

IN THE COURT OF COMMON PLEAS
WASHINGTON COUNTY, OHIO

STATE OF OHIO, ex rel.
MICHAEL DEWINE
OHIO ATTORNEY GENERAL,

Plaintiff,

v.

MARIETTA INDUSTRIAL
ENTERPRISES, INC., et al.,

Defendants.

CASE NO. 10 OT 271

JUDGE BURNWORTH

PARTIAL CONSENT ORDER AND JUDGMENT ENTRY

Plaintiff, the State of Ohio, through its Attorney General ("Plaintiff" or "the State"), has filed the Complaint in this action against Defendants to enforce Ohio's air pollution control laws found in R.C. Chapter 3704 and rules adopted thereunder.

Plaintiff and Defendant Marietta Industrial Enterprises, Inc. now consent to the entry of this Consent Order and Judgment Entry.

This Partial Consent Order ("Order") provides final resolution of liability for violations of Ohio's air pollution control laws as alleged against that Defendant.

Therefore, upon the consent of the State of Ohio and Marietta Industrial Enterprises, Inc., it is hereby ORDERED, ADJUDGED, and DECREED as follows:

I. DEFINITIONS

1. As used in this Order, the following terms are defined:
 - a. "Ohio EPA" means the Ohio Environmental Protection Agency.

- b. "Defendant" means Marietta Industrial Enterprises, Inc., an Ohio Corporation with its principal place of business at 17943 State Route 7, Marietta, Ohio 45750.
- c. "Director" means the Director of the Ohio Environmental Protection Agency.
- d. "The parties" shall mean the State of Ohio and Marietta Industrial Enterprises, Inc..
- e. "Facility" means Defendant Marietta Industrial Enterprises, Inc.'s facility located on County Road 10, Warren Township, Washington County, Ohio.
- f. "Appendix" refers to a document that is attached to, and incorporated into, this Consent Order.
- g. "Appendix A" is the map and terms agreed to by the parties, which outlines the requirements to be incorporated into the Roadways Plan.
- h. "Roadways Plan" means the engineering design plan to be installed that addresses the proposed surfaces and traffic patterns of Emissions Unit F014, the paved and unpaved roadways, conforming to the specifications set forth in Appendix A.
- i. "Area" refers to a designated location as set forth in Appendix A and incorporated into the Roadways Plan.

II. JURISDICTION AND VENUE

2. The Court has jurisdiction over the parties and the subject matter of this case. The Complaint states a claim for which relief can be granted pursuant to R.C. Chapter 3704. Venue is



proper in this Court. Defendant shall not challenge the Court's jurisdiction to enter or enforce this Partial Consent Order.

III. PERSONS BOUND

3. The provisions of this Consent Order shall apply to and be binding upon Plaintiff and Defendant, and Defendant's agents, officers, employees, assigns, successors-in-interest, any person acting in concert, privity or participation with them and any purchaser of the Facility who receives actual notice of this Partial Consent Order whether by personal service or otherwise. Defendant is ordered and enjoined to provide a copy of this Partial Consent Order to each purchaser of the Facility.

4. If insolvency, bankruptcy, or other failure occurs and the Defendant continues to operate, Defendant is not relieved of its obligations to complete the injunctive relief required by Section V of this Order.

IV. SATISFACTION OF LAWSUIT AND RESERVATION OF RIGHTS

5. The Plaintiff alleges that Defendant is responsible for violations of the air pollution control laws of the State of Ohio under R.C. Chapter 3704. Defendant neither admits nor denies liability for the claims alleged in the State's Complaint. Compliance with this Partial Consent Order shall constitute full satisfaction of any civil liability of Defendant Marietta Industrial Enterprises, Inc. to Plaintiff for: 1) all claims of Plaintiff's Complaint, and 2) any violations alleged in existing notices of violation from Ohio EPA Division of Air Pollution Control up to the Court's entry of this Consent Order.

6. Except as provided in Paragraph 6, nothing in this Partial Consent Order, including the imposition of stipulated civil penalties for violations of this Partial Consent Order, shall limit the authority of the State of Ohio to:



- a. Seek any legal or equitable relief or civil penalties from Defendant or any other appropriate person for any claims or violations that occurred after filing the Complaint and are not alleged in the Complaint;
- b. Seek any legal or equitable relief or civil penalties from Defendant or any other appropriate person for claims or violations not alleged in the Complaint;
- c. Seek any legal or equitable relief or civil penalties from Defendant or any other appropriate person for claims or conditions that occur or exist after the entry of this Partial Consent Order;
- d. Enforce this Partial Consent Order through a contempt action or otherwise seek relief for violations of this Partial Consent Order; and/or
- e. Take any action authorized by law against any appropriate person, including Defendant, to eliminate or mitigate conditions at the Facility that may threaten public health or welfare or the environment.

