

BEFORE THE  
OHIO ENVIRONMENTAL PROTECTION AGENCY

OHIO E.P.A.

DEC 29 2006

ENTERED DIRECTOR'S JOURNAL

In the Matter of:

Soil Remediation, Inc.  
6065 Arrel-Smith Road  
Lowellville, Ohio 44436

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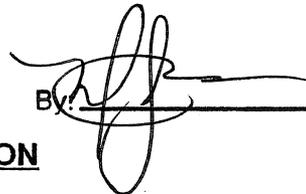
Director's Final Findings  
and Orders

Respondent

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:  Date: 12/29/06

I. JURISDICTION

These Director's Final Findings and Orders ("Orders") are issued to Soil Remediation, 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 or Site 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 Chapters 3704 and 3745 and the rules promulgated thereunder.

IV. FINDINGS

The Director of Ohio EPA has determined the following findings:

1. Respondent is the owner and operator of a contaminated-soil processing facility located at 6065 Arrel-Smith Road, Lowellville, Mahoning County, Ohio, and hereinafter referred to as the "Facility" or "Site."

2. On or about February 9, 2005, the Director of Ohio EPA received a verified complaint, filed pursuant to ORC § 3745.08, from Mary Helen Smith, Director of the Solid Waste Program and Deputy Director of Environmental Health, of the Mahoning County District Board of Health, 50 Westchester Drive, Youngstown, Ohio. The verified complaint alleged that Respondent had been processing iron ore sludge through the processing equipment normally used for the processing of petroleum-contaminated soil, in violation of air pollution control regulations. Specifically, it was alleged that Respondent may be processing such waste in violation of Respondent's PTO which does not identify such waste as one of the permissible materials that may be treated in this equipment.
3. Ohio EPA staff investigated the allegations of the verified complaint and on April 1, 2005, Ohio EPA conducted an inspection at the Site. Ohio EPA determined that in 2003, and continuing thereafter, Respondent placed on the Site large piles of iron oxide and blast furnace flue dust.
4. Respondent had no permit authorizing the installation or operation of storage piles of materials at the Site without Respondent first obtaining a PTI and PTO. Respondent's failure to have such PTO and PTI violated OAC Rules 3745-31-02 and 3745-35-02, respectively, and ORC § 3704.05(G).
5. Ohio EPA staff also determined that an employee of Respondent stated that iron oxide was processed at least once, with less than optimum results, and was never repeated.
6. The alleged processing of the waste materials, i.e., iron oxide and blast flue dust, as described in Finding No. 4 of these Orders, without Respondent first obtaining a PTI and PTO would violate OAC Rules 3745-31-02 and 3745-35-02 and ORC § 3704.05(G).
7. Respondent denies ever having processed any iron oxide because effective processing of the iron oxide was not technically feasible.
8. On August 18, 2006, the Mahoning County District Board of Health verified the successful removal of the iron oxide sludge and flue dust.
9. ORC § 3745.08(B) prescribes that if the Director determines that a violation, as alleged, has occurred, is occurring, or will occur, he may enter such order as may be necessary, request the Attorney General to commence appropriate legal proceedings, or, where he determines that prior violations have been terminated and that future violations of the same kind are unlikely to occur, he may dismiss the complaint.

10. The Director has given consideration to, and based his determination on, evidence relating to the technical feasibility and economic reasonableness of complying with these Orders and to evidence relating to conditions calculated to result from compliance with these Orders, and its relation to the benefits to the people of the State to be derived from such compliance in accomplishing the purposes of ORC §§ 3704.

#### **V. ORDERS**

The Director hereby issues the following Orders:

1. Pursuant to ORC § 3745.08, these Orders are a resolution of the verified complaint of air pollution violations received on or about February 9, 2005 from the complainant identified in Finding No. 2.
2. Respondent shall pay the amount of one thousand five hundred dollars (\$1,500) in settlement of Ohio EPA's air pollution control law 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 one thousand five hundred dollars (\$1,500). The official check shall be submitted to Brenda Case, or her successor, together with a letter identifying Respondent, to the above-stated address.

A photocopy of the check shall be sent to James A. Orlemann, SIP Development and Enforcement, or his successor, in accordance with Section X of these Orders.

#### **VI. TERMINATION**

Respondent's obligations under these Orders shall terminate when Ohio EPA receives the check in payment of the civil penalty described in Order No. 2.

#### **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 or Site.

### **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  
Division of Air Pollution Control  
P.O. Box 1049  
Columbus, Ohio 43216-1049  
Attention: James Orlemann, SIP Development and Enforcement

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 alleged 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 only the violations specifically alleged 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. Kondelik  
Director

12/29/06  
Date

**IT IS SO AGREED:**

**Soil Remediation, Inc.**

*on behalf of -*

  
\_\_\_\_\_  
Signature

Charles R. Owen, Jr.  
Printed or Typed Name

Legal Counsel  
Title

12/29/06  
Date