

AGENDA FOR THE AUGUST 27, 2009 EC MEETING

CASES TO BE CLOSED:

Ohio Department of Natural Resources, Division of Forestry, Shawnee State Forest (VCs of 5/14 and 6/10/08 from Ms. Carpenter and Ms. Lund)	#2732	PLAA	Dismissal Letter	John/Marc
Hishan Jundi, d.b.a. Avon Lake Shell	#2807	NEDO	AGO Referral	Tom/Marc
Saif Kahn, d.b.a. Lakeland Citgo	#2812	NEDO	Final F&Os	Tom/Marc
Joseph Parker	#2846	SWDO	Unil. F&Os	John/Marc

PENDING CASES:

Quikrete-Cleveland	#2685	Akron	Prop. F&Os	Tom/Don
Quality Ready Mix, Inc.	#2713	NWDO	Prop. F&Os	Tom/Bryan
Barberton Steel Industries, Inc.	#2830	Akron	DWL	Tom/Marc
Flying J, Inc. (Austinburg Truck Stop)	#2837	NEDO	Prop. F&Os	Tom/Marc
Englefield, Inc., d.b.a. Ashtabula Duchess	#2838	NEDO	DWL	Tom/Steve
Sandusky Dock Corporation	#2848	NWDO	Prop. F&Os	Jim/Bryan

OTHER BUSINESS:

- (1) Distribute updated schedule of progress for resolving all "old" cases for 2008.
- (2) Distribute updated schedule of progress on resolving all "old" cases for 2009.
- (3) Distribute updated schedule of progress on resolving all "old" cases for 2010.
- (4) Jim is scheduled to provide food for today's meeting at 3:00 p.m. in DAPC Rm C.
- (5) The next EC meeting is scheduled for Thursday, September 10, 2009 at 3:00 p.m. in DAPC Rm C. John is scheduled for food. (Future food schedule: Don for September 24; Bryan for October 8.)

ENFORCEMENT COMMITTEE MEETING MINUTES

(August 27, 2009)

Case Number: 2732 (VC)	Dates:
Entity: ODNR, Division of Forestry	EAR: 04/08/08
Field Office: Portsmouth LAA	DWL: N/A
Contact: John Paulian	F&Os: N/A
Attorney: Marc Glasgow	Referral: N/A
	Dismissal: 08/14/09

Background: Verified complaints were filed by Cheryl Carpenter and Barbara Lund against the Ohio Department of Natural Resources, Division of Forestry (ODNR), regarding open burning activities conducted on April 8, 2008, in the Backcountry Unit of Shawnee State Forest, located in Scioto County, Ohio. The verified complaints were received by Ohio EPA on May 14 and June 10, 2008. Both complainants alleged that ODNR violated its permission to conduct prescribed burn operations in the Backcountry Unit by allowing burning to occur outside of the boundaries defined in the permission to burn during the April 8, 2008 prescribed burn.

In addition, Ms. Carpenter specifically alleged that the prescribed burn produced a prohibited amount of smoke and particulate matter, causing negative health effects and caused impaired visibility on Forest Road 2. She also alleged that air monitoring was not conducted during the burn operations because ODNR failed to notify the Portsmouth Local Air Agency (PLAA). She also stated that ODNR is doing an inadequate job contacting and educating the forest residents about the notification process.

Ms. Lund also alleged that burning outside these boundaries resulted in the diminishment of natural life and habitat that was consumed by the fire and stated that the escaped fires demonstrated that prescribed fires of such a large size cannot be completely controlled and thus constitute an unacceptable safety risk to the forest and to the general public, as well as the firefighters involved.

PLAA conducted a thorough investigation of the verified complaints. A summary of its investigation is outlined below by issue.

Spotfires: On November 1, 2007, PLAA received five applications from ODNR requesting permission to conduct prescribed burns in the Shawnee State Forest between November 1, 2007, and April 30, 2008 to address the silvicultural needs of the forest by reducing heavy fuel load accumulations from the ice storm of 2003.

After reviewing the applications, PLAA determined that the proposed prescribed burn operations were in an unrestricted area, as defined in Ohio Administrative Code ("OAC") Rule 3745-19-01(K) and therefore allowable as a recognized silvicultural practice, per OAC Rules 3745-19-04©)(5) and 3745-19-05. On November 5, 2007 PLAA granted ODNR permission to conduct the prescribed burns under the terms and conditions in burning permits # 07-26 through #07-30. PLAA burning permit #07-30 specifically granted ODNR approval to conduct prescribed burning activities in the Backcountry Unit of the Shawnee State Forest. This area was defined as being bound by #5 Bridle Trail on the east side, and by the Shawnee Backpack Hiking Trail on the north, south, and west sides. ODNR was permitted to burn no more than 800 acres total in this area starting November 14, 2007, and ending on April 30, 2008. The prescribed burn of 193 acres in the Backcountry Unit took place on April 8, 2008.

On April 23, 2008, PLAA received a complaint from Ms. Lund alleging that ODNR had violated burn permit #07-30 by allowing the fire to jump the fire lines resulting in areas outside of the boundaries specified in the burn permit to be burned.

PLAA contacted Mike Bowden, the Prescribed Burn Manager for the operation, on April 24, 2008, to discuss the alleged violations of burn permit #07-30. He acknowledged that there were several places where wind blew embers across the fire line causing spot fires totaling approximately four acres, but that these fires did not escape and develop into a wildfire. He further stated that there were fire engines on hand to take care of spot fires.

On April 25, 2008, PLAA conducted a site visit of the #5 Bridle Trail in the Backcountry Unit where the April 8, 2008 prescribed burn took place. Accompanied by the Shawnee State Forest, District Forest Manager, the PLAA inspector observed four areas where spot fires had occurred, each of which were outside the boundaries specified in burn permit #07-30. The inspector noted that no residential structures were observed within a mile of the areas in question. On October 2, 2008, PLAA issued a Notice of Violation ("NOV") to ODNR, Division of Forestry, for violation of the conditions of burn permit #07-30 by burning outside of the allowed burn area. PLAA requested a response in writing

within 14 days (later extended by an additional 14 days) describing how future prescribed burns could be conducted in accordance with the conditions of the permission to open burn.

ODNR responded to the PLAA NOV in a letter dated October 31, 2008. It also provided additional information to PLAA and Ohio EPA in a conference call held on October 22, 2008, a meeting conducted on January 7, 2009, and in a letter to Ohio EPA, DAPC, dated January 27, 2009.

In its responses, ODNR emphasized the difference between a spot fire and an escaped fire. A spot fire is defined as a small, containable fire caused by the transport of embers or burning debris past containment lines that can be controlled and extinguished with on-hand resources. An escaped fire is considered to be a fire outside the prescribed burn area that has exceeded the initial attack capabilities and requires additional resources to be brought under control.

ODNR stated that its policy requires that a site-specific burn plan be developed by the Certified Prescribed Burn Manager responsible for the prescribed burn prior to beginning ignition operations. Contingency plans addressing what actions are to be taken in the event of the occurrence of spot fires or escaped fires are developed as part of each burn plan. This planning takes into account factors such as topography, fuel moisture conditions, and meteorological conditions to estimate the potential for spot fires. Because of the variability of weather and fuel moisture, the contingency plans are reviewed and final assessments are completed on the day of the prescribed burn before the start of operations.

These plans include a description of the procedures and protocols to be followed in the event of a spot fire, the actions to be taken, and the resources to be allocated to suppressing a spot fire. The focus of each plan is to minimize the area burned by the spot fire and ensure fire fighter safety. If the spot fire cannot be contained, the burn will be declared a wildfire, all prescribed ignition will be halted, and additional suppression resources will be requested. The contingency planning section of each burn plan includes a map of the secondary contingency lines surrounding the prescribed burn area and provides examples of the type of firefighting equipment that will be available to suppress any spot fires. It also identifies the personnel responsible for coordinating these efforts.

In its January 27, 2009, response to PLAA and Ohio EPA ODNR provided additional details regarding the April 8, 2008 prescribed burn and the spot fire suppression operations. ODNR stated that the contingency plan outlined in the prescribed burn plan for the Backcountry Unit was successfully implemented and followed to suppress and subsequently mop up the spot fires that had occurred. All four spot fires occurred on Division of Forestry lands and were not near any structures or property not owned by ODNR. No additional assistance beyond the resources on hand for the prescribed fire operations were needed to suppress the spot fires.

ODNR also noted in this letter that an additional spot fire had occurred in an area adjoining the Backcountry Unit for which permission to conduct prescribed burn operations had previously been granted by PLAA. This spot fire had occurred in the East Fork Unit (PLAA burn permit #07-29), involved approximately 800 square feet (20' x 40'), and had been contained and extinguished per ODNR's contingency plan. The proximity of residences and the potential impact of smoke from prescribed burn operations of up to 250 acres in this area had already been evaluated by PLAA and found to be acceptable.

Excess particulate emissions: On September 5, 2008, at PLAA's request, ODNR submitted VSmoke modeling data for the prescribed burn of the 283 acre subunit of Backcountry Unit that was burned in the April 8, 2008, operation. VSmoke is a smoke dispersion modeling program that is used to model scenarios of various meteorological conditions to estimate the air quality impact downwind of the prescribed burn operations and help determine a prescription (i.e., a range of meteorological conditions) that will minimize this impact.

ODNR stated the weather forecast for the day of the burn predicted conditions well inside the parameters set for the burn operations. In all of the VSmoke model runs, even those with conditions much less favorable for smoke dispersion than were present on the day of the burn, PM 2.5 levels were predicted to be within acceptable ranges 2.5 to 3 miles from the burn unit.

The prescribed burn conducted on April 8, 2008, consisted of 196 acres total, including four to five acres burned by spot fires, less than the total acreage that had been modeled. Weather conditions during the prescribed burn were within the prescription established by ODNR and the VSmoke modeling results were within acceptable parameters. The area burned by the spot fires consist of less than 3% of the total and would not have caused a significant impact regarding

modeling results or in the amount of particulate produced during the prescribed burn.

Roadway visibility: During its investigation, PLAA was unable to substantiate the allegation that visibility on Forest Road 2 was significantly impaired during the prescribed burn operation. Photographs submitted by the complainant were inconclusive and no other complaints regarding visibility on the forest roads were received by the PLAA.

ODNR stated that the Certified Prescribed Burn Manager on the scene is responsible for the tactical decision to close or not close forest roads during the prescribed burn operations. The forest roads typically remain open to the public during prescribed burn operations and would generally remain so unless forest law enforcement officers determine conditions have become unsafe, at which time they would close the road. During the April 8, 2008, prescribed burn signs were posted and forestry law enforcement officers stationed along the roads during the prescribed burn operations. Mr. Bowden stated that he did not feel the conditions he observed represented a visibility hazard and therefore did not order the roads to be closed.

Other allegations: Air quality monitoring is not required by either the open burn permission or by rule and is conducted only if the sampling equipment and personnel are available. ODNR did notify PLAA on the morning of the prescribed burn operation when the decision to proceed with the prescribed burn was made. PLAA has included in the prescribed burn permission conditions that ODNR provide notice the day prior to the ignition of the prescribed burn.

Open burn permissions do not require individuals or organizations to provide public notification prior to conducting open burning operations. As part of its investigation, PLAA reviewed the process ODNR used to notify nearby residents of its intent to conduct the prescribed burns in the Shawnee State Forest. PLAA strongly recommended ODNR also notify residents in close proximity to the prescribed fire sites directly, as had been done in the past.

The remaining issues raised by the complainants, such as the purpose of ODNR's prescribed burn program in state forests and the need for such a program, and the impact to the flora or fauna located in the prescribed burn area fall outside of Ohio EPA's jurisdiction and are ODNR responsibility as it is the agency responsible for the management of State Forest land.

Based upon the above information, PLAA and Ohio EPA determined that the NOV issued to ODNR was satisfactorily responded to and that adequate procedures are in place to address the issue of spot fires that occur outside of the prescribed burn area. Based on analysis of the data and information available, PLAA and Ohio EPA could not substantiate the alleged violations related to excess smoke and particulate emissions generated by the prescribed fire, or the allegations of restricted visibility on area roadways.

Action: On August 14, 2009, a letter from the Director was sent to the two complainants dismissing the verified complaints.

CASE CLOSED



Case Number: 2807	Dates:
Entity: Hishan Jundi d.b.a. Avon Lake Shell	EAR: 03/16/09
Field Office: NEDO	DWL: N/A
Contact: Jim Kavalec/Tom Kalman	F&Os: 05/01/09 (prop.)
Attorney: Marcus Glasgow	Referral: N/A
	Dismissal: N/A

Background: On May 1, 2009, proposed Director's Final Findings and Orders ("F&Os") were sent to Hishan Jundi, d.b.a. Avon Lake Shell, in an attempt to achieve an administrative settlement of the violations of the Stage II vapor control system requirements in OAC Rule 3745-21-09(DDD) for the gasoline dispensing facility ("GDF") located at 33433 Lake Road, Avon Lake, Lorain County, Ohio. The F&Os cited Mr. Jundi with the following violations:

- (1) OAC Rule 3745-21-09(DDD)(1)(b) and (c), for causing, allowing, or permitting the transfer of gasoline from a stationary storage tank into a motor vehicle while the vapor control system was malfunctioning and without successfully passing the testing requirements in OAC Rule 3745-21-09(DDD)(2), from March 8, 2007 until May 1, 2007;
- (2) OAC Rule 3745-21-09(DDD)(3)(a)(iii) and (vi), for failing to maintain maintenance logs for the Stage II vapor control system and failing to possess proof of completion of Stage II training for the operator or manager of the GDF, from

March 8, 2007 until March 18, 2008;

- (3) OAC Rule 3745-21-09(DDD)(1)(b) and (c), for causing, allowing, or permitting the transfer of gasoline from a stationary storage tank into a motor vehicle while the vapor control system was malfunctioning and without successfully passing the testing requirements in OAC Rule 3745-21-09(DDD)(2), from March 18, 2008 until the present;
- (4) OAC Rule 3745-21-09(DDD)(2)(f), for failing to complete and successfully pass the annual static leak and A/L ratio tests within one year from the last test (May 1, 2007) to the present;
- (5) OAC Rule 3745-78-02(D) and (G), for failing to submit fee emission reports for calendar years 2006 and 2007, which were due by June 6, 2008; and
- (6) ORC § 3704.05(G), for failing to comply with above-mentioned rules adopted by the Director pursuant to ORC Chapter 3704.03.

The F&Os proposed to require Mr. Jundi, within 30 days after the effective date of the F&Os, to submit a Permit-By-Rule ("PBR") notification for this GDF since the permit renewal application, submitted by the previous owner, was never processed by Ohio EPA. Also, the F&Os proposed to require Mr. Jundi, within 30 days after the effective date of the F&Os, to demonstrate that the vapor control system is operating correctly by conducting and passing the static leak and A/L ratio tests. The proposed F&Os would also require Mr. Jundi to conduct weekly inspections of the Stage II vapor control system for the next two ozone seasons (April 1, 2010 to October 31, 2010, and April 1, 2011 to October 31, 2011), checking for leaks, malfunctions or damage to the system. Copies of the records of these inspections and any repairs made are required to be submitted to Ohio EPA by August 14 of each year for the period from March 15 through July 31 and by November 14 of each year for the period from August 1 through October 31. Also, during the next two ozone seasons (2010 and 2011), the F&Os proposed to require Mr. Jundi to perform static leak and A/L ratio tests at this GDF prior to the beginning (during March) of each ozone season and during August of each ozone season. The results of these tests must be submitted to Ohio EPA within 14 days of completion of the tests. Lastly, the proposed F&Os would require Mr. Jundi to pay Ohio EPA a civil penalty in the amount of \$27,000, from which \$5,400 was to be directed to Ohio EPA's Clean Diesel School Bus Program Fund as a SEP.

(See the EC Meeting Minutes of May 7, 2009 for additional background information.)

Ohio EPA did not receive a response from Mr. Jundi concerning the May 1, 2009 proposed F&Os. Attempts to reach Mr. Jundi have been unsuccessful. On June 11 and July 31, 2009, Ohio EPA Legal Office attempted to contact Mr. Jundi and on both occasions spoke with an employee who indicated Mr. Jundi was not available, but he would pass along a message for him. The employee was informed that if Ohio EPA did

not hear back from Mr. Jundi, it may be necessary to refer the case to the Attorney General's Office ("AGO"). Mr. Jundi has not contacted Ohio EPA despite the messages. Therefore, DAPC recommended to the Director that the case be referred to the AGO.

Action: In August 19, 2009 letter to the AGO, the Director referred these violations to the AGO for enforcement action. The referral letter requests that the AGO obtain either a consent order or a court order with the injunctive relief sought in the proposed F&Os and with a reasonable civil penalty consistent with the policy.

CASE CLOSED



Case Number: 2812	Dates:
Entity: Saif Khan, d.b.a. Lakeland Citgo	EAR: 03/25/09
Field Office: NEDO	DWL: N/A
Contact: Jim Kavalec/Tom Kalman	F&Os: 08/20/09
Attorney: Marcus Glasgow	Referral: N/A
	Dismissal: N/A

Background: On May 1, 2009, proposed Director's Final Findings and Orders ("F&Os") were sent to Saif Khan, d.b.a. Lakeland Citgo, to attempt an administrative settlement of the violations of the Stage II vapor control system requirements of OAC Rule 3745-21-09(DDD) associated with the gasoline dispensing facility ("GDF") located at 30460 Lakeland Blvd., Wickliffe, Ohio. The proposed F&Os cited Mr. Khan for the following violations:

- (1) On September 28, 2006, the static leak test passed the annual testing requirements, but the air-to-liquid ("A/L") ratio test failed due to multiple error codes on the Stage II vapor control system. Subsequent A/L ratio retests on October 5, 2006 and January 12, 2007 failed due to problems requiring the replacement of several dispenser nozzles and hoses. The GDF was operated prior to and after each failed test. The failure to operate the Stage II vapor control system free of defect and successfully pass the testing requirements in OAC Rule 3745-21-09(DDD)(2) while causing, allowing, or permitting the transfer of gasoline from a stationary storage tank into a motor vehicle were violations of OAC Rule 3745-21-09(DDD)(1)(b) and (DDD)(1)(c), PTI #02-19108, and ORC §

3704.05(C) and (G). A passing A/L ratio test was conducted on February 22, 2007.

- (2) On November 5, 2007, the static leak test passed the annual testing requirements, but the A/L ratio test failed due to multiple error codes on the Stage II vapor control system. The GDF was operated prior to and after each failed test. An A/L ratio retest on May 28, 2008 also failed. Again, these were violations of OAC Rule 3745-21-09(DDD)(1)(b) and (DDD)(1)(c), PTI #02-19108, and ORC § 3704.05(C) and (G). A passing A/L ratio test was conducted on July 17, 2008.
- (3) On December 17, 2008, the static leak test passed the annual testing requirements, but the A/L ratio test failed for dispensers 4, 8 and 9. On January 15, 2009, an A/L ratio retest was conducted, with dispenser 4 passing the test and dispensers 8 and 9 failing the test. The GDF was operated prior to and after each failed test. Again, these were violations of OAC Rule 3745-21-09(DDD)(1)(b) and (DDD)(1)(c), PTI #02-19108, and ORC § 3704.05(C) and (G). A passing A/L ratio test was conducted on dispensers 8 and 9 on March 9, 2009.
- (4) Mr. Khan failed to timely submit the 2006 and 2007 fee emission reports, which were due by June 6, 2008, in violation of OAC Rule 3745-78-02(D) and (G) and ORC § 3704.05(G). The reports were submitted on May 22, 2009.

The F&Os proposed to require Mr. Khan to conduct weekly inspections of the Stage II vapor control system for the next two ozone seasons (2010 and 2011), checking for leaks, malfunctions or damage to the system. Copies of the records of these inspections and any repairs made are required to be submitted to Ohio EPA by August 14 of each year for the period from March 15 through July 31 and by November 14 of each year for the period from August 1 through October 31. Also, during the next two ozone seasons (2010 and 2011), the F&Os propose to require Mr. Khan to perform static leak and A/L ratio tests at this GDF prior to the beginning (during March) of each ozone season and during August of each ozone season. The results of these tests must be submitted to Ohio EPA within 14 days of completion of the tests. Lastly, the proposed F&Os would require Mr. Khan to pay Ohio EPA a civil penalty in the amount of \$25,000, from which \$5,000 will go towards the Ohio EPA's Clean Diesel School Bus Program Fund as a SEP. The penalty was determined using the Enhanced Enforcement Protocol penalty policy for Stage II vapor control system violations.

(See the EC Meeting Minutes of May 7, 2009 for additional background information.)

A settlement was reached via phone conversations between Mr. Khan's counsel and DAPC's attorney. A payment plan was provided to minimize any adverse financial impact on Mr. Khan's business.

Action: On August 20, 2009, final F&Os were issued to Mr. Khan. The F&Os continue to require the inspections and testing for the next two ozone seasons as in the proposed F&Os. A civil penalty of \$10,000 is required to be paid to Ohio EPA, of which \$2,000 is to be directed to Ohio EPA's Clean Diesel School Bus Program Fund as a SEP within 30 days after the effective date of the F&Os. The remaining \$8,000 is to be paid as follows:

- \$500 within 30 days after the effective date of the F&Os;
- \$2,500 within 120 days after the effective date of the F&Os;
- \$2,500 within 210 days after the effective date of the F&Os; and
- \$2,500 within 300 days after the effective date of the F&Os.

CASE CLOSED



Case Number: 2846	Dates:
Entity: Joseph Parker	EAR: 08/03/09
Field Office: SWDO	DWL:
Contact: Eric Yates/John Paulian	F&Os: 08/18/09 (final)
Attorney: Marc Glasgow	Referral:
	Dismissal:

Background: On July 20, 2009, an Ohio EPA SWDO DERR inspector responded to a complaint of an open burning event at Mr. Parker's property located at 3187 County Road 12 that occurred on or about July 18, 2009. The inspector discovered a large pile of demolition debris including asphalt shingles that had been placed into a dry creek bed and burned. The pile also contained computer equipment and mail that was used to identify Mr. Parker as the person responsible for the burning. The DERR inspector took multiple pictures of the burn pile and of the mail that was used to identify Mr. Parker.

The open burning of demolition debris in an unrestricted area is prohibited by OAC rule 3745-19-04.

The open burning is also being investigated by the Logan County Health Department for possible solid waste violations

Action: On August 18, 2009, Director's Unilateral Final Findings and Orders were sent to Mr. Parker. The Orders require Mr. Parker to pay a civil penalty of \$250 to settle the open burning violations.

CASE CLOSED



Case Number: 2685	Dates:
Entity: Quikrete-Cleveland	EAR: 12/14/07
Field Office: Akron	DWL: N/A
Contact: Urvi Doshi/Tom Kalman	F&Os: 08/20/09 (prop)
Attorney: Donald L. Vanterpool	Referral: N/A
	Dismissal: N/A

Background: Quikrete-Cleveland ("Quikrete") has corporate offices located at 8951 Schaefer Highway, Bldg. #4 in Detroit, Michigan. It owns and operates a cement blending and packaging plant located at 2693 Lake Rockwell Road, Shalersville Township, Portage County, Ohio. Air contaminant sources at the plant consist cement packaging operations with baghouse (emissions unit P901), a fluid bed dryer (emissions unit P902), roadways and parking areas (emissions unit F001), and storage piles (emissions unit F002). Quikrete was issued Permit to Install ("PTI") #16-1513 on October 18, 1995 and permits to operate ("PTOs") on July 5, 2005 for these emissions units.

Between November 19, 2007 and July 29, 2008, on three days, visible particulate emission observations demonstrated violations of the visible particulate emission limit of one minute during any 60-minute period for the paved roadways of emissions unit F001, in violation of PTI #16-1513, the PTO, and ORC § 3704.05(C).

PTI #16-1513 and the PTO for emissions unit P901 require Quikrete to not allow any visible emissions of fugitive dust from the building housing this emissions unit. Between September 24, 2007 and December 15, 2008, on 37 days, visible particulate emissions of fugitive dust were observed from the building housing emissions unit P901, in

violation of PTI #16-1513, the PTO and ORC § 3704.05(C). Quikrete corrected these violations by repairing the baghouse and the broken parts of the production building and storage bin vents.

PTI #16-1513 and the PTO for emissions unit P901 and OAC Rule 3745-15-07 prohibit Quikrete from causing a public nuisance by the emission of air contaminants from this emissions unit. Between September 20, 2007 and October 25, 2007, six fugitive dust emission incidents involving emissions unit P901 caused a public nuisance in the vicinity outside of the facility, which endangered the health, safety or welfare of the public, or caused unreasonable injury or damage to property, in violation of PTI #16-1513, the PTO, OAC Rule 3745-15-07, and ORC § 3704.05(C) and (G).

Quikrete failed to timely submit quarterly deviation reports for the following calendar quarters: 2nd, 3rd and 4th quarters of 2005; 1st, 2nd, 3rd and 4th quarters of 2006; 1st, 2nd, 3rd and 4th quarters of 2007; and 1st quarter of 2008, in violation of PTI #16-1513 and ORC § 3704.05(C). The delinquent reports were finally submitted on July 25, 2008.

Quikrete failed to keep records of daily inspections for determining the need to implement control measures for emissions unit F001, in violation of PTI #16-1513 and ORC § 3704.05(C). On February 15, 2009, Quikrete submitted information on the daily inspections and record-keeping of visible emissions for emissions units F001 and F002 from January 2008 through December 2008.

On December 14, 2007, Akron submitted an Enforcement Action Request to Central Office to obtain compliance and the payment of a civil penalty.

Action: On August 20, 2009, proposed Director's Final Findings and Orders ("F&Os") were sent to Quikrete to attempt an administrative settlement of the violations. The F&Os propose to require Quikrete to:

- (1) upon the effective date of the F&Os and thereafter, maintain emissions units P901, P902, F001 and F002 in compliance with the visible emission limitations and control requirements in PTI #16-1513;
- (2) pay a total civil penalty of \$85,500 to Ohio EPA;
- (3) within 14 days after the effective date of the F&Os, pay \$68,400 of the total civil penalty to Ohio EPA; and

- (4) within 14 days after the effective date of the F&Os, pay \$17,100 of the total civil penalty to Ohio EPA's Clean Diesel School Bus Program Fund as a SEP.

CASE CONTINUED



Case Number: 2713	Dates:
Entity: Quality Ready Mix, Inc.	EAR: 04/10/08
Field Office: NWDO	DWL: N/A
Contact: Patty Porter/Tom Kalman	F&Os: 08/20/09 (prop.)
Attorney: Bryan Zima	Referral: N/A
	Dismissal: N/A

Background: Quality Ready Mix, Inc. ("Quality") of St. Marys, Ohio, owned and operated a concrete batching plant that was formerly located at 1670 North McCullough Street in Lima, Allen County, Ohio. The facility mixed cement and other raw materials to produce concrete that was sold to various customers. Cement was delivered to the facility by trucks and pneumatically unloaded into a cement storage silo equipped with a fabric filter to control particulate emissions during loading of the silo. The cement along with other raw materials was weighed in weigh hoppers that were also equipped with a fabric filter to minimize particulate emissions. In December 2008, Quality gave notice that it was ceasing operations at this site and removed the equipment from the site. Quality owns and operates several other concrete batching facilities in Ohio.

On October 30, 1991, DAPC issued PTI #03-6000 to Quality for the installation of the facility. The PTI required Quality to conduct regular maintenance on the facility's air pollution control equipment in accordance with good engineering practices to minimize air contaminant emissions. The PTI also specified that the cement silo and weigh hoppers are subject to the requirements of OAC Rule 3745-17-08, including the requirement to install and employ reasonably available control measures ("RACM") to achieve the lowest particulate matter emissions possible. In this case, the fabric filter discharges are required to meet a grain loading of 0.030 grain per dry standard cubic foot of exhaust air or no visible emissions, whichever is less stringent.

Northwest District Office of Ohio EPA ("NWDO") received several complaints regarding excessive fugitive dust emissions being generated by Quality at the facility. The complainant provided NWDO with several photographs, video tapes, and notes

documenting excessive dust being emitted from a vent on the side of the cement silo. Although DAPC believes that these fugitive dust emissions are probably classified as a public nuisance, a public nuisance violation is not being pursued because the photographs and video tapes only document where emissions were being generated. In other words, the evidence fails to establish that the excessive fugitive dust was emitted in a manner or in such amounts as to endanger the health, safety, or welfare of the public, or cause unreasonable injury or damage to the property.

During the period from March 7, 2007 to April 10, 2007, for at least 16 incidents during pneumatic conveying of cement from tanker trucks to the silo, Quality failed to employ control equipment on the silo that achieved an outlet grain loading of not greater than 0.030 grain per dry standard cubic foot of exhaust gas or no visible emissions, whichever is less stringent, in violation of PTI #03-6000, OAC Rule 3745-17-08(B), and ORC § 3704.05(C) and (G). On each of those incidents, visible emissions were seen from the discharge of the fabric filter serving the silo and particulate emission calculations found the grain loading to exceed 0.030 grain per dry standard cubic foot. These violations were corrected by Quality on December 3, 2008 when the facility ceased production at this site.

NWDO visited the facility and discovered that Quality was not maintaining the control systems as required by the PTI, in violation of ORC § 3704.05(C). In fact, it appeared that the only time the fabric filters were serviced was due to the complaints and NWDO's investigation. The exact dates of the violations are not known; however, they occurred from at least August 25, 2006, the date of NWDO's first inspection, and continued until September 13, 2006, the date Quality repaired and replaced the torn and clogged bags on the weigh hopper fabric filter. On September 7, 2006, Quality completed similar maintenance on the cement silo's fabric filter.

A notice of violation ("NOV") letter was sent to Quality on January 10, 2007, which identified these violations.

On April 10, 2008, NWDO submitted an Enforcement Action Request to Central Office for these violations.

On December 3, 2008, Quality informed Ohio EPA that the facility would be ceasing production at this site and that operations would be relocated to another site. On December 11, 2008, NWDO staff visited the facility and observed that the cement silo was loaded onto a flat bed trailer for removal.

Action: On August 20, 2009, proposed Director's Final Findings and Orders ("F&Os") were sent to Quality to attempt an administrative settlement of the violations. The F&Os

propose to require Quality to pay a civil penalty of \$28,800, of which \$5,700 would be directed to Ohio EPA's Clean Diesel School Bus Program Fund as a SEP and \$5,000 would go toward the performance of a pollution prevention study of one or more of its facilities as a SEP. The penalty payments are proposed to be due within 14 days after the effective date of the F&Os and the pollution prevention study is to be completed within 330 days after the effective date of the F&Os.

The civil penalty includes a mitigation of 40 percent for the small amount of non-complying particulate emissions.

CASE CONTINUED



Case Number: 2830	Dates:
Entity: Barberton Steel Industries, Inc.	EAR: 06/16/09
Field Office: Akron	DWL: 08/27/09
Contact: Muhammad Mereb/Tom Kalman	F&Os: N/A
Attorney: Marcus Glasgow	Referral: N/A
	Dismissal: N/A

Background: Barberton Steel Industries, Inc. ("BSI") owns and operates a foundry located at 240 Huston Street in Barberton, Summit County, Ohio. The foundry operates several air contaminant sources, which were required to be permitted by Ohio EPA under the former OAC Rule 3745-35-02 ("Permits to Operate") and, as of June 30, 2008, OAC Rule 3745-31-02(A)(1)(c) ("Permits to Install and Operate").

On May 13, 2004, the permits to operate ("PTOs") for the following air contaminant sources expired and BSI failed to apply for and obtain renewal PTOs, and subsequently permits to install and operate ("PTIOs") while continuing operation, in violation of OAC Rules 3745-35-02(A) and 3745-31-02(A)(1)(c), and ORC § 3704.05(G):

<u>Emissions Unit ID</u>	<u>Company ID</u>
F003	Large Casting Shakeout
F005	Small Casting Shakeout
P001	Large Table Blast
P002	Tumble Blast Casting
P003	Shot Blast Casting
P901	Large Electromelt Electric Arc Furnace

P902
P905

Small Electromelt Electric Arc Furnace
Dry Sand Reclaimer

The Akron Regional Air Quality Management District ("ARAQMD") sent BSI a renewal notice approximately six months prior to the expiration date of the PTOs. On February 25, 2008, ARAQMS sent BSI a notice of expiration of the PTOs for the above emissions units along with the appropriate hardcopy application forms and instructions. Since applications had not been submitted, ARAQMD sent a notice of violation letter to BSI on August 21, 2008, requesting submission of the appropriate permit applications.

On May 18, 2009, BSI submitted incomplete renewal applications to ARAQMD. ARAQMD returned the incomplete applications to BSI along with clarifying instructions on June 1, 2009. Complete PTIO applications have not been submitted.

On June 16, 2009, ARAQMD submitted an Enforcement Action Request to Central Office to obtain assistance in bringing BSI into compliance.

Action: In a letter dated August 27, 2009, the Director requested BSI to submit complete PTIO applications to ARAQMD within 14 days of receipt of the letter. The letter indicates that failure to do so will result in Ohio EPA considering its enforcement options including referral of the matter to the Attorney General's Office for legal action and assessment of civil penalties.

CASE CONTINUED



Case Number: 2837

Entity: Flying J, Inc.

Field Office: NEDO

Contact: Jim Kavalec/Tom Kalman

Attorney: Marcus Glasgow

Dates:

EAR: 07/08/09

DWL: N/A

F&Os: 08/18/09 (prop)

Referral: N/A

Dismissal: N/A

Background: Flying J, Inc. ("Flying J"), of Odgen, Utah, owns and operates a gasoline dispensing facility ("GDF") located at 2349 Center Road in Austinburg, Ashtabula County, Ohio. This GDF is subject to the requirements of OAC Rule 3745-21-09(DDD) concerning Stage II vapor control systems. Also, PTI #02-15824 and a Permit-by-Rule were issued to Flying J for this GDF on February 2, 2002 and December 18, 2007, respectively, and require compliance with OAC Rule 3745-21-09(DDD).

On August 7, 2007 and August 19, 2008, Flying J attempted to conduct the annual static leak and air-to-liquid ("A/L") ratio tests at this GDF. During each test, the test failed due to malfunctions with the Stage II vapor control system. In the case of the August 7, 2007 test failure, Flying J subsequently repaired the system and passed static leak and A/L ratio tests on December 11, 2007. In the case of the August 19, 2008 test failure, Flying J subsequently retested; however, the static leak test failed due to a leaking drop tube and leaking vacuum pump motor, and the A/L ratio test failed for dispenser #7 due to the vacuum pump not working on the dispenser. Flying J subsequently conducted and passed the static leak and A/L ratio tests for this GDF on July 14, 2009.

Flying J continued to operate the dispensers before and after the failed tests. The failure to properly operate and maintain the vapor control system and the failure to successfully pass the testing requirements of OAC Rule 3745-21-09(DDD)(2) while causing, allowing, or permitting the transfer of gasoline from a stationary storage tank into a motor vehicle were violations of ORC § 3704.05 and OAC Rule 3745-21-09(DDD)(1)(b) and (c). Furthermore, the failure to complete and successfully pass the annual static leak and A/L ratio tests within one year from the last passing test (December 11, 2007) while causing, allowing, or permitting the transfer of gasoline from a stationary storage tank into a motor vehicle is a violation of ORC § 3704.05(G) and OAC Rule 3745-21-09(DDD)(2)(f).

Notice of violation letters were sent by the Northeast District Office of Ohio EPA ("NEDO") to Flying J on August 27, 2007 and July 1, 2009, in which repairs and retesting of the Stage II vapor control system were requested.

On July 8, 2009, NEDO submitted an Enforcement Action Request to Central Office for the violations.

Action: On August 18, 2009, proposed Director's Final Findings and Orders ("F&Os") were sent to Flying J's corporate office to attempt an administrative settlement of the violations. The F&Os propose to require Flying J to do the following:

- (1) Within 30 days after the effective date of the F&Os, demonstrate that the vapor control system is operating correctly by conducting and passing the static leak, A/L ratio, and dynamic pressure performance tests;
- (2) Conduct weekly inspections of the Stage II vapor control system for the next two ozone seasons, i.e., April 1, 2010 to October 31, 2010, and April 1, 2011 to October 31, 2011, beginning on March 15, 2010 and March 15, 2011, checking for leaks, malfunctions or damage to the system;

- (3) Perform static leak and A/L ratio tests at this GDF prior to the beginning (during March) of each ozone season and during August of each ozone season for the next two ozone seasons; and
- (4) Pay a civil penalty of \$29,650 to Ohio EPA, with \$23,720 due within 14 days after the effective date of the F&Os and with \$5,930 due to the Clean Diesel School Bus Program Fund as a SEP within 30 days after the effective date of the F&Os.

The Enhanced Enforcement Protocol penalty policy was used to calculate the civil penalty.

CASE CONTINUED



Case Number: 2838	Dates:
Entity: Englefield, Inc., d.b.a. Ashtabula Duchess	EAR: 07/14/09
Field Office: NEDO	DWL: 08/12/09
Contact: Jim Kavalec/Tom Kalman	F&Os: N/A
Attorney: Stephen Feldmann	Referral: N/A
	Dismissal: N/A

Background: Englefield, Inc. of 447 James Parkway in Heath, Ohio, owns and operates Ashtabula Duchess, a gasoline dispensing facility (“GDF”) located at 1415 Lake Avenue in Ashtabula, Ohio. This GDF is subject to the Stage II vapor control system requirements of OAC Rule 3745-21-09(DDD) and employs a Stage II vapor control system.

For the past two years, the Ashtabula Duchess has failed to provide Ohio EPA with proof of attendance and completion of training for the operator or local manager of this GDF, in violation of OAC Rule 3745-21-09(DDD)(3)(a)(vi) and ORC § 3704.05(G). Specifically, no proof of attendance and completion of training for the Stage II vapor control system was noted during Ohio EPA, Northeast District Office’s (“NEDO”) inspections of this GDF on April 24, 2008 and April 23, 2009.

In letters dated May 15, 2008 and April 29, 2009, NEDO notified Englefield, Inc. of these violations and the need to obtain this training. Despite these requests, Englefield, Inc.

has failed to provide Ohio EPA with documentation of attendance and completion of training.

On July 14, 2009, NEDO submitted an Enforcement Action Request to Central Office to obtain assistance in getting this GDF into compliance with training requirements.

Action: On August 12, 2009, a Director's warning letter was sent to Englefield, Inc. informing it of the violations and requesting that such training be obtained within 90 days of the receipt of the letter and that documentation demonstrating proof of attendance and completion of the training be submitted to NEDO within 30 days after completion of the training. The letter indicated that failure to do so would result in the Director's consideration of alternative enforcement mechanisms including referral of the matter to the Attorney General's Office for appropriate legal action.

CASE CONTINUED



Case Number: 2848	Dates:
Entity: Sandusky Dock Corporation	EAR: 08/06/09
Field Office: NWDO	DWL: N/A
Contact: Jim Orlemann	F&Os: 08/18/09 (prop.)
Attorney: Bryan Zima	Referral: N/A
	Dismissal:

Background: Sandusky Dock Corporation ("SDC"), of 2705 West Monroe Street in Sandusky, Ohio, owns and operates a coal handling facility that receives coal by rail, stockpiles it, and loads it into trucks and ships for distribution to power plants and various manufacturing plants. The facility is located in Sandusky on a pier that extends approximately one mile into Sandusky Bay of Lake Erie. SDC operates the following emissions units at the coal handling facility: paved and unpaved roadways and parking areas (F001), coal storage piles (F002), and material handling operations (F003). The Northwest District Office of Ohio EPA ("NWDO") has received numerous complaints from neighboring businesses, residents, and Sandusky Harbor Marina patrons concerning the emissions of fugitive dust from SDC's coal handling facility. In June 2000, a Sandusky Harbor Marina patron filed a verified complaint with the Director alleging that emissions of fugitive dust from SDC's facility were causing damage to his boat and other personal property. The verified complaint included a petition signed by

98 individual Marina patrons complaining that the fugitive dust from the facility was causing a public nuisance, in violation of OAC Rule 3745-15-07.

NWDO investigated the verified complaint and determined that the fugitive dust emissions from SDC's facility were causing a public nuisance, in violation of OAC Rule 3745-15-07 and ORC § 3704.05(G). To address the public nuisance determination, the PTO for F002 was modified on October 16, 2001 to include control requirements and a visible emission limitation for the fugitive dust emissions. The terms of the permit stated that the control requirements were necessary to prevent further violations of OAC Rule 3745-15-07. SDC subsequently appealed the issuance of the permit modification to the ERAC.

On January 1, 2003, after conducting a hearing concerning SDC's appeal of the modified PTO, ERAC issued a decision that upheld (a) the Director's conclusion that SDC was causing a public nuisance and (b) his issuance of the modified PTO to address the nuisance. SDC subsequently appealed ERAC's decision to the Franklin County Court of Appeals.

On December 23, 2003, the Franklin County Court of Appeals issued its decision concerning SDC's appeal. In the decision, the Court stated "the ERAC's order is reversed and this cause is remanded to ERAC for further proceedings consistent with this opinion." The Director subsequently appealed the Franklin County Court of Appeals' decision to the Ohio Supreme Court.

On October 5, 2005, the Ohio Supreme Court issued its decision concerning the Director's appeal. The decision affirmed the judgment of the Franklin County Court of Appeals to remand the permit to ERAC and, in doing so, stated the following: "When, as in this case, a PTO modification requir[es] abatement of or prohibit[s] emissions, R.C. 3704.03[R] governs the Director's authority. R.C. 3704.03[R] requires the Director to give consideration to, and base his determination on, evidence relating to the technical feasibility and economic reasonableness of compliance. The record does not indicate the Director complied with this requirement."

ERAC issued its Final Order on Remand on October 20, 2005. In the Order, ERAC remanded the modified PTO to the Director "for formal consideration of the technical feasibility and economic reasonableness" of the control requirements and visible emission limitation specified in the permit. ERAC's remand did not require the Director to reconsider whether or not SDC is causing a public nuisance, in violation of OAC Rule 3745-15-07.

On July 27, 2007, a letter was sent to SDC by the NWDO requesting the company to prepare an engineering analysis of all the possible fugitive dust control measures for each of the three emissions units at the facility. For all the possible control measures,

SDC was required to identify the measures that are technically feasible; and for each of the technically feasible control measures, SDC was required to provide the uncontrolled and controlled emission estimates, the capital and annual operating costs, and a schedule for implementation (if the measure were required by the Director).

On November 26, 2007, SDC submitted the engineering analysis requested by the NWDO. The NWDO reviewed the report, and in a letter dated January 31, 2008, provided comments and requested additional clarification and information. On March 14, 2008, SDC responded to the NWDO's letter and provided information to supplement the engineering analysis.

Central Office reviewed the complete engineering analysis and, in consultation with the NWDO, completed a summary of the technically feasible control measures that could be employed for F001, F002, and F003. NWDO sent this summary to SDC by e-mail on February 11, 2009, and requested comments on its conclusions concerning the engineering analysis.

On March 31, 2009, SDC submitted comments concerning the summary to NWDO by e-mail. In general, SDC objected to the implementation of any control measure that has a cost-effectiveness greater than \$5,000/ton of particulate removed.

During the time period from October 16, 2001, when the modified PTO for F002 was issued, to the present, SDC has operated F001, F002, and F003 under the expired PTOs that were initially issued on April 24, 1999. (SDC filed timely renewal applications for all three of the emissions units.) Also, during this same period, Ohio EPA has continued to receive complaints concerning the fugitive dust emissions, and this facility continues to cause a public nuisance, in violation of OAC Rule 3745-15-07 and ORC § 3704.05(G). In addition, during this same period, SDC has implemented no additional control measures to further abate the fugitive dust emissions.

With the March 31, 2009 response from SDC concerning the summary of the technically feasible control measures, Ohio EPA has completed the technical review required by ERAC's Final Order on Remand. Ohio EPA now is able to issue the 3704.03[R] Orders that the Ohio Supreme Court determined must be issued by the Agency to address the public nuisance. To fulfil this requirement, DAPC is recommending to the Director the issuance of proposed, consensual Director's Final Findings and Orders ("F&Os") with a civil penalty, rather than unilateral F&Os.