7. This Partial Consent Order does not waive, abridge, settle, compromise, or otherwise impact any other claims in law or equity that the State of Ohio, or other persons may have against Defendant.

8. Except for the signatories to the Partial Consent Order, nothing in this Partial Consent Order shall constitute or be construed as satisfaction of civil liability, a covenant not to sue, and/or a release regarding the claims alleged, against any person not a signatory to this Partial Consent Order for any liability such non-signatories may have arising out of matters alleged in the Complaint. Plaintiff also specifically reserves its right to sue any entity that is not a signatory to this Partial Consent Order.

9. Nothing in this Partial Consent Order shall relieve Defendant of its obligations to

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comply with applicable federal, state, or local statutes, regulations, rules, or ordinances.

10. Defendant shall not assert and/or maintain, any defense or claim of waiver, *res judicata*, collateral estoppel, issue preclusion, claim splitting, or other defenses based on any contention that Plaintiff's claims in any subsequent judicial or administrative proceeding could or should have been brought in this case.

V. INJUNCTIVE RELIEF

11. Defendant is ordered and enjoined to fully comply with R.C. Chapter 3704 and the rules promulgated thereunder with respect to all air contaminant sources at the Facility.

12. Defendant is ordered and enjoined to comply with all terms and conditions of the Permits-to-Install, Permits-to-Operate, Permits-to-Install-and-Operate, and Title V Permits that have been issued or may be issued to it in the future, including modifications and renewals thereof.

13. Defendant is ordered to comply with the emissions limitations and control measures identified in Title V Permit No. P0090973, any active Permit-to-Install governing Emissions Unit F014, the paved and unpaved roadways, and any properly adopted revisions, renewals, or amendments to these permits.

14. Defendant is ordered to hire an engineer to prepare a Roadways Plan for Emissions Unit F014, the paved and unpaved roadways, and detail the applicable engineering standards, materials to be used, and cost to complete the paving to conform to the specifications set forth in Appendix A. Defendant agrees to hire a qualified firm of civil engineers ("Paving Consultant"). Defendant will complete the paving pursuant to the Paving Consultant's guidelines and recommendations on the schedule set forth herein, and pursuant to the terms and with the type of surfacing specified in Appendix A. The Paving Consultant will develop a timeline, as



outlined in Appendix A, to complete the work under the Roadways Plan in three equal phases, based on the total estimated cost of the Roadways Plan: Phase One must be complete by September 30, 2016, Phase Two must be complete by September 30, 2017, and Phase Three must be complete by September 30, 2018.

15. The parties agree that the Roadways Plan is subject to approval from Washington County Engineer. The parties agree that within thirty (30) days following the date of this Order both parties will jointly approach the Washington County Engineer to discuss the Roadways Plan.

16. The parties agree that completion of the Roadways Plan is subject to approval by Ohio EPA Division of Surface Water.

17. If there are any violations of the deadlines contained in the Roadways Plan with relation to Area J, Defendant shall not install any new storage piles, add material to any existing piles, or load material on roadways in Area J until the roads in that area meets the requirements in the Roadways Plan.

18. If there are any violations of the deadlines contained in the Roadways Plan with relation to Areas A, B, or L, Defendant shall not install any new storage piles, or add material to any existing piles until the roads in Areas A, B, and L meet the requirements in the Roadways Plan.

19. Defendant is ordered to comply with the emissions limitations and control measures identified in the Title V Permit No. P0090973, any active Permit-to-Install governing the #1 loading station, Emissions Unit F024, and any properly adopted revisions, renewals, or amendments to these permits, by ensuring control measures are in place and installing a baghouse. Defendant will complete construction and installation of the loading station and

baghouse of Emissions Unit F024, to be located between MIE Building #3 and Building #4, by December 31, 2015. If necessary, Defendant will file with Ohio EPA an administrative permit amendment application for Permit-to-Install 06-5817 at least 30 days prior to installation of the baghouse to ensure the permit accurately reflects the newly installed baghouse specifications. Defendant will notify Ohio EPA at least 30 days prior to operating the unit.

20. Defendant shall conduct emission testing for Emissions Unit F024 within three months after start-up of the newly installed baghouse, in accordance with the requirements in Title V Permit No. P0090973.

21. If the loading station and baghouse of Emissions Unit F024 are not fully installed by December 31, 2015, Defendant shall not load or unload any bulk materials from Area Q until the loading station and baghouse are fully installed.

