



**Environmental
Protection Agency**

John R. Kasich, Governor
Mary Taylor, Lt. Governor
Scott J. Nally, Director

March 30, 2012

CERTIFIED MAIL

Mr. Michael E. Born, Esq.
Shumaker, Loop & Kendrick, LLP
Huntington Center
41 South High Street, Suite 2400
Columbus, Ohio 43215-6104

Re: Final Findings and Orders for:
air pollution control permit and
law violations by Oglebay Norton
Industrial Sands, LLC at its facility
located at 2446 Glass Rock Road,
Glenford, Ohio

Dear Mr. Born:

Transmitted herewith are the Final Findings and Orders ("Orders") of the Director of Ohio EPA concerning the above-referenced matter.

Please note that the effective date of the Orders is the date that the Orders were entered into the Ohio EPA Director's journal, which is the date that is stamped on the first page of the Orders.

Sincerely,

Thomas J. Kalman, P.E.
Acting Assistant Chief, SIP Development and Enforcement
Division of Air Pollution Control

TJK/lt

xc: Carol Hester, PIC
Lee Tullis, DAPC
Akia Smith, Fiscal Office (Agency # NA)
Donald L. Vanterpool, Legal Office
Patty Porter, DAPC
Bruce Weinberg, SEDO
Stephen C. Smith, Carmeuse
Ron Schindler, Pioneer

MAR 30 2012

BEFORE THE

OHIO ENVIRONMENTAL PROTECTION AGENCY'S JOURNAL

In the Matter of:

Oglebay Norton Industrial Sands, LLC
d.b.a. Carmeuse Industrial Sands
2446 Glass Rock Road
Glenford, Ohio 43739

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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: M. Shapiro Date: 3/30/2012

I. JURISDICTION

These Director's Final Findings and Orders ("Orders") are issued to Oglebay Norton Industrial Sands, LLC, d.b.a. Carmeuse Industrial Sands ("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 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 OAC Chapter 3704 and the rules promulgated thereunder.

IV. FINDINGS

The Director of Ohio EPA makes the following findings:

1. Respondent owns and operates a facility located at 2446 Glass Rock Road, Glenford, Ohio. The facility is identified by Ohio EPA ID #0664000087. At this facility, Respondent mines, processes and distributes various industrial sands. After mining, the sands are cleaned, sized and dried in a fluidized bed dryer ("dryer"). The dryer is identified by Ohio EPA as emissions unit P910. The particulate matter ("PM") emissions generated by the dryer are captured and controlled with a wet scrubber.

2. The dryer emits PM which is defined as an "air pollutant" or "air contaminant" in OAC Rule 3745-15-01(C). Additionally, the dryer is an "air contaminant source" as defined in OAC Rules 3745-31-01(I) and 3745-15-01(C) and (X).

3. The dryer is subject to the applicable requirements of the New Source Performance Standards ("NSPS") for Calciners and Dryers in Mineral Industries [40 CFR Part 60, Subpart UUU ("Subpart UUU")]. These requirements are included or referenced in the emissions unit's permit-to-install ("PTI") and/or in the Title V permit.

4. Subpart UUU requires, among other things, that the owner or operator of an industrial fluid bed dryer not allow PM emissions in excess of 0.057 gram per dry standard cubic meter ("g/dscm") from such dryer, and, if the dryer is equipped with a wet scrubber, the owner or operator must install, calibrate, maintain, and operate monitoring devices that continuously measure and record the pressure loss (i.e., pressure drop) of the gas stream through the scrubber and the scrubbing liquid flow rate to the scrubber. The owner or operator is to determine and record once each day, an arithmetic average over a two-hour period, the pressure drop and flow rate and to submit semiannual written reports of any daily two-hour average where the wet scrubber pressure drop was less than 90 percent of the average value recorded during the most recent performance test that demonstrated compliance with the PM emission limitation and of each daily wet scrubber liquid flow rate that is less than 80 percent or greater than 120 percent of the average flow rate determined during the most recent performance test that demonstrated compliance with the PM emission limitation.

5. 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. On October 19, 2000, Ohio EPA issued an administrative modification to PTI 06-04926 for the dryer that contained the requirements of Subpart UUU.

6. The facility is a "major source" as defined in OAC Rule 3745-77-01(X) for PM and sulfur dioxide and is required to apply for and obtain a Title V permit. OAC Rule 3745-77-07(A)(1) requires that a Title V permit include emission limitations and standards, including those operational requirements and limitations that assure compliance with all applicable requirements. OAC Rule 3745-77-07(A)(3) requires, in part, that a Title V permit contain emission monitoring and analysis procedures or test methods sufficient to yield reliable representative data to determine the source's compliance with the permit and applicable emission limitations. On June 13, 2001, Ohio EPA issued a Title V permit to Respondent that contained, among other things, the applicable requirements of Subpart UUU.

