

BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY

OHIO E.P.A.
DEC 31 2008
ENTERED DIRECTOR'S JOURNAL

In the Matter of:

Sidwell Materials, Inc.
4620 Limestone Valley Road
Zanesville, Ohio 43701

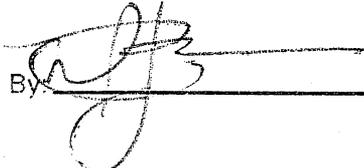
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Director's Final Findings
and Orders

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.

PREAMBLE

It is agreed by the parties hereto as follows:

By: 

Date: 12.31.08

I. JURISDICTION

These Director's Final Findings and Orders ("Orders") are issued to Sidwell Materials, 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 its successors in interest liable under Ohio law. No change in ownership of the Respondent or of the facilities (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

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 currently owns and operates numerous portable facilities, including aggregate crushers, aggregate screeners, generators, and concrete batch plants, which are "air contaminant sources," as defined in Ohio Administrative Code ("OAC") Rule 3745-15-01(C) and (W). These facilities may be located separately, or co-located with each other. Respondent's administrative office is located at 4620 Limestone Valley Road in Zanesville, Ohio.

2. The facilities owned by Respondent, which are subject of these Orders, and their Ohio EPA facility IDs, and current locations are as follows:

#	Facility	ID	Current Location (County)
6	Tri-Son Screening Plant with Generator	0660950006	4620 Limestone Valley Rd., Zanesville (Muskingum)
14	Tri-Son Concrete Batch Plant -Zanesville Plant #1	0660970003	1835 ½ W. Main St., Zanesville (Muskingum) [Sold]
15	Tri-Son Concrete-Zanesville Plant # 2	0690970004	Twp. Rd. 93 (0.7 mile from St. Rt. 9), Cadiz (Harrison)
16	IROCK 300 Crushing Plant	0660950014	426000 Deersville Ridge Rd., Cadiz (Harrison)
17	IROCK RDS-20 Crushing Plant	0660950007	Kokosing Materials, Intersection of I-270 and St. Rt. 3, Westerville (Franklin)
18	Metso Crusher	0660950019	426000 Deersville Ridge Rd., Cadiz (Harrison)
19	Chieftain 1400 Screen	0660950015	2194 Brightwood Rd., New Philadelphia (Tuscarawas)
20	4424 Screening Plant	0660950045	St. Rt. 345, Duplar Pit, Zanesville (Muskingum)
22	McNeilius Concrete Batch Plant	0660970002	5300 Guernsey St., Bellaire (Belmont)
23	Tri-Son Concrete-Zanesville #4	0660970006	66760 Belmont Morristown Rd., Morristown (Belmont)
24	IROC 150 Crusher	0660950017	4260 Limestone Valley Rd., Zanesville (Muskingum)

3. The facilities in Finding 2 were found in violation of air pollution control laws and rules, which were discovered through detailed record reviews and site inspections conducted by Ohio EPA, Southeast District Office ("SEDO") on various dates including September 16, 2005, October 12, 2005, December 13, 2006, August 14, 2007, and August 17, 2007.

4. The following table summarizes the dates when Notice of Violation ("NOV") letters or warning letters were issued by SEDO to Respondent for the violations and the dates Respondent replied for each.

NOV/ Warning Letter	Date	Date Response Received
Warning letter regarding the 9/16/05 inspection for Facilities #16 and #18.	10/17/05	11/15/05 (dated 11/4/05)
Warning letter regarding the 10/12/05 follow-up inspection for Facilities #16 and #18	10/21/05	11/15/05 (dated 11/4/05)
Letter requesting resubmittal of fee information for Facility #16	05/30/06	6/14/06 (received via email)
Letter concerning the 12/13/06 visit, requesting information about permitting status of Facilities #20.	12/15/07	1/9/07
NOV citing permitting violations at Facilities #20.	02/09/07	2/27/07 (dated 2/26/07)
Warning letter requesting that Respondent provide testing status for Facility #16.	03/30/07	4/30/07
NOV for failure to retain records at Facilities #15, #19, #22, and #24	08/23/07	9/25/07 (dated 9/24/07)
NOV citing the above record retention violations and requesting more information concerning Facility #22.	10/05/07	10/24/07 (dated 10/23/07)
NOV requesting that Respondent provide testing status for Facilities #5, #18, and #24.	11/6/07	11/15/07