On August 6, 2009, NWDO submitted an Enforcement Action Request to Central Office that requests the issuance of F&Os with a control plan and schedule to abate the nuisance and with a civil penalty demand.

Action: On August 18, 2009, proposed F&Os were sent to SDC to attempt an

administrative settlement of the violations of the public nuisance rule. The purpose of these F&Os is two-fold: (1) to officially address the Final Order on Remand issued by ERAC on October 20, 2005 and (2) to abate the ongoing public nuisance.

It is not possible to completely eliminate the fugitive dust emissions from this facility by employing control measures; however, DAPC believes that by implementing (and properly operating) all the technically feasible control measures for F001, F002, and F003, the nuisance conditions will be abated and compliance with OAC Rule 3745-15-07 will be achieved.

The following briefly summarizes the additional control measures proposed to be required by these F&Os:

A. F001 (paved and unpaved roadways and parking areas):

1. Employ chemical dust suppression for the unpaved roadways.
2. Pave unpaved road segment UR3, which runs adjacent to the coal piles and is traveled primarily by coal handling vehicles.
3. Employ watering for the paved roadways and parking areas.

B. F002 (coal storage piles):

1. Automate the existing water spray towers by installing additional hardware, software, sensors, and real-time aerosol monitors to enable the watering of the storage piles based upon site-specific weather conditions. Also install an on-site meteorological station to provide site-specific ambient data that can be used by the new computer system to adjust the amount and frequency of the water sprayed on the storage piles.
2. For any coal storage pile that will remain inactive for a significant period of time, utilize a spray truck to apply a chemical dust suppressant (crusting agent) over the entire surface of the pile.
3. Limit the maximum height of each coal storage pile to 70 feet.

C. F003 (material handling operations):

1. Car dumping -

Install a water spray system that rotates with each railcar. Install a surfactant system to improve the control efficiency of the wet suppression system for dusty coal shipments. Install a wind barrier around three sides of the dumper structure.

2. **Conveyor 8 discharge -**

Replace the existing spray nozzles to provide better coverage and install a surfactant system to improve the control efficiency of the wet suppression system for dusty coal shipments.

3. **Pan chute transfer to conveyor 1 -**

Install water sprays at the transfer point.

4. **Transfer to conveyor 2, transfer to conveyor 3, transfer to conveyor 4, and transfer to conveyor 6 -**

Install water sprays at each transfer point.

5. **Cross conveyor to bandwagon transfer -**

Install a hood on the bandwagon hopper and a water spray at the cross conveyor discharge point.

6. **Bucket wheel reclaim from storage piles -**

Install water sprays at the discharge of the buckets to the reclaim conveyor.

7. **Bandwagon to conveyor 4 hopper transfer -**

Install water sprays at the discharge from the bandwagon to the hopper.

8. **Transfer from hopper to conveyor 4 and transfer from conveyor 4 to conveyor 5 -**

Install water sprays at each of the transfer points.

9. **Silo discharges to conveyor 6 -**

Install water sprays at each of the 6 transfer points.

10. **Silo structures -**

Plant a wind barrier of adequately sized trees and bushes on the north side of the silos.

11. **Transfer to conveyor 7 and transfer to conveyor 8 -**

Install water sprays at each of the transfer points.

12. **Transfer to stacker/reclaim conveyor -**

Install water sprays at each of the transfer points.

All of the above-mentioned control measures have been determined by SDC to be technically feasible, and the F&Os require the installation of all the control measures within 180 days after the effective date of the F&Os.

There is substantial cost information from the engineering analysis submitted on November 26, 2007 and supplemented on March 14, 2008, as well as the from the initial engineering analysis completed by the company in January 1995. This information was used to determine the economic reasonableness of the above-mentioned control measures. The total estimated capital cost of the control measures is \$990,000, and the estimated annual operating cost of the control measures is \$140,900.

In looking at the cost-effectiveness of the additional control measures, only the automation of the water spray towers has a cost-effectiveness value less than \$5,000/ton. The overall cost-effectiveness for the control measures for the material handling operations is approximately \$5,935/ton (in 2008 \$) using the uncontrolled emission rates from the all the operations and \$22,237/ton (in 2008 \$) using the controlled emission rates for the operations that currently have some level of control and the uncontrolled emission rates for the remaining operations.

As mentioned above, SDC argues that any control measure with a cost-effectiveness greater than \$5,000/ton is economically unreasonable. However, in determining economic reasonableness for a situation that involves a public nuisance, DAPC cannot rely solely upon cost-effectiveness figures. The entity causing the public nuisance must take whatever measures are necessary to cure the public nuisance. Therefore, with public nuisance situations, whether the entity can afford the necessary measures would be a better measure of economic reasonableness than simply looking at the cost-effectiveness values for the control measures.

The 1995 engineering study has some very interesting information concerning the affordability of the control measures required by these F&Os. Prior to the installation of the water spray towers, the annual operating cost associated with the use of the spray trucks was \$446,927. By implementing only the water spray towers, which is what the company did as a result of the 1995 engineering study, the company reported that the annual operating costs for the control measures dropped to \$101,742. This resulted, therefore, in an annual cost saving, in 1995 dollars, of \$345,175. This cost saving has occurred each year for the past 13 years, for a total saving of \$4,487,275 in 1995 dollars and approximately \$7,292,000 in 2008 dollars.

Furthermore, the 1995 engineering study indicates that if all the control measures in the "Mode 4" option were implemented, the annual operating cost would drop to \$146,826. Mode 4 includes the water spray towers as well as all the control measures for the

material handling operations that DAPC is requiring in these F&Os. Therefore, this control scheme would have resulted in an annual cost saving of \$300,101, versus the annual cost saving of \$345,175 for the implementation of only the water spray towers. This annual cost saving would have reduced the total cost saving for the past 13 years to \$3,901,313 in 1995 dollars and approximately \$6,340,000 in 2008 dollars.

Therefore, in light of the annual cost saving that has occurred, or would have occurred if all the control measures required by these F&Os were implemented, Ohio EPA believes the total capital cost and the total annual operating cost for all the control measures required by these F&Os are economically reasonable, even though some of the required control measures have cost-effectiveness values greater than \$5,000/ton.

DAPC believes this longstanding public nuisance warrants a reasonable civil penalty; however, a specific value is not included in the proposed F&Os. The calculated civil penalty will depend greatly upon three factors: the total capital cost for the required control measures, the total annual operating cost for the required control measures, and the chosen start date for the period of noncompliance. Changes in one or more of these factors can dramatically affect the calculated civil penalty.

To get an idea of what the civil penalty might be, a calculation was completed using the above-mentioned capital and annual operating costs, and very conservatively assumed a noncompliance start date of July 27, 2008. This date was chosen because it was one year after the Agency requested the updated engineering analysis and indicated through the request that the company was still causing a public nuisance. It was felt that one year after the date of that request would have been an adequate period of time to implement all the required control measures. With these data inputs, the calculated civil penalty turned out to be \$322,120. DAPC does not, however, want to propose this number in the F&Os because if SDC is successful in convincing the Division that not all the control measures for the material handling operations are necessary, the calculated civil penalty could change dramatically. DAPC wants to have the ability to appropriately adjust the noncompliance start date in such case so that it ends up with a reasonable civil penalty, which at this point in time could be in the "gray area" specified by the MOU. Therefore, DAPC recommended to the Director that the technical issues with SDC first be negotiated and an agreement reached on that, and then calculate the civil penalty based upon the technical agreement. At that point, the civil penalty would be negotiated with the company. The Director agreed with this approach through his signing of the cover letter to the proposed F&Os.

CASE CONTINUED



ACTIONS & MINUTES APPROVED BY:



Bob Hodanbosi, Chief, DAPC

NEXT MEETING:

September 6, 2009

3:00 pm

6C

PENDING AIR ENFORCEMENT COMMITTEE CASES

Total Unresolved Cases (97)

Case #	Facility Name	Field Office	Atty./Staff	Zero Date for SOL	EAR Date Received
2527	Carmeuse Lime, Inc., Maple Grove Facility (HPV)	NWDO	DV/UD	11/05/02	06/19/06
2618	TRC Industries	Akron	SF/MM	03/03/06	05/04/07
2638	Fairport Yachts, LTD (multi-media)	NEDO	MG/PP	01/27/98	07/02/07
2657	Environmental Affairs Management, Inc. (asbestos)	M-TAPCA	SF/FU	06/07/07	08/17/07
2666	Mr. and Mrs. James Conley (multi-media case)	SWDO	BZ/EY	08/06/07	09/25/07
2671	Mar-Zane, Inc. (Plant #1)	CDO	MG/JP	12/11/06	10/25/07
2676	OmniSource Corporation - Lima Division	NWDO	MG/MM	02/23/06	11/08/07
2679	Rascal House Pizza / Cardinal Environmental Services, Inc. (asbestos)	Cleve.	BZ/EY	03/02/07	12/04/07
2685	Quickrete - Cleveland Plant	Akron	DV/UD	10/17/07	12/14/07
2687	Cast Fab Technologies	HAMCO	BZ/TT	04/25/05	12/17/07
2691	Unique Finishers, Inc., D & S Coating, and Binks Coating (all 3 formerly L & C, Inc.)	RAPCA	BZ/PP	06/29/06	12/28/07
2693	Ameriseal Restoration LLC	Akron	DV/FU	04/26/07	10/26/07
2696 (112r)	Eramet Marietta, Inc.	N/A	BZ/KJ	09/26/07	01/18/08
2698 (112r)	Sugar Creek Packing Co.	N/A	DV/SS	01/03/08	01/31/08
2701 (VC)	City of Dayton, Advanced Wastewater Treatment Facility	RAPCA	BZ/JK	02/19/08	02/19/08
2707	Thermo-Rite Manufacturing Co. (HPV)	Akron	MG/UD	02/12/08	03/12/08
2708	Dave Sugar Excavating, Inc.	SEDO	DV/MM	03/13/05	02/04/08
2710	Stein, Inc.	Cleve.	BZ/EY	07/31/07	03/14/08
2713	Quality Ready Mix	NWDO	BZ/PP	12/21/06	04/10/08
2719 (112r)	Sugar Creek Packing Co. (Dayton)	N/A	DV/SS	03/26/08	04/28/08
2722	Tuscarwas County YMCA, M-Cor Inc., Raeder Construction, et al.	SEDO	BZ/UD	12/20/07	05/05/08
2723	Cognis Oleochemicals, LLC (HPV)	HAMCO	DV/PP	01/03/07	05/19/08
2725	Hosea Project Movers, LLC (asbestos)	HAMCO	SF/TT	05/06/07	05/16/08
2726	Glick Real Estate LTD/All-Type Demolition and Excavating (asbestos)	Canton	BZ/FU	05/19/06	05/19/08
2731 (112r)	H. B. Fuller Company	N/A	DV/KJ	03/26/08	06/04/08

Updated: 08/27/09

PENDING AIR ENFORCEMENT COMMITTEE CASES

Case #	Facility Name	Field Office	Atty./Staff	Zero Date for SOL	EAR Date Received
2733	McCarthy Corporation (asbestos)	NWDO	SF/UD	10/10/07	06/23/08
2739	BP - Husky Refining LLC	TDES	BZ/JP	08/01/07	07/18/08
2744	The Afco Group (asbestos)	NEDO	BZ/JK	02/14/08	08/06/08
2745	OmniSource Corporation	NWDO	MG/MM	12/14/05	08/11/08
2748	Great Plains Exploration, LLC	NEDO	BZ/UD	05/01/08	08/27/08
2750 (VC)	New Day Farms, LLC / Henning Construction Company	CDO	SF/JP	08/21/08	08/21/08
2752	Allied Corporation (Plant #75)	Akron	MG/JP	01/29/05	09/02/08
2754	Lepi Enterprises/Caldwell United Methodist Church (asbestos)	SEDO	DV/TT	06/28/08	09/12/08
2756	Pioneer Environmental Systems, Inc. (asbestos)	NWDO	BZ/JK	03/24/08	10/03/08
2760	Precision Environmental Company	Akron	SF/PP	08/06/08	10/22/08
2774	Total Environmental Services, LLC (asbestos)	SEDO	SF/TT	07/26/07	10/29/08
2775	Selvey's Dirt Works / Famous Supply (asbestos)	NWDO	DV/UD	06/12/08	11/05/08
2776	Circle K (GDF's #5204, 5209, 5318, and 5320)	NEDO	MG/JK	03/15/07	11/04/08
2777	Sawbrook Steel LLC	HAMCO	BZ/MM	11/13/06	11/07/08
2779 (112r)	Sunoco, Inc. R & M (Toledo Refinery)	N/A	DV/KJ	04/29/08	11/14/08
2781	Great Lakes Crushing, Ltd. (asbestos)	NEDO	SF/PP	06/18/08	11/18/08
2782	International Converter, Inc. - Caldwell (HPV)	SEDO	DV/FU	07/05/08	11/26/08
2783	Evonik Degussa Engineered Carbons Corporation (HPV)	SEDO	MG/TT	03/17/08	11/26/08
2784	Reichert Excavating, Inc. (asbestos)	CDO	SF/EY	06/12/08	12/04/08
2786	D & R Supply, Inc.	NEDO	MG/UD	09/17/07	12/24/08
2789	Complete Clearing, Inc. (asbestos)	NWDO	MG/PP	07/09/08	02/05/09
2790	Erie Materials, Inc.	NWDO	SF/TT	04/16/08	02/05/09
2791	Carmeuse Lime, Inc. (Millersville) (HPV)	NWDO	DV/FU	02/14/06	02/09/09
2793	Combs' Trucking Incorporated	HAMCO	SF/MM	07/16/08	02/09/09
2794	Kenmore Construction Co., Inc.	Akron	DV/UD	05/14/08	02/13/09
2795	Evans Landscaping, Inc.	HAMCO	MG/TT	05/01/08	02/23/09
2796	Speedway SuperAmerica LLC (#3648 and #9975)	NEDO	SF/JK	05/19/08	02/24/09
2799	Convenient Food Mart, Inc., No. 391	NEDO	SF/EY	10/21/08	02/24/09

PENDING AIR ENFORCEMENT COMMITTEE CASES

Case #	Facility Name	Field Office	Atty./Staff	Zero Date for SOL	EAR Date Received
2800	Gary Rogers, d.b.a. Rogers Sunoco	NEDO	DV/JK	10/21/08	02/24/09
2801	Terry Adams, d.b.a. Rusty's Auto Care Shell	NEDO	MG/JK	01/29/07	02/25/09
2803	Wheeling Brake Band & Friction Mfg., Inc./Investment Capital of America, Inc./Rob Burgess Enterprises, LLC (asbestos) (multi-media case, DSIWM lead)	SEDO	DV/PP	01/13/09	02/26/09
2806	Ramon Patel, d.b.a. Marathon Quick Mart	NEDO	DV/JK	10/21/08	03/02/09
2808	Randy Wise	NWDO	SF/ FU	11/05/08	03/20/09
2810	Ellwood Engineered Castings Co. (HPV)	NEDO	DV/TT	02/25/09	03/13/09
2811	NewKor, Inc.	Cleve.	SF/EY	01/27/09	03/30/09
2813	ConSun Food Industries, Inc. (Convenient Food Mart #746)	NEDO	DV/JK	08/08/08	03/27/09
2814	Barrett Paving Materials, Inc. (HPV)	HAMCO	SF/PP	01/16/08	04/01/09
2815	Royal Sebring Properties, Inc., a.k.a. Zee Tech Warehousing	M-TAPCA	MG/JK	09/17/07	04/02/09
2816	Republic Engineered Products, Inc. (HPV)	NEDO	DV/	11/13/07	04/16/09
2817	S.H. Bell Company	NEDO	MG/TK	01/16/08	04/21/09
2818	Mac Trailer Manufacturing, Inc.	Canton	SF/MM	10/06/08	04/07/09
2819	Masonic Temple/The New Victorians, Inc./AHC, Inc. (asbestos)	CDO	DV/	01/24/08	04/27/09
2820	Bailey PVS Oxides Delta, L.L.C.	NWDO	MG/JK	03/29/07	04/27/09
2821	OmniSource Corporation, Mansfield Division	NWDO	MG/MM	05/08/08	05/04/09
2822	J. S. Paris Excavating, Inc./Signature Development Group, LLC (asbestos)	MTAPCA	SF/TT	03/11/08	04/28/09
2823	Rudzik Excavating, Inc./Charles J. Arendas (asbestos)	MTAPCA	DV/FU	02/27/09	05/11/09
2824	Ariel Corporation (HPV)	CDO	MG/EY	04/02/08	05/18/09
2825	El Ceramics LLC	HAMCO	SF/JK	03/11/08	05/08/09
2826	Staker Alloys, Inc.	RAPCA	DV/FU	11/14/07	05/29/09
2827	Evelyn M. (Burger) Koch (asbestos)	MTAPCA	MG/UD	07/21/08	06/01/09
2829(VC)	ODNR, Division of Forestry (regarding the Shawnee State Forest open burning)	Ports.	DV/JP	04/24/09	06/03/09
2830	Barberton Steel Industries, Inc.	Akron	MG/MM	08/21/08	06/16/09

PENDING AIR ENFORCEMENT COMMITTEE CASES

Case #	Facility Name	Field Office	Atty./Staff	Zero Date for SOL	EAR Date Received
2833	Veterans of Foreign Wars Post 6519 (asbestos)	Lake Co.	DV/TT	04/29/08	06/22/09
2834	Foti Contracting, LLC	Akron	MG/FU	10/23/08	06/29/09
2835	Elyria Foundry Company (HPV)	NEDO	SF/PP	10/18/07	07/13/09
2836	Uni-Mart, Inc. (#04767, #04768, #74775)	NEDO	DV/JK	11/10/08	07/13/09
2837	Flying J, Inc. (Austinburg Truck Stop)	NEDO	MG/JK	08/19/08	07/08/09
2838	Englefield, Inc., d.b.a. Ashtabula Duchess	NEDO	SF/JK	04/29/09	07/14/09
2839	Liberty Gas USA, LLC (Middle Avenue GDF in Elyria and Colorado Avenue GDF in Lorain)	NEDO	DV/JK	07/07/09	07/21/09
2840	Von Vittersan Le Copla USA LLC Delaware Corporation (asbestos)	MTAPCA	MG/UD	07/03/08	07/23/09
2841	Salvatore Sorice/Michael A. Kernan (asbestos)	MTAPCA	SF/MM	03/13/09	07/27/09
2842	Duff Quarry, Inc.	SWDO	DV/EY	07/13/09	07/28/09
2843	Bruewer Woodwork Mfg. Co. (FER case)	HAMCO	MG/UD	06/06/08	07/28/09
2844	Iten Industries, Inc. (Plant 1) (HPV)	NEDO	SF/MM	04/18/08	07/28/09
2845	Blackhawk Automotive Plastics, Inc. (FER case)	HAMCO	DV/TT	06/06/08	07/28/09
2847	Ultimate Building Systems, Ltd.	HAMCO	SF/FU	04/29/08	08/03/09
2848	Sandusky Dock Corporation	NWDO	BZ/JO	07/27/08	08/06/09
2849	Dean Calhoun/Tim Gearhart (asbestos)	NWDO	DV/MM	03/27/09	08/11/09
2850	Yochman Excavating, Inc. (open burning)	M-TAPCA	MG/PP	03/23/09	08/05/09
2851	Joseph Eberz (open burning)	Akron	SF/JK	05/15/09	08/10/09
2852	AOHW Corporation/Hasper Leggett (asbestos)	M-TAPCA	DV/UD	03/25/09	08/11/09
2853	Valentine Contractors, Inc.	Akron	MG/TT	05/30/08	08/17/09

Summary of the Final Disposition of Air Enforcement Committee Cases Processed During Calendar Year 2009

Docket Number	Case Name	Rank	Field Office	EC Contact	Staff	Attorney	Complaint/Referral	Returned to Field Office	Warning Letter	Status	Source in Compliance	Director's F & O's	Referred To AGO
January													

Total for the month of January =

Summary of the Final Disposition of Air Enforcement Committee Cases Processed During Calendar Year 2009

Docket Number	Case Name	Rank	Field Office	EC Contact	Staff	Attorney	Complaint/Referral	Returned to Field Office	Warning Letter	Status	Source in Compliance	Director's F & O's	Referred To AGO
February													
2736	Emanuel Hadgigeorgiou d.b.a. Society Dry Cleaners	3	Cleve.	JP	EY	DV	07/03/08						02/12/09
2747	Tri-County Concrete Co., Inc.	1	Akron	TK	MM	DV	08/19/08			Closed - NPA	02/12/09		
2762	Copley Fairlawn City Schools (E-check)	3	N/A	JP	JP	DV	10/01/08					02/11/09	
2768	Orange Board of Education (E-check)	3	N/A	JP	JP	DV	10/01/08					02/06/09	
2659	Steve Jones and George Webber (asbestos)	1	NEDO	TK	FU	DV	08/31/07			Closed-NFA	02/26/09		
2728	Protec Pac	1	SWDO	JP	EY	MG	05/21/08			Closed-NFA	02/26/09		
2759	Kay Enterprises, Inc., d.b.a. Waste Removal Equipment	3	Akron	TK	UD	MG	10/21/08			Unilateral		02/26/09	

Total for the month of February = 7

Summary of the Final Disposition of Air Enforcement Committee Cases Processed During Calendar Year 2009

Docket Number	Case Name	Rank	Field Office	EC Contact	Staff	Attorney	Complaint/Referral	Returned to Field Office	Warning Letter	Status	Source in Compliance	Director's F & O's	Referred To AGO
March													
2650	Duer Construction Company	3	Akron	TK	MM	SF	07/23/07						03/13/09
2757	N-Viro International Corporation	3	TDES	JP	EY	SF	10/10/08					03/24/09	
2758	Brush Wellman, Inc.	3	NWDO	TK	MM	DV	10/15/08					03/24/09	
2769	Tallmadge Board of Education (E-check)	3	N/A	JP	JP	DV	10/01/08					03/23/09	
2785	Miller Garage Door Company	3	Akron	TK	MM	DV	12/09/08			Unilateral F&Os		03/13/09	

Total for the month of March = 5

Summary of the Final Disposition of Air Enforcement Committee Cases Processed During Calendar Year 2009

Docket Number	Case Name	Rank	Field Office	EC Contact	Staff	Attorney	Complaint/Referral	Returned to Field Office	Warning Letter	Status	Source in Compliance	Director's F & O's	Referred To AGO
April													
2639	Keim Lumber Company, Inc.	3	NEDO	TK	UD	SF	07/02/07					04/09/09	
2755	Liberta Construction Company	3	Akron	TK	FU	MG	09/15/08					04/09/09	
2724	Moser Construction Company, Inc.	3	Akron	TK	MM	MG	05/19/08						04/10/09
2746	Steel Structures of Ohio, LLC	1	Akron	TK	MM	SF	08/19/08		10/15/08 (DWL)	Closed-NFA	04/23/09		
2765	Lagrange Township Trustees (E-check)	3	N/A	JP	JP	DV	10/01/08					04/15/09	
2773	George Rank	3	NWDO	TK	FU	MG	10/27/08			Unilateral F&Os		04/16/09	
2792	Grand Avenue Realty Corporation, d.b.a. DLH Plating, and Clean CEMP (asbestos)	3	CDO	JP	EY	MG	02/10/09						04/13/09

Total for the month of April = 7

Summary of the Final Disposition of Air Enforcement Committee Cases Processed During Calendar Year 2009

Docket Number	Case Name	Rank	Field Office	EC Contact	Staff	Attorney	Complaint/Referral	Returned to Field Office	Warning Letter	Status	Source in Compliance	Director's F & O's	Referred To AGO
May													
2753	Richard Morrow	3	NEDO	TK	PP	SF	09/08/08			Unilateral F&Os		05/01/09	
2802	James Brown	3	RAPCA	TK	UD	SF	03/13/09						05/01/09
2763	Deerfield Township Trustees (E-check)	3	N/A	JP	JP	DV	10/01/08					05/15/09	
2766	Lorain County Regional Transit Authority (E-check)	3	N/A	JP	JP	DV	10/01/08					05/15/09	
2780	Magnesium Elektron North America, Inc.	3	NWDO	TK	JK	MG	11/17/08					05/14/09	
2804	Tim Davidson	3	SWDO	JP	EY	MG	03/18/09					05/21/09	

Total for the month of May = 6

Summary of the Final Disposition of Air Enforcement Committee Cases Processed During Calendar Year 2009

Docket Number	Case Name	Rank	Field Office	EC Contact	Staff	Attorney	Complaint/Referral	Returned to Field Office	Warning Letter	Status	Source in Compliance	Director's F & O's	Referred To AGO
June													
2654 VC	Shaw High School (City of East Cleveland)	3	Cleve.	JP	JP	SF	08/16/07			Dismissed	06/18/09		
2692	Production Paint Finishers, Inc. (HPV)	3	RAPCA	JP	EY	MG	12/28/07						06/18/09
2741	Plasti-Kote Company, Inc. (HPV)	3	Akron	TK	JK	MG	07/14/08					06/17/09	
2770	Village of Gloria Glens (E-Check)	3	N/A	JP	JP	DV	10/01/08					06/18/09	
2797	T. S. Trim, Inc. (HPV)	3	CDO	JP	EY	SF	03/02/09					06/17/09	

Total for the month of June = 5

Summary of the Final Disposition of Air Enforcement Committee Cases Processed During Calendar Year 2009

Docket Number	Case Name	Rank	Field Office	EC Contact	Staff	Attorney	Complaint/Referral	Returned to Field Office	Warning Letter	Status	Source in Compliance	Director's F & O's	Referred To AGO
July													
2742	Gas and Oil, Inc. (GDFs 2, 3, 7, 15, & 19)	3	Akron	TK	TT	SF	07/13/08						06/26/09
2771	Village of North Randall (E-check)	3	N/A	JP	JP	DV	10/01/08					06/30/09	
2798	Canary Cleaners	1	TDES	JP	EY	MG	03/03/09			Closed-NFA	07/02/09		
2828	Leroy and Judith Schaffer	3	SWDO	JP	EY	SF	06/08/09			Unilateral F&O's		06/30/09	
2695	Precision Aggregates III, LLC	3	NWDO	TK	UD	BZ	01/14/08					07/08/09	
2772	Village of Oakwood (E-check)	3	N/A	JP	JP	DV	10/01/08					07/07/09	
2805	Thomas McMinn, d.b.a. Wellington Citgo	1	NEDO	TK	JK	SF	02/26/09			Closed-NFA	07/16/09		
2809	Procex, Ltd.	3	Akron	TK	MM	MG	03/16/09						07/07/09
2831	Aleris International, Inc./IMCO Recycling of Ohio,	3	SEDO	TK	TK	MG	06/19/09						07/07/09

Summary of the Final Disposition of Air Enforcement Committee Cases Processed During Calendar Year 2009

Docket Number	Case Name	Rank	Field Office	EC Contact	Staff	Attorney	Complaint/Referral	Returned to Field Office	Warning Letter	Status	Source in Compliance	Director's F & O's	Referred To AGO
	Inc./Common-wealth Aluminum Concast of Ohio, Inc.												
2712	Cleveland Trencher Company	3	Cleve.	JP	EY	DV	03/24/08						07/14/09

Total for the month of July = 10

Summary of the Final Disposition of Air Enforcement Committee Cases Processed During Calendar Year 2009

Docket Number	Case Name	Rank	Field Office	EC Contact	Staff	Attorney	Complaint/Referral	Returned to Field Office	Warning Letter	Status	Source in Compliance	Director's F & O's	Referred To AGO
August													
2761	Cleveland Board of Education (E-Check)	3	N/A	JP	JP	DV	10/01/08					08/11/09	
2764	Homer Township Trustees (E-Check)	1	N/A	JP	JP	DV	10/01/08			Closed-NFA	08/13/09		
2787	Airstream, Inc.	3	SWDO	JP	EY	SF	01/09/09					08/11/09	
2788	Gas Express, Inc.	3	Akron	TK	JK	DV	01/27/09						08/12/09
2832	United Tool and Machine	1	SWDO	JP	EY	SF	07/01/09		08/04/09 (DWL)	Closed-NFA	08/13/09		
2704	Gallo's Convenient Market	1	Cleve.	JP	EY	SF	03/05/08			Closed-NFA	08/13/09		
2732 VC	Ohio DNR, Division of Forestry (for open burning permit 07-30)	3	Ports	JP	JP	MG	05/14/08			Dismissed	08/14/09		
2807	Hishan Jundi, d.b.a. Avon Lake Shell	3	NEDO	TK	JK	MG	03/16/09						08/19/09
2812	Saif Khan, d.b.a. Lakeland Valero	3	NEDO	TK	JK	MG	03/25/09					08/20/09	

Summary of the Final Disposition of Air Enforcement Committee Cases Processed During Calendar Year 2009

Docket Number	Case Name	Rank	Field Office	EC Contact	Staff	Attorney	Complaint/Referral	Returned to Field Office	Warning Letter	Status	Source in Compliance	Director's F & O's	Referred To AGO
2846	Joseph Parker	3	SWDO	JP	EY	MG	08/03/09			Unilateral F&O's		08/18/09	

Total for the month of August = 10

Summary of Compliance with Effective Findings and Orders

Facility Name	Milestone or Requirement*	Revenue ID #	Deadline in F&O's	C y/n	Completion Date
Ball & Sons Construction (11/08/96)	Civil penalty: (\$1,000.00)	563513	11/22/96	Y	FSC**

Smith Foundry & Machine Co. (12/31/96)	Civil penalty: (\$25,000.00)				
	\$5,000.00	530404	01/31/97		01/23/97
	\$5,000.00	530405	01/31/98		01/23/98
	\$5,000.00	530406	01/31/99		01/19/99
	\$5,000.00	530407	01/31/00	Y	ACT**
	\$5,000.00	541831	01/31/01	Y	ACT**
	AC		01/15/97		N/A*
	IC		06/16/97		N/A*
	CC		08/15/97		N/A*
	Conduct emission tests - submit results		10/15/97		N/A*
* The cupola has been removed. The 12/96 F&O's were revised to reflect the installation of electric induction furnaces rather than controls for the cupola.					

Mark Fuerst (02/08/00)	Civil penalty (\$10,000.00)				
	to ODNR \$2,000.00	606212	03/08/00	Y	FSC**
	to OEPA \$2,000.00	172154	04/08/00	Y	*
	\$2,000.00	172155	05/08/00	Y	FSC**
	\$2,000.00	172156	06/08/00	Y	FSC**
	\$2,000.00	172157	07/08/00	Y	FSC**
* Paid \$1,654 on 2/10/09. \$165.40 of that amount was paid to AGO.					

American Environmental Abatement Company, Inc. (12/29/00)	Civil penalty: (\$2,500)				
	to OEPA \$2,000	206005	01/12/01		01/16/01
	to ODNR \$500	564224	01/29/01	N	

Anco Properties (06/19/01)	Civil penalty: (\$23,000)				
	to OEPA \$4,600	224714	09/19/01	Y	FSC**
	\$4,600	224715	12/19/01	Y	FSC**
	\$4,600	224716	03/19/02	Y	FSC**
	\$4,600	224717	06/19/02	Y	FSC**
	to ODNR \$4,600	613129	07/19/01	N	FSC**

Superior Demolition and Excavating (12/28/01)	Civil penalty: (\$15,000)				
	to ODNR \$3,000	270395	01/11/02		01/10/02
	to OEPA \$3,000	270396	01/28/02		02/11/02
	\$3,000	270397	02/28/02		03/14/02
	\$3,000	270398	03/28/02		04/23/02
	\$3,000	270399	04/28/02	Y	UNC**

Facility Name	Milestone or Requirement*	Revenue ID #	Deadline in F&O's	Cert. y/n	Completion Date	
Richard and Joby Hackett (04/04/02)	Civil penalty: (\$3,000)					
	to OEPA	\$150	279226	09/04/02	Y	RTN**
		\$150	279227	10/04/02	Y	RTN**
		\$150	279228	11/04/02	Y	RTN**
		\$150	279229	12/04/02	Y	RTN**
		\$150	279230	01/04/03	Y	RTN**
		\$150	279231	02/04/03	Y	RTN**
		\$150	279232	03/04/03	Y	RTN**
		\$1,350	279233	04/04/03	Y	RTN**
	to ODNR	\$150		05/04/02		
	\$150		06/04/02			
	\$150		07/04/02			
	\$150		08/04/02			

Schloss Materials Company (09/18/02)	Civil penalty: (\$6,000)					
	to OEPA	\$4,000	304257	10/02/02		09/30/02
	to ODNR	\$2,000	564243	10/18/02	N	
	pave entrance & access road to facility		10/31/02			06/03/04*
* CDAQ inspection date						

City of Oregon (09/16/02)	Civil penalty: (\$10,000)					
	to OEPA	\$8,000	304256	09/30/02		09/30/02
	to ODNR	\$2,000	564249	09/30/02	N	
	conduct asbestos fire training		02/01/03			01/8-14-15&29/03

Cleveland Industrial Drum Service, Inc. (10/30/02)	Civil penalty: (\$1,000)					
	to OEPA	\$800	314152	11/13/02		06/24/03
	to ODNR	\$200	564255	11/30/02	N	

M & J Excavating (11/27/02)	Civil penalty: (\$2,450)					
	to ODNR	\$490	564257	12/27/02		09/25/02
	to OEPA	\$392	333074	01/27/03	Y	09/27/03
		\$392	333075	02/27/03	Y	10/25/03*
		\$392	333076	03/27/03	Y	UNC
		\$392	333077	04/27/03	Y	01/24/04*
	\$392	333078	05/27/03	Y	01/24/04*	

Chris Corso (12/02/02)	Civil penalty: (\$7,000)					
	to OEPA	\$1,600	319940	12/16/02		12/16/02
		\$2,000	319941	03/02/03		09/04/03
		\$2,000	319942	06/02/03		09/27/03
	to ODNR	\$1,400	614162	01/02/03	N	

Facility Name	Milestone or Requirement*	Revenue ID #	Deadline in F&O's	C y/n	Completion Date
Goldline Wrecking Co. (12/23/02)	Civil penalty: (\$35,000)				
	to OEPA \$ 8,000	333227	04/23/03		06/30/04*
	\$10,000	333228	12/23/03	Y	10/27/08**
	\$10,000	333229	06/23/04	Y	10/27/08**
	to ODNR \$ 7,000		01/23/03		01/22/03

* The AGO Special Counsel collected \$8,134.92. The AGO kept \$723.13 of that amount.

** Ohio EPA agreed to a payment of \$13,150 to satisfy the remaining claim of \$20,000. Special Counsel received \$4,339.50 and the AGO received \$1,183.50 of the \$13,150 for their collection services.

Glo-Mar Masonry (02/06/03)	Civil penalty: (\$8,500)				
	to ODNR \$1,700	583375	03/06/03	Y	
	to OEPA \$ 500	336723	03/06/03	P	06/23/03
	\$2,100	336724	06/06/03	Y	01/24/04
	\$2,100	336725	08/06/03	Y	04/24/04
	\$2,100	336726	02/06/04	Y	03/26/05* (\$680.60)

* Account Certified to AGO. Three partial payments made totaling (\$680), still owe \$1,419.40

Ford Motor Company, Cleveland Casting Plant (12/24/03)	Civil penalty: (\$40,000)	413303	01/31/04		01/07/04
	Submit modeling analysis		02/29/04		

Minerva Enterprises, Inc. (12/31/03)	Civil penalty: (\$41,125)				
	\$3,500	413351	01/31/04	Y	07/29/04a
	\$3,500	413352	03/02/04	Y	06/16/05b
	\$3,500	413353	04/02/04	Y	08/12/05c
	\$3,500	413354	05/03/04	Y	06/15/05d
	\$3,500	413355	06/03/04	Y	07/22/05e
	\$3,500	413356	07/04/04	Y	08/12/05f
	\$3,500	413357	08/04/04	Y	07/23/04
	\$3,500	413358	09/04/04	Y	12/24/05h
	\$3,500	413359	10/04/04	Y	12/24/05
	\$3,500	413360	11/04/04		07/29/05
	\$2,625	413362	01/04/05	Y	12/05/05i

a. Paid \$3,501.92, of which \$315.17 was kept by AGO and \$3,186.75 was put into OEPA's account. The remaining \$1.92 is interest charged.

b. Paid \$53.70 to resolve this claim. \$4.83 of that amount was AGO's share. \$48.87 was put in OEPA's account.

c. Paid \$831.54 to resolve this claim. \$74.84 of that amount was AGO's share. \$756.70 was put in OEPA's account.

d. Paid \$3,574.03 to resolve this claim. \$321.66 of that amount was AGO's share. \$3,252.37 was put in OEPA's account.

e. Paid \$2,211.00 to resolve this claim. \$198.99 of that amount was AGO's share. \$2,012.01 was put in OEPA's account.

f. Paid \$3,903.47 to resolve this claim. \$351.31 of that amount was AGO's share. \$3,552.16 was put in OEPA's account.

h. Paid \$3,500 to resolve this claim. \$315 of that amount was AGO's share. \$3,185 was put in OEPA's account.

I. Paid \$1,141.96 to resolve claim. \$102.78 of that amount was AGO's share. \$1,039.18 was put in OEPA's account.

Facility Name	Milestone or Requirement*	Revenue ID #	Deadline in F&O's	C y/n	Completion Date	
Hydraulic Press Brick (04/28/04)	Civil penalty: (\$19,000)					
	\$7,000	439209	05/12/04		05/12/04	
	\$7,000	439210	08/12/04		05/12/04	
	Submit P ² reports			07/28/04		07/26/04
				10/28/04		10/25/04
				01/28/05		01/21/05
				03/28/05		N/A
Submit cost of P ² study		04/05/05				

Kerry's Motor World (05/13/04)	Civil penalty: (\$3,000.00)	443684	05/27/04	Y		

John Dubuk (12/29/04)	Civil penalty: (\$10,000.00)					
	\$834.00	489979	01/28/05		01/24/05	
	\$834.00	489980	02/27/05		02/24/05	
	\$834.00	489981	03/29/05		03/26/05	
	\$834.00	489982	04/28/05	Y	07/29/06	
	\$834.00	489983	05/28/05	Y	UNC**	
	\$834.00	489984	06/27/05	Y	07/29/06	
	\$834.00	489985	07/27/05	Y	UNC**	
	\$834.00	489986	08/26/05	Y	UNC**	
	\$834.00	489987	09/25/05	Y	UNC**	
	\$834.00	489988	10/25/05	Y	UNC**	
\$834.00	489989	11/24/05	Y	UNC**		
\$826.00	489990	12/24/05	Y	UNC**		

C & J Contractors (12/21/04)	Civil penalty: (\$5,600.00)	479998	01/21/05	Y	*	
* This account is Certified and still open--various payments have been made (10/05-05/06) totaling \$2,150, leaving a balance of \$3,450. *****						
Bohanan Investments, Inc. (04/14/05 - Court Order, Default Judgement)	Civil penalty: (\$127,900.00)	550712	04/14/05	Y		

Facility Name	Milestone or Requirement*	Revenue ID #	Deadline in F&O's	C y/n	Completion Date
Columbus Steel Drum (07/06/05 - Consent Order)	Civil penalty: (\$500,000.00)				
	Bus Fund	\$25,000	514606	07/31/05	09/20/05
		\$25,000	514607	10/01/05	10/12/05
		\$25,000	514608	01/01/06	02/08/06
		\$25,000	514609	04/01/06	04/21/06
	OEPA	\$25,000	514163	07/01/06	07/10/06
		\$25,000	514164	10/01/06	10/30/06
		\$25,000	514165	01/01/07	01/09/07
		\$25,000	514166	04/01/07	04/11/07
		\$25,000	514167	07/01/07	08/01/07
		\$25,000	514168	10/01/07	10/17/07
		\$25,000	514169	01/01/08	03/12/08
		\$25,000	514170	04/01/08	04/15/08
		\$25,000	514171	07/01/08	07/01/08
		\$25,000	514172	10/01/08	10/01/08
		\$25,000	514173	01/01/09	04/08/09
		\$25,000	514174	04/01/09	07/17/09
		\$21,250	514175	07/01/09	
		\$21,250	726464	09/01/09	
		\$21,250	726465	11/01/09	
		\$21,250	726466	12/01/09	
	Submit PTI app. for K001-K003			08/06/05	05/31/05
	Award contracts			30 days from issuance of PTI	
	IC			60 days from issuance of PTI	07/16/06
	CC			180 days from issuance of PTI	07/13/07
	Perform stack tests			210 days from issuance of PTI	07/03/07
	Submit ITT for P015 & P016			07/20/05	06/07/05
	Perform stack tests			12/27/05	06/23/05
	Submit PTI app. for P015 & P016			30 days after submission of test results	09/22/05
	Award Contracts			30 days from issuance of PTI	*
	IC			60 days from issuance of PTI	*
	CC			120 days from issuance of PTI	*
	Perform stack tests			150 days from issuance of PTI	*
	Perform stack tests for P001, P005, P012 & P013			09/06/05	07/5-7/05
* PTI not issued due to the continued incomplete nature of the PTI application.					

