OHIO E.P.A.

DEC 29 2004

ENTERED DIRECTOR'S JOURNAL

BEFORE THE

OHIO ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

Canton Asphalt Company
5947 Whipple Ave. NW
Canton, Ohio 44720

Director's Final Findings and Orders

PREAMBLE

It is agreed by the parties hereto as follows:

I. JURISDICTION

These Director's Final Findings and Orders ("Orders") are issued to Canton Asphalt Company ("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's facility identified below 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

All of the findings necessary for the issuance of these Orders pursuant to ORC §§ 3704.03 and 3745.01 have been made and are outlined below. Nothing in the findings shall be considered to be an admission by Respondent of any matter of law or fact. The Director of Ohio EPA has determined the following findings:

1. Respondent owns and operates an asphaltic concrete production facility located at County Road ("CR") 82, 1000 feet east of CR103 in Sandy Township of Tuscarawas County, Ohio, at the Oster Sand and Gravel facility. Respondent is a subsidiary of Oster Enterprises.

2. At the facility, Respondent operates a 150 tons per hour hot mix asphaltic concrete batch plant (identified by Ohio EPA as "emissions unit P901"), roadways, and storage piles, all of which are "air contaminant sources" as defined by Ohio Administrative

Code ("OAC") Rules 3745-31-01(I) and 3745-35-01(B)(1). Fugitive dust emissions from the screen deck of the asphaltic concrete plant are captured and vented to a baghouse, along with emissions from other operations of the plant.

3. OAC Rule 3745-31-02 requires that an application for a permit to install ("PTI") be submitted to Ohio EPA and that a PTI be obtained prior to installation or modification of any air contaminant source, unless specifically exempted by rule or law.

4. OAC Rule 3745-35-02(A) requires that no person operate any air contaminant source without applying for and obtaining a permit to operate ("PTO") from the Director of Ohio EPA, unless otherwise exempted by rule or law.

5. ORC § 3704.05(A), (C) and (G) require that no person allow the emission of an air contaminant in violation of any rule adopted by the Director of Ohio EPA, violate any terms or conditions of a permit issued by the Director of Ohio EPA, or violate any order, rule or determination of the Director of Ohio EPA.

6. Emissions unit P901 takes sand and gravel, which is loaded into hoppers and metered onto a feed belt, and dries it in a rotary dryer. Liquid asphalt is added and mixed with the hot aggregate. The resulting material ("blacktop") is transferred to a silo where trucks are loaded to take the material to paving sites. The plant was built in 1973 and was most recently located in Wooster, Ohio prior to being relocated to the current site by the former owner, Miller Brothers ("Miller") in 1995. Respondent purchased the plant in March 1998. The current location is not in an area identified in Appendix A of OAC Rule 3745-17-08; therefore, the fugitive dust emission control requirements of such rule are not applicable to the facility, except as otherwise provided by rule.

7. A PTO was issued to Miller for the plant in August 1993. This PTO expired on August 19, 1996, and Miller refiled a PTO application for the plant on April 18, 1997. No PTO was issued pursuant to the April 18, 1997 application.

8. Miller sold the plant to Respondent on March 19, 1998. At that time, contrary to the representations that Respondent claims were made by Miller to Respondent, there were no valid and effective air permits for the plant. Therefore, Respondent was required to obtain a PTI and a PTO before operating the plant.

9. On July 28, 1998, an inspector from the Southeast District Office ("SEDO") of Ohio EPA observed visible emissions of fugitive dust in excess of 80% opacity from the screen deck of the asphalt plant. Staff at the plant agreed to address the problem and, on July 29, 1998, called SEDO to inform the inspector that the problems had been addressed by replacing some of the bags in the baghouse and diaphragms in the pulsers.

10. Visible particulate emissions from any stack of the asphaltic plant are regulated by OAC Rule 3745-17-07(A)(1), which requires that visible particulate emissions from any stack not exceed 20% opacity, as a six-minute average, except that such emissions may exceed 20% opacity, as a six-minute average, for not more than six consecutive minutes in any sixty minutes, but shall not exceed 60% opacity, as a six-minute average, at any time.

11. On August 19, 1998, an inspector from SEDO again observed the plant in operation and, using USEPA Method 9 of 40 CFR, Part 60, Appendix A, observed and recorded visible particulate emissions in excess of 80% opacity, as a six-minute average, from the stack of the baghouse serving emissions unit P901, for twenty-four consecutive six-minute averages, in violation of OAC Rule 3745-17-07(A)(1) and ORC § 3704.05(A) and (G).