7. OAC Rule 3745-77-08(E) states that, if the Director fails to take a final action on an application to renew a Title V permit and the owner or operator of the source filed a timely and complete renewal application, all provisions and

authorizations of an expired Title V permit shall remain in effect until the Director's final action on the pending renewal application occurs. On December 13, 2005, Respondent submitted a timely and complete renewal Title V permit application. Therefore, the provisions and requirements of Respondent's original Title V permit remain in effect, including the requirements of Subpart UUU, until the Director's final action on the pending Title V permit renewal application.

8. ORC § 3704.05(C) prohibits any person from violating any terms or conditions of any permit issued by the Director of Ohio EPA.

9. ORC § 3704.05(J)(2) prohibits any person from violating any applicable requirement of a Title V permit or any permit condition, except for an emergency as defined in 40 CFR 70.6(g).

10. On or around February 2008, Respondent completed the acquisition of the Cleveland, Ohio based Oglebay Norton Company which included the facility identified in Finding 1. Prior to the acquisition, emissions unit P910 had a history of non-compliance with Subpart UUU. Specifically, during a 2003 Title V inspection it was discovered that the facility did not maintain the required records of the wet scrubber's pressure drop and liquid flow rate and the magnehelic gauges for pressure drop monitoring were not functional. Similarly, during the August 2007 Title V inspection, it was determined that the facility was using a portable device to monitor the pressure drop and the equipment used to measure the scrubber's flow rate did not satisfy the requirements of Subpart UUU. Additionally, the portable device only periodically measured the pressure drop; therefore, it failed to satisfy Subpart UUU's requirement to continuously measure and record the pressure drop. In or around November of 2007, a new scrubber and monitoring devices were installed. On January 25, 2008, the "former" Oglebay Norton Company submitted the quarterly/semi-annual deviation reports for the fourth quarter/last half of 2007. The reports stated that continuous data logging devices were not installed and/or used between July 2007 and December 2007; but the devices were now installed. However, the devices were not properly working and were sent back to the manufacturer.

Failure to properly monitor and record liquid flow rate and pressure drop for emissions unit P910's scrubber

11. On October 21, 2008, Respondent met with Ohio EPA to discuss revising several previously submitted Title V permit required reports. On October 31, 2008, Respondent resubmitted the 2007 Annual Compliance Certification and the 2008 quarterly/semi-annual deviation reports for the first and second quarter 2008 and the first half of 2008, respectively. Respondent also submitted the quarterly deviation report for the third quarter of 2008. The resubmitted reports showed deviations that occurred at the facility that had not been included in the earlier submittals. The failure to timely submit such reports that identify all violations that are required to be reported, were

violations of the PTI and Title V permit and ORC § 3704.05(C) and (J)(2). These deviations included violations of the monitoring and record-keeping requirements of Subpart UUU and the terms and conditions of Respondent's PTI and Title V permit. Specifically, continuous data logging devices were not used to record pressure drop and flow rates as required by Subpart UUU since at least July 31, 2007. The revised reports also indicated that the "old" data logging devices had been returned to the manufacturer for diagnostics and repair; and re-installed on May 7, 2008. The revised reports indicated that continuous data logging devices were not previously used to record the pressure drop, and liquid flow rate for emissions unit P910's scrubber and that new loggers were installed in July 2008. Respondent's attorney informed Ohio EPA that the facility had returned to compliance in August 2008. Respondent's quarterly/semi-annual deviation reports through the third quarter of 2009 showed intermittent noncompliance with the monitoring, record-keeping and reporting requirements of Subpart UUU due to problems with the monitoring devices and personnel issues. The reports also indicated that the person responsible for the monitoring, record-keeping and reporting requirements had been replaced.

12. On September 10, 2009, Ohio EPA conducted a Title V inspection of the facility. During the inspection it was discovered that the monitoring and recording equipment required by Subpart UUU to measure the pressure drop across the air stream of the scrubber was not functioning properly and the accuracy of the device was questioned. During the inspection the chart recorder showed a pressure drop of approximately 2.5 inches of water while a hand held device measured the pressure drop between 1 to 1.5 inches of water. On September 24, 2009, Ohio EPA sent a Notice of Violation ("NOV") letter to Respondent regarding the non-compliance discovered during the inspection and requested Respondent to submit, within 30 days of receipt of the letter, a compliance plan and schedule to bring the facility into compliance.

13. In a letter dated October 23, 2009, Respondent replied to the September 24, 2009, NOV. Respondent stated that new equipment to measure and record the pressure drop and water flow rate of the scrubber system had been ordered. The installation, programming and calibration of the new equipment were scheduled for the week of November 9, 2009. Respondent alleged that a hand held device was used to measure the pressure drop across the scrubber from September 9, 2009 to November 9, 2009 (the installation date of the new equipment).

14. On November 25, 2009, all of the new metering and logging equipment, including the replacement water flow meter, were installed, calibrated and functional.

