

BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY

OHIO E.P.A.

MAR 24 2009

FILED DIRECTOR'S JOURNAL

In the Matter of:

Brush Wellman Inc. : Director's Final Findings
14710 W. Portage River South Road : and Orders
Elmore, Ohio 43416 :

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: Daryl Cassider Date: 3-24-09

I. JURISDICTION

These Director's Final Findings and Orders ("Orders") are issued to Brush Wellman 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 defined) 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 owns and operates a facility located at 14710 W. Portage River South Road, Harris Township, Ottawa County, Ohio. At the facility, Respondent converts beryllium hydroxide into beryllium, beryllium oxide and beryllium-containing alloys. These products are used in electrical, mechanical, electronics and aerospace applications.

2. A final Title V permit was issued for the facility on March 16, 2004 and became effective on April 16, 2004. Part II(A)(1) of the Title V permit states, in part, that the concentration of beryllium ("Be") in the ambient air in the vicinity of the facility shall not

exceed 0.01 microgram per cubic meter ($\mu\text{g}/\text{m}^3$), averaged over a 30-day period, as specified in the National Emission Standards for Hazardous Air Pollutants, 40 CFR 61.32(b).

3. Respondent collects filters for Be analysis from nine out-plant compliance monitoring sites on a weekly basis. Compliance with the Be limit is determined by calculating a monthly average concentration for the designated monitor at each site. The following table provides information concerning the monitoring sites. The monthly average is calculated by averaging the four weekly samples within each calendar month. Two co-located monitors are located at site 13 and site 18, for quality assurance purposes. The designated monitor is used for determining compliance. Ohio EPA also has a monitor located at site 13 for quality assurance purposes only and it is sampled on a weekly basis.

Site Name	Site ID	Site Address	Distance and Direction from the Facility
Site 3	39-123-0006	2517 St. Rt. 590	4,366 ft S-SW
Site 8	39-123-0007	2124 S. Slemmer Portage	3,640 ft E-SE
Site 9	39-123-0008	1338 S. Portage River Rd.	6,760 ft E-NE
Site 11	39-123-0009	14405 West True Rd.	17,778 ft N
Site 12	39-123-0010	15473 W. St. Rt. 105	4,854 ft W
Site 13	39-123-0012	14244 W. St. Rt. 105	3,010 ft NE
Site 15	39-123-0013	14028 W. St. Rt. 105	4,100 ft NE
Site 18	39-123-0014	14681 W. St. Rt. 105	1,879 ft N
Site 19	39-123-0011	14850 St. Rt. 105	1,736 ft N-NW

4. Upon receipt of laboratory results on August 15, 2008, Respondent informed Ohio EPA, Northwest District Office ("NWDO") via voice mail that the Be results for the week of August 4-11, 2008 at site 13 were much higher than normal for each of the two monitors at the site. During subsequent conversations on August 18, 2008, Respondent indicated that it was continuing to investigate the probable cause of the high readings. Respondent requested Ohio EPA to expedite the analysis of the split sample and the sample from the Ohio EPA monitor. Ohio EPA agreed to provide the analysis.

5. On August 28, 2008, NWDO contacted Respondent and Respondent indicated it launched an extensive effort to determine the cause of the high Be readings at site 13, including reviewing all production and maintenance activities that occurred during the week of August 4-11, 2008 for any unusual event. Respondent's investigation found no production or equipment malfunction during that week likely to be the cause of the high Be readings.

6. Respondent believes that the most probable cause of the elevated Be concentrations at site 13 was the mowing around lagoon #5 the first week of August 2008.

During the mowing, a large mowing deck ran across the exposed sediment, creating a cloud of dust and dispersing it into the air. Lagoon #5 receives both wastewater and storm water runoff as per the NPDES permit. On August 22, 2008, Respondent collected soil samples from the exposed sludge along the western dike wall of lagoon #5. Results received from the laboratory on August 29, 2008, indicated measurable concentration levels in the sludge containing up to 0.2% beryllium.

7. On September 15-16, 2008, NWDO inspected Respondent's facility, and no process upsets or control device malfunctions were discovered during the inspection.

8. On September 4, 2008, the results received from Ohio EPA lab confirmed the elevated levels of Be at site 13 for both the split sample ($0.077 \mu\text{g}/\text{m}^3$) and the sample from Ohio EPA's monitor ($0.057 \mu\text{g}/\text{m}^3$) for the week of August 4-11, 2008. The monthly average concentration for Ohio EPA's monitor was $0.013 \mu\text{g}/\text{m}^3$ for August 2008.