12. On September 15, 1998, an inspector from SEDO, using USEPA Method 9, observed and recorded visible particulate emissions in excess of 60% opacity, as a three-minute average, from the drum dryer of emissions unit P901, for twenty-seven consecutive three-minute averages. Such emissions would have exceeded the visible fugitive particulate emission limitation reflective of best available technology ("BAT"), pursuant to OAC Rule 3745-31-05(A)(3), had Respondent obtained a PTI for the plant prior to operating the same.

13. On December 10, 1998, City of Canton Health Department, Air Pollution Control Division ("City of Canton"), which processes permit applications for portable emissions units whose main offices are based in Stark County, sent a letter to Respondent indicating that visible particulate emission violations had been observed at the plant and requesting submittal of PTI and PTO applications for the appropriate emissions units. Respondent was given 30 days to submit these documents. In addition to the permit applications, Respondent was requested to submit written documentation that the asphaltic concrete plant, roadways, and storage piles were being operated in compliance with all applicable state and federal regulations (with the exception of the permit requirements).

14. By letter dated January 11, 1999, Respondent responded to the City of Canton's letter. The letter acknowledged the excessive visible emissions from the plant and stated that Respondent had plans to replace the existing pollution control equipment of the plant. Respondent committed to submit PTI and PTO applications once Respondent had decided on the type of new equipment it would purchase and install. Respondent requested an extension until February 1, 1999, in order to gather all the information necessary and to submit the application forms. City of Canton agreed to the extension request.

15. By letter dated January 28, 1999, Respondent submitted PTO applications for the roadways and storage piles as had previously been requested by City of Canton. No PTI application was submitted for the asphaltic concrete plant, as it was still undecided what control equipment was going to be purchased and used at the facility. Respondent indicated that such a decision should be made within two weeks of the date of that letter.

16. On March 25, 1999, City of Canton received a PTI application from Respondent, for emissions unit P901. By letter dated March 30, 1999, Respondent was again requested to submit a PTO application for emissions unit P901 within 30 days of receipt of the letter. Respondent violated OAC Rule 3745-31-02 and ORC § 3704.05(G) for its failure to obtain a PTI.

17. On May 10, 1999, a PTO application was received from Respondent, for emissions unit P901, by the City of Canton. The PTI/PTO applications were forwarded to SEDO in May 2000 when it was determined that the facility was in fact stationary and in SEDO's jurisdiction. A PTI was issued by Ohio EPA to Respondent on June 26, 2001 for emissions unit P901. The PTI requires that visible particulate emissions from any stack of emissions unit P901 be less than 20% opacity, as a six-minute average. Respondent was in violation of OAC Rule 3745-35-02 and ORC § 3704.05(G) for its failure to obtain a PTO from at least March of 1998 until June 26, 2001 and for its failure to obtain a PTO from at least July 28, 1998 until the present.

18. On September 18, 2001, an inspector from SEDO, using USEPA Method 9, observed and recorded visible particulate emissions from the baghouse stack of emissions unit P901, of between 40 and 50% opacity, as a six-minute average, for the 15-minute observation period, in violation of OAC Rule 3745-17-07(A)(1) and ORC § 3704.05 (A), (C) and (G). Respondent at this time was reminded that it was under obligation to conduct a stack test of this emissions unit by December 26, 2001 (i.e., 6 months of the issuance date of the PTI). A response was requested within two weeks. Respondent was made aware of these violations and issues in a warning letter from SEDO, dated September 21, 2001.

19. Respondent spoke to a SEDO representative by phone on October 1, 2001, and indicated that the necessary repairs had been made and that the control equipment was functioning correctly. On October 2, 2001, an inspector from SEDO observed visible particulate emissions in excess of 50% opacity from the baghouse stack, but did not take Method 9 readings.

20. On October 9, 2001, SEDO was contacted by Respondent by phone regarding the stack test. Respondent requested to delay the stack test until October 18, 2001. SEDO agreed to this delay and informed Respondent that emissions from the plant had looked as bad on October 2, 2001, as they had on September 18, 2001, when visible particulate emission readings were taken.