22. Defendant is ordered to comply with emissions limitations identified in Title V Permit No. P0090973, any active Permit-to-Install governing the storage piles of Emissions Unit F016, and any properly adopted revisions, renewals or amendments to these permits. Defendant will file with Ohio EPA an administrative permit amendment application for Permit-to-Install 06-4681 to request the modifications identified in Appendix B within 30 days of entry of this Order. Ohio EPA will process the application in accordance with Ohio Administrative Code requirements. Plaintiff and Defendant agree that Defendant will comply with the agreed-upon control measures identified in the modified Permit.

23. Defendant is ordered to comply with the emissions limitations identified in Title V Permit No. P0090973, any active Permit-to-Install governing the portable conveying system of Emissions Unit F020, and any properly adopted revisions, renewals or amendments to these permits. Defendant will file with Ohio EPA an administrative permit amendment application for



Permit-to-Install PTI 06-5655 to request the modifications identified in Appendix C within 30 days of entry of this Order. Ohio EPA will process the application in accordance with Ohio Administrative Code requirements. Defendant shall employ best available control measures on the portable conveying system for the purpose of ensuring compliance with the above-mentioned applicable requirements. In accordance with Defendant's permit application, when the material processed does not contain sufficient inherent moisture, Defendant shall operate and maintain water spray bars and apply water at a rate sufficient to ensure compliance. The application of water will not be required when the material processed contains sufficient inherent moisture to ensure compliance. Nothing in this paragraph shall prohibit Defendant from employing additional control measures to ensure compliance.

24. In any action by Plaintiff to enforce any provision of this Order, Defendant may raise that it is entitled to a defense that its conduct was caused by reasons entirely beyond its control such as, by way of example and not limitations, acts of God, strikes, acts of war or civil disturbances. While Plaintiff does not agree that such a defense exists, it is, however, hereby agreed upon by Defendant and Plaintiff that it is premature at this time to raise and adjudicate the existence of such a defense and that the appropriate time at which to adjudicate the existence of such a defense is when an enforcement action, if any, is commenced by the Plaintiff. If such action is commenced, Defendant shall bear the burden of proving that any delay was caused by circumstances entirely beyond its control. Unanticipated or increased costs associated with the implementation of any requirement of this Consent Order, or changed financial circumstances, shall not constitute circumstances entirely beyond the control of Defendant or serve as a basis for an extension of time under this Consent Order. Acceptance of this Order with this potential



force majeure clause does not constitute a waiver by Defendant of any rights or defenses it may have under applicable law.

VI. CIVIL PENALTY

25. Pursuant to and in accordance with R.C. 3704.06, Marietta Industrial Enterprises, Inc. agrees and is ordered and enjoined to pay a total civil penalty of Twenty Four Thousand Dollars (\$24,000.00) over two years.

26. The first penalty payment of Eight Thousand Dollars (\$8,000.00) shall be delivered to the State as described in paragraph 27 within eight months of entry of this Consent Order. The second penalty payment of Eight Thousand Dollars (\$8,000.00) shall be delivered to the State as described in paragraph 27 within sixteen months of entry of this Consent Order. The third penalty payment of Eight Thousand Dollars (\$8,000.00) shall be delivered to the State as described in paragraph 27 within twenty four months of entry of this Consent Order.

27. The penalty payments shall be made by a certified check for the amount as stated above, payable to the order of "Treasurer, State of Ohio" of this Consent Order to Scott Hainer, Paralegal, at the Office of the Attorney General of Ohio, Environmental Enforcement Section, 30 East Broad Street, 25th Floor, Columbus, Ohio 43215. The memorandum portion of the check, or some other prominent location on the transmittal letter or documentation, shall include a reference to "A.G. EAGO No. 370994."

28. The payment(s) made by Defendant shall be credited by Ohio EPA to its accounts in the following fashion: Four Thousand and Eight Hundred Dollars (\$4,800.00) shall be credited to Ohio EPA's Clean Diesel School Bus Fund in accordance with R.C. 3704.114, and Nineteen Thousand, Two Hundred Dollars (\$19,200.00) shall be credited to the environmental



education fund and the air pollution control administration fund in accordance with R.C. 3704.06.

29. In the event that Defendant fails to comply with any requirement or deadline contained in Paragraphs 25-26 above, all remaining payments owed by Defendant shall become due and owing immediately, plus the interest as set forth in R.C. 131.03(D), at the maximum statutory rate established under R.C. 5703.47 calculated from the Effective Date of this Order.

