



Mike DeWine, Governor  
Jon Husted, Lt. Governor  
Laurie A. Stevenson, Director

June 12, 2019

**CERTIFIED MAIL**

Mr. Ty Nofziger  
President  
The Shelly Company  
PO Box 266  
Thornville, Ohio 43076

Re: Final Findings and Orders for air pollution  
violations

Dear Mr. Nofziger,

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,



James Kavalec, Manager  
Compliance/Enforcement Section  
Division of Air Pollution Control

cc: Kelly Toth/Ben Halton, DAPC-CDO  
Brandon Schwendeman, DAPC  
Kim Rhoads, Legal Office  
Lee Tullis, DAPC

**BEFORE THE**  
**OHIO ENVIRONMENTAL PROTECTION AGENCY**

In the Matter of:

**The Shelly Company**  
**P.O. Box 266**  
**Thornville, Ohio 43076**

**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: Jon Bassler Date: 4/12/19

**I. JURISDICTION**

These Director's Final Findings and Orders ("Orders") are issued to The Shelly Company ("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 Respondent or of the facilities (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**

The Director of Ohio EPA makes the following findings:

1. Respondent owns and operates the following asphalt paving mixture and block manufacturing facilities in Ohio, with a headquarters office located at 80 Park Dr in Thornville, Ohio. All of these facilities are classified as synthetic minor sources:

#	Facility (ID)	Address	County
1	Shelly 119 (0664005030)	2650 Old Dublin Rd Columbus, Ohio 43026	Franklin
2	Shelly 62 (0123000206)	3232 Lancaster Logan Rd. SE Lancaster, Ohio 43130	Fairfield
3	Allied 74A (0664005017)	1661 S. Bailey Rd North Jackson, Ohio 44451	Mahoning

**Facility #1 (Shelly 119, 0664005030)**

2. Respondent owns and operates emissions unit ("EU") P901 a 400 ton per hour portable, continuous-mix asphalt plant at the facility which is the subject of these Orders, and it is subject to Ohio EPA rules and regulations.
3. ORC § 3704.05(C) prohibits any person who is a holder of a permit issued by the Director pursuant to ORC § 3704.03 from violating any of its terms and conditions.
4. EU P901 was installed on May 1, 2015. Federally enforceable permit-to-install and operate (FEPTIO) P0117858, for EU P901, was issued on February 3, 2015.
5. The Standard of Performance for Hot Mix Asphalt Facilities (40 CFR Part 60, Subpart I) requires, in part, that particulate emissions (PE) from EU P901 at the facility not exceed 0.04 gr/dscf and opacity not to exceed 20%. The requirements of 40 CFR Part 60, Subpart I, are incorporated as applicable requirements in the FEPTIO for EU P901.
6. The FEPTIO required Respondent, in part, to conduct emission testing within 60 days after the switch to a secondary fuel to demonstrate compliance with the allowable mass emission rate for the following pollutants from emissions unit P901: PE, carbon monoxide (CO), volatile organic compounds (VOC), sulfur dioxide (SO<sub>2</sub>), and nitrogen oxides (NO<sub>x</sub>). The FEPTIO identified 40 CFR Part 60, Subpart I as an applicable rule and established that emissions testing for PE and opacity be conducted in accordance with the appropriate provisions of 40 CFR Part 60.
7. 40 CFR Part 60, Subpart I, required Respondent to demonstrate compliance with the PE standards in part using reference Method 9 not later than 180 days after initial startup of the facility.
8. On September 21, 2018, Ohio EPA Central District Office (CDO) conducted a compliance inspection of the plant. CDO discovered that Respondent failed to perform the reference Method 9 visible emissions evaluation portion of the initial compliance demonstration which was due to be completed by September 15, 2015, in violation of 40 CFR Part 60, Subpart I, FEPTIO # P0117858, and ORC § 3704.05(C). Additionally, Respondent switched the primary fuel for EU P901 from natural gas to on-spec used oil, from June 1, 2017 to May 14, 2018, and failed to perform emission testing as required by FEPTIO P0117858, in violation of FEPTIO # P0117858 and ORC § 3704.05(C). The emission test was required to have been performed by August 1, 2017.
9. On October 8, 2018, CDO sent a notice of violation (NOV) letter to Respondent for the violations listed above and requested Respondent to submit a compliance plan and schedule.

10. Respondent's response to the NOV was received by CDO on November 19, 2018. Respondent stated that EU P901 is currently using natural gas as the primary fuel; Respondent requested to not perform emission testing using used oil since there is no plan to switch back to using used oil in the future. Respondent also stated that it would not be possible to complete reference Method 5 emissions test concurrently with reference Method 9 visible emissions evaluation during the 2018 production season. Respondent stated that it intends to complete the required test during the 2019 production season while burning natural gas.

