouldn't even require an Air  
13 Quality Approval Order.

14 I told him at that point that if he didn't  
15 require an Air Quality Approval Order, he should  
16 apply to have his Air Quality Approval Order removed.

17 MR. WESSMAN: That eight pounds over the  
18 limit, was that during initial calculations that led  
19 to the issuance of the Approval Order?

20 THE WITNESS: No. That was -- I think  
21 that that eight pounds over the limit is Mr. Clark's  
22 recollection of what the de minimus requirements are  
23 or what requires him to have an Air Quality Approval  
24 Order. But his initial -- the initial calculations  
25 back in 1995 were actually 15 tons of material. Mr.

1 Clark believes that because his emissions were 1,508  
2 pounds, or something to that effect, over the -- that  
3 he was eight pounds over the limit.

4 MR. WESSMAN: That initial 15-ton  
5 calculation, was that submitted by Mr. Clark or done  
6 by members of the Air Quality Division?

7 THE WITNESS: That calculation would have  
8 been based on information that Mr. Clark submitted  
9 when he initially applied for the Air Quality  
10 Approval.

11 MR. WESSMAN: Okay. Thank you.

12 Q. (By Ms. Hubbell) Document Number 9, what  
13 is this document?

14 A. Document Number 9 is a proposed settlement  
15 agreement issued to Pine Factory on May 13, 2005.  
16 That is a document where, based on the information  
17 that we had available to us at the time, calculations  
18 were made as to what the penalty would be for Pine  
19 Factory considering Mr. Clark's responses or lack  
20 thereof, considering the circumstances behind the  
21 violations, considering the requirements, all of  
22 these things went into the calculations, and entered  
23 into a spreadsheet where then he was given an  
24 opportunity to go ahead and settle the Compliance  
25 Advisory.

1 The initial proposed settlement offer  
 2 contained a reduction in the penalty of 20 percent in  
 3 the event that he wanted to go ahead and settle the  
 4 Compliance Advisory the way it sat. And that  
 5 document was also sent to Mr. Clark via certified  
 6 mail.  
 7 Q. And did he receive it?  
 8 A. He did not receive it by three attempts to  
 9 deliver the certified mail. He did receive it when I  
 10 delivered a copy of it to the store in Riverdale.  
 11 Q. That was --  
 12 A. That was on June 8th of 2005.  
 13 Q. Did he contact you after that?  
 14 A. Yes. Doug called me on the phone.  
 15 Q. Are you looking at Exhibit 10?  
 16 A. Yeah. Exhibit 10 is just one of my notes  
 17 that I had made when I received a phone call from Mr.  
 18 Clark on July 6th of 2005 -- no. That was about a  
 19 month later. I probably had phoned Mr. Clark trying  
 20 to -- or the company, trying to get ahold of him to  
 21 let him know that the time was expiring on the  
 22 settlement notice.  
 23 On July 6 of '05 at 2:30 p.m., I received  
 24 a call from Mr. Clark. He stated that the citations  
 25 in the Compliance Advisory were not accurate or

1 valid, that the company was actually in compliance;  
 2 that Pine Factory shouldn't even be regulated; that  
 3 the company has no money to pay and that they were  
 4 not going to pay.  
 5 Mr. Clark felt that these were small  
 6 infractions and did not warrant disciplinary actions  
 7 taken by DAQ, that he could not pay his penalty and  
 8 will not -- oh, and that the penalties would put Pine  
 9 Factory out of business.  
 10 He also, again, talked to me about family  
 11 illness and death, and, you know, the death of his  
 12 father. And, you know, this is a family-run business  
 13 and that those issues were all aggravating factors in  
 14 his failure to give me records. He also gave me a  
 15 cell number to call him by in the event that I needed  
 16 to get ahold of him in the future.  
 17 We had discussed where to go from here.  
 18 He indicated that he had had good success in the past  
 19 working with the Attorney General's office when he  
 20 didn't want to settle a violation approximately five  
 21 years before the inspection for failure to provide  
 22 records.  
 23 That violation was eventually settled for  
 24 \$500 after the Attorney General's office sent him a  
 25 letter indicating that the Division's offer was

1 extremely generous and that he should take that  
 2 offer. So I told him that I would call him if we  
 3 referred the case to the Attorney General's office.  
 4 I called him on July 11th of 2005 and indicated that  
 5 a packet would be assembled and submitted to the  
 6 Attorney General's office.  
 7 Q. Okay. What's Exhibit 11?  
 8 A. Exhibit 11 is a notification by Melissa  
 9 Hubbell of the Attorney General's office that -- just  
 10 kind of a statement of facts, and that the Attorney  
 11 General's office will be taking the case giving Mr.  
 12 Clark an attendant period to contact the Attorney  
 13 General's office before they proceeded with formal  
 14 notice and violation.  
 15 Q. Okay. Do you know if Mr. Clark received  
 16 that?  
 17 A. The next page is a copy of the certified  
 18 mail receipt which indicates that the item was  
 19 returned to sender as unclaimed.  
 20 Q. Could we move onto Exhibit Number 12?  
 21 A. Exhibit 12 is the Notice of Violation and  
 22 Order for Compliance for the Pine Factory. It is --  
 23 was issued. It's a formal citation of noncompliance  
 24 to the company based on the same conditions which  
 25 were cited in the Compliance Advisory.