Alfred Nickles Bakery, Inc. (08/24/05)	Civil penalty: (\$37,800)				
	OEPA	\$10,240	519964	09/24/05	09/23/05
	Bus Fund	\$7,560	519965	09/24/05	09/23/05
	Submit P ² report			11/24/05	
	Submit P ² report			02/24/06	
	Submit final P ² report			05/24/06	
	Submit documentation of costs			08/24/06	

Facility Name	Milestone or Requirement*	Revenue ID #	Deadline in F&O's	C y/n	Completion Date	
Shell Construction, Inc. (09/26/05)	Civil penalty: (\$3,700) OEPA	\$100.00	526004	10/26/05		09/27/05
		\$100.00	526005	11/25/05		11/10/05
		\$100.00	526006	12/25/05		12/20/05
		\$100.00	526007	01/24/06		10/28/06
		\$100.00	526008	02/23/06		10/28/06
		\$100.00	526009	03/25/06		10/28/06
		\$100.00	526010	04/24/06		09/13/06
		\$100.00	526011	05/24/06		09/13/06
		\$100.00	526012	06/23/06		09/13/06
		\$100.00	526013	07/23/06		09/13/06
		\$100.00	526014	08/22/06		11/02/06
		\$100.00	526015	09/21/06		11/02/06
		\$100.00	526016	10/21/06		11/02/06
		\$100.00	526017	11/20/06		11/02/06
		\$100.00	526018	12/20/06		11/14/06
		\$100.00	526019	01/19/07		11/30/06
		\$100.00	526020	02/18/07		11/30/06
		\$100.00	526021	03/20/07		12/18/06
		\$100.00	526022	04/19/07		01/10/07
		\$100.00	526023	05/19/07		02/02/07
		\$100.00	526024	06/18/07		03/01/07
		\$100.00	526025	07/18/07		03/12/07
		\$100.00	526026	08/17/07		05/07/07
		\$100.00	526027	09/16/07		06/27/07
		\$100.00	526028	10/16/07		06/27/07
		\$100.00	526029	11/15/07		06/27/07
		\$100.00	529030	12/15/07		06/27/07
		\$100.00	526031	01/14/08		08/13/07
		\$100.00	526032	02/13/08		08/13/07
		\$100.00	526033	03/14/08		10/24/07
		\$100.00	526034	04/13/08		10/24/07
		\$100.00	526035	05/13/08		10/24/07
		\$100.00	526036	06/12/08	Y	05/07/09
		\$100.00	526037	07/12/08	Y	
		\$100.00	526038	08/11/08	Y	05/07/09
		\$100.00	526039	09/10/08	Y	05/07/09
		\$100.00	526040	10/10/08	Y	

Facility Name	Milestone or Requirement*	Revenue ID #	Deadline in F&O's	C y/n	Completion Date
Environmental Affairs Management (12/29/05)	Civil penalty: (\$10,000)				
	OEPA	\$1,000	541425		03/06/06
		\$1,000	541426		04/28/06
		\$1,000	541427	Y	FSC**
		\$1,000	541428	Y	FSC**
		\$1,000	541429	Y	12/28/07
		\$1,000	541430	Y	FSC**
		\$1,000	541431	Y	FSC**
		\$1,000	541432	Y	FSC**
		\$1,000	541433	Y	ACT**
Bus Fund		\$1,000	541433		01/25/06
		\$1,000	541434		02/25/06

Cargill, Incorporated (03/03/06 - Consent Decree) * - CD modification on 11/26/08	Civil penalty: (\$61,538)				
	OEPA	\$30,769	551695		03/27/06
	RAPCA	\$30,769	----		04/03/06
	Pay Title V permit fees	\$216,133.86			03/29/06
	Contribute \$75,000 to RAPCA's wood stove replacement program				09/28/05
	Retire B005				04/15/06
	Install LNB & FGR for B006				03/21/06
	Propose final VOC solvent loss limit for Sidney				09/14/06
	Comply w/final VOC solvent loss limit for Sidney				09/01/07
	Meet 95% control for VOC or 10 ppm for P067 & P582 at Dayton				03/03/11
	Meet 98% control for VOC for P057, P031, P052, P088, & P072 at Dayton				02/27/09
	Meet control equipment operating parameters for P032, P033 and P034 at Dayton				02/27/09
	Test and establish an allowable short-term VOC limit for each scrubber stack serving P032, P033 and P034 at Dayton				06/17/08
	Submit permit applications for P032, P033 and P034 at Dayton to incorporate control equipment operating parameters and VOC emission limits				09/01/10
	Submit PTI application to cap VOC and NOx emissions from Dayton at less than 854 tons/yr				02/28/10*
	Comply w/ emission cap for Dayton				02/28/10*
	Submit odor control optimization report for Dayton				09/01/10*
	Meet 90% control for CO or 100 ppm for P067 and P582 at Dayton				09/01/10*
	Meet 90% control for CO or 100 ppm for P057, P031, P052, P088 & P072				09/01/06

Facility Name	Milestone or Requirement*	Revenue ID #	Deadline in F&O's	C y/n	Completion Date
Sunoco, Inc. (03/20/06 - Consent Decree)	SEP Project (\$50,000)				
	Pay contractor for project		04/20/06		08/01/06
	Install SCR for FCCU		12/31/09		
	Install WGS for FCCU		12/31/09		
	Comply with NSPS for SO ₂ and opacity for FCCU		12/31/09		
	Comply with NSPS for PM for FCCU		03/20/06		03/20/06
	Comply with NSPS for CO for FCCU		03/20/08		03/27/08
	Reduce NOx emissions from heaters and boilers greater than 40mm Btu/hr by at least 2,189 tons/yr		03/20/14		
	Achieve 2/3 of 2,189 tons/yr NOx reduction		03/20/10		
	Submit a detailed NOx Control Plan		07/20/06		07/05/06
	Install a second Claus train and 2 TGUs at the SRP		12/31/09		
	Submit optimization study for the SRP		09/20/06		09/10/06
	Implement recommendations of optimization study for SRP		03/20/07		03/12/07
	Propose interim performance standards for SRP		03/20/07		03/12/07
	Submit enhanced O & M plans for SRP and TGUs		09/20/06		09/08/06
	Submit Phase One review and verification of the TAB and BWON compliance status for 2 refineries		11/20/06		11/03/06
	Modify procedures for annual review of process information for benzene waste streams		09/20/06		08/01/06
	Implement annual benzene training for employees		06/20/06		06/08/06
	Develop SOPs for all benzene control equipment		09/20/06		09/08/06
	Submit schematics for waste/slop/off-spec oil streams		05/20/06		05/11/06
	Develop and submit written LDAR program		09/20/06		09/08/06
	Implement an LDAR training program		03/20/07		03/14/07
	Perform LDAR compliance audit		12/20/06		12/07/06
	Develop QA & QC procedures for LDAR monitoring		07/20/06		07/11/06
	Develop LDAR personnel accountability program		09/20/06		09/08/06
	Submit application to revise Title V permit to incorporate CD requirements		09/20/06		10/31/06

David Scholl (09/25/06)	Civil penalty: (\$400)	584589	10/25/06		12/11/06* 05/26/07*
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* Made a partial payment of \$200 on 12/11/06. \$200 was certified to AGO. Payment of \$180 + \$20 AGO portion was made on 5/26/07

Alpha-Omega Chemical Company (12/14/06)				Civil penalty	
	OEPA	\$1,000	605635	05/14/07	08/20/07
		\$1,000	605636	09/14/07	Y
		\$1,200	605637	12/14/07	Y
	Bus Fund	\$ 800	605638	01/14/07	Y 07/29/07

Facility Name	Milestone or Requirement*	Revenue ID #	Deadline in F&O's	C y/n	Completion Date
Astro Manufacturing & Design, Inc. (12/29/06)	Civil penalty (\$34,000)				
	OEPA	\$12,200	600221	01/29/07	01/23/07
	Bus Fund	\$ 6,800	600222	01/29/07	01/23/07
	Submit INR			01/29/07	11/30/06
	Submit semi-annual exceedance reports			01/29/07	04/12/07
	Submit detailed P ² report			03/29/07	03/29/07
	Submit detailed P ² report			06/29/07	
	Submit detailed P ² report			09/29/07	
	Submit final P ² report			11/29/07	
Submit PTI and Title V permit applications			03/01/07	11/30/06	

Gas and Oil, Inc. (03/14/07)	Civil penalty: (\$10,000)				
	OEPA	\$8,000	607778	06/14/07	Y BSC
	Bus Fund	\$2,000	607779	06/14/07	Y BSC
	Submit ITT			04/14/07	
	Conduct tests for #2, #3, #15 & #19			06/14/07	
	Submit test results			07/14/07	
	Submit PTO renewal application for #19			04/14/07	

Robert Henry and April Garner (07/11/07)	Civil penalty: (\$1,000)		616290	08/11807	Y ACT

Eslich Wrecking Company (07/16/07 - Consent Order)	Civil penalty: (\$44,853)		623581	08/16/07	08/20/07
	(\$44,853 = 45% of \$99,674)				
	Submit survey and plan to install protective physical barrier			08/16/07	
	Install cap			w/i 60 days of OEPA approval of survey and plan	
Grant a new deed			w/i 30 days of OEPA approval of survey		

Avalon Cleaners (08/21/07)	Civil penalty: (\$1,000)				
	OEPA	\$250	624475	09/21/07	Y
		\$250	624476	10/21/07	Y
		\$250	624477	11/21/07	Y
		\$250	624478	12/21/07	Y
	Submit records & documentation			01/31/08	
Submit records & documentation			07/31/08		

Facility Name	Milestone or Requirement*	Revenue ID #	Deadline in F&O's	C y/n	Completion Date
Tim Weiland (09/06/07)	Civil penalty: (\$250)	624378	10/06/07	Y	SKP

Alfred Nickles Bakery, Inc. (11/08/07)	Civil penalty: (\$60,250)				
	OEPA \$46,200	634724	12/08/07		11/02/07
	Bus Fund \$14,050	634725	12/08/07		11/02/07
	Submit P ² report		02/08/07		
	Submit P ² report		05/08/07		
	Submit P ² report		08/08/07		
	Submit final P ² report		10/08/07		
	Submit cost documentation		w/i 30 days of approval of report by OEPA		

The Premcor Refining Group, Inc. (11/20/07 - Consent Decree)	Civil penalty: (\$800,000)				
	OEPA \$640,000	634775	12/20/07		12/19/07
	Bus Fund \$160,000	634776	12/20/07		12/19/07
	Submit plan to meet .060 lb NOx/MMBtu for heaters and boilers		12/31/08		12/10/08
	Install controls to meet .060 lb NOx/MMBtu for heaters and boilers		12/31/11		
	Submit plan to meet .044 lb NOx/MMBtu for heaters and boilers		12/31/10		
	Install controls to meet .044 lb NOx/MMBtu for heaters and boilers		12/31/13		
	Submit report that demonstrates compliance with limits for heaters and boilers		03/31/12 03/31/14		
	Submit report re: the NOx concentration emissions for the FCCU thru optimization of O ₂ CS		03/01/12		
	Submit report that demonstrates compliance w/ <u>interim</u> NOx system-wide average for FCCUs		03/31/11		
	Submit report that demonstrates compliance w/ final NOx system-wide average for FCCUs		03/31/14		
	Commence implementation of SO ₂ adsorbing catalyst additive protocol for FCCU		11/20/07		09/07/07
	Comply w/ CO emission limit for FCCU		02/20/08		11/20/07
	Comply w/ opacity and PE limits for FCCU		12/31/13		
	Submit alternative monitoring plan application for NSPS Subpart J monitoring for SO ₂ at FCCU		12/31/08		12/19/08

Facility Name	Milestone or Requirement*	Revenue ID #	Deadline in F&O's	C y/n	Completion Date	
The Premcor Refining Group, Inc (Continued)	Discontinue burning of fuel oil in heaters and boilers		11/20/07		08/16/07	
	Determine compliance w/ 6 BQ compliance option & submit a Benzene Waste NESHAP Compliance Review and Verification Report		03/01/08		03/14/08	
	Submit a report re: carbon canisters installed pursuant to Subpart FF		02/20/08		02/12/08	
	Develop annual training program for employees that draw benzene waste samples		02/20/08		03/19/08	
	Develop SOPs for all control equipment used to comply w/ Benzene Waste NESHAP and complete initial training re: SOPs		11/20/08		05/19/08* 02/12/09**	
				* Develops SOPs	** Training	
	Develop and implement procedures to ensure QA/QC for all LDAR data		02/20/08		01/25/08	
	Develop program to hold LDAR personnel accountable for LDAR performance		11/20/07		06/28/07	
	Establish a tracking program for valves and pumps that should be added to LDAR program		11/20/08		01/25/08	
	Reroute any SRP sulfur pit emissions to eliminate emissions		11/20/08		11/03/08	
	Provide description of causes of all acid gas flaring incidents from 1/1/02 thru 12/31/06		11/20/08		08/11/08	
	Submit compliance plan for flaring devices		12/31/09			
	Certify compliance for all flaring devices		12/31/13			
	Complete design of compressor system for P025		12/20/07		01/03/08	
	Complete installation of compressor system for P025		04/01/08		04/01/08	
	Submit T5 permit applications to incorporate emission limits required by Consent Decree		12/31/07		06/12/08	
	Pay \$200,000 to develop and implement a Traffic Signal Synchronization study for City of Lima		02/20/08		01/25/08	
	Install controls for unregulated and uncontrolled relief vents at Refinery (spend \$675,000 for SEP)		12/31/09			
	Submit plan for the Lima Infrared Camera Imaging Project (spend \$50,000 for SEP)		02/20/08		02/12/08	
	Transfer \$200,000 to LADCO for PM 2.5 speciation		02/20/08		01/18/08	

Facility Name	Milestone or Requirement*	Revenue ID #	Deadline in F&O's	C y/n	Completion Date
The Premcor Refining Group, Inc (Continued)	Transfer \$50,000 to Ohio Environmental Council for control of emissions from municipal trucks and buses		02/20/08		01/18/08

E. I. Du Pont de Nemours & Company (11/06/07 - Consent Decree)	Civil penalty: (\$550,000)				
	OEPA	\$440,000	634777	12/06/07	12/19/07
	Bus Fund	\$110,000	634778	12/06/07	12/19/07
	Comply w/ short-term SO ₂ emission limit of 2.2 lbs/ton			03/01/11	
	Comply w/ Mass Cap of 281 TPY			03/01/13	
	Submit proposed O&M Plan for short-term SO ₂ limit			11/01/10	
	Submit a complete T5 permit application for Consent Decree SO ₂ limits			09/01/11	

Converters Prepress (12/06/07 - Consent Order)	Civil penalty: (\$5,004)				
	OEPA	\$139.00	644190	01/06/08	02/22/08
		\$139.00	644191	02/06/08	03/26/08
		\$139.00	644192	03/06/08	03/26/08
		\$139.00	644193	04/06/08	04/04/08
		\$139.00	644194	05/06/08	05/05/08
		\$139.00	644195	06/06/08	05/30/08
		\$139.00	644196	07/06/08	07/14/08
		\$139.00	644197	08/06/08	08/04/08
		\$139.00	644198	09/06/08	08/29/08
		\$139.00	644199	10/06/08	09/29/08
		\$139.00	644200	11/06/08	11/06/08
		\$139.00	644201	12/06/08	12/02/08
		\$139.00	644202	01/06/09	12/30/08
		\$139.00	644203	02/06/09	02/09/09
		\$139.00	644204	03/06/09	03/11/09
		\$139.00	644205	04/06/09	03/31/09
		\$139.00	644206	05/06/09	05/05/09
		\$139.00	644207	06/06/09	06/01/09
		\$139.00	644208	07/06/09	07/06/09
		\$139.00	644209	08/06/09	08/07/09
		\$139.00	644210	09/06/09	
		\$139.00	644211	10/06/09	
		\$139.00	644212	11/06/09	
		\$139.00	644213	12/06/09	
		\$139.00	644214	01/06/10	
		\$139.00	644215	02/06/10	
		\$139.00	644216	03/06/10	
		\$139.00	644217	04/06/10	
		\$139.00	644218	05/06/10	
		\$139.00	644219	06/06/10	

Facility Name	Milestone or Requirement*	Revenue ID #	Deadline in F&O's	C y/n	Completion Date
Converters Prepress (Con't)		\$139.00 644220	07/06/10		
		\$139.00 644221	08/06/10		
		\$139.00 644222	09/06/10		
		\$139.00 644223	10/06/10		
		\$139.00 644224	11/06/10		
		\$139.00 644225	12/06/10		

Real Spaces Property for Rent (12/31/07)	Civil penalty: (\$17,700)				
	OEPA	\$ 600.00 645338	01/30/08		02/07/08
		\$ 600.00 645339	02/29/08		03/12/08
		\$ 600.00 645340	03/30/08		05/05/08
		\$ 600.00 645341	04/29/08		06/09/08
		\$ 600.00 645342	05/29/08		07/03/08
		\$ 600.00 645343	06/28/08		08/04/08
		\$ 600.00 645344	07/28/08		09/11/08
		\$ 600.00 645345	08/27/08		11/17/08
		\$ 600.00 645346	09/26/08		01/13/09
		\$ 600.00 645347	10/26/08	Y	
		\$ 600.00 645348	11/25/08	Y	
		\$ 600.00 645349	12/25/08	Y	
		\$ 600.00 645350	01/24/09	Y	
		\$ 600.00 645351	02/23/09		
		\$ 600.00 645352	03/25/09		
		\$ 600.00 645353	04/24/09		
	\$ 600.00 645354	05/24/09			
	\$ 600.00 645355	06/23/09			
	\$3,360.00 645356	07/23/09			
	Bus Fund	\$3,560.00 645357	07/23/09		

Christopher Vincent (02/15/08)	Civil penalty: (\$1,000)	653134	03/16/08	Y	ACT

James Brown (03/11/08)	Civil penalty: (\$750)	653125	04/11/08	Y	ACT

Bates Recycling, Inc. (06/04/08)	Civil penalty: (\$1,000)	657594	06/18/08	Y	

Craig Eddy (06/04/08)	Civil penalty: (\$750)	657302	07/04/08	Y	

Warren Ropp (06/02/08)	Civil penalty: (\$250)	657293	07/02/08	Y	

JR's Truck Parts (06/02/08)	Civil penalty: (\$500)	657294	07/02/08	Y	

Facility Name	Milestone or Requirement*	Revenue ID #	Deadline in F&O's	C y/n	Completion Date
Peter Backer (07/01/08)	Civil penalty: (\$750)	657790	07/31/08	Y	

W. A. Miller (07/16/08)	Civil penalty: (\$1,000)	666334	08/16/08	Y	*
* Partial payment of \$350 received 10/20/08 - Potential to Certify. *****					
Lanny Reynolds (07/16/08)	Civil penalty: (\$750)	666335	08/16/08	P	

Lance Dudgeon (07/09/08)	Civil penalty: (\$500)	659540	08/09/08	Y	

Johnathan Strickland (07/16/08)	Civil penalty: (\$2,000)	666331	08/16/08	Y	

Luci, Inc. (07/08/08)	Civil penalty: (\$10,000)				
	OEPA \$8,000	659538	08/08/08	Y	
	Bus Fund \$2,000	659539	08/08/08	Y	

Ford Motor Company (07/31/08)	Civil penalty: (\$1,400,000)				
	OEPA \$1,120,000	666337	08/31/08		08/18/08
	Bus Fund \$280,000	666338	08/31/08		08/18/08
	Shut down cupola 3 and mold line 7		12/31/08		12/11/08
	Shut down cupola 1 & 2 and mold lines 2 & 3		12/31/10		

Douglas Kehres (08/13/08)	Civil penalty: (\$500)	666363	09/13/08	Y	

Great Lakes Crushing Ltd. (10/01/08)	Civil penalty: (\$12,000)				
	OEPA \$9,600	686990	10/31/08	Y	
	Bus Fund \$2,400	686991	10/31/08	Y	04/23/09

Erie Materials, Inc. (09/24/08 - Consent Order)	Civil penalty: (\$180,000)				
	OEPA \$144,000	686933	10/24/08		12/03/08
	Bus Fund \$ 36,000	686932	10/24/08		12/03/08
	Conduct emission testing		w/i 60 days of permit issuance or w/i 60 days of startup of 2009 season if permit issued after 9/1/08		
	Pay emissions fees of \$7,330 for 1995 through 2007 for Sandusky and for 1999 through 2005 for Portage		10/24/08		10/09/08

Facility Name	Milestone or Requirement*	Revenue ID #	Deadline in F&O's	C y/n	Completion Date
Robert Montgomery, Sr., d.b.a. Montgomery Auto Salvage (10/16/08)	Civil penalty: (\$3,000)	688462	11/15/08	Y	

Re-Gen, Inc. (01/15/09 - Consent Order)	Civil penalty: (\$70,000)				
	OEPA	\$28,000	709526	02/14/09	02/11/09
		\$28,000	709527	01/15/10	
	Bus Fund	\$ 7,000	709528	02/14/09	02/11/09
		\$ 7,000	709529	01/15/10	
	Submit complete approvable synthetic minor PTIO app.		w/i 60 days of resuming operations		
	Submit FERs for 1999-2007 and pay \$8,000 in past emission fees		upon receipt of invoice from OEPA		

Ultimate Industries, Inc. (02/25/09 - Consent Order)	Civil penalty: (\$4,200)				
	EPA	\$175.00	712529	03/05/09	05/12/09
		\$175.00	712530	04/05/09	06/15/09
		\$175.00	712531	05/05/09	08/07/09
		\$175.00	712532	06/05/09	
		\$175.00	712533	07/05/09	
		\$175.00	712534	08/05/09	
		\$175.00	712535	09/05/09	
		\$175.00	712536	10/05/09	
		\$175.00	712537	11/05/09	
		\$175.00	712538	12/05/09	
		\$175.00	712539	01/05/10	
		\$175.00	712540	02/05/10	
		\$175.00	712541	03/05/10	
		\$175.00	712542	04/05/10	
		\$175.00	712543	05/05/10	
		\$175.00	712544	06/05/10	
		\$175.00	712545	07/05/10	
		\$175.00	712546	08/05/10	
		\$175.00	712547	09/05/10	
		\$175.00	712548	10/05/10	
		\$175.00	712549	11/05/10	
		\$175.00	712550	12/05/10	
		\$175.00	712551	01/05/11	
		\$175.00	712552	02/05/11	

N-Viro International Corp. (03/24/09)	Civil penalty: (\$16,000)				
	OEPA	\$4,000	707974	07/22/09	04/22/09
		\$4,000	707975	10/20/09	07/21/09
		\$4,000	707976	01/18/10	
		\$4,000	707977	04/18/10	
	Bus Fund	\$4,000	707978	04/23/09	

Facility Name	Milestone or Requirement*	Revenue ID #	Deadline in F&O's	C y/n	Completion Date	
Brush Wellman, Inc. (03/24/09)	Civil penalty: (\$40,000)					
	OEPA	\$28,000 711745	04/24/09		03/26/09	
	Bus Fund	\$12,000 711746	04/24/09		03/26/09	
	Install 3 TRIBO.d2 particulate emission monitors		09/24/09			
	Submit documentation of SEP cost		10/24/09			

Chemtrade Logistics Inc/Marsulex, (04/02/09 - Consent Decree)	Civil penalty: (\$120,000)					
	OEPA	\$72,000 712639	05/02/09		05/26/09	
	Bus Fund	\$24,000 712640	05/02/09		05/26/09	
	ODNR	\$24,000	05/02/09			
	Comply w/ short-term and long-term SO ₂ emission rates:	Oregon	07/01/11			
		Cairo	07/01/11			
	Comply w/ acid mist emission rate:	Oregon	04/02/09			
		Cairo	07/01/11			
	Install SO ₂ CEMS:	Oregon	07/01/11			
		Cairo	07/01/11			
	Perform compliance tests:	Oregon	07/01/11			
		Cairo	07/01/11			
	Submit O&M Plans:	Oregon	07/01/11			
Cairo		07/01/11				
Submit permit applications:	Oregon	07/01/11				
	Cairo	07/01/11				
Submit report re: how compliance will be achieved:	Oregon	01/01/13				
	Cairo	(365 days after acceptance of short-term limit)				
		Oregon	07/01/10			
		Cairo	07/01/10			

Lagrange Township Trustees (04/14/09)	Civil penalty: (\$250)				05/14/09	
	Report the results of vehicle inspections				12/31/09	

George Rank (04/16/09)	Civil penalty: (\$500)				05/16/09	

Richard Morrow (05/01/09)	Civil penalty: (\$3,000)				05/15/09	

Lorain County Regional Transit Authority (05/15/09)	Civil penalty: (\$250)	714622	06/15/09			

Facility Name	Milestone or Requirement*	Revenue ID #	Deadline in F&O's	C y/n	Completion Date
Tim Davidson (05/21/09)	Civil penalty: (\$3,000)	714624	06/21/09		07/06/09

Container Recyclers, Inc. (d.b.a. Colimbus Steel Drum) (06/08/09 Amended Consent Order for stipulated penalties)	Stipulated penalty: (\$87,050) OEPA \$21,762.50 \$21,762.50 \$21,762.50 Bus Fund \$10,881.25 \$10,881.25	713429 713430 713431 713432 713433	10/23/09 01/18/10 04/16/10 06/05/09 07/17/09		06/01/09 07/16/09

Plasti-Kote Company, Inc. (06/17/09)	Civil penalty: (\$240,000) OEPA \$192,000 Bus Fund \$48,000 Submit either a Title V permit app or a synthetic minor PTI/FESOP app	714631 714632	07/01/09 07/17/09 10/17/09		08/21/09 08/21/09

T.S. Trim Industries, Inc. (06/17/09)	Civil penalty: (\$85,200) OEPA \$68,160 Bus Fund \$17,040 Conduct emission tests Submit test report	714704 714705	07/17/09 07/17/09 08/07/09 09/07/09		06/25/09 06/25/09

Village of Gloria Glens (06/18/09)	Civil penalty: (\$250) Have all vehicles tested and report results	714659	07/18/09 12/31/09		

Village of North Randall (06/30/09)	Civil penalty: (\$1,500) Have all vehicles tested and report results	714660	07/30/09 12/31/09		

Leroy and Judith Schaffer (06/30/09)	Civil penalty: (\$250)	714661	07/30/09		

Precision Aggregates III, LLC (07/08/09)	Civil penalty: (\$15,000) OEPA \$4,000 \$7,500 Bus Fund \$3,000	715181 715182 715183	09/15/09 09/15/10 09/15/09		

Village of Oakwood (07/07/09)	Civil penalty: (\$2,500) Have all vehicles tested and report results	714842	08/07/09 11/02/09		08/17/09

Facility Name	Milestone or Requirement*	Revenue ID #	Deadline in F&O's	C y/n	Completion Date
The Belden Brick Company, L.L.C. (07/06/09 - Consent Order)	Civil penalty: (\$850,000)				
	OEPA	\$170,000	717042	08/06/09	08/17/09
		\$170,000	717043	07/06/10	
		\$170,000	717044	01/06/11	
		\$170,000	717045	07/06/11	
	Bus Fund	\$170,000	717046	08/06/09	08/17/09
	Pay \$334,514.43 for Title V permit emission fees for CY 2001 thru 2006			Upon receipt of invoice from OEPA	
	Submit SO ₂ FERs for CY 1993 thru 2000		01/06/10		
	For Plant 8, pay difference in emission fees for CY 1999 and 2000		Upon receipt of invoice from OEPA		

Cleveland Board of Education (E-Check) (08/11/09)	Civil penalty: (\$5,000)			09/11/09	
	Have all vehicles tested and report results			12/31/09	

Airstream, Inc. (08/12/09)	Civil penalty: (\$14,000)				
	OEPA	\$11,200	725209	09/12/09	08/20/09
	Bus Fund	\$ 2,800	725210	09/12/09	08/20/09

Saif Khan, d.b.a. Lakeland Citgo (08/20/09)	Civil penalty: (\$10,000)				
	OEPA	\$ 500		09/20/09	08/06/09
		\$2,500		12/20/09	
		\$2,500		03/20/10	
		\$2,500		06/20/10	
	Bus Fund	\$2,000		09/20/09	08/06/09

Joseph Parker (08/18/09)	Civil penalty: (\$250)		725188	09/18/09	

** FSC - Assigned to a Special Counsel
ACT - Account is being collected in house
UNC - Account has been placed in a currently uncollectible status
RTN - Returned from Special Counsel, Unpaid
PIF - Account is paid in full
SKP - Account is in the skip tracer desk



State of Ohio Environmental Protection Agency

OHIO E.P.A.

STREET ADDRESS:

MAILING ADDRESS:

Lazarus Government Center
50 W. Town St., Suite 700
Columbus, Ohio 43215

TELE: (614) 644-3020 FAX: (614) 644-3184
www.epa.state.oh.us

AUG 14 2009

P.O. Box 1049
Columbus, OH 43216-1049

ENTERED DIRECTOR'S JOURNAL

AUG 14 2009

CERTIFIED MAIL

Ms. Cheryl Carpenter
Voices for the Forest
1372 Blue Run Road
Lucasville, Ohio 45648

I certify this to be a true and accurate copy of the official documents as filed in the records of the Ohio Environmental Protection Agency.

Ms. Barbara A. Lund
2635 Hamilton Road
Lynx, Ohio 45650

By: M. Shapiro Date: 8/14/09

RE: Verified Complaints Regarding Prescribed Burn Activities Conducted by the Ohio Department of Natural Resources in the Shawnee State Forest, Scioto County, on April 8, 2008

Dear Complainants:

By sworn affidavit, each of you filed a verified complaint ("VC") with the Ohio Environmental Protection Agency ("Ohio EPA") against the Ohio Department of Natural Resources, Division of Forestry (ODNR), regarding open burning activities conducted on April 8, 2008, in the Shawnee State Forest, located in Scioto County, Ohio. The verified complaints were received by Ohio EPA on May 14 and June 10, 2008. This letter constitutes Ohio EPA's official response to your VCs.

The complaints both alleged that ODNR violated its permission to conduct prescribed burn operations in the Backcountry Unit by allowing burning to occur outside of the boundaries defined in the permission to burn during the April 8, 2008 prescribed burn. Ms. Lund also stated that burning outside these boundaries resulted in the diminishment of natural life and habitat that was consumed by the fire.

In addition, Ms. Carpenter specifically alleged that the Backcountry Unit prescribed burn produced a prohibited amount of smoke and particulate matter, causing negative health effects and caused impaired visibility on Forest Road 2 during the prescribed burn, in violation of the permission to burn. She also alleged that air monitoring was not conducted during the burn operations because ODNR failed to notify the Portsmouth Local Air Agency ("PLAA"), Ohio EPA's contractual agent in Scioto County, prior to beginning operations. She also stated that ODNR is doing an inadequate job contacting and educating the forest residents about the notification process, which includes a call list for the prescribed burns.

Ted Strickland, Governor
Lee Fisher, Lieutenant Governor
Chris Korleski, Director

Ms. Lund also alleged that the escaped fires from the April 8, 2008 prescribed burn under permit #07-30 in the Backcountry Site Unit of Shawnee State Forest demonstrate that prescribed fires of such a large size cannot be completely controlled and thus constitute an unacceptable safety risk to the forest and to the general public, as well as the firefighters involved.

As required by Ohio Revised Code ("ORC") § 3745.08, after receipt of your VCs, PLAA conducted an investigation into the allegations and determined the following facts:

- On November 1, 2007, PLAA received a letter dated October 29, 2007, from ODNR requesting permission to conduct five prescribed burns in the Shawnee State Forest in Scioto County between November 1, 2007, and April 30, 2008. The stated reason for the prescribed burns was to address the silvicultural needs of the forest by reducing heavy fuel load accumulations from the ice storm of 2003. Applications for each of the five burn areas were attached to the letter.
- After reviewing the applications, PLAA determined that the proposed prescribed burn operations were in an unrestricted area, as defined in Ohio Administrative Code ("OAC") Rule 3745-19-01(K) and therefore allowable as a recognized silvicultural practice, per OAC Rules 3745-19-04(C)(5) and 3745-19-05. In a letter dated November 5, 2007, PLAA granted ODNR permission to conduct the prescribed burns under the terms and conditions in the attached PLAA burning permits, #07-26 through #07-30.
- PLAA burning permit #07-30 specifically granted ODNR approval to conduct prescribed burning activities in the Backcountry Unit of the Shawnee State Forest. This area was defined as being bound by Forest Road 5 (now known as #5 Bridle Trail) on the east side, and by the Shawnee Backpack Hiking Trail on the north, south, and west sides. ODNR was permitted to burn no more than 800 acres total in this area starting November 14, 2007, and ending on April 30, 2008. Burning was allowed from 10:00 AM through 7:00 PM each day. Special instructions in permit #07-30 included requirements for smoke management, mop-up operations, and follow-up activities to be conducted after the prescribed burn operations were completed.
- On Tuesday, April 8, 2008, at approximately 10:55 AM, Mike Bowden, Fire Supervisor for ODNR, Division of Forestry, notified PLAA that ODNR planned to conduct a prescribed burn of 193 acres in the Backcountry Unit that day. The prescribed burn operations begin at approximately 12:00 PM.
- On April 23, 2008, PLAA received a letter dated April 20, 2008, from Ms. Lund alleging that ODNR had violated burn permit #07-30 during the prescribed fire operations conducted in the Backcountry Unit on April, 8, 2008. Specifically, Ms.

Lund alleged that the fire had jumped the fire lines and that areas outside of the boundaries specified in the burn permit had been burned.

- PLAA contacted Mike Bowden of ODNR on April 24, 2008, to discuss the alleged violations of burn permit #07-30 while conducting the prescribed burn in the Backcountry Unit on April 8, 2008. Mr. Bowden stated there were six (later revised to four) places where wind blew embers across the fire line causing spot fires, but that these fires did not escape and develop into a wildfire. He further stated that there were fire engines on hand to take care of spot fires. He said that ODNR had documented where the spot fires occurred and would show PLAA the areas. Mr. Bowden stated that ODNR had burned 193 acres inside and four acres outside of the permitted area and had not received any complaints about smoke to his knowledge.
- On April 25, 2008, PLAA conducted a site visit of the #5 Bridle Trail in the Backcountry Site where the April 8, 2008 prescribed burn took place. Accompanied by Ben Hamilton, Shawnee State Forest, District Forest Manager, the PLAA inspector observed four areas of spot fires:
 - Spot fire 1 was located approximately 370 feet north of #5 Bridle Trail, about 1000 feet south of the triangular grass area at the intersection of #5 Bridle Trail and Forest Road 2, and was about 1.0 acres.
 - Spot fire 2 was located on the eastern border of #5 Bridle Trail and was about 3.0 acres.
 - Spot fire 3 was located on the eastern border of #5 Bridle Trail and was about 1.5 acres.
 - Spot fire 4 was located on the eastern border of #5 Bridle Trail and was about 0.4 acres.

The inspector noted that no residential structures were observed within a mile of the areas in question.

- On June 17, 2008, PLAA received a written request from Ohio EPA, Division of Air Pollution Control, Central Office ("DAPC") to conduct an investigation of two verified complaints filed with the Director of Ohio EPA by Ms. Lund and Ms. Carpenter, on May 14, 2008 and June 10, 2008, respectively.
- On September 4, 2008, PLAA contacted Mike Bowden of ODNR to discuss the allegation that the prescribed burn operation resulted in impaired visibility on Forest Road 2. Mr. Bowden stated ODNR's Certified Prescribed Burn Manager on the scene is responsible for the tactical decision to close or not close forest roads during the prescribed burn operations. The forest roads typically remain open to the public during prescribed burn operations and would generally remain so unless

forest law enforcement officers determine conditions have become unsafe, at which time they would close the road. Mr. Bowden stated that during the April 8, 2008, prescribed burn signs were posted and forestry law enforcement officers were stationed along the roads during the prescribed burn operations. As the Prescribed Burn Manager on scene, he stated that he did not feel the conditions he observed represented a visibility hazard and therefore did not order the roads to be closed.

- On September 5, 2008, at PLAA's request, ODNR submitted via email VSmoke modeling data for the prescribed burn of the Backcountry Unit 283 acre Subunit 3. VSmoke is a smoke dispersion modeling program that is used to model scenarios of various meteorological conditions to estimate the air quality impact downwind of the prescribed burn operations and help determine a prescription (i.e., a range of meteorological conditions) that will minimize this impact.
- Per Mr. Bowden's email, the weather forecast for the day of the burn predicted mixing heights of 6300 to 6800 feet and transport wind speeds from the south at 8 to 15 mph. In all model runs, even those with conditions much less favorable for smoke dispersion than were present on the day of the burn, PM 2.5 levels were predicted to be within acceptable ranges 2.5 to 3 miles from the burn unit. He stated the modeling is used to determine what portion of the unit ODNR can burn in a given day. If the conditions were less favorable, ODNR stated it would have either burned fewer acres or not burned at all.
- Although there was no requirement in burn permit #07-30 requiring ODNR to provide public notification prior to conducting open burning operations, as part of the verified complaint investigation, PLAA requested that ODNR submit documentation on what steps it took to notify nearby residents of its intent to conduct the prescribed burns in the Shawnee State Forest. On September 5, 2008, Mr. Bowden provided a copy of a March 25, 2008, news release announcing the upcoming prescribed burns in the Shawnee State Forest and providing contact information for more information and for those individuals wanting advance notice prior to the prescribed burn operations. On September 8, 2009, ODNR also provided PLAA with documentation of the contacts made on April 8, 2008 before the prescribed burn was conducted. PLAA has strongly recommended to ODNR that, in addition to the practices described above, it also notify residents in close proximity to the prescribed fire sites by postcard, as had been done in the past.
- On October 2, 2008, PLAA issued a Notice of Violation ("NOV") to ODNR, Division of Forestry, for violation of the conditions of burn permit #07-30, issued November 5, 2007, by burning outside of the allowed burn area. Specifically, each of the spot fire locations observed during PLAA's April 25, 2008, site visit (as described above) were located east of the easternmost boundary as designated in burn permit #07-30. PLAA requested a response in writing within 14 days (later extended by an additional 14 days) describing how future prescribed burns could be conducted in accordance with the conditions of the permission to open burn.

- ODNR responded to the PLAA NOV in a letter dated October 31, 2008. ODNR also provided additional information to PLAA and Ohio EPA, DAPC, in a conference call held on October 22, 2008, a meeting conducted on January 7, 2009, and in a letter to Ohio EPA, DAPC, dated January 27, 2009. The information ODNR provided was primarily concentrated on two specific topics: prescribed burn operations planning and preparation; and specific information related to the April 8, 2008, Backcountry Unit prescribed burn.
- In its responses, ODNR emphasized the difference between a spot fire and an escaped fire. A spot fire is defined as a small, containable fire caused by the transport of embers or burning debris past containment lines that can be controlled and extinguished with on-hand resources. An escaped fire is considered to be a fire outside the prescribed burn area that has exceeded the initial attack capabilities and requires additional resources to be brought under control.
- ODNR stated that its policy requires that a site-specific burn plan be developed by the Certified Prescribed Burn Manager responsible for the prescribed burn prior to beginning ignition operations. Contingency plans addressing what actions are to be taken in the event of the occurrence of spot fires or escaped fires are developed as part of each burn plan. This planning takes into account factors such as topography, fuel moisture conditions, and meteorological conditions to estimate the potential for spot fires. Because of the variability of weather and fuel moisture, the contingency plans are reviewed and final assessments are completed on the day of the prescribed burn before the start of operations. The plans include a description of the procedures and protocols to be followed in the event of a spot fire, the actions to be taken, and the resources to be allocated to suppressing a spot fire.
- When a spot fire does occur during prescribed burn operations, in its responses, ODNR stated that it has two primary considerations during spot fire suppression: minimizing the area burned by the spot fire and ensuring fire fighter safety. Actions and tactics employed by the prescribed burn manager on scene during the attack of spot fires are based on the fire behavior and topography. ODNR has committed to aggressively attacking spot fires, but has stated that if the spot fire cannot be contained, the burn will be declared a wildfire, all prescribed ignition will be halted, and additional suppression resources will be requested.
- The contingency planning section includes a narrative description and a map of the secondary contingency lines surrounding the prescribed burn area. The plan states that spot fires occurring inside these contingency lines will be aggressively suppressed. The locations of the secondary contingency lines are selected based on ODNR's review of the prescribed burn area and account for potential fire fighting response time as well as the topography of the area surrounding the prescribed burn site, including natural terrain (such as streams, hill slope, drainage areas, etc.) and constructed features such as forest roads and hiking trails. The contingency plan also provides examples of the type of fire fighting equipment that will be

available to suppress any spot fires and identifies the personnel responsible for coordinating these efforts.

- During the prescribed burn conducted in Shawnee State Forest on April 8, 2008, four spot fires occurred, as described above. The spot fires ranged in size from 0.4 acre up to approximately 3.0 acres. Per ODNR, the range in size was the result of a combination of fire behavior, tactics taken by the fire fighters on the scene during suppression of the fires, the amount of time to detect the spot fire, and the terrain at the location of the spot fire. Tactical decisions made during the fire fighting operations included consideration of fire fighter safety, impact to surrounding areas, and best methods to contain the spot fire.
- In its January 27, 2009, response to PLAA and Ohio EPA's request for further information regarding the prescribed burn, ODNR provided additional details regarding the April 8, 2008 prescribed burn and the spot fire suppression operations. In this letter, ODNR stated that the contingency plan outlined in the prescribed burn plan for the Backcountry Unit was successfully implemented and followed to suppress and subsequently mop up the spot fires that had occurred. All four spot fires occurred on Division of Forestry lands and were not near any structures or property not owned by ODNR. No additional assistance beyond the resources on hand for the prescribed fire operations were needed to suppress the spot fires.
- In the January 27, 2009, letter, ODNR also noted that an additional spot fire had occurred in an area adjoining the Backcountry Unit for which permission to conduct prescribed burn operations had previously been granted by PLAA. PLAA determined that this spot fire had occurred in the East Fork Unit, PLAA burn permit #07-29, had involved approximately 800 square feet (20' x 40'), and had been contained and extinguished per ODNR's contingency plan. The proximity of residences and the potential impact of smoke from prescribed burn operations of up to 250 acres in this area had already been evaluated by PLAA and found to be acceptable.

ODNR did exceed the prescribed burn boundaries specified in Burning Permit #07-30, and a NOV was issued by PLAA on October 2, 2008. ODNR's October 31, 2008, letter in response to the NOV, and the information subsequently provided, adequately demonstrated the contingency plan outlined in the Division of Forestry's general prescribed burn plan was implemented and followed during the April 8, 2008 prescribed burn of the Backcountry Unit in Shawnee State Forest. ODNR demonstrated to PLAA and Ohio EPA that the spot fires had been identified, evaluated, contained and extinguished without impact beyond Forestry land and in a manner that considered the safety of the fire fighting personnel. This general contingency plan will be referenced as part of any future permission to conduct prescribed burns issued to ODNR and ODNR will be required to follow the provisions of the contingency plan during the prescribed burn operations.

During its investigation, PLAA was unable to substantiate the allegation that visibility on Forest Road 2 was significantly impaired during the prescribed burn operation. Photographs submitted by the complainant were inconclusive and no other complaints regarding visibility on the forest roads were received by the PLAA.

The prescribed burn conducted on April 8, 2008, of the Backcountry Unit, Subunit 3, consisted of 196 acres, including four to five acres burned by spot fires, less than the total acreage that had been modeled. Weather conditions during the prescribed burn were within the prescription established by ODNR and the VSmoke modeling results were considered to be within acceptable parameters. The four to five acres burned by the spot fires consist of less than 3% of the total and would not have caused a significant impact regarding modeling results or in the amount of particulate produced during the prescribed burn.

Regarding Ms. Carpenter's allegation regarding air quality monitoring not being conducted during the prescribed burn operations due to ODNR's failure to notify PLAA, please note that air quality monitoring is not required by either the open burn permission or by rule and is conducted only if the sampling equipment and personnel are available. ODNR did notify PLAA on the morning of the prescribed burn operation when the decision to proceed with the prescribed burn was made. PLAA has since included in the prescribed burn permission conditions the requirement that ODNR provide notice the day prior to the ignition of the prescribed burn.

The remaining issues raised by the complainants, such as the purpose of ODNR's prescribed burn program in State forests and the need for such a program, and the impact to the flora or fauna located in the prescribed burn area fall outside of Ohio EPA's jurisdiction and are better addressed with ODNR, Division of Forestry, as it is the agency responsible for the management of State Forest land.

Based upon the above information, PLAA and Ohio EPA have determined that the NOV issued to ODNR has been satisfactorily responded to and that adequate procedures are in place to address the issue of spot fires that occur outside of the prescribed burn area. Based on analysis of the data and information available, PLAA and Ohio EPA have not been able to substantiate the alleged violations related to excess smoke and particulate emissions generated by the prescribed fire, or the allegations of restricted visibility on area roadways. Therefore, pursuant to ORC § 3745.08(B), your verified complaints are hereby dismissed.

You are hereby notified that this action of the Director is final and may be appealed to the Environmental Review Appeals Commission pursuant to Section 3745.04 of the Ohio Revised Code. The appeal must be in writing and set forth the action complained of and the grounds upon which the appeal is based. The appeal must be filed with the Commission within thirty (30) days after notice of the Director's action. The appeal must be accompanied by a filing fee of \$70.00 which the Commission, in its discretion, may reduce if by affidavit you demonstrate that payment of the full amount of the fee would cause extreme hardship. Notice of the filing of the appeal shall be filed with the Director

within three (3) days of filing with the Commission. Ohio EPA requests that a copy of the appeal be served upon the Ohio Attorney General's Office, Environmental Enforcement Section. An appeal may be filed with the Environmental Review Appeals Commission at the following address:

Environmental Review Appeals Commission
309 South Fourth Street, Room 222
Columbus, OH 43215

I would also like to acknowledge receipt of the verified complaints each of you have filed against ODNR alleging violations of the open burn permission (#093004cds07) issued by PLAA on March 27, 2009, regarding the prescribed burn conducted in the East Fork Unit of the Shawnee State Forest April 24, 2009, and the subsequent wildfire that occurred between the dates of April 24 and April 29, 2009. Your complaints have been forwarded to PLAA for investigation and you will be notified of the results of this investigation and of any subsequent action.

Please feel free to contact Marc Glasgow, Legal Office, Ohio EPA, at (614) 644-3037 if you have any further questions.

Sincerely,



Chris Korleski
Director

CK/JP/jp

xc: Jim Orlemann, DAPC
John Paulian, DAPC
Bryan Zima, Legal Office, Ohio EPA
Marc Glasgow, Legal Office, Ohio EPA
Cindy Charles, PLAA
David Lytle, ODNR, Division of Forestry



State of Ohio Environmental Protection Agency

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Columbus, OH 43216-1049

AUG 19 2009

The Honorable Richard Cordray
Attorney General of Ohio
Environmental Enforcement Section
State Office Tower, 25th Floor
30 East Broad Street
Columbus, Ohio 43266-0410

Re: Referral of Hishan Jundi, d.b.a. Avon Lake Shell (EC Case #2807)

Dear Mr. Cordray:

Pursuant to ORC § 3704.06, I hereby request that you initiate all necessary legal and/or equitable civil actions as may be deemed necessary and seek appropriate penalties against the above-referenced party and any other appropriate party for the violations of ORC Chapter 3704 and the regulations adopted thereunder. A copy of the Division of Air Pollution Control's enforcement file is enclosed.