30. The State reserves the right to file a certificate of judgment lien against Defendant for the remaining unpaid balance of the total civil penalty, plus applicable interest per Paragraph 29 above, if the full payment is not paid according to the schedule in Paragraphs 25-27 above. Defendant shall not be permitted to claim a force majeure as an excuse for any untimely payment or partial payment of an amount less than that specified in Paragraphs 25-27.

VII. STIPULATED PENALTIES

31. In the event that Defendant violates any requirement contained in Section V, Injunctive Relief, and Section VI, Civil Penalty, in this Order, the stipulated penalties contained herein shall apply for the purpose of coercing compliance. Defendant is liable for and shall immediately pay stipulated penalties without demand or notice by the State of Ohio in accordance with the following schedule for each failure to comply:

- a. For each day of each failure to comply with any requirement or deadline of this Partial Consent Order, with the exception of those failures addressed in paragraphs "d" and "e" below, up to and including the first thirty (30) days of each failure, Five Hundred Dollars (\$500) per day for each requirement or deadline not met.

- b. For each day of each failure to comply with a requirement or deadline of this Partial Consent Order, with the exception of those failures addressed in paragraphs “d” and “e” below, for days thirty-one (31) to sixty (60) days of each failure, Seven Hundred and Fifty Dollars (\$750.00) per day for each requirement or deadline not met.
- c. For each day of each failure to comply with a requirement or deadline of this Partial Consent Order, with the exception of those failures addressed in paragraphs “d” and “e” below, for each day over sixty (60) days of each failure, One Thousand Dollars (\$1,000.00) per day for each requirement or deadline not met.
- d. If Defendant fails to complete at least one-third of the Roadways Plan by September 30, 2016, at least two-thirds of the Roadways Plan by September 30, 2017, or the entire Roadways Plan by September 30, 2018, the Defendant shall be liable for Seven Hundred and Fifty Dollars (\$750.00) per day until the required portion of the Roadways Plan is complete.
- e. For any open burning in violation of Ohio Adm.Code Chapter 3745-19, Defendant shall be liable for Two Thousand, Five Hundred Dollars (\$2,500.00) for each day of each violation.

32. Any payment required to be made under the provisions of this Section of the Consent Order shall be made by delivering to Plaintiff, c/o Scott Hainer, Paralegal, or his successor at the Office of the Attorney General of Ohio, Environmental Enforcement Section, 30



East Broad Street, 25th Floor, Columbus, Ohio 43215, a certified check or checks made payable to the order of "Treasurer, State of Ohio," for the appropriate amount within thirty (30) days from the date of the failure to meet the requirement or deadline of this Partial Consent Order or violation of R.C. 3704. The memo portion of the check, or some other prominent location on the transmittal letter or documentation, shall include a reference to "A.G. EAGO No. 370994." The payment of the stipulated penalty shall be accompanied by a letter briefly describing the type of violation, deadline or requirement not met, and the date upon which the violation of this Partial Consent Order occurred. A copy of the letter shall also be delivered to Ohio EPA Southeast District Office, c/o Christina Wieg, 2195 Front Street, Logan, Ohio 43138.

33. Defendant's payment and Plaintiff's acceptance of such stipulated penalties under this Section shall not be construed to limit Plaintiff's authority, without exception, to seek: 1) additional relief under R.C. Chapter 3704, including civil penalties under R.C. 3704.06; 2) judicial enforcement of this Order for the same violations for which a stipulated penalty was paid; or 3) sanctions for additional remedies, civil, criminal, or administrative, for violations of applicable laws, or for the same violation for which a stipulated penalty was paid or for other violations.

VIII. COMPLIANCE NOT DEPENDENT ON GRANTS OR LOANS

34. Performance of the terms of this Consent Order by Defendant is not conditioned on the receipt of any private, federal or state grants, loans, and/or funds. In addition, Defendant's performance is not excused by failing to obtain or any shortfall of any private, federal or state grants, loans and/or funds or by the processing of any applications for the same.

IX. EFFECT OF CONSENT ORDER



35. This Partial Consent Order does not constitute authorization or approval of the construction, installation, modification, or operation of any air contaminant source, source operation, or any building, structure, facility, facility component, operation, installation, disposal or storage site, other physical facility, or real or personal property that emits or may emit any air pollutant or air contaminant not previously approved by Ohio EPA, under the Clean Air Act, or by a permitting authority or its delegates. Approval for any such construction, installation, modification, or operation shall be by permit issued by Ohio EPA or other such permits as may be required by applicable federal, state, or local laws, rules or regulations.

X. MISCELLANEOUS

36. Nothing in this Partial Consent Order shall affect Defendant's obligation to comply with all applicable federal, state or local laws, regulations, rules, ordinances, or orders.