1 Q. Okay. Do you know if Mr. Clark received  
 2 this?  
 3 A. I believe that this document was actually  
 4 served to Mr. Clark by a process server, rather than  
 5 certified mail. And it appears as though, based on  
 6 the stamp on the front of the document, that it was  
 7 actually served on November 2, 2005, at 10:30 a.m.  
 8 MS. HUBBELL: Okay. Do you have any  
 9 questions for Mr. Leishman?  
 10 MR. WESSMAN: No.  
 11 Q. (By Ms. Hubbell) All right. I'll simply  
 12 call your attention to Exhibit 13, which is another  
 13 letter from Mr. Clark a month after the Notice of  
 14 Violation was served, and this is dated December 2,  
 15 2005, and is his request for hearing.  
 16 And Exhibit 14 is attached. It's simply  
 17 some documents concerning the Notice of Hearing and  
 18 notifying him of the hearing.  
 19 MR. WESSMAN: A question on the facts that  
 20 indicates December 2nd of 2005; is that correct?  
 21 MS. HUBBLE: Yes.  
 22 MR. WESSMAN: That's when he requested the  
 23 hearing?  
 24 MS. HUBBLE: Yes.  
 25 MR. WESSMAN: Okay. In his --

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1 MS. HUBBLE: He first called my office and  
2 left a message on the phone and then faxed this the  
3 same day.  
4 MR. WESSMAN: Okay. Thank you.  
5 MS. HUBBLE: I'm aware that at the top of  
6 the document, the fax record shows it as 12/18/2004.  
7 I can only assume that that's the set on his fax  
8 machine and that it's incorrect, because I did  
9 receive this the same day he called.  
10 MR. WESSMAN: Right. Okay. All right.  
11 MS. HUBBLE: I would request that all of  
12 these exhibits be admitted and made part of the  
13 record.  
14 MR. WESSMAN: Okay. Let's admit them as  
15 part of the record. Do I have to -- the documents  
16 are admitted as part of the record. Make a  
17 declarative statement. Okay.  
18 (EXHIBITS-1 THROUGH -14 WERE ADMITTED.)  
19 MS. HUBBLE: And I have no further  
20 questions for the witness.  
21 MR. WESSMAN: Okay. Thank you.  
22 Just to make sure, I think we've covered  
23 this, but at no time that you're aware of has Mr.  
24 Clark requested a change in status of the Approval  
25 Order?

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1 THE WITNESS: No. Mr. Clark actually  
2 should have requested a change in status of the  
3 Approval Order approximately five years before the  
4 inspection when he changed locations and when he  
5 changed operations. He was never cited for that.  
6 He -- we actually lucked into finding him  
7 at his new location. And when we cited him for  
8 failure to give records five years earlier, he --  
9 that was the only citation that we had made at the  
10 time.  
11 But -- so at that point, he should have at  
12 least modified his Air Quality Approval Order, but he  
13 hasn't done that. He has yet to, to the best of my  
14 knowledge, even consider applying for modification to  
15 his Air Quality Approval Order.  
16 MR. WESSMAN: Without in any way  
17 suggesting that he didn't have to, I have a question.  
18 If I were to go into the business tomorrow in this  
19 industry, and I set up a paint booth, and I'm going  
20 to be less than five tons a year criteria pollutant,  
21 what do I need to do?  
22 THE WITNESS: You would need to comply  
23 with the Utah Administrative Code as it relates to  
24 your business.  
25 MR. WESSMAN: Right. Obey all laws and

39

1 regulations. But do I have an obligation to notify  
2 the State that -- particularly the Air Quality  
3 Division, that I've set up a paint booth?  
4 THE WITNESS: No.  
5 MR. WESSMAN: Do I have any expectation  
6 that I would be inspected, provided I maintain  
7 operations in a way that doesn't create a nuisance or  
8 something that makes the State aware of my  
9 enterprise?  
10 THE WITNESS: No.  
11 MR. WESSMAN: So if he had basically shut  
12 down his previous business, started in this new  
13 business and new location there, he would have no  
14 obligations to apply provided he was under these five  
15 tons a year?  
16 THE WITNESS: Yes.  
17 MR. WESSMAN: Okay. Well, part of what  
18 seems to be his argument is that the rules don't  
19 apply to him because he is de minimus or is below the  
20 five tons. I'm not saying that the air permit is not  
21 valid -- or Approval Order, but I'm just trying to  
22 sort out in my own mind, once an Approval Order is  
23 issued, you've got to apply with it until the  
24 quarters change. And I understand that, or at least  
25 that's my understanding.