Thank you for your assistance in this matter. Any questions you may have should be directed to Jim Kavalec of the Division of Air Pollution ("DAPC") (644-4840). He, as well as Tom Kalman of the DAPC Enforcement Section (644-3598), should be kept apprised of the status of this matter and any action taken with regard to it. Please also coordinate all negotiations and any resolution of this case with Jim Orlemann, Assistant Chief, SIP Development and Enforcement, and Enforcement Coordinator of the DAPC.

Sincerely,

Chris Korleski
Director

xc: Jim Orlemann, DAPC
Tom Kalman, DAPC
Marcus Glasgow, Legal Office
Jim Kavalec, DAPC
Keith Riley/Tim Fischer, NEDO DAPC

Enclosures

CK/JK/jk

Ted Strickland, Governor
Lee Fisher, Lieutenant Governor
Chris Korleski, Director

**Ohio EPA
Division of Air Pollution Control**

INTER-OFFICE COMMUNICATION

TO: Dale Vitale, Chief, Environmental Enforcement Section, Attorney General's Office

FROM: Marcus Glasgow, Staff Attorney and Jim Orlemann, DAPC Enforcement Coordinator

SUBJECT: Notes concerning the referral of Hishan Jundi, d.b.a. Avon Lake Shell to the Attorney General's Office (EC Case #2807)

DATE: August 6, 2009

**CONFIDENTIAL: ATTORNEY-CLIENT PRIVILEGED COMMUNICATION
CONFIDENTIAL LAW ENFORCEMENT INVESTIGATORY RECORD**

The Director of Ohio EPA is referring Hishan Jundi, d.b.a. Avon Lake Shell ("Respondent") to the Attorney General's Office ("AGO") for violations of Ohio Revised Code ("ORC") Chapter 3704 and Ohio Administrative Code ("OAC") Rule 3745-21-09(DDD). The May 1, 2009 proposed Director's Final Findings and Orders ("DFFOs") are attached for the AGO's use in preparing a complaint and consent order. A copy of the enforcement case file is also attached. A brief summary of the case is provided below.

SYNOPSIS

- Respondent owns and operates a gasoline dispensing facility ("GDF") located 33433 Lake Road, Avon Lake, Lorain County, Ohio. This GDF is subject to the requirements of Ohio Administrative Code ("OAC") Rule 3745-21-09(DDD) concerning Stage II vapor control systems. As part of the Stage II vapor control system requirements, this GDF is required to conduct Stage II compliance tests, which consist of an annual static leak and air-to-liquid ("A/L") ratio tests and a five-year dynamic pressure performance test. The purpose of these tests is to ensure that the Stage II vapor control system is working properly to capture gasoline vapors so they do not contribute to ozone formation.
- On March 8, 2007 and March 18, 2008, Respondent attempted to conduct the annual static leak and A/L ratio tests at this GDF. During each year, the tests could not be conducted due to malfunctions with the Stage II vapor control system. In 2007, several dispenser nozzles needed to be replaced and a gasket was missing from the fill cap on a tank. In 2008, the shear valve was uncapped,

thus, allowing gas fumes to escape into the atmosphere. Because the annual static leak and A/L ratio tests could not be conducted due to the malfunctions, the tests are considered to be failures. Respondent did make repairs and pass the 2007 annual static leak and A/L ratio tests on May 1, 2007, but, to date, has failed to conduct the 2008 annual static leak and A/L ratio tests. During both 2007 and 2008, Respondent was operating the dispensers at this GDF prior to and after the discovery of the malfunctioning Stage II vapor control system. Operating the vapor control system with malfunctioning nozzles and fill caps and failing to successfully pass the testing requirements in OAC Rule 3745-21-09(DDD)(2) while causing, allowing, or permitting the transfer of gasoline from a stationary storage tank into a motor vehicle are violations of ORC § 3704.05(G) and OAC Rule 3745-21-09(DDD)(1)(b) and (c). In addition, Respondent's failure to complete and successfully pass the annual static leak and A/L ratio tests within one year from the last test (May 1, 2007) was in violation of OAC Rule 3745-21-09(DDD)(2)(f) and ORC § 3704.05(G). By letter dated November 3, 2008, Ohio EPA notified Respondent of the violations of OAC Rule 3745-21-09(DDD). To date, the static leak test and A/L ratio test have not been conducted.

- Respondent failed to submit the 2006 and 2007 fee emission reports, which were due June 6, 2008, in violation of OAC Rule 3745-78-02(D) and (G), and ORC § 3704.05(G). Also, maintenance logs were not being maintained and proof of completion of Stage II training was not available from March 8, 2007 until March 18, 2008, in violation of OAC Rule 3745-21-09(DDD)(3)(a)(iii) and (vi) and ORC § 3704.05(G).
- The proposed DFFOs were sent to Respondent on May 1, 2009. The proposed DFFOs would have required Respondent to submit a permit-by-rule notification for this GDF; to demonstrate that the vapor control system was operating correctly by conducting and passing the dynamic pressure performance test, the static leak test and A/L ratio test; to conduct weekly inspections of the Stage II vapor control system for the next two ozone seasons, checking for leaks, malfunctions or damage to the systems; and for the next two ozone seasons, to perform static leak and A/L ratio tests prior to the beginning (during March) of each ozone season and during August of each ozone season. Lastly, the proposed DFF&Os would have required Respondent to pay Ohio EPA a civil penalty in the amount of twenty-seven thousand dollars (\$27,000).
- Ohio EPA never received a response from Respondent concerning the May 1, 2009 proposed DFFOs. Attempts to reach Respondent have been unsuccessful. On June 11, 2009 and July 31, 2009, Marc Glasgow attempted to contact Respondent and on both occasions Marc Glasgow spoke to an employee who indicated that Mr. Jundi was not available, but they would pass along a message for him. Marc Glasgow identified himself and discussed the proposed DFFOs, including the penalty. Marc Glasgow concluded by saying that if we didn't hear

from Respondent we may refer the matter to the AGO. Marc Glasgow also left his phone number both times. As of today's date, Respondent has not contacted DAPC regarding the proposed DFFOs. In addition, by letter dated July 2, 2009, a last chance letter was sent to Respondent and no response was received.

PENALTY

The calculated civil penalty is \$27,000. (See the attached penalty worksheets.) The Enhanced Enforcement Protocol penalty policy for Stage II vapor control system violations applies a \$5,000 penalty when there are two consecutive test failures for the same test in the same year or when a facility fails any test in two consecutive years. This GDF failed the static leak and A/L ratio tests in two consecutive years, 2007 and 2008; therefore, a \$5,000 penalty was applied. In addition, a multi-day penalty of \$25 per day was assessed for failing to fix and pass the static leak or A/L ratio retests within 30 days.

RECOMMENDATION

Ohio EPA is recommending that the AGO resolve this enforcement case by obtaining a consent order (or a court order, if necessary) requiring the responsible parties to comply with the actions in the proposed DFFOs and pay an appropriate civil penalty. If you have any questions, please contact one of us.



State of Ohio Environmental Protection Agency

2807

STREET ADDRESS:

Lazarus Government Center
50 W. Town St., Suite 700
Columbus, Ohio 43215

TELE: (614) 644-3020 FAX: (614) 644-3184
www.epa.state.oh.us

MAILING ADDRESS:

P.O. Box 1049
Columbus, OH 43216-1049

MAY 01 2009

CERTIFIED MAIL

Mr. Hishan Jundi, d.b.a.
Avon Lake Shell
33433 Lake Road
Avon Lake, Ohio 44012

Re: Proposed Director's Findings and Orders for Hishan Jundi, d.b.a. Avon Lake Shell

Dear Mr. Jundi:

My staff has informed me of the violations of Ohio Administrative Code Rules 3745-21-09(DDD)(1)(b), (DDD)(1)(c) and (DDD)(2)(f), concerning the Stage II vapor control system, OAC Rule 3745-78-02(D) and (G), concerning fee emission reports, and ORC § 3704.05(G) associated with your gasoline dispensing facility ("GDF") located at 33433 Lake Road, Avon Lake, Lorain County, Ohio. I would like to express my concern regarding the violations of the Stage II vapor control system requirements at the above-mentioned GDF located in an area that is in non-attainment of the National Ambient Air Quality Standard for ozone. Compliance with Stage II vapor control system requirements is an important element in our State Implementation Plan and in avoiding continued non-attainment of the ambient air quality standard. In addition, it is my understanding that several of these violations have not yet been corrected.

In order to resolve this matter, I am proposing to use the enclosed Findings and Orders, prepared by my staff, which include a provision for civil penalties for the settlement of claims resulting from your violations of the State's air pollution control laws. Also, enclosed is an administrative enforcement process guide to facilitate your review of the proposed Findings and Orders. I am proposing the use of Findings and Orders because this is the most expeditious means of resolving the violations. Because this letter and the attached document summarize a proposed settlement, I consider them to be inadmissible for any purpose in any enforcement action the State may take if settlement cannot be reached.

Please note that the proposed Findings and Orders include a provision for 20 percent of the total civil penalty amount to go toward the funding of a supplemental environmentally beneficial project involving the retrofitting of school buses with control equipment to reduce diesel particulate emissions. This project has the primary benefits of reducing children's exposure to harmful diesel exhaust emissions and helping attain the National Ambient Air Quality Standards for fine particulates (i.e., particles less than 2.5 microns in diameter). Information concerning the school bus

Ted Strickland, Governor
Lee Fisher, Lieutenant Governor
Chris Korleski, Director

Hishan Jundi,
d.b.a. Avon Lake Shell
Page 2 of 2

retrofit program is provided in an enclosed document.

Please review the attached documents carefully. If you have any questions concerning the proposed Findings and Orders, or if you would like to arrange a meeting or conference call to try to negotiate a settlement via the Findings and Orders, please contact Marcus Glasgow of the Ohio EPA Legal Office, at (614) 644-3037. If he does not hear from you, within fourteen (14) days of receipt of this letter concerning your willingness to accept the Findings and Orders as currently written, or with mutually agreed upon modifications, I will consider alternative enforcement mechanisms including referral of the matter to the Ohio Attorney General's Office for legal action.

I hope that you and Ohio EPA are able to resolve this matter via the enclosed proposal, and I thank you in advance for your cooperation.

Sincerely,



Chris Korleski
Director

xc: Jim Orlemann, DAPC
Tom Kalman, DAPC
Jim Kavalec, DAPC
Marcus Glasgow, Legal Office
Dennis Bush, DAPC NEDO

Enclosures

CK:JK:jk

BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

Hishan Jundi	:	<u>Director's Final Findings</u>
d.b.a. Avon Lake Shell	:	<u>and Orders</u>
33433 Lake Road	:	
Avon Lake, Ohio 44012	:	

PREAMBLE

It is agreed by the parties hereto as follows:

I. JURISDICTION

These Director's Final Findings and Orders ("Orders") are issued to Hishan Jundi, d.b.a. Avon Lake Shell ("Respondent") pursuant to the authority vested in the Director of the Ohio Environmental Protection Agency ("Ohio EPA") under Ohio Revised Code ("ORC") §§ 3704.03 and 3745.01.

II. PARTIES BOUND

These Orders shall apply to and be binding upon Respondent and heirs and successors in interest liable under Ohio law. No change in ownership of the facility (as hereinafter defined) shall in any way alter Respondent's obligations under these Orders.

III. DEFINITIONS

Unless otherwise stated, all terms used in these Orders shall have the same meaning as defined in ORC Chapter 3704 and the regulations promulgated thereunder.

IV. FINDINGS

The Director of Ohio EPA makes the following findings:

1. Respondent owns and operates a gasoline dispensing facility ("GDF") located at 33433 Lake Road, Avon Lake, Lorain County, Ohio. This GDF is subject to the requirements of Ohio Administrative Code ("OAC") Rule 3745-21-09(DDD) concerning Stage II vapor control systems.

2. ORC § 3704.05(G) states, in part, that no person shall violate any order, rule, or determination of the Director issued, adopted, or made under ORC Chapter 3704. OAC Rules 3745-21-09(DDD) and 3745-31-02 were adopted by the Director pursuant to ORC Chapter 3704.

3. OAC Rule 3745-21-09(DDD)(1)(b) provides, in part, that no owner or operator of a GDF may cause, allow, or permit the transfer of gasoline from a stationary tank at a GDF into a motor vehicle unless the vapor control system is installed, operated, and maintained in accordance with the manufacturer's specifications and the applicable CARB certification, and is free from defect.

4. OAC Rule 3745-21-09(DDD)(1)(c) states, in part, that no owner or operator of a GDF may cause, allow, or permit the transfer of gasoline from a stationary tank at a GDF into a motor vehicle unless the vapor control system successfully passes the testing requirements contained in OAC Rule 3745-21-09(DDD)(2).

5. OAC Rule 3745-21-09(DDD)(2)(f) requires the owner or operator of a GDF to perform and comply with any vapor control system tests specified in the applicable CARB certification. As part of the required CARB testing for the above-mentioned GDF, an air-to-liquid ("A/L") ratio test and a static leak test is required to be performed annually and any fueling point not capable of demonstrating compliance with the performance standards of the A/L ratio test is deemed to be defective and is required to be removed from service.

6. OAC Rule 3745-21-09(DDD)(3)(a)(iii) and (vi) state, in part, that any owner or operator of a GDF subject to the requirements of paragraph (DDD)(1) shall maintain a log of the date and description of all repair and maintenance work performed (including, but not limited to, work performed to meet manufacturer's specifications or CARB certification requirements), or any other modifications made to the vapor control system and maintain records demonstrating proof of attendance and completion of training required by Ohio EPA for the operator or local manager of the GDF.

7. On March 8, 2007, Ohio EPA conducted an inspection at this GDF to determine compliance with requirements of OAC Rule 3745-21-09(DDD). The annual static leak and A/L ratio tests were not conducted because maintenance needed to be performed on several dispensers. Specifically, nozzles needed to be replaced on dispensers 3, 4 and 5 and a gasket was missing from the fill cap on tank 2. Operating the vapor control system with malfunctioning dispenser nozzles and a tank fill cap and failing to successfully pass the testing requirements in OAC Rule 3745-21-09(DDD)(2) while causing, allowing, or permitting the transfer of gasoline from a stationary storage tank into a motor vehicle were violations of ORC § 3704.05(G) and OAC Rule 3745-21-09(DDD)(1)(b) and (c). Respondent was operating the dispensers prior to and after this inspection. In addition, Ohio EPA discovered that maintenance logs were not being maintained and proof of completion of Stage II training was not available, in violation of OAC Rule 3745-21-09(DDD)(3)(a)(iii) and (vi) and ORC § 3704.05(G).

8. On May 1, 2007, Respondent conducted the annual static leak and A/L ratio tests at this GDF. By this date, the necessary maintenance had been performed and both the annual static leak and A/L ratio tests passed; however, Respondent was still not maintaining the records referenced in Finding No. 7, in violation of OAC Rule 3745-21-09(DDD)(3)(a)(iii) and (vii) and ORC § 3704.05(G). By letter dated June 28, 2007, Ohio EPA notified Respondent that it had passed the annual stage II vapor control system tests and that records were not being properly maintained.

9. On March 18, 2008, Ohio EPA conducted an inspection at this GDF to determine compliance with requirements of OAC Rule 3745-21-09(DDD). During this inspection, Ohio EPA noted that Respondent was properly maintaining the records referenced in Finding Nos. 7 and 8; however, the annual static leak and A/L ratio tests could not be conducted because the shear valve was uncapped, thus, allowing gas fumes to escape into the atmosphere. Respondent was operating the dispensers at this GDF prior to and after the discovery of the uncapped shear valve. The failure to properly install, operate, and maintain the vapor control system and to successfully pass the testing requirements in OAC Rule 3745-21-09(DDD)(2) while causing, allowing, or permitting the transfer of gasoline from a stationary storage tank into a motor vehicle are violations of OAC Rules 3745-21-09(DDD)(1)(b) and (c) and ORC § 3704.05(G). In addition, Respondent's failure to complete and successfully pass the annual static leak and A/L ratio tests within one year from the last test (May 1, 2007) was in violation of OAC Rule 3745-21-09(DDD)(2)(f) and ORC § 3704.05(G). By letter dated November 3, 2008, Ohio EPA notified Respondent of the violations of OAC Rule 3745-21-09(DDD). To date, the static leak test and A/L ratio test have not been conducted.

10. By letter dated December 30, 2008, Ohio EPA notified Respondent that it had failed to submit the 2006 and 2007 fee emission reports which were due June 6, 2008, in violation of OAC Rule 3745-78-02(D) and (G) and ORC § 3704.05(G).

11. The Director has given consideration to, and based his determination on, evidence relating to the technical feasibility and economic reasonableness of complying with the following Orders and their relation to benefits to the people of the State to be derived from such compliance.

V. ORDERS

The Director hereby issues the following Orders:

1. Within thirty (30) days from the effective date of these Orders, Respondent shall submit a permit-by-rule notification to Ohio EPA for this facility in accordance with OAC Rule 3745-31-03(A)(4)(a).

2. Within thirty (30) days from the effective date of these Orders, Respondent shall submit complete and approvable 2006 and 2007 fee emission reports to Ohio EPA in accordance with the requirements of OAC Rule 3745-78-02(D) and (G).

3. Within thirty (30) days from the effective date of these Orders, Respondent shall demonstrate that the Stage II vapor control system is operating correctly by conducting and passing a static leak test and A/L ratio test. Respondent shall notify Ohio EPA of such testing within fourteen (14) days prior to the tests. The results of these tests shall be submitted to Ohio EPA within fourteen (14) days after completion of the tests.

4. For the next two ozone seasons (April 1, 2010 – October 31, 2010 and April 1, 2011 – October 31, 2011), starting two weeks prior to the start of the ozone season, i.e., by March 15, 2010 and March 15, 2011, and continuing until October 31, 2010 and October 31, 2011, respectively, Respondent shall conduct weekly inspections of the Stage II vapor control system at this GDF, checking for leaks, malfunctions or damage to the system and shall keep records of these inspections and any repairs made. The inspections shall be recorded in an inspection log or checklist. Copies of the inspection logs or checklists shall be submitted to Ohio EPA during the middle and at the end of the ozone season. Specifically, copies of the weekly inspection records for the period from March 15 through July 31 shall be submitted by August 14 of each year. Copies of the weekly inspection records for August 1 through October 31 shall be submitted by November 14 of each year.

5. For the next two ozone-producing seasons (i.e., April 1, 2010 – October 31, 2010 and April 1, 2011 – October 31, 2011), Respondent shall perform and pass static leak and A/L ratio tests at this GDF, prior to the beginning (during March) of each ozone season and during August of each ozone season. Respondent shall notify Ohio EPA of such testing within fourteen (14) days prior to any test. The results of these tests shall be submitted to Ohio EPA within fourteen (14) days after completion of the tests.

6. Respondent shall pay the amount of twenty-seven thousand dollars (\$27,000) in settlement of Ohio EPA's claims for civil penalties, which may be assessed pursuant to ORC Chapter 3704. Within thirty (30) days after the effective date of these Orders, payment to Ohio EPA shall be made by an official check made payable to "Treasurer, State of Ohio" for eighteen thousand six hundred dollars (\$18,600) of the total amount. The official check shall be submitted to Brenda Case, or her successor, together with a letter identifying the Respondent, to:

Ohio EPA
Office of Fiscal Administration
50 West Town Street, Suite 700
P.O. Box 1049
Columbus, Ohio 43216-1049

7. In lieu of paying the remaining five thousand four hundred dollars (\$5,400) of the civil penalty, Respondent shall fund a Supplemental Environmental Project ("SEP") by making a contribution in the amount of \$5,400 to Ohio EPA's Clean Diesel School Bus Program Fund (Fund 5CD0). Respondent shall make payment on or within

thirty (30) days after the effective date of these Orders by tendering an official check made payable to "Treasurer, State of Ohio" for \$5,400. The official check shall be submitted to Brenda Case, or her successor, together with a letter identifying the Respondent and Fund 5CD0, to the above-stated address.

8. A copy of each of the above checks shall be sent to James A. Orlemann, Assistant Chief, SIP Development and Enforcement, or his successor, at the following address:

Ohio EPA
Division of Air Pollution Control
50 West Town Street, Suite 700
P.O. Box 1049
Columbus, Ohio 43216-1049

9. Should Respondent fail to fund the SEP within the required time frame set forth in Order 7, Respondent shall immediately pay to Ohio EPA \$5,400 of the civil penalty in accordance with the procedures in Order 6.

VI. TERMINATION

Respondent's obligations under these Orders shall terminate when Respondent certifies in writing and demonstrates to the satisfaction of Ohio EPA that Respondent has performed all obligations under these Orders and the Chief of Ohio EPA's Division of Air Pollution Control acknowledges, in writing, the termination of these Orders. If Ohio EPA does not agree that all obligations have been performed, then Ohio EPA will notify Respondent of the obligations that have not been performed, in which case Respondent shall have an opportunity to address any such deficiencies and seek termination as described above.

The certification shall contain the following attestation: "I certify that the information contained in or accompanying this certification is true, accurate and complete."

This certification shall be signed and submitted by Respondent to Ohio EPA.

VII. OTHER CLAIMS

Nothing in these Orders shall constitute or be construed as a release from any claim, cause of action, or demand in law or equity against any person, firm, partnership, or corporation, not a party to these Orders, for any liability arising from, or related to, the operation of Respondent's facility.

VIII. OTHER APPLICABLE LAWS

All actions required to be taken pursuant to these Orders shall be undertaken in accordance with the requirements of all applicable local, state and federal laws and regulations. These Orders do not waive or compromise the applicability and enforcement of any other statutes or regulations applicable to Respondent.

IX. MODIFICATIONS

These Orders may be modified by agreement of the parties hereto. Modifications shall be in writing and shall be effective on the date entered in the journal of the Director of Ohio EPA.

X. NOTICE

All documents required to be submitted by Respondent pursuant to these Orders shall be addressed to:

Ohio EPA, Northeast District Office
2110 East Aurora Rd.
Twinsburg, Ohio 44087
Attn: Dennis Bush

and to:

Ohio Environmental Protection Agency
Lazarus Government Center
Division of Air Pollution Control
50 West Town Street, Suite 700
Columbus, Ohio 43216-1049
Attn: Thomas Kalman

or to such persons and addresses as may hereafter be otherwise specified in writing by Ohio EPA.

XI. RESERVATION OF RIGHTS

Ohio EPA and Respondent each reserve all rights, privileges, and causes of action except as specifically waived in Section XII of these Orders.

XII. WAIVER

In order to resolve disputed claims, without admission of fact, violation, or liability, and in lieu of further enforcement action by Ohio EPA for only the violations specifically cited in these Orders, Respondent consents to the issuance of these Orders and agrees to comply with these Orders. Compliance with these Orders shall be full accord and

satisfaction for Respondent's liability for the violations specifically cited herein.

Respondent hereby waives the right to appeal the issuance, terms and conditions, and service of these Orders, and Respondent hereby waives any and all rights Respondent may have to seek administrative or judicial review of these Orders either in law or equity.

Notwithstanding the preceding, Ohio EPA and Respondent agree that if these Orders are appealed by any other party to the Environmental Review Appeals Commission, or any court, Respondent retains the right to intervene and participate in such appeal. In such an event, Respondent shall continue to comply with these Orders notwithstanding such appeal and intervention unless these Orders are stayed, vacated, or modified.

XIII. EFFECTIVE DATE

The effective date of these Orders is the date these Orders are entered into the Ohio EPA Director's journal.

XIV. SIGNATORY AUTHORITY

Each undersigned representative of a party to these Orders certifies that he or she is fully authorized to enter into these Orders and to legally bind such party to these Orders.

IT IS SO ORDERED AND AGREED:

Ohio Environmental Protection Agency

Chris Korleski
Director

Date

IT IS SO AGREED:

Hishan Jundi, d.b.a. Avon Lake Shell

Signature

Date

GDF PENALTY WORK SHEET

Hishan Jundi, d.b.a. Avon Lake Shell
(for settlement purposes only)

A. Benefit Component:		\$0	Economic benefit is negligible (i.e., less than \$5,000).
B. Gravity Component			
1. Testing violations:			
a. Consecutive test failures:	\$5,000		<p>On 3/8/07 and 3/18/08, Respondent attempted to conduct the annual static leak and A/L ratio tests at this GDF. During each year the tests could not be conducted to due to malfunctions with the Stage II vapor control system; therefore, these are considered failed tests. Respondent did make repairs and pass the 2007 annual static leak and A/L ratio tests on 5/1/07 but, to date, has failed to conduct the 2008 annual static leak and A/L ratio tests. During both 2007 and 2008, Respondent was operating the dispensers at this GDF prior to and after the discovery of the malfunctioning Stage II vapor control system. Operating the vapor control system with malfunctioning nozzles and fill caps and failing to successfully pass the testing requirements in OAC Rule 3745-21-09(DDD)(2) while causing, allowing, or permitting the transfer of gasoline from a stationary storage tank into a motor vehicle are violations of ORC § 3704.05(G) and OAC Rule 3745-21-09(DDD)(1)(b) and (c). Per the GDF penalty policy, when a facility fails any test in two consecutive years the penalty is \$5,000.</p>
2. Length of violation:	\$11,400		<p>From 3/18/08 to the present (*7/18/09), Respondent has caused, allowed, or permitted the transfer of gasoline from a stationary storage tank into a motor vehicle without successfully passing the testing requirements contained in OAC Rule 3745-21-09(DDD)(2). Specifically, Respondent operated the vapor</p>

			control system with malfunctioning nozzles and fill caps and failed to perform and successfully pass the annual static leak test and A/L ratio test within 12 months of the last test (5/1/07), in violation of OAC Rules 3745-21-09(DDD)(1)(b), (1)(c) and (2)(f) and ORC § 3704.05(G). Per GDF penalty policy, 30 days is given to fix the problems and retest. Any additional days beyond the initial 30 days are penalized \$25 per day. So, 4/18/08 until 7/18/09 (456 days). 456 days x \$25 per day = \$11,400.
3. Reporting violations:	\$600		Respondent failed to pay the 2006 & 2007 emission fees (\$150 each year) and failed to submit the 2006 & 2007 fee emission reports by 6/6/2008, in violation of OAC Rule 3745-78-02(D) and (G) and ORC § 3704.05(G). Penalty calculated is double emission fees not paid.
4. Record-keeping violations:	\$5,000		From 3/8/07 to 3/18/08, Respondent failed to maintain maintenance logs and proof of completion of Stage II training was not available, in violation of OAC Rule 3745-21-09(DDD)(3)(a)(iii) and (vi) and ORC § 3704.05(G).
5. Size of violator:	\$5,000		Net worth (~\$350,000) is estimated at 20% of annual sales (annual sales are ~ \$1,750,000 from Reference USA database). Penalty associated with this amount is \$5,000.
Preliminary Deterrence Amount		\$27,000	
Initial Gravity Component:		\$27,000	
C. Adjustment Factors:	\$0		Not applicable
1. Degree of willfulness or negligence: (total gravity component times any augmentation percentage)			
2. Degree of cooperation: (total gravity component times any mitigation percentage)	\$0		Not applicable

3. History of noncompliance: (total gravity component times any augmentation percentage)	\$0		Not applicable
4. Ability to pay: (any mitigation amount)	\$0		Not known
5. Other unique factors: (total gravity component times any mitigation or augmentation percentage)	\$0		Not applicable
D. Adjusted Gravity Component:		\$27,000	
E. Administrative Component:			Not applicable
F. Initial Settlement Amount:		\$27,000	

* Projected compliance date



State of Ohio Environmental Protection Agency

STREET ADDRESS:

Lazarus Government Center
50 W. Town St., Suite 700
Columbus, Ohio 43215

TELE: (614) 644-3020 FAX: (614) 644-3184
www.epa.state.oh.us

MAILING ADDRESS:

P.O. Box 1049
Columbus, OH 43216-1049

August 20, 2009

CERTIFIED MAIL

Mr. Lawrence J. Rich, Esq.
Zashin & Rich Co., LPA
55 Public Square
Cleveland, Ohio 44113

Re: Final Findings and Orders for:
violations of air pollution control
regulations for Stage II vapor control
systems at Lakeland Citgo, 30460
Lakeland Blvd., Wickliffe, Ohio and
owned by Saif Khan

Dear Mr. Rich:

Transmitted herewith are the Final Findings and Orders ("Orders") of the Director of Ohio EPA concerning the above-referenced matter.

Please note that the effective date of the Orders is the date that the Orders were entered into the Ohio EPA Director's journal, which is the date that is stamped on the first page of the Orders.

Sincerely,

James A. Orlemann, P.E.
Assistant Chief, SIP Development and Enforcement
Division of Air Pollution Control

JAO/pr

xc: Jim Orlemann, DAPC
Tom Kalman, DAPC
Carol Hester, PIC
Priscilla Roberson, DAPC
Brenda Case, Fiscal Office (Agency #NA)
Marcus Glasgow, Legal Office
Jim Kavalec, DAPC
Keith Riley/Tim Fischer/Erik Bewley, NEDO
Saif Khan, Lakeland Citgo

Ted Strickland, Governor
Lee Fisher, Lieutenant Governor
Chris Korleski, Director

BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY ENTERED DIRECTOR'S JOURNAL

In the Matter of:

Saif Khan : Director's Final Findings
d.b.a. Lakeland Citgo : and Orders
30460 Lakeland Blvd. :
Wickliffe, Ohio 44092 :

PREAMBLE

It is agreed by the parties hereto as follows:

I. JURISDICTION

These Director's Final Findings and Orders ("Orders") are issued to Saif Khan, d.b.a. Lakeland Citgo ("Respondent") pursuant to the authority vested in the Director of the Ohio Environmental Protection Agency ("Ohio EPA") under Ohio Revised Code ("ORC") §§ 3704.03 and 3745.01.

II. PARTIES BOUND

These Orders shall apply to and be binding upon Respondent and heirs and successors in interest liable under Ohio law. No change in ownership of the facility (as hereinafter defined) shall in any way alter Respondent's obligations under these Orders.

III. DEFINITIONS

Unless otherwise stated, all terms used in these Orders shall have the same meaning as defined in ORC Chapter 3704 and the regulations promulgated thereunder.

IV. FINDINGS

The Director of Ohio EPA makes the following findings:

1. Respondent owns and operates a gasoline dispensing facility ("GDF") located at 30460 Lakeland Blvd., Wickliffe, Lake County, Ohio (Ohio EPA ID 0243151355). This GDF is subject to the requirements of Ohio Administrative Code ("OAC") Rule 3745-21-09(DDD) concerning Stage II vapor control systems.

I certify this to be a true and accurate copy of the official documents as filed in the records of the Ohio Environmental Protection Agency.

By: [Signature] Date: 8-20-09

2. On April 6, 2004, Permit-to-Install ("PTI") 02-19108 was issued by Ohio EPA to the previous owner East 305 & Lakeland Blvd LLC, d.b.a. Fancy Nancy's Citgo. PTI #02-19108 requires Respondent to comply with the requirements for Stage II vapor control systems as specified in OAC Rule 3745-21-09(DDD). On April 24, 2006, ownership of this GDF was transferred from Fancy Nancy's Citgo to Respondent.

3. ORC § 3704.05(G) states, in part, that no person shall violate any order, rule, or determination of the Director issued, adopted, or made under ORC Chapter 3704. OAC Rules 3745-21-09(DDD) and 3745-31-02 were adopted by the Director pursuant to ORC Chapter 3704.

4. OAC Rule 3745-21-09(DDD)(1)(b) provides, in part, that no owner or operator of a GDF may cause, allow, or permit the transfer of gasoline from a stationary tank at a GDF into a motor vehicle unless the vapor control system is installed, operated, and maintained in accordance with the manufacturer's specifications and the applicable CARB certification, and is free from defect.

5. OAC Rule 3745-21-09(DDD)(1)(c) states, in part, that no owner or operator of a GDF may cause, allow, or permit the transfer of gasoline from a stationary tank at a GDF into a motor vehicle unless the vapor control system successfully passes the testing requirements contained in OAC Rule 3745-21-09(DDD)(2).

6. OAC Rule 3745-21-09(DDD)(2)(f) requires the owner or operator of a GDF to perform and comply with any vapor control system tests specified in the applicable CARB certification. As part of the required CARB testing for the above-mentioned GDF, an air-to-liquid ("A/L") ratio test and a static leak test is required to be performed annually and any fueling point not capable of demonstrating compliance with the performance standards of the A/L ratio test is deemed to be defective and is required to be removed from service.

7. On September 28, 2006, Ohio EPA conducted an inspection at this GDF to determine compliance with requirements of OAC Rule 3745-21-09(DDD). The static leak test passed the annual testing requirements; however, the A/L ratio test failed due to multiple error codes on the Stage II vapor control system. On October 11, 2006 and January 12, 2007, Respondent conducted A/L ratio retests and both times the tests failed due to problems with the Stage II vapor control system. Specifically, on January 12, 2007, several dispenser nozzles and hoses needed to be replaced. Respondent was operating the dispensers prior to and after each failed A/L ratio test. The failure to operate the Stage II vapor control system free of defect and successfully pass the testing requirements in OAC Rule 3745-21-09(DDD)(2) while causing, allowing, or permitting the transfer of gasoline from a stationary storage tank into a motor vehicle are violations of PTI 02-19108, ORC § 3704.05(C) and (G) and OAC Rule 3745-21-09(DDD)(1)(b) and (c). By letter dated January 21, 2007, Ohio EPA notified Respondent of these violations. A passing A/L ratio retest was conducted on February 22, 2007.

8. On November 5, 2007, Respondent conducted the 2007 annual static leak and A/L ratio tests at this GDF. The static leak test passed the annual testing requirements; however, the A/L ratio test, once again, failed this year due to multiple error codes on the Stage II vapor control system. On May 28, 2008, an A/L ratio retest was conducted and failed. Respondent was operating the dispensers prior to and after each failed A/L ratio test. The failure to operate the Stage II vapor control system free of defect and successfully pass the testing requirements in OAC Rule 3745-21-09(DDD)(2) while causing, allowing, or permitting the transfer of gasoline from a stationary storage tank into a motor vehicle are violations of PTI 02-19108, ORC § 3704.05(C) and (G) and OAC Rule 3745-21-09(DDD)(1)(b) and (c). By letter dated January 21, 2007, Ohio EPA notified Respondent of these violations. A passing A/L ratio retest was conducted on July 17, 2008.

9. On December 17, 2008, Respondent conducted the 2008 annual static leak and A/L ratio tests at this GDF. The static leak test passed; however, the A/L ratio test failed for dispensers 4, 8 and 9. On January 15, 2009, an A/L ratio retest was conducted. Dispenser 4 passed the retest while dispensers 8 and 9 failed. Respondent was operating these dispensers prior to and after each failed A/L ratio test. The failure to operate the Stage II vapor control system free of defect and successfully pass the testing requirements in OAC Rule 3745-21-09(DDD)(2) while causing, allowing, or permitting the transfer of gasoline from a stationary storage tank into a motor vehicle are violations of PTI 02-19108, ORC § 3704.05(C) and (G) and OAC Rule 3745-21-09(DDD)(1)(b) and (c). On March 9, 2009, an A/L ratio retest passed for both dispensers 8 and 9.

10. By letter dated December 30, 2008, Ohio EPA notified Respondent that it had failed to submit the 2006 and 2007 fee emission reports which were due June 6, 2008, in violation of OAC Rule 3745-78-02(D) and (G) and ORC § 3704.05(G).

11. On May 22, 2009, Respondent submitted the 2006 and 2007 fee emission reports abating the violations referenced in Finding No. 10.

12. The Director has given consideration to, and based his determination on, evidence relating to the technical feasibility and economic reasonableness of complying with the following Orders and their relation to benefits to the people of the State to be derived from such compliance.

V. ORDERS

The Director hereby issues the following Orders:

1. For the next two ozone seasons (April 1, 2010 – October 31, 2010 and April 1, 2011 – October 31, 2011), starting two weeks prior to the start of the ozone season, i.e., by March 15, 2010 and March 15, 2011, and continuing until October 31, 2010 and October 31, 2011, respectively, Respondent shall conduct weekly inspections of the Stage II vapor control system at this GDF, checking for leaks, malfunctions or

damage to the system and shall keep records of these inspections and any repairs made. The inspections shall be recorded in an inspection log or checklist. Copies of the inspection logs or checklists shall be submitted to Ohio EPA during the middle and at the end of the ozone season. Specifically, copies of the weekly inspection records for the period from March 15 through July 31 shall be submitted by August 14 of each year. Copies of the weekly inspection records for August 1 through October 31 shall be submitted by November 14 of each year.

2. For the next two ozone-producing seasons (i.e., April 1, 2010 – October 31, 2010 and April 1, 2011 – October 31, 2011), Respondent shall perform and pass static leak and A/L ratio tests at this GDF, prior to the beginning (during March) of each ozone season and during August of each ozone season. Respondent shall notify Ohio EPA of such testing within fourteen (14) days prior to any test. The results of these tests shall be submitted to Ohio EPA within fourteen (14) days after completion of the tests.

3. Respondent shall pay the amount of ten thousand dollars (\$10,000) in settlement of Ohio EPA's claims for civil penalties, which may be assessed pursuant to ORC Chapter 3704. Payment shall be made by official checks made payable to "Treasurer, State of Ohio" for eight thousand dollars (\$8,000) of the total amount, which shall be paid in installments per the following schedule:

a. Within thirty (30) days after the effective date of these Orders, Respondent shall pay to Ohio EPA the amount of five hundred dollars (\$500);

b. Within one hundred and twenty (120) days after the effective date of these Orders, Respondent shall pay to Ohio EPA the amount of two thousand five hundred dollars (\$2,500); and

c. Within two hundred and ten (210) days after the effective date of these Orders, Respondent shall pay to Ohio EPA the amount of two thousand five hundred dollars (\$2,500); and

d. Within three hundred (300) days after the effective date of these Orders, Respondent shall pay to Ohio EPA the amount of two thousand five hundred dollars (\$2,500).

The official checks shall be submitted to Brenda Case, or her successor, together with a letter identifying the Respondent to:

Ohio EPA
Office of Fiscal Administration
P.O. Box 1049
Columbus, Ohio 43216-1049

4. In lieu of paying the remaining two thousand dollars (\$2,000) of the civil penalty, Respondent shall, within thirty (30) days of the effective date of these Orders, fund a Supplemental Environmental Project ("SEP") by making a contribution in the amount of \$2,000 to the Ohio EPA's Clean Diesel School Bus Program Fund (Fund 5CD0). Respondent shall tender an official check made payable to "Treasurer, State of Ohio" for \$2,000. The official check shall be submitted to Brenda Case, or her successor, together with a letter identifying the Respondent and Fund 5CD0, to the above-stated address.

5. A copy of each of the above checks shall be sent to James A. Orlemann, Assistant Chief, SIP Development and Enforcement, or his successor, at the following address:

Ohio EPA
Division of Air Pollution Control
50 West Town Street, Suite 700
P.O. Box 1049
Columbus, Ohio 43216-1049

6. Should Respondent fail to fund the SEP within the required time frame set forth in Order 4, Respondent shall immediately pay to Ohio EPA \$2,000 of the civil penalty in accordance with the procedures in Order 3.

VI. TERMINATION

Respondent's obligations under these Orders shall terminate when Respondent certifies in writing and demonstrates to the satisfaction of Ohio EPA that Respondent has performed all obligations under these Orders and the Chief of Ohio EPA's Division of Air Pollution Control acknowledges, in writing, the termination of these Orders. If Ohio EPA does not agree that all obligations have been performed, then Ohio EPA will notify Respondent of the obligations that have not been performed, in which case Respondent shall have an opportunity to address any such deficiencies and seek termination as described above.

The certification shall contain the following attestation: "I certify that the information contained in or accompanying this certification is true, accurate and complete."

This certification shall be signed and submitted by Respondent to Ohio EPA.

VII. OTHER CLAIMS

Nothing in these Orders shall constitute or be construed as a release from any claim, cause of action or demand in law or equity against any person, firm, partnership, or corporation, not a party to these Orders, for any liability arising from, or related to, the operation of Respondent's facility.

VIII. OTHER APPLICABLE LAWS

All actions required to be taken pursuant to these Orders shall be undertaken in accordance with the requirements of all applicable local, state and federal laws and regulations. These Orders do not waive or compromise the applicability and enforcement of any other statutes or regulations applicable to Respondent.

IX. MODIFICATIONS

These Orders may be modified by agreement of the parties hereto. Modifications shall be in writing and shall be effective on the date entered in the journal of the Director of Ohio EPA.

X. NOTICE

All documents required to be submitted by Respondent pursuant to these Orders shall be addressed to:

Ohio EPA, Northeast District Office
2110 East Aurora Rd.
Twinsburg, Ohio 44087
Attn: Dennis Bush

and to:

Ohio Environmental Protection Agency
Lazarus Government Center
Division of Air Pollution Control
50 West Town Street, Suite 700
Columbus, Ohio 43216-1049
Attn: Thomas Kalman

or to such persons and addresses as may hereafter be otherwise specified in writing by Ohio EPA.

XI. RESERVATION OF RIGHTS

Ohio EPA and Respondent each reserve all rights, privileges, and causes of action except as specifically waived in Section XII of these Orders.

XII. WAIVER

In order to resolve disputed claims, without admission of fact, violation, or liability, and in lieu of further enforcement action by Ohio EPA for only the violations specifically cited in these Orders, Respondent consents to the issuance of these Orders and agrees to comply with these Orders. Compliance with these Orders shall be a full accord and

Director's Final Findings and Orders
Saif Kahn, d.b.a. Lakeland Citgo
Page 7 of 7

satisfaction for Respondent's liability for the violations specifically cited herein.

Respondent hereby waives the right to appeal the issuance, terms and conditions, and service of these Orders, and Respondent hereby waives any and all rights Respondent may have to seek administrative or judicial review of these Orders either in law or equity.

Notwithstanding the preceding, Ohio EPA and Respondent agree that if these Orders are appealed by any other party to the Environmental Review Appeals Commission, or any court, Respondent retains the right to intervene and participate in such appeal. In such an event, Respondent shall continue to comply with these Orders notwithstanding such appeal and intervention unless these Orders are stayed, vacated, or modified.

XIII. EFFECTIVE DATE

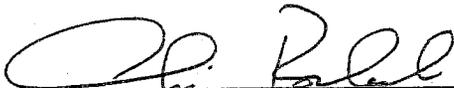
The effective date of these Orders is the date these Orders are entered into the Ohio EPA Director's journal.

XIV. SIGNATORY AUTHORITY

Each undersigned representative of a party to these Orders certifies that he or she is fully authorized to enter into these Orders and to legally bind such party to these Orders.

IT IS SO ORDERED AND AGREED:

Ohio Environmental Protection Agency

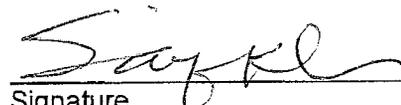


Chris Korleski
Director

Date 8/12/09

IT IS SO AGREED:

Saif Kahn, d.b.a. Lakeland Citgo



Signature

Date 8/06/2009



State of Ohio Environmental Protection Agency

STREET ADDRESS:

Lazarus Government Center
50 W. Town St., Suite 700
Columbus, Ohio 43215

TELE: (614) 644-3020 FAX: (614) 644-3164
www.epa.state.oh.us

MAILING ADDRESS:

P.O. Box 1049
Columbus, OH 43216-1049

AUG 18 2009

CERTIFIED MAIL

Mr. Joseph Parker
3187 County Road 12
Bellefontaine, Ohio 43311

RE: Director's Final
Findings and Orders
for Violations of OAC
Rule 3745-19-04

Dear Mr. Parker:

Transmitted herewith are the Final Findings and Orders ("Orders") of the Director of Ohio EPA concerning the above-referenced matter.

These Orders are being issued pursuant to Ohio Administrative Code ("OAC") Rule 3745-19-06(A) which states that the Director of Ohio EPA may assess a violator not more than two hundred fifty dollars per day for each separate violation of the rules in this Chapter for open burning on residential property. A copy of this rule is attached.

