



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

March 23, 2020

**CERTIFIED MAIL**

Mr. David Bowers  
Bowers Asphalt & Paving, Inc.  
6157 Walbridge Road  
Walbridge, Ohio 45465

Re: Final Findings and Orders for air pollution  
violations

Dear Mr. Bowers,

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,

A handwritten signature in blue ink, appearing to read "Robert H. Haddad for".

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

ec: Kim Rhoads, Legal  
John Paulian, DAPC  
Melanie Ray, NWDO-DAPC  
Tan Tran, DAPC

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

**In the Matter of:**

**Bowers Asphalt & Paving, Inc.**  
**6157 Walbridge Road**  
**Walbridge, Ohio 45465**

:  
:  
:

**Director's Final Findings**  
**and Orders**

*I certify this to be a true and accurate copy of the original documents as filed in the records of the Ohio Environmental Protection Agency.*

**PREAMBLE**

It is agreed by the parties hereto as follows:

**I. JURISDICTION**

*Wally Miller*      Date: *3-23-20*

These Director's Final Findings and Orders ("Orders") are issued to Bowers Asphalt & Paving, 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 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 an asphalt facility (Facility ID#0387040084) located at 6157 Walbridge Road, in Walbridge, Ohio (Wood County). At this facility, among other emissions units, Respondent operates emissions unit ("EU") P901 which is the 175 TPH batch asphalt plant with baghouse. EU P901 was installed and began operation in March of 1987. The most current renewal permit to install and operate ("PTIO") P0124928, which contains EU P901, was issued on April 8, 2019.

2. ORC § 3704.05(C) states that no person who is a holder of a permit issued under ORC § 3704.03(F) or (G) shall violate any of its terms or conditions.

3. PTIO P0124928 required Respondent to conduct a stack test for EU P901 by July 1, 2019, as specified in the Term C1.f(1)(a) of the permit.

4. PTIO P0124928 Term C.1.e)(1) requires Respondent to submit quarterly deviation (excursion) reports for EU P901. The quarterly reports shall be submitted (postmarked) each year by the thirty-first of January (covering October to December), the thirtieth of April (covering January through March), the thirty-first of July (covering April to June), and thirty-first of October (covering July to September).

5. At the beginning of September of 2019, Ohio EPA, Northwest District Office ("NWDO") discovered that Respondent failed to conduct a stack test by July 1, 2019 for EU P901, in violation of the terms and conditions of PTIO P0124928 and ORC § 3704.05(C).

6. On September 16, 2019, Ohio EPA, NWDO sent a notice of violation ("NOV") letter to Respondent for the violation of the terms and conditions of PTIO P0124928 and ORC § 3704.05(C) as mentioned in Finding #5 for EU P901. In this NOV letter, Ohio EPA, NWDO requested Respondent to submit a compliance plan regarding stack testing for EU P901 within 14 days of receipt of the NOV letter.

7. On September 27, 2019, Respondent submitted a compliance plan in response to the September 16, 2019 NOV letter. In this response, Respondent stated that it would conduct the required stack test in spring of 2020 with a completion date of July 1, 2020.

8. At the beginning of September of 2019, Ohio EPA, NWDO conducted a file review of Respondent's facility. During this file review, NWDO discovered that Respondent failed to submit quarterly deviation reports for 4<sup>th</sup> Quarter of 2018, and 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Quarters of 2019 by the required deadlines as specified by its permit for EU P901, in violation of the terms and conditions of PTIO P0124928 and ORC § 3704.05(C).

9. On November 5, 2019, Ohio EPA, NWDO sent a NOV letter to Respondent for the violations of the terms and conditions of PTIO P0124928 and ORC § 3704.05(C) as mentioned in Finding #8. In this NOV letter, Ohio EPA, NWDO requested Respondent to submit the missing quarterly deviation reports within 14 days of receipt of the NOV letter.

10. On November 9, 2019, Respondent submitted to Ohio EPA, NWDO all the late quarterly deviation reports.

11. 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:

1. Respondent shall conduct the required stack test as specified in PTIO P0124928 for EU P901, as expeditiously as possible, but no later than June 1, 2020. Not later than thirty (30) prior to conducting the stack test, Respondent shall submit an Intent-to-Test notification ("ITT") to Ohio EPA, NWDO. A comprehensive written report on the results of the stack test shall be signed by the person or persons responsible for the test and submitted via eBusiness: Air Services within thirty (30) days following completion of the test. Respondent may request additional time for the submittal of the written report, where warranted, with prior approval from Ohio EPA.

2. Respondent shall pay the amount of six thousand dollars (\$6,000) 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 six thousand dollars (\$6,000) of the total amount. The official check shall be submitted to Carol Butler, or her successor, together with a letter identifying 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, 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 3745-33-03(F)(1) for a corporation, by 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  
Northwest District Office  
Air Pollution Control Division  
347 North Dunbridge Road  
Bowling Green, Ohio 43402-9398  
Attention: Tom Sattler

and to:

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

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 agree 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**

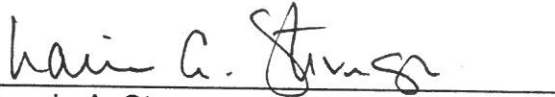
The effective date of these Orders is the date these Orders are entered into the Ohio EPA Director's journal.

**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**



Laurie A. Stevenson  
Director

3/  
Date

**AGREED:**

**Bowers Asphalt & Paving, Inc.**

  
Signature

3/18/20  
Date

David R. Bowers VICE PRESIDENT  
Printed or Typed Name