OHIO E.P.A.
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ENTERED DIRECTOR'S JOURNAL

BEFORE THE

OHIO ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

Tube City IMS
3024 Oxford State Road
Middletown, Ohio 45044

: Director's Final Findings and Orders

PREAMBLE

It is agreed by the parties hereto as follows:

I. JURISDICTION

These Director's Final Findings and Orders ("Orders") are issued to Tube City IMS ("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 is the exclusive handler of blast furnace ("BF") slag and basic oxygen furnace ("BOF") slag from AK Steel Corporation's Middletown Works in Middletown, Ohio. AK Steel Corporation owns the property where Respondent operates slag dumping, cooling, handling and processing so that slag materials can be recycled. This property is located at 3024 Oxford State Road, Middletown, Butler County, Ohio. Respondent's headquarters are located at 1155 Business Center Drive, Horsham, Pennsylvania.

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.

By: [signature] Date: 12-23-08

2. At the above-referenced property, Respondent operates, among other equipment, emissions unit ("EU") F005 (BF slag dumping), EU F006 (BOF slag pit dumping, excavation and loadout), EU F009 (unprocessed slag and product storage piles), and EU F010 (roadways and parking areas). These EUs are "air contaminant sources" as defined in OAC Rule 3745-31-01(I).

3. ORC § 3704.05(C) 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 and conditions. ORC § 3704.05(G) prohibits any person from violating any rule adopted by the Director of Ohio EPA.

4. OAC Rule 3745-15-07(A) prohibits, in part, any person from causing a public nuisance by emitting fugitive 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.

5. On January 3, 2005, a Federally Enforceable State Operating Permit ("FESOP") was issued to Respondent for all EUs at its facility.

6. The special terms and conditions of Respondent's FESOP require Respondent to keep the visible emissions ("VEs") of fugitive dust from EUs F005 and F006 from exceeding 10 percent opacity as a three-minute average.

7. The special terms and conditions of Respondent's FESOP require Respondent to continuously apply water to the slag during all dumping, excavation and loadout for EU F006.

8. The special terms and conditions of Respondent's FESOP require Respondent to equip and operate EU F005 with dedicated water sprays for the purpose of controlling fugitive dust emissions.

9. The special terms and conditions of Respondent's FESOP require Respondent to perform VE observations and inspect EU F009 daily for wind erosion.

10. The special terms and conditions of Respondent's FESOP require Respondent to keep the VEs from EU F010 from exceeding one (1) minute and three (3) minutes during any 60-minute observation period for paved and unpaved roadways, respectively. Respondent was required to inspect EU F010 (roadways) twice daily to confirm compliance with these limitations.

11. On May 18, 2006, the HCDES conducted a compliance inspection at Respondent's facility. At this inspection, HCDES documented the following: (1) daily inspections for wind erosion of the storage piles (EU F009) and twice daily compliance inspections of the roadways (EU F010) were not performed on weekends since the issuance of the FESOP; and (2) no dedicated water spray was installed for the BF slag dumping (EU F005) as required by the FESOP.

12. On June 13, 2006, HCDES issued a Notice of Violation ("NOV") letter to Respondent for the violations that were documented during the May 18, 2006 inspection. In this NOV letter, HCDES required Respondent to submit a plan of corrective action to its Agency by June 30, 2006.

13. On October 18, 2006, HCDES performed VE observations for EU F006 at Respondent's facility. The results of these observations indicated that Respondent emitted in excess of 10 percent opacity as a three-minute average limitation in the FESOP for EU F006 at the BF slag pit. Based on the HCDES's observations, the VE readings ranged from 0 to 96.7 percent opacity as a three-minute average for an observation period of twenty-two minutes. There were two documented three-minute blocks with opacities greater than 10 percent. This is a violation of the terms and conditions of the FESOP and ORC § 3704.05(C).

14. On October 26, 2006, HCDES performed VE observations for EU F006 at Respondent's facility. Based on the HCDES's observations, the VE readings ranged from 0 to 23.8 percent opacity as a three-minute average for an observation period of fifteen minutes. There was one three-minute block with an average opacity greater than 10 percent. On this date, HCDES documented nuisance conditions (dust on vehicles) at the property of a neighbor of the facility, due to excessive dust coming from Respondent's facility. This is a violation of OAC Rule 3745-15-07 and ORC § 3704.05(G).

15. On March 27, 2007, HCDES performed VE observations at Respondent's facility due to several complaints from nearby neighbors. The results of these observations indicated that Respondent emitted in excess of the 10 percent opacity as a three-minute average limitation in the FESOP for EU F005 at the BF slag pit. Based on the HCDES's observations, the VE readings ranged from 0 to 14.2 percent opacity as a three-minute average for an observation period of thirty minutes. There were two three-minute blocks with average opacities greater than 10 percent. This is a violation of the terms and conditions of the FESOP and ORC § 3704.05(C).

