

**BEFORE THE**  
**OHIO ENVIRONMENTAL PROTECTION AGENCY**

In the Matter of:

City Concrete, L.L.C.	:	<u>Director's Final Findings</u>
P.O. Box 1312	:	<u>and Orders</u>
Youngstown, Ohio 44501	:	

**PREAMBLE**

It is agreed by the parties hereto as follows:

**I. JURISDICTION**

These Director's Final Findings and Orders ("Orders") are issued to City Concrete, L.L.C. ("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 relating to the facilities identified in Finding 1 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 has determined the following findings:

1. Respondent owns and operates a concrete batch plant, with associated roadways, parking areas, and storage piles, located at 2600 Division Street, in Youngstown, Mahoning County, Ohio. Respondent formerly operated aggregate crushing and screening equipment at the 2600 Division Street site from June 1999 until June 2000. Respondent also owns, and has installed, a portable concrete batch plant, located at Mahoning Avenue, in North Jackson, Mahoning County, Ohio. These facilities are "air contaminant sources," as defined in Ohio Administrative Code ("OAC") Rule 3745-15-01(C) and (W).

2. ORC § 3704.05(A) states that no person shall cause, permit, or allow emission of an air contaminant in violation of any rule adopted by the Director of Ohio EPA unless the person is the holder of a variance permitting the emission of the contaminant in excess of that permitted by the rule or the person is the holder of an operating permit that includes a compliance schedule.

3. 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.

4. Ohio Administrative Code ("OAC") Rule 3745-31-02 states, in part, that no person shall cause, permit, or allow the installation of a new source of air pollutants...or cause, permit, or allow the modification of an air contaminant source without first obtaining a permit to install from the Director of Ohio EPA, unless otherwise exempted by rule or law.

5. OAC Rule 3745-31-05 states, in part, that the Director of Ohio EPA shall only issue a permit to install for a new air contaminant source if he determines that the source will employ the best available technology ("BAT").

6. OAC Rule 3745-35-02 states, in part, that no person may cause, permit, or allow the operation or other use of any air contaminant source without applying for and obtaining a permit to operate from the Director of Ohio EPA in accordance with the requirements of this rule, unless otherwise exempted by rule or law.

7. OAC Rule 3745-17-07(B)(1) states, in part, that visible particulate emissions from any fugitive dust source shall not exceed 20% opacity, as a three-minute average. OAC Rule 3745-17-07(B)(5) further states that there shall be no visible particulate emissions from any unpaved roadway or parking area except for a period of time not to exceed 13 minutes during any 60-minute observation period. OAC Rule 3745-17-07 applies to any fugitive dust source located in a geographical area specified in Appendix A of OAC Rule OAC Rule 3745-17-08, except as otherwise provided in OAC Rule 3745-17-07(B)(11).

8. OAC Rule 3745-17-08 states, in part, that no person shall cause or permit any fugitive dust source to be operated; or any materials to be handled, transported, or stored; or a building or its appurtenances or a road to be used, constructed, altered, repaired, or demolished without taking or installing reasonably available control measures ("RACM") to prevent fugitive dust from becoming airborne, if the fugitive dust source is located within any area identified in "Appendix A" of this rule and is not otherwise exempted from the requirements by this rule. The City of Youngstown in Mahoning County is listed in Appendix A.

9. As a result of an Ohio EPA inspector observing excess fugitive dust originating from Respondent's facility while inspecting a neighboring facility, on June 1, 1999, Ohio EPA, Division of Air Pollution Control, Northeast District Office ("NEDO") sent, by certified mail, a letter to Respondent requesting it submit completed Permit to Install ("PTI") and Permit to

Operate ("PTO") applications to Ohio EPA for the portable concrete batch plant, aggregate storage piles, roadways, parking areas, and crushing and screening operations at Respondent's facility located at 2600 Division Street, Youngstown. Respondent received the request on June 11, 1999.

10. On September 14, 1999, NEDO sent, by certified mail, a Notice of Violation ("NOV") to Respondent concerning the sources identified in Finding 9, citing violations of OAC Rule 3745-31-02, for failure to apply for and obtain PTIs prior to installing air contaminant sources, and of OAC Rule 3745-35-02, for operating air contaminant sources prior to obtaining PTOs from Ohio EPA. The NOV was returned to NEDO by the Post Office on October 4, 1999, as unclaimed by Respondent. NEDO attempted to hand-deliver the NOV to Respondent on September 23, 1999; Respondent again refused receipt of the NOV. The NOV was hand-delivered by NEDO to Respondent on May 5, 2000; copies of the PTI application form were also delivered to Respondent at that time.