37. Any acceptance by the State of Ohio of any payment, document, or other work due subsequent to the time that the obligation is due under this Partial Consent Order shall not relieve Defendant from the obligations created by this Partial Consent Order.

38. Marietta Industrial Enterprises, Inc. shall inform Ohio EPA of any change in Registered Agents' address and business addresses or telephone numbers, or the cessation of the business that is the subject of this action.

XI. COURT COSTS

39. Defendant shall pay the court costs of this action up to the Effective Date of this Partial Consent Order.

XII. EFFECTIVE DATE

40. This Partial Consent Order shall be effective upon the date of its entry by the Court.



XIII. RETENTION OF JURISDICTION

41. The Court will retain jurisdiction of this action for purposes of enforcing this Partial Consent Order.

XIV. SIGNATORIES

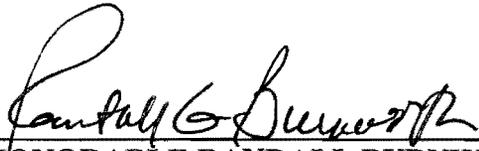
42. Each signatory represents and warrants he has been duly authorized to sign this document and is fully authorized to agree to its terms and conditions, and, in the case of a person signing on behalf of a corporate entity, may so legally bind the corporate entity to all terms and conditions in this document.

XV. ENTRY OF CONSENT ORDER AND JUDGMENT BY CLERK

43. Pursuant to Civ.R. 58, upon signing of this Partial Consent Order by the Court, the Clerk is directed to enter it upon the journal. Within three days of entering the judgment upon the journal, the Clerk is directed to serve upon all parties, notice of the judgment and its date of entry upon the journal in the manner prescribed by Civ.R. 5(B) and note the service in the appearance docket. The failure of the Clerk to serve notice does not affect the validity of this Partial Consent Order.

IT IS SO ORDERED.

7-22-15
DATE



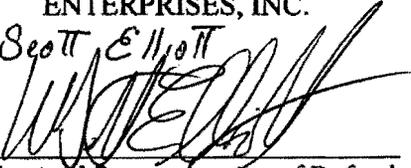
HONORABLE RANDALL BURNWORTH
Judge, Washington County Court of Common Pleas

**THE CLERK IS DIRECTED TO SERVE ALL
INTERESTED PARTIES AND ATTORNEYS A
COPY OF THIS FINAL APPEALABLE JUDGMENT**

APPROVED:

MARIETTA INDUSTRIAL
ENTERPRISES, INC.

W. Scott Elliott


Authorized Representative of Defendant



RICHARD L. LEWIS, II (0047378)

Steptoe & Johnson PLLC

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Charleston, WV 25326

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Counsel for Defendant

MICHAEL DEWINE
OHIO ATTORNEY GENERAL



SARAH BLOOM ANDERSON (0082817)

ELIZABETH R. EWING (0089810)

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Assistant Attorney General

Environmental Enforcement Section

30 East Broad Street, 25th Floor

Columbus, OH 43215

Telephone: (614) 466-2766

Facsimile: (614) 644-1926

Counsel for Plaintiff, the State of Ohio

APPENDIX A
To the Consent Order between the State of Ohio and Marietta
Industrial Enterprises, Inc.

This Appendix A is intended to supplement, not supplant, Marietta Industrial Enterprises, Inc.'s obligations to comply with Ohio Adm.Code Chapter 3745-17 and the conditions of its Title V Permit and current Permit-to-Install for Emissions Unit, F014, the paved and unpaved roadways.

The attached map contains a complete, facility-wide representation of all interior and exterior roadways at Marietta Industrial Enterprises, Inc.'s facility. The attached map is fully incorporated into Appendix A. Any changes to Appendix A, including the map, must be approved in writing by Ohio EPA, which approval shall not be unreasonably withheld.

MIE will hire Pickering Associates ("Paving Consultant") to put together a plan that will detail the applicable engineering standards, materials to be used, and cost to complete the paving. Pickering Associates is a qualified firm of civil engineers located in Parkersburg, West Virginia.

The cost proposal shall break down the estimated costs by the designated Areas on the attached map. MIE will share the costs estimates with Ohio EPA, and MIE will consider input from Ohio EPA in determining the priority of the areas to be complete.

MIE will complete the paving pursuant to the Paving Consultant's guidelines and recommendations. All surfaces are subject to approval though analysis by the Paving Consultant that the surface in question can support the proposed traffic. In regard to the areas described in 5.a. or 5.d. below, if the Paving Consultant determines that the surface as described in this document cannot support the proposed traffic, an alternative surface that is capable of being swept by a street sweeper must be used.

