

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.

OHIO E.P.A.

FEB 26 2010

By: [Signature] Date: 2/26/10

ENTERED DIRECTOR'S JOURNAL

BEFORE THE

OHIO ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

Quikrete-Cleveland	:	<u>Director's Final Findings</u>
2693 Lake Rockwell Road	:	<u>and Orders</u>
Ravenna, Ohio 44266	:	

PREAMBLE

It is agreed by the parties hereto as follows:

I. JURISDICTION

These Director's Final Findings and Orders ("Orders") are issued to Quikrete-Cleveland ("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:

- Respondent operates a cement blending and packaging facility ("Facility") located at 2693 Lake Rockwell Road in Shalersville Township, Portage County, Ohio. The facility consists of cement packaging plant operations with emissions units that include a baghouse (emissions unit ("EU") P901), and roadways and parking areas (EU F001), that are subject to the terms and conditions of Permit to Install ("PTI") #16-1513 issued by Ohio EPA to Respondent on October 18, 1995.

2. Emissions units P901 and F001 are "air contaminant sources" as that term is defined in Ohio Administrative Code ("OAC") Rules 3745-15-01(C) and (W), 3745-31-01(I) and former 3745-35-01(B)(4) and emit "particulate matter" ("PM") and particulate matter with an aerodynamic diameter of 10 microns or less ("PM₁₀"), which are defined as "air pollutants" or "air contaminants" in OAC Rule 3745-15-01(C).
3. ORC § 3704.05(C) prohibits any person from violating any terms or conditions of any permit issued by the Director of Ohio EPA pursuant to ORC Chapter 3704. Any PTIs and permits to operate ("PTOs") issued by the Director of Ohio EPA were issued pursuant to ORC Chapter 3704.
4. ORC § 3704.05(G) prohibits any person from violating any order, rule or determination of the Director of Ohio EPA issued, adopted, or made under ORC Chapter 3704. Any OAC rule identified in these Orders was adopted by the Director of Ohio EPA pursuant to ORC Chapter 3704.
5. On July 5, 2005, Respondent was issued PTOs by Ohio EPA for each of emissions units P901 and F001, which expire on July 5, 2010. On November 3, 2008, Respondent was issued a Permit-to-Install-and-Operate ("PTIO") by Ohio EPA for a modification to emissions unit P901.
6. PTI #16-1513 and the PTO for F001 required Respondent to limit visible particulate emissions from the paved roadways of emissions unit F001 to one minute during any 60-minute period. Also, the PTO requires the Respondent to treat paved roadways and parking areas by sweeping, water flushing, or other cleaning methods periodically at sufficient frequencies to minimize or eliminate fugitive dust emissions and to ensure compliance with the visible particulate emission limitation. Compliance with such prohibition is to be determined using the test methods and procedures specified in 40 CFR Part 60, Appendix A, Method 22.
7. Between November 19, 2007 and July 29, 2008, the Akron Regional Air Quality Management District ("ARAQMD"), Ohio EPA's contractual representative in Portage County, conducted Method 22 visible particulate emissions observations on a number of dates to determine whether the roadways at the facility were in compliance with PTI #16-1513. On three of those dates, ARAQMD observed visible particulate emissions in violation of the limit of one minute during any 60-minute period for the paved roadways. The exceedances, as summarized in the following table, were in violation of PTI #16-1513, the PTO, and ORC § 3704.05(C):

Date	Observation Point Noted	Total Observation Time of VEs (in minutes:seconds)	Total Observation Time (in minutes:seconds)
November 19, 2007	South of EU P901	7:38	58:00
June 5, 2008	West of EU P901	20:00	38:00
July 29, 2008	Northwest of EU P901	10:20	15:00

8. PTI #16-1513 and the PTO and PTIO for emissions unit P901 prohibit any visible emissions of fugitive dust from the building housing this emissions unit. Compliance with such prohibition is to be determined using the test methods and procedures specified in 40 CFR Part 60, Appendix A, Method 22.

