

BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY

OHIO E.P.A.

AUG 28 2006

In the Matter of:

ENTERED DIRECTOR'S JOURNAL

OmniSource Corporation
2453 Hill Avenue
Toledo, Ohio 43607

:
:
:

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 OmniSource 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 Respondent's facility (as identified hereinafter) 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 operates a scrap metal processing facility located at 5130 North Detroit Avenue, Toledo, Ohio. The roadways at the facility are identified as emissions unit ("EU") F001. This EU constitutes an "air contaminant source," as defined in Ohio Administrative Code ("OAC") Rule 3745-15-01(C) and (W).

2. By letter dated December 10, 2003, City of Toledo, Division of Environmental Services ("Toledo"), Ohio EPA's contractual representative in Lucas County, issued a Notice of Violation ("NOV") to Respondent, for violations observed during an inspection of the facility on December 8, 2003. The NOV cited violations of OAC Rule 3745-17-07(B)(4) which states "there shall be no visible particulate emissions from any paved roadway or

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



8/28/06

parking area except for a period of time not to exceed six minutes in any sixty minute observation period," and OAC Rule 3745-17-08(B) which states that "no person shall cause or permit any fugitive dust source to be operated...without taking or installing reasonably available control measures to prevent fugitive dust from becoming airborne." Toledo observed a total of 13 minutes and 25 seconds of visible emissions over a 60-minute period from the facility entrance to North Detroit Avenue, in violation of OAC Rule 3745-17-07(B)(4).

3. OAC Rule 3745-17-08(B)(9) requires the prompt removal, in such a manner as to minimize or prevent resuspension, of earth or other material from paved streets onto which earth or other material has been deposited by trucking or earth moving equipment or erosion by water or other means. During the inspection of December 8, 2003, Toledo noted that reasonably available control measures ("RACM") were not being fully employed to prevent dragout from the paved areas onto North Detroit Avenue, in violation of OAC Rule 3745-17-08(B)(9).

4. The NOV of December 10, 2003 requested that, within 14 days, Respondent submit a description of actions taken to abate violations; a description and time schedule for future actions; a description of action taken and/or to be taken to prevent recurrence of violations; and copies of all records from July 2003 until the date of the NOV as required by PTO # 0448011189 for EU F001. These records were to include the date that parking lots and roadways were treated or swept; the type and rate of application of any chemical suppressants; the name of the equipment operator responsible for the treatment or cleaning; and the reason any area was not swept if that was the case. The NOV also suggested remedial actions for Respondent to consider to avoid future violations.

5. By letter dated December 12, 2003, Toledo issued a NOV to Respondent for violations observed during an inspection of the facility on December 11, 2003. The NOV cited violations of OAC Rule 3745-17-07(B)(4); specifically Toledo observed a total of 8 minutes and 20 seconds of visible emissions over a 40-minute period and RACM were not being fully employed on the paved areas. The NOV requested that the same documentation as requested in the December 10, 2003 NOV be submitted within 14 days of receipt of the letter.

6. On December 15, 2003, Respondent met with Toledo to discuss the NOV's. At the meeting, Respondent provided documents that indicated that sweeping activities had increased on the roadways at the facility and that it had hired a contractor to evaluate alternative methods of keeping dust off the roadways. One suggestion that was raised by Toledo was to pave the roadways at the facility. However, Respondent indicated that such a remedy was cost prohibitive and it preferred to explore less costly alternatives including a wheel washer.

7. By letter dated January 13, 2004, Respondent submitted a written response to the NOV's. The response included sweeping records for the period of June 6, 2003

through January 2, 2004, quarterly sweeping and emissions tracking summaries, and records of chemical dust suppressant applications.

8. On March 8, 2004, Toledo issued another NOV to Respondent for violations of OAC Rule 3745-17-07(B)(4) observed during inspections on March 4 and 5, 2004. Specifically, on March 4, inspectors from Toledo observed a total of 23 minutes and 34 seconds of visible emissions during a 40-minute period from the facility entrance to North Detroit Avenue, and, on March 5, the inspectors observed a total of 8 minutes and 2 seconds of visible emissions during a 37-minute period from facility entrance to North Detroit Avenue. Toledo again requested, within 14 days of receipt of the NOV, the information previously requested on December 10 and 12, 2003. Also, at these times, Respondent failed to employ RACM, in violation of OAC Rule 3745-17-08(B)(9).

9. By letter dated March 29, 2004, Respondent submitted a written response to the NOV. The response included sweeping records for the period December 2003 through March 2004, quarterly sweeping and emissions tracking summaries, and road surface maintenance logs. The letter restated that Respondent was currently in the process of developing a long term solution to address fugitive dust, and gave an update of the current status of the options that were being explored.

10. By letter dated June 9, 2004, Respondent was issued an NOV for violations of OAC Rules 3745-17-07(B)(4) and 3745-17-08(B) for visible emissions violations of 20 minutes and 20 seconds in a 35-minute period and for failing to employ RACM on roadways and parking areas on May 27, 2004. Additionally, Respondent was cited for violations of Toledo City Codes for 'Creating a Public Nuisance, and Creating an Air Pollution Nuisance' for open burning at the facility. Respondent met with Toledo on August 25, 2004 to discuss the violations observed on May 27, 2004. At the meeting Respondent indicated that it had installed a wheel washer to address the visible emission violations and had installed 4 additional water hose hookups to keep any burning under control.