15. Respondent failed to comply with the monitoring and record-keeping requirements specified by Subpart UUU, PTI 06-04926 and its Title V permit, in violation of ORC §§ 3704.05(C) and (J)(2). Although these monitoring and record-keeping violations have occurred sporadically since at least 2003 (see Finding 10), these Orders assess the penalty for the violations that occurred since the acquisition of the former

company (February 2008) to November 2009 (the date Respondent started to properly monitor and record the scrubber's pressure drop and liquid flow rate).

Failure to comply with PM emission limitation

16. On or around November 2009, the new pressure drop sensors indicated that the pressure drop across the gas stream through the scrubber was averaging 0.2 inch of water. The pressure drop measured during the most recent performance test was 0.8 inch of water. Therefore, the pressure drop was less than 90 percent of the average value recorded during the most recent performance test that demonstrated compliance with the PM emission limitation, in violation of the pressure drop range restriction in Respondent's PTI and Title V permit. However, the water flow rates were within the range allowed by Subpart UUU and Respondent's PTI and Title V permit.

17. On January 26, 2010, due to the low pressure drop values, Respondent conducted a performance test to determine if compliance with the PM emission limitation could be achieved with the scrubber operating at the lower pressure drop values. The performance test showed that the average filterable particulate emissions measured were 0.126 g/dscm with the scrubber operating at an average pressure drop of 0.2 inch of water. As a result of the performance test, Respondent shut down the dryer on February 6, 2010, to modify the wet scrubber to increase the pressure drop. On February 9, 2010, Respondent started operation of the dryer. The pressure drop of the scrubber's gas stream had increased to an average range of 0.7 to 1.0 inch of water. On February 11, 2010, the pressure drop values were greater than 0.8 inch of water.

18. On April 15, 2010, Respondent performed a PM compliance test in accordance with the requirements of Subpart UUU. The filterable particulate emissions were measured in compliance. The average pressure drop across the scrubber was determined to be 0.8 inch of water, and the average scrubber liquid flow rate was 68 gallons per minute. The average production rate of the dryer during the test was 45.46 tons per hour, or 57 percent of the maximum operating rate of 80 tons per hour.

19. Respondent failed to comply with the PM limitation specified in Subpart UUU, PTI 06-04926 and the Title V permit, in violation of ORC §§ 3704.05(C) and (J)(2). The violation occurred from at least January 26, 2010 (i.e., the date of the failing performance test). By February 11, 2010, Respondent made repairs to the scrubber.

20. 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 the benefits to the people of the State to be derived from such compliance.

V. ORDERS

The Director hereby issues the following Orders:

1. Pursuant to ORC § 3704.06, Respondent is assessed a civil penalty in the amount of thirty-eight thousand dollars (\$38,000) in settlement of Ohio EPA's claim for civil penalties. Within thirty (30) days after the effective date of these Orders, Respondent shall pay Ohio EPA the amount of thirty thousand four hundred dollars (\$30,400) of the total penalty amount. Payment shall be made by official check made payable to "Treasurer, State of Ohio" for \$30,400. The official check shall be submitted to Akia Smith, 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 seven thousand six hundred dollars (\$7,600) 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 \$7,600 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 \$7,600. The official check shall be submitted to Akia Smith, 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 Thomas Kalman, Acting 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 time frame set forth in Order 2, Respondent shall immediately pay to Ohio EPA \$7,600 of the civil penalty in accordance with the procedures in Order 1.

5. Prior to establishing new monitoring and reporting baseline parameters for the dryer's wet scrubber, Respondent shall use the baseline parameters determined in the April 14, 2010, PM compliance test. Specifically, the monitoring and reporting baseline parameters for Subpart UUU and Respondent's PTI and Title V permit are: 0.8

inch of water for the average change in the pressure of the gas stream across the scrubber and 68 gallons per minute for the average flow rate of the scrubber liquid.

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 be signed by Respondent and contain the following attestation: "I certify that the information contained in or accompanying this certification is true, accurate and complete."

This certification shall be signed by a responsible official of Respondent and submitted by Respondent to Ohio EPA. For the purposes of these Orders, a responsible official is a principal executive officer of at least the level of vice president, or his duly 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, 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

Except as otherwise provided in these Orders, all documents required to be submitted by Respondent pursuant to these Orders shall be addressed to:

Ohio Environmental Protection Agency
Southeast District Office
2195 Front Street
Logan, Ohio 43138
Attn: Bruce Weinberg

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, Acting Assistant Chief, SIP
Development and Enforcement

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 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

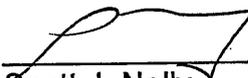
The effective date of these Orders is the date these Orders are entered into the Ohio EPA Director's journal.

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



Scott J. Nally
Director

3/30/12
Date

AGREED:

**Oglebay Norton Industrial Sands, LLC
d.b.a. Carmeuse Industrial Sands**



Signature

3/28/12
Date

Kevin J. Whyte

Printed or Typed Name

VP General Counsel

Title