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1 THE WITNESS: Yes.  
2 MR. WESSMAN: Melissa, is that correct?  
3 MS. HUBBLE: Yes. Let me -- I have I  
4 guess what you would call a summary. And in this  
5 case, we have someone who we have dealt with in the  
6 past who had previous violations and those were  
7 resolved.  
8 MR. WESSMAN: Now, that was ten years ago,  
9 right?  
10 MS. HUBBLE: Five years ago.  
11 MR. WESSMAN: Five?  
12 MS. HUBBLE: Yes. In this case, Mr.  
13 Leishman is required to do these annual inspections  
14 and he went out to do it. He carried the Approval  
15 Order with him and cited him for those that he felt  
16 did not comply with the Approval Order. He asked for  
17 records, which he did not receive. He then attempted  
18 to -- and you've seen the record here of the numerous  
19 attempts to deal with Mr. Clark.  
20 The Division has gone far beyond any  
21 requirements. All they're required to do is mail  
22 these things. And they sent them every time by  
23 certified mail, and then Mr. Leishman, himself, would  
24 take them and hand deliver them, and explain to Mr.  
25 Clark exactly what needed to be done. They tried to

1 set up several conferences. And at that time, things  
2 could have been resolved.

3 Mr. Clark was informed that he could apply  
4 to have his Approval Order taken care of, but he  
5 chose not to do that. He chose not to come to any of  
6 the meetings. He chose simply to say, you know, "I  
7 shouldn't be regulated."

8 MR. WESSMAN: Excuse me, but that -- I'm  
9 not sure that I've heard in the record that he was  
10 ever advised that he could have his Approval Order  
11 taken care of.

12 MS. HUBBELL: Isn't that what you  
13 testified, that he could apply for --

14 THE WITNESS: Yeah. In the telephone  
15 conversations with him, I had indicated when he told  
16 me that the rules don't apply, that he's only eight  
17 pounds over the limit. In my work as an inspector we  
18 take on sometimes a little bit of an advisory role.  
19 We have some kind of teaching moments at times. A  
20 lot of times, you know, we don't necessarily advise  
21 the companies, but we're a good resource for what  
22 rules apply.

23 In his statements that he was only eight  
24 pounds over the limit for a single pollutant, I asked  
25 him if he had considered alternative materials that,

1 Q. And even if you did, would you have been  
2 able, based on the record he provided you, to know  
3 what -- I mean, was that sufficient to provide you  
4 with information that made it --

5 A. No. No. If he were to apply for a de  
6 minimus status, he would need to provide adequate  
7 documentation to show that his emission rates are  
8 actually below the de minimus values.

9 Q. And the VOC report he provided you --

10 A. That wouldn't -- that wouldn't suffice as  
11 adequate information, no.

12 Q. Okay. But if he had come to some of these  
13 meetings, you might have been able to inform him  
14 again of what was necessary?

15 A. Yes, possibly. If he were to ask about  
16 it, we probably could have provided at least some  
17 guidance that would have helped him if that were the  
18 route he wanted to go.

19 Q. Okay.

20 If I could finish. In this case, I think  
21 it's obvious from the record that he's been very  
22 difficult to deal with. We had to have the Notice of  
23 Violation served on him by a process server. And,  
24 you know, he's had infinite opportunities to try and  
25 deal with this matter without even having the Notice

1 you know, maybe some water-based stains or something  
2 like that to bring his total down; and, you know that  
3 if he were able to be under the de minimus amounts,  
4 that he could apply for that. Those have been in the  
5 discussions with Mr. Clark.

6 I think he's well aware of those. And  
7 that's why he would bring up, himself, the fact that  
8 he doesn't believe that the company is required to  
9 have any regulations on them. I think that is the  
10 basis for that.

11 MR. WESSMAN: So you have informally  
12 counseled him on the opportunity he would have to  
13 apply to a different status --

14 THE WITNESS: Yes.

15 MR. WESSMAN: -- if he changed his  
16 operations or whatever to be under the minimum level.

17 THE WITNESS: Yes. And I believe he's  
18 well aware of those.

19 MR. WESSMAN: Okay.

20 Q. (By Ms. Hubbell) Okay. Let me ask you  
21 another question that this just made me think of.  
22 The Division doesn't have an obligation to apply for  
23 the change to the Approval Order for the individual,  
24 do they?

25 A. No.

1 of Violation and Order issued. We only did that as a  
2 last resort because we were simply getting no  
3 response from him.

