

OHIO E.P.A.

RECEIVED
OHIO EPA

DEC 22 2009

BEFORE THE

2009 DEC 17 AM 10:18

ENTERED DIRECTOR'S JOURNAL

OHIO ENVIRONMENTAL PROTECTION AGENCY LEGAL OFFICE

In the Matter of:

Quality Ready Mix, Inc.
16672 County Road 66A North
St. Marys, Ohio 45885

Director's Final Findings
and Orders

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: 12.22.09

I. JURISDICTION

These Director's Final Findings and Orders ("Orders") are issued to Quality Ready Mix, Inc. ("Respondent") pursuant to the authority vested in the Director of 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 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 rules promulgated thereunder.

IV. FINDINGS OF FACT

The Director of Ohio EPA makes the following findings of fact:

1. Until on or about December 3, 2008, Respondent owned and operated a concrete batch plant ("facility") located at 1670 North McCullough Street in Lima, Allen County, Ohio. At this facility, Respondent mixed cement and other raw materials to produce concrete that was used by various customers for the construction of sidewalks, driveways, curbs and poured walls. The cement was delivered to the facility by trucks where it was pneumatically unloaded into a cement silo equipped with a fabric filter. The facility also employed a weigh hopper that was used to measure and store cement and other raw materials prior to the materials being mixed to form concrete. The weigh hopper was controlled by a separate fabric filter.

2. The weigh hopper and cement silo are defined as emission units F004 and F003, respectively, emit "particulate emissions" as defined in Ohio Administrative Code ("OAC") Rule 3745-17-01(B)(11), and each is an "air contaminant source" as defined in OAC Rule 3745-31-01(I).
3. OAC Rule 3745-31-05(D) states, in part, that the Director of Ohio EPA may impose special terms and conditions in a PTI as are appropriate or necessary to ensure compliance with applicable laws and to ensure adequate protection of the environment.
4. ORC § 3704.05(G) states that no person shall violate any order, rule, or determination of the Director of Ohio EPA issued, adopted, or made under ORC Chapter 3704.
5. ORC § 3704.05(C) prohibits any person from violating any terms or conditions of a permit issued by the Director of Ohio EPA pursuant to ORC Chapter 3704.
6. OAC Rule 3745-17-08(B) states, in part, that no person shall cause or permit any fugitive dust source to be operated or constructed, without taking or installing reasonably available control measures ("RACM") to prevent fugitive dust from becoming airborne, if the fugitive dust source is located within the areas identified in "Appendix A" of this rule and is not otherwise exempted from the requirements by this rule. The City of Lima in Allen County is listed in Appendix A; therefore, Respondent is required to employ RACM for fugitive dust sources at the facility. OAC Rule 3745-17-08(B)(3)(b) states, in part, that RACM shall include the installation and use of equipment to adequately control the fugitive dust. Such control equipment is required, in part, to achieve an outlet particulate emission concentration of not greater than 0.030 grain per dry standard cubic foot ("gr/dscf") of exhaust gases or there are no visible particulate emissions ("VEs") from the exhaust stack(s), whichever is less stringent.
7. OAC Rule 3745-17-01(B)(18) defines RACM as control technology which enables a particular fugitive dust source to achieve the lowest particulate matter emission level possible and which is reasonably available considering technological feasibility and cost-effectiveness.
8. In accordance with ORC Rules 3745-17-08 and 3745-31-05(D), Respondent was issued, on October 30, 1991, PTI # 03-6000. The PTI required the installation and use of dust collectors (i.e., fabric filters) for the control of fugitive dust emissions generated by the cement silo and the weigh hopper to satisfy the requirement to install and employ RACM. Additionally, the PTI contains a general provision requiring air pollution control systems to be maintained regularly in accordance with good engineering practices in order to minimize air contaminant emissions.
9. On at least the dates identified in the following table, Respondent failed to employ control equipment on the cement silo during pneumatic truck unloading, which achieved an outlet particulate emission concentration of not greater 0.030 gr/dscf of

exhaust gases or no visible emissions from the exhaust stack, whichever is less stringent, in violation of PTI # 03-6000, OAC Rule 3745-17-08(B), and ORC § 3704.05(C) and (G). On the dates in the following table and during cement silo loading by pneumatic equipment, the fabric filter discharge on the silo had grain loadings that exceeded particulate emissions of 0.030 gr/dscf and had VEs:

