

BEFORE THE  
OHIO ENVIRONMENTAL PROTECTION AGENCY, MAY 16 2011

OHIO E.P.A.

In the Matter of:

ENTERED DIRECTOR'S JOURNAL

Tube City IMS, LLC  
1155 Business Center Dr.  
Horsham, PA 19044

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:  
:

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 Ohio Environmental Protection Agency.

PREAMBLE

It is agreed by the parties hereto as follows:

By: Donna L. Cassel Date: 5-16-11

I. JURISDICTION

These Director's Final Findings and Orders ("Orders") are issued to Tube City IMS, 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 identified) 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's corporate office is located at 1155 Business Center Dr., Horsham, Pennsylvania. Respondent operates several scrap metal processing facilities in Ohio. These include the Mansfield facility that was acquired from PSC Metals Inc. on April 6, 2004.

2. Respondent's Mansfield facility ("the facility") is located at 1344 Bowman Street, in Mansfield, Richland County, Ohio. This facility processes scrap metal, mainly steel. At the facility the scrap metal is sized/sorted with most of it going directly to AK Steel, which is connected to the Mansfield facility by private, unpaved roadways. The facility receives the scrap metal in trucks through the main public entrance. The facility also receives scrap and off-specification steel from AK Steel through the private, unpaved

roadways.

3. The facility is located in an Appendix A area under Ohio Administrative Code ("OAC") Rule 3745-17-08 and, therefore, the facility is required to employ reasonably available control measure ("RACM") on sources of fugitive dust emissions.

4. 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 material to be handled, transported, or stored; or a road to be used without taking or installing RACM to prevent fugitive dust from becoming airborne.

5. OAC Rule 3745-17-08(B)(2) specifies that such RACM shall include but not be limited to the periodic application of asphalt, oil, water, or other suitable dust suppression chemicals on dirt or gravel roads and parking lots.

6. OAC Rule 3745-17-07(B)(4) states that there shall be no visible particulate emissions from any paved roadway or parking area except for a period of time not to exceed six minutes during any sixty-minute observation period.

7. OAC Rule 3745-17-07(B)(5) states that there shall be no visible particulate emissions from any unpaved roadway or parking area except for a period of time not to exceed thirteen minutes during any sixty-minute observation period.

8. OAC Rule 3745-17-08(B)(9) specifies that such RACM shall include but not be limited to the prompt removal, in such a manner as to minimize or prevent resuspension, of earth or other material from paved streets onto which earth or other material has been deposited by trucking or earth moving equipment or erosion by water or other means.

9. OAC Rule 3745-17-07(B)(1) states that, except as otherwise provided in paragraphs (B)(2) to (B)(11) of this rule, visible particulate emissions from any fugitive dust source shall not exceed twenty percent opacity as a three-minute average.

10. ORC § 3704.05(G) prohibits any person from violating any OAC rule adopted by the Director of Ohio EPA. OAC Chapter 3745-17 was adopted by the Director pursuant to ORC Chapter 3704.

**Fugitive Dust Violations:**

11. The day-to-day activities at the facility directly impact Bowman Street, the paved, public street at which the facility is located. The metal is hauled to and from the facility, mainly in large, open-bed trucks. These trucks have been responsible for dragging dirt from Respondent's facility onto Bowman Street. Fugitive dust is generated from traffic on the road.

12. Respondent's PTI 03-1416 that was issued July 15, 1998 for emissions unit F001 (paved and unpaved roadways and parking areas) has the following visible particulate emission limitations and control measure requirements for fugitive dust:

- Paved roadways and parking areas shall have no visible particulate emissions except for up to one minute during any 60-minute period.
- Unpaved roadways and parking areas shall have no visible particulate emissions except for up to 3 minutes during any 60-minute period.
- The following best available control measures ("BACM") must be employed to minimize or eliminate visible emissions of fugitive dust:
  - Treat the paved roadways and parking areas by using a street sweeper truck with a power broom, vacuum and water dispensing, at sufficient treatment frequencies to ensure compliance.
  - Treat the unpaved roadways and parking areas with Coherex Dust Control Agent and Base, produced by Witco Corporation, at sufficient treatment frequencies to ensure compliance.

