



2. Respondent was issued a Permit to Install ("PTI") modification on April 5, 2005 pursuant to OAC Chapter 3745-31. The terms of Respondent's PTI required Respondent to perform stack testing to determine compliance with the particulate emissions ("PE") limitation contained in the PTI. Specifically, Respondent's PTI established that PE shall not exceed 0.04 grain per dry standard cubic foot ("gr/dscf") of exhaust gas.

3. Respondent performed a stack test for PE on August 1, 2007 and provided Ohio EPA with the results of the stack test on September 13, 2007. The stack test revealed that the actual PE were 0.085 gr/dscf, over twice as much as the PE limit of 0.04 gr/dscf, and Respondent was therefore in violation of the terms and conditions of its PTI and ORC § 3704.05(C). Furthermore, Respondent submitted the stack test results 43 days after the test was conducted, in violation of the terms and conditions of Respondent's PTI, OAC Rule 3745-15-04(A) and ORC § 3704.05(C) and (G). Under the terms of the facility's PTI, Respondent was required to submit stack test results to Ohio EPA within 30 days of conducting the test.

4. Ohio EPA issued a Notice of Violation ("NOV") to Respondent on September 17, 2007. In the NOV, Ohio EPA detailed the violations cited above and requested that Respondent submit a compliance plan and schedule for addressing the exceedances of the PE limitation at the facility.

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5. Respondent provided a compliance plan and schedule to Ohio EPA on October 9, 2007. Respondent's compliance plan called for Respondent to review its emissions unit and scrubber to determine if modifications and/or improvements can be made to bring the unit back into compliance with Respondent's PE limit. The plan also called for Respondent to perform additional stack testing.

6. On or about April 25, 2008, Respondent purchased a baghouse to replace the existing wet scrubber and control PE at the facility and conducted stack testing on June 11, 2008 to determine compliance with Respondent's PTI terms and conditions. Respondent submitted the stack test results to Ohio EPA on July 11, 2008. The stack test revealed that the actual PE were 0.110 gr/dscf, over twice as much as the PE limit of 0.04 gr/dscf and, therefore, Respondent continued to exceed the PE limit established in its PTI, and continued to be in violation of the terms and conditions of Respondent's PTI and ORC § 3704.05(C).

7. Ohio EPA issued a second NOV to Respondent on July 14, 2008. In the NOV, Ohio EPA detailed the violations cited above and requested that Respondent submit a compliance plan and schedule for addressing the exceedances of the PE limitation at the facility.

8. Respondent provided a compliance plan and schedule to Ohio EPA on August 1, 2008. In its compliance plan, Respondent committed to hiring a professional baghouse company to inspect the newly installed baghouse to ensure that it is operating properly. Respondent further indicated that it would provide the results of the baghouse investigation and any corrective measures conducted by the company to Ohio EPA with one week of occurrence. On August 27, 2008, Respondent submitted paperwork documenting where repairs were made to the baghouse. Furthermore, Respondent indicated that additional compliance stack testing would occur in spring 2009.

9. On July 30, 2009, PE testing was performed on the baghouse discharge of emissions unit P901. The test results indicated compliance with the PE limitation, with actual PE of 0.007 gr/dscf.

10. Due to Respondent's financial condition as a result of the downturn in the construction materials industry and significant expenditures made for replacement of its air pollution control equipment, a payment schedule for the civil penalty is reasonable.

11. 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.

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## **V. ORDERS**

The Director hereby issues the following Orders:

1. Respondent shall pay the amount of twenty thousand dollars (\$20,000) in settlement of Ohio EPA's claims for civil penalties, which may be assessed pursuant to ORC Chapter 3704. Of this amount, Respondent shall pay to Ohio EPA the amount of sixteen thousand dollars (\$16,000) in accordance with the payment schedule in Order 4. Payments shall be made by official checks made payable to "Treasurer, State of Ohio." The official checks 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

2. In lieu of paying the remaining four thousand dollars (\$4,000) of the civil penalty, Respondent shall fund a Supplemental Environmental Project ("SEP") by making a contribution to the Ohio EPA's Clean Diesel School Bus Program Fund (Fund 5CD0). Respondent shall make payment pursuant to the payment schedule in Order 4 by tendering an official check made payable to "Treasurer, State of Ohio" for \$4,000. 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 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. Respondent shall pay the civil penalties identified in Orders 1 and 2 by no later than the deadlines specified in the following payment schedule:

- \$4,000 due to SEP bus fund per Order 2 by December 1, 2009
- \$5,000 due to Ohio EPA per Order 1 by January 1, 2010
- \$2,750 due to Ohio EPA per Order 1 by April 1, 2010
- \$2,750 due to Ohio EPA per Order 1 by July 1, 2010
- \$2,750 due to Ohio EPA per Order 1 by October 1, 2010
- \$2,750 due to Ohio EPA per Order 1 by January 1, 2011

5. Should Respondent fail to fund the SEP within the required timeframe set forth in Order 4, Respondent shall immediately pay to Ohio EPA \$4,000 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, 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**

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All documents required to be submitted by Respondent pursuant to these Orders shall be addressed to:

Ohio EPA, Northeast District Office  
2110 East Aurora Road  
Twinsburg, Ohio 44087  
Attn: Tim Fischer

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.

### **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**

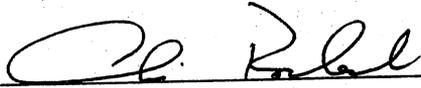
The effective date of these Orders is the date these Orders are entered into the Ohio EPA Director's journal.

### **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**

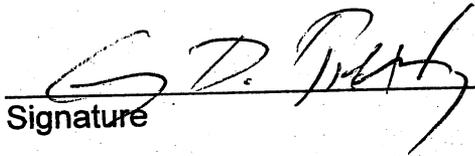
  
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Chris Korleski  
Director

11/30/09  
\_\_\_\_\_  
Date

**IT IS SO AGREED:**

**D&R Supply, Inc.**

  
\_\_\_\_\_  
Signature

11-6-09  
\_\_\_\_\_  
Date

Gary D. Radabaugh  
\_\_\_\_\_  
Printed or Typed Name

President  
\_\_\_\_\_  
Title