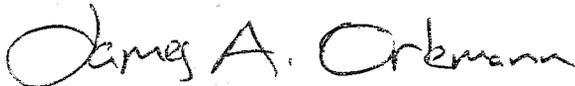
Should you fail to comply with these Orders, the Director of Ohio EPA may refer this matter to the Ohio Attorney General's Office where, under the authority of Ohio Revised Code § 3704.06, the Director may request that the Attorney General pursue litigation and seek civil penalties of up to \$25,000 per day of violation.

You are hereby notified that this action of the Director is final and may be appealed to the Environmental Review Appeals Commission pursuant to Section 3745.04 of the Ohio Revised Code. The appeal must be in writing and set forth the action complained of and the grounds upon which the appeal is based. The appeal must be filed with the Commission within thirty (30) days after notice of the Director's action. The appeal must be accompanied by a filing fee of \$70.00 which the Commission, in its discretion, may reduce if by affidavit you demonstrate that payment of the full amount of the fee would cause extreme hardship. Notice of the filing of the appeal shall be filed with the Director within three (3) days of filing with the Commission. Ohio EPA requests that a copy of the appeal be served upon the Ohio Attorney General's Office, Environmental Enforcement Section. An appeal may be filed with the Environmental Review Appeals Commission at the following address:

Environmental Review Appeals Commission
309 South Fourth Street, Room 222
Columbus, OH 43215

Please note that the effective date of the Orders is the date that the Orders were entered into the Ohio EPA Director's journal, which is the date stamped on the first page of the Orders.

Sincerely,



James A. Orlemann, P.E.
Assistant Chief
SIP Development & Enforcement Section

JAO/ey

Enclosure

xc: Carol Hester, PIC
Marc Glasgow, Legal Office
Brenda Case, Fiscal Office (Agency #05)
Priscilla Roberson, DAPC
Eric Yates, DAPC
John Paulian, DAPC
Tom Schneider, SWDO

3745-19-06

Open burning unilateral order.

- (A) The director may assess and collect administrative penalties from any person who violates any of the rules in this chapter. Through unilateral orders, the director may assess a violator not more than two hundred-fifty dollars per day for each separate violation of the rules in this chapter for open burning on residential property and not more than one thousand dollars per day for each separate violation of the rules in this chapter for open burning on industrial, commercial, institutional, or municipal property. Commercial property includes construction sites, including, but not limited to, the construction of residential homes, if the sites are not properly permitted under section 3704.11(C) of the Revised Code. A separate violation is assessed for each day (24-hour period) the violation occurs.

- (B) The director's authority under paragraph (A) of this rule is in addition to, and not in limitation of, the director's authority under section 3704.06 of the Revised Code to request the attorney general to initiate legal action to seek penalties of not more than twenty-five thousand dollars for each day of each violation for the violation of rules in this chapter.

3745-19-06

2

Effective: 07/07/2006

R.C. 119.032 review dates: 07/07/2011

CERTIFIED ELECTRONICALLY
Certification

06/27/2006
Date

Promulgated Under: 119.03
Statutory Authority: R.C. Section 3704.03(E)
Rule Amplifies: R.C. Section 3704.03(A), 3704.03(E)

BEFORE THE

OHIO ENVIRONMENTAL PROTECTION AGENCY OHIO E.P.A.

In the Matter of:

AUG 18 2009

ENTERED DIRECTOR'S JOURNAL

Mr. Joseph Parker
3187 County Road 12
Bellefontaine, Ohio, 43311

:
:
:

Director's Final Findings
and Orders

I. JURISDICTION

These Director's Final Findings and Orders ("Orders") are issued to Mr. Joseph Parker ("Respondent") pursuant to the authority vested in the Director of the Ohio Environmental Protection Agency ("Ohio EPA") under Ohio Revised Code ("ORC") §§ 3704.03 and 3745.01.

II. PARTIES BOUND

These Orders shall apply to and be binding upon Respondent and heirs and successors in interest liable under Ohio law.

III. DEFINITIONS

Unless otherwise stated, all terms used in these Orders shall have the same meaning as defined in ORC Chapter 3704 and the rules promulgated thereunder.

IV. FINDINGS

The Director of Ohio EPA has determined the following findings:

1. Respondent owns property located at 3187 County Road 12 in Bellefontaine. The property is located in an "unrestricted area" as defined in Ohio Administrative Code ("OAC") Rule 3745-19-01(J).

2. OAC Rule 3745-19-04(A) prohibits "open burning," as defined in OAC Rule 3745-19-01(H), in an unrestricted area except as otherwise provided in OAC Rule 3745-19-04(B) and (C) and ORC § 3704.11. The provisions of OAC Rule 3745-19-04(B) and (C) and ORC § 3704.11 do not provide for the open burning of trash or demolition debris in an unrestricted area.

3. ORC § 3704.05(G) states, in part, that no person shall violate any order, rule, or determination of the Director issued, adopted, or made under ORC Chapter 3704. OAC Chapter 3745-19 was adopted by the Director pursuant to ORC Chapter 3704.

4. On July 20, 2009, an Ohio EPA inspector responded to the complaint of an open burning event at Respondent's property that occurred on or about July 18, 2009. The

[Handwritten signature]
8-18-09

inspector discovered that Respondent conducted open burning of what appeared to be trash and demolition debris in an unrestricted area.

5. Open burning of such waste material is prohibited by rule, and the open burning was not otherwise exempted from the prohibition of OAC Rule 3745-19-04(A).

6. Based on the above Findings, the Director of Ohio EPA finds that Respondent violated the following ORC law and OAC rule:

- ORC § 3704.05(G), for violating a rule the Director adopted under ORC Chapter 3704; and
- OAC Rule 3745-19-04(A) which prohibits the open burning for waste disposal.

7. On July 27, 2009, a notice of violation letter was sent to Respondent for the open burning violations identified above.

8. OAC Rule 3745-19-06(A) states that the Director of Ohio EPA may assess a violator not more than two hundred fifty dollars per day for each separate violation of the rules in this Chapter for open burning on residential property.

9. Should Respondent fail to comply with these Orders, the Director of Ohio EPA may refer this matter to the Ohio Attorney General's Office where, under the authority of the Ohio Revised Code § 3704.06, the Director may request that the Attorney General pursue litigation and seek civil penalties of up to \$25,000 per day of violation.

10. The Director has given consideration to, and based his determination on, evidence relating to the technical feasibility and economic reasonableness of complying with the following Orders and the benefits to the people of the State to be derived from such compliance.

V. ORDERS

The Director hereby issues the following Orders:

1. Upon the effective date of these Orders, Respondent shall achieve compliance with the requirements of OAC Chapter 3745-19 and shall maintain compliance thereafter.

2. Within thirty (30) days after the effective date of these Orders, Respondent shall pay Ohio EPA the amount of two hundred fifty dollars (\$250) in administrative penalties pursuant to OAC Rule 3745-19-06. Payment shall be made by an official check made payable to "Treasurer, State of Ohio" for \$250. The official check shall be submitted

to Brenda Case, or her successor, with a letter identifying the Respondent, to:

Ohio EPA
Office of Fiscal Administration
P.O. Box 1049
Columbus, Ohio 43216-1049

3. A copy of the check shall be sent to James A. Orlemann, Assistant Chief, SIP Development and Enforcement Section, or his successor, at the following address:

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

VI. TERMINATION

Respondent's obligations under these Orders shall terminate upon Ohio EPA's receipt of the official check required by Section V of these Orders.

VII. OTHER APPLICABLE LAWS

All actions required to be taken pursuant to these Orders shall be undertaken in accordance with the requirements of all applicable local, State and federal laws and regulations. These Orders do not waive or compromise the applicability and enforcement of any other statutes or regulations applicable to Respondent.

VIII. RESERVATION OF RIGHTS

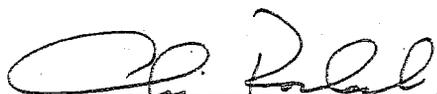
Nothing contained herein shall be construed to prevent Ohio EPA from seeking legal or equitable relief to enforce the terms of these Orders or from taking other administrative, legal or equitable action as deemed appropriate and necessary, including seeking penalties against Respondent for noncompliance with these Orders and/or for the violations described herein. Nothing contained herein shall be construed to prevent Ohio EPA from exercising its lawful authority to require Respondent to perform additional activities pursuant to ORC Chapter 3704 or any other applicable law in the future. Nothing herein shall restrict the right of Respondent to raise any administrative, legal or equitable claim or defense with respect to such further actions which Ohio EPA may seek to require of Respondent. Nothing in these Orders shall be construed to limit the authority of Ohio EPA to seek relief for violations not addressed in these Orders.

IX. EFFECTIVE DATE

The effective date of these Orders is the date these Orders are entered into the Ohio EPA Director's journal.

IT IS SO ORDERED:

Ohio Environmental Protection Agency



Chris Korleski
Director

Date 8/12/09



State of Ohio Environmental Protection Agency

STREET ADDRESS:

Lazarus Government Center
50 W. Town St., Suite 700
Columbus, Ohio 43215

TELE: (614) 644-3020 FAX: (614) 644-3184
www.epa.state.oh.us

MAILING ADDRESS:

P.O. Box 1049
Columbus, OH 43216-1049

CERTIFIED MAIL

AUG 20 2009

Mr. Jay Owens
Vice President
Quikrete-Cleveland
8951 Schaefer Highway, Bldg. #4
Detroit, Michigan 48228

Re: Air pollution control rule and law violations at Quikrete-Cleveland facility ("Quikrete")
located at 2693 Lake Rockwell Road, Shalersville Township, Portage County, Ohio

Dear Mr. Owens:

My staff has informed me of the violations of the terms and conditions of Permit to Install ("PTI") No. 16-1513 and of the permits to operate, and ORC § 3704.05(C) and (G) associated with Quikrete's operation of air contaminant sources at the facility located at 2693 Lake Rockwell Road, Shalersville Township, Portage County, Ohio. Specifically, Quikrete failed to comply with the visible emission limitations for the roadways and parking areas and the cement packaging plant. Additionally, Quikrete violated various testing, record-keeping and reporting requirements in its PTI. Furthermore, dust emissions from the facility caused an air pollution nuisance in the neighborhood. Quikrete has corrected the violations; however, it is my understanding that Quikrete needs to ensure compliance with the visible emission limit and control requirements in its PTI for the roadways and parking areas at the facility.

In order to resolve this matter, I am proposing to issue the enclosed Findings and Orders prepared by my staff, which includes a provision for the settlement of the claims for civil penalties for the violations that occurred. I am proposing the use of Findings and Orders because this is the most expeditious means of resolving the violations. Because this letter and the attached documents summarize a proposed settlement, I consider them inadmissible for any purpose in any enforcement action the State may take if settlement cannot be reached.

Please note that the proposed Findings and Orders include voluntary provisions for a portion of the total civil penalty amount to go toward the funding of a supplemental environmental project. The project involves diverting 20 percent of the total penalty

Ted Strickland, Governor
Lee Fisher, Lieutenant Governor
Chris Korleski, Director

Mr. Jay Owens
Vice President
Quikrete-Cleveland
Page 2 of 2

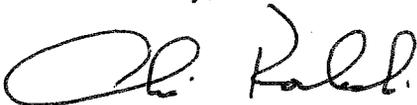
amount to go toward funding an Ohio EPA program for the retrofitting of school buses with control equipment to reduce diesel particulate emissions. This project has the primary benefits of reducing children's exposure to harmful diesel exhaust emissions and helping attain the National Ambient Air Quality Standards for fine particulates (i.e., particulates less than 2.5 microns in diameter). Information concerning the diesel school bus project is provided in an enclosed document.

Please review the attached documents carefully. If you have any questions concerning the proposed Findings and Orders, or if you would like to arrange a meeting to try to negotiate a settlement, please contact Donald L. Vanterpool, Ohio EPA Staff Attorney, at (614) 644-3037. If he does not hear from Quikrete within fourteen (14) days of the receipt of this letter concerning its willingness to accept the Findings and Orders as currently written, or with mutually agreed upon modifications, I will consider alternative enforcement mechanisms including referral of the violations to the Ohio Attorney General's Office for legal action.

Enclosed is a copy of guidance on the administrative enforcement process, which you may find helpful in answering any questions on Ohio EPA's enforcement process.

I hope that Quikrete and Ohio EPA are able to resolve this matter via the enclosed proposal, and I thank you in advance for your cooperation.

Sincerely,



Chris Korleski
Director

xc: Frank J. Markunas, ARAQMD
Urvi Doshi, DAPC
Tom Kalman, DAPC
Donald L. Vanterpool, Legal
Jim Orlemann, DAPC

Enclosures

CK:UD:ud

General Guidelines for Ohio EPA's Program for the Retrofitting of School Buses with Control Equipment to Reduce Diesel Particulate Emissions

The following questions and answers explain the Ohio EPA's program for the retrofitting of school buses with emission control equipment and provide the general guidelines that must be followed by any school system that participates in the program.

1. Why is there a need to reduce diesel particulate emissions from school buses?

The exhaust gases from diesel, school bus engines contain significant amounts of organic compounds, carbon monoxide, nitrogen oxides (NO_x) and fine particulates. If inhaled, the fine particulates are so small that they are able to penetrate deep into the lungs and pose serious health risks such as aggravated asthma and lung damage. In addition, USEPA has identified diesel exhaust as a likely human carcinogen. These fine particulate emissions contribute to the poor ambient air quality in 27 counties in Ohio, which currently are not meeting the national health-based ambient air quality standards for fine particulates (i.e., PM 2.5, particles less than 2.5 microns in diameter). Reducing the particulate emissions from diesel school bus engines will have two primary benefits:

- a. For the children who ride buses, it will reduce their exposure to the harmful diesel exhaust emissions. Children are more susceptible to air pollution than healthy adults because their respiratory systems are still developing and they have a faster breathing rate.
- b. It will help in attaining the National Ambient Air Quality Standards for PM 2.5 in Ohio's nonattainment counties.

2. What retrofit options are available to reduce particulate emissions from school buses?

There are three primary ways to retrofit a school bus for particulate emission control:

- a. **Diesel particulate filters** are ceramic devices that collect particulate matter in the exhaust stream. The high temperature of the exhaust heats the ceramic structure and allows the particles inside to break down into less harmful components. These filters must be used in conjunction with ultra-low sulfur diesel ("ULSD") fuel, which is a fuel with a sulfur content of less than 15 parts per million. The combination of particulate filters and ULSD fuel can reduce emissions of particulates, organic compounds, and carbon monoxide in the exhaust gases by 60 to 90 percent. Particulate filters work best on engines built after 1994 and cost \$6,500 to \$7,500.

- b. **Crankcase filtration systems** allow a diesel engine's crankcase to be closed and use an air filter to trap blow-by aerosols consisting mainly of oil droplets, with some carbon and traces of wear debris and PM10. Blow-by gas emissions can be as much as 25% of the total emissions from a diesel engine. The filtration efficiency of crankcase filters averages between 80% and 97%. The crankcase filter must be changed at every lube oil change (as recommended by the diesel engine manufacturer) or every 500 hours of operation, whichever comes first. Crankcase filters are inexpensive (a replacement element typically costs less than \$50.00) and are best used in conjunction with some type of filtration system in the exhaust stream.
- c. **Diesel oxidation catalysts** are devices that use a chemical process to break down pollutants in the exhaust stream into less harmful components. Diesel oxidation catalysts can reduce emissions of particulates by 20 percent, hydrocarbons by 50 percent, and carbon monoxide by 40 percent. Oxidation catalysts cost \$600 to \$2,000 and can be used with regular diesel fuel.

Only control equipment found on USEPA's "Verified Technology List" may be purchased and installed (see (4) below for further details).

3. Which types of school buses will be eligible to be retrofitted with particulate emission controls?

Only school buses that meet the following criteria will be retrofitted with particulate emission controls:

- a. The school bus must be equipped with a diesel engine.
- b. The school bus must have a gross vehicle rating of 19,500 pounds or more (Types C & D).
- c. The school bus must be driven not less than 5,000 miles per year.
- d. The school bus model year must be 1994 or newer.

4. Which types of control equipment would be acceptable for installation?

The USEPA publishes a "Verified Technology List." Only control equipment found on this list may be purchased and installed. As additional technologies are found to be acceptable by the USEPA, they will be added to the list. A copy of this list can be accessed at the following web site:

<http://www.epa.gov/otaq/retrofit/retroverifiedlist.htm>.

This table summarizes all the diesel retrofit technologies that the USEPA has approved for use in engine retrofit programs. The table shows the percent reduction (from verified or tested levels) that USEPA will recognize for emission reductions for each technology.

5. Is there a special type of fuel that must be used with the control equipment?

In some cases, yes. Each bus equipped with a particulate filter must use ultra low sulfur diesel (ULSD) fuel. Because of the high sulfur content of regular diesel fuel, the use of regular diesel fuel would cause the particulate filter to clog. This, in turn, could cause exhaust back-pressure increases and engine damage. The ULSD fuel contains less than 10% of the sulfur content of regular diesel fuel. Regular diesel fuel may contain 150 to 500 ppm of sulfur, compared to the maximum of 15 ppm for the ULSD fuel. As a result of recent changes in the U.S. federal fuel standards, ULSD fuel will become the standard diesel fuel throughout the U.S. beginning in June of 2006. Many parts of the country, including certain parts of Ohio, are already being supplied with ULSD fuel. The price differential between ULSD fuel and regular diesel fuel currently ranges between eight and 25 cents per gallon. In 2006, when ULSD fuel is available nationwide, the cost differential should be much less.

Diesel oxidation catalysts and crankcase filtration systems do not require special fuel.

6. What costs are associated with the installation and operation of the emission controls?

The estimated cost to retrofit each bus with a diesel particulate filter ranges from \$6,500 to \$7,500. On an annual basis, or about every 100,000 miles, these filters must be disassembled and cleaned either with compressed air or by heating the filter in a filter cleaning device. (The cost of such a device ranges from \$300 to \$350.) The cost for the annual maintenance for each filter, which normally takes less than 3 hours to complete, will depend upon whether the work is performed by school district personnel, the engine dealer, or the filter vendor. Also, until ULSD fuel becomes available nationwide in June of 2006, there will be an increased cost for the diesel fuel burned in each retrofitted bus. The current price differential between ULSD fuel and regular diesel fuel varies between 8 and 25 cents per gallon.

Crankcase filters are fairly inexpensive (a replacement element typically costs less than \$50.00). Crankcase filters must be changed at every lube oil change (as recommended by the diesel engine manufacturer) or every 500 hours of operation, whichever comes first.

The estimated cost to retrofit each bus with a diesel oxidation catalyst ranges from \$600 to \$2,000. Installation takes approximately one to three hours to complete. Diesel oxidation catalysts do not require annual maintenance and will operate with regular diesel fuel.

7. How will the control devices be funded by the Ohio EPA?

Ohio EPA enforcement case settlements will be the source of the funding for the diesel retrofit installations. Each enforcement case resolved either through administrative Findings and Orders or a Consent Order, that contains a significant civil penalty (a total civil penalty assessment of \$5,000 or greater), will also include a Supplemental Environmental Project (SEP) that is equal in value to 20 percent of the total assessed civil penalty. The entity that is the subject of the enforcement case will be required to pay the SEP monies directly to a specific fund that Ohio EPA has established for the retrofitting of school buses.

8. How will the school systems receive the SEP monies for the diesel retrofit installations?

A school system that desires to participate in the retrofit program must apply to Ohio EPA to receive funding to purchase and install USEPA approved control equipment. Once or twice per year, the Ohio EPA will solicit applications from the eligible school systems. In the application, an eligible school system must describe the proposed project, providing details such as the number and ages of the buses to be retrofitted, the type of equipment that will be purchased and installed (must be on the USEPA-published list of "Verified Retrofit Technologies"), a schedule for installation of the equipment, and a detailed cost breakdown. Ohio EPA will evaluate each application and provide funding to applicant school systems that meet the criteria specified by Ohio EPA's regulations. Priority will be given to those applicants that are located in a nonattainment county for PM 2.5 and/or that include a commitment to implement an anti-idling program.

9. What oversight will be provided by the Ohio EPA to ensure that the diesel retrofit control equipment is installed and maintained properly?

Ohio EPA will closely track the amount of enforcement monies directed to each public school system. Each participating school system must submit regular progress reports providing information regarding the equipment purchased and installed to date, as well as a final report summarizing the project results. Periodic inspections also may be conducted by District Office or local air agency staff to confirm that the control equipment has been correctly installed, that the diesel particulate filters are being maintained properly, and that the monies are being spent appropriately.

A guide to the . . .

Administrative Enforcement Process

Within the Division of Air Pollution Control

Introduction

This information sheet has been prepared to help you understand the administrative enforcement process within the Agency. With an understanding of the process and adequate preparation, you can facilitate a prompt resolution of this enforcement action. Included are answers to the questions most frequently asked by parties involved in the administrative enforcement process.

I have been working with the District Office or local air agency inspector to correct the violations. Why is an enforcement action necessary?

The Agency considers the following factors in deciding that an enforcement action is necessary: (1) Ohio EPA needs to obtain civil penalties for your violations; (2) your violations are serious; (3) you have taken too long to address the violations; (4) you need to be on a formal schedule to address the violations; (5) you have been recalcitrant in addressing the violations; and/or (6) you are a chronic violator.

Why should I try to negotiate an administrative consent order with Ohio EPA?

- Negotiating administrative findings and orders ("Order") with the Ohio EPA avoids expensive and time-consuming litigation.
- Negotiation can be a swift resolution of the State's claims against you for the non-compliance.
- We can quickly identify any obstacle to agreement.
- Negotiation can minimize or prevent any intervention by the USEPA to address the violations.

Should I continue working with the District or local air agency inspector?

Yes, the District Office or local air agency inspector is the best person to work with you to resolve the technical aspects of the violations, and prepare an acceptable control plan and schedule for submission to the Agency. Central Office personnel will also be available to provide assistance.

What should I do now that I received the proposed administrative consent order?

You should review the enclosed Order and the summary of the penalty calculation. If you accept the enclosed Order as written, sign the Order and send it within two weeks to the staff attorney referenced in the Director's letter. If you cannot accept the Order as written, the Agency would like to meet with you to discuss your concerns. Please contact the designated staff attorney at (614) 644-3037 to arrange a meeting.

If I want to have a meeting, what should I do to prepare for it?

Generally, the most productive meetings occur when both parties come prepared to discuss all issues. The Order and correspondence from the District Office or local air agency inspector contain the Agency's position. Since you were not willing to agree to the Order as written, we need to know whether you: (1) disagree with the facts outlined in the Order; (2) are not able or willing to comply with the Order; or (3) have information you feel may mitigate the civil penalty settlement amount. Send the staff attorney a written summary of your issues within two weeks from the date of the Director's letter. Additionally, if you believe you are financially unable to pay the penalty, contact the staff attorney for a list of information we need to evaluate your ability to pay.

What will happen at the meeting?

During the meeting, we will respond to any information you have provided. We are willing to work with you to arrive at mutually agreed upon modifications to the Order. Except in the most complex cases, our goal is to complete all negotiations at the meeting. If we cannot agree at the meeting and we feel we are making adequate progress, we will hold our offer of settlement open. Thereafter, if resolution of the negotiations is not achieved within the time frame agreed to by the parties at the settlement meeting or if we feel we are not making adequate progress, the offer of settlement may be withdrawn, and we may consider other enforcement alternatives, including a referral to the Office of the Attorney General.

Why do I have to pay a civil penalty?

A civil penalty is necessary to deter future violations and to remove any economic advantage you may have realized from not complying with Ohio's regulations. Instead of a full cash payment, the Agency may be willing to accept a supplemental environmentally beneficial project ("SEP"), that meets certain guidelines.

How did the DAPC arrive at the civil penalty settlement amount?

Ohio EPA relied on U.S. EPA's Air Civil Penalty Policy to calculate the penalty. The DAPC uses this Policy to ensure that we calculate penalties fairly and consistently and that the penalty is appropriate for the gravity of the violations. Enclosed is a summary of the DAPC's civil penalty settlement calculation. If you want a copy of the U.S. EPA's Air Civil Penalty Policy, contact the designated staff attorney at (614) 644-3037.

Who from Ohio EPA will be at the meeting?

Everyone necessary to resolve the matter will be at the meeting or available during the meeting to provide settlement authority. This includes the staff attorney, the District Office or local air agency inspector, and Central Office technical personnel.

Who should I bring to the meeting?

Similarly, you should bring anyone familiar with the issues as well as anyone who has the authority to settle this matter. You are welcome to be represented at this meeting by your attorney and your consultant.

News releases

Please be aware that Ohio EPA may issue a news release to the media to inform the community about the settlement of this case, after all parties have signed it. As a public agency whose primary mission is to promote compliance with environmental laws, we believe it is important to inform citizens about our enforcement efforts. Ohio EPA's news release represents our position, and so we do not negotiate the language in the news release with you. If we prepare a news release, you will receive a courtesy copy shortly before it is released to the media and posted on our web site. You can read all of our news releases at: <http://www.epa.state.oh.us/pic/current.html>.

District Office and Local Air Agency Addresses and Phone Numbers

See the following pages.

Local Air Pollution Control Agencies

Division of Air Pollution Control
Ohio EPA, Central Office
(614) 644-2270

www.epa.state.oh.us/dapc/general/dolaa.html



This map shows jurisdictional boundaries.
Shaded areas represent local agencies within Ohio EPA districts.



District Offices

CDO Adam Ward, APC Manager
01 Central District Office
50 West Town Street, Suite 700
Columbus, OH 43215
(614) 728-3778 FAX (614) 728-3898
e-mail: adam.ward@epa.state.oh.us

SEDO Bruce Weinberg, APC Manager
06 Southeast District Office
2195 Front St.
Logan, OH 43138
(740) 385-8501 FAX (740) 385-6490
e-mail: bruce.weinberg@epa.state.oh.us

NEDO Dennis Bush, APC Manager
02 Northeast District Office
2110 E. Aurora Rd.
Twinsburg, OH 44087
(330) 425-9171 FAX (330) 487-0769
e-mail: dennis.bush@epa.state.oh.us

NWDO Mark Budge, APC Manager
03 Northwest District Office
347 North Dunbridge Rd.
Bowling Green, OH 43402
(419) 352-8461 FAX (419) 352-8468
e-mail: mark.budge@epa.state.oh.us

SWDO Tom Schneider, APC Manager
05 Southwest District Office
401 E. Fifth St.
Dayton, OH 45402-2911
(937) 285-6357 FAX (937) 285-6249
e-mail: tom.schneider@epa.state.oh.us

16 **Lynn Malcolm, Administrator**
Akron Regional Air Quality
Management District
146 South High St, Room 904
Akron, Ohio 44308
(330) 375-2480 FAX (330) 375-2402
e-mail: lmalcolm@ci.akron.oh.us

13 **Richard L. Nemeth, Commissioner**
Cleveland Dept. of Public Health
Division of Air Quality
Penton Media Building, 4th Floor
1300 East 9th St.
Cleveland, Ohio 44114
(216) 664-2297 FAX (216) 420-8047
e-mail: Rnemeth@city.cleveland.oh.us

07 **Cindy Charles, Director**
Portsmouth Local Air Agency
605 Washington St., Third Floor
Portsmouth, Ohio 45662
(740) 353-5156 FAX (740) 353-3638
e-mail: cindy.charles@epa.state.oh.us

15 **Dan Aleman, Administrator**
Air Pollution Control Division
Canton City Health Dept.
420 Market Ave. North
Canton, Ohio 44702-1544
(330) 489-3385 FAX (330) 489-3335
e-mail: daaleman@cantonhealth.org

08 **John Paul, Administrator**
Regional Air Pollution Control Agency
Montgomery County Health Dept.
117 South Main St.
Dayton, Ohio 45422-1280
(937) 225-4435 FAX (937) 225-3486
e-mail: paulja@rapca.org

04 **Karen Granata, Administrator**
City of Toledo
Division of Environmental Services
348 South Erie Street
Toledo, Ohio 43604
(419) 936-3015 FAX (419) 936-3959
e-mail: karen.granata@toledo.oh.gov

14 **Cory R. Chadwick, Director**
Dept. of Environmental Services
Air Quality Programs
250 William Howard Taft Road
Cincinnati, Ohio 45219-2660
(513) 946-7777 FAX (513) 946-7778
e-mail: cory.chadwick@hamilton-co.org

20 **Bert Mechenbier, Supervisor ***
Lake County General Health District
Air Pollution Control
33 Mill Street
Painesville, Ohio 44077
(440) 350-2543 FAX (440) 350-2548
e-mail: BMechenbier@lghd.org

21 **Misty Koletich, Supervisor ***
Mahoning-Trumbull APC Agency
345 Oak Hill Ave., Suite 200
Youngstown, Ohio 44502
(330) 743-3333 FAX (330) 744-1928
e-mail: mtapca@cboss.com

*Facilities located within these jurisdictions should file air permit applications with Ohio EPA's Northeast District Office (NEDO).

BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

Quikrete-Cleveland	:	<u>Director's Final Findings</u>
2693 Lake Rockwell Road	:	<u>and Orders</u>
Ravenna, Ohio 44266	:	

PREAMBLE

It is agreed by the parties hereto as follows:

I. JURISDICTION

These Director's Final Findings and Orders ("Orders") are issued to Quikrete-Cleveland ("Respondent") pursuant to the authority vested in the Director of the Ohio Environmental Protection Agency ("Ohio EPA") under Ohio Revised Code ("ORC") §§ 3704.03 and 3745.01.

II. PARTIES BOUND

These Orders shall apply to and be binding upon Respondent and successors in interest liable under Ohio law. No change in ownership of the Respondent or of the facility (as hereinafter defined) shall in any way alter Respondent's obligations under these Orders.

III. DEFINITIONS

Unless otherwise stated, all terms used in these Orders shall have the same meaning as defined in ORC Chapter 3704 and the rules promulgated thereunder.

IV. FINDINGS

The Director of Ohio EPA makes the following findings:

1. Respondent operates a cement blending and packaging facility ("Facility") located at 2693 Lake Rockwell Road in Shalersville Township, Portage County, Ohio. The facility consists of cement packaging plant operations with emissions units that include a baghouse (emissions unit ("EU") P901), and roadways and parking areas (EU F001), that are subject to the terms and conditions of Permit to Install ("PTI") #16-1513 issued by Ohio EPA to Respondent on October 18, 1995.

2. Emissions units P901 and F001 are "air contaminant sources" as that term is defined in Ohio Administrative Code ("OAC") Rules 3745-15-01(C) and (W), 3745-31-01(I) and former 3745-35-01(B)(4) and emit "particulate matter" ("PM") and particulate matter with an aerodynamic diameter of 10 microns or less ("PM₁₀"), which are defined as "air pollutants" or "air contaminants" in OAC Rule 3745-15-01(C).

3. ORC § 3704.05(C) prohibits any person from violating any terms or conditions of any permit issued by the Director of Ohio EPA pursuant to ORC Chapter 3704. Any PTIs and permits to operate ("PTOs") issued by the Director of Ohio EPA were issued pursuant to ORC Chapter 3704.

4. ORC § 3704.05(G) prohibits any person from violating any order, rule or determination of the Director of Ohio EPA issued, adopted, or made under ORC Chapter 3704. Any OAC rule identified in these Orders was adopted by the Director of Ohio EPA pursuant to ORC Chapter 3704.

5. On July 5, 2005, Respondent was issued PTOs by Ohio EPA for each of emissions units P901 and F001, which expire on July 5, 2010.

6. PTI #16-1513 and the PTO for F001 required Respondent to limit visible particulate emissions from the paved roadways of emissions unit F001 to one minute during any 60-minute period. Also, the PTI requires the Respondent to treat paved roadways and parking areas by sweeping, water flushing, or other cleaning methods at sufficient frequencies to minimize or eliminate fugitive dust emissions and to ensure compliance with the visible particulate emission limitation. Compliance with such prohibition is to be determined using the test methods and procedures specified in 40 CFR Part 60, Appendix A, Method 22.

7. Between November 19, 2007 and July 29, 2008, the Akron Regional Air Quality Management District ("ARAQMD"), Ohio EPA's contractual representative in Portage County, conducted several Method 22 visible particulate emissions observations to determine whether the roadways at the facility were in compliance with PTI #16-1513. The visible particulate emission observations in violation of the visible particulate emission limit of one minute during any 60-minute period for the paved roadways of emissions unit F001 are summarized in the following table. The exceedances are in violation of PTI #16-1513, the PTO, and ORC § 3704.05(C):

Date	Observation Point Noted	Total Observation Time of VEs (in minutes:seconds)	Total Observation Time (in minutes:seconds)
November 19, 2007	South of EU P901	7:38	58:00
June 5, 2008	West of EU P901	20:00	38:00
July 29, 2008	Northwest of EU P901	10:20	15:00

8. PTI #16-1513 and the PTO for emissions unit P901 prohibit any visible emissions of fugitive dust from the building housing this emissions unit. Compliance with such prohibition is to be determined using the test methods and procedures specified in 40 CFR Part 60, Appendix A, Method 22.

9. On at least the following dates, visible emissions of fugitive dust were observed using Method 22 from the following areas or parts of the building housing emissions unit P901, in violation of PTI #16-1513, the PTO and ORC § 3704.05(C):

Date	Location of Visible Emissions
September 24, 2007	building
September 27, 2007	building
October 6, 2007	upper door of building
October 26, 2007	bucket elevator area
October 30, 2007	bucket elevator leaks
January 15, 2008	leaking pipe on cement packer
January 17, 2008	excessive dust from bottom of sand silo
January 18, 2008	dust emitted from fly ash bin vent
January 28, 2008	bucket elevator leaks
January 30, 2008	dust emitted from bin vent
March 12, 2008	dust leaking from screw
March 18, 2008	dust leaking from weld seam on pipe
March 27, 2008	dust leaking from hole in pod on system

March 28, 2008	material leaking from discharge chute at top of dryer elevator
April 23, 2008	top of elevator
May 16, 2008	bin vent for Portland cement leaking
June 3, 2008	sand leaking from pipe on bin vent level
June 5, 2008	sand leaking from pipe on bin vent level
June 19, 2008	sand leaking from pipe on bin vent level
July 15, 2008	bin vent for cement leaking
July 23, 2008	cement unloading pipe leaking
July 28, 2008	bin vent for cement leaking
July 29, 2008	building roof and elevator
August 14, 2008	cement unloading pipe leaking
August 26, 2008	outside diverter gate leaking
August 27, 2008	bin vent for cement leaking
August 28, 2008	interior baghouse unloading pipe leaking
September 4, 2008	top of elevator
September 10, 2008	bin vent for cement leaking
October 8, 2008	interior duct collection discharge pipe
October 30, 2008	sand leaking from pipe on bin vent level
November 6, 2008 through December 15, 2008	six occurrences of dust emissions from cleaning plant during construction

10. A Notice of Violation ("NOV") letter dated November 14, 2007, was sent to Respondent by ARAQMD requesting abatement of the violations concerning emissions unit P901. As a result, Respondent has repaired the broken baghouse, patched a hole, replaced the off-load pipe on bin vent level for emissions unit P901.

11. PTI # 16-1513, the PTO for emissions unit P901, and OAC Rule 3745-15-07 prohibit Respondent from causing a public nuisance by the emission of air contaminants from, in part, this emissions unit. OAC Rule 3745-15-07(A) specifies that the emission or escape into the open air from any source or sources of dust in such manner or in such amounts as to endanger the health, safety or welfare of the public, or

cause unreasonable injury or damage to property is deemed to be a public nuisance and is unlawful.

12. On at least the following dates, Respondent's emissions of fugitive dust from emissions unit P901 caused a public nuisance in the vicinity outside of Respondent's property and in the following manner that endangered the health, safety or welfare of the public, or caused unreasonable injury or damage to property, in violation of PTI #16-1513, the PTO, OAC Rule 3745-15-07(A), and ORC § 3704.05(C) and (G):

Date	Description of Endangerment or Unreasonable Injury or Damage
September 20, 2007	dust fallout resulting in citizen's sweeping of driveway
September 21, 2007	dust fallout-driveway covered in dust
September 23, 2007	dust fallout resulting in citizen's washing of truck and driveway
September 24, 2007	dust fallout resulting in citizen's truck washing
October 17, 2007	dust fallout
October 25, 2007	dust fallout-driveway covered in dust

13. PTI #16-1513 requires Respondent to submit quarterly reports for the facility for deviations from control measure requirements, emission limitations, control device operating parameter limitations, and operating restrictions, by April 30, July 31, October 31, and January 31 for the preceding calendar quarter.

14. Respondent failed to timely submit quarterly deviation reports for the following calendar quarters: 2nd, 3rd and 4th quarters of 2005; 1st, 2nd, 3rd and 4th quarters of 2006; and 1st, 2nd, 3rd and 4th quarters of 2007, and 1st quarter of 2008, in violation of PTI #16-1513 and ORC § 3704.05(C). A NOV letter was sent to Respondent by ARAQMD on November 14, 2007, which requested the submittal of the delinquent reports. The remaining delinquent reports were submitted on July 25, 2008.

15. The PTO for EU F001 requires Respondent to keep records of the daily inspections for determining the need to implement control measures for emissions unit F001.

16. The NOV letter dated November 3, 2006 requested the Respondent to submit all deviation reports of such daily inspections by no later than November 20, 2006. Respondent failed to provide such records, in violation of PTI #16-1513 and ORC § 3704.05(C). Another NOV letter was sent to Respondent by Ohio EPA on November 14, 2007, which requested the Respondent to correct the record-keeping and reporting violations at the facility. In a letter dated November 28, 2007, Respondent informed ARAQMD that an attached summary form would immediately be used for keeping records of daily inspections.

17. On March 3, 2009, ARAQMD received a letter dated February 15, 2009 from Respondent, which summarized the information on the daily inspections and record-keeping of visible emissions observed from EU F001 from January 2008 through December 2008. Based on the February 15, 2009 letter, the facility reported four deviations from the visible emissions limit for emissions unit F001 during this period.

18. On March 3, 2009, ARAQMD received another letter dated February 15, 2009 from Respondent, which summarized the annual reporting requirements related to monitoring and record-keeping for EU P901 from January 2008 through December 2008. Based on the February 15, 2009 letter, the facility reported thirty occurrences of visible emissions for EU P901 during this period as noted in Finding 9.

19. The Director has given consideration to, and based his determination on, evidence relating to the technical feasibility and economic reasonableness of complying with the following Orders and their relation to benefits to the people of the State to be derived from such compliance.

V. ORDERS

The Director hereby issues the following Orders:

1. Respondent shall pay the amount of eighty-five thousand and five hundred dollars (\$85,500) in settlement of Ohio EPA's claims for civil penalties, which may be assessed pursuant to ORC Chapter 3704. Within fourteen (14) days after the effective date of these Orders, payment to Ohio EPA shall be made by an official check made payable to "Treasurer, State of Ohio" for sixty-eight thousand and four hundred dollars (\$68,400). The official check shall be submitted to Brenda Case, or her successor, together with a letter identifying Respondent, to:

Ohio EPA
Office of Fiscal Administration
P.O. Box 1049
50 West Town Street
Suite 700
Columbus, Ohio 43216-1049

2. In lieu of paying the remaining seventeen thousand and one hundred dollars (\$17,100) of the civil penalty, Respondent shall, within fourteen (14) days of the effective date of these Orders, fund a Supplemental Environmental Project ("SEP") by making a contribution in the amount of \$17,100 to the Ohio EPA's Clean Diesel School Bus Program Fund (Fund 5CD0). Respondent shall tender an official check made payable to "Treasurer, State of Ohio" for \$17,100. The official check shall be submitted to Brenda Case, or her successor, together with a letter identifying the Respondent and Fund 5CD0, to the above-stated address.

3. A copy of each of the above checks shall be sent to James A. Orlemann, Assistant Chief, SIP Development and Enforcement, or his successor, at the following address:

Ohio EPA
Office of Fiscal Administration
P.O. Box 1049
50 West Town Street
Suite 700
Columbus, Ohio 43216-1049

4. Should Respondent fail to fund the SEP within the required time frame set forth in Order 2, Respondent shall immediately pay to Ohio EPA \$17,100 of the civil penalty in accordance with the procedures in Order 1.

5. Upon the effective date of these Orders, Respondent shall maintain emissions units P901, P902, F001 and F002 in compliance with the visible emission limitations and control requirements specified in PTI #16-1513.

VI. TERMINATION

Respondent's obligations under these Orders shall terminate when Respondent certifies in writing and demonstrates to the satisfaction of Ohio EPA that Respondent has performed all obligations under these Orders and the Chief of Ohio EPA's Division of Air Pollution Control acknowledges, in writing, the termination of these Orders. If Ohio EPA does not agree that all obligations have been performed, then Ohio EPA will notify

Respondent, in which case Respondent shall have an opportunity to address any such deficiencies and seek termination as described above.

The certification shall contain the following attestation: "I certify that the information contained in or accompanying this certification is true, accurate and complete."

This certification shall be submitted by Respondent to Ohio EPA and shall be signed by a responsible official of Respondent. For purposes of these Orders, a responsible official is a principal executive officer of at least the level of vice president, or his duly authorized representative, if such representative is responsible for the overall operation of the facility.

VII. OTHER CLAIMS

Nothing in these Orders shall constitute or be construed as a release from any claim, cause of action or demand in law or equity against any person, firm, partnership or corporation, not a party to these Orders, for any liability arising from, or related to, the operation of Respondent's facility.

VIII. OTHER APPLICABLE LAWS

All actions required to be taken pursuant to these Orders shall be undertaken in accordance with the requirements of all applicable local, state and federal laws and regulations. These Orders do not waive or compromise the applicability and enforcement of any other statutes or regulations applicable to Respondent.

IX. MODIFICATIONS

These Orders may be modified by agreement of the parties hereto. Modifications shall be in writing and shall be effective on the date entered in the journal of the Director of Ohio EPA.

X. NOTICE

All documents required to be submitted by Respondent pursuant to these Orders shall be addressed to:

Akron Regional Air Quality Management District
Citicenter-Suite 904
146 South High Street
Akron, Ohio 44308
Attn: Frank J. Markunas

and to:

Ohio Environmental Protection Agency
Lazarus Government Center
Division of Air Pollution Control
P.O. Box 1049
50 West Town Street
Suite 700
Columbus, Ohio 43216-1049
Attn: Thomas Kalman

or to such persons and addresses as may hereafter be otherwise specified in writing by Ohio EPA.

XI. RESERVATION OF RIGHTS

Ohio EPA and Respondent each reserve all rights, privileges and causes of action, except as specifically waived in Section XII of these Orders.

XII. WAIVER

In order to resolve disputed claims, without admission of fact, violation or liability, and in lieu of further enforcement action by Ohio EPA for only the violations specifically cited in these Orders, Respondent consents to the issuance of these Orders and agrees to comply with these Orders. Compliance with these Orders shall be a full accord and satisfaction for Respondent's liability for the violations specifically cited herein.

Respondent hereby waives the right to appeal the issuance, terms and conditions, and service of these Orders, and Respondent hereby waives any and all rights Respondent may have to seek administrative or judicial review of these Orders either in law or equity.

Notwithstanding the preceding, Ohio EPA and Respondent agree that if these Orders are appealed by any other party to the Environmental Review Appeals Commission, or any court, Respondent retains the right to intervene and participate in such appeal. In such an event, Respondent shall continue to comply with these Orders notwithstanding such appeal and intervention unless these Orders are stayed, vacated or modified.

XIII. EFFECTIVE DATE

The effective date of these Orders is the date these Orders are entered into the Ohio EPA Director's journal.

XIV. SIGNATORY AUTHORITY

Each undersigned representative of a party to these Orders certifies that he or she is fully authorized to enter into these Orders and to legally bind such party to these Orders.

