OHIO E.P.A.

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ENTERED DIRECTOR'S JOURNAL

BEFORE THE

OHIO ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

Barrett Paving Materials, Inc. 600 Shepherd Lane Cincinnati, Ohio 45215	:	Director's Final Findings and Orders
RESPONDENT	:	

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.

By: [signature] Date: 6-2-10

PREAMBLE

It is agreed by the parties hereto as follows:

I. JURISDICTION

These Director's Final Findings and Orders ("Orders") are issued to Barrett Paving 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 successors in interest liable under Ohio law. No change in ownership of the Respondent or of the facilities (as herein 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 used in ORC Chapter 3704 and the regulations promulgated thereunder.

IV. FINDINGS

The Director of Ohio EPA makes the following findings:

1. Respondent owns and operates asphaltic concrete production facilities located throughout Ohio. Four of these facilities are or were located at 107 River Circle Drive ("Fairfield Facility"), Fairfield, Ohio (identified by Ohio EPA as facility ID 1409000018); 4000 Turtle Creek Road ("Turtle Creek Facility"), South Lebanon, Ohio (identified by Ohio EPA as facility ID 1483980456); 387 Smalley Road ("Reading Facility"), Reading, Ohio (identified by Ohio EPA as facility ID 1431443377); and 1466 West Mason Morrow Millgrove Road ("West Mason Facility"), South Lebanon, Ohio (identified by Ohio EPA as facility ID 1483980486). Each of these facilities emit, among other air pollutants, particulate matter ("PM"), particulate matter with an aerodynamic diameter of 10 microns or less ("PM_{10}"), and volatile organic compounds ("VOCs"), which are defined as "air pollutants" or "air contaminants" in Ohio Administrative Code ("OAC") Rule 3745-15-01(C). Additionally, asphaltic concrete production operations are "air contaminant sources" as

defined in OAC Rule 3745-31-01(I).

2. OAC Rule 3745-31-05(F) (formerly OAC Rule 3745-31-02(A)(2)) allows, in part, the owner or operator of any air contaminant source to voluntarily request a permit to install ("PTI") from Ohio EPA that would lower the allowable emissions from the air contaminant source. OAC Rule 3745-31-01(K) defines "allowable emissions," in part, as the emission rate of an air contaminant source calculated using the maximum rated capacity to emit, unless federally enforceable limitations restrict the operation rate or hours of operation. This type of permit is referred to as a "synthetic minor permit."

3. OAC Rule 3745-31-05(E) and (D) (formerly OAC Rules 3745-31-05(D) and 3745-35-02) state, in part, that the Director of Ohio EPA may impose special permit terms and conditions as are appropriate or necessary to ensure compliance with applicable laws and to ensure adequate protection of the environment.

4. ORC § 3704.05(C) prohibits any person from violating any terms or conditions of any permit issued by the Director of Ohio EPA.

Turtle Creek Facility

5. On August 22, 2006, Ohio EPA issued a synthetic minor PTI for Respondent's Turtle Creek Facility. The PTI contained a short-term particulate emissions ("PE") limitation that prohibits more than 8 pounds per hour ("lbs/hr") to be emitted from the Facility's fabric filter stack. Additionally, the PTI required Respondent to conduct compliance tests within 180 days after the issuance of the PTI (i.e., February 18, 2007), using the appropriate USEPA reference test methods, to demonstrate compliance with the short-term PE limitation.

6. On September 20 and 21, 2007, Respondent conducted the required compliance demonstration emission tests. PE were measured at 10.90 lbs/hr, in violation of the 8 lbs/hr PE limitation in the PTI and ORC § 3704.05(C).

7. On January 16, 2008, Hamilton County Department of Environmental Services ("HCDES"), Ohio EPA's contractual representative in Butler, Warren and Hamilton counties, sent Respondent a notice of violation ("NOV") letter for the failure to comply with the terms and conditions of its PTI and requested Respondent to submit a plan to bring the Facility into compliance.