9. On September 23, 2008, Ohio EPA received from Respondent the report for the month of August for the Be concentrations measured at all nine monitoring sites, including the results from the two co-located monitors at site 13. The following table includes all the Be concentration analyses conducted by Respondent for site 13 during the month of August 2008.

Date of Sample	Site 13 ($\mu\text{g}/\text{m}^3$) [Designated Monitor]	Site 13 Co-located Monitor ($\mu\text{g}/\text{m}^3$) [Quality Assurance Monitor]
08/04 – 08/11	0.0797	0.0611
08/11 – 08/15	0.0007	0.0007
08/15 – 08/20	0.0009	0.0007
08/20 – 08/25	0.0006	0.0004
08/25 – 09/02	0.0006	0.0005
August Average	0.0196	0.0151

10. The average Be concentration of $0.0196 \mu\text{g}/\text{m}^3$ at site 13 during the month of August 2008 results in a single violation of the $0.01 \mu\text{g}/\text{m}^3$ monthly average Be limit in the Title V permit and of ORC § 3704.05(J)(2).

11. On September 30, 2008, NWDO sent a Notice of Violation ("NOV") letter to Respondent. The NOV cited the violation of Be limit during the month of August 2008. Respondent was requested to provide Ohio EPA with a summary report of the investigation efforts to determine the cause of the violation, the history of the flow into lagoon #5 over the past decade, and Respondent's corrective actions to prevent future reoccurrence of the violation. Based on the information provided, it was concluded by Respondent that the cause of the high reading during the week of August 4-11 was the result of the mowing activities around lagoon #5 during that period.

12. On October 9, 2008, Ohio EPA received from Respondent the report of the month of September for the Be concentrations measured at all nine monitoring sites, including the results from the two co-located monitors. The monthly Be average concentration at site 13 was 0.0003 $\mu\text{g}/\text{m}^3$.

13. On November 3, 2008, NWDO received Respondent's response to the NOV of September 30, 2008. Respondent's corrective actions to prevent the reoccurrence of the violation included (1) not to intentionally disturb the sediment inside the lagoon, and (2) placing a physical barrier over the sediment to prevent it from being disturbed. It was also indicated that since 2000 wastewater discharged to lagoon #5 has consisted of filtrate from the production of Elmore Recovery Concentrate process and storm water.

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. Until final action is taken by the Director on Respondent's pending Title V permit application for the facility, as received by Ohio EPA on October 16, 2008, Respondent shall maintain the existing physical barrier over the exposed sediment at lagoon #5 or shall use any equivalent measure, including the application of chemical agents, with approval of Ohio EPA, to minimize or eliminate any fugitive dust emissions. Until such action by the Director, any necessary uncovering of the barrier shall be accompanied by adequate watering or the application of other dust suppressants to the exposed sediment to minimize or eliminate fugitive dust emissions.

2. Pursuant to ORC § 3704.06, Respondent is assessed a civil penalty in the amount of sixty thousand dollars (\$60,000) 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 twenty-eight thousand dollars (\$28,000) of the total penalty amount. Payment shall be made by an official check made payable to "Treasurer, State of Ohio" for \$28,000. 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

3. In lieu of paying the remaining thirty-two thousand dollars (\$32,000) of the civil penalty to Ohio EPA, Respondent shall fund the supplemental environmental project ("SEP") identified in Order 4 and shall perform the penalty credit project outlined in Order 5. Of the \$32,000, \$12,000 shall be used to fund the project identified in Order 4, and \$20,000 shall be used to fund the project identified in Order 5. In the event Respondent defaults or otherwise fails to complete any of the projects as specified in Orders 4 and 5, the \$12,000 for the SEP in Order 4 and/or the \$20,000 for the project in Order 5, whichever is (are) applicable, shall immediately become due and payable to Ohio EPA. Such payment shall be made by an official check made payable to "Treasurer, State of Ohio" and sent to Brenda Case, or her successor, together with a letter identifying the Respondent, to the above-stated address. A copy of the check shall be sent to James A. Orlemann, or his successor, at the above-stated address.