9. On at least the following dates, Respondent and/or ARAQMD observed visible emissions of fugitive dust using Method 22 from the following areas or parts of the building housing emissions unit P901, in violation of PTI #16-1513, the PTO and ORC § 3704.05(C):

Date	Location of Visible Emissions
September 24, 2007	building
September 27, 2007	building
October 6, 2007	upper door of building
October 26, 2007	bucket elevator area
October 30, 2007	bucket elevator leaks
January 28, 2008	bucket elevator leaks
March 28, 2008	material leaking from discharge chute at top of dryer elevator
April 23, 2008	top of elevator
June 3, 2008	sand leaking from pipe on bin vent level
June 5, 2008	sand leaking from pipe on bin vent level
June 19, 2008	sand leaking from pipe on bin vent level
July 23, 2008	cement unloading pipe leaking

July 28, 2008	bin vent for cement leaking
July 29, 2008	building roof and elevator
August 14, 2008	cement unloading pipe leaking
August 26, 2008	outside diverter gate leaking
August 28, 2008	interior baghouse unloading pipe leaking
September 4, 2008	top of elevator
October 8, 2008	interior duct collection discharge pipe

10. A Notice of Violation ("NOV") letter dated November 14, 2007, was sent to Respondent by ARAQMD requesting abatement of the violations concerning emissions unit P901. In a response letter dated November 28, 2007, Respondent indicated it had repaired the broken baghouse, patched a hole, and replaced the off-load pipe on the bin vent level for emissions unit P901. On November 28, 2007, ARAQMD extended the time to provide a detailed and comprehensive compliance plan and schedule to December 21, 2007. On December 28, 2007, Respondent provided a letter outlining improved procedures and steps that had been taken to address the non-compliance issues.

11. PTI # 16-1513, the PTO for emissions unit P901, and OAC Rule 3745-15-07 prohibit Respondent from causing a public nuisance by the emission of air contaminants from, in part, this emissions unit. OAC Rule 3745-15-07(A) specifies that the emission or escape into the open air from any source or sources of dust in such manner or in such amounts as to endanger the health, safety or welfare of the public, or cause unreasonable injury or damage to property is deemed to be a public nuisance and is unlawful.

12. On several occasions between September 20, 2007 and October 25, 2007, ARAQMD responded to complaints by a neighbor of Respondent and observed the following:

Date	Description of Observations
September 20, 2007	dust fallout resulting in citizen's sweeping of driveway
September 21, 2007	dust fallout-driveway covered in dust
September 23, 2007	dust fallout resulting in citizen's washing of truck and driveway

September 24, 2007	dust fallout resulting in citizen's truck washing
October 17, 2007	dust fallout
October 25, 2007	dust fallout-driveway covered in dust

13. PTI #16-1513 requires Respondent to submit quarterly reports for the facility for deviations from control measure requirements, emission limitations, control device operating parameter limitations, and operating restrictions, by April 30, July 31, October 31, and January 31 for the preceding calendar quarter.

14. Respondent failed to timely submit quarterly deviation reports for the following calendar quarters: 2nd, 3rd and 4th quarters of 2005; 1st, 2nd, 3rd and 4th quarters of 2006; and 1st, 2nd, 3rd and 4th quarters of 2007, and 1st quarter of 2008, in violation of PTI #16-1513 and ORC § 3704.05(C). A NOV letter was sent to Respondent by ARAQMD on November 14, 2007, which requested the submittal of the delinquent reports. The remaining delinquent reports were submitted on July 25, 2008.

15. The PTO for EU F001 requires Respondent to keep records of the daily inspections for determining the need to implement control measures for emissions unit F001.

16. The NOV letter dated November 14, 2007 requested the Respondent to correct the record-keeping and reporting violations at the facility by submitting all deviation reports of such daily inspections by no later than November 30, 2007. In a letter dated November 28, 2007, Respondent informed ARAQMD that an attached summary form would immediately be used for keeping records of daily inspections.