21. Respondent conducted the stack test of the particulate emissions from the baghouse stack of emissions unit P901 on October 18, 2001, despite visible emissions of fugitive dust from the screens and drum dryer of 30% to 50% opacity, as a six-minute average, for a fifteen-minute observation period. These visible emissions constitute a violation of the visible emissions of fugitive dust limitation in PTI #06-6439, which requires no visible emissions from the enclosures for the hot aggregate elevator, vibrating screens and weigh hopper, and ORC § 3704.05(C).

22. On October 30, 2001, an inspector from SEDO, using USEPA Method 9, observed and recorded visible emissions of fugitive dust from the plant screens on top of the plant, of between 75 to 95% opacity, as a six-minute average, for a fifteen-minute observation period. These emissions constitute a violation of the no visible emissions of fugitive dust limitation in PTI # 06-6439. Visible emissions of fugitive dust of approximately 20% opacity, as a six-minute average, were also noted from the top of the plant during the stack test. By letter dated November 3, 2001, Respondent was instructed to submit, within 7 days of receipt of the letter, a plan and schedule for achieving compliance with the visible emissions of fugitive dust limitation in its permit.

23. On November 6, 2001, an inspector from SEDO again observed and recorded visible emissions of fugitive dust from the screen deck of the asphaltic concrete plant, of between 70 and 90% opacity, as a six-minute average, for the fifteen-minute observation period, using USEPA Method 9, in violation of the visible emissions of fugitive dust limitation in PTI # 06-6439 and ORC § 3704.05(C).

24. By letter dated November 7, 2001, Respondent responded to a November 2 conversation with a SEDO representative and the November 3, 2001 letter from SEDO. The letter outlined Respondent's findings in trying to fix its visible emission problems. Respondent found that a damper was broken and, consequently, the air flow had been reduced by approximately 50%. In addition to the malfunctioning damper, the fugitive dust pipes from the screen deck had become plugged. Respondent submitted a plan to repair faulty equipment, including the damper, rubber dust seals, and the fugitive dust pipes by November 9, 2001.

25. On November 21, 2001, SEDO received the test report for the stack test conducted on October 18, 2001. The results of the test showed emissions unit P901 to be out of compliance with NSPS, Subpart I particulate emission limitation and the terms and conditions of PTI # 06-6439 and in violation of ORC § 3704.05(C). By letter dated January 3, 2002, Respondent was sent notification of these violations, and was requested, within 30 days of receipt of the letter, to submit a plan and schedule for achieving compliance. The test was reviewed and was found to have been performed in accordance with USEPA Methods 1 through 5 of 40 CFR, Part 60, Appendix A.

A summary of the results from the particulate emissions ("PE") test for the asphaltic concrete plant is shown below:

Allowable particulate emissions:	0.04 grain of PE/dry standard cubic foot ("gr/dscf")
Tested particulate emissions:	0.182 gr/dscf
Percent tested above allowable emissions:	355 %
Source operating rate:	60 tons of asphaltic concrete/hour

26. Respondent replied to the violation notification by letter dated January 24, 2002. In its response to SEDO, Respondent indicated that the plant had closed for the 2001 season, as of November 28, 2001, and that it would remove the bags from its baghouse and have them analyzed under a microscope by its consultant (Enviro Consultants of Phoenix, Arizona). The letter also stated that Respondent was patching and replacing ductwork on the baghouse.

27. Prior to the start of the 2002 asphalt production season, Respondent replaced all 320 bags in the baghouse associated with the Bolivar, Ohio plant. Respondent conducted a stack test for particulate emissions, volatile organic compound ("VOC") emissions, nitrogen oxides emissions, and carbon monoxide emissions on July 18, 2002. The purpose of the test was to determine whether or not Respondent was a "major source", as defined by OAC Rule 3745-77-01(W)(2), and to determine compliance with the emission limitations and the terms and conditions of PTI # 06-6439. The results of the test showed emissions unit P901 to be in compliance with the particulate limitations applicable to the emissions from the stack of the Bolivar, Ohio plant, but out of compliance with the allowable VOC limitation in PTI # 06-6439, and in violation of ORC § 3704.05(C).