IT IS SO ORDERED AND AGREED:

Ohio Environmental Protection Agency

Chris Korleski
Director

Date

IT IS SO AGREED:

Quikrete-Cleveland

Signature

Date

Printed or Typed Name

Title

AIR CIVIL PENALTY WORK SHEET
Quikrete-Cleveland
 (for settlement purposes only)

A. Benefit Component:		\$0	No significant economic benefit gained as a result of these violations.
B. Gravity Component:			
1. Actual or possible harm:			
a. Amount above standard:	\$5,000		The amount above standard for the exceedances of the visible particulate emission limitation for emissions unit F001 cannot be quantified in terms of mass emissions. Therefore, the minimum penalty has been used.
b. Toxicity:	\$0		N/A
c. Sensitivity of the environment	\$5,000		Attainment area for particulate matter.
d. Length of violation:			
i.	\$5,000		Length of time of violation for noncompliance with VE limitation for paved roads (11/19/07, 6/5/08 and 7/29/08; 3 days).
ii.	\$25,000		Length of time of violation for failure to timely submit quarterly deviation reports (6/14/06* to 7/25/08; 24 months).
iii.	\$5,000		Length of time violation for failure to comply with the no VE requirement for the building housing emissions unit P901 (from 9/24/07 to 12/15/08; 37 days or about one month).
2. Importance to the regulatory scheme:			
a. Testing violation:	\$5,000		Failure to perform timely testing of emissions unit F001.
b. Emissions control equipment violation:	\$15,000		Failure to comply with the no VE limitation for the building housing emissions unit P901.
c. Violation of an administrative order:	\$0		N/A
d. Permitting violations:	\$0		N/A

e. Reporting violations:	\$5,000		Failure to timely submit quarterly deviation reports.
f. Record-keeping violations	\$15,000		Failure to maintain for inspection records of daily inspections of emissions unit F001.
g. Compliance certification violations	\$0		N/A
h. Title V compliance schedule violations:	\$0		N/A
3. Size of violator:	\$10,000		Quikrete's net worth is estimated to be equal to 20% of annual sales. Annual sales, per Reference USA, are between \$10 and \$20 million for year 2007. Therefore, net worth is between \$2,000,000 and \$4,000,000.
Total Gravity Component:		\$95,000	
Preliminary Deterrence Amount: (sum of benefit and gravity components)		\$95,000	
C. Adjustment Factors:			
1. Degree of cooperation: (total gravity component times any mitigation percentage)	(\$9,500)		The facility has upgraded emissions units P901 and P902 to minimize the visible emissions from the units (mitigate 10%).
2. Degree of willfulness or negligence: (total gravity component times any augmentation percentage)	\$0		N/A
3. History of noncompliance: (total gravity component times any augmentation percentage)	\$0		N/A
4. Ability to pay: (any mitigation amount)	\$0		N/A
5. Other unique factors: (total gravity component times any mitigation or augmentation percentage)	\$0		N/A

Sum of Flexibility Adjustment Factors:		(\$9,500)	
D. Total Gravity Component:		\$85,500	
E. Administrative Component:	\$0		N/A
Total Administrative Component:		\$0	
F. Initial Settlement Amount:		\$85,500	

* Beginning date under Ohio EPA's statute of limitations policy.



State of Ohio Environmental Protection Agency

STREET ADDRESS:

Lazarus Government Center
50 W. Town St., Suite 700
Columbus, Ohio 43215

TELE: (614) 644-3020 FAX: (614) 644-3184
www.epa.state.oh.us

MAILING ADDRESS:

P.O. Box 1049
Columbus, OH 43216-1049

AUG 20 2009

CERTIFIED MAIL

Mr. John Hirschfeld
Vice President
Quality Ready Mix, Inc.
16672 Country Road 66 A North
St. Marys, Ohio 45885

Re: Air pollution control rule, permit and law violations at Quality Ready Mix located at 1670 North McCullough Street, Lima, Ohio

Dear Mr. Hirschfeld:

My staff has informed me of the violations of Ohio Administrative Code ("OAC") Rule 3745-17-08, the terms and conditions of Permit to Install ("PTI") #03-6000, and ORC § 3704.05(C) and (G) due to excessive dust emissions caused by the failure to meet emissions limitations for control equipment and to regularly maintain the fabric filters using good engineering practices, associated with Quality Ready Mix's former facility located at 1670 North McCullough Street, Lima Ohio. I understand that Quality Ready Mix, Inc. has since ceased operations at this location.

In order to resolve this matter, I am proposing to issue the enclosed Findings and Orders prepared by my staff, which includes a provision for the settlement of the claims for civil penalties for the violations that occurred. I am proposing the use of Findings and Orders because this is the most expeditious means of resolving the violations. Because this letter and the attached documents summarize a proposed settlement, I consider them inadmissible for any purpose in any enforcement action the State may take if settlement cannot be reached.

Please note that the proposed Findings and Orders include voluntary provisions for a portion of the total civil penalty amount to go toward the funding of two supplemental environmentally beneficial projects. The first project involves diverting 20 percent of the total civil penalty amount to go toward funding an Ohio EPA program for the retrofitting of school buses with control equipment to reduce diesel particulate emissions. This project has the primary benefits of reducing children's exposure to harmful diesel exhaust emissions and helping attain the National Ambient Air Quality Standards for fine particulates (i.e., particulates less than 2.5 microns in diameter). Information concerning the diesel school bus project is provided in an enclosed document. The second project involves diverting a portion of the total civil penalty amount toward performing a pollution prevention study of the facility to assess the feasibility of specific source emission reduction

Ted Strickland, Governor
Lee Fisher, Lieutenant Governor
Chris Korleski, Director

Mr. John Hirschfeld
Quality Ready Mix, Inc.
Page 2 of 2

and environmentally sound recycling projects. The pollution prevention studies can lead not only to the reduction of pollution at its source, but also to substantial cost-savings for the facility. Such provisions are being included in Findings and Orders used to resolve violations of Ohio's air pollution control regulations, although for some smaller facilities the pollution prevention studies are not included in the Findings and Orders.

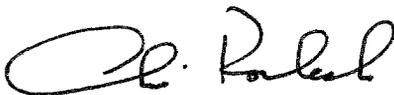
A copy of the Manual referenced in the proposed Findings and Orders concerning the pollution prevention study may be obtained by calling Ohio EPA's Office of Compliance Assurance and Pollution Prevention ("OCAPP") at 614/644-3469. Also, the Manual is available electronically from the OCAPP's website at www.epa.state.oh.us/opp/guide/p2pbgn.html.

Please review the attached documents carefully. If you have any questions concerning the proposed Findings and Orders, or if you would like to arrange a meeting to try to negotiate a settlement, please contact Bryan Zima, Ohio EPA Attorney, at (614) 644-3037. If he does not hear from Quality Ready Mix, Inc. within fourteen (14) days of the receipt of this letter concerning its willingness to accept the Findings and Orders as currently written, or with mutually agreed upon modifications, I will consider alternative enforcement mechanisms including referral of the violations to the Ohio Attorney General's Office for legal action.

Enclosed is a copy of guidance on the administrative enforcement process, which you may find helpful in answering any questions on Ohio EPA's enforcement process.

I hope that Quality Ready Mix, Inc. and Ohio EPA are able to resolve this matter via the enclosed proposal, and I thank you in advance for your cooperation.

Sincerely,



Chris Korleski
Director

xc: Jim Orlemann, DAPC
Tom Kalman, DAPC
Patty Porter, DAPC
Bryan Zima, Legal Office
Jeffrey Skebba/Don Waltermeyer/NWDO

Enclosures

CK

General Guidelines for Ohio EPA's Program for the Retrofitting of School Buses with Control Equipment to Reduce Diesel Particulate Emissions

The following questions and answers explain the Ohio EPA's program for the retrofitting of school buses with emission control equipment and provide the general guidelines that must be followed by any school system that participates in the program.

1. Why is there a need to reduce diesel particulate emissions from school buses?

The exhaust gases from diesel, school bus engines contain significant amounts of organic compounds, carbon monoxide, nitrogen oxides (NOx) and fine particulates. If inhaled, the fine particulates are so small that they are able to penetrate deep into the lungs and pose serious health risks such as aggravated asthma and lung damage. In addition, USEPA has identified diesel exhaust as a likely human carcinogen. These fine particulate emissions contribute to the poor ambient air quality in 27 counties in Ohio, which currently are not meeting the national health-based ambient air quality standards for fine particulates (i.e., PM 2.5, particles less than 2.5 microns in diameter). Reducing the particulate emissions from diesel school bus engines will have two primary benefits:

- a. For the children who ride buses, it will reduce their exposure to the harmful diesel exhaust emissions. Children are more susceptible to air pollution than healthy adults because their respiratory systems are still developing and they have a faster breathing rate.
- b. It will help in attaining the National Ambient Air Quality Standards for PM 2.5 in Ohio's nonattainment counties.

2. What retrofit options are available to reduce particulate emissions from school buses?

There are three primary ways to retrofit a school bus for particulate emission control:

- a. **Diesel particulate filters** are ceramic devices that collect particulate matter in the exhaust stream. The high temperature of the exhaust heats the ceramic structure and allows the particles inside to break down into less harmful components. These filters must be used in conjunction with ultra-low sulfur diesel ("ULSD") fuel, which is a fuel with a sulfur content of less than 15 parts per million. The combination of particulate filters and ULSD fuel can reduce emissions of particulates, organic compounds, and carbon monoxide in the exhaust gases by 60 to 90 percent. Particulate filters work best on engines built after 1994 and cost \$6,500 to \$7,500.

- b. **Crankcase filtration systems** allow a diesel engine's crankcase to be closed and use an air filter to trap blow-by aerosols consisting mainly of oil droplets, with some carbon and traces of wear debris and PM10. Blow-by gas emissions can be as much as 25% of the total emissions from a diesel engine. The filtration efficiency of crankcase filters averages between 80% and 97%. The crankcase filter must be changed at every lube oil change (as recommended by the diesel engine manufacturer) or every 500 hours of operation, whichever comes first. Crankcase filters are inexpensive (a replacement element typically costs less than \$50.00) and are best used in conjunction with some type of filtration system in the exhaust stream.
- c. **Diesel oxidation catalysts** are devices that use a chemical process to break down pollutants in the exhaust stream into less harmful components. Diesel oxidation catalysts can reduce emissions of particulates by 20 percent, hydrocarbons by 50 percent, and carbon monoxide by 40 percent. Oxidation catalysts cost \$600 to \$2,000 and can be used with regular diesel fuel.

Only control equipment found on USEPA's "Verified Technology List" may be purchased and installed (see (4) below for further details).

3. Which types of school buses will be eligible to be retrofitted with particulate emission controls?

Only school buses that meet the following criteria will be retrofitted with particulate emission controls:

- a. The school bus must be equipped with a diesel engine.
- b. The school bus must have a gross vehicle rating of 19,500 pounds or more (Types C & D).
- c. The school bus must be driven not less than 5,000 miles per year.
- d. The school bus model year must be 1994 or newer.

4. Which types of control equipment would be acceptable for installation?

The USEPA publishes a "Verified Technology List." Only control equipment found on this list may be purchased and installed. As additional technologies are found to be acceptable by the USEPA, they will be added to the list. A copy of this list can be accessed at the following web site:

<http://www.epa.gov/otaq/retrofit/retroverifiedlist.htm>.

This table summarizes all the diesel retrofit technologies that the USEPA has approved for use in engine retrofit programs. The table shows the percent reduction (from verified or tested levels) that USEPA will recognize for emission reductions for each technology.

5. Is there a special type of fuel that must be used with the control equipment?

In some cases, yes. Each bus equipped with a particulate filter must use ultra low sulfur diesel (ULSD) fuel. Because of the high sulfur content of regular diesel fuel, the use of regular diesel fuel would cause the particulate filter to clog. This, in turn, could cause exhaust back-pressure increases and engine damage. The ULSD fuel contains less than 10% of the sulfur content of regular diesel fuel. Regular diesel fuel may contain 150 to 500 ppm of sulfur, compared to the maximum of 15 ppm for the ULSD fuel. As a result of recent changes in the U.S. federal fuel standards, ULSD fuel will become the standard diesel fuel throughout the U.S. beginning in June of 2006. Many parts of the country, including certain parts of Ohio, are already being supplied with ULSD fuel. The price differential between ULSD fuel and regular diesel fuel currently ranges between eight and 25 cents per gallon. In 2006, when ULSD fuel is available nationwide, the cost differential should be much less.

Diesel oxidation catalysts and crankcase filtration systems do not require special fuel.

6. What costs are associated with the installation and operation of the emission controls?

The estimated cost to retrofit each bus with a diesel particulate filter ranges from \$6,500 to \$7,500. On an annual basis, or about every 100,000 miles, these filters must be disassembled and cleaned either with compressed air or by heating the filter in a filter cleaning device. (The cost of such a device ranges from \$300 to \$350.) The cost for the annual maintenance for each filter, which normally takes less than 3 hours to complete, will depend upon whether the work is performed by school district personnel, the engine dealer, or the filter vendor. Also, until ULSD fuel becomes available nationwide in June of 2006, there will be an increased cost for the diesel fuel burned in each retrofitted bus. The current price differential between ULSD fuel and regular diesel fuel varies between 8 and 25 cents per gallon.

Crankcase filters are fairly inexpensive (a replacement element typically costs less than \$50.00). Crankcase filters must be changed at every lube oil change (as recommended by the diesel engine manufacturer) or every 500 hours of operation, whichever comes first.

The estimated cost to retrofit each bus with a diesel oxidation catalyst ranges from \$600 to \$2,000. Installation takes approximately one to three hours to complete. Diesel oxidation catalysts do not require annual maintenance and will operate with regular diesel fuel.

7. How will the control devices be funded by the Ohio EPA?

Ohio EPA enforcement case settlements will be the source of the funding for the diesel retrofit installations. Each enforcement case resolved either through administrative Findings and Orders or a Consent Order, that contains a significant civil penalty (a total civil penalty assessment of \$5,000 or greater), will also include a Supplemental Environmental Project (SEP) that is equal in value to 20 percent of the total assessed civil penalty. The entity that is the subject of the enforcement case will be required to pay the SEP monies directly to a specific fund that Ohio EPA has established for the retrofitting of school buses.

8. How will the school systems receive the SEP monies for the diesel retrofit installations?

A school system that desires to participate in the retrofit program must apply to Ohio EPA to receive funding to purchase and install USEPA approved control equipment. Once or twice per year, the Ohio EPA will solicit applications from the eligible school systems. In the application, an eligible school system must describe the proposed project, providing details such as the number and ages of the buses to be retrofitted, the type of equipment that will be purchased and installed (must be on the USEPA-published list of "Verified Retrofit Technologies"), a schedule for installation of the equipment, and a detailed cost breakdown. Ohio EPA will evaluate each application and provide funding to applicant school systems that meet the criteria specified by Ohio EPA's regulations. Priority will be given to those applicants that are located in a nonattainment county for PM 2.5 and/or that include a commitment to implement an anti-idling program.

9. What oversight will be provided by the Ohio EPA to ensure that the diesel retrofit control equipment is installed and maintained properly?

Ohio EPA will closely track the amount of enforcement monies directed to each public school system. Each participating school system must submit regular progress reports providing information regarding the equipment purchased and installed to date, as well as a final report summarizing the project results. Periodic inspections also may be conducted by District Office or local air agency staff to confirm that the control equipment has been correctly installed, that the diesel particulate filters are being maintained properly, and that the monies are being spent appropriately.

A guide to the...

Administrative Enforcement Process

Within the Division of Air Pollution Control

Introduction

This information sheet has been prepared to help you understand the administrative enforcement process within the Agency. With an understanding of the process and adequate preparation, you can facilitate a prompt resolution of this enforcement action. Included are answers to the questions most frequently asked by parties involved in the administrative enforcement process.

I have been working with the District Office or local air agency inspector to correct the violations. Why is an enforcement action necessary?

The Agency considers the following factors in deciding that an enforcement action is necessary: (1) Ohio EPA needs to obtain civil penalties for your violations; (2) your violations are serious; (3) you have taken too long to address the violations; (4) you need to be on a formal schedule to address the violations; (5) you have been recalcitrant in addressing the violations; and/or (6) you are a chronic violator.

Why should I try to negotiate an administrative consent order with Ohio EPA?

- Negotiating administrative findings and orders ("Order") with the Ohio EPA avoids expensive and time-consuming litigation.
- Negotiation can be a swift resolution of the State's claims against you for the non-compliance.
- We can quickly identify any obstacle to agreement.
- Negotiation can minimize or prevent any intervention by the USEPA to address the violations.

Should I continue working with the District or local air agency inspector?

Yes, the District Office or local air agency inspector is the best person to work with you to resolve the technical aspects of the violations, and prepare an acceptable control plan and schedule for submission to the Agency. Central Office personnel will also be available to provide assistance.

What should I do now that I received the proposed administrative consent order?

You should review the enclosed Order and the summary of the penalty calculation. If you accept the enclosed Order as written, sign the Order and send it within two weeks to the staff attorney referenced in the Director's letter. If you cannot accept the Order as written, the Agency would like to meet with you to discuss your concerns. Please contact the designated staff attorney at (614) 644-3037 to arrange a meeting.

If I want to have a meeting, what should I do to prepare for it?

Generally, the most productive meetings occur when both parties come prepared to discuss all issues. The Order and correspondence from the District Office or local air agency inspector contain the Agency's position. Since you were not willing to agree to the Order as written, we need to know whether you: (1) disagree with the facts outlined in the Order; (2) are not able or willing to comply with the Order; or (3) have information you feel may mitigate the civil penalty settlement amount. Send the staff attorney a written summary of your issues within two weeks from the date of the Director's letter. Additionally, if you believe you are financially unable to pay the penalty, contact the staff attorney for a list of information we need to evaluate your ability to pay.

What will happen at the meeting?

During the meeting, we will respond to any information you have provided. We are willing to work with you to arrive at mutually agreed upon modifications to the Order. Except in the most complex cases, our goal is to complete all negotiations at the meeting. If we cannot agree at the meeting and we feel we are making adequate progress, we will hold our offer of settlement open. Thereafter, if resolution of the negotiations is not achieved within the time frame agreed to by the parties at the settlement meeting or if we feel we are not making adequate progress, the offer of settlement may be withdrawn, and we may consider other enforcement alternatives, including a referral to the Office of the Attorney General.

Why do I have to pay a civil penalty?

A civil penalty is necessary to deter future violations and to remove any economic advantage you may have realized from not complying with Ohio's regulations. Instead of a full cash payment, the Agency may be willing to accept a supplemental environmentally beneficial project ("SEP"), that meets certain guidelines.

How did the DAPC arrive at the civil penalty settlement amount?

Ohio EPA relied on U.S. EPA's Air Civil Penalty Policy to calculate the penalty. The DAPC uses this Policy to ensure that we calculate penalties fairly and consistently and that the penalty is appropriate for the gravity of the violations. Enclosed is a summary of the DAPC's civil penalty settlement calculation. If you want a copy of the U.S. EPA's Air Civil Penalty Policy, contact the designated staff attorney at (614) 644-3037.

Who from Ohio EPA will be at the meeting?

Everyone necessary to resolve the matter will be at the meeting or available during the meeting to provide settlement authority. This includes the staff attorney, the District Office or local air agency inspector, and Central Office technical personnel.

Who should I bring to the meeting?

Similarly, you should bring anyone familiar with the issues as well as anyone who has the authority to settle this matter. You are welcome to be represented at this meeting by your attorney and your consultant.

News releases

Please be aware that Ohio EPA may issue a news release to the media to inform the community about the settlement of this case, after all parties have signed it. As a public agency whose primary mission is to promote compliance with environmental laws, we believe it is important to inform citizens about our enforcement efforts. Ohio EPA's news release represents our position, and so we do not negotiate the language in the news release with you. If we prepare a news release, you will receive a courtesy copy shortly before it is released to the media and posted on our web site. You can read all of our news releases at: <http://www.epa.state.oh.us/pic/current.html>.

District Office and Local Air Agency Addresses and Phone Numbers

See the following pages.

Air Permit Review Agencies

Division of Air Pollution Control
Ohio EPA, Central Office
(614) 644-2270
www.epa.state.oh.us/dapc/general/dolaa.html



This map shows jurisdictional boundaries.
Shaded areas represent local agencies within Ohio EPA districts.



District Offices

CDO Adam Ward, APC Manager
01 Central District Office
50 West Town Street, Suite 700
Columbus, OH 43215
(614) 728-3778 FAX (614) 728-3898
e-mail: adam.ward@epa.state.oh.us

SEDO Bruce Weinberg, APC Manager
06 Southeast District Office
2195 Front St.
Logan, OH 43138
(740) 385-8501 FAX (740) 385-6490
e-mail: bruce.weinberg@epa.state.oh.us

NEDO Dennis Bush, APC Manager
02 Northeast District Office
2110 E. Aurora Rd.
Twinsburg, OH 44087
(330) 425-9171 FAX (330) 487-0769
e-mail: dennis.bush@epa.state.oh.us

NWDO Mark Budge, APC Manager
03 Northwest District Office
347 North Dunbridge Rd.
Bowling Green, OH 43402
(419) 352-8461 FAX (419) 352-8468
e-mail: mark.budge@epa.state.oh.us

SWDO Tom Schneider, APC Manager
05 Southwest District Office
401 E. Fifth St.
Dayton, OH 45402-2911
(937) 285-6357 FAX (937) 285-6249
e-mail: tom.schneider@epa.state.oh.us

 **Lynn Malcolm, Administrator**
Akron Regional Air Quality
Management District
146 South High St, Room 904
Akron, Ohio 44308
(330) 375-2480 FAX (330) 375-2402
e-mail: Malcoly@ci.akron.oh.us

 **Richard L. Nemeth, Commissioner**
Cleveland Dept. of Public Health
Division of Air Quality
Penton Media Building, 4th Floor
1300 East 9th St.
Cleveland, Ohio 44114
(216) 664-2297 FAX (216) 420-8047
e-mail: Rnemeth@city.cleveland.oh.us

 **Cindy Charles, Director**
Portsmouth Local Air Agency
605 Washington St., Third Floor
Portsmouth, Ohio 45662
(740) 353-5156 FAX (740) 353-3638
e-mail: cindy.charles@epa.state.oh.us

 **Dan Aleman, Administrator**
Air Pollution Control Division
Canton City Health Dept.
420 Market Ave. North
Canton, Ohio 44702-1544
(330) 489-3385 FAX (330) 489-3335
e-mail: daleman@cantonhealth.org

 **John Paul, Administrator**
Regional Air Pollution Control Agency
Montgomery County Health Dept.
117 South Main St.
Dayton, Ohio 45422-1280
(937) 225-4435 FAX (937) 225-3486
e-mail: paulja@rapca.org

 **Karen Granata, Administrator**
City of Toledo
Division of Environmental Services
348 South Erie Street
Toledo, Ohio 43604
(419) 936-3015 FAX (419) 936-3959
e-mail: karen.granata@toledo.oh.gov

 **Cory R. Chadwick, Director**
Dept. of Environmental Services
Air Quality Programs
250 William Howard Taft Road
Cincinnati, Ohio 45219-2660
(513) 946-7777 FAX (513) 946-7778
e-mail: cory.chadwick@hamilton-co.org

BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

Quality Ready Mix, Inc.	:	<u>Director's Final Findings</u>
16672 County Road 66 A North	:	<u>and Orders</u>
St. Marys, Ohio 45885	:	

PREAMBLE

It is agreed by the parties hereto as follows:

I. JURISDICTION

These Director's Final Findings and Orders ("Orders") are issued to Quality Ready Mix, Inc. ("Respondent") pursuant to the authority vested in the Director of Ohio Environmental Protection Agency ("Ohio EPA") under Ohio Revised Code ("ORC") §§ 3704.03 and 3745.01.

II. PARTIES BOUND

These Orders shall apply to and be binding upon Respondent and successors in interest liable under Ohio law. No change in ownership of the Respondent or of the facility (as hereinafter defined) shall in any way alter Respondent's obligations under these Orders.

III. DEFINITIONS

Unless otherwise stated, all terms used in these Orders shall have the same meaning as defined in ORC Chapter 3704 and the rules promulgated thereunder.

IV. FINDINGS OF FACT

The Director of Ohio EPA makes the following findings of fact:

1. Until on or about December 3, 2008, Respondent owned and operated a concrete batch plant ("facility") located at 1670 North McCullough Street in Lima, Allen County, Ohio. At this facility, Respondent mixed cement and other raw materials to produce concrete that was used by various customers for the construction of sidewalks, driveways, curbs and poured walls. The cement was delivered to the facility by trucks where it was pneumatically unloaded into a cement silo equipped with a fabric filter. The facility also employed a weigh hopper that was used to measure and store cement and other raw materials prior to the materials being mixed to form concrete. The weigh hopper was controlled by a separate fabric filter.

2. The weigh hopper and cement silo are defined as emission units F004 and F003, respectively, emit "particulate emissions" as defined in Ohio Administrative Code ("OAC") Rule 3745-17-01(B)(11), and each is an "air contaminant source" as defined in OAC Rule 3745-31-01(I).

3. OAC Rule 3745-31-05(D) states, in part, that the Director of Ohio EPA may impose special terms and conditions in a PTI as are appropriate or necessary to ensure compliance with applicable laws and to ensure adequate protection of the environment.

4. ORC § 3704.05(G) states that no person shall violate any order, rule, or determination of the Director of Ohio EPA issued, adopted, or made under ORC Chapter 3704.

5. ORC § 3704.05(C) prohibits any person from violating any terms or conditions of a permit issued by the Director of Ohio EPA pursuant to ORC Chapter 3704.

6. OAC Rule 3745-17-08(B) states, in part, that no person shall cause or permit any fugitive dust source to be operated or constructed, without taking or installing reasonably available control measures ("RACM") to prevent fugitive dust from becoming airborne, if the fugitive dust source is located within the areas identified in "Appendix A" of this rule and is not otherwise exempted from the requirements by this rule. The City of Lima in Allen County is listed in Appendix A; therefore, Respondent is required to employ RACM for fugitive dust sources at the facility. OAC Rule 3745-17-08(B)(3)(b) states, in part, that RACM shall include the installation and use of equipment to adequately control the fugitive dust. Such control equipment is required, in part, to achieve an outlet particulate emission concentration of not greater than 0.030 grain per dry standard cubic foot ("gr/dscf") of exhaust gases or there are no visible particulate emissions ("VEs") from the exhaust stack(s), whichever is less stringent.

7. OAC Rule 3745-17-01(B)(18) defines RACM as control technology which enables a particular fugitive dust source to achieve the lowest particulate matter emission level possible and which is reasonably available considering technological feasibility and cost-effectiveness.

8. In accordance with ORC Rules 3745-17-08 and 3745-31-05(D), Respondent was issued, on October 30, 1991, PTI # 03-6000. The PTI required the installation and use of dust collectors (i.e., fabric filters) for the control of fugitive dust emissions generated by the cement silo and the weigh hopper to satisfy the requirement to install and employ RACM. Additionally, the PTI contains a general provision requiring air pollution control systems to be maintained regularly in accordance with good engineering practices in order to minimize air contaminant emissions.

9. On at least the dates identified in the following table, Respondent failed to employ control equipment on the cement silo during pneumatic truck unloading, which achieved an outlet particulate emission concentration of not greater 0.030 gr/dscf of exhaust gases or no visible emissions from the exhaust stack, whichever is less stringent, in violation of PTI # 03-6000, OAC Rule 3745-17-08(B), and ORC § 3704.05(C) and (G). On the dates in the following table and during cement silo loading by pneumatic equipment, the fabric filter discharge on the silo had grain loadings that exceeded particulate emissions of 0.030 gr/dscf and had VEs:

Date VEs were observed	Estimated grains/acfm*	Date VEs were observed	Estimated grains/acfm*
3/7/2007	15.460	3/29/2007	24.736
3/7/2007	15.653	3/29/2007	17.199
3/14/2007	17.154	3/30/2007	19.117
3/15/2007	17.128	4/2/2007	14.957
3/23/2007	15.419	4/5/2007	19.425
3/23/2007	17.263	4/6/2007	29.148
3/26/2007	14.349	4/10/2007	8.657
3/29/2007	9.544	4/10/2007	21.764

* Based on the amount and time of unloading on the given day and the USEPA AP-42 uncontrolled emission factor. It is assumed that acfm essentially equals dscfm in the dry environment of the pneumatic loading system.

Respondent corrected the violations identified above on December 3, 2008, when Respondent stopped production at the facility.

10. On at least the dates identified in the following table, Respondent failed to regularly maintain the following air pollution control systems in accordance with good engineering practices in order to minimize air contaminant emissions, in violation of PTI # 03-6000 and ORC § 3704.05(C):

Date	Air pollution control system	Description of violation
August 25, 2006 through September 13, 2006	cement silo fabric filter and weigh hopper fabric filter	Several bags in the fabric filters were torn and completely clogged without replacement bags being readily available at the facility.

Respondent corrected the violations identified above on September 13, 2006, when Respondent replaced and unplugged the bags in the weigh hopper and cement silo's fabric filters.

11. On January 10, 2007, a notice of violation ("NOV") letter was issued to Respondent for the violations identified in Finding 10.

12. On December 3, 2008, Respondent informed Ohio EPA that the facility was stopping production and that the operations would be relocated to another site. On December 11, 2008, NWDO visited the facility and observed that the cement silo was loaded onto a flat bed trailer for removal.

13. The Director has given consideration to, and based his determination on, evidence relating to the technical feasibility and economic reasonableness of complying with the following Orders and their relation to benefits to the people of the State to be derived from such compliance.

V. ORDERS

The Director hereby issues the following Orders:

1. Respondent shall pay the amount of twenty-eight thousand eight hundred dollars (\$28,800) in settlement of Ohio EPA's claims for civil penalties, which may be assessed pursuant to ORC Chapter 3704. Within fourteen (14) days after the effective date of these Orders, payment to Ohio EPA shall be made by an official check made payable to "Treasurer, State of Ohio" for eighteen thousand and forty dollars (\$18,040). The official check shall be submitted to Brenda Case, or her successor, together with a letter identifying Respondent, to:

Ohio EPA
Office of Fiscal Administration
P.O. Box 1049
Columbus, Ohio 43216-0149

A copy of the check shall be sent to James A. Orlemann, Assistant Chief, SIP Development and Enforcement, or his successor, at the following address:

Ohio EPA
Division of Air Pollution Control
Lazarus Government Center
P.O. Box 1049
Columbus, Ohio 43216-1049

2. In lieu of payment to Ohio EPA of the remaining ten thousand seven hundred and sixty dollars (\$10,760) of the total penalty amount, Respondent shall fund the supplemental environmentally beneficial projects identified in Orders 3 and 4. Of the \$10,760, \$5,000 shall be used to fund the project in Order 3 and \$5,760 shall be used to fund the project in Order 4. In the event Respondent defaults or otherwise fails to complete any of the projects as specified in Orders 3 and 4, the \$5,000 for the project in Order 3 and/or the \$5,760 for the project in Order 4, whichever is applicable, shall immediately become due and payable to Ohio EPA. Such payment shall be made by an official check made payable to "Treasurer, State of Ohio" and sent to Brenda Case at the above-stated address. A copy of the check shall be sent to James A. Orlemann, or his successor, at the above-stated address.

3. As outlined below, and with reference to the chapters described in Ohio EPA's 1993 "Ohio Pollution Prevention and Waste Minimization Planning Guidance Manual" (the Manual), Respondent shall conduct a pollution prevention study ("P2 Study") at one or more of the concrete batching facilities it operates in the State of Ohio. The P2 Study is an assessment of selected facility processes to identify and evaluate specific source reduction and environmentally sound recycling opportunities.

- a. Within ninety (90) days after the effective date of these Orders, Respondent shall submit a detailed narrative report to Ohio EPA for review and approval containing the following:
 - i. a list of the members of a cross-functional team for the P2 Study, including the name of a designated team leader;
 - ii. an identification of the processes selected for study and the methods used to select the processes; and
 - iii. a description of the processes being studied, including types and quantities of raw materials used, waste generated (i.e., air emissions, hazardous waste, solid waste, wastewater), and the intermediate or final products.

The above items shall be completed following the guidance provided in Chapters 8 and 9 of the Manual.

- b. Within one hundred eighty (180) days after the effective date of these Orders, Respondent shall submit a detailed narrative report to Ohio EPA for review and approval containing the following:
 - i. an analysis of the process-related factors contributing to waste generation;

- ii. a description of the specific pollution prevention opportunities identified; and
- iii. a discussion of the approach used in screening and prioritizing pollution prevention opportunities for future implementation.

The above items shall be completed following the guidance provided in Chapters 11 and 12 of the Manual.

- c. Within two hundred seventy (270) days after the effective date of these Orders, Respondent shall submit a detailed narrative final report to Ohio EPA for review and approval containing the following:
 - i. an evaluation of the cost considerations and feasibility analysis of the identified pollution prevention opportunities;
 - ii. a discussion of those projects that have been eliminated as well as those that have been implemented, planned for implementation, or under consideration for possible implementation; and
 - iii. a description of the other items bulleted in Table 7 of Chapter 15 of the Manual.

The above items shall be completed following the guidance provided in Chapters 13, 14 and 15 of the Manual.

- d. Within three hundred and thirty (330) days after the effective date of these Orders, Respondent shall submit an approvable detailed narrative final report to Ohio EPA, unless the report submitted to Ohio EPA pursuant to the above paragraph c is approved by Ohio EPA.

Ohio EPA shall provide Respondent with its comments and an indication of approval or disapproval of the reports submitted pursuant to this Order in a timely manner.

4. In lieu of paying the remaining five thousand seven hundred sixty dollars (\$5,760) of the civil penalty, Respondent shall, within fourteen (14) days of the effective date of these Orders, fund a Supplemental Environmental Project ("SEP") by making a contribution in the amount of \$5,760 to the Ohio EPA's Clean Diesel School Bus Program Fund (Fund 5CD0). Respondent shall tender an official check made payable to "Treasurer, State of Ohio" for \$5,760. The official check shall be submitted to Brenda Case, or her successor, together with a letter identifying the Respondent and Fund 5CD0, to the above-stated address. A copy of this check also shall be sent to James A. Orlemann, or his

successor, at the above-stated address.

5. Within thirty (30) days of the completion and approval by Ohio EPA of the project identified in Order 3, Respondent shall submit documentation to Ohio EPA of the total cost of the P2 Study. If the total cost of the P2 Study is less than \$5,000, Respondent shall submit along with the final report identified in Order 3 and in the manner described in Order 2, an official check to Ohio EPA for the difference in cost between \$5,000 and the total cost of the P2 Study.

VI. TERMINATION

Respondent's obligations under these Orders shall terminate when Respondent certifies in writing and demonstrates to the satisfaction of Ohio EPA that Respondent has performed all obligations under these Orders and the Chief of Ohio EPA's Division of Air Pollution Control acknowledges, in writing, the termination of these Orders. If Ohio EPA does not agree that all obligations have been performed, then Ohio EPA will notify Respondent, in which case Respondent shall have an opportunity to address any such deficiencies and seek termination as described above.

The certification shall contain the following attestation: "I certify that the information contained in or accompanying this certification is true, accurate and complete."

This certification shall be submitted by Respondent to Ohio EPA and shall be signed by a responsible official of Respondent. For purposes of these Orders, a responsible official is a principal executive officer of at least the level of vice president, or a duly authorized representative, if such representative is responsible for the overall operation of the facility and/or facilities owned or operated by Respondent.

VII. OTHER CLAIMS

Nothing in these Orders shall constitute or be construed as a release from any claim, cause of action or demand in law or equity against any person, firm, partnership or corporation, not a party to these Orders, for any liability arising from, or related to, the operation of Respondent's facility.

VIII. OTHER APPLICABLE LAWS

All actions required to be taken pursuant to these Orders shall be undertaken in accordance with the requirements of all applicable local, state and federal laws and regulations. These Orders do not waive or compromise the applicability and enforcement of any other statutes or regulations applicable to Respondent.

IX. MODIFICATIONS

These Orders may be modified by agreement of the parties hereto. Modifications shall be in writing and shall be effective on the date entered in the journal of the Director of

Ohio EPA.

X. NOTICE

All documents required to be submitted by Respondent pursuant to these Orders shall be addressed to:

Ohio Environmental Protection Agency
Northwest District Office
347 North Dunbridge Road
Bowling Green, Ohio 43402-9398
Attention: Don Waltermeyer

and to:

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

or to such persons and addresses as may hereafter be otherwise specified in writing by Ohio EPA.

XI. RESERVATION OF RIGHTS

Ohio EPA and Respondent each reserve all rights, privileges and causes of action, except as specifically waived in Section XII of these Orders.

XII. WAIVER

In order to resolve disputed claims, without admission of fact, violation or liability, and in lieu of further enforcement action by Ohio EPA for only the violations specifically cited in these Orders, Respondent consents to the issuance of these Orders and agrees to comply with these Orders. Compliance with these Orders shall be a full accord and satisfaction for Respondent's liability for the violations specifically cited herein.

Respondent hereby waives the right to appeal the issuance, terms and conditions, and service of these Orders, and Respondent hereby waives any and all rights Respondent may have to seek administrative or judicial review of these Orders either in law or equity.

Notwithstanding the preceding, Ohio EPA and Respondent agree that if these Orders are appealed by any other party to the Environmental Review Appeals Commission, or any court, Respondent retains the right to intervene and participate in such appeal. In such an event, Respondent shall continue to comply with these Orders notwithstanding

such appeal and intervention unless these Orders are stayed, vacated or modified.

XIII. EFFECTIVE DATE

The effective date of these Orders is the date these Orders are entered into the Ohio EPA Director's journal.

XIV. SIGNATORY AUTHORITY

Each undersigned representative of a party to these Orders certifies that he or she is fully authorized to enter into these Orders and to legally bind such party to these Orders.

IT IS SO ORDERED AND AGREED:

Ohio Environmental Protection Agency

Chris Korleski
Director

Date

IT IS SO AGREED:

Quality Ready Mix, Inc.

Signature

Date

Printed or Typed Name

Title

Air Civil Penalty Worksheet
Quality Ready Mix, Inc.
Lima, Ohio
(for settlement purposes only)

A. Benefit Component: (enter from attached computer calculation)		<u>\$0</u>	Economic benefit from the delayed maintenance of air pollution control systems and the failure to use RACM is assumed to be negligible (i.e., less than \$5,000 under the policy).
B. Gravity Component: 1. Actual or possible harm			
a. Amount above standard:	<u>\$0</u>		not applicable
b. Toxicity of pollutant:	<u>\$0</u>		not applicable
c. Sensitivity of environment:	<u>\$0</u>		not applicable
d. Length of time of violation:	<u>\$8,000</u>		1. Failure to comply with PTI requirements to maintain air pollution control systems. Two months, from the first inspection on 8/25/06 until 9/13/06, the date facility replaced and unclogged the bags on weigh hopper and cement silo's control systems. 2. Failure to comply with PTI requirement and OAC Rule 3745-17-08(B) by not employing RACM to meet 0.030 gr/dscf or no VEs, whichever is less stringent, on 10 days, for the cement silo. Since the amount of mass emissions associated with any VEs is not determinable and meeting the no VEs requirement is less stringent than meeting the grain loading requirement, the minimum penalty amount has been selected.
	<u>\$5,000</u>		
2. Importance to regulatory scheme:	<u>\$15,000</u>		1. Failure to use good engineering practices to maintain the weigh hopper and cement silo's fabric filters in a good working order that minimized air contaminant emissions. 2. Failure to employ RACM for the cement silo.
	<u>\$15,000</u>		
3. Size of violator:	<u>\$5,000</u>		Net worth of Quality Ready Mix was estimated at \$700,000 based on 20% of sales of \$1 to \$2.5 million as reported in Reference USA.
Total Gravity Component:		<u>\$48,000</u>	
Preliminary Deterrence Amount: (sum of benefit and gravity components)		<u>\$48,000</u>	
C. Flexibility-Adjustment Factor:			
1. Degree of willfulness or negligence: (total gravity component times an augmentation percentage)	<u>\$0</u>		not applicable
2. Degree of cooperation: (total gravity component times any mitigation percentage)	<u>\$0</u>		not applicable
3. History of noncompliance: (total gravity component times any augmentation percentage)	<u>\$0</u>		not applicable
4. Ability to pay: (any mitigation amount)	<u>\$0</u>		not known at this time
5. Other unique factors: (total gravity component times any mitigation or augmentation percentage)	<u>(\$19,200)</u>		40 % mitigation due the small amount of non-complying particulate emissions.
All augmentation (+) and mitigation (-) amounts added: (if negative, cannot exceed total gravity component)		<u>\$0</u>	
D. Administrative component			not applicable
E. Initial Minimum Settlement Amount: [preliminary deterrence amount + or - sum of flexibility adjustment factors plus administrative component (A+B+C+D)]		<u>\$28,800</u>	



State of Ohio Environmental Protection Agency

STREET ADDRESS:

Lazarus Government Center
50 W. Town St., Suite 700
Columbus, Ohio 43215

TELE: (614) 644-3020 FAX: (614) 644-3184
www.epa.state.oh.us

MAILING ADDRESS:

P.O. Box 1049
Columbus, OH 43216-1049

AUG 18 2009

CERTIFIED MAIL

Ms. Crystal Maggelet
President
Flying J, Inc.
1104 Country Hills Drive
Ogden, Utah 84403-2400

Re: Proposed Director's Final Findings and Orders for Flying J, Inc.'s Austinburg, Ohio Facility

Dear Ms. Maggelet:

My staff has informed me of the violations of Ohio Administrative Code Rule 3745-21-09(DDD) and ORC § 3704.05(G) associated with Flying J, Inc.'s gasoline dispensing facility ("GDF") located at 2349 Center Road, in Austinburg (Ashtabula County), Ohio. I would like to express my concern regarding the violations of the Stage II vapor control system requirements at the above-mentioned GDF located in an area that is in nonattainment of the National Ambient Air Quality Standard for ozone. Compliance with Stage II vapor control system requirements is an important element in our State Implementation Plan and in avoiding continued nonattainment of the ambient air quality standard. I understand that the violations have been corrected.

In order to resolve this matter, I am proposing to issue the enclosed Findings and Orders prepared by my staff, which include a provision for civil penalties for the settlement of claims resulting from Flying J, Inc.'s violations of the State's air pollution control laws. Also, enclosed is an administrative enforcement process guide to facilitate your review of the proposed Findings and Orders. I am proposing the use of Findings and Orders because this is the most expeditious means of resolving the violations. Because this letter and the attached document summarize a proposed settlement, I consider them to be inadmissible for any purpose in any enforcement action the State may take if settlement cannot be reached.

Please note that the proposed Findings and Orders include a provision for 20 percent of the total civil penalty amount to go toward the funding of a supplemental environmentally beneficial project involving the retrofitting of school buses with control equipment to reduce diesel particulate emissions. This project has the primary benefits of reducing children's exposure to harmful diesel exhaust emissions and helping attain the National Ambient Air Quality Standards for fine particulates (i.e., particles less than 2.5 microns in diameter). Information concerning the school bus

Ted Strickland, Governor
Lee Fisher, Lieutenant Governor
Chris Korleski, Director

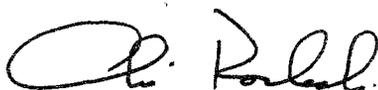
Ms. Crystal Maggelet, President
Flying J, Inc.
Page 2 of 2

retrofit program is provided in an enclosed document.

Please review the attached documents carefully. If you have any questions concerning the proposed Findings and Orders, or if you would like to arrange a meeting or conference call to try to negotiate a settlement via the Findings and Orders, please contact Marcus Glasgow of the Ohio EPA Legal Office, at (614) 644-3037. If he does not hear from Flying J, Inc., within fourteen (14) days of receipt of this letter, concerning its willingness to accept the Findings and Orders as currently written, or with mutually agreed upon modifications, I will consider alternative enforcement mechanisms including referral of the matter to the Ohio Attorney General's Office for legal action.

I hope that Flying J, Inc. and Ohio EPA are able to resolve this matter via the enclosed proposal, and I thank you in advance for your cooperation.

Sincerely,



Chris Korleski
Director

xc: Jim Orlemann, DAPC
Tom Kalman, DAPC
Jim Kavalec, DAPC
Marcus Glasgow, Legal Office
Keith Riley/Tim Fischer, DAPC NEDO
Brian Christin, Manager, Flying J, Inc.

Enclosures

CK:JK:jk

A guide to the . . .

