

BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY

OHIO E.P.A.

DEC 20 2005

ENTERED DIRECTOR'S JOURNAL

In the Matter of:

All Ohio Landscaping, Inc.	:	<u>Director's Final Findings</u>
2636 Brecksville Road	:	<u>and Orders</u>
Richfield, Ohio 44286	:	

PREAMBLE

It is agreed by the parties hereto as follows:

I. JURISDICTION

These Director's Final Findings and Orders ("Orders") are issued to All Ohio Landscaping, 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 facility as hereafter 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 has determined the following findings:

1. Respondent owns and operates a mulch production facility located at 5649 Akron-Cleveland Road, Boston Township, Summit County, Ohio.
2. At the above-referenced facility, Respondent owned or owns and operated or operates emissions units that are identified in the table below:

Director's Final Findings and Orders
All Ohio Landscaping, Inc.
 Page 2 of 7

<u>EMISSIONS UNIT DESCRIPTION</u>	<u>EMISSIONS UNIT NUMBER</u>	<u>INSTALLATION/INITIAL OPERATION DATE</u>
Duratech HD-10 400 horsepower grinder	P901	February 2001
Mulch Transfer Points (associated with P901)	F001	February 2001
Storage Piles (associated with P901)	F002	February 2001
Roadways and Parking Areas (associated with P901)	F003	February 2001
500 horsepower Gruendler Horizontal Grinder	unassigned state ID hereinafter "X001"	June 27, 2003 (date equipment was first seen on site)
Shearer	unassigned state ID hereinafter "X002"	May 24, 2005 (date equipment was first seen on site)

3. Emissions units F001, F002, F003, P901, X001 and X002 are (were) "air contaminant sources" as defined in Ohio Administrative Code ("OAC") Rules 3745-15-01(C) and (W), 3745-31-01(I), and 3745-35-01(B)(1), and ORC § 3704.01(C).

4. OAC Rule 3745-31-02 prohibits any person from installing an air contaminant source unless a Permit to Install ("PTI") has been applied for and obtained, except as provided by rule or law.

5. OAC Rule 3745-35-02 prohibits any person from operating an air contaminant source unless a Permit to Operate ("PTO") has been applied for and obtained, except as provided by rule or law.

6. OAC Rule 3745-31-05(A)(3) requires, in part, the Director of Ohio EPA to issue a PTI to an applicant desiring to install a new source of air contaminants if he determines that operation of the new source will employ Best Available Technology ("BAT") as defined in OAC Rule 3745-31-01(M).

7. OAC Rule 3745-15-07(A) prohibits, in part, any person from causing a public nuisance by emitting excessive fugitive dust.

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

Director's Final Findings and Orders
All Ohio Landscaping, Inc.
Page 3 of 7

9. On February 14, 2001, Ohio EPA issued the PTI #16-02107 to Respondent for emissions units P901, F001, F002 and F003.

10. Between July 26 and August 16, 2001, Respondent removed emissions unit P901 from its facility.

11. Between August 2001 and June 2003, the Akron Regional Air Quality Management District ("ARAQMD"), a contractual representative of Ohio EPA in Summit County, documented its observations of more than one grinder being employed at Respondent's facility. Specifically, ARAQMD observed the presence of two horizontal grinders on site on April 16, 2003 and a Gruendler Trex horizontal grinder on June 27 and August 25, 2003. However, according to ARAQMD, these grinders were generally removed from the site shortly after each installation.

12. On April 17, 2003, ARAQMD sent a notice of violation ("NOV") to Respondent regarding the presence of the two horizontal grinders that were observed on April 16, 2003. Attached to this NOV were the permit applications that the ARAQMD requested Respondent to complete and submit. There was no response from Respondent regarding this request. ?

13. On July 20, 2001; August 16, 2001; August 20, 2001; July 24, 2002; July 30, 2002; and May 8, 2003, ARAQMD visited the facility and documented that best available technology ("BAT") (i.e., applying water as required by PTI #16-02107 and pursuant to OAC Rule 3745-31-05(A)(3)) was not being employed during Respondent's grinding operation, in violation of ORC § 3704.05(C) and the terms and conditions of the PTI that was issued for emissions unit P901.

14. On August 23, 2001, ARAQMD sent a warning letter by certified mail to Respondent for the violations of BAT that were observed on July 20 and August 16, 2001. In this letter, ARAQMD requested Respondent to submit a plan for correction of the violations. There was no response from Respondent regarding this request. ?

15. From October 2, 2000 through 2003, there were eighteen (18) citizen dust complaints against Respondent's operations, which interfered with citizens' comfortable enjoyment of their properties and created air pollution nuisances, in violation of OAC Rule 3745-15-07 and ORC § 3704.05(G).