Allowable VOC emissions:	1.23 lbs/hr
Tested VOC emissions:	15.4 lbs/hr
Percent tested above allowable emissions:	1152 %
Source operating rate:	150 tons of asphaltic concrete/hour

28. During the test on July 18, 2002, the plant was unable to generate sufficient draw through the baghouse and was unable to control fugitive dust emissions from the screen deck. The fugitive dust emissions were attributed to cold wet recycled asphalt pavement ("RAP") being added to the Pug Mill holding 400 degree Fahrenheit aggregate, and the moisture flashing off. This pressure caused a damper to open to relieve the pressure and resulted in temporary inadequate draw from the baghouse which reduced the capture efficiency of the control system.

29. Respondent was requested by letter dated September 27, 2002, to submit a control plan and schedule for achieving compliance with the emission limitations of PTI # 06-6439, within 30 days. Respondent responded by letter dated November 7, 2002, requesting further discussion with SEDO to increase the PTI VOC emission limitation.

30. By letter dated September 2, 2003, SEDO requested Respondent submit an approvable PTI modification application to address the requested increase of the VOC emission limitation.

31. On February 18, 2004, Respondent submitted a PTI application to SEDO for emissions units F001, F002 and P901, wherein, in part, a higher VOC emission limitation was requested for emissions unit P901. On April 8, 2004, Ohio EPA issued a draft PTI (#06-07437) to Respondent for comment. Respondent and Ohio EPA subsequently disagreed on the appropriate visible emission limitation reflecting BAT for fugitive emissions from emissions unit P901, and the final action was not processed.

32. During a meeting with Ohio EPA on November 23, 2004, Respondent committed to converting the facility to a dryer-drum plant and applying for and obtaining a PTI prior to the conversion. Operations for the 2005 season would begin using the converted plant.

33. 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 be derived from such compliance.

V. ORDERS

The Director hereby issues the following Orders:

1. Respondent shall not operate emissions unit P901 as currently configured as a batching plant. The use or operation of emissions unit P901 or any existing components of emissions unit P901 is permitted only pursuant to a PTI issued by Ohio EPA after the effective date of these Orders.

2. Respondent shall pay to Ohio EPA the amount of forty-six thousand, three hundred eighty-five dollars ($46,385) in settlement of Ohio EPA's claim for civil penalties which may be assessed pursuant to ORC § 3704.06. Payment shall be made pursuant to the following schedule:

- Seven thousand, seven hundred and thirty dollars ($7,730) within thirty (30) days after the effective date of these Orders;

- Seven thousand, seven hundred and thirty-one dollars ($7,731) within sixty (60) days after the effective date of these Orders;

- Seven thousand, seven hundred and thirty-one dollars ($7,731) within ninety (90) days after the effective date of these Orders;

- Seven thousand, seven hundred and thirty-one dollars ($7,731) within one hundred twenty (120) days after the effective date of these Orders;

- Seven thousand, seven hundred and thirty-one dollars ($7,731) within one hundred fifty (150) days after the effective date of these Orders; and

- Seven thousand, seven hundred and thirty-one dollars ($7,731) within one hundred eighty (180) days after the effective date of these Orders.

Payment shall be made by official checks made payable to "Treasurer, State of Ohio" and sent to Brenda Case, Fiscal Specialist, at the following address:

Fiscal Administration
Ohio Environmental Protection Agency
P.O. Box 1049
Columbus, Ohio 43216-1049

A copy of each check shall be sent to James A. Orlemann, Assistant Chief, Compliance and Enforcement, 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 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 the corporation 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 to the Ohio EPA by these Orders, unless otherwise specified in writing, shall be submitted to:

Ohio Environmental Protection Agency
Division of Air Pollution Control
Southeast District Office
2195 Front Street
Logan, Ohio 43138
Attn: Kay Gilmer

and to:

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

All documents required to be submitted to Respondent by these Orders, unless otherwise specified in writing, shall be submitted to:

Canton Asphalt Company
5947 Whipple Avenue NW
North Canton, Ohio 44720
Attn: Scott E. Oster, Secretary

and to:

Roetzel & Andress
222 South Main Street, Suite 400
Akron, Ohio 44308
Attn: Shane A. Farolino

XI. RESERVATION OF RIGHTS

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

XII. WAIVER

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

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

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

XIII. EFFECTIVE DATE

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

XIV. SIGNATORY AUTHORITY

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

IT IS SO ORDERED AND AGREED:

Ohio Environmental Protection Agency

Christopher Jones
Director

12-23-04
Date

IT IS SO AGREED:

Canton Asphalt Company

Scott E. Oster
Signature

12-21-04
Date

Scott E. Oster
Printed or Typed Name

Secretary
Title

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