

BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

Mar-Zane, Inc.	:	<u>Director's Final Findings</u>
P.O. Box 1585	:	<u>and Orders</u>
Zanesville, Ohio 44702	:	

PREAMBLE

It is agreed by the parties hereto as follows:

I. JURISDICTION

These Director's Final Findings and Orders ("Orders") are issued to Mar-Zane, 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 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 regulations promulgated thereunder.

IV. FINDINGS

The Director of Ohio EPA has determined the following findings:

1. Respondent owns an asphaltic concrete production plant, located on U.S. Route 40 West, Morristown, Belmont County, Ohio, and identified as "Plant 29" by Respondent.

2. At the Morristown facility, Respondent operates a 200 tons per hour ("tph") asphaltic concrete batch plant with baghouse, which is identified by Ohio EPA facility identification number #0607100109. The Morristown facility consists of paved and unpaved roads and parking areas, defined by Ohio EPA as emissions unit ("EU") F001; aggregate storage piles, EU F002; rotary dryer, hot aggregate elevator, vibrating screens, weigh hopper with fabric filter, EU P902; and several storage tanks, EUs T001 through T005.

3. Permit to Install ("PTI") number 06-06485 was issued to Respondent on October 9, 2001, and contained a volatile organic compounds ("VOC") emission limitation of 9.1 lbs per hour ("lbs/hr").

4. On August 29, 2001, an inspector from Ohio EPA, Southeast District Office, conducted a compliance inspection of Plant 29, to determine compliance with all applicable air pollution control regulations.

5. During the August 29, 2001 inspection, Respondent mentioned that it had been burning used oil years to fire the rotary dryer since April 1999. Respondent had not been approved by Ohio EPA to use waste oil. Issuance of PTI # 06-06485 on October 9, 2001 permitted Respondent to burn waste oil in the rotary dryer. Use of waste oil prior to October 9, 2001 was in violation of Ohio Administrative Code ("OAC") Rule 3745-31-02(A)(1) which states in part that "no person shall cause, permit, or allow the modification of an air contaminant source without first obtaining a permit to install from the director." Also this omission constitutes a violation of ORC § 3704.05(G), which states, in part, that no person shall violate any order, rule, or determination of the Director issued, adopted, or made under ORC Chapter 3704.

6. By letter dated October 30, 2001, Ohio EPA requested Respondent submit copies of all fuel oil records for Plant 29 for the previous 12 calendar months.

7. On April 4, 2002, Ohio EPA contacted Respondent by telephone to request submittal of the information that was previously requested in the October 30, 2001 letter. Respondent informed Ohio EPA that the previously requested information would be submitted within a 'couple of days'. By letter dated April 30, 2002, Respondent submitted copies of all the 'tickets' and certificates of purchase for all used oil that had been delivered to the Plant 29 for the previous 12 months.

8. On July 22, 2002, Respondent conducted a stack test on EU P901 to determine compliance with the VOC emission limitation in PTI # 06-06485. The results of the stack test indicated that Respondent was in violation of the VOC emission limitation in PTI # 06-06485. The results of the stack test showed an actual VOC emissions rate of 83.9 lbs/hr, in violation of the allowable limitation of 9.1 lbs/hr and ORC §3704.05(C), which states, in part, that no person who is a holder of a permit issued under ORC § 3704.03(F) or (G) shall violate any of its terms or conditions.

9. By letter dated March 21, 2003, Respondent submitted additional information regarding the fuel oil purchases for Plant 29. The information included fuel shipments for the years 1999 through 2003.

10. On June 18, 2003, Ohio EPA conducted an annual compliance inspection of Plant 29. The purpose of the compliance inspection was to determine Respondent's compliance status with applicable state and federal air pollution control regulations. A review of the facility's files during the inspection showed that Respondent had failed the VOC emission test conducted on July 22, 2002.

11. By letter dated July 14, 2003, Ohio EPA informed Respondent of the VOC emission limitation violation that resulted from the July 22, 2002 stack test. The letter stated that the results showed Respondent to be in violation of PTI #06-06485, and Ohio Administrative Code ("OAC") Rule 3745-31-02. Ohio EPA requested that Respondent, within thirty days of receipt of the July 14, 2003 letter, submit a plan and schedule for achieving compliance, to Ohio EPA.