Date VEs were observed	Estimated grains/acfm*	Date VEs were observed	Estimated grains/acfm*
3/7/2007	15.460	3/29/2007	24.736
3/7/2007	15.653	3/29/2007	17.199
3/14/2007	17.154	3/30/2007	19.117
3/15/2007	17.128	4/2/2007	14.957
3/23/2007	15.419	4/5/2007	19.425
3/23/2007	17.263	4/6/2007	29.148
3/26/2007	14.349	4/10/2007	8.657
3/29/2007	9.544	4/10/2007	21.764

* Based on the amount and time of unloading on the given day and the USEPA AP-42 uncontrolled emission factor. It is assumed that acfm essentially equals dscfm in the dry environment of the pneumatic loading system.

Respondent corrected the violations identified above on December 3, 2008, when Respondent stopped production at the facility.

10. On at least the dates identified in the following table, Respondent failed to regularly maintain the following air pollution control systems in accordance with good engineering practices in order to minimize air contaminant emissions, in violation of PTI # 03-6000 and ORC § 3704.05(C):

Date	Air pollution control system	Description of violation
August 25, 2006 through September 13, 2006	cement silo fabric filter and weigh hopper fabric filter	Several bags in the fabric filters were torn and completely clogged without replacement bags being readily available at the facility.

Respondent corrected the violations identified above on September 13, 2006, when Respondent replaced and unplugged the bags in the weigh hopper and cement silo's fabric filters.

11. On January 10, 2007, a notice of violation ("NOV") letter was issued to Respondent for the violations identified in Finding 10.

12. On December 3, 2008, Respondent informed Ohio EPA that the facility was

stopping production and that the operations would be relocated to another site. On December 11, 2008, NWDO visited the facility and observed that the cement silo was loaded onto a flat bed trailer for removal.

13. 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 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 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 twelve thousand dollars (\$12,000). The official check shall be submitted to Brenda Case, or her successor, together with a letter identifying Respondent, to:

Ohio EPA
Office of Fiscal Administration
P.O. Box 1049
Columbus, Ohio 43216-0149

A copy of the check 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
Lazarus Government Center
P.O. Box 1049
Columbus, Ohio 43216-1049

2. In lieu of paying the remaining three thousand dollars (\$3,000) of the civil penalty, Respondent shall, within fourteen (14) days of the effective date of these Orders, fund a Supplemental Environmental Project ("SEP") by making a contribution in the amount of three thousand dollars (\$3,000) to the Ohio EPA's Clean Diesel School Bus Program Fund (Fund 5CD0). 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 and Fund 5CD0, to the above-stated address. A copy of this check also shall be sent to James A. Orlemann, or his successor, at the above-stated address.

3. In the event Respondent fails to make the payment specified in Order 3, the \$3,000 for the project in Order 3 shall immediately become due and payable to Ohio EPA.

Such payment shall be made by an official check made payable to "Treasurer, State of Ohio" and sent to Brenda Case at the above-stated address. A copy of the check shall be sent to James A. Orlemann, or his successor, at the above-stated address.

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, 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 a principal executive officer of at least the level of vice president, or a duly authorized representative, if such representative is responsible for the overall operation of the facility and/or facilities owned or operated by Respondent.

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:

Ohio Environmental Protection Agency
Northwest District Office
347 North Dunbridge Road
Bowling Green, Ohio 43402-9398
Attention: Don Waltermeyer

and to:

Ohio Environmental Protection Agency
Lazarus Government Center
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



Chris Korleski
Director

Date

12/21/09

IT IS SO AGREED:

Quality Ready Mix, Inc.



Signature

Date

12/11/09

John R. Hirschfeld

Printed or Typed Name

President

Title