

DEC 30 2009

BEFORE THE

OHIO ENVIRONMENTAL PROTECTION AGENCY

ENTERED DIRECTOR'S JOURNAL

In the Matter of:

Ameriseal & Restoration, LLC,
d.b.a. Ameriseal
685 High Grove Blvd.
Akron, Ohio 44312

: 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
Environmental Protection Agency.

PREAMBLE

By:  Date: 12/30/09

It is agreed by the parties hereto as follows:

I. JURISDICTION

These Director's Final Findings and Orders ("Orders") are issued to Ameriseal & Restoration, LLC, d.b.a. Ameriseal ("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 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 makes the following findings:

1. Respondent is a masonry contractor with an office located at 685 High Grove Blvd., Akron, Summit County, Ohio. Respondent was registered with the Secretary of State to do business in Ohio on May 16, 2001.

2. Akron Regional Air Quality Management District ("ARAQMD") is a contractual agent for Ohio EPA in Summit County.

3. A "fugitive dust source," is defined in part, in OAC Rule 3745-17-01(B)(7) as any source which emits fugitive dust as defined in OAC Rule 3745-17-01(B)(6). "Fugitive dust" means particulate matter which is emitted from any source by means other than a stack. The outdoor operation of masonry cutting and sawing equipment emits fugitive dust and constitutes a fugitive dust source and an "air contaminant source," as defined in OAC Rule 3745-15-01(C) and (X).

4. OAC Rule 3745-17-08(A)(1) states, in part, that the requirements of OAC Rule 3745-17-08(B) apply to any fugitive dust source which is located within the areas identified in Appendix A of such rule, unless otherwise provided in OAC Rule 3745-17-08(A)(3). The City of Akron is listed in Appendix A.

5. OAC Rule 3745-17-08(B) 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; without taking or installing "reasonably available control measures" ("RACM") as defined in OAC Rule 3745-17-01(B)(18), to minimize or eliminate visible emissions of fugitive dust. Such measures shall include, but not be limited to, the use of water or other suitable dust suppression chemicals for control of fugitive dust from construction operations and/or the use of adequate containment methods. For masonry sawing operations, the Director finds the use of water hose connections for water application to suppress dust emissions, or equivalent device, constitutes RACM.

6. On April 26, 2007, Respondent emitted yellow dust from sawing brick on the front of an old fire station at 57 S. Broadway Street, Akron, Ohio without employing RACM to minimize or eliminate such emissions, in violation of OAC Rule 3745-17-08(B).

7. On June 11, 2007, Respondent conducted brick sawing operations at 57 S. Broadway Street in Akron, Ohio. Respondent generated visible emissions of fugitive dust as a result of sawing brick. Respondent failed to employ RACM to minimize or eliminate such emissions, in violation of OAC Rule 3745-17-08(B).

8. On June 14, 2007, ARAQMD issued a Notice of Violation ("NOV") to Respondent indicating that Respondent had failed to control dust emissions associated with brick sawing operations on April 26, 2007, and June 11, 2007, in violation of OAC Rule 3745-17-08(B)

). The NOV concluded with a request that Respondent submit a written statement outlining its plan to control fugitive dust emissions at construction sites where cutting or sawing of brick is taking place.

9. On September 20, 2007, Respondent conducted brick sawing operations at 1115 South Main Street, Akron, Ohio without any form control measures for visible

emissions of fugitive dust. ARAQMD issued a local "Cease and Desist Order" to Respondent and requested Respondent to use proper control measures to minimize or eliminate fugitive dust in its operation. Respondent's failure to employ RACM to minimize or eliminate such emissions constitutes a violation of OAC Rule 3745-17-08(B).

10. On August 7 and 8, 2008, Respondent conducted brick sawing operations at 12 East Exchange Street, Akron, Ohio without employing any control measures for visible emissions of fugitive dust. Respondent's failure to employ RACM to minimize or eliminate such emissions constitute violations of OAC Rule 3745-17-08(B).