1. **Set-back requirement for Storage Piles.** All storage piles shall be at least 25 feet from any public roadway. All Storage Piles shall be at least 10 feet from any interior roadway.
2. **Traffic Flow.** All vehicle traffic must travel in the direction of the arrows that are designated on the attached map.
3. **Barriers.** For purposes of this Appendix, "barrier" shall mean a concrete barrier, minimum 24 inches tall, commonly called a "Jersey Barrier." Except as provided below, the barriers shall not be moved. If MIE needs to move barriers, the following procedure shall be used:
 - a. MIE shall notify Ohio EPA prior to moving any barriers.
 - b. For barriers that are intended to be moved for 7 days or less, no approval will be necessary. The barriers shall be returned to their original location within the

noticed timeframe. If barriers are unable to be returned to their original location within the noticed timeframe, MIE shall seek approval from Ohio EPA, pursuant to Paragraph 2.c. or 2.d. below, within 12 hours upon discovering additional time is necessary and provide the reason for additional time and an estimate time for return to the original location.

- c. For barriers that are intended to be moved for a period of 8-30 days, Ohio EPA will need to approve the moving of the barriers. Ohio EPA will respond with its decision within 7 days of receiving a request to move the barriers. The barriers shall be returned to their original location within the noticed and approved timeframe.
- d. For barriers that are intended to be moved for a period of 31 days or longer, Ohio EPA will need to approve the moving of the barriers.

4. **Maintenance of Roadways.** All roadways shall be maintained in a state of good repair. By April 30th of each calendar year, MIE shall inspect all roadways and document any areas that are in disrepair. The roadways in disrepair shall be repaired by December 31st of that same calendar year.

MIE shall keep records of all inspections which shall document the date and time of the inspection and the current state of all roadways. Any areas of disrepair shall be documented with the exact location and a detailed description of the condition of the roadways. MIE shall keep records of all repairs conducted on the roadways, which shall include the date, location, and a detailed description of the work performed.

5. **Type of Surface.** All roadways shall be maintained as indicated on the attached map.
 - a. All areas shaded in Green shall be a chipseal surface. These surfaces shall be maintained in a condition that allows the surface to be swept by a street sweeper. For purposes of this Appendix A, "chipseal" means a surface that is comprised of layers of asphalt and small aggregate.
 - b. All areas shaded in Yellow shall be a concrete surface. These surfaces shall be maintained in a condition that allows the surface to be swept by a street sweeper.
 - c. All areas shaded in Orange are proposed concrete surfaces and shall be maintained as concrete surfaces. These surfaces shall be maintained in a condition that allows the surface to be swept by a street sweeper.
 - d. All roadways shaded in Blue shall be an aggregate surface. These aggregate roadways shall be watered as necessary to control emissions. For purposes of this Appendix A, "aggregate surface" means virgin, quarried aggregate, or its equivalent. Any non-virgin aggregate must be approved in advance of installation by Ohio EPA.
 - e. All roadways shaded in Purple are proposed aggregate roadways and shall be maintained as aggregate surfaces. These aggregate roadways shall be watered as necessary to control emissions. For purposes of this Appendix A, "aggregate surface" means virgin quarried aggregate or its equivalent. Any non-virgin aggregate must be approved in advance of installation by Ohio EPA.

- f. All areas shaded in Pink are proposed asphalt surfaces and shall be maintained as asphalt surfaces. These surfaces shall be maintained in a condition that allows the surface to be swept by a street sweeper.
6. **Timeline for completion.** The roadways plan will be completed in three phases. Phase One will constitute at least 33% of the work under the roadways plan, based on the total estimated cost of the roadways plan, and shall include the installation of all barriers on all existing roadways. Phase One shall be completed by September 30, 2016. Phase Two shall constitute at least an additional 33% of the work under the roadways plan, based on the total estimated cost of the roadways plan. Phase Two shall be completed by September 30, 2017. Phase Three will constitute all the remaining portions of roadways plan and shall be completed by September 30, 2018.
7. **Specific Areas.** The following areas correspond to the specific labeled areas on the attached map:
- a. **Area A:** This interior roadway shall be paved with chipseal surface, except in such areas that the Paving Consultant recommends asphalt.
- b. **Area B:** This interior roadway shall be an aggregate surface. There shall be a concrete bib providing access to County Road 3. This concrete Bib shall be at least 30 feet wide and shall be at least 30 feet deep. Barriers shall line the Eastern portion of the roadway. The barriers shall be no more than 20 feet apart, with a chain between them. There will be a single entrance, up to 40 feet wide, into the storage pile area immediately East of this roadway.
- c. **Area C:** This is a concrete bib providing access to County Road 3. This concrete Bib shall be at least 30 feet wide and shall be at least 30 feet deep. Barriers shall align the county roadway from Area C to Area D to prevent vehicles from pulling off the county road. These barriers shall be no more than 10 feet apart. These barriers are subject to the approval of the Washington County Engineer.
- d. **Area D:** This curved area adjacent to County Road 3 and County Road 10 extends from Area C to Area S. Barriers shall line the roadway in this location with the exception of a 30 feet wide opening to allow entrance to Building B. The entire entrance driveway to Building B, from County Road 10 to the building, shall be paved with concrete. The barriers shall be no more than 10 feet apart. These barriers are subject to the approval of the Washington County Engineer. In the event that barriers are not approved by the County, this area shall be paved with a chipseal surface.
- e. **Area E:** This area is directly East of County Road 10 and includes the areas around the coal loading station and the truck scales. This area shall be paved with a chipseal surface.

