

BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

B & B Properties (a.k.a. Madden Bros., Inc.)	:	<u>Director 's Final Findings</u>
66 Pearl Road	:	<u>and Orders</u>
Brunswick, Ohio 44212	:	

PREAMBLE

It is agreed by the parties hereto as follows:

I. JURISDICTION

These Director's Final Findings and Orders ("Orders") are issued to B & B Properties (a.k.a. Madden Bros., 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 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 regulations promulgated thereunder.

IV. FINDINGS

The Director of Ohio EPA has determined the following findings:

1. Respondent owns and operates a landscaping supply company ("the facility"), which is located at 66 Pearl Road in Brunswick, Medina County, Ohio. The facility is identified by Ohio EPA as facility identification number 1652010051.

2. At the facility, Respondent operates roadways and parking areas; storage piles; a portable Morbak Model 1300 tub grinder with 750 horsepower diesel engine; a portable star screen Tornado Star 4008 Screener with a 50 horsepower diesel engine; a portable screen machine 621T Shredder/Trommel with a 110 horsepower diesel engine, and a firewood process with an 80 horsepower diesel engine, which are identified by Ohio EPA as emissions units F001, F002, P901, P902, P903 and B001, respectively.

3. Emissions units F001, F002, P901, P902, P903 and B001 are "air contaminant sources" as defined by Ohio Administrative Code ("OAC") Rules 3745-31-01(I) and 3745-35-01(B)(1).

4. OAC Rule 3745-31-02, in part, prohibits any person from causing, permitting, or allowing the installation of a new source of air pollutants without first applying for and obtaining a permit to install ("PTI") from the Director.

5. OAC Rule 3745-35-02(A), in part, prohibits any person from causing, permitting, or allowing the operation or other use of any air contaminant source without first applying for and obtaining a permit to operate ("PTO") from the Director.

6. ORC § 3704.05(C) prohibits any person who is the holder of a permit issued under ORC § 3704.03(F) or (G) from violating any of its terms and conditions.

7. ORC § 3704.05(G) prohibits any person from violating any order, or, any determination of the Director of Ohio EPA that was issued, adopted, or made under ORC Chapter 3704.

8. ORC § 3704.05(A) prohibits any person from emitting any air contaminant in violation of any rule adopted by the Director of Ohio EPA.

9. Between September 13, 2000 and October 15, 2002, Akron Air Quality Management District ("ARAQMD"), Ohio EPA contractor representative in Medina County, received and investigated the following citizen complaints concerning operations at the facility:

Date	Nature of Complaint	Inspector's Findings and Action
09/13/00	Dust and shredded material from tub grinder on residential building.	Machine portable and rented; throws debris, steam and smoke; water applied as control; no permit needed.
08/20/01	Dust from storage piles.	Conference with Respondent. Area not dusty at this time. They have storage piles and use water for dust control. Front area is asphalt. Inspector went over the fugitive dust regulations for Brian.
11/06/01	Fertilizer, black dirt and mulch blowing through the neighborhood from emissions units F001 and F002.	Complaint unjustified because Method 22 readings/inspection show adequate wetting was being used.
11/21/01	Poor air quality and dust all the time.	No dust found at the time of inspection because it rained.

01/22/02	Headaches and odors from fine dust particles due to mulch operation. Odor due to coloring.	No dust found at the time of inspection because it rained. When asked, Respondent stated they were not coloring on this particular day. Respondent was given PTI and PTO applications for emissions units F001, F002, P901 and P902.
03/21/02	Topsoil going all over the place.	Mulch screening operation suspected; equipment needs to be kept further from the property line.
05/01/02	Bad odor when pile is moved.	Inspector determined compost being loaded on the truck as possible source of odor.
05/13/02	Operating bin grinder on property.	ARAQMD can't do anything about zoning rules.
07/25/02	Dust every where from hauling topsoil.	Complaint justified. Excessive fugitive dust from roadways and storage piles. Re-inspected and found small sprinkler treating a small portion of paved entrance but dust still found on paved roadway. Issued local order to treat dust.
07/26/02	Three complaints about dust emissions from emissions units F001 and F002 and the operation of emissions unit P901.	Complaint justified. Issued order to treat emissions units F001, F002 and P901 to reduce fugitive dust emissions.
07/28/02	Unbearable dust and stench from dirt pile.	No odor noticed; observed emissions units F001 and P901 untreated. Written local order issued to treat sources.
07/29/02	Two complaints about cloud of dust over Pearl Road.	Observed fugitive emissions from emissions units F001 and P901. Written local order issued to treat sources.