13. Ohio EPA recorded the following visible particulate emission readings at the facility's paved exit onto Bowman Street, using U.S. EPA Method 22, that were in violation of PTI 03-1416 and/or OAC Rule 3745-17-07(B)(4), and ORC § 3704.05(C) and/or (G).

<b>Date</b>	<b>Location</b>	<b>VE (minutes: seconds)</b>	<b>Observation Period (minutes)</b>
07/06/2006	The facility's paved exit on Bowman St.	13:23	41
08/26/2008	The facility's paved exit on Bowman St.	10:44	14
05/12/2009	The facility's paved exit on Bowman St.	01:12	04
05/15/2009	The facility's paved exit on Bowman St.	02:59	04
05/21/2009	The facility's paved exit on Bowman St.	02:23	06
06/17/2010	The facility's paved exit on Bowman St.	01:16	03

14. On the dates and locations listed in the above table, Ohio EPA observed that Respondent did not adequately employ BACM and RACM to prevent fugitive dust from becoming airborne at its facility, in violation of PTI 03-1416, OAC Rule 3745-17-08(B) and ORC § 3704.05(C) and (G).

15. The following table lists the dates of the Notice of Violation ("NOV") letters sent to Respondent by Ohio EPA concerning the violations of the visible particulate emission limitations and BACM/RACM requirements, and the dates of Respondent's responses:

NOV Date	Response Received (Dated)
03/15/2006	Not applicable
08/27/2008	09/29/2008 (09/26/2008)
05/14/2009	06/15/2009 (06/12/2009)
05/19/2009	06/15/2009 (06/12/2009)
05/26/2009	06/15/2009 (06/12/2009)
06/22/2010	07/29/2010 (07/28/2010)

16. Respondent submitted its compliance plan on September 29, 2008, and the plan included the following:

- Hiring a contractor (MPW) to increase sweeping and, if necessary, water the paved streets twice a day Monday through Friday;
- The application of dust suppressant material on the gravel parking area outside the front gate;
- Using recycled asphalt pavement ("RAP") to fill the holes within plant roadways and throughout the facility; and
- Keeping a record of the number of times each road or parking area was swept or watered and the particular section of road or parking area that was serviced.

17. Respondent submitted a revised compliance plan on June 15, 2009. The plan included the following:

- Increasing the frequency of sweeping and watering the roads;
- Providing training to employees regarding controlling of fugitive dust and requiring them to notify management when they notice fugitive dust so that arrangements can be made for additional sweeping and watering;
- Increasing the inspection frequency of the roadways and parking areas (The PTI for emissions unit F001 requires Respondent to perform inspections of roadways and parking areas a minimum of once a day.);
- Sweeping or washing the rumble strip (cattle crossing) to reduce mud drag-out onto the paved roads;
- Requiring truck drivers leaving the site to pass over the rumble strip; and
- Applying a dust suppressant such as "DustLoc" on unpaved areas as necessary to prevent mud drag-out onto paved roads.

18. In its response to the NOV letter of June 22, 2010, Respondent stated that it is considering installing a vehicle tire washer system after the rumble strip grate and just before the trucks exit the facility onto Bowman Street as an additional control measure. Respondent stated that the tire washing station is expected to be installed and operational within two months.

19. On September 30, 2010, Ohio EPA received a letter from Respondent requesting an additional time to install the vehicle tire washer system. Respondent expected the system to be installed and operational sometime around spring 2011.