5. As indicated in the following table, each of the following emissions units were installed by Respondent prior to obtaining a Permit-To-Install ("PTI"), in violation of OAC Rule 3745-31-02(A)(1) and ORC § 3704.05(G):

Facility	Emissions Unit	PTI #	Date PTI Issued	Installation Started	PTI Application Received
15: Tri-Son Concrete-Zanesville Plant # 2 (0690970004)	F003: Roadways and parking areas	06-08346	1/3/08	purchased on 5/1/04	9/25/07
20: 4424 Screening Plant (0660950045)	P901: Screen, Material Handling and attached Diesel Generator	06-08272	6/14/07	before 4/1/00	1/31/07
	F001: Unpaved or Paved Roadways	06-08272	6/14/07	before 4/1/00	1/31/07
	F002: Storage Piles	06-08272	6/14/07	before 4/1/00	1/31/07

Director's Final Findings and Orders
Sidwell Materials, Inc.
Page 4 of 13

23: Tri-Son Concrete-Zanesville #4 (0660970006)	F001: Unpaved or paved roadways; PTI issued to previous owner on 3/23/04 did not include fugitive sources.	06-08347	1/29/08	Purchased on 4/18/05	9/25/07
	F002: Storage piles; PTI issued to previous owner on 3/23/04 did not include fugitive sources.	06-08347	1/29/08	Purchased on 4/18/05	9/25/07

6. As indicated in the following table, each of the emissions units were operated by Respondent without first obtaining a Permit-To-Operate ("PTO"), in violation of OAC Rule 3745-35-02(A) and ORC § 3704.05(G):

Facility	Emissions Unit	Operation Start Date	PTO Application Received
20: 4424 Screening Plant (0660950045)	P901: Screen, Material Handling and attached Diesel Generator	4/1/00	1/31/07
	F001: Unpaved and Paved Roadways	4/1/00	1/31/07
	F002: Storage Piles	4/1/00	1/31/07
23: Tri-Son Concrete-Zanesville #4 (0660970006)	F001: Unpaved and Paved Roadways	Purchased on 4/18/05	9/25/07
	F002: Storage Piles	Purchased on 4/18/05	9/25/07

7. As identified in the following table, Respondent did not timely comply with the minimum thirty days written notice prior to the scheduled relocation as required in PTIs for the following emissions units, in violation of ORC § 3704.05(C):

Facility	Emissions Unit	Relocation Date	Notice Date	Relocation Approval
17: IROCK RDS-20 Crushing Plant (0660950007)	F001: Portable IROCK RDS-20 450 TPH Crushing Plant (including hopper, screen, and conveyors)	9/12/05	9/13/05	11/23/05
	F002: Plant Unpaved Roadways and Unpaved Parking Areas	9/12/05	9/13/05	11/23/05
	F003: Storage Piles (load-in, load-out, and wind erosion from storage piles)	9/12/05	9/13/05	11/23/05
18: Metso Crusher (0660950019)	F029: Metso Nordberg HP 200 Portable Cone Crusher and Material Handling (load-in and load-out)	9/7/05	9/13/05	None
	F030: Material Stockpiles (load-in and load-out of storage piles and wind erosion from storage piles)	9/7/05	9/13/05	None

8. As identified in the following table, Respondent failed to comply with PTI record-keeping and monitoring requirements for the following emissions units, in violation of ORC § 3704.05(C):

Facility	Emissions Unit	Violation	Violation Start Date	Violation End date
14: Tri-Son Concrete Batch Plant -Zanesville #1 (0660970003)	F001: Concrete Batch Plant (silo, weigh hopper and transit truck loading)	Failure to monitor and maintain complete records.	5/1/04	4/14/05
16: IROCK 300 Crushing Plant (0660950014)	F001(was F006): Portable Unpaved Roadways and Unpaved Parking Areas	Failure to monitor and maintain complete records.	9/1/05	9/16/05
	F002 (was F005): Portable Aggregate Storage Piles (load-in, load-out, and wind erosion of storage piles)	Failure to monitor and maintain complete records.	9/1/05	9/16/05
	F003 (was F007): Portable IROCK 300 Aggregate Processing Plant	Failure to monitor and maintain complete records.	9/1/05	9/16/05