4 If at this point in time Mr. Clark wishes  
5 to apply, he would still get the exemption. But at  
6 the time that the Notice of Violation was issued, at  
7 the time that the inspections were made, the Approval  
8 Order was in force. There had been no application to  
9 reduce it, and he was not meeting the requirements of  
10 that Approval Order.

11 That Approval Order was what he was  
12 operating under and what he was required to operate  
13 under until such a time as the Approval Order was  
14 modified, or dismissed, or changed in some way.

15 But none of that has ever happened. At  
16 this point in time, the Approval Order is still in  
17 force. And based on the fact that he violated that  
18 Approval Order, I would ask that that Notice of  
19 Violation and Order be upheld and that that be the  
20 recommendation you make to the Board.

21 MR. WESSMAN: Okay. Thank you. I don't  
22 think I have any questions for that.

23 Let's see, Jeff, you've been sworn. Do  
24 you have any comments?

25 MR. DEAN: Yeah. I would like to make a

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1 comment. As easily as we are talking about the de  
2 minimus status of this source and speculating that  
3 they could be de minimus, based on a lack of records  
4 from the company, it's as easy to speculate that the  
5 source may be a synthetic minor or a major hazardous  
6 air pollutant source. We don't have the records to  
7 confirm that at this point.

8 MR. WESSMAN: Right. You have no --  
9 paraphrasing what you said, you have no way of  
10 verifying their status at this point, given what's  
11 been provided.

12 MR. DEAN: Right. And he could easily,  
13 from the date that he first got his Approval Order,  
14 he could have easily increased production to a point  
15 where he needed to have modified his Approval Order  
16 to get a status that would have been even higher than  
17 a minor source, the synthetic minor.

18 It only takes ten tons of one hazardous  
19 air pollutant major Title 5 source. This could be  
20 very well -- we could speculate that that is what's  
21 going on and the reason we haven't gotten any records  
22 from the company.

23 MR. WESSMAN: Okay. Thank you.  
24 Any other comments?

25 MR. DEAN: No.

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1 gathered the facts I need to do so.

2 And so unless there's any other items to  
3 bring before the hearing, I would like to close the  
4 hearing, and thank you very much.

5 (Hearing adjourned at 2:39 p.m.)  
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1 MR. WESSMAN: Okay. Rob, did you have any  
2 more?

3 MR. LEISHMAN: No.

4 MR. NELSON: Counsel, do you have  
5 anything?

6 MR. NELSON: I just want to enter onto the  
7 record the fact that Mr. Clark, when he called me,  
8 acknowledged having received a letter from me dated  
9 April 12, 2006, which transmitted to him a copy of  
10 the administrative record as has been received into  
11 evidence and notifying him of the date of the  
12 meeting, so that it's clear that he had the documents  
13 that have been discussed today and that again he  
14 relied upon his two submittals as his basis for  
15 having you consider the recommendations to the Board.

16 With that being the case, the next step  
17 would be for you to prepare a recommendation to the  
18 Board and transmit to the Board the transcript of  
19 this hearing and these documents, and have the Board  
20 then make a final decision.

21 MR. WESSMAN: Okay. I understand that  
22 that's the responsibility I have now is to prepare a  
23 recommendation to the Board.

24 And I appreciate taking the time, all of  
25 you, to help me understand this. I believe I've

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1 REPORTER'S CERTIFICATE

2  
3 STATE OF UTAH )  
4 COUNTY OF SALT LAKE ) Ss.

5 I, Shantae Rindfleisch, Registered  
6 Professional Reporter and Notary Public in and for  
7 the State of Utah, do hereby certify:

8 That on April 27, 2006, I was present at  
9 the Pine Factory Hearing, and the proceedings were  
10 reported by me in stenotype and thereafter  
11 transcribed, and that a full, true, and correct  
12 transcription of said proceedings is set forth in the  
13 preceding pages, according to my ability to hear and  
14 understand the proceedings;

15 That the original transcript was sealed  
16 and delivered to the EPA for safekeeping.

17 WITNESS MY HAND AND OFFICIAL SEAL this  
18 9th day of May, 2006.  
19  
20  
21  
22  
23  
24  
25

**Exhibit 1**

*Dules 8:14*

*Records taken then*

DEPARTMENT OF ENVIRONMENTAL QUALITY  
DIVISION OF AIR QUALITY

057-00060  
10953

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DAQE-880-95

September 26, 1995

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Ogden, Utah 84401

*Pre factory  
2400 S. 2050 W.  
Ogden*

*731-7463*

Dear Mr. Clark:

RE: APPROVAL ORDER FOR WOOD SHOP OPERATION  
WEBER COUNTY - CDS B ATT

The attached document is an Approval Order for the above referenced project.

Future correspondence on this Approval Order should include the engineer's name as well as the DAQE number as shown on the upper right-hand corner of this letter. Please direct any technical questions you may have on this project to Mr. Dale Chapman. He may be reached at (801) 536-4096.