**Violations Concerning the Control Measure for and the Emissions from the Torching Operations:**

20. Two oxygen torches were installed and were being operated at the facility to cut large pieces of scrap steel. The first torch ("Torch #1") was installed by the former owner of the facility, PSC Metals Inc., in 2000. The second torch ("Torch #2") was installed by Respondent in June 2008. Both torches are made by Caldo and the model number is CA940. The consumable bar is 9.4 pounds and 10.5 feet long, and it consists of an outer alloy tube 11/16 inch in diameter that contains 15 consumable fuel rods inside. No control equipment was employed for the torches; however, Respondent claims that best management practices for torching operations were employed. Respondent voluntarily shut down both torches on March 9, 2009.

21. On September 29, 2008, NWDO received potential-to-emit ("PTE") calculations from Respondent for the torching operations. Respondent used the emission factor of 0.42 pound of metal oxide fume per ton of metal cut from a study that assumed that 1% of the metal is removed during flame cutting and that the fume is formed at a rate of 2.1% of the metal removed. At a theoretical 8,760 hours per year of emissions, a PTE estimate for both torches is 9.2 tons of particulate matter ("PM") per year, which is equivalent to 2.1 pounds of PM per hour. These calculations were similar to those submitted to and approved by Ohio EPA in 2003 and resulted in a determination that Torch #1 was "de minimis."

22. The NOV letter of October 1, 2008 from Ohio EPA to Respondent stated that based on observations of the torch in operation and comparison to similar operations in Ohio, the calculations submitted on September 29, 2008, were felt not to be accurate. It also stated that Ohio EPA does not believe that accurate emissions factors representative of this type of torch operations currently exist. The NOV letter requested Respondent to submit a compliance plan for installing proper control equipment, PTIO applications for the torching operations, and revised PTE calculations by November 3, 2008.

23. In its response to the NOV letter of October 1, 2008, Respondent stated that it believed that the torching operations are exempt from permitting based on information previously provided to Ohio EPA by a previous owner of the facility, PSC Metals, Inc. It also included emission calculations for the torches using five different approaches.

24. The NOV letter of November 10, 2008 from Ohio EPA to Respondent stated that Ohio EPA does not believe that the emission factors referenced by Respondent are applicable to its torching operations. The NOV suggested coordinating a site visit to give NWDO the opportunity to observe and evaluate the torching process at Respondent's facility.

25. In its response to the NOV letter of November, 2008, Respondent indicated that all operations were shut down at that time and operations are expected to resume in 2009. It stated that Respondent is arranging for an experiment at another facility for Respondent to derive an emission factor for the torches in question that includes emissions from the consumption of bars in addition to the metal being cut.

26. On December 2, 2008, a representative from Ohio EPA informed Respondent in an e-mail message that for the test to be considered valid its conditions must be identical to operations at the Mansfield facility. It also clarified that the hourly emissions are multiplied by 24 hours per day to determine PTE within a day for the purpose of a "de minimis" determination pursuant to OAC Rule 3745-15-05. If the emissions of each air pollutant are less than 10 pounds per day, then the torches may be considered "de minimis."

27. On January 27, 2009, Ohio EPA observed the torching operation at Respondent's facility, and U.S. EPA Method 9 readings for visible emissions were performed. Visible emissions were observed for 26 minutes and the three-minute averages above 20% included: 78.3%, 76.6%, 73.8%, 64.6%, 64.2%, 49.2%, 39.2%, 34.2%, 27.9%, and 23.85%. Also, RACM were not being employed for the torching operation; however, Respondent claims that best management practices for torching operations were employed. These emissions and lack of adequate RACM were violations of OAC Rules 3745-17-07(B)(1) and 3745-17-08(B), and ORC § 3704.05(G).

28. The NOV letter of February 6, 2009 from Ohio EPA to Respondent requested Respondent to submit a compliance plan and schedule for installing proper control equipment and a date by which complete PTIO applications for the torching operations will be submitted.

29. In its response to the NOV letter of February 6, 2009, Respondent stated that based on the reconsideration by Ohio EPA on the determination of "de minimis" status of Torch #1, it will stop the torching operations at its facility. The torching operations were shut down on March 9, 2009.