Administrative Enforcement Process

Within the Division of Air Pollution Control

Introduction

This information sheet has been prepared to help you understand the administrative enforcement process within the Agency. With an understanding of the process and adequate preparation, you can facilitate a prompt resolution of this enforcement action. Included are answers to the questions most frequently asked by parties involved in the administrative enforcement process.

I have been working with the District Office or local air agency inspector to correct the violations. Why is an enforcement action necessary?

The Agency considers the following factors in deciding that an enforcement action is necessary: (1) Ohio EPA needs to obtain civil penalties for your violations; (2) your violations are serious; (3) you have taken too long to address the violations; (4) you need to be on a formal schedule to address the violations; (5) you have been recalcitrant in addressing the violations; and/or (6) you are a chronic violator.

Why should I try to negotiate an administrative consent order with Ohio EPA?

- Negotiating administrative findings and orders ("Order") with the Ohio EPA avoids expensive and time-consuming litigation.
- Negotiation can be a swift resolution of the State's claims against you for the non-compliance.
- We can quickly identify any obstacle to agreement.
- Negotiation can minimize or prevent any intervention by the USEPA to address the violations.

Should I continue working with the District or local air agency inspector?

Yes, the District Office or local air agency inspector is the best person to work with you to resolve the technical aspects of the violations, and prepare an acceptable control plan and schedule for submission to the Agency. Central Office personnel will also be available to provide assistance.

What should I do now that I received the proposed administrative consent order?

You should review the enclosed Order and the summary of the penalty calculation. If you accept the enclosed Order as written, sign the Order and send it within two weeks to the staff attorney referenced in the Director's letter. If you cannot accept the Order as written, the Agency would like to meet with you to discuss your concerns. Please contact the designated staff attorney at (614) 644-3037 to arrange a meeting.

If I want to have a meeting, what should I do to prepare for it?

Generally, the most productive meetings occur when both parties come prepared to discuss all issues. The Order and correspondence from the District Office or local air agency inspector contain the Agency's position. Since you were not willing to agree to the Order as written, we need to know whether you: (1) disagree with the facts outlined in the Order; (2) are not able or willing to comply with the Order; or (3) have information you feel may mitigate the civil penalty settlement amount. Send the staff attorney a written summary of your issues within two weeks from the date of the Director's letter. Additionally, if you believe you are financially unable to pay the penalty, contact the staff attorney for a list of information we need to evaluate your ability to pay.

What will happen at the meeting?

During the meeting, we will respond to any information you have provided. We are willing to work with you to arrive at mutually agreed upon modifications to the Order. Except in the most complex cases, our goal is to complete all negotiations at the meeting. If we cannot agree at the meeting and we feel we are making adequate progress, we will hold our offer of settlement open. Thereafter, if resolution of the negotiations is not achieved within the time frame agreed to by the parties at the settlement meeting or if we feel we are not making adequate progress, the offer of settlement may be withdrawn, and we may consider other enforcement alternatives, including a referral to the Office of the Attorney General.

Why do I have to pay a civil penalty?

A civil penalty is necessary to deter future violations and to remove any economic advantage you may have realized from not complying with Ohio's regulations. Instead of a full cash payment, the Agency may be willing to accept a supplemental environmentally beneficial project ("SEP"), that meets certain guidelines.

How did the DAPC arrive at the civil penalty settlement amount?

Ohio EPA relied on U.S. EPA's Air Civil Penalty Policy to calculate the penalty. The DAPC uses this Policy to ensure that we calculate penalties fairly and consistently and that the penalty is appropriate for the gravity of the violations. Enclosed is a summary of the DAPC's civil penalty settlement calculation. If you want a copy of the U.S. EPA's Air Civil Penalty Policy, contact the designated staff attorney at (614) 644-3037.

Who from Ohio EPA will be at the meeting?

Everyone necessary to resolve the matter will be at the meeting or available during the meeting to provide settlement authority. This includes the staff attorney, the District Office or local air agency inspector, and Central Office technical personnel.

Who should I bring to the meeting?

Similarly, you should bring anyone familiar with the issues as well as anyone who has the authority to settle this matter. You are welcome to be represented at this meeting by your attorney and your consultant.

News releases

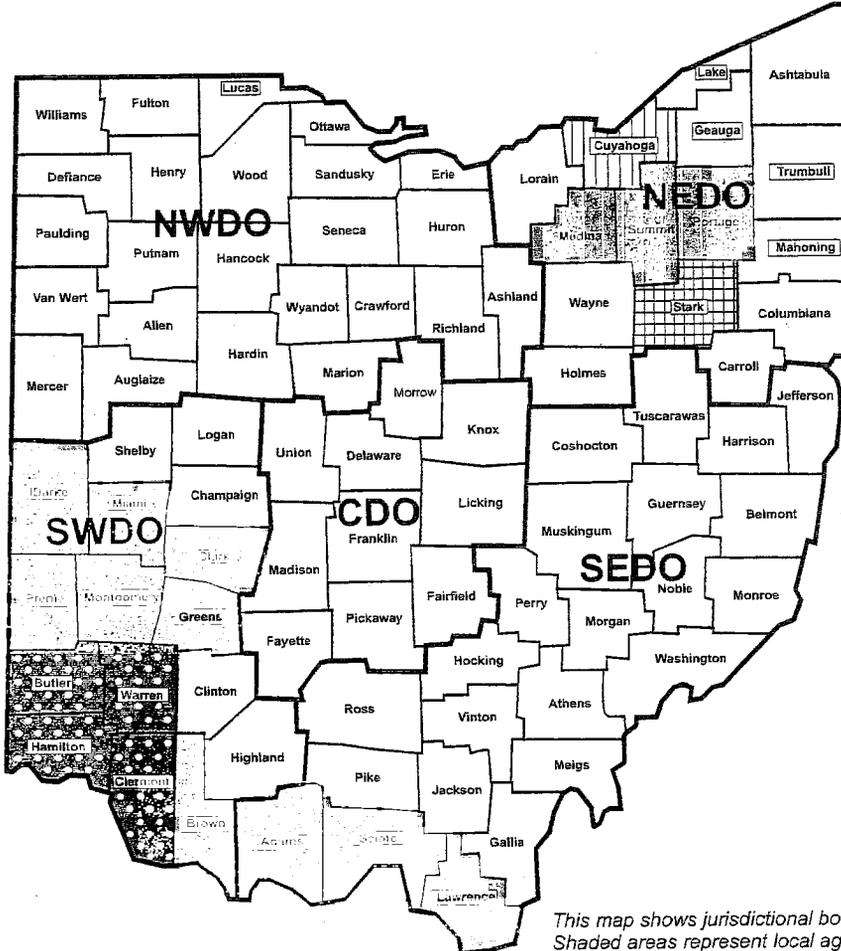
Please be aware that Ohio EPA may issue a news release to the media to inform the community about the settlement of this case, after all parties have signed it. As a public agency whose primary mission is to promote compliance with environmental laws, we believe it is important to inform citizens about our enforcement efforts. Ohio EPA's news release represents our position, and so we do not negotiate the language in the news release with you. If we prepare a news release, you will receive a courtesy copy shortly before it is released to the media and posted on our web site. You can read all of our news releases at:
<http://www.epa.state.oh.us/pic/current.html>.

District Office and Local Air Agency Addresses and Phone Numbers

See the following pages.

Air Permit Review Agencies

Division of Air Pollution Control
Ohio EPA, Central Office
(614) 644-2270
www.epa.state.oh.us/dapc/general/dolaa.html



This map shows jurisdictional boundaries.
Shaded areas represent local agencies within Ohio EPA districts.



District Offices

CDO Adam Ward, APC Manager
01 Central District Office
50 West Town Street, Suite 700
Columbus, OH 43215
(614) 728-3778 FAX (614) 728-3898
e-mail: adam.ward@epa.state.oh.us

SEDO Bruce Weinberg, APC Manager
06 Southeast District Office
2195 Front St.
Logan, OH 43138
(740) 385-8501 FAX (740) 385-6490
e-mail: bruce.weinberg@epa.state.oh.us

NEDO Dennis Bush, APC Manager
02 Northeast District Office
2110 E. Aurora Rd.
Twinsburg, OH 44087
(330) 425-9171 FAX (330) 487-0769
e-mail: dennis.bush@epa.state.oh.us

NWDO Mark Budge, APC Manager
03 Northwest District Office
347 North Dunbridge Rd.
Bowling Green, OH 43402
(419) 352-8461 FAX (419) 352-8468
e-mail: mark.budge@epa.state.oh.us

SWDO Tom Schneider, APC Manager
05 Southwest District Office
401 E. Fifth St.
Dayton, OH 45402-2911
(937) 285-6357 FAX (937) 285-6249
e-mail: tom.schneider@epa.state.oh.us

 **Frank Markunas, Interim Administrator**
Akron Regional Air Quality
Management District
146 South High St, Room 904
Akron, Ohio 44308
(330) 375-2480 FAX (330) 375-2402
e-mail: markufr@ci.akron.oh.us

 **Richard L. Nemeth, Commissioner**
Cleveland Dept. of Public Health
Division of Air Quality
75 Erieview Plaza, 2nd Floor
Cleveland, Ohio 44114
(216) 664-2297 FAX (216) 420-8047
e-mail: Rnemeth@city.cleveland.oh.us

 **Cindy Charles, Director**
Portsmouth Local Air Agency
605 Washington St., Third Floor
Portsmouth, Ohio 45662
(740) 353-5156 FAX (740) 353-3638
e-mail: cindy.charles@epa.state.oh.us

 **Dan Aleman, Administrator**
Air Pollution Control Division
Canton City Health Dept.
420 Market Ave. North
Canton, Ohio 44702-1544
(330) 489-3385 FAX (330) 489-3335
e-mail: daleman@cantonhealth.org

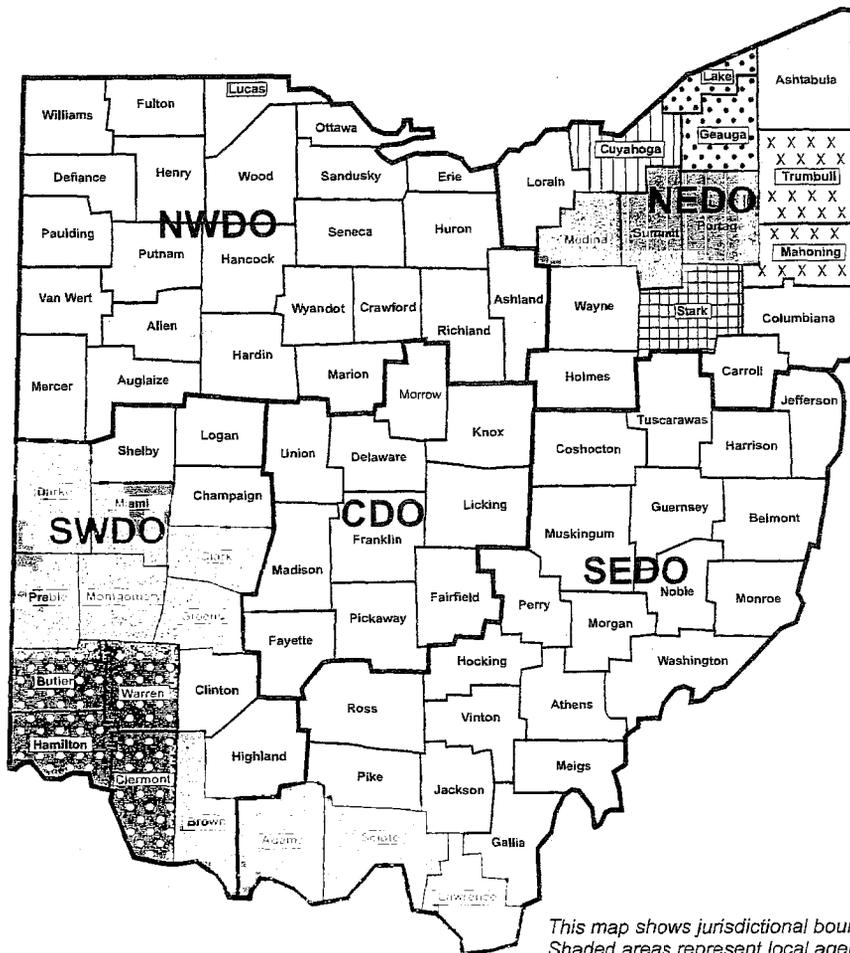
 **John Paul, Administrator**
Regional Air Pollution Control Agency
Public Health Dayton and Montgomery Cnty.
117 South Main St.
Dayton, Ohio 45422-1280
(937) 225-4435 FAX (937) 225-3486
e-mail: paulja@rapca.org

 **Karen Granata, Administrator**
City of Toledo
Division of Environmental Services
348 South Erie Street
Toledo, Ohio 43604
(419) 936-3015 FAX (419) 936-3959
e-mail: karen.granata@toledo.oh.gov

 **Cory R. Chadwick, Director**
Dept. of Environmental Services
Air Quality Programs
250 William Howard Taft Road
Cincinnati, Ohio 45219-2660
(513) 946-7777 FAX (513) 946-7778
e-mail: cory.chadwick@hamilton-co.org

Local Air Pollution Control Agencies

Division of Air Pollution Control
Ohio EPA, Central Office
(614) 644-2270
www.epa.state.oh.us/dapc/general/dolaa.html



This map shows jurisdictional boundaries.
Shaded areas represent local agencies within Ohio EPA districts.



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Logan, OH 43138
(740) 385-8501 FAX (740) 385-6490
e-mail: bruce.weinberg@epa.state.oh.us

NEDO Dennis Bush, APC Manager
02 Northeast District Office
2110 E. Aurora Rd.
Twinsburg, OH 44087
(330) 425-9171 FAX (330) 487-0769
e-mail: dennis.bush@epa.state.oh.us

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03 Northwest District Office
347 North Dunbridge Rd.
Bowling Green, OH 43402
(419) 352-8461 FAX (419) 352-8468
e-mail: mark.budge@epa.state.oh.us

SWDO Tom Schneider, APC Manager
05 Southwest District Office
401 E. Fifth St.
Dayton, OH 45402-2911
(937) 285-6357 FAX (937) 285-6249
e-mail: tom.schneider@epa.state.oh.us

 **Frank Markunas, Interim Administrator**
Akron Regional Air Quality
Management District
146 South High St, Room 904
Akron, Ohio 44308
(330) 375-2480 FAX (330) 375-2402
e-mail: markufr@ci.akron.oh.us

 **Richard L. Nemeth, Commissioner**
Cleveland Dept. of Public Health
Division of Air Quality
75 Erieview Plaza, 2nd Floor
Cleveland, Ohio 44114
(216) 664-2297 FAX (216) 420-8047
e-mail: Rnemeth@city.cleveland.oh.us

 **Cindy Charles, Director**
Portsmouth Local Air Agency
605 Washington St., Third Floor
Portsmouth, Ohio 45662
(740) 353-5156 FAX (740) 353-3638
e-mail: cindy.charles@epa.state.oh.us

 **Dan Aleman, Administrator**
Air Pollution Control Division
Canton City Health Dept.
420 Market Ave. North
Canton, Ohio 44702-1544
(330) 489-3385 FAX (330) 489-3335
e-mail: daleman@cantonhealth.org

 **John Paul, Administrator**
Regional Air Pollution Control Agency
Public Health Dayton and Montgomery Cnty.
117 South Main St.
Dayton, Ohio 45422-1280
(937) 225-4435 FAX (937) 225-3486
e-mail: paulja@rapca.org

 **Karen Granata, Administrator**
City of Toledo
Division of Environmental Services
348 South Erie Street
Toledo, Ohio 43604
(419) 936-3015 FAX (419) 936-3959
e-mail: karen.granata@toledo.oh.gov

 **Cory R. Chadwick, Director**
Dept. of Environmental Services
Air Quality Programs
250 William Howard Taft Road
Cincinnati, Ohio 45219-2660
(513) 946-7777 FAX (513) 946-7778
e-mail: cory.chadwick@hamilton-co.org

 **Bert Mechenbier, Supervisor ***
Lake County General Health District
Air Pollution Control
33 Mill Street
Painesville, Ohio 44077
(440) 350-2543 FAX (440) 350-2548
e-mail: BMechenbier@icghd.org

 **Misty Koletich, Administrator ***
Mahoning-Trumbull APC Agency
345 Oak Hill Ave., Suite 200
Youngstown, Ohio 44502
(330) 743-3333 FAX (330) 744-1928
e-mail: mtpaca@cboss.com

*Facilities located within these jurisdictions should file air permit applications with Ohio EPA's Northeast District Office (NEDO).

General Guidelines for Ohio EPA's Program for the Retrofitting of School Buses with Control Equipment to Reduce Diesel Particulate Emissions

The following questions and answers explain the Ohio EPA's program for the retrofitting of school buses with diesel particulate filters and crankcase filters and provide the general guidelines that must be followed by any school system that participates in the program.

1. Why is there a need to reduce diesel particulate emissions from school buses?

The exhaust gases from diesel, school bus engines contain significant amounts of organic compounds, carbon monoxide, nitrogen oxides (NO_x) and fine particulates. If inhaled, the fine particulates are so small that they are able to penetrate deep into the lungs and pose serious health risks such as aggravated asthma and lung damage. In addition, USEPA has identified diesel exhaust as a likely human carcinogen. These fine particulate emissions contribute to the poor ambient air quality in 27 counties in Ohio, which currently are not meeting the national health-based ambient air quality standards for fine particulates (i.e., PM 2.5, particles less than 2.5 microns in diameter). Reducing the particulate emissions from diesel school bus engines will have two primary benefits:

- a. For the children who ride buses, it will reduce their exposure to the harmful diesel exhaust emissions. Children are more susceptible to air pollution than healthy adults because their respiratory systems are still developing and they have a faster breathing rate.
- b. It will help in attaining the National Ambient Air Quality Standards for PM 2.5 in Ohio's nonattainment counties.

2. What retrofit options are available to reduce particulate emissions from school buses?

There are three primary ways to retrofit a school bus for particulate emission control:

- a. **Diesel particulate filters** are ceramic devices that collect particulate matter in the exhaust stream. The high temperature of the exhaust heats the ceramic structure and allows the particles inside to break down into less harmful components. These filters must be used in conjunction with ultra-low sulfur diesel ("ULSD") fuel, which is a fuel with a sulfur content of less than 15 parts per million. The combination of particulate filters and ULSD fuel can reduce emissions of particulates, organic compounds, and carbon monoxide in the exhaust gases by 60 to 90 percent. Particulate filters work best on engines built after 1994 and cost \$6,500 to \$7,500.

they will be added to the list. Field experience indicates it takes six to eight hours to install one of these diesel particulate filters. Crankcase filters are relatively simple to install and are easily serviced.

5. How efficient are the diesel particulate filters and crankcase filters in reducing the particulate emissions?

The diesel particulate filters will reduce the particulate emissions in the exhaust gases by 60 to 90 percent. These control devices also will reduce the emissions of organic compounds and carbon monoxide by 60 to 90 percent. Most particulate filters come with a 100,000 to 150,000-mile warranty and have a useful life of seven to 15 years. The filtration efficiency of crankcase filters averages between 80% and 97%.

6. Is there a special type of fuel that must be used with the diesel particulate filters?

Yes. Each bus equipped with a particulate filter must use ultra low sulfur diesel (ULSD) fuel. Because of the high sulfur content of regular diesel fuel, the use of regular diesel fuel would cause the particulate filter to clog. This, in turn, could cause exhaust back-pressure increases and engine damage. The ULSD fuel contains less than 10% of the sulfur content of regular diesel fuel. Regular diesel fuel may contain 150 to 500 ppm of sulfur, compared to the maximum of 15 ppm for the ULSD fuel. As a result of recent changes in the U.S. federal fuel standards, ULSD fuel will become the standard diesel fuel throughout the U.S. beginning in June of 2006. Many parts of the country, including certain parts of Ohio, are already being supplied with ULSD fuel. The price differential between ULSD fuel and regular diesel fuel currently ranges between eight and 25 cents per gallon. In 2006, when ULSD fuel is available nationwide, the cost differential should be much less.

7. What costs are associated with the installation and operation of the diesel particulate filters and crankcase filters?

The estimated cost to retrofit each bus with a diesel particulate filter ranges from \$6,500 to \$7,500. On an annual basis, or about every 100,000 miles, these filters must be disassembled and cleaned either with compressed air or by heating the filter in a filter cleaning device. (The cost of such a device ranges from \$300 to \$350.) The cost for the annual maintenance for each filter, which normally takes less than 3 hours to complete, will depend upon whether the work is performed by school district personnel, the engine dealer, or the filter vendor. Also, until ULSD fuel becomes available nationwide in June of 2006, there will be an increased cost for the diesel fuel burned in each retrofitted bus. The current price differential between ULSD fuel and regular diesel fuel varies between 8 and 25 cents per gallon. Crankcase filters are fairly inexpensive (a replacement element typically costs less than \$50.00). Crankcase filters must be changed at every lube oil change (as recommended by the diesel engine manufacturer) or every 500 hours of operation, whichever comes first.

BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

Flying J, Inc.	:	<u>Director's Final Findings</u>
1104 Country Hills Drive	:	<u>and Orders</u>
Ogden, Utah 84403-2400	:	

PREAMBLE

It is agreed by the parties hereto as follows:

I. JURISDICTION

These Director's Final Findings and Orders ("Orders") are issued to Flying J, Inc. ("Respondent") pursuant to the authority vested in the Director of the Ohio Environmental Protection Agency ("Ohio EPA") under Ohio Revised Code ("ORC") §§ 3704.03 and 3745.01.

II. PARTIES BOUND

These Orders shall apply to and be binding upon Respondent and successors in interest liable under Ohio law. No change in ownership of the Respondent or of the facility (as hereinafter defined) shall in any way alter Respondent's obligations under these Orders.

III. DEFINITIONS

Unless otherwise stated, all terms used in these Orders shall have the same meaning as defined in ORC Chapter 3704 and the rules promulgated thereunder.

IV. FINDINGS

The Director of Ohio EPA makes the following findings:

1. Respondent owns and operates a gasoline dispensing facility ("GDF") known as Flying J Truck Stop located at 2349 Center Road, in Austinburg (Ashtabula County), Ohio (Ohio EPA ID number 0204000444.) This GDF is subject to the requirements of Ohio Administrative Code ("OAC") Rule 3745-21-09(DDD) concerning Stage II vapor control systems.

2. On February 2, 2002, Permit-to-Install #02-15824 was issued by Ohio EPA to Respondent for this GDF. On December 18, 2007, Respondent was issued a Permit-by-Rule ("PBR") requiring compliance with the requirements for Stage II vapor control systems as specified in OAC Rule 3745-21-09(DDD).

3. ORC § 3704.05(G) states, in part, that no person shall violate any order, rule, or determination of the Director issued, adopted, or made under ORC Chapter 3704. OAC Rule 3745-21-09(DDD) was adopted by the Director pursuant to ORC Chapter 3704.

4. OAC Rule 3745-21-09(DDD)(1)(b) states, in part, that no owner or operator of a GDF may cause, allow, or permit the transfer of gasoline from a stationary tank at a GDF into a motor vehicle unless a vapor control system is installed, operated, and maintained in accordance with the manufacturer's specifications and the applicable California Air Resources Board ("CARB") certification, and is free from defect.

5. OAC Rule 3745-21-09(DDD)(1)(c) states, in part, that no owner or operator of a GDF may cause, allow, or permit the transfer of gasoline from a stationary tank at a GDF into a motor vehicle unless the vapor control system successfully passes the testing requirements contained in OAC Rule 3745-21-09(DDD)(2).

6. OAC Rule 3745-21-09(DDD)(2)(f) requires the owner or operator of a GDF to perform and comply with any vapor control system tests specified in the applicable CARB certification. As part of the required CARB testing for the above-mentioned GDF, an air-to-liquid ("A/L") ratio test and a static leak test are required to be performed annually and any fueling point not capable of demonstrating compliance with the performance standards of the A/L ratio test is deemed to be defective and is required to be removed from service.

7. On August 7, 2007, Ohio EPA conducted an inspection at this GDF to determine compliance with the Stage II annual static leak and A/L ratio tests. The static leak and A/L ratio tests both failed at the time of this inspection. Respondent was transferring gasoline into motor vehicles prior to and after the failed static leak and A/L ratio tests. The failure to successfully pass the testing requirements in OAC Rule 3745-21-09(DDD)(2) while causing, allowing, or permitting the transfer of gasoline from a stationary storage tank into a motor vehicle is a violation of ORC § 3704.05(G) and OAC Rule 3745-21-09(DDD)(1)(c). By letter dated August 27, 2007, Ohio EPA notified Respondent of these violations and requested that repairs be made and a retest conducted within 30 days of receipt of the letter. On December 11, 2007, Respondent conducted a retest and passed both the static leak and A/L ratio tests. By letter dated February 13, 2008, Ohio EPA sent Respondent a return to compliance letter.

8. On August 19, 2008, Respondent conducted the annual static leak and A/L ratio tests at this GDF. The static leak test failed due to a leaking drop tube and leaking vacuum pump motor and the A/L ratio test failed for dispenser #7 due to the vacuum pump not working on the dispenser. Respondent was transferring gasoline into

motor vehicles prior to and after the failed static leak and A/L ratio tests. The failure to properly operate and maintain the vapor control system and the failure to successfully pass the testing requirements contained in OAC Rule 3745-21-09(DDD)(2) while causing, allowing, or permitting the transfer of gasoline from a stationary storage tank into a motor vehicle are violations of ORC § 3704.05(G) and OAC Rule 3745-21-09(DDD)(1)(b) and (c).

9. By letter dated July 1, 2009, Ohio EPA notified Respondent that it had not conducted and passed static leak and A/L ratio retests since the August 19, 2008 failures, in violation of ORC § 3704.05(G) and OAC Rule 3745-21-09(DDD)(1)(c). In addition, the failure to complete and successfully pass the annual static leak and A/L ratio tests within one year from the last test (December 11, 2007) while causing, allowing, or permitting the transfer of gasoline from a stationary storage tank into a motor vehicle are violations of ORC § 3704.05(G) and OAC Rule 3745-21-09(DDD)(1)(c). In this letter, Ohio EPA requested that testing be completed within 30 days of receipt of the letter.

10. On July 14, 2009, Respondent conducted and passed the static leak and A/L ratio tests at this GDF.

11. The Director has given consideration to, and based his determination on, evidence relating to the technical feasibility and economic reasonableness of complying with the following Orders and their relation to benefits to the people of the State to be derived from such compliance.

V. ORDERS

The Director hereby issues the following Orders:

1. Within thirty (30) days after the effective date of these Orders, Respondent shall demonstrate that the Stage II vapor control system is operating correctly by conducting and passing static leak, A/L ratio, and dynamic pressure performance tests. Respondent shall notify Ohio EPA of such testing within fourteen (14) days prior to any test. The results of these tests shall be submitted to Ohio EPA within fourteen (14) days after completion of the tests.

2. For the next two ozone seasons (April 1, 2010 – October 31, 2010 and April 1, 2011 – October 31, 2011), starting two weeks prior to the start of the ozone season, i.e., by March 15, 2010 and March 15, 2011, and continuing until October 31, 2010 and October 31, 2011, respectively, Respondent shall conduct weekly inspections of the Stage II vapor control system, checking for leaks, malfunctions or other damage to the system and shall keep records of these inspections and any repairs made. The inspections shall be recorded in an inspection log or checklist. Copies of the inspection logs or checklists shall be submitted to Ohio EPA during the middle and at the end of each ozone season. Specifically, copies of the weekly inspection records for the period from March 15 through July 31 shall be submitted by August 14 of that year. Copies of

the weekly inspection records for August 1 through October 31 shall be submitted by November 14 of that year.

3. For the next two ozone-producing seasons (i.e., April 1, 2010 – October 31, 2010 and April 1, 2011 – October 31, 2011), Respondent shall perform static leak and A/L ratio tests prior to the beginning (during March) of each ozone season and during August of each ozone season. Respondent shall notify Ohio EPA of such testing within fourteen (14) days prior to any test. The results of these tests shall be submitted to Ohio EPA within fourteen (14) days after completion of the tests.

4. Respondent shall pay the amount of twenty-nine six hundred and fifty thousand dollars (\$29,650) in settlement of Ohio EPA's claims for civil penalties, which may be assessed pursuant to ORC Chapter 3704. Within fourteen (14) days after the effective date of these Orders, payment to Ohio EPA shall be made by an official check made payable to "Treasurer, State of Ohio" for twenty-three thousand seven hundred and twenty dollars (\$23,720) of the total amount. The official check shall be submitted to Brenda Case, or her successor, together with a letter identifying the Respondent, to:

Ohio EPA
Office of Fiscal Administration
50 West Town Street, Suite 700
P.O. Box 1049
Columbus, Ohio 43216-1049

5. In lieu of paying the remaining five thousand nine hundred and thirty dollars (\$5,930) of the civil penalty, Respondent shall fund a Supplemental Environmental Project ("SEP") by making a contribution in the amount of \$5,930 to Ohio EPA's Clean Diesel School Bus Program Fund (Fund 5CD0). Respondent shall make payment on or within thirty (30) days after the effective date of these Orders by tendering an official check made payable to "Treasurer, State of Ohio" for \$5,930. The official check shall be submitted to Brenda Case, or her successor, together with a letter identifying the Respondent and Fund 5CD0, to the above-stated address.

6. A copy of each of the above checks shall be sent to James A. Orlemann, Assistant Chief, SIP Development and Enforcement, or his successor, at the following address:

Ohio EPA
Division of Air Pollution Control
50 West Town Street, Suite 700
P.O. Box 1049
Columbus, Ohio 43216-1049

7. Should Respondent fail to fund the SEP within the required time frame set forth in Order 5, Respondent shall immediately pay to Ohio EPA \$5,930 of the civil penalty in accordance with the procedures in Order 4.

VI. TERMINATION

Respondent's obligations under these Orders shall terminate when Respondent certifies in writing and demonstrates to the satisfaction of Ohio EPA that Respondent has performed all obligations under these Orders and the Chief of Ohio EPA's Division of Air Pollution Control acknowledges, in writing, the termination of these Orders. If Ohio EPA does not agree that all obligations have been performed, then Ohio EPA will notify Respondent of the obligations that have not been performed, in which case Respondent shall have an opportunity to address any such deficiencies and seek termination as described above.

The certification shall contain the following attestation: "I certify that the information contained in or accompanying this certification is true, accurate and complete."

This certification shall be submitted by Respondent to Ohio EPA and shall be signed by a responsible official of Respondent. For the purposes of these Orders, a responsible official is a principal executive officer of at least the level of vice president or his duly authorized representative.

VII. OTHER CLAIMS

Nothing in these Orders shall constitute or be construed as a release from any claim, cause of action or demand in law or equity against any person, firm, partnership, or corporation, not a party to these Orders, for any liability arising from, or related to, the operation of Respondent's facilities.

VIII. OTHER APPLICABLE LAWS

All actions required to be taken pursuant to these Orders shall be undertaken in accordance with the requirements of all applicable local, state and federal laws and regulations. These Orders do not waive or compromise the applicability and enforcement of any other statutes or regulations applicable to Respondent.

IX. MODIFICATIONS

These Orders may be modified by agreement of the parties hereto. Modifications shall be in writing and shall be effective on the date entered in the journal of the Director of Ohio EPA.

X. NOTICE

All documents required to be submitted by Respondent pursuant to these Orders shall be addressed to:

Ohio EPA, Northeast District Office
2110 East Aurora Rd.
Twinsburg, Ohio 44087
Attn: Tim Fischer

and to:

Ohio Environmental Protection Agency
Lazarus Government Center
Division of Air Pollution Control
50 West Town Street, Suite 700
Columbus, Ohio 43216-1049
Attn: Tom Kalman

or to such persons and addresses as may hereafter be otherwise specified in writing by Ohio EPA.

XI. RESERVATION OF RIGHTS

Ohio EPA and Respondent each reserve all rights, privileges, and causes of action except as specifically waived in Section XII of these Orders.

XII. WAIVER

In order to resolve disputed claims, without admission of fact, violation, or liability, and in lieu of further enforcement action by Ohio EPA for only the violations specifically cited in these Orders, Respondent consents to the issuance of these Orders and agrees to comply with these Orders. Compliance with these Orders shall be a full accord and satisfaction for Respondent's liability for the violations specifically cited herein.

Respondent hereby waives the right to appeal the issuance, terms and conditions, and service of these Orders, and Respondent hereby waives any and all rights Respondent may have to seek administrative or judicial review of these Orders either in law or equity.

Notwithstanding the preceding, Ohio EPA and Respondent agree that if these Orders are appealed by any other party to the Environmental Review Appeals Commission, or any court, Respondent retains the right to intervene and participate in such appeal. In such an event, Respondent shall continue to comply with these Orders notwithstanding such appeal and intervention unless these Orders are stayed, vacated, or modified.

XIII. EFFECTIVE DATE

The effective date of these Orders is the date these Orders are entered into the Ohio EPA Director's journal.

XIV. SIGNATORY AUTHORITY

Each undersigned representative of a party to these Orders certifies that he or she is fully authorized to enter into these Orders and to legally bind such party to these Orders.

IT IS SO ORDERED AND AGREED:

Ohio Environmental Protection Agency

Chris Korleski
Director

Date

IT IS SO AGREED:

Flying J, Inc.

Signature

Date

Printed or Typed Name

Title

GDF PENALTY WORK SHEET

Flying J, Inc.
2349 Center Road, Austinburg, Ohio
(for settlement purposes only)

A. Benefit Component:		\$0	Economic benefit is negligible (i.e., less than \$5,000).
B. Gravity Component:			
1. Testing violations- Consecutive test failures:	\$5,000		On 8/7/07 and 8/19/08, Respondent failed the 2007 and 2008 annual static leak and A/L ratio tests. Respondent was operating the dispensers prior to and after each failed A/L ratio test. Operating the vapor control system with malfunctions and the failure to successfully pass the testing requirements in OAC Rule 3745-21-09(DDD)(2) while causing, allowing, or permitting the transfer of gasoline from a stationary storage tank into a motor vehicle are violations of ORC § 3704.05(G) and OAC Rules 3745-21-09(DDD)(1). Per the GDF penalty policy, when a facility fails any test in two consecutive years, the penalty is \$5,000.
2. Length of violation: a.	\$2,375		On 8/7/07, Respondent failed the static leak and A/L ratio tests and continued to dispense gasoline until the vapor control system was repaired and successfully passed a static leak and A/L ratio retests on 12/11/07. The failure to successfully pass the testing requirements in OAC Rule 3745-21-09(DDD)(2) while causing, allowing, or permitting the transfer of gasoline from a stationary storage tank into a motor vehicle are violations of ORC § 3704.05(G) and OAC Rule 3745-21-09(DDD)(1)(c). Per GDF penalty policy, 30 days are given to fix the problems and retest. Any additional days beyond the initial 30 days are penalized \$25 per day. So, 9/7/07 until 12/11/07 (95 days). 95 days x \$25 per day = \$2,375.

b.	\$7,450		On 8/19/08, Respondent failed the static leak test due to a leaking drop tube and leaking vacuum pump motor and the A/L ratio test failed for dispenser #7 due to the vacuum pump not working on the dispenser. The failure to properly operate and maintain the vapor control system and the failure to successfully pass the testing requirements in OAC Rule 3745-21-09(DDD)(2) while causing, allowing, or permitting the transfer of gasoline from a stationary storage tank into a motor vehicle and the failure to perform and successfully pass the annual static leak test and A/L ratio test within 12 months of the last test (12/11/07), are violations of ORC § 3704.05(G) and OAC Rules 3745-21-09(DDD)(1)(b) and (c). On July 14, 2009, Respondent conducted and passed the static leak and A/L ratio retest. Per GDF penalty policy, 30 days are given to fix the problems and retest. Any additional days beyond the initial 30 days are penalized \$25 per day. So, 9/19/08 until 7/14/09, 298 days. 298 days x \$25 per day = \$7,450.
3. Size of violator:	\$14,825		Net worth (about \$1,890,000,000) is estimated at 20% of annual sales (annual sales are over \$9,450,000,000 from Reference USA database). Penalty associated with this amount would be \$7,870,000. The size of violator is set at 50% of the preliminary deterrence amount because the size of violator penalty is over 50% of the preliminary deterrence amount (\$14,825).
Preliminary Deterrence Amount:		\$29,650	
Initial Gravity Component:		\$29,650	
C. Adjustment Factors:	\$0		Not applicable
1. Degree of willfulness or negligence: (total gravity component times any augmentation percentage)			
2. Degree of cooperation:	\$0		Not applicable

(total gravity component times any mitigation percentage)			
3. History of noncompliance: (total gravity component times any augmentation percentage)	\$0		Not applicable
4. Ability to pay: (any mitigation amount)	\$0		Not known
5. Other unique factors: (total gravity component times any mitigation or augmentation percentage)	\$0		Not applicable
D. Adjusted Gravity Component:		\$29,650	
E. Administrative Component:			Not applicable
F. Initial Settlement Amount:		\$29,650	



State of Ohio Environmental Protection Agency

STREET ADDRESS:

Lazarus Government Center
50 W. Town St., Suite 700
Columbus, Ohio 43215

TELE: (614) 644-3020 FAX: (614) 644-3184
www.epa.state.oh.us

MAILING ADDRESS:

P.O. Box 1049
Columbus, OH 43216-1049

AUG 12 2009

CERTIFIED MAIL

Ms. Tracy Sullivan
Englefield, Inc.
447 James Parkway
Heath, Ohio 43506

Re: Violation of OAC Rule 3745-21-09(DDD)(3)(a)(vi) at Ashtabula Duchess (Failure to provide proof of attendance and completion of training for the operator or local manager of this GDF)

Dear Ms. Sullivan:

My staff has informed me of the violation of Ohio Administrative Code ("OAC") Chapter 3745-21-09(DDD)(3)(a)(vi) associated with Stage II vapor control system training for operators or local managers of gasoline dispensing facilities ("GDFs"). My staff has informed me that for the past two years the Ashtabula Duchess GDF located at 1415 Lake Avenue, Ashtabula, Ohio, has failed to provide Ohio EPA with proof of attendance and completion of training for the operator or local manager of this GDF.

During the annual Stage II compliance inspections conducted on April 24, 2008 and April 23, 2009, the Ohio Environmental Protection Agency ("Ohio EPA") noted that there was no proof of attendance for the Stage II training as required by OAC Rule 3745-21-09(DDD)(3)(a)(vi). By letters dated May 15, 2008 and April 29, 2009, Ohio EPA notified you of these violations and the need to obtain this training. Because you have failed to demonstrate proof of attendance for Stage II training, Ohio EPA is requesting that you obtain this training within ninety (90) days and within thirty (30) days after completion, submit documentation demonstrating proof of attendance to Ohio EPA's Northeast District Office. The documents required to be submitted shall be addressed to:

Ohio EPA, Northeast District Office
2110 East Aurora Rd.
Twinsburg, Ohio 44087
Attn: Tim Fischer

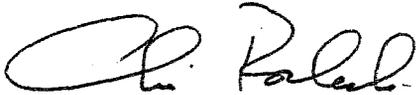
You are advised that if Englefield, Inc. fails to demonstrate compliance with the aforementioned rule, I will consider alternative enforcement mechanisms including referral of the matter to the Attorney General's Office for appropriate legal action.

Ted Strickland, Governor
Lee Fisher, Lieutenant Governor
Chris Korleski, Director

Ms. Tracy Sullivan
Englefield, Inc.
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Should you have any questions concerning this matter, please contact either Stephen Feldmann, Ohio EPA Staff Attorney, at (614) 644-3037, or Tim Fischer, DAPC-Northeast District Office, at (330) 963-1270.

Sincerely,

A handwritten signature in black ink, appearing to read "Chris Korleski". The signature is fluid and cursive, with a large initial "C" and "K".

Chris Korleski
Director

CK/JK/jk

xc: Jim Orlemann, DAPC
Tom Kalman, DAPC
Jim Kavalec, DAPC
Stephen Feldmann, Legal Office
Tim Fischer, NEDO



State of Ohio Environmental Protection Agency

STREET ADDRESS:

Lazarus Government Center
50 W. Town St., Suite 700
Columbus, Ohio 43215

TELE: (614) 644-3020 FAX: (614) 644-3184
www.epa.state.oh.us

MAILING ADDRESS:

P.O. Box 1049
Columbus, OH 43216-1049

AUG 18 2009

CERTIFIED MAIL

Mr. Jeffrey K. Smith
Superintendent
Sandusky Dock Corporation
P. O. Box 899
2705 West Monroe St.
Sandusky, Ohio 44870

Re: Proposed Director's Final Findings and Orders for the violations of OAC rule 3745-15-07 (Air Pollution Nuisances Prohibited)

Dear Mr. Smith:

My staff has informed me of the longstanding violations of the Ohio EPA's public nuisance rule (OAC rule 3745-15-07) at the Sandusky Dock Corporation facility in Sandusky. The purpose of the attached, proposed Findings and Orders (F&Os) is to abate the public nuisance caused by emissions of fugitive dust from the roadways, storage piles, and material handling operations at the facility. The proposed F&Os require the installation of additional control measures that we believe will be sufficient, if operated properly, to abate the public nuisance and comply with the rule.

As you know, an evaluation of the technical feasibility and economic reasonableness of the control measures deemed necessary to abate the public nuisance was required by the Final Order on Remand issued by the Environmental Review Appeals Commission on October 20, 2005. The control measures required by the proposed F&Os are based upon the engineering studies submitted by the Sandusky Dock Corporation. All the required control measures are control measures that have been determined by the company's consultants to be technically feasible. We concur with that assessment. We also believe the engineering studies support the conclusion that all the required control measures are economically reasonable.

Please note that the proposed F&Os include a provision for the settlement of the claim for civil penalties for the violations of OAC rule 3745-15-07; however, the current wording of the penalty provision does not contain a specific dollar amount. Once agreement has been reached concerning the control measures that must be installed to abate the public nuisance, my staff will calculate a proposed civil penalty and present it to the company for

negotiation.

A portion (20%) of the total civil penalty amount will fund a supplemental environmentally beneficial project. This provision is being included in all F&Os used to resolve violations of Ohio's air pollution control regulations, except for F&Os with very small civil penalties. The project involves funding an Ohio EPA program for the retrofitting of school buses with control equipment to reduce diesel particulate emissions. This project has the primary benefits of reducing children's exposure to harmful diesel exhaust emissions and helping attain the National Ambient Air Quality Standards for fine particulates (i.e., particles less than 2.5 microns in diameter). Information concerning the school bus retrofit program is provided in an enclosed document.

I am proposing the use of consensual F&Os because this is the most expeditious means of resolving the violations of OAC rule 3745-15-07. Because this letter and the attached documents summarize a proposed settlement, I consider them inadmissible for any purpose in any enforcement action the State may take if a settlement cannot be reached.

Please review the attached documents carefully. If you have any questions concerning the proposed F&Os, or if you would like to arrange a meeting to try to negotiate a mutually acceptable settlement, please contact Bryan Zima, Ohio EPA's Air Supervising Attorney, at (614) 644-3037. If he does not hear from you within fourteen (14) days of the receipt of this letter concerning your willingness to resolve the violations with consensual F&Os, I will consider alternative enforcement mechanisms including referral of the violations to the Ohio Attorney General's Office for legal action.

Enclosed is a copy of guidance on the administrative enforcement process, which you may find helpful in answering questions on Ohio EPA's enforcement process.

Your prompt attention to this matter will be appreciated. I am optimistic that Ohio EPA and Sandusky Dock Corporation will be able to agree, in a timely manner, on F&Os that will be effective in abating the public nuisance.

Sincerely,



Chris Korleski
Director

xc: Jim Orlemann, DAPC
Tom Kalman, DAPC
Bryan Zima, Legal Section
Don Waltermeyer, NWDO

Enclosures

General Guidelines for Ohio EPA's Program for the Retrofitting of School Buses with Control Equipment to Reduce Diesel Particulate Emissions

The following questions and answers explain the Ohio EPA's program for the retrofitting of school buses with diesel particulate filters and crankcase filters and provide the general guidelines that must be followed by any school system that participates in the program.