07/30/02	Sawing in the middle of the night, topsoil everywhere; breathing problem.	No odor noticed; observed fugitive emissions from emissions units F001 and P901. Written local order issued to treat sources.
08/06/02	Dirt flying everywhere and the stench is unbearable.	Observed fugitive emissions from emissions units F001 and P901. Written local order issued to treat sources.
08/08/02	Dust, odor, and noise almost daily.	Observed fugitive emissions from emissions units F001 and P901. Written local order issued to treat sources.
08/12/02	Four complaints about dust, one about emissions unit P902 running in the middle of the night, and one about odor.	Observed fugitive emissions from emissions units F001 and F002. Written local order issued to treat sources.
08/13/02	Complaint about dust.	No dust found at the time of inspection because it rained. No odor noticed.
10/15/02	Complaint about diesel fumes from equipment.	Slight odor noticed; size of engine (80 hp) required permits. Requested that PTI and PTO applications be submitted.

10. During a complaint investigation on January 24, 2002, an ARAQMD official noted that Respondent had:

- a. installed emissions units F001 and F002 on or about June 2, 1997 and, on the same day, started operating emissions units F001 and F002, without first applying for and obtaining a PTI and PTOs;
- b. installed emissions unit P901 on or about February 1, 2001 and, on or about February 1, 2001, started operating emissions unit P901, without first applying for and obtaining a PTI and a PTO; and
- c. installed emissions unit P902 on or about January 24, 2002 without first applying for and obtaining a PTI.

11. Respondent's failures to first apply for and obtain PTIs before installing emissions units F001, F002, P901 and P902 constitute violations of OAC Rule 3745-31-02 and ORC § 3704.05(G).

12. Respondent's failures to first apply for and obtain PTOs before operating emissions units F001, F002, P901 and P902 constitute violations of OAC Rule 3745-35-02 and ORC § 3704.05(G). These violations occurred from June 2, 1997 until October 8, 2002 for emissions units F001 and F002, from February 1, 2001 until October 8, 2002 for emissions unit P901, and from on or about January 24, 2002 until October 8, 2002 for emissions unit P902.

13. On January 28, 2002, ARAQMD sent a notice of violation ("NOV") to Respondent citing the violations of OAC Rules 3745-31-02 and 3745-35-02 and requested Respondent to submit completed PTI and PTO applications for emissions units F001, F002, P901 and P902 within 14 days of the receipt of the NOV.

14. On February 21, 2002, ARAQMD received complete PTI and PTO applications for emissions units F001, F002, P901 and P902 from Respondent.

15. During another complaint investigation conducted on March 22, 2002, ARAQMD official noted that Respondent operated emissions unit P902 without obtaining a PTO, in violation of OAC Rule 3745-35-02 and ORC § 3704.05(G). These violations occurred from on or about January 24, 2002 until October 8, 2002.

16. OAC Rule 3745-31-03(A)(1)(p) provides, in part, a permanent exemption from the requirement to obtain a PTI for a portable source operating such source subject to certain requirements including providing Ohio EPA with a minimum of 30 days notice prior to any scheduled relocation in the State of Ohio. Otherwise, the source must obtain a PTI prior to any such relocation.

17. During a complaint investigation conducted on May 2, 2002, an ARAQMD official determined that Respondent had relocated emissions unit P901 (a portable source), from 66 Pearl Road to an unknown location without first notifying the Director of Ohio EPA of intent to relocate. Respondent's failure to provide proper notice of intent to relocate to the Director before relocating emissions unit P901 or obtaining a PTI prior to the relocation constitutes a violation of OAC Rule 3745-31-02 and ORC § 3704.05(G).

18. On June 21, 2002, ARAQMD sent an NOV to Respondent citing the violation of OAC Rule 3745-31-03(A)(1)(p) and requested Respondent to submit a complete notice of intent to relocate within 14 days of the receipt of the NOV.