30. 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 sixty thousand dollars (\$60,000) 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 forty-eight thousand dollars (\$48,000) 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 twelve thousand dollars (\$12,000) 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 \$12,000 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 \$12,000. 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 Tom Kalman, Acting 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 \$12,000 of the civil penalty in accordance with the procedures in Order 1.

5. Upon the effective date of these Orders and continuing thereafter, Respondent shall employ the dust control measures, meet the visible emission limitations, and comply with all the monitoring, record-keeping, reporting and testing requirements, as specified in PTI 03-1416 for the roadways and parking areas at the facility. Nothing in these Orders shall prohibit Respondent from employing additional control measures to ensure compliance.

6. No later than June 30, 2011, Respondent shall install and begin operation of a vehicle tire washer system designed to minimize or eliminate the drag-out of the surface materials from the facility onto any public roadways and to maintain compliance with the visible particulate emission limitations contained in Respondent's PTI for emissions unit F001. The tire washing station shall be maintained and operated in accordance with designer's specifications. Operation of the tire washer system may be suspended during

periods of freezing temperatures; however, alternative measures shall be implemented to maintain compliance during such period. Respondent shall provide written notification to Ohio EPA of the completion of the tire wash system within 15 days of the completion date.

7. Upon initial operation of the tire washer system, Respondent shall direct all commercial vehicular traffic exiting the facility through the tire washer system.

8. Respondent shall maintain records specifying the dates and times the tire washer system was not in operation and the facility was operating, except that only the beginning and ending dates of any tire washer system shutdown period for the winter season or for extended periods of freezing temperatures may be recorded and the reason for shutdown identified. The records shall state the reason(s) the tire washer system was not in operation and, if applicable, any corrective measures taken to bring the tire washer system into proper operation. During the winter season or periods of freezing temperatures, Respondent shall keep daily records of all other measures being implemented to maintain compliance and the date(s) the measures are implemented. All records shall be maintained for a period of at least 5 years and made available for inspection upon request by Ohio EPA.

9. Respondent shall submit quarterly deviation reports identifying the days the tire washer system did not operate and the facility was operating (this excludes the days during the winter season or otherwise when freezing temperatures prohibited operation), the reason(s) it did not operate, the corrective measure(s) taken to eliminate any problem that prevented the tire washer system from operation, and any other control measures that were implemented during the time the tire washer system did not operate. The quarterly deviation reports shall be submitted by January 31, April 30, July 31, and October 30 for the preceding 3-month period (i.e., quarter). A report shall be submitted for the first quarter after installation even if the tire washer did not operate the entire 3-month period. Respondent shall submit the quarterly deviation reports even if no deviations occurred.

## **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, these obligations have been embedded in operation permits, and the Director of Ohio EPA's acknowledges, in writing, the termination 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 purposes of these Orders, a responsible official is as defined in OAC Rule 3745-33-03(D)(1) for a corporation, or a corporate officer who is in charge of a principal business function of 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, 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:

Ohio EPA  
Northwest District Office  
347 North Dunbridge Road  
Bowling Green, Ohio 43402  
Attn: Thomas C. Cikotte

and to:

Ohio EPA  
Division of Air Pollution Control  
P.O. Box 1049  
Columbus, Ohio 43216-1049  
Attn: Tom Kalman, Acting Assistant Chief

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**

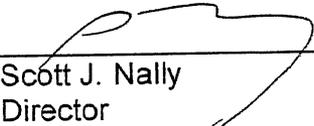
The effective date of these Orders is the date these Orders are entered into the Ohio EPA Director's journal.

**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**

  
\_\_\_\_\_  
Scott J. Nally  
Director

5/11/11  
\_\_\_\_\_  
Date

**AGREED:**

**Tube City IMS, LLC**

  
\_\_\_\_\_  
Signature

4-25-11  
\_\_\_\_\_  
Date

John E. Minihan  
\_\_\_\_\_  
Printed or Typed Name

Asst. Gen'l Counsel  
\_\_\_\_\_  
Title