8. On February 15, 2008, HCDES received Respondent's reply to the January 16, 2008, NOV. Respondent stated that the hot mix asphalt plant had ceased to operate and had been disassembled. In a March 25, 2008, response to HCDES's request for additional information, Respondent stated that the Facility had operated 56 days from the failed compliance demonstration until it ceased operation.

9. Respondent failed to comply with the PE limitation specified in the terms and conditions of its PTI, in violation of ORC § 3704.05(C).

West Mason Facility

10. On December 20, 2007, Ohio EPA issued a synthetic minor PTI for the installation of Respondent's 400 tons per hour portable counter-flow drum mix asphalt plant, which is controlled with a baghouse taken from the Turtle Creek Facility, at the West Mason Facility. The PTI specified a short-term PE limitation prohibiting the stack gasses from containing more than 0.03 grain per dry standard cubic foot ("gr/dscf"). To demonstrate compliance with this limitation, the PTI required Respondent to conduct compliance tests. The tests were required to be conducted within 60 days after maximum production was achieved but no later than 120 days after the initial startup of Facility.

11. On August 28, 2008, Respondent conducted the required compliance demonstration emission tests. PE were measured at 0.15 gr/dscf, in violation of the PTI limitation and ORC § 3704.05(C).

12. Respondent inspected and tested the baghouse controlling the PE for possible causes of the excessive PE. The tests revealed that a flange between the clean and dirty air compartments of the baghouse was not properly sealed allowing part of the PE to "by-pass" the filters and be emitted "uncontrolled." Respondent resealed the flange and conducted a new compliance demonstration on October 28, 2008. The filterable particulate emissions (i.e., PE) were measured at 0.006 gr/dscf, in compliance with the 0.03 gr/dscf limitation.

13. Respondent failed to comply with the 0.03 gr/dscf PE permit limitation, in violation of ORC § 3704.05(C). The violation occurred from June 30, 2008 (i.e., the date of startup of the Facility using the baghouse with the failing stack test from the Turtle Creek Facility) and continued until compliance was demonstrated on October 28, 2008. In a compliance plan letter dated January 8, 2009, Respondent committed to inspect the ductwork that had been problematic for baghouses with internal ducting and to record the inspections in the baghouse maintenance log to help prevent the reoccurrence of the problems that caused the PE limitation exceedance.

Fairfield Facility

14. On April 15, 2008, Ohio EPA issued a synthetic minor permit to operate ("PTO") for the operation of Respondent's Fairfield Facility. The PTO required Respondent to conduct compliance tests on the Facility's stack gasses to determine compliance with 0.04 gr/dscf and 10.35 pounds per hour PE limitations. The compliance tests were required to be conducted within six months after the issuance of the PTO.

15. On September 26, 2008, Respondent conducted the required compliance test. The measured PE of 0.18 gr/dscf and 40.7 pounds per hour revealed that Respondent was not complying with the short-term PE limitations contained in the PTO, in violation of ORC § 3704.05(C). Based on Respondent's experience with the failed seam at the West Mason Facility, Respondent inspected a similar seam at the Fairfield Facility's control device and found that it had worn from age and heat. Respondent cleaned and

repaired the worn seam.

16. On October 31, 2008, Respondent retested the Facility's stack emissions and demonstrated compliance with both short-term PE limitations.

17. Respondent's failure to comply with PE limitations is a violation of the PTO terms and conditions and the ORC § 3704.05(C).

Reading Facility

18. On October 10, 2006, Ohio EPA issued a synthetic minor PTO for the operation of Respondent's Reading Facility. Among other things, the PTO required Respondent to conduct compliance tests on the Facility's stack gasses to determine compliance with various short-term emission limitations contained in the PTO. The compliance tests were required to be conducted within 12 months after the issuance of the PTO for the primary fuel fired and within 60 days after switching to the secondary fuel.

19. On December 13, 2007, a representative of HCDES told Respondent that the Reading Facility had failed to conduct the required compliance demonstrations within the time frame specified in the October 10, 2006, PTO. Respondent stated that an Intent-to-Test form would be submitted in the spring once the Facility reopened for the season.