11. On August 18, 2008, Respondent submitted a written plan to ARAQMD to control fugitive dust emissions when cutting or sawing of brick. The plan included the use of dust collectors, vacuum equipment and water sprayers (i.e., RACM) to minimize or eliminate visible emissions of fugitive dust.

12. On March 16, 2009, Respondent conducted brick sawing operations at 54 Mill Street (at the corner of High Street) in Akron, Ohio. Respondent conducted the sawing operation without any control measure for visible emissions of fugitive dust. From Finding #s 9 and 11, Respondent had the knowledge and means to employ RACM to minimize or eliminate such emissions. Respondent's failure to employ RACM to minimize or eliminate such emissions constitutes a violation of OAC Rule 3745-17-08(B).

13. The violations of OAC Rule 3745-17-08(B) by the failure to employ RACM to minimize or eliminate fugitive dust emissions also constitutes violations of ORC § 3704.05(G).

14. 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. Upon the effective date of these Orders, Respondent shall employ RACM as required pursuant to OAC Rule 3745-17-08(B) for all masonry cutting or sawing equipment operations at any Ohio construction site located in the Appendix A areas identified in OAC Rule 3745-17-08. Such measures shall minimize or eliminate visible emissions of fugitive dust. Respondent shall maintain compliance with OAC Rule 3745-17-08(B) thereafter.

2. Respondent shall pay the amount of six thousand seven hundred dollars (\$6,700) in settlement of Ohio EPA's claims for civil penalties, which may be assessed pursuant to ORC Chapter 3704 in accordance with the payment schedule in Order 3.

3. Payments to Ohio EPA shall be made by official checks made payable to "Treasurer, State of Ohio" in accordance with the following schedule:

- (a) eight hundred and sixty dollars (\$860) by January 15, 2010;
- (b) one thousand three hundred and forty dollars (\$1,340) by January 15, 2010 pursuant to Order 4;
- (c) two thousand two hundred dollars (\$2,200) by February 15, 2010; and
- (d) two thousand three hundred dollars (\$2,300) by March 15, 2010.

The official checks shall be submitted to Brenda Case, or her successor, together with a letter identifying the Respondent, to:

Ohio EPA
Office of Fiscal Administration
50 West Town Street, Suite 700
P.O. Box 1049
Columbus, Ohio 43216-1049

4. In lieu of paying the one thousand three hundred and forty dollars (\$1,340) of the civil penalty identified in Order 3(b) to Ohio EPA's general fund, Respondent shall, by January 15, 2010, fund a Supplemental Environmental Project ("SEP") by making the payment in the amount of \$1,340 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 \$1,340. 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.

5. 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
50 West Town Street, Suite 700
P.O. Box 1049
Columbus, Ohio 43216-1049

6. Should Respondent fail to fund the SEP within the required time frame set forth in Order 4, Respondent shall immediately pay to Ohio EPA \$1,340 of the civil penalty in accordance with the procedures in Order 3.

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 principal executive officer of at least the level of vice president or his duty authorized representative.

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:

Akron Regional Air Quality Management District
146 South High Street, Room 904
Akron, Ohio 44308
Attn: Bonetta Guyette

and to:

Ohio Environmental Protection Agency
Division of Air Pollution Control
50 West Town Street, Suite 700
P.O. Box 1049
Columbus, Ohio 43216-1049
Attn: Thomas Kalman

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 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

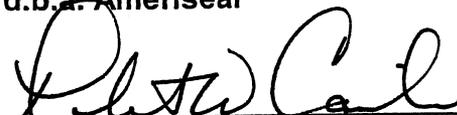


Chris Korleski
Director

Date 12/29/09

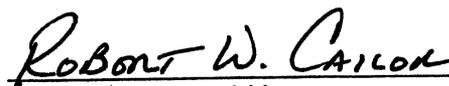
IT IS SO AGREED:

**Ameriseal & Restoration, LLC,
d.b.a. Ameriseal**

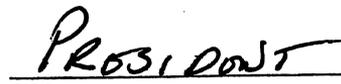


Signature

Date 12-22-09



Printed or Typed Name



Title