

BEFORE THE  
OHIO ENVIRONMENTAL PROTECTION AGENCY

OHIO E.P.A.  
NOV 10 2003  
ENTERED DIRECTOR'S JOURNAL

In the Matter of:

The Akron Brick & Block Co., Ltd	:	<u>Director's Final Findings</u>
3225 Mogadore Road	:	<u>and Orders</u>
Akron, Ohio 44312	:	

**PREAMBLE**

It is hereby agreed that:

**I. JURISDICTION**

These Director's Final Findings and Orders ("Orders") are issued to The Akron Brick & Block Co., Ltd. ("ABB") 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 ABB and successors in interest liable under Ohio law. No change in ownership of ABB's facility shall in any way alter ABB'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**

All of the findings necessary for the issuance of these Orders pursuant to ORC §§ 3704 and 3745.01 have been made and are outlined below. Nothing in the findings shall be an admission by Respondent of any matter of law or fact. The Director of Ohio EPA has determined the following findings:

1. ABB owns and operates a facility that manufactures concrete blocks for decorative and constructive use and is located at 3225 Mogadore Road, Akron, Summit County, Ohio. On August 28, 1997, ABB purchased the assets of the previous owner of the facility. ABB is a subsidiary of Oldcastle APG, which has its principal place of business at 375 Northridge Road, Suite 350, Atlanta, Georgia.

2. At the above-referenced facility, ABB owns and operates roadways/parking areas, aggregate storage piles, a material handling operation, and a concrete block plant, which are identified by Ohio EPA as "sources F001, F002, unassigned state ID (hereinafter "X001"), and P901," respectively. These sources were installed in 1946 and began operation soon thereafter. At the time of inspection of the facility on May 10, 2001 by Akron Regional Air Quality Management District, a contractual representative of Ohio EPA in Summit County, ABB was operating additional roadways/parking areas (hereinafter "X002"), storage piles (hereinafter "X003"), and material handling (hereinafter "X004") associated with a 300 ton-per-hour portable aggregate processing plant ("F004"). ABB rented the portable aggregate processing plant from CON/AGG Machinery of 11649 Reading Road, Cincinnati, Ohio, and subsequently contracted with Progressive Excavating, Inc. of 4320 Wilcor Drive, Akron, Ohio, to operate it. The portable aggregate processing plant was used to crush recycled concrete and rock. The Permit to Install ("PTI") for source F004 was issued to CON/AGG by Ohio EPA on June 14, 2001. On August 9, 2001, ABB shut down sources F004, X002, X003 and X004. In May, 2002, ABB replaced source F004, X002, X003 and X004 with the new Pegson Trackpactor Impact Crusher (hereinafter "X005"), additional roadways/parking areas (hereinafter "X006"), storage piles (hereinafter "X007"), and material handling (hereinafter "X008"), respectively.

3. Sources F001, F002, P901, F004, X001 through X008 were or are "air contaminant sources" as defined in OAC Rules 3745-15-01(C) and (W), 3745-31-01(D), and 3745-35-01(B)(1), and ORC §3704.01(C).

4. OAC Rule 3745-15-07(A) prohibits, in part, any person from causing a public nuisance by emitting excessive fugitive dust. OAC Rule 3745-17-07(B)(4) requires that there shall be no visible particulate emissions from any paved roadway or parking area except for a period of time not to exceed six minutes during any sixty-minute observation period. OAC Rule 3745-17-07(B)(5) requires that there shall be no visible particulate emission from any unpaved roadway or parking area except for a period of time not to exceed thirteen minutes during any sixty-minute observation period. OAC Rule 3745-17-08(B) requires, in part, that reasonably available control measures ("RACM") be used to minimize or eliminate visible particulate emissions of fugitive dust from any fugitive dust source as defined in OAC Rule 3745-17-01(B)(7).