**Facility #2 (Shelly 62, 0123000206)**

11. Respondent owns and operates EU P902 a 400 ton per hour continuous-mix asphalt plant at the facility which is the subject of these Orders, and it is subject to Ohio EPA rules and regulations. Respondent installed and began operating the plant without first obtaining a permit-to-install and operate (PTIO), in violation of OAC Rule 3745-31-02(A)(1) and ORC § 3704.05. By letters dated November 30, 2017 and March 28, 2018, Ohio EPA notified Respondent of these violations.
12. On May 15, 2018, Ohio EPA sent Respondent a warning letter for failing to submit PTIO applications. On June 18, 2018, Respondent submitted a PTIO application for this plant; however, the application was missing information necessary to process the permit.
13. EU P902 is permitted to utilize on-spec used oil as a fuel source and is subject to sulfur dioxide modeling requirements as identified in the letter sent to the Flexible Pavements Association in February of 2018; Ohio EPA e-mailed this information to Respondent on July 6, 2018, in response to the permit application received for EU P902. The July 2018 e-mail also requested information pertaining to the installation date of EU P902 and subsequent requests for this information were sent via e-mail on September 24, 2018, and October 16, 2018. On March 1 and March 4, 2019, Respondent submit the sulfur dioxide modeling and an updated EAC for this plant.

**Facility #3 (Allied 74A, 0664005017)**

14. EU P901 (500 ton per hour portable counter flow drum asphalt plant) at the facility is the subject of these Orders. The terms and conditions of PTIO P0108959 for this facility establish a nitrogen oxide emissions limit of 0.026 lb/ton for EU P901.
15. On September 11, 12 and 13, 2018, Respondent conducted emissions testing at this facility. The results of the emissions test were 0.032 lb/ton which is an exceedance of the permit limits, and a violation of terms and conditions of PTIO P0108959 and ORC § 3704.05(C). By letter dated January 7, 2019, Ohio EPA notified Respondent of these violations.

16. The Director has given consideration to, and based her 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:

### **Facility #1 (Shelly 119, 0664005030)**

1. Not later than August 1, 2019, Respondent shall conduct performance tests for EU P901 while the EU is operating at or near its maximum capacity, unless otherwise specified or approved by the Ohio EPA, to demonstrate compliance with 40 CFR Part 60, Subpart I, using the following test methods:

Opacity, Method 9 of 40 CFR Part 60, Appendix A  
PE, Methods 1-5 of 40 CFR Part 60, Appendix A

2. No later than 30 days prior to the proposed test date(s), Respondent shall submit an "Intent to Test" notification to Ohio EPA. The "Intent to Test" notification shall describe in detail the proposed test methods and procedures, the EU operating parameters, the time(s) and date(s) of the test(s), and the person(s) who will be conducting the test(s). Failure to submit such notification for review and approval prior to the test(s) may result in the Ohio EPA or local air agency's refusal to accept the results of the emission test(s).
3. Within thirty (30) days of receipt of the stack test results for EU P901, Respondent shall submit a comprehensive written report on the results of the emissions test(s) which shall be signed by the person or persons responsible for the tests to Ohio EPA. If the stack test shows failing results, Respondent shall, within thirty (30) days of submittal of the test report, submit a detailed compliance plan to Ohio EPA which addresses the violation(s).

### **Penalty**

4. 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 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 fifteen thousand dollars (\$15,000). The official check shall be submitted to Carol Butler, 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

## **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, these obligations have been embedded in operation permits where appropriate, 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 purposes of these Orders, a responsible official is as defined in OAC Rule 3745-77-01 (JJ) and for a corporation it is a corporate officer who is in charge of a principal business function of 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, 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:

Ohio EPA  
Central District Office  
P.O. Box 1049  
Columbus, Ohio 43216-1049  
Attention: Kelly Toth

and:

Ohio EPA  
Southeast District Office  
2195 Front Street  
Logan, Ohio 43138  
Attention: Jessica Kuenzli

and:

Ohio EPA  
Division of Air Pollution Control  
P.O. Box 1049  
Columbus, Ohio 43216-1049  
Attention: Jim Kavalec

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 and all violations of ORC Chapter 3704 known to Ohio EPA or CDAQ up through the effective date of these Orders.

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

Laurie A. Stevenson  
Laurie A. Stevenson  
Director

6/10/19  
Date

**AGREED:**

The Shelly Company

Ty Nofziger  
Signature

May 31, 2019  
Date

Ty NOFZIGER, PRESIDENT  
Printed or Typed Name and Title

The Shelly Company