OHIO E.P.A.
DEC - 7 2010
ENTERED DIRECTOR'S JOURNAL

BEFORE THE

OHIO ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

Valentine Contractors, Inc. 7680 Whipple Avenue NW North Canton, Ohio 44720	: : :	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 Valentine Contractors, 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 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 3745 and the rules promulgated thereunder.

IV. FINDINGS

The Director of Ohio EPA makes the following findings:

1. Respondent is a masonry contractor with an office located at 7680 Whipple Avenue NW in North Canton, Ohio. Respondent employs concrete sawing equipment in its operations.

2. Akron Regional Air Quality Management District ("ARAQMD") is a contractual agent for Ohio EPA in Summit County.

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 Donna Lassiter Date: 12-7-10

3. A "fugitive dust source," in part, is defined in OAC Rule 3745-17-01(B)(7) as any source which emits fugitive dust as defined in OAC Rule 3745-17-01(B)(6). "Fugitive dust" means particulate matter which is emitted from any source by means other than a stack. The outdoor operation of masonry sawing equipment emits fugitive dust and constitutes a fugitive dust source and an "air contaminant source," as defined in OAC Rule 3745-15-01(C) and (X).

4. OAC Rule 3745-17-08(A)(1) states, in part, that the requirements of OAC Rule 3745-17-08(B) apply to any fugitive dust source which is located within the areas identified in Appendix A of such rule, unless otherwise provided in OAC Rule 3745-17-08(A)(3). The City of Akron is listed in Appendix A.

5. OAC Rule 3745-17-08(B) states, in part, that no person shall cause or permit any fugitive dust source to be operated; or any materials to be handled, transported, or stored; or a building to be constructed, altered, repaired, or demolished without taking or installing reasonably available control measures to prevent fugitive dust from becoming airborne. Such reasonably available control measures shall include, but not be limited to, the use of water or other suitable dust suppression chemicals for control of fugitive dust from construction operations and/or the use of adequate containment methods.

6. On May 30, 2008, Respondent's employees generated fugitive dust by the sawing of concrete block without employing any dust control measures during a work project at the Akrochem facility on Huntington Avenue in the City of Akron, in violation of OAC Rule 3745-17-08(B). A copy and explanation of OAC Rule 3745-17-08 were provided to Respondent by ARAQMD, along with an Order to Comply.

7. On June 6, 2008, Respondent's employees generated fugitive dust by the sawing of concrete block without employing any dust control measures during a work project at the Akrochem facility on Huntington Avenue in The City of Akron, in violation of OAC Rule 3745-17-08(B). Written orders were again issued to Respondent by ARAQMD.

8. On June 11, 2009, a citizen complaint was received by ARAQMD regarding excessive fugitive dust being generated by the sawing of stones without employing any dust control measures. On June 15, 2009, Respondent's employees generated fugitive dust by the sawing of stones without employing any dust control measures during a work project at The Howe House on West Exchange Street in the City of Akron, in violation of OAC Rule 3745-17-08. Written orders were given to Respondent.

9. By letter dated June 17, 2009, ARAQMD sent Respondent a warning letter for the violations referenced in Findings 6 through 8 of these Orders. The warning letter required Respondent to cease illegally operating

fugitive dust sources without employing reasonably available control measures and to submit a plan describing the dust control measures that would be utilized in the future. Respondent did not submit the aforementioned plan.

10. The OAC violations cited in the above findings also constituted violations of ORC § 3704.05(G), which prohibits any person from violating any OAC rule adopted by the Director of Ohio EPA pursuant to ORC Chapter 3704. OAC Chapter 3745-17 was adopted by the Director pursuant to ORC Chapter 3704.

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.

V. ORDERS

The Director hereby issues the following Orders:

1. Upon the effective date of these Orders, Respondent shall employ reasonably available control measures as required pursuant to OAC Rule 3745-17-08(B), for all sawing activities, by equipping each saw with a hose and canister assembly unit or equivalent device that will minimize or eliminate visible emissions of fugitive dust from all masonry sawing operations at its Ohio construction sites located in the Appendix A areas identified in OAC Rule 3745-17-08. Respondent shall maintain compliance with OAC Rule 3745-17-08(B) thereafter.

2. Respondent shall pay the amount of seven thousand and five hundred dollars ($7,500) in settlement of Ohio EPA's claims for civil penalties, which may be assessed pursuant to ORC Chapter 3704. Respondent shall pay to Ohio EPA the amount of six thousand dollars ($6,000) of the total penalty amount pursuant to the following schedule:

- One thousand dollars ($1,000) due within ninety (90) days after the effective date of these Orders;
- One thousand dollars ($1,000) due within one hundred fifty (150) days after the effective date of these Orders;
- One thousand dollars ($1,000) due within two hundred ten (210) days after the effective date of these Orders;
- One thousand dollars ($1,000) due within two hundred seventy (270) days after the effective date of these Orders;

- One thousand dollars ($1,000) due within three hundred thirty (330) days after the effective date of these Orders; and

- One thousand dollars ($1,000) due within three hundred sixty (360) days after the effective date of these Orders.

Payments shall be made by official checks made payable to "Treasurer, State of Ohio." Each of these 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
P.O. Box 1049
Columbus, Ohio 43216-1049

3. In lieu of paying the remaining one thousand and five hundred dollars ($1,500) of the civil penalty, Respondent shall fund a Supplemental Environmental Project ("SEP") by making a contribution in the amount of $1,500 to the Ohio EPA's Clean Diesel School Bus Program Fund (Fund 5CD0). Respondent shall make payment within thirty (30) days after the effective date of these Orders by tendering an official check made payable to "Treasurer, State of Ohio" for $1,500. The official check shall be submitted to Brenda Case, or her successor, together with a letter identifying the Respondent and Fund 5CD0, to:

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

4. 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
P.O. Box 1049
Columbus, Ohio 43216-1049

5. Should Respondent fail to fund the SEP within the required time frame set forth in Order 3, Respondent shall immediately pay to Ohio EPA $1,500 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 the purposes of these Orders, a responsible official is a principal executive officer of at least the level of vice president or his duty authorized representative.

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

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

Akron Regional Air Quality Management District
146 South High Street, Room 904
Akron, Ohio 44308
Attn: Bonetta Guyette

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.

ORDERED AND AGREED:

Ohio Environmental Protection Agency

Chris Korleski
Director

12/1/10
Date

AGREED:

Valentine Contractors, Inc.

Signature

11-22-10
Date

EUELYN VALENTINE
Printed or Typed Name

President
Title