16. On April 4, 2007, HCDES issued a NOV letter to Respondent for the violation that was documented during its inspection of Respondent's facility on March 27, 2007. In this NOV letter, HCDES requested that Respondent to submit a compliance plan to reduce VEs at the slag pit by April 20, 2007.

17. On May 15, 2007, HCDES performed VE observations at Respondent's facility to confirm the results that HCDES obtained on March 27, 2007. The results of this observation again indicated that Respondent emitted in excess of the visible emission limitation of 10 percent opacity as a three-minute average limitation in the FESOP for EU F005 at the BF slag pit. Based on the HCDES's observation, the VE readings ranged from 2.5 to 15.0 percent opacity as a three-minute average for an observation period of thirty minutes. There were two three-minute blocks with average opacities greater than 10 percent. This is a violation of the terms and conditions of the FESOP and ORC § 3704.05(C).

18. On May 17, 2007, HCDES issued a NOV letter to Respondent for the violation that was documented during its inspection of Respondent's facility on May 15, 2007.

19. On August 10 and 16, 2007, HCDES conducted its investigation at Respondent's facility based on complaints from neighbors regarding nuisance conditions due to excessive emissions from EU F006. During these investigations, HCDES took photographs of damages due to excessive dust deposition on neighbors' property (dust on vehicles) for evidence. This is a violation of OAC Rule 3745-15-07 and ORC § 3704.05(G).

20. On October 1, 2007, HCDES issued a NOV letter to Respondent for the nuisance violation that was documented during its inspections of Respondent's facility on August 10 and 16, 2007. In this NOV letter, HCDES requested Respondent to submit a corrective plan by October 15, 2007.

21. By a letter dated October 30, 2007, Respondent replied as a response to HCDES's October 1, 2007 NOV after it had been given an extension to respond until October 30, 2007. In this NOV, Respondent proposed to reduce the fugitive VE by increasing the application of water to BF slag pit, roadways and other applicable areas.

22. On January 2, 2008, Respondent began to install a dedicated water spray for EU F005.

23. In summary, the Director of Ohio EPA finds Respondent violated the following laws and rules:

a. The terms and conditions of its FESOP and ORC § 3704.05(C), on October 18 and 26, 2006 (for EU F006), March 27 and May 15, 2007 (for EU F005), by exceeding the VE limitations that are specified in the FESOP;

b. The terms and conditions of its FESOP and ORC § 3704.05(C), from May 18, 2006 (date of inspection) through January 2, 2008 (date water sprays were installed), by failing to install dedicated water sprays for EU F005 as required by its FESOP;

c. The terms and conditions of its FESOP and ORC § 3704.05(C), from January 2005 through May 27, 2006 (when Respondent began its daily VE observations), by failing to perform the required daily VE observations for EU F009 (storage piles) and EU F010 (roadways) on weekends; and

d. OAC Rule 3745-15-07 and ORC § 3704.05(G), on three documented dates (October 26, 2006 and August 10 and 16, 2007), by failing to control its fugitive dust emissions and consequently causing damage to the adjacent properties by this action. According to the HCDES, no additional complaints were received after the installation of a water spray on January 2, 2008.

24. 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 seventy-one thousand and five hundred dollars ($71,500) in settlement of Ohio EPA's claim for civil penalties, which may be assessed pursuant to ORC § 3704.06. 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 fifty-seven thousand and two hundred dollars ($57,200) 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
50 West Town Street, Suite 700
P.O. Box 1049
Columbus, Ohio 43216-1049

2. In lieu of paying the remaining fourteen thousand and three hundred dollars ($14,300) of civil penalty to Ohio EPA, Respondent shall fund a Supplemental Environmental Project ("SEP") by making a contribution in the amount of $14,300 to the Ohio EPA's Clean Diesel School Bus Program Fund (Fund 5CD0). Respondent shall make payment on or within thirty (30) days after the effective date of these Orders by tendering an official check made payable to "Treasurer, State of Ohio" for $14,300. 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 James A. Orlemann, Assistant Chief, SIP Development and Enforcement, or his successor, at the following address:

Ohio EPA
Division of Air Pollution Control
50 West Town Street, Suite 700
P.O. Box 1049
Columbus, Ohio 43216-1049

4. Should Respondent fail to fund the SEP within the required timeframe in Order 2, Respondent shall immediately pay to Ohio EPA $14,300 of the civil penalty in accordance with the procedures in Order 1.

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:

Hamilton County Environmental Services
250 William Howard Taft Road
Cincinnati, Ohio 45219
Attention: Michael Ploetz

and to:

Ohio Environmental Protection Agency
Lazarus Government Center
Division of Air Pollution Control
P.O. Box 1049
Columbus, Ohio 43216-1049
Attention: Thomas Kalman, Manager, Enforcement Section

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 the 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 the 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 said 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

C. Korleski — 12/19/08

Chris Korleski
Director

Date

IT IS SO AGREED:

Tube City IMS

[signature] — 12-2-08

Signature

Date

John E. Minihan

Printed or Typed Name

Asst. Gen'l Counsel & Asst Secretary

Title