11. On September 23, 1999, NEDO received a PTO application from Respondent for the concrete batch plant (and its associated roadways, parking areas, and storage piles) located at 2600 Division Street in Youngstown. A PTI application was not submitted. No applications were received for the aggregate crushing and screening operations also located at the Division Street site.

12. In a series of eight telephone conversations from February 6, 2001 to April 2, 2001 with Respondent, NEDO continued to request that Respondent submit a PTI application for the concrete batch plant and both PTI and PTO applications for the aggregate crushing and screening operations at the Division Street location.

13. On March 28, 2001, NEDO received a letter from the Respondent, notifying Ohio EPA that it had temporarily installed a portable concrete batch plant at Mahoning Avenue, in North Jackson, in Mahoning County. At this time, Respondent also re-submitted a copy of the September 23, 1999 PTO application for the Division Street location's concrete batch plant.

14. On April 2, 2001, NEDO sent an NOV to Respondent, citing violations of OAC Rule 3745-31-02, for failure to apply for and obtain PTIs prior to installing air contaminant sources, and of OAC Rule 3745-35-02, for operating air contaminant sources prior to obtaining PTOs from Ohio EPA for the concrete batch plant; storage piles; roadways and parking areas; and aggregate crushing and screening operations located at the 2600 Division Street facility, and for violation of OAC Rule 3745-31-02, for failure to apply for and obtain a PTI prior to installing an air contaminant source for the installation of the portable concrete batch plant at the Mahoning Avenue location.

15. In a letter dated April 16, 2001, and received by NEDO on April 17, 2001, Respondent replied to the April 2, 2001 NOV by reporting that the aggregate crushing and screening equipment had been removed from service at the Division Street location in June 2000, and subsequently sold. Respondent again stated that the portable concrete batch plant

installed at the Mahoning Avenue location was only a temporary facility and would be in operation for approximately six months. Respondent requested that NEDO provide the specific forms necessary to conform to the applicable requirements.

16. On April 19, 2001, NEDO responded to Respondent's April 16, 2001, letter and requested that Respondent forward any documentation verifying the sale of the aggregate crushing and screening equipment, as well as provide any information regarding the time frame in which it had operated, to NEDO. NEDO also provided the forms Respondent had requested.

17. On May 9, 2001, NEDO received Respondent's PTI application for the Mahoning Avenue facility. The PTI application for the Division Street facility was received by NEDO on May 18, 2001. From the information provided in the PTI applications, NEDO learned that the portable concrete batch plant had been installed at the Mahoning Avenue location in April 2001. Per the PTI application, the concrete batch plant at the Division Street location was installed in June 1998, and began operations in August 1998.

18. On May 23, 2001, NEDO sent an NOV to Respondent for violations of visible particulate emission limits, and for failure to obtain a PTI and a PTO prior to installing and operating an air contaminant source. Specifically, on May 11, 2001, an inspector from NEDO, using Method 22 of Title 40 of the Code of Federal Regulations ("40 CFR"), Part 60, Appendix A, observed visible particulate emissions from an unpaved portion of roadway at the Respondent's Division Street facility for over 15 minutes in a 60-minute observation period, in violation of OAC Rule 3745-17-07(B)(5) and ORC § 3704.05(A) and (G). NEDO also cited Respondent with a violation of OAC Rule 3745-17-08(B), for failing to have RACM in place to minimize or eliminate fugitive dust from becoming airborne. On May 16, 2001, inspectors from NEDO, using Method 9 of 40 CFR, Part 60, Appendix A, observed visible particulate emissions from the loading of transit-mix concrete trucks at the Respondent's Division Street facility. During a 16-minute observation period, the inspectors observed visible particulate emissions from the truck loading operations as high as 36%, as a three-minute average, and the lack of RACM, in violation of OAC Rules 3745-17-07(B)(1) and 3745-17-08(B), and ORC § 3704.05(A) and (G). Of the 64 opacity readings recorded, 31 were above 20% opacity.

19. The May 23, 2001 NOV further cited Respondent as still in violation of OAC Rules 3745-31-02 and 3745-35-02, for installing and operating air contaminant sources without first obtaining PTIs and PTOs from Ohio EPA. NEDO required that Respondent submit a compliance plan and schedule detailing the measures to be taken to bring the Division Street facility into compliance with the above-mentioned rules and laws. As the Mahoning Avenue facility is identical to the Division Street facility, NEDO also requested that Respondent submit a plan demonstrating that the facility would be capable of operating in compliance with the above-mentioned rules upon operation. NEDO required that both plans be submitted within 14 days of receipt of the NOV by the Respondent. The NOV, which was sent to Respondent via certified mail, was returned to NEDO by the Post Office as unclaimed on June 13, 2001. NEDO faxed the NOV to Respondent on June 15, 2001.