- f. **Area F:** This area is directly East of County Road 10 and includes the areas on both sides of the truck scales. This area shall be paved concrete bibs, at least 30 feet in depth on both ends of the scales.
- g. **Area G:** This interior roadway shall be an aggregate surface.
- h. **Area H:** This interior roadway shall be an aggregate surface. Barriers shall line the Eastern portion of the roadway. The barriers shall be no more than 20 feet apart, with a chain between them. There will be a two entrances, up to 40 feet wide, into the storage pile area immediately East of this roadway.
- i. **Area I:** This is a concrete bib providing access to County Road 10. This concrete bib shall be at least 30 feet wide and shall be at least 30 feet deep. MIE shall designate Area I for one-way use. "One way" signs shall be installed to direct truck traffic to only enter the facility through Area I and exit the facility through Area O. Passenger vehicles and equipment may enter and exit at Area I.
- j. **Area J:** These are interior roadways and shall be maintained with a chipseal surface. Barriers shall line the Western side of the Eastern portion of this area. Barriers shall line the Eastern side of the Western portion of this area. The barriers shall be no more than 20 feet apart, with a chain between them. There may be up to two entrances and exits in each the Eastern and Western roadways of Area J – up to 40 feet wide, into the storage pile area between the Eastern and Western portions of the roadway. The maximum number of entrances will be two and the maximum number of exits will be two. Trucks will not be loaded or unloaded on these roadways.
- k. **Area K:** This is an interior roadway that extends from County Road 10 to the interior roadway of Area H, and is one of the designated entrances for Area H: The roadway shall be aggregate. There will be one 40 foot wide entrance to be paved with a concrete bib providing access to County Road 10. The concrete bib shall be at least 40 feet wide and shall be at least 30 feet deep. Barriers will line both sides of the 40 foot entrance to Area K for a distance of no less than 20 feet. The barriers lining the entrance to Area K shall be no more than 5 feet apart. Barriers, no more than 5 feet apart, must line County Road 10 except for the one 40 foot wide entrance. Trucks used for the coal load-out station, Emissions Unit F029, cannot use Area K.
- l. **Area L:** This area, including the truck scales, is on the Southern portion of the facility. This area shall be paved with chipseal. Concrete bibs at least 30 feet deep shall be maintained on both sides of the truck scales.
- m. **Area M:** This is an unused roadway adjacent to Ohio Route 7 in the Southern portion of the facility. This area is not to be used as a roadway. It shall be blocked off with barriers on both ends of the unused existing roadway so that no traffic may access this area.

- n. **Area N:** This is an area immediately Northwest of the intersection between Area I and County Road 10. This area shall be barricaded with a line of barriers, running parallel to County Road 10, that is 30 to 35 feet from County Road 10, so that no trucks may enter or exit the area directly from (or to) County Road 10. There shall be no more than 6 feet between the barriers.
- o. **Area O:** This concrete bib provides access to County Road 10. This concrete bib shall be at least 30 feet wide and at least 30 feet deep.
- p. **Area P:** These are unused roadways in the Northwest corner of the facility. These areas are not to be used as roadways. They shall be blocked off with barriers on both ends of the unused existing roadways so that no traffic may access these areas.
- q. **Area Q:** This is an area in the center of the facility and includes the areas around and between the buildings. This area shall be paved and maintained as concrete. The concrete shall extend all the way to County Road 10. Any storage piles in this area, with the exception of storage piles inside of buildings, shall be set off with barriers.
- r. **Area R:** This area is at the Northern end of the facility and includes the interior roadways associated Manganese Milling operation. These roadways shall be maintained as concrete or asphalt.
- s. **Area S:** This interior roadway will connect County Road 10 with the interior haul road delineated as "H". This interior roadway shall be paved with chipseal surface. There will be a concrete bib providing access to County Road 10. This concrete bib shall be at least 30 feet wide and shall be at least 30 feet deep.
- t. **Area T:** This area is directly south of County Road 3, and includes the areas on both sides of a new truck scale, yet to be installed. There will be a concrete bib at each end of this road way providing access to County Road 3. These concrete bibs shall be at least 30 feet in length, and sized in width to accommodate truck traffic. The roadway between the bibs and the scale shall be Chip sealed. There shall be concrete areas at each end of the truck scale in conformance with County and state specifications.
- u. **Area U:** This area is proposed to be an asphalt surface. The asphalt shall extend from the existing concrete to County Road 10. The asphalt surface shall be as wide as the building.