Sincerely,

*cell - 710-7986*

Russell A. Roberts, Executive Secretary  
Utah Air Quality Board

RAR:JTB:aj

*Store #  
(801) 394-4005  
12-6 pm*

cc: Salt Lake City/County Health Department  
1954 E Ft. Union Blvd. #100  
Salt Lake City, UT 84121

Records:

- left msg Tuesday 11/9/2004 for re
- Called Shop 9:50 am 11/12/04, can't leave m
- called Store got cell number 12:20 11/11
- called cell & left message 11/12/04 12:21
- called Shop, no answer, no message service, 11/15
- left msg @ shop 731-7463 1/10/04. 9:45

*Jesse  
332-03*

*AD 1/10/04 11-04*

*Abstract*

*This review is for an existing cabinet and furniture manufacturing facility located in Ogden, Utah. The existing facilities include wood cutting and milling machinery, sawdust handling equipment and two finishing rooms, each with one paint spray booth.*

The above-referenced project has been evaluated and found to be consistent with the requirements of the Utah Air Conservation Rules (UACR) and the Utah Air Conservation Act. A 30-day public comment period was held and all comments received were evaluated. The conditions of this AO reflect any changes to the proposed conditions which resulted from the evaluation of the comments received. This air quality AO authorizes the project with the following conditions and failure to comply with any of the conditions may constitute a violation of this order:

General Conditions:

1. This AO applies to the following company:

✓ C & C Manufacturing  
3150 Wall Avenue  
Ogden, UT 84401  
(801) 621-6203

*Notification of new location  
12/10/1999*

The equipment listed in Condition #5 of this AO shall be operated at the above location.  
Universal Transverse Mercator Coordinate System: 4,565,000 m Northing,  
420,000 m Easting

2. Definitions of terms, abbreviations, and references used in this AO conform to those used in the UACR, Utah Administrative Codes (UAC), American Society of Testing & Materials, (ASTM) and Series 40 of the Code of Federal Regulations (40 CFR). These definitions take precedence unless specifically defined otherwise herein.
3. C & C Manufacturing shall operate the wood cabinet and furniture manufacturing facility according to the information submitted in the Notice of Intent dated February 22, 1993 and additional information submitted to the Executive Secretary dated March 10, 1993.
4. A copy of this AO shall be posted on site. The AO shall be available to the employees who operate the air emission producing equipment. These employees shall receive instruction as to their responsibilities in operating the equipment according to all of the relevant conditions listed below.
5. The approved installations shall consist of the following equipment:
  - A. Sawdust collection system consisting of: (not a source)

Sawdust collection ductwork,

*gone*

One cyclone, (9' cone x 4' diameter), exhausting to, One Fabric filter/ baghouse, (201 ft<sup>2</sup> total filter area), located inside the manufacturing building and exhausting inside the manufacturing building.

*gone never installed @ new location*

B. Two paint/coating spray booths, each 8' long x 8' wide:

*one 8x16*

6. The paint spray booth shall be equipped with paint arrestor particulate filters, (or equivalent), to control particulate emissions. All air exiting the booth shall pass through this control system before being vented to the atmosphere. Equivalency shall be determined by the Executive Secretary.

*Needs new Filters*

*R*

7. The volatile organic content, (VOC), of the coatings used in the paint booth shall not exceed 7.5% by weight without prior approval in accordance with R307-1-3.1, UAC. The VOC content shall be tested if directed by the Executive Secretary using the appropriate ASTM method or another method approved by the Executive Secretary.

8.

*R*

The plantwide emissions of VOC from the paint booths, shall not exceed 15 tons per 12-month period. This value shall not be exceeded without prior approval in accordance with R307-1-3.1, UAC. Compliance with the limitation shall be determined on a rolling 12-month total. Based on the first day of each month a new 12-month total shall be calculated using data from the previous 12 months.

The plantwide emissions of VOC shall be determined by maintaining a record of VOC containing materials used each month. The record shall include the following data for each item used:

- A. Name of the VOC emitting material, such as; paint, adhesive, solvent, thinner, reducers, chemical compounds, toxics, isocyanates, etc.
- B. Percent by weight of all VOC and Hazardous Air Pollutants (HAPs) for each individual material used. The recommended source of the information is from the manufacturers MSDS<sup>1</sup> sheet
- C. The amount of VOCs and HAPs contained in each individual item or surface coating used shall be calculated by the following procedure:

$$\text{VOC} = (\% \text{ Volatile by Weight}/100) * (\text{Density lb/gal}) * (\text{Gallons Consumed})/2,000 \text{ lb/ton}$$

<sup>1</sup> MSDS = Material Safety Data Sheets. Obtain from manufacturer.

