

OHIO E.P.A.

OCT 13 2005

ENTERED DIRECTOR'S JOURNAL

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

By: Janet Jackson Date 10-13-05

BEFORE THE

OHIO ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

Progressive Excavating, Inc.
4320 Wilcor Drive
Akron, Ohio 44319

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 Progressive Excavating, 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 identified) 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, with office located at 4320 Wilcor Avenue, Akron, Summit County, Ohio, operated a diesel-powered portable crusher (hereinafter "emissions unit F001") to crush demolition debris at a demolition site at 4760 Portage Street NW, North Canton, Jackson Township of Stark County, Ohio, on at least December 20 and 21, 2001. The demolition debris involved in this crushing project contained no asbestos. Respondent rented emissions unit F001 from Grasan Equipment Company in Mansfield, Ohio.

2. Source F001 was an "air contaminant source" as defined in OAC Rules 3745-15-01(C) and (W), 3745-31-01(D), and 3745-35-01(B)(1), and ORC § 3704.01(C).

3. OAC Rule 3745-15-07(A) prohibits, in part, any person from causing a public nuisance by emitting fugitive 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. OAC Rule 3745-17-07(B)(1) states, in part, that visible particulate emissions from any fugitive dust source located in an Appendix A area of OAC Rule 3745-17-08 shall not exceed twenty percent opacity as a three-minute average. OAC Rule 3745-17-08(B) requires, in part, that reasonably available control measures ("RACM") be used to minimize or eliminate visible particulate emissions of fugitive dust from any fugitive dust source as defined in OAC Rule 3745-17-01(B)(7) and located in an Appendix A area of OAC Rule 3745-17-08.

4. OAC Rule 3745-31-02 prohibits any person from installing an air contaminant source unless a Permit to Install ("PTI") has been applied for and obtained, except as provided by rule or law. OAC Rule 3745-35-02 prohibits any person from operating an air contaminant source unless a Permit to Operate ("PTO") has been applied for and obtained, except as provided by rule or law.

5. ORC § 3704.05(A) prohibits any person from allowing any emission from any source in excess of that permitted in any rule adopted by the Director of Ohio EPA. ORC § 3704.05(G) prohibits any person from violating any rule adopted by the Director of Ohio EPA.

6. On August 10, 2001, the Akron Regional Air Quality Management District ("ARAQMD"), a contractual representative of Ohio EPA in Summit County, issued a Notice of Violation ("NOV") to Respondent for not employing RACM and emitting excessive fugitive dust from its concrete crushing operation at Akron Brick & Block Co., LTD located at 3225 Mogadore Road in Akron, Ohio. This NOV cited Respondent for its violation of OAC Rules 3745-15-07(A) (Air Pollution Nuisances) and 3745-17-08(B) (Restriction of Emission of Fugitive Dust), and requested Respondent to submit a compliance plan within fourteen days from the date of receipt of the NOV.

7. By a letter dated August 21, 2001, Respondent responded to the ARAQMD's August 10, 2001 NOV. Respondent informed ARAQMD that it had taken necessary steps to control fugitive dust, which included employing RACM for the remaining portion of its concrete crushing operation.

8. On December 21, 2001, the Canton City Health Department, Air Pollution Control Division ("Canton APCD"), a contractual representative of Ohio EPA in Stark County, received a complaint by telephone from a citizen about fugitive dust from a building demolition located at 4760 Portage Street NW in North Canton, Ohio. As a follow-up to this complaint, Canton APCD conducted an on-site investigation on the same day. Upon its arrival, Canton APCD observed Respondent was operating emissions unit F001 to crush demolition debris without employing RACM. Also, Canton APCD observed excessive visible particulate emissions ("VE") while the crushing operation was in progress. VE readings and photographs were taken by Canton APCD for documentation. In addition, Canton APCD collected bulk samples for laboratory testing which later confirmed that no

asbestos was present. Canton APCD learned that Respondent installed and operated emissions unit F001 without first applying for and obtaining a PTI and a PTO, respectively. Canton APCD also learned that Respondent began its crushing operation on December 20, 2001. Canton APCD requested Respondent to cease the crushing operation and not to resume until a PTI and a PTO are obtained for emissions unit F001, and RACM is implemented for its crushing operation. Respondent satisfied Canton APCD's request by stopping its crushing operation immediately.

9. Respondent did not obtain a PTI prior to its installation of emissions unit F001, in violation of OAC Rule 3745-31-02 and ORC § 3704.05(G). Similarly, since a PTO was not obtained by Respondent prior to its operation of emissions unit F001, Respondent was in violation of OAC Rule 3745-35-02 and ORC § 3704.05(G).

10. Based on its investigation of the complaint on December 21, 2001, Canton APCD concluded that Respondent violated OAC Rule 3745-15-07(A) and ORC § 3704.05(G) since the excessive fugitive dust caused poor driving visibility and uncomfortable enjoyment of property by neighbors adjacent to the site. Also, since opacity readings indicated that there were seven three-minute averages that were greater than twenty percent opacity, Respondent was in violation of OAC Rule 3745-17-07(B)(1) and ORC § 3704.05(A) and (G). Furthermore, Respondent also violated OAC Rule 3745-17-08(B) and ORC § 3704.05(G) for not employing RACM for its crushing operation.