1. Why is there a need to reduce diesel particulate emissions from school buses?

The exhaust gases from diesel, school bus engines contain significant amounts of organic compounds, carbon monoxide, nitrogen oxides (NO_x) and fine particulates. If inhaled, the fine particulates are so small that they are able to penetrate deep into the lungs and pose serious health risks such as aggravated asthma and lung damage. In addition, USEPA has identified diesel exhaust as a likely human carcinogen. These fine particulate emissions contribute to the poor ambient air quality in 27 counties in Ohio, which currently are not meeting the national health-based ambient air quality standards for fine particulates (i.e., PM 2.5, particles less than 2.5 microns in diameter). Reducing the particulate emissions from diesel school bus engines will have two primary benefits:

- a. For the children who ride buses, it will reduce their exposure to the harmful diesel exhaust emissions. Children are more susceptible to air pollution than healthy adults because their respiratory systems are still developing and they have a faster breathing rate.
- b. It will help in attaining the National Ambient Air Quality Standards for PM 2.5 in Ohio's nonattainment counties.

2. What retrofit options are available to reduce particulate emissions from school buses?

There are three primary ways to retrofit a school bus for particulate emission control:

- a. **Diesel particulate filters** are ceramic devices that collect particulate matter in the exhaust stream. The high temperature of the exhaust heats the ceramic structure and allows the particles inside to break down into less harmful components. These filters must be used in conjunction with ultra-low sulfur diesel ("ULSD") fuel, which is a fuel with a sulfur content of less than 15 parts per million. The combination of particulate filters and ULSD fuel can reduce emissions of particulates, organic compounds, and carbon monoxide in the exhaust gases by 60 to 90 percent. Particulate filters work best on engines built after 1994 and cost \$6,500 to \$7,500.

- b. **Crankcase filtration systems** allow a diesel engine's crankcase to be closed and use an air filter to trap blow-by aerosols consisting mainly of oil droplets, with some carbon and traces of wear debris and PM10. Blow-by gas emissions can be as much as 25% of the total emissions from a diesel engine. The crankcase filter must be changed at every lube oil change (as recommended by the diesel engine manufacturer) or every 500 hours of operation, whichever comes first. Crankcase filters are inexpensive (a replacement element typically costs less than \$50.00) and are best used in conjunction with some type of filtration system in the exhaust stream.
- c. **Diesel oxidation catalysts** are devices that use a chemical process to break down pollutants in the exhaust stream into less harmful components. Diesel oxidation catalysts can reduce emissions of particulates by 20 percent, hydrocarbons by 50 percent, and carbon monoxide by 40 percent. Oxidation catalysts cost \$600 to \$2,000 and can be used with regular diesel fuel.

Based on the comparative effectiveness of the three types of particulate emission controls, only particulate filters and crankcase filters will be considered for this retrofit program.

3. Which types of school buses will be eligible to be retrofitted with particulate emission controls?

Only school buses that meet the following criteria should be retrofitted with particulate emission controls:

- a. The school bus must be equipped with a diesel engine.
- b. The school bus must have a gross vehicle rating of 19,500 pounds or more (Types C & D).
- c. The school bus must be in operation at least 4 days per week during the school year and travel at least 10,000 miles per year.
- d. The school bus model year must be 1994 or newer.

4. Which types of diesel particulate filters and crankcase filters would be acceptable for installation?

The USEPA has published a list of "Verified Retrofit Technologies." A copy of this list can be accessed at the following website:

<http://www.epa.gov/otag/retrofit/retroverifiedlist.htm>

Only the particulate filters and crankcase filters on this list may be purchased and installed. As additional technologies are found to be acceptable by the USEPA,

they will be added to the list. Field experience indicates it takes six to eight hours to install one of these diesel particulate filters. Crankcase filters are relatively simple to install and are easily serviced.

5. How efficient are the diesel particulate filters and crankcase filters in reducing the particulate emissions?

The diesel particulate filters will reduce the particulate emissions in the exhaust gases by 60 to 90 percent. These control devices also will reduce the emissions of organic compounds and carbon monoxide by 60 to 90 percent. Most particulate filters come with a 100,000 to 150,000-mile warranty and have a useful life of seven to 15 years. The filtration efficiency of crankcase filters averages between 80% and 97%.

6. Is there a special type of fuel that must be used with the diesel particulate filters?

Yes. Each bus equipped with a particulate filter must use ultra low sulfur diesel (ULSD) fuel. Because of the high sulfur content of regular diesel fuel, the use of regular diesel fuel would cause the particulate filter to clog. This, in turn, could cause exhaust back-pressure increases and engine damage. The ULSD fuel contains less than 10% of the sulfur content of regular diesel fuel. Regular diesel fuel may contain 150 to 500 ppm of sulfur, compared to the maximum of 15 ppm for the ULSD fuel. As a result of recent changes in the U.S. federal fuel standards, ULSD fuel will become the standard diesel fuel throughout the U.S. beginning in June of 2006. Many parts of the country, including certain parts of Ohio, are already being supplied with ULSD fuel. The price differential between ULSD fuel and regular diesel fuel currently ranges between eight and 25 cents per gallon. In 2006, when ULSD fuel is available nationwide, the cost differential should be much less.

7. What costs are associated with the installation and operation of the diesel particulate filters and crankcase filters?

The estimated cost to retrofit each bus with a diesel particulate filter ranges from \$6,500 to \$7,500. On an annual basis, or about every 100,000 miles, these filters must be disassembled and cleaned either with compressed air or by heating the filter in a filter cleaning device. (The cost of such a device ranges from \$300 to \$350.) The cost for the annual maintenance for each filter, which normally takes less than 3 hours to complete, will depend upon whether the work is performed by school district personnel, the engine dealer, or the filter vendor. Also, until ULSD fuel becomes available nationwide in June of 2006, there will be an increased cost for the diesel fuel burned in each retrofitted bus. The current price differential between ULSD fuel and regular diesel fuel varies between 8 and 25 cents per gallon. Crankcase filters are fairly inexpensive (a replacement element typically costs less than \$50.00). Crankcase filters must be changed at every lube oil change (as recommended by the diesel engine manufacturer) or every 500 hours of operation, whichever comes first.

8. How will the control devices be funded by the Ohio EPA?

Ohio EPA enforcement case settlements will be the source of the funding for the diesel particulate filters and crankcase filters. Each enforcement case resolved either through administrative Findings and Orders or a Consent Order, that contains a significant civil penalty (a total civil penalty assessment greater than \$5,000), will also include a Supplemental Environmental Project (SEP) that is equal in value to 20 percent of the total assessed civil penalty. The entity that is the subject of the enforcement case will be required to pay the SEP monies directly to a specific fund that Ohio EPA will establish for the retrofitting of school buses.

9. How will the school systems receive the SEP monies for the diesel particulate filters and crankcase filters?

A school system that desires to participate in the retrofit program must apply to Ohio EPA to receive funding to purchase and install the diesel particulate filters and crankcase filters. In the application, an eligible school system (i.e., one located in a nonattainment county for PM 2.5) must describe the proposed project, providing details such as the number and ages of the buses to be retrofitted, the types of filters that will be purchased and installed (must be on the USEPA-published list of "Verified Retrofit Technologies"), a schedule for installation of the filters, and a detailed cost breakdown. Ohio EPA will evaluate each application and provide funding to applicant school systems on a first come-first served basis as monies become available in the retrofit fund. Preference will be given to those applicants that include a commitment to implement an anti-idling program at the applicant's school system. Once or twice per year, the Ohio EPA will solicit applications from the eligible school systems.

10. What oversight will be provided by the Ohio EPA to ensure that the diesel particulate filters are installed and maintained properly?

Ohio EPA will closely track the amount of enforcement monies directed to each public school system. Each participating school system must submit regular progress reports providing information regarding the equipment purchased and installed to date, as well as a final report summarizing the project results. Periodic inspections also may be conducted by District Office or local air agency staff to confirm that the diesel particulate filters and crankcase filters are being installed and maintained properly and that the monies are being spent appropriately.

A guide to the . . .

Administrative Enforcement Process

Within the Division of Air Pollution Control

Introduction

This information sheet has been prepared to help you understand the administrative enforcement process within the Agency. With an understanding of the process and adequate preparation, you can facilitate a prompt resolution of this enforcement action. Included are answers to the questions most frequently asked by parties involved in the administrative enforcement process.

I have been working with the District Office or local air agency inspector to correct the violations. Why is an enforcement action necessary?

The Agency considers the following factors in deciding that an enforcement action is necessary: (1) Ohio EPA needs to obtain civil penalties for your violations; (2) your violations are serious; (3) you have taken too long to address the violations; (4) you need to be on a formal schedule to address the violations; (5) you have been recalcitrant in addressing the violations; and/or (6) you are a chronic violator.

Why should I try to negotiate an administrative consent order with Ohio EPA?

- Negotiating administrative findings and orders ("Order") with the Ohio EPA avoids expensive and time-consuming litigation.
- Negotiation can be a swift resolution of the State's claims against you for the non-compliance.
- We can quickly identify any obstacle to agreement.
- Negotiation can minimize or prevent any intervention by the USEPA to address the violations.

Should I continue working with the District or local air agency inspector?

Yes, the District Office or local air agency inspector is the best person to work with you to resolve the technical aspects of the violations, and prepare an acceptable control plan and schedule for submission to the Agency. Central Office personnel will also be available to provide assistance.

What should I do now that I received the proposed administrative consent order?

You should review the enclosed Order and the summary of the penalty calculation. If you accept the enclosed Order as written, sign the Order and send it within two weeks to the staff attorney referenced in the Director's letter. If you cannot accept the Order as written, the Agency would like to meet with you to discuss your concerns. Please contact the designated staff attorney at (614) 644-3037 to arrange a meeting.

If I want to have a meeting, what should I do to prepare for it?

Generally, the most productive meetings occur when both parties come prepared to discuss all issues. The Order and correspondence from the District Office or local air agency inspector contain the Agency's position. Since you were not willing to agree to the Order as written, we need to know whether you: (1) disagree with the facts outlined in the Order; (2) are not able or willing to comply with the Order; or (3) have information you feel may mitigate the civil penalty settlement amount. Send the staff attorney a written summary of your issues within two weeks from the date of the Director's letter. Additionally, if you believe you are financially unable to pay the penalty, contact the staff attorney for a list of information we need to evaluate your ability to pay.

What will happen at the meeting?

During the meeting, we will respond to any information you have provided. We are willing to work with you to arrive at mutually agreed upon modifications to the Order. Except in the most complex cases, our goal is to complete all negotiations at the meeting. If we cannot agree at the meeting and we feel we are making adequate progress, we will hold our offer of settlement open. Thereafter, if resolution of the negotiations is not achieved within the time frame agreed to by the parties at the settlement meeting or if we feel we are not making adequate progress, the offer of settlement may be withdrawn, and we may consider other enforcement alternatives, including a referral to the Office of the Attorney General.

Why do I have to pay a civil penalty?

A civil penalty is necessary to deter future violations and to remove any economic advantage you may have realized from not complying with Ohio's regulations. Instead of a full cash payment, the Agency may be willing to accept a supplemental environmentally beneficial project ("SEP"), that meets certain guidelines.

How did the DAPC arrive at the civil penalty settlement amount?

Ohio EPA relied on U.S. EPA's Air Civil Penalty Policy to calculate the penalty. The DAPC uses this Policy to ensure that we calculate penalties fairly and consistently and that the penalty is appropriate for the gravity of the violations. Enclosed is a summary of the DAPC's civil penalty settlement calculation. If you want a copy of the U.S. EPA's Air Civil Penalty Policy, contact the designated staff attorney at (614) 644-3037.

Who from Ohio EPA will be at the meeting?

Everyone necessary to resolve the matter will be at the meeting or available during the meeting to provide settlement authority. This includes the staff attorney, the District Office or local air agency inspector, and Central Office technical personnel.

Who should I bring to the meeting?

Similarly, you should bring anyone familiar with the issues as well as anyone who has the authority to settle this matter. You are welcome to be represented at this meeting by your attorney and your consultant.

News releases

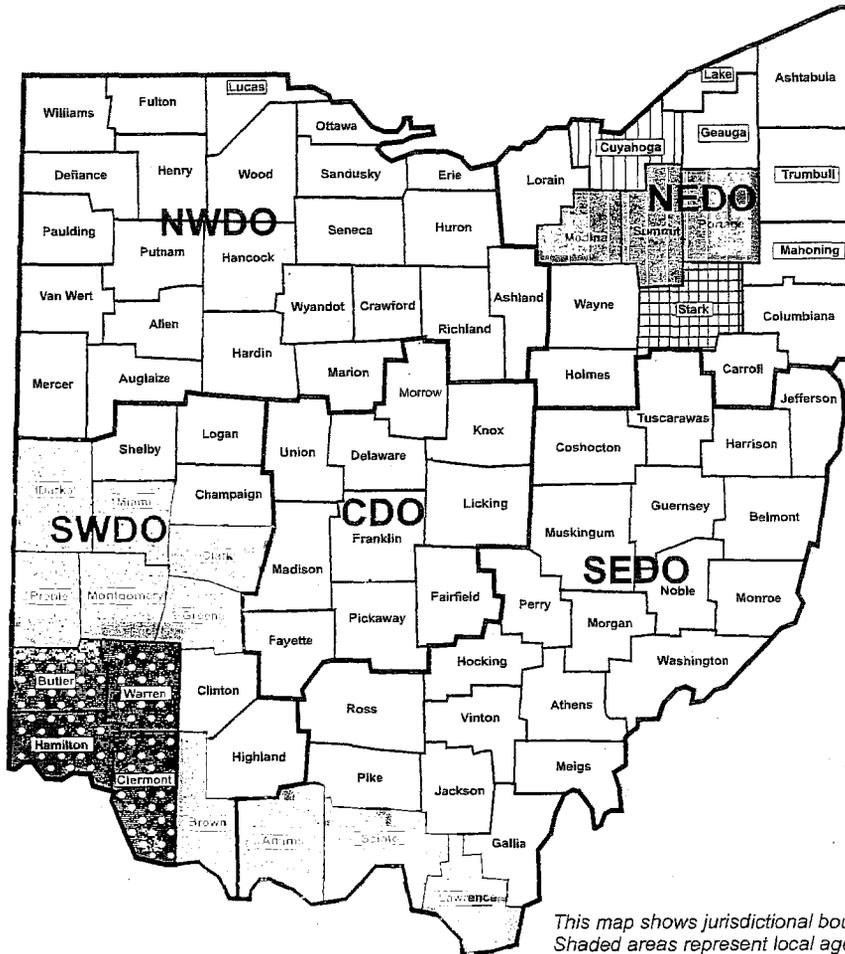
Please be aware that Ohio EPA may issue a news release to the media to inform the community about the settlement of this case, after all parties have signed it. As a public agency whose primary mission is to promote compliance with environmental laws, we believe it is important to inform citizens about our enforcement efforts. Ohio EPA's news release represents our position, and so we do not negotiate the language in the news release with you. If we prepare a news release, you will receive a courtesy copy shortly before it is released to the media and posted on our web site. You can read all of our news releases at: <http://www.epa.state.oh.us/pic/current.html>.

District Office and Local Air Agency Addresses and Phone Numbers

See the following pages.

Air Permit Review Agencies

Division of Air Pollution Control
Ohio EPA, Central Office
(614) 644-2270
www.epa.state.oh.us/dapc/general/dolaa.html



This map shows jurisdictional boundaries.
Shaded areas represent local agencies within Ohio EPA districts.



District Offices

CDO Adam Ward, APC Manager
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Columbus, OH 43215
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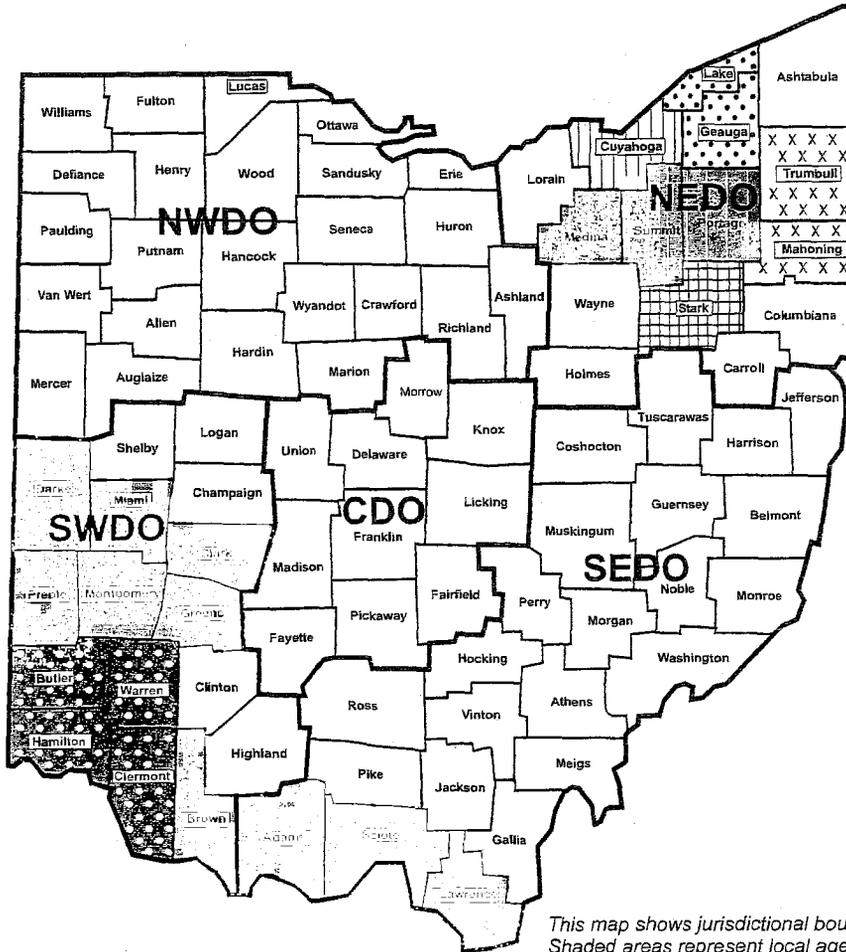
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Local Air Pollution Control Agencies

Division of Air Pollution Control
Ohio EPA, Central Office
(614) 644-2270
www.epa.state.oh.us/dapc/general/dolaa.html



This map shows jurisdictional boundaries.
Shaded areas represent local agencies within Ohio EPA districts.

OhioEPA

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*Facilities located within these jurisdictions should file air permit applications with Ohio EPA's Northeast District Office (NEDO).

BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

Sandusky Dock Corporation)	<u>Director's Final Findings</u>
2705 West Monroe Street)	<u>and Orders</u>
Sandusky, Ohio 44870)	

PREAMBLE

It is agreed by the parties hereto as follows:

I. JURISDICTION

These Director's Final Findings and Orders ("Orders") are issued to Sandusky Dock Corporation ("Respondent") pursuant to the authority vested in the Director of the Ohio Environmental Protection Agency ("Ohio EPA") under Ohio Revised Code ("ORC") § 3704.03 and § 3745.01.

II. PARTIES BOUND

These Orders shall apply to and be binding upon Respondent and successors in interest liable under Ohio law. No change in ownership of the Respondent or of the facilities (as hereinafter defined) shall in any way alter Respondent's obligations under these Orders.

III. DEFINITIONS

Unless otherwise stated, all terms used in these Orders shall have the same meaning as defined in ORC Chapter 3704 and the rules promulgated thereunder.

IV. FINDINGS

The Director of Ohio EPA has determined the following findings:

1. Respondent owns and operates a coal handling facility that receives coal by rail, stockpiles it, and loads it into trucks and ships for distribution to power plants and various manufacturing plants. The facility is identified by Ohio EPA facility identification number 0322020259 and is located at 2705 West Monroe Street in Sandusky, Ohio, on a pier that extends approximately one mile into Sandusky Bay of Lake Erie. Respondent is a "person" as defined by ORC § 3704.01(O) and Ohio Administrative Code ("OAC") Rule 3745-15-

01(U).

2. Respondent operates the following emissions units at the coal handling facility: paved and unpaved roadways and parking areas (F001), coal storage piles (F002), and material handling operations (F003). Each of these emissions units is an "air contaminant source" as defined in OAC Rule 3745-15-01(C) and (W), and emits "fugitive dust" and "particulate matter" as defined in OAC Rule 3745-17-01(B)(6) and (B)(12), respectively.

3. OAC Rule 3745-15-07 prohibits any person from causing, permitting or maintaining a public nuisance due to the emission or escape into the open air from any source or sources of smoke, ashes, dust, dirt, grime, acids, fumes, gases, vapors, odors, or any other substances or combinations of substances, in such manner or in such amounts as to endanger the health, safety or welfare of the public, or cause unreasonable injury or damage to property.

4. The Ohio EPA has received numerous complaints from neighboring businesses, residents, and Sandusky Harbor Marina patrons concerning the emissions of fugitive dust from Respondent's coal handling facility.

In June of 2000, a Sandusky Harbor Marina patron filed a verified complaint with the Director alleging that emissions of fugitive dust from Respondent's facility were causing damage to his boat and other personal property. The verified complaint included a petition signed by 98 individual Marina patrons complaining that the fugitive dust from Respondent's facility was causing a public nuisance, in violation of OAC Rule 3745-15-07.

5. The Northwest District Office investigated the verified complaint and determined that the fugitive dust emissions from Respondent's coal handling facility were causing a public nuisance, in violation of OAC Rule 3745-15-07. To address the public nuisance determination, the permit to operate for F002 (material storage piles), which was initially issued on April 24, 1999, was modified on October 16, 2001 to include control requirements and a visible emission limitation for the fugitive dust emissions. The terms of the permit stated that the control requirements were necessary to prevent further violations of OAC Rule 3745-15-07. Respondent subsequently appealed the issuance of the permit modification to the Environmental Review Appeals Commission (ERAC).

6. On April 3, 2002, the Director officially responded to the pending verified complaint. In his response, the Director indicated "that the dust nuisance allegation had merit;" however, he dismissed the verified complaint on the basis that it was unlikely the nuisance conditions would occur in the future if Respondent complied with the terms and conditions of the modified permit to operate issued on October 16, 2001.

7. On January 1, 2003, after conducting a hearing concerning Respondent's appeal

of the modified permit to operate, ERAC issued a decision that upheld (a) the Director's conclusion that Respondent was causing a public nuisance and (b) his issuance of the modified permit to operate to address the nuisance. Respondent subsequently appealed ERAC's decision to the Franklin County Court of Appeals.

8. On December 23, 2003, the Franklin County Court of Appeals issued its decision concerning Respondent's appeal. In the decision, the Court stated "the ERAC's order is reversed and this cause is remanded to ERAC for further proceedings consistent with this opinion." The Director subsequently appealed the Franklin County Court of Appeals' decision to the Ohio Supreme Court.

9. On October 5, 2005, the Ohio Supreme Court issued its decision concerning the Director's appeal. The decision affirmed the judgment of the Franklin County Court of Appeals to remand the permit to ERAC and, in doing so, stated the following: "When, as in this case, a PTO modification requir[es] abatement of or prohibit[s] emissions, R.C. 3704.03[R] governs the Director's authority. R.C. 3704.03[R] requires the Director to give consideration to, and base his determination on, evidence relating to the technical feasibility and economic reasonableness of compliance. The record does not indicate the Director complied with this requirement."

10. ERAC issued its Final Order on Remand on October 20, 2005. In the Order, ERAC remanded the modified permit to operate to the Director "for formal consideration of the technical feasibility and economic reasonableness" of the control requirements and visible emission limitation specified in the permit. ERAC's remand did not require the Director to reconsider whether or not Respondent is causing a public nuisance, in violation of OAC Rule 3745-15-07.

11. During the time period from October 16, 2001, when the modified permit to operate for F002 was issued, to the present, Respondent has operated F001, F002, and F003 under the expired permits to operate that were issued on April 24, 1999. (Respondent filed timely renewal applications for all three of the emissions units.) Also, during this same time period, the Agency has continued to receive complaints concerning the fugitive dust emissions from Respondent's coal handling facility. In addition, during this same time period, Respondent has implemented no additional control measures to further abate the fugitive dust emissions.

12. The fugitive dust emissions from Respondent's coal handling facility continue to cause a public nuisance, in violation of OAC Rule 3745-15-07. Additional control measures for the fugitive dust emissions are necessary to abate the public nuisance; and since ERAC issued its Final Order on Remand, the Agency has reconsidered the technical feasibility and economic reasonableness of the control measures and emission limitations

necessary to abate the public nuisance, as instructed by ERAC.

13. The Director has given consideration to, and based his determination on evidence relating to the technical feasibility and economic reasonableness of complying with the following Orders and their benefits to the people of the State to be derived from such compliance.

V. ORDERS

The Director hereby issues the following Orders:

1. To reduce the emissions of fugitive dust that are causing the violations of OAC Rule 3745-15-07, Respondent shall comply with the requirements of Orders 2 through 30 as expeditiously as practicable, but not later than the deadlines specified therein.

Unpaved Roads and Other Unpaved Surfaces with Vehicle Traffic (F001)

2. Within ninety (90) days of the effective date of these Orders, Respondent shall pave unpaved road segment UR3, which is the unpaved road segment that runs adjacent to the coal piles and is traveled primarily by coal handling vehicles.

3. Within thirty (30) days after the effective date of these Orders, Respondent shall apply dust suppressants on all unpaved roads and other unpaved surfaces with vehicle traffic at the facility in accordance with the following program, to minimize or eliminate fugitive dust emissions into the ambient air:

- a. All unpaved roads and other unpaved surfaces with vehicle traffic shall be treated weekly with a chemical dust suppressant (petroleum resin emulsions, asphalt emulsions, acrylic cements, or surfactants), except as provided under Orders 3.e. through 3.g., and 14 through 17 below.
- b. Except as provided in Orders 14 through 17 below, the dust suppressant application program shall provide for the application of a dust suppressant diluted by no more than seven (7) parts water to one part chemical and applied at a rate of not less than 0.5 gallon per square yard of unpaved road or unpaved surface with vehicle traffic.
- c. Respondent shall comply with a visible particulate emission limitation of no visible emissions, except for a period of three minutes in any 60-minute observation period for the unpaved roads and other unpaved surfaces with

vehicle traffic.

- d. Any unpaved road or other unpaved surface with vehicle traffic that is paved pursuant to these Orders shall comply with the requirements for paved roads and other paved surfaces with vehicle traffic.
 - e. Applications of dust suppressant may be delayed by not more than three (3) days for any scheduled date upon which the unpaved road or other unpaved surface with vehicle traffic is snow and/or ice covered or has experienced greater than or equal to 0.25 inch of rainfall.
 - f. In the event of persistent adverse weather conditions such as snow and/or ice cover or excessive rainfall, Respondent may petition the Director or his representative verbally, with written confirmation within three (3) days, for extended exemptions which may be granted as deemed appropriate by the Director or his representative.
 - g. Respondent shall ensure the availability, required scheduling, and proper maintenance of spray trucks for the dust suppressant application measures on all unpaved roads and other unpaved surfaces with vehicle traffic at the facility. The spray trucks shall be designed and equipped, at a minimum, with a 2,000-gallon capacity tank, a spray bar system capable of applying the dust suppressant solution at a coverage rate of at least 1.3 gallons per square yard of surface, a certified flow metering device calibrated in units of gallons per minute, and an apparatus that will facilitate manual applications of the solution to areas not readily accessible by the spray truck.
4. Respondent shall maintain records relative to the above dust suppressant application program for the unpaved roads and other unpaved surfaces with vehicle traffic. These records shall include, at a minimum, the following information:
- a. Control equipment maintenance records.
 - b. Scheduled and unscheduled equipment malfunctions and downtime.
 - c. A meteorological log to include average daily temperature, daily precipitation, and unusual meteorological occurrences.
 - d. The date, type, and quantity received for each delivery of chemical dust suppressant.

- e. For each dust suppressant application date, and for each unpaved road or other unpaved surface with vehicle traffic, the start and stop times, average truck speed, number of passes, type of dust suppressant, amount of solution applied, and the dilution ratio of the solution.
 - f. Identification of areas where manual spraying was utilized.
5. These above records shall be retained by Respondent for five (5) years and shall be made available to the Director or his representative upon request.
6. Respondent shall submit reports on a calendar quarter basis to Ohio EPA. The reports shall contain all of the information identified in Order 4 above and a description of any deviations from the control program and the reasons for such deviations. The reports shall be certified to be accurate by the Respondent and each report shall be submitted within fifteen (15) days after the end of each calendar quarter.
7. Respondent shall notify Ohio EPA, in writing, of any noncompliance with Orders 2, 3 and 4. Such notice shall be submitted within five (5) days of the noncompliance occurrence and shall include a detailed explanation of the cause of such noncompliance, all remedial actions required, and the date by which compliance was or will be reestablished.

Paved Roads and Paved Surfaces with Vehicle Traffic (F001)

8. Within thirty (30) days after the effective date of these Orders, Respondent shall employ watering on all paved roads and other paved surfaces with vehicle traffic, including parking areas, in accordance with the following program to minimize or eliminate fugitive dust emissions into the ambient air:
- a. All paved roads and other paved surfaces with vehicle traffic shall be cleaned via watering on at least a daily basis on each day of plant operation, except as provided under Orders 8.a.i., 8.a.ii., and 14 through 17 below.
 - i. Daily sweeping may be suspended only when there is snow, ice cover, or standing water on the surface.
 - ii. All such suspensions shall be reported and verified as required under Orders 12 and 13.
 - b. Respondent shall ensure the availability, required scheduling, and proper

maintenance of watering trucks. The trucks shall be designed and maintained so as to minimize or eliminate fugitive dust emissions into the ambient air.

- c. Respondent shall comply with a visible particulate emission limitation of no visible emissions, except for a period of one minute in any 60-minute observation period for the paved roads and other unpaved surfaces with vehicle traffic.

9. Within two (2) weeks after the effective date of these Orders, Respondent shall post signs throughout the facility that limit the speed of all vehicles to 5 miles per hour.

10. Respondent shall maintain daily records for the paved road cleaning program. These records shall include, at a minimum, the following information:

- a. Control equipment maintenance records.
- b. Scheduled and unscheduled equipment malfunctions and downtime.
- c. A meteorological log to include average daily temperature, daily precipitation, and unusual meteorological occurrences.
- d. Qualitative description of the road surface conditions.
- e. Start and stop times, average truck speed, and number of passes for each paved road segment.
- f. Identification of areas where chemical treatment was utilized.
- g. Qualitative descriptions of areas of unusually high silt loadings from spills and track-ons.

11. These records shall be retained by Respondent for five (5) years and shall be made available to Ohio EPA upon request.

12. A calendar quarterly report shall be submitted to Ohio EPA. The report shall contain all of the information cited above and a description of any deviation from the control program and the reasons for such deviation. The report shall be certified to be accurate by Respondent and shall be submitted within fifteen (15) days after the end of the quarter.

13. Respondent shall notify the Director or his representative, in writing, of any noncompliance with Orders 8 through 10. Such notice shall be submitted within five (5)

days of the noncompliance occurrence and shall include a detailed explanation of the cause of such noncompliance, all remedial actions required, and the date by which compliance was or will be reestablished.

Changes to Dust Control Program for Unpaved and Paved Roads and Other Unpaved and Paved Surfaces with Vehicle Traffic

14. Respondent has the right to petition Ohio EPA for written approval of definitive treatment methods, treatment schedules, and procedures or reporting requirements different from those required herein. No action shall be taken by Respondent in employing the alternative practices until Ohio EPA issues a written approval to Respondent. Such alternative practices must be demonstrated to Ohio EPA to result in equivalent dust control effectiveness.

15. In the event that Respondent certifies that all of a road or other surface has been discontinued, the dust suppression or surface cleaning program for that surface may be terminated or reduced. If Respondent begins to utilize any new roadway, parking lot or other vehicular activity area, it shall notify the Director and treat or clean the road or other surface in accordance with the procedures contained herein, unless more stringent requirements are specified in any permit to install issued by Ohio EPA for such road or other surface.

16. The Director or his representative shall not be precluded from requiring adjustments, including increased chemical suppressant application or cleaning, if on-site inspections reveal that the program contained herein does not prevent significant visible dust surface entrainment and emissions from a particular road segment or other surface.

17. In the event that an unpaved road or other unpaved surface with vehicle traffic that has been chemically treated becomes completely hardened and cemented by such treatment so as to become like a paved road as demonstrated by observation, compaction tests, and silt analyses, or in the event that Respondent paves any unpaved road or other unpaved surface, that road or other surface may be treated as a paved surface and cleaned in accordance with the procedures outlined in Order 8.

Coal Storage Piles (F002)

18. Respondent shall minimize or eliminate visible emissions of fugitive dust from the coal storage piles at all times.

19. Respondent shall continue to utilize the existing water spray towers to apply a sufficient amount of water at sufficient frequencies on all surfaces of the coal storage piles

to maintain the surface material in a moist condition at all times and thereby control the emissions of fugitive dust.

20. Within sixty (60) days after the effective date of these Orders, Respondent shall automate the existing water spray towers by installing additional hardware, software, sensors, and real-time aerosol monitors to enable the watering of the storage piles based upon site-specific weather conditions. An on-site meteorological station shall be installed within the same time frame to provide site-specific ambient data that can be used by the new computer system for the water spray towers to adjust the amount and frequency of the water sprayed on the storage piles.

21. For any coal storage pile that will remain inactive for a significant period of time, Respondent shall utilize a spray truck to apply a chemical dust suppressant (crusting agent) over the entire surface of the pile to minimize or eliminate visible emissions of fugitive dust from the pile.

22. The maximum height of each coal storage pile shall not exceed seventy (70) feet. Respondent shall routinely utilize dozers to flatten the peaks of the storage piles to ensure (a) that the maximum pile height is not exceeded and (b) that all portions of the storage piles can be reached by the sprays from the water spray towers and spray truck(s).

Material Handling Operations (F003)

23. Within one hundred and eighty (180) days after the effective date of these Orders, Respondent shall install the following additional control measures for the material handling operations:

a. **Car Dumping:**

Respondent shall install a water spray system that rotates with each railcar during the dumping cycle so as to provide the most uniform coverage over the railcar. The spray manifold shall be situated over the railcar and oriented to provide a water curtain that covers the railcar and the portion of the pan chute where the coal movement is most turbulent.

Respondent shall install a surfactant system to enable the addition of a surfactant (wetting agent) to the water sprays to improve the control efficiency of the wet suppression system for dusty coal shipments.

Respondent also shall install a wind barrier around three sides of the dumper structure to minimize the wind velocity through the dump zone.

b. **Conveyor 8 Discharge:**

Respondent shall replace the nozzles on the existing spray bar for the pan chute with smaller nozzles to conserve water and provide coverage over the portion of the pan where dust is generated.

The surfactant system installed pursuant to paragraph 23.a also shall be utilized for this operation to improve the control efficiency of the wet suppression system for dusty coals.

c. Pan Chute Transfer to Conveyor 1:

Respondent shall install water sprays at the transfer point to conveyor 1.

During the transfer of coal from the pan chute to conveyor 1, the pan chute shall be lowered as much as possible to minimize the drop height of the coal being transferred.

d. Transfer to Conveyor 2, Transfer to Conveyor 3, Transfer to Conveyor 4, and Transfer to Conveyor 6:

Respondent shall install water sprays at each of the transfer points to conveyor 2, conveyor 3, conveyor 4, and conveyor 6.

e. Cross Conveyor to Bandwagon Transfer:

Respondent shall install a hood on the bandwagon hopper and a water spray at the cross conveyor discharge point.

f. Bucket Wheel Reclaim from Storage Piles:

Respondent shall install water sprays at the discharge of the buckets to the reclaim conveyor.

g. Bandwagon to Conveyor 4 Hopper Transfer:

Respondent shall install water sprays at the discharge from the bandwagon to the hopper for conveyor 4.

During the transfer of coal from the bandwagon to the hopper for conveyor 4, the chute from the bandwagon shall be lowered as much as possible to minimize the drop height of the coal being transferred.

h. Transfer from Hopper to Conveyor 4 and Transfer from Conveyor 4 to

Conveyor 5:

Respondent shall install water sprays at each of the transfer points to conveyor 4 and conveyor 5.

i. Silo Discharges to Conveyor 6:

Respondent shall install water sprays at each of the 6 transfer points from the silos to conveyor 6.

j. Silo Structures:

Respondent shall plant a wind barrier of adequately sized trees and bushes on the north side of the silos to inhibit wind effects and reduce emissions of fugitive dust.

k. Transfer to Conveyor 7 and Transfer to Conveyor 8:

Respondent shall install water sprays at each of the transfer points to conveyor 7 and conveyor 8.

l. Transfer to Stacker/Reclaim Conveyor:

Respondent shall install water sprays at each of the transfer points to the stacker/reclaim conveyor.

24. After installation of the control measures specified in Order 23, Respondent shall utilize the control measures at all times the material handling operations are in use.

Progress Reports

25. Within fifteen (15) days after each deadline in the above Orders, Respondent shall submit a report to Ohio EPA on the progress in achieving compliance with such deadline. The report shall indicate whether or not the project was completed, the date it was completed or the date it is expected to be completed, and the reason(s) for not completing the project by the deadline (if applicable).

Monitoring, and Record Keeping, and Reporting Requirements for the Coal Storage Piles (F002) and the Material Handling Operations (F003)

26. Respondent shall perform daily checks, when the emissions units are in operation and when the weather conditions allow, for any visible emissions of fugitive dust from each of the coal storage piles and material handling operations comprising emissions

units F002 and F003. The presence or absence of any visible emissions shall be noted in an operations log. If visible emissions are observed, Respondent also shall note the following in the operations log:

- a. the location of the emissions;
- b. whether the emissions are representative of normal operations;
- c. if the emissions are not representative of normal operations, the cause of the abnormal emissions;
- d. the total duration of any visible emission incident; and
- e. any corrective actions taken to minimize or eliminate the visible emissions.

If visible emissions are present, a visible emission incident has occurred. The observer does not have to document the exact start and end times for the visible emission incident under item (d) above or continue the daily check until the incident has ended. The observer may indicate that the visible emission incident was continuous during the observation period (or, if known, continuous during the operation of the emissions unit). With respect to the documentation of corrective actions, the observer may indicate that no corrective actions were taken if the visible emissions were representative of normal operations, or specify the minor corrective actions that were taken to ensure that the emissions unit continued to operate under normal conditions, or specify the corrective actions that were taken to eliminate abnormal visible emissions.

27. Respondent shall submit semiannual written reports that (a) identify all days during which any visible emissions of fugitive dust were observed from the coal storage piles and material handling operations comprising emissions units F002 and F003 and (b) describe any corrective actions taken to minimize or eliminate the visible emissions. These reports shall be submitted to the Northwest District Office by January 31 and July 31 of each year and shall cover the previous 6-month periods.

28. Respondent also shall maintain records of the following information:

- a. The total volume of water sprayed on the coal storage piles each day.
- b. The date a crusting agent was sprayed on an inactive coal storage pile and an identification of the inactive coal storage pile that was sprayed.
- c. An identification of each calendar day the water spray tower was not operating properly.
- d. For the days when the material handling operations were in use, an identification of each water spray that was not being utilized for the control of fugitive dust emissions.

29. Respondent shall submit semiannual written reports that summarize the information recorded pursuant to Order 28. These reports shall be submitted to the Northwest District Office by January 31 and July 31 of each year and shall cover the previous 6-month periods.

Compliance Testing

30. Compliance with the visible emission limitations in the above Orders shall be determined using USEPA Method 22.

Civil Penalty

31. Respondent shall pay the amount of **XXX** dollars (\$ **XXX**) in settlement of Ohio EPA's claims for civil penalties, which may be assessed pursuant to ORC Chapter 3704. Within fourteen (14) days after the effective date of these Orders, payment to Ohio EPA shall be made by an official check made payable to "Treasurer, State of Ohio" for [**YYY**] dollars (\$ **YYY**) of the total amount. The official check shall be submitted to Brenda Case, or her successor, together with a letter identifying the Respondent, to:

Ohio EPA
Office of Fiscal Administration
P.O. Box 1049
Columbus, Ohio 43216-1049

32. In lieu of paying the remaining **ZZZ** dollars (\$ **ZZZ**) of the civil penalty, Respondent shall, within fourteen (14) days of the effective date of these Orders, fund a Supplemental Environmental Project ("SEP") by making a contribution in the amount of \$ **ZZZ** to the Ohio EPA's Clean Diesel School Bus Program Fund (Fund 5CD0). Respondent shall tender an official check made payable to "Treasurer, State of Ohio" for \$ **ZZZ**. The official check shall be submitted to Brenda Case, or her successor, together with a letter identifying the Respondent and Fund 5CD0, to the above-stated address.

33. A copy of each of the above checks shall be sent to James A. Orlemann, Assistant Chief, SIP Development and Enforcement, or his successor, at the following address:

Ohio EPA
Division of Air Pollution Control
P.O. Box 1049
Columbus, Ohio 43216-1049

34. Should Respondent fail to fund the SEP within the required time frame set forth in Order 32, Respondent shall immediately pay to Ohio EPA \$ **ZZZ** of the civil penalty in accordance with the procedures in Order 31.

VI. TERMINATION

Respondent's obligations under these Orders shall terminate when Respondent certifies in writing and demonstrates to the satisfaction of Ohio EPA that Respondent has performed all obligations under these Orders and the Chief of Ohio EPA's Division of Air Pollution Control acknowledges, in writing, the termination of these Orders. If Ohio EPA does not agree that all obligations have been performed, then Ohio EPA will notify Respondent of the obligations that have not been performed, in which case Respondent shall have an opportunity to address any such deficiencies and seek termination as described above.

The certification shall contain the following attestation: "I certify that the information contained in or accompanying this certification is true, accurate and complete."

This certification shall be submitted by Respondent to Ohio EPA and shall be signed by a responsible official of Respondent. For purposes of these Orders, a responsible official is the person authorized to sign in OAC Rule 3745-35-02(B)(1) for a corporation or a duly authorized representative of Respondent as that term is defined in the above-referenced rule.

VII. OTHER CLAIMS

Nothing in these Orders shall constitute or be construed as a release from any claim, cause of action or demand in law or equity against any person, firm, partnership or corporation, not a party to these Orders, for any liability arising from, or related to, the operation of Respondent's facility.

VIII. OTHER APPLICABLE LAWS

All actions required to be taken pursuant to these Orders shall be undertaken in accordance with the requirements of all applicable local, State and federal laws and regulations. These Orders do not waive or compromise the applicability and enforcement of any other statutes or regulations applicable to Respondent.

IX. MODIFICATIONS

These Orders may be modified by agreement of the parties hereto. Modifications shall be in writing and shall be effective on the date entered in the journal of the Director

of Ohio EPA.

X. NOTICE

All documents required to be submitted by Respondent pursuant to these Orders shall be addressed to:

Ohio Environmental Protection Agency
Northwest District Office
Division of Air Pollution Control
347 North Dunbridge Rd.
Bowling Green, Ohio 43402
Attention: Don Waltermeyer

and

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

or to such persons and addresses as may hereafter be otherwise specified in writing by Ohio EPA.

XI. RESERVATION OF RIGHTS

Ohio EPA and Respondent each reserve all rights, privileges and causes of action, except as specifically waived in Section XII of these Orders.

XII. WAIVER

Respondent hereby waives the right to appeal the issuance, terms and conditions, and service of these Orders, and Respondent hereby waives any and all rights Respondent may have to seek administrative or judicial review of these Orders either in law or equity.

Notwithstanding the preceding, Ohio EPA and Respondent agree that if these Orders are appealed by any other party to the Environmental Review Appeals Commission, or any court, Respondent retains the right to intervene and participate in such appeal. In such an event, Respondent shall continue to comply with these Orders notwithstanding such appeal and intervention unless these Orders are stayed, vacated, or modified.

XIII. EFFECTIVE DATE

The effective date of these Orders is the date these Orders are entered into the Ohio EPA Director's journal.

XIV. SIGNATORY AUTHORITY

Each undersigned representative of a party to these Orders certifies that he or she is fully authorized to enter into these Orders and to legally bind such party to these Orders.

IT IS SO ORDERED AND AGREED:

Ohio Environmental Protection Agency

Chris Korleski
Director

Date

IT IS SO AGREED:

Sandusky Dock Corporation

Signature

Date

Printed or Typed Name

Title