- D. The cumulative total of the 12 previous months VOC emissions shall not exceed the amount specified above.
  - E. Records of consumption shall be kept for all periods when the plant is in operation. Records of consumption shall be made available to the Executive Secretary upon request, and shall include a period of two years ending with the date of the request.
9. All HAPs are subject to the annual Operating Permit Program if one of the following conditions is met:
- a. The emissions of any one of the 189 HAPs listed in the 1990 Clean Air Act is over ten (10) tons/yr
  - b. The emissions of any combination of these HAPs are over 25 tons/yr
10. Visible emissions from any point or fugitive emission source associated with the installation or control facilities shall not exceed 10% opacity. Opacity observations of emissions from stationary sources shall be conducted in accordance with 40 CFR 60, Appendix A, Method 9.
11. Sawdust collected by the cyclone shall be transferred to an enclosed storage device for subsequent disposal. The system shall comply with Condition #10 above.
- gone*
12. All records referenced in this AO which are required to be kept by the owner/operator, shall be made available to the Executive Secretary or his representative upon request.
13. All installations and facilities authorized by this AO shall be adequately and properly maintained. All pollution control equipment shall be installed, maintained, and operated. Instructions from the vendor or established maintenance practices that maximize pollution control shall be used.
14. The owner/operator shall comply with R307-1-4.7, UAC. This rule addresses unavoidable breakdown reporting requirements. The owner/operator shall calculate/estimate the excess emissions whenever a breakdown occurs. The total of excess emissions shall be reported to the Executive Secretary as directed for each calendar year.

Any future modifications to the equipment approved by this order must also be approved in accordance with R307-1-3.1.1, UAC.

This AO in no way releases the owner or operator from any liability for compliance with all other applicable federal, state, and local regulations including the UACR.

Annual emissions for this source (the entire plant) are currently calculated at the following values:

<u>Pollutant</u> .....	<u>Tons/yr</u>
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**Exhibit 2**

Type of Inspection: Initial ( ) Partial Initial ( ) Sack Test ( ) CEM ( ) Annual ( )  
 Followup ( ) Surveillance ( ) Complaint ( )

Observation Date: 11/14/2004  
 Start Time: 12:15 Stop Time: 12:21

min	sec	0	15	30	45
1	0				
2	0				
3	0				
4	0				
5	0				
6	0				
7	0				
8	0				
9	0				
10	0				
11	0				
12	0				

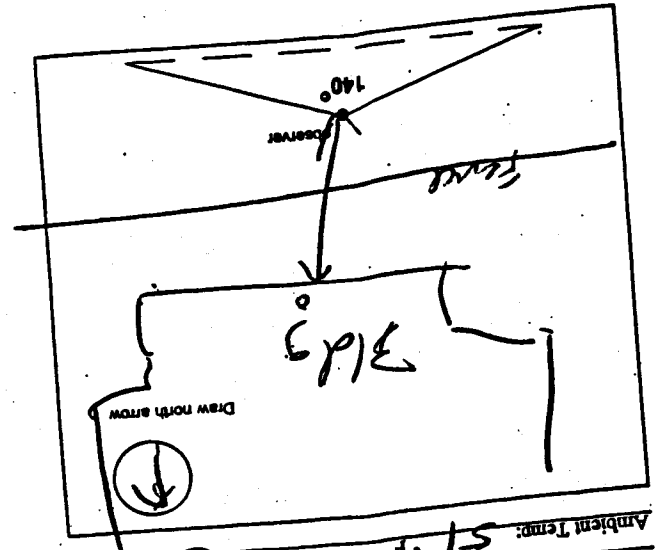
Average Opacity for Highest Six-Minute Period: 0%

Comments: No visible emissions observed from the paint booth. Check or any other point associated with the operation. The operation was covered during the inspection. Some open stain containers were observed (2 buckets) but were replaced. Paint booth filters were missing (5 gals) but were on order to replace.

Records will be fixed to DQO when Doug Clark returns and all marks are made.