12. By letter dated July 17, 2003, Ohio EPA again requested that Respondent submit a compliance plan and schedule, to include retesting as soon as practicable, in order to demonstrate compliance with the VOC emission limitation of 9.1 lbs/hr included in PTI #06-06485.

13. On December 4, 2003, Ohio EPA contacted Respondent by telephone to request submittal of the information that had been previously requested in the July 14 and 17, 2003 letters to Respondent. Respondent stated that it would submit a written response to Ohio EPA by no later than December 5, 2003.

14. By letter dated December 18, 2003, Respondent submitted a response to Ohio EPA. The response letter stated that the VOC emissions recorded during the July 22, 2002, stack test were, in the Respondent's opinion, representative of the conditions of the stack gases. Respondent requested, therefore, to modify PTI # 06-06485 using the stack test data to establish an achievable VOC emission limitation.

15. By letter dated December 30, 2003, Ohio EPA issued a Notice of Violation ("NOV") to Respondent for its failure to respond to the letters dated July 14, and July 17, 2003 from Ohio EPA. The NOV informed Respondent of its failure to submit the requested compliance plan and schedule and also informed Respondent that the PTI modification request received on December 18, 2003, lacked any supporting data to demonstrate that the proposed limitation would constitute best available technology ("BAT").

16. The December 30, 2003 letter requested that within ten working days of receipt of the letter, Respondent submitted to Ohio EPA the following information; asphalt production figures for years 2000 through 2003; fuel consumption records for years 2000 through 2003; all maintenance records for years 2000 through 2003; and all information for inclusion in the plan and schedule previously requested in July 2003.

17. By letter dated January 16, 2004, Respondent submitted a response to the December 30, 2003 letter from Ohio EPA. The response included asphalt production figures, amount and types of oil used, and maintenance activities for the years 2000 through 2003. The letter also outlined Respondent's contention that the PTI modification, that had been previously submitted, did represent BAT.

18. On September 14, 2004, Respondent conducted another stack test to establish an achievable VOC emission limitation to include in a modification to PTI # 06-06485. On November 17, 2004, Respondent submitted the results of the stack test to Ohio

EPA, and requested a VOC emission limitation of 28.5 lbs/hr based on the results of the stack test. The administrative modification has not been processed as of July 1, 2005.

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 comply with the terms and conditions of PTI #06-06485 except for the requirement to comply with a VOC emission limitation of 9.1 lbs/hr. In lieu of compliance with that limitation, Respondent shall instead comply with a VOC emission limitation of 28.5 lbs/hr. The above provisions shall remain in effect until either PTI #06-06485 is modified or PTI #06-06485 is replaced with another PTI.

2. Respondent shall pay the amount of twenty-seven thousand dollars (\$27,000) 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 twenty-one thousand six hundred dollars (\$21,600) 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

3. In lieu of paying the remaining five thousand four hundred dollars (\$5,400) of the civil penalty, Respondent shall, within thirty (30) days after the effective date of these Orders, fund a Supplemental Environmental Project ("SEP") by making a contribution in the amount of \$5,400 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 \$5,400. The official check shall be submitted to Brenda Case, or her successor, together with a letter identifying the Respondent and Fund 5CD, to the above-stated address.

4. A copy of each check shall be sent to James A. Orlemann, Assistant Chief, SIP Development and Enforcement, at the following address:

Division of Air Pollution Control
Ohio EPA
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 \$5,400 of the civil penalty in accordance with the procedures in Order 2.

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 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 the person authorized to sign in OAC Rule 3745-35-02(B)(1) for a corporation or a duly authorized representative of Respondent as that term is defined in the above-referenced rule.

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. NOTICE

All documents required by these Orders, unless otherwise specified in writing, shall be submitted to:

Ohio Environmental Protection Agency
Division of Air Pollution Control
Southeast District Office
2195 Front Street
Logan, Ohio 43138
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.

X. MODIFICATIONS

These Orders may be modified by agreement of the parties. Modifications shall be in writing and shall be effective on the date entered in the journal of the Director of 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 she or he is fully authorized to enter into these Orders and to legally bind such party to this document.

IT IS SO ORDERED AND AGREED:

Ohio Environmental Protection Agency

Joseph P. Koncelik
Director

Date

IT IS SO AGREED:

Mar-Zane, Inc.

Signature

Date

Printed or Typed Name

Title