

BEFORE THE

OHIO E.P.A.

OHIO ENVIRONMENTAL PROTECTION AGENCY MAY 18 2011

ENTERED DIRECTOR'S JOURNAL

In the Matter of:

The University of Akron  
Department of Capital Planning  
100 Lincoln Street  
Akron, Ohio 44325

: 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 The University of Akron ("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 Respondent's facilities (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 rules promulgated thereunder.

IV. FINDINGS

The Director of Ohio EPA makes the following findings:

1. Respondent, operating as the general contractor, contracted with various construction trades and companies for the construction of a football stadium, stadium parking area and student housing project in 2008 and 2009 at the campus in Akron, Ohio. The various construction trades and companies included, but may not be limited to: Kenmore Construction, Foti Contracting, Wetly Building Company, Cavanaugh Building Corporation, Crowe Masonry, Martin Enterprises and Duer Construction.

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: Dana Cassler Date: 5-18-11

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

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 cutting and sawing equipment and the carryout of earth from construction site roadways onto public streets emit fugitive dust and constitute fugitive dust sources and "air contaminant sources," 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 the following dates and times, the ARAQMD conducted inspections at the University of Akron stadium construction site and observed visible emissions of fugitive dust from the following locations and sources:

<b>Date</b>	<b>Time</b>	<b>Location and source of fugitive dust emissions</b>
5/23/08	2:15 pm	Carryout on S. Union St. entrance/exit to the jobsite
6/25/08	11:45 am	Carryout on E. Exchange St.
10/23/08 & 10/24/08	2:00 pm & 9:30 am	Sawing block without dust controls on northwest section of jobsite around Brown St. near corner of Vine St. (both days)
10/23/08 & 10/24/08	3:05 pm & 10:30 am	Carryout on S. Union St. and Vine St. (both days)

2/25/09	11:05 am & 1:15 pm	Sawing block without dust controls on the East side of stadium facing Spicer St. and carryout out on Spicer, Vine, East Exchange and S. Union Streets
3/4/09	2:00 pm	Corner of Spicer and E. Exchange Streets and carryout on Spicer, Vine, E. Exchange and S. Union Streets
3/5/09	12:40 pm 2:40 pm 2:45 pm & 3:00 pm	Carryout on Spicer, Vine and E. Exchange Streets and sawing block without dust controls at north and northeast corners of stadium
3/17/09	1:35 pm	Carryout on Vine St.
6/4/09	11:50 am	Carryout on E. Exchange St.
7/16/09	1:30 pm	Sawing masonry without dust controls and using a leaf blower to clean up dust from the sawing activity at the south end of the stadium
7/28/09	12:20 pm	Carryout on Vine and S. Union Streets

7. On the following dates and times, the ARAQMD conducted inspections at the University of Akron student housing project construction site and observed visible emissions of fugitive dust from the following locations and sources:

Date	Time	Location and source of fugitive dust emissions
3/5/09	3:20 pm	Carryout on Spicer St.
6/15/09	1:33 pm	Sawing block without dust controls on 3 <sup>rd</sup> floor of project
7/15/09 & 7/16/09	2:10 pm	Various equipment and truck traffic on unpaved haul road and carryout on Vine St.
7/28/09	12:10 pm	Various equipment and truck traffic on unpaved haul road
8/27/09	2:00 pm	Carryout on Vine St.
9/3/09	10:45 am	Carryout on Vine St.
11/3/09	2:00 pm	Stone sawing without dust control on east side of the building

8. On the following dates and times, the ARAQMD conducted inspections at the University of Akron stadium parking area construction site and observed visible emissions of fugitive dust from the following locations and sources:

Date	Time	Location and source of fugitive dust emissions
3/4/09	2:32 pm	Sawing block without dust controls on Spicer St. at corner of E. Exchange St.
7/9/09	10:40 am	Various equipment and truck traffic on unpaved haul road
7/15/09	1:15 pm	Various equipment and truck traffic on unpaved haul road

9. The Director has determined that, on the dates referenced in Finding Nos. 6, 7 and 8 of these Orders, fugitive dust emissions were observed from these construction sites without adequately employing reasonably available control measures to minimize or eliminate such emissions in violation of OAC Rule "3745-17-08(B). In addition, these OAC violations also constituted violations of ORC § 3704.05(G), which prohibits any person from violating any OAC rule adopted by the Director of Ohio EPA. OAC Chapter 3745-17 was adopted by the Director pursuant to ORC Chapter 3704.

10. On March 5 and March 19, 2009, ARAQMD notified Respondent of the fugitive dust emissions violations on and around the University of Akron's construction sites referenced in Finding No. 1 of these Orders. On June 4, 2009, ARAQMD met with Respondent to discuss the fugitive dust emission violations at the construction sites. Lastly, by letter dated November 9, 2009, ARAQMD notified Respondent of the violations referenced in Finding Nos. 6, 7 and 8 of these Orders.

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 be derived from such compliance.

#### **V. ORDERS**

The Director hereby issues the following Orders:

1. Given the totality of the circumstances, Respondent shall pay the amount of seven thousand five hundred dollars (\$7,500) in settlement of Ohio EPA's claims for civil penalties, which may be assessed pursuant to ORC Chapter 3704. 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 six thousand dollars (\$6,000) 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  
P.O. Box 1049  
Columbus, Ohio 43216-1049

2. In lieu of paying the remaining one thousand five hundred dollars (\$1,500.00) of the civil penalty, Respondent shall, within thirty (30) days of the effective date of these Orders, 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 5CDO). Respondent shall tender 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 5CDO, 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  
P.O. Box 1049  
Columbus, Ohio 43216-1049

4. Should Respondent fail to fund the SEP within the required timeframe set forth in Order 2, Respondent shall immediately pay to Ohio EPA \$1,500 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**

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: Frank Markunas

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.

### **V. 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.

#### **XI. 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 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.

#### **XII. EFFECTIVE DATE**

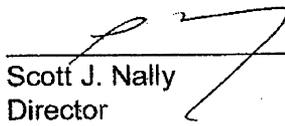
The effective date of these Orders is the date these Orders are entered into the Ohio EPA Director's journal.

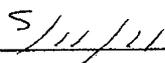
**XIII. SIGNATORY AUTHORITY**

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:**

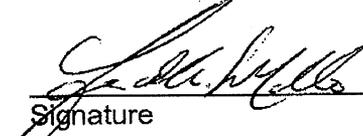
**Ohio Environmental Protection Agency**

  
\_\_\_\_\_  
Scott J. Nally  
Director

  
\_\_\_\_\_  
Date

**AGREED:**

**The University of Akron**

  
\_\_\_\_\_  
Signature

5-2-11  
\_\_\_\_\_  
Date

Ted A. Mallo  
\_\_\_\_\_  
Printed or Typed Name

Vice President and General Counsel  
\_\_\_\_\_  
Title