11. On December 27, 2001, Canton APCD re-visited the site and observed that all demolition debris was no longer at the site. Canton APCD was informed by Respondent that it stopped its crushing operation since Canton APCD's initial inspection and that the remaining demolition debris had been transported to a landfill for disposal.

12. On February 5, 2002, Canton APCD sent Respondent a NOV by certified mail citing Respondent for violations of OAC Rules 3745-15-07(A), 3745-17-07(B)(1), 3745-17-08(B), 3745-31-02 and 3745-35-02 that were discovered on December 21, 2001. In this NOV, the Canton APCD requested Respondent, within thirty days of receipt of the NOV, to submit a compliance plan and a written commitment to assure compliance with all applicable air pollution control regulations in all of its future projects.

13. By a letter dated February 20, 2002, Respondent responded to February 5, 2002 NOV from Canton APCD. In this letter, Respondent submitted all the items that were requested by Canton APCD in its February 5, 2002 NOV. Specifically, Respondent informed Canton APCD that it: (1) worked with Grasan Equipment Company to obtain proper permits for the crusher being used and would make sure all crushers rented in the future are properly permitted; (2) reviewed and trained employees on Ohio EPA applicable regulations concerning fugitive dust; and (3) would notify Canton APCD at least five (5) working days prior to mobilizing a crusher in Stark County. For clarification purposes, Ohio EPA notes that, pursuant to OAC Chapter 3745-31, a portable source is required to obtain a PTI prior to relocation of an air contaminant source or must provide a notice of intent to relocate to Ohio EPA at least thirty days prior to such relocation and meet the other requirements of OAC Rule 3745-31-03(A)(1)(p).

14. On April 23, 2002, Respondent submitted a completed PTI application to Akron RAQMD for emissions unit F001.

15. On June 16, 2002, Ohio EPA issued a PTI to Respondent for emissions unit F001 that contains requirements to employ the best available technology for the control of fugitive dust emissions.

16. On October 25, 2002, Respondent submitted a completed PTO application to Akron RAQMD for emissions unit F001. Currently, the PTO application is being processed by Ohio EPA, Central Office.

17. 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 Order:

Pursuant to ORC § 3704.06, Respondent is assessed a civil penalty in the amount of six thousand dollars (\$6,000) in settlement of Ohio EPA's claim for civil penalties. Respondent shall pay to Ohio EPA the amount of six thousand dollars (\$6,000) pursuant to the following schedule:

one thousand dollars (\$1,000) due within thirty (30) days after the effective date of these Orders;

one thousand dollars (\$1,000) due within sixty (60) days after the effective date of these Orders;

one thousand dollars (\$1,000) due within ninety (90) days after the effective date of these Orders;

one thousand dollars (\$1,000) due within one hundred twenty (120) days after the effective date of these Orders;

one thousand dollars (\$1,000) due within one hundred fifty (150) days after the effective date of these Orders; and

one thousand dollars (\$1,000) due within one hundred eighty (180) days after the effective date of these Orders.

Payments shall be made by official checks made payable to "Treasurer, State of Ohio." Each of these official checks shall be submitted to Brenda Case, or her successor,

Ohio EPA, Office of Fiscal Administration, P.O. Box 1049, Columbus, Ohio 43216-1049, together with a letter identifying Respondent and the site.

A copy of each of these official checks shall be submitted to James A. Orlemann, Assistant Chief, SIP Development and Enforcement, or his successor, Division of Air Pollution Control, Ohio EPA, 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 checks required by Section V of these Orders.

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:

Canton City Health Department
Air Pollution Control Division
420 Market Avenue North
Canton, Ohio 44702-1544
Attention: Dan Aleman

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, 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 specially waived in Section XI 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.

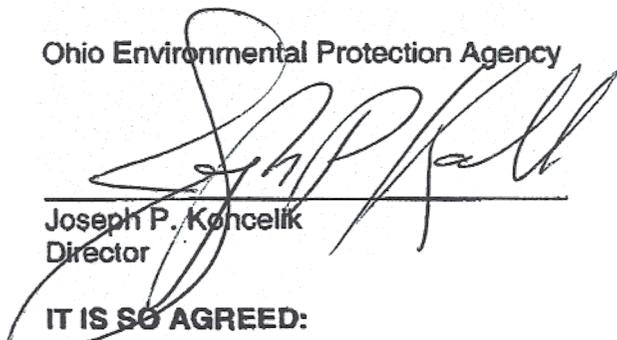
XIV. SIGNATORY AUTHORITY

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.

**Director's Final Findings and Orders
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IT IS SO ORDERED AND AGREED:

Ohio Environmental Protection Agency

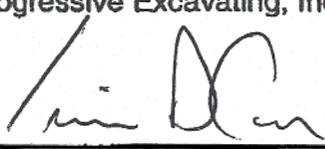


Joseph P. Kencelik
Director

10/11/05
Date

IT IS SO AGREED:

Progressive Excavating, Inc.



Signature

4-30-05
Date

Timothy D Carr
Printed or Typed Name

President
Title