20. On July 9, 2001, NEDO received correspondence from the Respondent, in which it submitted the requested compliance plan and schedule to address the violations cited by NEDO in the May 23, 2001 NOV. Respondent committed to immediately initiating and maintaining dust control measures on the Division Street facility's roadways and parking areas, including the use of sweeping, watering, and application of chemical dust suppressant. Respondent also committed to appropriate record keeping related to these activities. Respondent also committed to the modification of the truck loading operations, including the installation of a sheet metal structure and a baghouse-type collector to capture fugitive dust emissions. This modification was to be operational by September 13, 2001. Respondent stated that a compliance plan detailing the measures to be taken to demonstrate compliance at the Mahoning Avenue facility prior to operation would be developed and submitted to NEDO by July 20, 2001.

21. On July 11, 2001, NEDO sent a letter to Respondent, notifying it that the PTI applications submitted on May 9, 2001 and May 18, 2001 were incomplete, as the applications only addressed emissions from the concrete batch plants and did not address any emissions from the associated roadway or storage piles. NEDO requested that the revised PTI applications be submitted within 21 days of receipt of the letter.

22. On July 31, 2001, NEDO received complete PTI applications for both the Division Street and Mahoning Avenue facilities from Respondent.

23. Ohio EPA has determined that BAT for the transit-mix truck loading operation consists of equipment to capture the particulate-laden air at the point of loading and a fabric filter (baghouse) to collect the particulate emissions. BAT would also include a requirement that such capture equipment be designed and operated to limit visible particulate emissions of fugitive dust at the point of loading to no greater than 10% opacity, as a three-minute average, and that the fabric filter be designed and operated so that there are no visible emissions from the outlet of the fabric filter.

24. Ohio EPA has determined that RACM for the transit-mix truck loading operation consists of the measures identified in Finding 23.

25. On September 20, 2001, the Director sent a warning letter to Respondent, noting the violations of OAC Rules 3745-31-02 and 3745-35-02 which had occurred at Respondent's Division Street facility. The Director specifically identified Respondent's installation and operation of aggregate crushing and screening equipment at that location without first applying for and obtaining a PTI and PTO from Ohio EPA. The Director requested that the Respondent submit the information requested by NEDO in its April 19, 2001, letter or submit permit applications for the aggregate crushing and screening equipment.

26. On September 24 and October 19, 2001, NEDO received correspondence from Engineering Services & Consultants, Inc. ("ES&C"), a firm retained by the Respondent to resolve the compliance issues at the Division Street facility. ES&C provided details regarding roadway maintenance at the site, and regarding the equipment being installed to control

fugitive dust emissions during transit-mix truck loading operations. ES&C stated that the dust collector had been delivered to the Division Street site the week of September 24, 2001, and installation had begun the week of October 3, 2001.

27. On January 3, 2002, NEDO inspected Respondent's Division Street and Mahoning Avenue facilities. No new violations were observed at that time. The Division Street fugitive dust collection equipment was partially installed, but not yet operational. Respondent provided NEDO with additional information regarding the installation, operation, and sale of the portable aggregate crushing and screening equipment, which had been operated at the Division Street site. The portable concrete batch plant was installed at the Mahoning Avenue site, but not operating.

28. On June 12, 2002, draft Director's Final Findings and Orders ("DFF&Os") were sent to Respondent by Ohio EPA to resolve the above violations.

29. On July 3, 2002, NEDO inspected Respondent's Division Street facility. At that time, the inspector observed fugitive dust being released at the transit-mix truck loading point. Opacities as high as 34.6%, as a three-minute average, were observed, in violation of OAC Rule 3745-17-07(B)(1) and ORC §§ 3704.05(A) and 3704.05(G). Respondent later determined that the opacity was caused by a malfunction of the reverse-air cleaning mechanism of the baghouse dust collector. In a letter dated July 8, 2002, NEDO described the above violation and warned that failure to report malfunctioning air pollution control equipment was also a violation of OAC Rule 3745-15-06(B).

30. On July 24, 2002, NEDO inspected Respondent's Division Street facility again. At that time, the inspector observed no fugitive dust being released at the transit-mix truck loading point. The highest opacity observed was 1.7% as a three-minute average. The roadways, parking areas, and aggregate storage piles were found to be watered and not emitting fugitive dust. No violations were observed during the inspection.

31. On August 6, 2002, Ohio EPA issued the PTI for Respondent's Division Street facility (PTI number 02-15214). The PTI for Respondent's portable concrete batch plant (PTI number 02-15165) was issued by Ohio EPA on August 15, 2002.

