BEFORE THE

OHIO ENVIRONMENTAL PROTECTION AGENCY

OHIO E.P.A.
SEP 23 2010
ENTERED DIRECTOR'S JOURNAL

In the Matter of:

Burnham Foundry, LLC.	:	**Director's Final Findings**
2345 Licking Road	:	**and Orders**
Zanesville, Ohio 43702	:	

PREAMBLE

It is agreed by the parties hereto as follows:

I. JURISDICTION

These Director's Final Findings and Orders ("Orders") are issued to Burnham Foundry, LLC. ("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 makes the following findings:

1. Respondent owns and operates an iron castings manufacturing facility located at 2345 Licking Road, Zanesville, Muskingum County, Ohio ("Facility"). On May 6, 2003, a Title V permit (06-60-01-0101) was issued to Respondent for the Facility pursuant to Ohio Administrative Code ("OAC") Chapter 3745-77. The Title V permit establishes terms and conditions under which the emissions units ("EUs") at the Facility are to be operated in order to ensure compliance with state and federal air pollution control laws and regulations. The Title V permit expired on May 6, 2008; however; its requirements remain in effect pursuant to OAC Rule 3745-77-08(E)(1) until a renewal Title V permit is issued by Ohio EPA. A renewal permit application was timely submitted by Respondent to Ohio EPA on November 5, 2007.

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: Date: 9-23-10

2. Respondent's Title V permit, in part, establishes emission limitations, operational controls and reporting requirements for the gray iron cupola, which is identified by Ohio EPA as EU P905 and is employed to melt foundry returns, scrap metal, and fluxes with emissions vented to an afterburner and wet scrubber. Specifically, Part III.A.I.1. of the terms and conditions of the Title V permit establishes a particulate emission limitation of 23.69 pounds per hour ("lbs/hr"). In addition, Part III.A.V.3. of the terms and conditions of the Title V permit requires Respondent to conduct an emission test for EU P905 within one year prior to the expiration of the Title V permit in order to demonstrate compliance with the allowable particulate emission limitation. EU P905 is an "air contaminant source" as defined in OAC Rule 3745-15-01(C) and (X).

3. On April 1, 2008, Respondent conducted the emission test for EU P905 in accordance with Part III.A.V. of the terms and conditions of the Title V permit and submitted the test report on April 30, 2008. In the cover letter to the test report, Respondent indicated that the average of the three, one-hour test runs was 25.11 lbs/hr. Respondent requested that Ohio EPA disregard the second test run as unrepresentative because of the degree of difference with the first and third runs as well as all prior testing of the unit.

4. However, upon review, Ohio EPA determined that the average particulate emissions based on three, one-hour test runs was 25.99 lbs/hr, in violation of Part III.A.I.1. of the terms and conditions of the Title V permit and ORC § 3704.05(J)(2). By letter dated August 8, 2008, which was re-mailed, by certified mail, on August 29, 2008 and actually received by Respondent on September 3, 2008, Ohio EPA notified Respondent of the violation of the particulate emission limitation for EU P905 and requested that Respondent submit a compliance plan to Ohio EPA.

5. In a letter dated September 19, 2008, Respondent again asked Ohio EPA to consider the second test run as erroneous and not a true representation of emissions levels. The September 19th letter referenced and included the cover letter to the April 30, 2008 stack test report that indicated the first and third runs were comparable to historical results. In a letter dated October 6, 2008, Ohio EPA declined to reconsider the second test run because no evidence was presented by the Respondent or test firm that would indicate that the test run, conducted in accordance with the approved protocol, was not a valid representation of the emissions released to the atmosphere during that time period and requested a compliance plan and schedule as well as a schedule for retesting EU P905.

6. On October 21, 2008, Respondent submitted the compliance plan as referenced in Finding Nos. 4 and 5 of these Orders. In this compliance plan, Respondent indicated that it would be replacing two courses of alumina block in the scrubber disk venturi section and re-profile the top for the scrubber disk during the December 2008 plant shutdown and conduct an emission test on a date to be determined. Respondent also noted that no other issues were identified that would affect the control system's efficiency. In a letter dated November 19, 2008, Ohio EPA accepted the control plan and schedule and requested that a retest be conducted within

30 days of the end of the December shutdown. Respondent returned to production on January 6, 2009 and rescheduled a retest for January 22, 2009.

7. By letter dated January 19, 2009, Respondent requested a 45-day extension to perform the emission test because additional maintenance activities needed to be performed on EU P905.

8. During a conference call held on February 19, 2009, Ohio EPA notified Respondent that Respondent had failed to report the particulate emission limitation exceedances for EU P905 in the 2nd, 3rd and 4th quarterly deviation reports for 2008, in violation of Part III.A.IV. of the terms and conditions of the Title V permit and ORC § 3704.05(J)(2). By letter dated March 16, 2009, Ohio EPA notified Respondent of these violations.

9. On April 3, 2009, Respondent submitted a revised quarterly deviation report for the 2nd quarter of 2008. In this submittal, Respondent outlined its position that other than the one, 1-hour second test run in April 2008, Respondent had not been out of compliance with the particulate emission limitation due to production levels being well below that run during the April 2008 testing. The 3rd and 4th quarterly deviation reports for 2008 were submitted on July 16, 2010.

10. On February 26, 2009, Respondent conducted and passed a retest of EU P905 at 19.32 lbs/hr. Respondent was in violation of Part III.A.I.1. of the terms and conditions of the Title V permit and ORC § 3704.05(J)(2) from April 1, 2008 until February 26, 2009.

11. 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 seventeen thousand dollars ($17,000) in settlement of Ohio EPA's claims for civil penalties, which may be assessed pursuant to ORC Chapter 3704. Within thirty (30) 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 thirteen thousand six hundred dollars ($13,600) 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 three thousand four hundred dollars ($3,400) of the civil penalty, Respondent shall, within thirty (30) days of the effective date of these Orders, fund a Supplemental Environmental Project ("SEP") by making a contribution in the amount of $3,400 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 $3,400. 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 $3,400 of the civil penalty in accordance with the procedures in Order 1.

VI. TERMINATION

Respondent's obligations under these Orders shall terminate upon Ohio EPA's receipt of the official checks required by Section V of these Orders.

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 of 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
2195 Front Street
Logan, Ohio
Attn: Bruce Weinberg

and to:

Ohio Environmental Protection Agency
Division of Air Pollution Control
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.

ORDERED AND AGREED:

Ohio Environmental Protection Agency

Chris Korleski
Director

Date 9/22/10

AGREED:

Burnham Foundry, LLC.

Signature

Date 9/8/10

Jeremiah Clegg
Printed or Typed Name

President/Plant Manager
Title