17. On March 3, 2009, ARAQMD received a letter dated February 15, 2009 from Respondent, which summarized the information on the daily inspections and record-keeping of visible emissions observed from EU F001 from January 2008 through December 2008. Based on the February 15, 2009 letter, the facility reported four deviations from the visible emissions limit for emissions unit F001 during this period.

18. On March 3, 2009, ARAQMD received a second letter dated February 15, 2009 from Respondent, which summarized the annual reporting requirements related to monitoring and record-keeping for EU P901 from January 2008 through December 2008. Based on the second February 15, 2009 letter, the facility reported thirty occurrences of visible emissions for EU P901 during this period, including some which were observed inside the building housing EU P901. Subsequently, Respondent provided information to Ohio EPA that it had taken a number of steps to address the noncompliance and improve fugitive dust management at the facility.

19. 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 fifty-two thousand five hundred dollars (\$52,500) 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 sixteen thousand two hundred fifty dollars (\$16,250). 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
50 West Town Street
Suite 700
Columbus, Ohio 43216-1049

2. A copy of the official check shall be sent to James A. Orlemann, Assistant Chief, SIP Development and Enforcement, or his successor, at the following address:

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

3. In lieu of paying the remaining thirty-six thousand two hundred fifty dollars (\$36,250) of the civil penalty and to further minimize dust in the vicinity of Respondent's property, Respondent shall complete a penalty credit project consisting of the asphalt paving of approximately 18,379 square feet of the unpaved portion of the facility as identified in the attachment to these Orders. The paving shall consist of 3 inches of 448 Type 2 asphalt and 2 inches of Type 1 asphalt. The project shall be completed by not later than one year after the effective date of these Orders.

4. Within thirty (30) days after the completion of the paving project specified in Order 3, Respondent shall submit a report to Ohio EPA and ARAQMD that indicates the date by which the paving project was completed and provides documentation of the expenditure of at least sixty-five thousand five hundred sixty dollars (\$65,560) for the paving project.

5. Should Respondent fail to spend at least \$65,560 on the paving project, complete the paving project by the deadline, or complete the paving project as specified in these Orders, Respondent shall immediately pay to Ohio EPA thirty-six thousand two hundred fifty dollars (\$36,250) of the civil penalty in accordance with the procedures in Order 1.

6. Upon the effective date of these Orders, Respondent shall maintain emissions units P901, P902, F001 and F002 in compliance with the visible emission limitations and control requirements specified in PTI #16-1513.

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. Ohio EPA agrees to act on Respondent's request for termination in an expeditious manner.

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 his duly authorized representative, if such representative is responsible for the overall operation of the facility.

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 facility.

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
Citicenter-Suite 904
146 South High Street
Akron, Ohio 44308
Attn: Frank J. Markunas

and to:

Ohio Environmental Protection Agency
Lazarus Government Center
Division of Air Pollution Control
P.O. Box 1049
50 West Town Street, Suite 700
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

2/24/10

Date

IT IS SO AGREED:

Quikrete-Cleveland



Signature

2/20/10

Date



Printed or Typed Name

V.P. Operations - MIDWESTERN REGION

Title

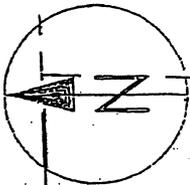
Director's Final Findings and Orders
Quikrete-Cleveland
Page 11 of 11

BUILDING LINE

PROJECT PAVING AREA

EXISTING
WAREHOUSE

BUILDING LINE



S.B.L.
BY CONTRACT 2,238 sq.yd.
NORTH AREA 1,840 sq.yd.
WEST AREA 360 sq.yd.
2,200 sq.yd.

LOADING AREA
1.5" C 42 yd ASPHALT

PAVED

CRUSHED
STONE

ASPHALT PAVING (S.B.L.)
380 sq.yd.

PRELIMINARY
CONSTRUCTION

EXHIBIT

A