16. On June 27, 2003, a representative of ARAQMD inspected Respondent's facility. During this inspection, ARAQMD observed that emissions unit X001 had been installed sometime prior to this inspection and that emissions unit X001 was in operation. Since there was no PTI applied for and obtained prior to installation of emissions unit X001, Respondent was in violation of OAC Rule 3745-31-02 and ORC § 3704.05(G). In addition, since there was no PTO applied for and obtained, Respondent was in violation of OAC Rule 3745-35-02 and ORC § 3704.05(G).

Director's Final Findings and Orders
All Ohio Landscaping, Inc.
Page 4 of 7

17. On May 24, 2005, ARAQMD conducted a follow-up visit to Respondent's facility and documented that emissions unit X001 was still in operation. In addition, ARAQMD documented that emissions unit X002 had been installed sometime prior to this inspection. Since there was no PTI or PTO applied for and obtained for this emissions unit, Respondent was in violation of OAC Rules 3745-31-02 and 3745-35-02, respectively. This violation also constituted a violation of ORC § 3704.05(G).

18. As of July 2005, ARAQMD informed Ohio EPA that emissions units X001 and X002 were still in operation at Respondent's facility.

19. 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 to be derived from such compliance.

V. ORDERS

The Director hereby issues the following Orders:

1. By not later than February 1, 2006, Respondent shall submit to Ohio EPA complete and approvable PTI and PTO applications for emissions units X001 and X002.

2. Respondent shall maintain compliance with OAC Rule 3745-15-07(A) and the terms and conditions of PTI # 16-02107.

3. Pursuant to ORC § 3704.06, Respondent is assessed a civil penalty in the amount of seventeen thousand dollars (\$17,000) in settlement of Ohio EPA's claim for civil penalties. Respondent shall pay to Ohio EPA the amount of thirteen thousand and six hundred dollars (\$13,600) of the penalty. In lieu of paying the remaining three thousand and four hundred dollars (\$3,400) of the civil penalty, Respondent shall fund a Supplemental Environmental Project ("SEP") by making a contribution in the amount of \$3,400 to Ohio EPA's Clean Diesel School Bus Fund (Fund 5CD). Respondent shall pay the thirteen thousand and six hundred dollars (\$13,600) to Ohio EPA and the three thousand and four hundred dollars (\$3,400) to Ohio EPA's Clean Diesel School Bus Program Fund pursuant to the following schedule:

a. Payment to the Clean Diesel School Bus Program Fund (5CD):

\$3,400 within thirty (30) days after the effective date of these Orders

Payment shall be made by an official check made payable to "Treasurer, State of Ohio." The official check shall specify that such monies are to be deposited into Fund 5CD established by Ohio EPA for the Clean Diesel School Bus Program. The official check shall be submitted to Brenda Case, or her successor, together with a letter identifying the Respondent and Fund 5CD, to:

**Director's Final Findings and Orders
All Ohio Landscaping
Page 5 of 7**

Ohio EPA
Office of Fiscal Administration
P.O. Box 1049
Columbus, Ohio 43216-1049

A copy of this check 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

b. **Payments to Ohio EPA:**

\$13,200 in equal monthly installments of \$600 for 22 months beginning within sixty (60) days after the effective date of these Orders, and each subsequent payment due within thirty (30) days thereafter; and \$400 within seven hundred twenty (720) days after the effective date of these Orders.

Payments shall be made by official checks made payable to "Treasurer, State of Ohio." Each official check shall be submitted to Brenda Case, or her successor, at the above-stated address, together with a letter identifying the Respondent. A copy of each check shall be sent to James A. Orlemann, Assistant Chief, SIP Development and Enforcement, or his successor, at the above-stated address.

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, 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.

Director's Final Findings and Orders
All Ohio Landscaping, Inc.
Page 6 of 7

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
CitiCenter - Suite 904
146 South High Street
Akron, Ohio 44308
Attn: Frank Markunas

and to:

Ohio Environmental Protection Agency
Division of Air Pollution Control
Lazarus Government Center
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.

XI. RESERVATION OF RIGHTS

Ohio EPA and Respondent each reserve all rights, privileges and causes of action, except as specially 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.

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.

Director's Final Findings and Orders
All Ohio Landscaping, Inc.
Page 7 of 7

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.

IT IS SO ORDERED AND AGREED:

Ohio Environmental Protection Agency

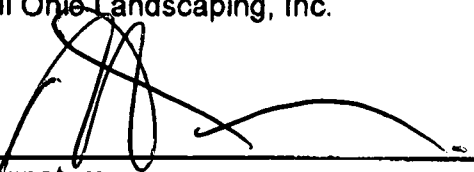


Joseph P. Koncelik
Director

12-16-05
Date


IT IS SO AGREED:

All Ohio Landscaping, Inc.

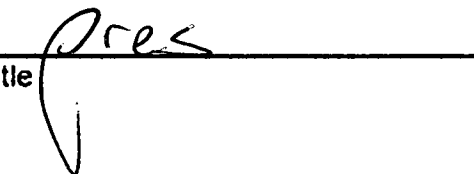


Signature

12/12/05
Date



Printed or Typed Name



Title