4. Respondent shall fund a SEP by making a contribution in the amount of \$12,000 to Ohio EPA's Clean Diesel School Bus Program Fund (Fund 5CD0). Respondent shall make payment within thirty (30) days after the effective date of these Orders by an official check made payable to "Treasurer, State of Ohio" for \$12,000. The official check shall specify that such monies are to be deposited into Fund 5CD0 established by Ohio EPA for the Clean Diesel School Bus Program. The official check shall be submitted to Brenda Case, or her successor, together with a letter identifying the Respondent, to the above-stated address. A copy of this check also shall be sent to James A. Orlemann, or his successor, at the above-stated address.

5. Within one hundred eighty (180) days after the effective date of these Orders and as a penalty credit pursuant to Order 3, Respondent shall install three (3) TRIBO.d²™ continuous particulate emission monitors downstream of three (3) secondary cartridge collectors located in the old cast shop, and an alarm transmission system at Respondent's facility, and shall thereafter operate and maintain such monitors. The purpose of TRIBO.d²™ monitors shall be to early detect dust collector leaks or malfunctions. Process operators will be alarmed quickly of the non-routine conditions, which allows for timely investigation and troubleshooting. The first TRIBO.d²™ monitor shall be installed downstream of the east secondary cartridge collector (C-32-1-2) associated with Alloy Induction Furnace #1 (emissions unit P064) and Alloy Induction Furnace #2 (emissions unit P065). The second TRIBO.d²™ monitor shall be installed downstream of the north secondary cartridge collector (C-32-2-2) associated with Alloy Induction Furnace #3 (emissions unit P066) and Alloy

Induction Furnace #4 (emissions unit P067). The third TRIBO.d²™ monitor shall be installed downstream of the south secondary cartridge collector (C-32-4-3) associated with the Alloy Cast Shop Auxiliary Operations (emissions unit P011). Respondent shall follow the manufacturer's recommendations for selecting the installation sites. In addition to the local alarm at the graphic display recorder located in the old case shop, the alarm signal shall be transmitted to the facility's Simplex centralized alarm monitoring system. The Simplex system provides audible alarm notification and text messaging to the central security control center, which is staffed 24 hours a day. The system shall be set to generate a low-level alarm and a high-level alarm based on the emissions level relative to the baseline. The system (TRIBO.d²™ monitor and the alarm transmission units) shall be installed, calibrated, operated and maintained in accordance with the manufacturers' recommendations, instructions, and the operating manuals. Within one hundred eighty (180) days after the effective date of these Orders, Respondent shall develop and maintain a written quality assurance plan to assess and document the continuing functioning and accuracy of the TRIBO.d²™ and the alarm transmission units. Respondent shall follow the recommendations in the U.S. EPA's document number EPA-454/R-98-015 (Fabric Filter Bag Leak Detection Guidance) in developing the part associated with TRIBO.d² monitor in the quality assurance plan. The requirements of this Order No. 5 may be terminated pursuant to Section VI of these Orders after the Director takes final action on Respondent's pending renewal Title V permit application for the facility, as received by the Ohio EPA on October 16, 2008. Respondent hereby waives any right to appeal to the Environmental Review Appeals Commission or other tribunal or to otherwise challenge incorporation of the requirements of this Order No. 5 into the renewal Title V permit which the Director may issue in response to the pending application or into any subsequent Title V permit. This waiver does not apply to any requirements that are different from those set forth in this Order No. 5, nor does Respondent waive any right that it may have to intervene in an appeal by a third party of a Title V permit issued to Respondent. Following the Director's final action on the Respondent's pending Title V permit application, Respondent may request Ohio EPA for changes with respect to the future operation and maintenance of these emission monitors in the light of changes in circumstances or law. Such requests shall be subject to approval by Ohio EPA at its sole discretion.

6. Within thirty (30) days of the completion of the project identified in Order 5, Respondent shall submit documentation to Ohio EPA of the total cost of the project. If the total cost of the project is less than \$40,000, Respondent shall submit, along with the final report and in the manner described in Order 2, an official check to Ohio EPA for one-half (1/2) of the difference in cost between \$40,000 and the total cost of the project.

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 duly 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:

Northwest District Office
Ohio Environmental Protection Agency
347 North Dunbridge Road
Bowling Green, Ohio 43402
Attn: Jay Liebrecht

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.

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 3/19/09

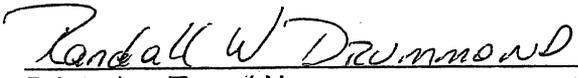
IT IS SO AGREED:

Brush Wellman Inc.



Signature

Date March 11, 2009



Printed or Typed Name



Title