11. By letter dated September 2, 2004, Respondent was issued another NOV for violations of OAC Rules 3745-17-07(B)(4) and 3745-17-08(B) for visible emissions of 6 minutes and 29 seconds in a 35-minute period on August 31, 2004 and for failure to employ RACM on roadways and parking areas. The NOV requested that Respondent submit a written response to Toledo within 14 days of receipt of the NOV, including a description of the actions taken or to be taken to prevent recurrence of the violations.

12. By letter dated May 23, 2005, Respondent was issued another NOV for violations of OAC Rules 3745-17-07(B)(4) for visible emissions of 9 minutes and 52 seconds in a 40-minute period on May 20, 2005 from the facility entrance to North Detroit Avenue. The NOV requested that Respondent submit a written response to Toledo within 14 days of receipt of the NOV, including a description of the actions taken or to be taken to prevent recurrence of the violations. Respondent responded to the NOV by letter dated June 2, 2005. The response included the information requested by Toledo.

13. By letter dated September 20, 2005, Respondent was issued another NOV for violations of OAC Rule 3745-17-07(B)(4) for visible emissions of 7 minutes and 50 seconds in a 60-minute period on September 19, 2005 from the facility entrance to North Detroit Avenue. The NOV requested that Respondent submit a written response to Toledo within 14 days of receipt of the NOV, including a description of the actions taken or to be taken to prevent recurrence of the violations.

14. Respondent and Toledo met at Respondent's facility on November 1, 2005, to discuss issues associated with the NOVs. During the meeting, Respondent was requested to submit a plan to Toledo that would reduce mud drag out from the facility, and consequently reduce the incidents of fugitive dust violations.

15. By letter dated November 30, 2005, Respondent submitted a plan to Toledo for review. The plan offered several different options to address the drag-out and fugitive dust issues.

16. By letter dated February 26, 2006, Respondent was issued an NOV for violations of OAC Rules 3745-17-07(B)(4) for visible emissions of 8 minutes and 45 seconds in a 20-minute period on February 22, 2006; 7 minutes and 35 seconds in a 35-minute period on February 23, 2006; and 6 minutes and 46 seconds in a 20-minute period on February 24, 2006 from the roadways at Respondent's facility.

17. By letter dated March 10, 2006, Respondent submitted a response to the February 26, 2006 NOV. The letter outlined in detail Respondent's plans to control fugitive emissions and described corrective actions that had already been taken and proposed future actions planned to be completed.

18. The above-mentioned violations of the OAC also constitute violations of ORC § 3704.05(G), which prohibits the violation of any rule adopted by the Director.

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 maintain emissions unit F001 in compliance with the terms and conditions of the Respondent's PTO #0448011189, and OAC Rules 3745-17-07(B) and 3745-17-08(B).

2. Respondent shall employ RACM on all paved roadways and parking areas for the purpose of achieving and maintaining compliance with the visible emission limitations specified in OAC Rule 3745-17-07(B) and the RACM requirements of OAC Rule

3745-17-08(B).

3. Respondent shall continue to treat the paved roadways and parking areas by manual and mechanical sweeping, surface grading, tire washing and the application of dust suppressants to achieve and maintain compliance with OAC Rules 3745-17-07 and 3745-17-08.

4. Respondent shall promptly remove, in such a manner as to minimize or prevent resuspension, earth and/or other material from paved streets onto which has been deposited by trucking by sweeping or other means.

5. Pursuant to ORC § 3704.06, Respondent is assessed a civil penalty in the amount of ten thousand five hundred dollars (\$10,500) in settlement of Ohio EPA's claims for civil penalties. Within thirty (30) days after the effective date of these Orders, Respondent shall pay Ohio EPA the amount of eight thousand four hundred dollars (\$8,400) of the total penalty amount. Payment shall be made by an official check made payable to "Treasurer, State of Ohio" for \$8,400. 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

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

6. In lieu of paying the remaining two thousand one hundred dollars (\$2,100) 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 \$2,100 to the Ohio EPA's Clean Diesel School Bus Program Fund (Fund 5CD). Respondent shall tender an official check made payable to "Treasurer, State of Ohio" for \$2,100. The official check shall be submitted to Brenda Case, or her successor, together with a letter identifying the Respondent, to the above-stated address.

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 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 to be submitted by Respondent pursuant to these Orders shall be addressed to:

City of Toledo
Division of Environmental Services
348 South Erie Street
Toledo, Ohio 43602
Attention: Karen Granata, Administrator

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 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 the 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 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

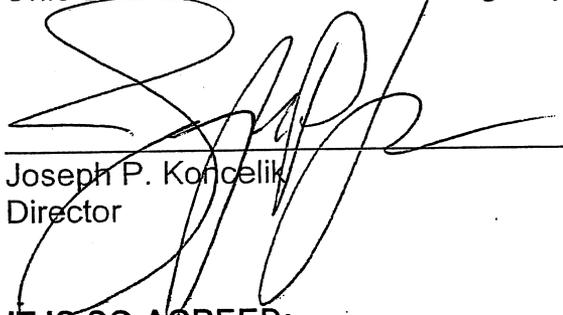
The effective date of these Orders is the date these Orders are entered into the Ohio EPA Director's journal.

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

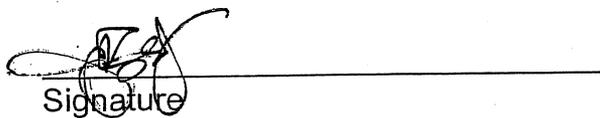


Joseph P. Koncelik
Director

8/23/06
Date

IT IS SO AGREED:

OmniSource Corporation



Signature

8/11/06
Date

JIM STOLLENBERGER
Printed or Typed Name

DIR. OF ENG / ENV. COMPLIANCE - OHIO
Title