Appendix B

The following terms shall be added to the PTI for the storage piles of emissions unit F016.

Additional Terms and Conditions:

The permittee shall employ reasonably available control measures for wind erosion from the surfaces of all storage piles for the purpose of ensuring compliance with the above-mentioned applicable requirements. In accordance with the application, the permittee has committed to perform one or more of the following: (chemical stabilization, watering/sprinkling systems/hoses, covering the storage piles) to ensure compliance. Permittee is to decide which specific type of control measure(s) is(are) to be employed to ensure compliance. Nothing in this paragraph shall prohibit the permittee from employing other control measures to ensure compliance.

Appendix C

The following terms shall be added to the PTI for the portable conveyor, emissions unit F020.

Additional Terms and Conditions:

The permittee shall employ best available control measures on the portable conveying system for the purpose of ensuring compliance with the above-mentioned applicable requirements. In accordance with the permittee's permit application, when the material processed does not contain sufficient inherent moisture, the permittee shall operate and maintain water spray bars and apply water at a rate sufficient to ensure compliance. The application of water will not be required when the material processed contains sufficient inherent moisture to ensure compliance. Nothing in this paragraph shall prohibit the permittee from employing additional control measures to ensure compliance.

Monitoring and/or Record Keeping Requirements:

The permittee shall maintain a record for each day of operation indicating the type of material processed and the type of control measures used (i.e. water spray bars or inherent moisture content of material).

IN THE COURT OF COMMON PLEAS
GENERAL DIVISION – WASHINGTON COUNTY
205 PUTNAM STREET
MARIETTA, OH 45750

OHIO STATE OF vs. MARIETTA INDUSTRIAL ENTERPRISES INC et al

To: ATTY CAMERON F SIMMONS
ENVIRONMENTAL ENFORCEMENT SECTION
30 EAST BROAD ST 25TH FL
COLUMBUS OH 43215

CASE NO. 100T000271
JUDGE: RANDALL G BURNWORTH

NOTICE OF FILING ON 7/22/15
YOU ARE HEREBY NOTIFIED A THAT A
COURT ORDER WAS FILED IN COURT OF
COMMON PLEAS.

COURT ORDER FILED
7/22/15

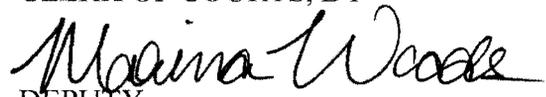
YOU MAY WISH TO CHECK THIS ENTRY AS
IT MAY BE AN APPEALABLE ORDER.

APPELLATE RULE 4A & B PROVIDES THAT
NOTICE OF APPEAL SHALL BE FILED WITH
THE CLERK OF THE TRIAL COURT WITHIN
30 DAYS OF THE DATE OF THE ENTRY OF
THE JUDGMENT OR ORDER APPEALED FROM.

YOU MAY WISH TO CHECK
THIS ENTRY AS IT MAY
BE AN APPEALABLE ORDER

SUPREME COURT OF OHIO HAS HELD THAT
WITHIN THREE (3) DAYS OF THE ENTRY OF
ANY FINAL APPEALABLE JUDGMENT OR
ORDER, THE CLERK OF COURTS SHALL
SERVE A NOTICE OF THE ENTRY IN ANY
MANNER PROVIDED IN CIVIL RULE 5, UPON
EVERY PARTY WHO IS NOT IN DEFAULT
FOR FAILURE TO APPEAR.

BRENDA L WOLFE
CLERK OF COURTS, BY


DEPUTY

DATED: 7/23/15

ORIGINAL NOTICE TO:
ATTY EDWARD L KROPP
ATTY CHRISTINA E GRASSESCHI
ATTY ELIZABETH R EWING
ATTY RICHARD L LEWIS II
ATTY WHITNIE PENN KROPP
ATTY SARAH BLOOM ANDERSON