32. On September 10, 2002, Respondent initiated negotiations with Ohio EPA to resolve the issues presented in the draft DFF&Os. As part of the negotiations, on November 19, 2002, Respondent proposed to perform a supplemental environmentally beneficial project to convert its Division Street concrete batch plant from a dry-load transit-truck mix system to an enclosed, wet-mix system. Concrete would be mixed internally in the plant and loaded wet into delivery trucks. This conversion eliminates much of the fugitive dust emissions from the truck loading operations. It also reduces emissions from the diesel concrete delivery trucks by reducing the amount of mixing time at high throttle from 10 minutes to approximately 40 seconds. Respondent estimated that as much as 11.0 tons of air contaminants would be eliminated per year. Respondent estimated that the cost of this conversion would be in



Method 22 of 40 CFR, Part 60, Appendix A and  
OAC Rule 3745-17-03(B)(4)

Alternative USEPA approved test methods may be used with prior approval from Ohio EPA.

- c. The tests shall be conducted while the truck loading operation is operating at or near its maximum capacity, unless otherwise specified or approved by NEDO.
- d. Not later than thirty (30) days prior to the tests, Respondent shall submit an "Intent to Test" notification to NEDO. The "Intent to Test" notification shall describe in detail the proposed test methods and procedures, the emissions unit operating parameters, the time and date of the tests, and the person who will be conducting the tests. Failure to submit such notification for review and approval prior to the tests may result in NEDO's refusal to accept the results of the emission tests.
- e. Personnel from NEDO shall be permitted to witness the tests, examine testing equipment, and acquire data and information necessary to ensure that the operation of the emissions unit and the testing procedures provide a valid characterization of the emissions from the emissions unit and/or the performance of the control equipment.
- f. A comprehensive written report on the results of the emission tests shall be signed by the person or persons responsible for the tests and submitted to NEDO within thirty (30) days following the completion of the tests. The permittee may request additional time for the submittal of the written report, where warranted, with prior approval from NEDO.

2. Respondent shall pay the amount of fifty-eight thousand and eight hundred dollars (\$58,800) in settlement of Ohio EPA's claim for civil penalties, which may be assessed pursuant to ORC Chapter 3704. Within thirty (30) days after the effective date of these Orders, Respondent shall pay to Ohio EPA the amount of ten thousand, one hundred and twenty-five dollars (\$10,125) of the total amount. Payment shall be made by an official check made payable to "Treasurer, State of Ohio" and shall be submitted, with a letter identifying the Respondent and its facilities located at 2600 Division Street in Youngstown, Ohio, and Mahoning Avenue in North Jackson, Ohio, to:

Ohio EPA, Office of Fiscal Administration  
P.O. Box 1049  
Columbus, Ohio 43216-1049  
Attention: Brenda Case

A copy of the check shall be sent to James A. Orlemann, Assistant Chief, 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

In lieu of payment to Ohio EPA of the remaining forty-eight thousand, six hundred, and seventy-five dollars (\$48,675) of the total penalty amount, Respondent shall perform the supplemental environmentally beneficial project identified in Order 3. In the event Respondent defaults or otherwise fails to complete the project as specified in Order 3, the \$48,675 shall immediately become due and payable to Ohio EPA. Such payment shall be made by 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. Respondent shall perform the supplemental environmentally beneficial project consisting of converting its Division Street concrete batch plant from a dry-load transit-truck mix system to an enclosed, wet-mix system, as described in Finding 32, PTI application 02-15214, and the PTO application for the facility (identification number 0150111005, emissions unit P901). As part of this project, in addition to paving road section CC-01, as identified in Figure Y01141-03 in PTI application 02-15214, submitted on June 5, 2003, Respondent shall also pave the road section CC-02, also identified in Figure Y01141-03. These road sections shall be completely paved as expeditiously as practicable, but not later than October 31, 2003.

4. Respondent shall submit a progress report for the road paving project specified in Order 3 within fourteen (14) days after the completion date. The report shall include a narrative description of whether the project has been completed and how this has been accomplished, with any documentation necessary to demonstrate that the project is completed. If the project has not been completed, the report shall include an explanation of the reasons for the missed completion date, a description of all actions to be taken to complete the project, and a proposed schedule to complete the project. In the event of a missed completion date, a follow-up progress report shall be submitted every fourteen (14) days after the initial report of non-completion until the project is completed.

## **VI. TERMINATION**

Except for Order 3, 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 Respondent's operation of its facility, as specified in these Orders.

## **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 the Respondent.

## **IX. MODIFICATIONS**

These Orders may be modified by mutual 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 by these Orders, unless otherwise specified in writing, shall be addressed to :

Ohio Environmental Protection Agency  
Northeast District Office  
Division of Air Pollution Control  
2110 E. Aurora Road  
Twinsburg, Ohio 44087  
Attention: Tim Fischer, Environmental Specialist

and to:

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

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 the 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 an appeal. In such an event, Respondent shall continue to comply with these Orders unless said 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.