20. On January 16, 2008, HCDES sent a NOV letter to Respondent requesting written confirmation of the December 13, 2007, commitment to conduct the required compliance demonstrations. Responded replied to the NOV on February 14, 2008, stating it had failed to schedule the required emissions test within the 12-month deadline. Respondent also confirmed that the test would be conducted upon reopening the Facility in the spring. Respondent further stated that the dates had been set and approved by HCDES for April 22 and 23, 2008.

21. On April 22 and 23, 2008, Respondent conducted the compliance testing required by the October 10, 2006, PTO. VOC emissions were measured at 44.7 lbs/hr, in excess of the limit of 15.1 lbs/hr in the PTO, in violation of ORC § 3704.05(C). Respondent also did not comply with the terms and conditions of the PTO by failing to timely conduct the required tests, in violation of ORC § 3704.05(C). The VOC emission limit violation occurred from the dates of the test to the date that a new permit was issued for the emissions unit, which contained a higher VOC emission limitation.

22. 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 pay the amount of one hundred forty-one thousand and seven hundred dollars ($141,700) 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 one hundred thirteen thousand three hundred and sixty dollars ($113,360). The official check shall be submitted to Brenda Case, or her successor, together with a letter identifying Respondent, to:

Ohio EPA
Office of Fiscal Administration
P.O. Box 1049
Columbus, Ohio 43216-1049

2. In lieu of paying the remaining twenty-eight thousand three hundred and forty dollars ($28,340) 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 $28,340 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 $28,340. 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.

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 timeframe set forth in Order 2, Respondent shall immediately pay to Ohio EPA $28,340 of the civil penalty in accordance with the procedures in Order 1.

5. Within sixty (60) days of the effective date of these Orders, Respondent shall develop, maintain and implement a regular inspection and maintenance plan ("plan") for each air pollution control system employed at the facilities identified in Finding 1, except for the former Turtle Creek Facility. The plan shall satisfy the requirements and recommendations of the individual control system's vendor, the inspection and maintenance procedures contained in Ohio EPA's "O&M Guidelines for Air Pollution Control Equipment" and shall at minimum meet good engineering practices. Respondent

shall maintain copies of the plan and the vendor's recommendations at each facility. Additionally, Respondent shall maintain, at each facility, all the spare parts that are recommended by the individual control system's vendor and/or the spare parts identified in the plan. Respondent shall record the date, the time and the results of each inspection conducted on a control system as well as the date, the finishing time, the name of the person(s) conducting the maintenance, and a detailed description of each maintenance performed on the control system. If a regular scheduled inspection or maintenance is not timely conducted, Respondent shall record the reason why the inspection and or maintenance was not conducted within the time specified in the plan and or the control system's vendor's recommendation. All records shall be maintained for a minimum of 5 years and shall be made available for inspection upon request by Ohio EPA or a representative of Ohio EPA. This Order will terminate at the time these requirements, in existing form or amended form, have been transferred into each facility's permit to operate.

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, 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 a principal executive officer of at least the level of vice president, or a duly authorized representative, if such representative is responsible for the overall operation of the facilities owned or operated by 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, the operation of Respondent's facilities.

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's facilities.

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:

Hamilton County
Department of Environmental Services
Air Quality Programs
250 William Howard Taft Road
Cincinnati, Ohio 45219-2660
Attention: Kerri Castlen

and to:

Ohio Environmental Protection Agency
Lazarus Government Center
Division of Air Pollution Control
P.O. Box 1049
Columbus, Ohio 43216-1049
Attn: Thomas Kalman

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.

ORDERED AND AGREED:

Ohio Environmental Protection Agency

Chris Korleski
Director

Date 5/27/10

AGREED:

Barrett Paving Materials, Inc.

Signature

Date 5/19/10

JEFFREY C. LAMB
Printed or Typed Name

VICE PRESIDENT MIDWEST
Title