Director's Final Findings and Orders
Sidwell Materials, Inc.
Page 6 of 13

18: Metso Crusher (0660950019)	F029: Metso Nordberg HP 200 Portable Cone Crusher and Material Handling (load-in and load-out)	Failure to monitor and maintain complete records.	9/1/05	9/17/05
	F030: Material Stockpiles (load-in and load-out of storage piles and wind erosion from storage piles)	Failure to monitor and maintain complete records.	9/1/05	9/17/05

9. On August 17, 2007, SEDO reviewed records at Respondent's headquarters. Only records going back to January 2005 were available for review for several emissions units. On September 25, 2007, SEDO received Respondent's response to the NOV of August 23, 2007, stating that all records prior to 2005 cannot be located. Respondent failed to retain records for a five-year period in accordance with PTI requirements for the following time periods and emissions units, in violation of ORC § 3704.05(C):

Facility	Emissions Unit	Violation	Violation Start Date	Violation End date
6: Tri-Son Screening Plant (0660950006)	F001: Portable Unpaved Plant Roadways	Failure to retain records.	7/27/04	1/1/05
	F002: Portable Storage piles	Failure to retain records.	7/27/04	1/1/05
	P901: 200 TPH Tri-Son Screen with attached 215 HP Diesel Generator	Failure to retain records.	7/27/04	1/1/05
15: Tri-Son Concrete-Zanesville Plant # 2 (0660970004)	F001: Portable 200 TPH Concrete Batch Plant (including Cement Silo and Fly Ash Silo with Baghouses)	Failure to retain records.	5/1/04	1/1/05
	F002: Material Handling (load-in and load-out of storage piles)	Failure to retain records.	5/1/04	1/1/05
18: Metso Crusher (0660950019)	F029: Metso Nordberg HP 200 Portable Cone Crusher Material Handling (load-in and load-out)	Failure to retain records.	6/20/02	1/1/05
	F030: Material Stockpiles (load-in and load-out of storage piles and wind erosion from storage piles)	Failure to retain records.	6/20/02	1/1/05
22: McNeilus Concrete Batch Plant (0660970002)	F001: Portable Roadways and Parking Areas	Failure to retain records.	7/29/04	1/1/05
	F002: Portable Storage Piles (sand and aggregate storage piles and wind erosion from storage piles)	Failure to retain records.	7/29/04	1/1/05

	P901: 200 TPH Portable McNeilus Concrete Batch Plant	Failure to retain records.	7/29/04	1/1/05
23: Tri-Son Concrete-Zanesville #4 (0660970006)	P901: Portable 150 cubic yard per hour Concrete Batch Plant	Failure to retain records.	3/23/04	1/1/05
24: IROCK 150 Crusher (0660950017)	F026: IROCK II Crusher and Screen	Failure to retain records.	8/17/02	1/1/05
	F027: Material Handling (including transfer points)	Failure to retain records.	8/17/02	1/1/05
	F028: Storage Piles	Failure to retain records.	8/17/02	1/1/05

10. As identified in the following table, Respondent failed to comply with PTI deviation reporting requirements for the following emissions units, in violation of ORC § 3704.05(C):

Facility	Emissions Unit	Operation Start date	Violation
14: Tri-Son Concrete-Zanesville Plant #1 (0660970003)	F001: Concrete Batch Plant (silo, weigh hopper and transit truck loading)	Purchased on 5/1/04	The 2Q 04, 3Q 04, and 4Q 04 deviation reports were late. They were due by 4/30/04, 7/31/04, 10/31/04, and 1/31/05 but the reports did not arrive until 4/15/05.
15: Tri-Son Concrete-Zanesville Plant # 2 (0660970004)	F001: Portable 200 TPH Concrete Batch Plant (including Cement Silo and Fly Ash with Baghouses).	Purchased on 5/1/04	The first and second semiannual written reports for 2004 were late. (Respondent indicated in a letter received on 4/15/05 that the plant had not begun operations yet).
	F002: Material Handling (load-in and load-out of storage piles)	Purchased on 5/1/04	Failure to submit 2Q 04, 3Q 04, 4Q 04, and 1Q 05 deviation reports (Respondent indicated in a letter received on 4/15/05 that the plant had not begun operations yet).
16: Portable IROCK 300 Crushing Plant (0660950014)	F001: Unpaved Roadways and Unpaved Parking Areas	Purchased on 9/1/05	3Q 05 deviation report was not representative of the true conditions at the facility (revision submitted 9/25/06).
	F002 (was F005): Aggregate Storage Piles (load-in, load-out, and wind erosion of storage piles)	Purchased on 9/1/05	3Q 05 deviation report was not representative of the true conditions at the facility (revision submitted 9/25/06).