19. OAC Rule 3745-31-05(A)(3) states, in part, that the Director shall issue a PTI if he determines that the air contaminant source to be installed or modified will employ

the best available technology ("BAT"). Such BAT is specified in the terms and conditions of a PTI.

20. OAC Rule 3745-17-07(B)(4) requires that there 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.

21. During a complaint investigation conducted on July 26, 2002, an ARAQMD representative determined that Respondent operated emissions unit F002 without obtaining a PTI and a PTO, in violation of OAC Rules 3745-31-02 and 3745-35-02. Visible emissions ("VE") were observed from emissions units F001, F002, and P902. The VE reading for emissions unit F001 was 7:44 minutes in 60-minute observation period, in violation of OAC Rule 3745-17-07(B)(4), and ORC § 3704.05(A) and (G). Similar investigation led ARAQMD to conclude that on August 9 and 12, 2002, Respondent also operated emissions unit F001 in violation of OAC Rule 3745-17-07(B)(4) and ORC § 3704.05(G) and also on August 9, 2002, operated emissions unit F002 in violation of OAC Rule 3745-17-08(B) and ORC § 3704.05(G) for failure to eliminate or minimize the visible emissions of dust during operation.

22. On October 8, 2002, PTI #16-02208 was issued for emissions units F001, F002, P901 and P902.

23. Following a citizen complaint received on October 15, 2002, ARAQMD conducted a complaint investigation on October 16, 2002, and determined that Respondent installed and operated emissions unit B001 without first applying for and obtaining a PTI and a PTO, in violation of OAC Rules 3745-31-02(A) and 3745-35-02(A), respectively, and ORC § 3704.05(G). Therefore, on October 17, 2002, ARAQMD sent a notice of violation ("NOV") to Respondent. The NOV cited Respondent for the aforementioned violations and requested it to submit complete PTI and PTO applications for emissions unit B001 within 14 days of the receipt of the NOV.

24. On October 21, 2002, in response to ARAQMD's letter of October 17, 2002, Respondent requested the 14-day deadline to submit complete PTI and PTO applications for emissions unit B001 be extended to November 21, 2002.

25. On January 7, 2003, ARAQMD sent a second NOV to Respondent. The NOV cited Respondent for the violations of OAC Rules 3745-31-02(A) and 3745-35-02(A); and requested Respondent to submit complete PTI and PTO applications for emissions unit B001 within 14 days from the receipt of the letter. The violations of OAC Rule 3745-35-02(A) occurred from on or about June 2, 2002 until August 5, 2003.

26. On July 16, 2003, ARAQMD received PTI and PTO applications for emissions unit B001 from Respondent. On August 5, 2003, PTI #16-02314 was issued for B001.

27. On February 26, 2004, a Director's warning letter ("DWL") was sent to Respondent. The DWL cited Respondent for the violations aforementioned in Findings 11 and 12 and also for the violations of OAC Rules 3745-31-05(A)(3) and 3745-31-03(A)(1)(p) for failure to employ BAT to suppress fugitive dust emissions from emissions units F001 and F002 and failure to submit an "Intent to Relocate" form for emissions unit P901 to ARAQMD before relocating the unit from Respondent's facility in Brunswick to an unknown location, respectively. The DWL requested Respondent to submit a written commitment to employ BAT as specified in PTI # 16-02208 issued on October 8, 2002, to control fugitive dust emissions from emissions units F001, F002, P901 and P902; and submit the date emissions unit B001 was installed and the date it began operation.

28. In response to the February 26, 2004 DWL, Respondent stated in a letter dated March 8, 2004, that it had implemented the BAT requirement by installing a 15-foot wind fence for the storage piles, installed a sprinkler system, provided a water truck and rigorous training for its use by staff. Respondent submitted a copy of the Intent to Relocate form it would use for future relocation of emissions units P901 and P902 without indicating their current location(s) and stated further that emissions unit B001 was installed on June 2, 2002.