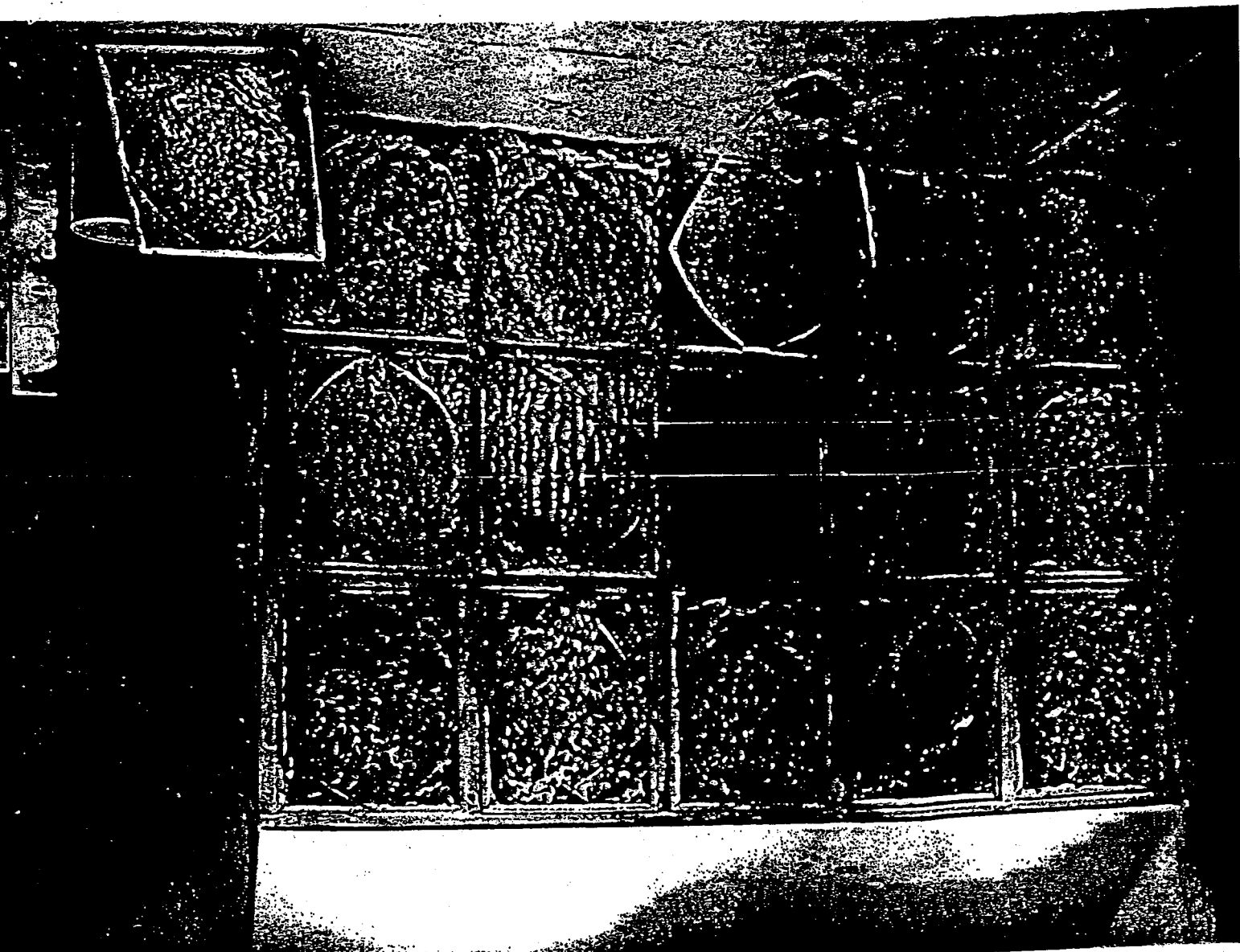
Source Name: Pine Factory 7 200 West  
 Street Address: 2100 South 200 West  
 City/Country: Ogden, Utah (county)  
 Phone: (204) 721-7463  
 AQS ID: 057-00060  
 EPA ID: 104 10953  
 Facility: Wood Furniture Manufacturing  
 Equipment: Wood Working/Coating  
 Control Equipment: Filters, good VOC  
 Emission Point: Whole Plant

Height of Discharge Relative to Observer: 15 feet  
 Distance from Observer: 40 feet  
 Condensed Water Vapor Present? Y/N  
 Attached  Detached   
 Length of Condensed Water Vapor Plume: N/A  
 Background: SKY/B/D/S  
 Sky Conditions: Clear  Partly Cloudy  Overcast   
 Wind Direction: West  
 Wind Speed: 0-3 mph  
 Ambient Temp: 51 F  
 RH: 50%



Sun ☉  
 Wind  
 Emission Point with Plume  
 Observation Point X  
 Observer's Signature: [Signature]  
 Affiliation: State of Utah, Department of Environmental Quality  
 Division of Air Quality  
 I Have Received a Copy of These Observations:  
 Signature: [Signature]  
 Printed Name: PAUL CLARK

MKSA



Picture taken 12/27/20  
Paint booth filters caked  
w/ overspray, filters  
missing after advised to  
replace during 11/14/04 inspection  
1/10/2004

**Exhibit 3**



OLENE S. WALKER  
Governor

GAYLE F. McKEACHNIE  
Lieutenant Governor

FILE COPY

State of Utah  
Department of  
Environmental Quality

Dianne R. Nielson, Ph.D.  
Executive Director

DIVISION OF AIR QUALITY  
Richard W. Sprott  
Director

DAQC-1546-2004  
Site ID# Blue-10953-1

November 16, 2004

Certified Mail

Doug Clark  
Pine Factory  
2480 South 2050 West  
Ogden, Utah 84401

Dear Mr. Clark:

Re: Pine Factory - Annual Compliance Inspection Conducted November 4, 2004 - Approval Order (AO) Dated September 26, 1995, Conditions 7 and 8 - VOC emission records - Weber County

On November 4, 2004, a compliance inspection was conducted at the Pine Factory production plant on 2480 South 2050 West, Ogden, Utah. The employees on site at the time of the inspection were not able to provide records required to determine compliance with Conditions 7 and 8 of the AO dated September 26, 1995. Several attempts have been made by calling the shop and the store to leave a message and arrange to get the required records to complete this inspection.