F003 (was F007): IROCK 300 Aggregate Processing Plant Rated 650 TPH (including vibrating feeder, crusher, inclined screen, and conveyors)	Purchased 9/1/05	3Q 05 deviation report was not representative of the true conditions at the facility (revision submitted 9/25/06).
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11. In violation of OAC Rule 3745-15-04, ORC § 3704.05(G) and 40 CFR, Part 60.672, Respondent failed to timely conduct visible emissions testing required by the PTI and 40 CFR, Part 60, Subpart OOO, for the following emissions units, in violation of ORC § 3704.05(C):

Facility	Emissions Unit	PTI # (Issuance Date)	Testing Due Date	Test Date
16: IROCK 300 Crushing Plant (0660950014)	F003: Portable IROCK 300 Aggregate Processing Plant	06-08028 (3/16/06)	9/12/06	6/15/07

12. The following violations have been identified by Respondent at emissions unit F007 of the IROCK 300 Crushing Plant (Facility #16 in Finding 2, Ohio EPA ID 0660950014):

a. Exceedance of PTI opacity limitation, in violation of ORC § 3704.05(C):

A representative from SEDO took the opacity readings on September 16, 2005 for 15 minutes. All the readings were above the limit of 15% opacity as a three-minute average. The minimum reading was 30% while the maximum was 75%. The average opacity for highest period (minutes 10 to 12) was 66.67%.

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 be derived from such compliance.

V. ORDERS

The Director hereby issues the following Orders:

1. Respondent shall pay the amount of fifty thousand dollars (\$50,000) 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

forty thousand dollars (\$40,000) 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

2. In lieu of paying the remaining ten thousand dollars (\$10,000) of 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 \$10,000 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 \$10,000. 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.

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
Division of Air Pollution Control
P.O. Box 1049
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 \$10,000 of the civil penalty in accordance with the procedures in Order 1.

5. Within thirty (30) days after the effective date of these Orders, Respondent shall label all emissions units owned by Respondent. The label shall contain the Ohio EPA facility ID and emissions unit ID.

6. Respondent shall develop an inventory of all emissions units owned by Respondent and locate them on maps (separate map for each different address). Ohio EPA shall be provided with a copy of the inventory and maps within thirty (30) days after the effective date of these Orders.

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 corporate officer who is in charge of a principal business function of 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, operations by Respondent.

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
Southeast District Office
Division of Air Pollution Control
2195 Front Street
Logan, Ohio 43138
Attn: Michael Carper

and to:

Ohio Environmental Protection Agency
Division of Air Pollution Control
P.O. Box 1049
Columbus, Ohio 43216-1049
Attn: Thomas Kalman, Manager, Enforcement Section

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

All documents required to be submitted by the Ohio EPA pursuant to these Orders shall be addressed to:

Sidwell Materials, Inc.
4200 Maysville Pike
Zanesville, Ohio 43701
Attn: Drake Prouty

and to:

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

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

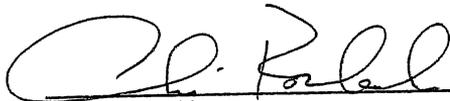
The effective date of these Orders is the date these Orders are entered into the Ohio EPA Director's journal.

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

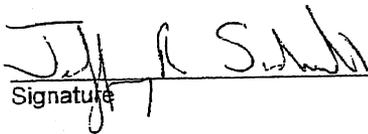


Chris Korleski
Director

12/31/08
Date

IT IS SO AGREED:

Sidwell Materials, Inc.



Signature

12-31-08
Date

Jeffrey R Sidwell
Printed or Typed Name

Pres.
Title