29. On October 26, 2004, ARAQMD conducted a facility inspection and observed the following deficiencies: inadequate record-keeping for emissions units F001, F002, P901 and P902; non-submission of quarterly deviation reports from January 31, 2003, to present for emissions units F001, F002, P901 and P902 as required by PTI #16-02208; non-submission of deviation reports for the annual operating hours for emissions unit P901 for the years 2003 and 2004; and non-submission of Notice of Intent to Relocate a Portable Source form for emissions unit P901 within a minimum of 30 days prior to moving it to a new location (3801 Copley Road in Akron) as required by PTI #16-02208 and OAC Rule 3745-31-03(A)(1)(p). As a follow-up to the facility inspection, ARAQMD sent a letter dated October 28, 2004, advising Respondent that the aforementioned deficiencies required corrective action, and reminded Respondent of its regulatory responsibility regarding the operation of emissions units at its facility. A formal NOV was sent to Respondent on November 15, 2004, citing it for the aforementioned violations and, also, the violations of OAC Rules 3745-31-02(A) and 3745-35-02(A) for installing and operating a new shredder/trommel without first applying for and obtaining a PTI and a PTO, respectively.

30. On November 19, 2004, Respondent replied to the November 15, 2004 NOV explaining that the new soil screener was delivered on October 14, 2004, to be tested in order to determine whether or not it could be purchased; it was not being used and would be removed by December 1, 2004. Respondent promised to bring the facility into compliance by January 1, 2005. On the issue of not submitting a Notice of Intent to Relocate a Portable Source form for emissions units P901, Respondent asserted that the unit had not been at 3801 Copley Road in Akron, Ohio since August of 2000, and it

appeared that another grinder owner/operator had mobilized his machine to the address at the date of the inspection. Respondent did not submit a deviation report for the annual operating hours for emissions unit P901 for 2003 and 2004, or comment on why the report was not submitted.

31. On April 11, 2005, ARAQMD performed a complaint investigation at the facility and determined that Respondent installed and operated a shredder/trommel without first applying for and obtaining a PTI and a PTO, in violation of OAC Rules 3745-31-02(A) and 3745-35-02(A), and ORC § 3704.05(G). In an NOV dated April 11, 2005, ARAQMD cited the violations and requested Respondent submit complete PTI and PTO applications for the shredder/trommel no later than 14 days from the receipt of the letter.

32. Respondent submitted complete PTI and PTO applications for the shredder/trommel on May 18, 2005. The final PTI for the shredder/trommel was issued on June 2, 2005, and the source was identified by Ohio EPA as emissions unit P903.

33. During a meeting on November 3, 2005, Respondent provided Ohio EPA with documentation to support its claim of an inability to pay the civil penalty proposed by Ohio EPA for the violations. Ohio EPA reviewed the documentation and found that Respondent did not have the ability to pay the full amount of the penalty.

34. The Director has given consideration to, and based his determination on, evidence relating to the technical feasibility and economic reasonableness of compliance 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. Within thirty (30) days after the effective date of these Orders, Respondent shall employ BAT as specified in PTI #16-02208, PTI #16-02409 and PTI #16-02314, to prevent fugitive dust from emissions units F001, F002, P901, P902, P903 and B001 from becoming airborne.

2. Respondent shall pay the amount of fifteen thousand dollars (\$15,000) 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 twelve thousand dollars (\$12,000) 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

3. In lieu of paying the remaining three thousand dollars (\$3,000) of 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 \$3,000 to the Ohio EPA's Clean Diesel School Bus Program Fund (Fund 5CD). Respondent shall tender an official check made payable to "Treasurer, State of Ohio" for \$3,000. The official check shall be submitted to Brenda Case, or her successor, together with a letter identifying the Respondent, to the above-stated address.

4. 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

5. Should Respondent fail to fund the SEP within the required timeframe set forth in Order 3, Respondent shall immediately pay to Ohio EPA \$3,000 of the civil penalty in accordance with the procedures in Order 2.

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, 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
146 South High Street, Room 904
Akron, Ohio 44308
Attention: Laura Miracle

and to:

Ohio Environmental Protection Agency
Division of Air Pollution Control
P.O. Box 1049
Columbus, Ohio 43216 - 1049
Attention: Felix Udeani, DAPC

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

Joseph P. Koncelik
Director

Date

IT IS SO AGREED:

B & B Properties (a.k.a. Madden Bros., Inc.)

Signature

Date

Printed or Typed Name

Title