AO Condition 7 limits all coatings to a VOC content not to exceed 7.5%. Records to show that the coatings are compliant with this limit are necessary to show that the company is in compliance with this condition.

AO Condition 8 limits VOC emissions from the entire plant to 15 tons per 12-month period. The condition specifies what records are required each month to determine compliance with this limit. A rolling 12-month total, where each month, a new 12-month total is recalculated using the required data from the previous 12 months, is necessary to determine compliance with this limit.

Since all attempts to contact you by phone to obtain the necessary records have failed, this certified letter will be used to determine whether Pine Factory is in compliance with the conditions cited in the AO. The following records are hereby formally requested in order to complete this inspection:

Condition 7: Copies of any records, such as MSDS sheets or manufacturers specification sheets that show the VOC content of any and all coatings used at this facility.

Condition 8: The rolling 12-month total of VOC emissions for the period of November 2003 through October 2004, for the entire plant to include all coatings and solvents used or purchased for use during that period. The records shall include all support information required in Conditions 8.A through 8.C.

This letter is not intended to be a formal compliance action, only a formal request for records since all other attempts to obtain records have failed. Records will be received by DAQ within 7 days of receipt of this certified letter. If records are not received within 7 days of Pine Factory's receipt of this letter, the inspection will be concluded with Pine Factory failing to provide records required by the AO and compliance actions will likely follow.

Your cooperation in complying with this formal request for records is appreciated. If you have any questions, please contact Rob Leishman at (801) 536-4438.

Sincerely,



Bryce C. Bird, Manager  
Air Standards Branch  
Division of Air Quality

BCB:RL:aj

Cc: EPA Region VIII, Carol Smith  
Davis County Health Department



State of Utah

Department of Environmental Quality

Dianne R. Nielson, Ph.D.  
Executive Director

DIVISION OF AIR QUALITY  
Richard W. Sprout  
Director

OLENE S. WALKER  
Governor

GAYLE F. McKEACHNIE  
Lieutenant Governor

Original

Hand Delivered

12/27/04

B:

CA

Caesar Ariis

Main Shop

November 16, 2004

Certified Mail

Doug Clark  
Pine Factory  
2480 South 2050 West  
Ogden, Utah 84401

Dear Mr. Clark:

Re: Pine Factory - Annual Compliance Inspection Conducted November 4, 2004 - Approval Order (AO) Dated September 26, 1995, Conditions 7 and 8 - VOC emission records - Weber County

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Since all attempts to contact you by phone to obtain the necessary records have failed, this certified letter will be used to determine whether Pine Factory is in compliance with the conditions cited in the AO. The following records are hereby formally requested in order to complete this inspection:

DAQC-1546-2004  
Site ID# Blue-10953-1  
4037 Riverdale Rd.

Hand Delivered @ Store

TO: Kara Lammert

12/27/04

Kara Lammert



The State of Utah

DEPARTMENT OF ENVIRONMENTAL QUALITY  
DIVISION OF AIR QUALITY  
PO BOX 144820  
SALT LAKE CITY, UT 84114-4820

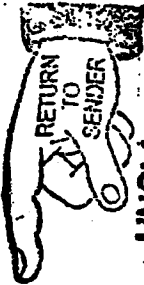
RETURN SERVICE REQUESTED

RECEIVED

DEC 20 2004

AIR QUALITY

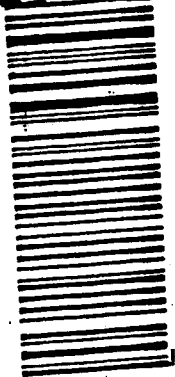
*Handwritten initials and date: JF 11/20*



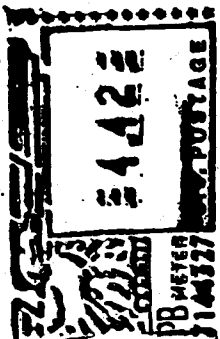
RETURN TO SENDER

UNCLAIMED  
DOUG CLARK  
PINE FACTORY  
2480 S 2050 W  
OGDEN UT 84401

CERTIFIED MAIL



7002 0510 0000 6392 2



11-20  
12-07  
12-12  
P.O. Notice



**Exhibit 4**