5. OAC Rule 3745-31-02 prohibits any person from installing an air contaminant source unless a PTI has been applied for and obtained, except as provided by rule or law. 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. ORC §3704.05(A) prohibits any person from allowing any emission from any source in excess of that permitted in any rule adopted by the Director of Ohio EPA. ORC 3704.05(G) prohibits any person from violating any rule adopted by the Director of Ohio EPA.

7. Between August 28, 1997 and July 3, 2003, there have been nineteen(19) documented complaints received by the ARAQMD from nearby residents concerning fugitive dust from ABB's facility. Each of these complaints was investigated by the ARAQMD. Several of these complaints were followed with a warning letter to ABB. Based on its investigation of these complaints, ARAQMD concluded that ABB violated OAC Rule 3745-15-07(A).

8. On July 7, 1998, ARAQMD sent a letter requesting ABB to submit renewal applications for the PTOs for sources F001 and P901 because the PTOs for these source expired on June 30, 1998.

9. On August 14, 1998, ABB submitted to ARAQMD the renewal applications for the PTOs for sources F001 and P901 and PTO applications for sources X001 and F002. The PTOs for sources F001, F002 and P901 were issued by Ohio EPA on December 3, 1998.

10. On September 11, 1998, December 9, 1999, and August 2, 2001, ARAQMD conducted visible particulate emission ("VE") readings at ABB's facility for the paved roadways/parking areas of source F001. The results of these VE readings revealed that visible particulate emissions exceeded six minutes during a sixty-minute observation period for the paved roadways/parking areas, in violation of OAC Rule 3745-17-07(B)(4) and ORC §3704.05(A) and (G). ABB was also in violation of OAC Rule 3745-17-08(B) and ORC §3704.05(G) for not employing RACM in controlling visible particulate emissions of fugitive dust.

11. From June 30, 1998 through December 3, 1998, ABB operated source F001 without applying for and obtaining a PTO from Ohio EPA, in violation of OAC Rule 3745-35-02 and ORC §3704.05(G).

12. From August 28, 1997 through December 3, 1998, ABB operated source F002 without applying for and obtaining a PTO from Ohio EPA, in violation of OAC Rule 3745-35-02 and ORC §3704.05(G).

13. From June 30, 1998 through December 3, 1998, ABB operated source P901 without applying for and obtaining a PTO from Ohio EPA, in violation of OAC Rule 3745-35-02 and ORC §3704.05(G).

14. From August 28, 1997 through February 14, 1999, ABB operated source X001 without applying for and obtaining a PTO from Ohio EPA, in violation of OAC Rule 3745-35-02 and ORC §3704.05(G).

15. On August 9, 2001, ABB informed ARAQMD that it had just stopped the operation of sources F004, X002, X003 and X004 at its facility.

16. In May of 2001, ABB installed sources X002, X003 and X004 without applying for and obtaining PTIs from Ohio EPA, in violation of OAC Rule 3745-31-02 and ORC §3704.05(G). From June 21, 2001, through August 9, 2001, ABB operated sources X002, X003 and X004 without applying for and obtaining a PTO from Ohio EPA, in violation of OAC Rule 3745-35-02 and ORC §3704.05(G).

17. On August 2 and 6, 2001, ARAQMD conducted VE readings at ABB's facility for the unpaved roadways/parking areas of source F001. The results of these VE readings revealed that visible particulate emissions exceeded thirteen minutes during a sixty-minute observation periods for the unpaved roadways/parking areas, in violation of OAC Rule 3745-17-07(B)(4) and ORC §3704.05(A) and (G). On these days, ABB was also in violation of OAC Rule 3745-17-08(B) and ORC §3704.05(G) for failing to employ RACM. On August 6, 2001, ARAQMD sent a facsimile to ABB outlining the results of the VE readings and violations observed by ARAQMD on August 2 and 6, 2001.

18. On August 9, 2001, ARAQMD sent Oldcastle APG a Notice of Violation ("NOV") by certified mail citing ABB for violations of OAC Rules 3745-15-07(A), 3745-17-07(B)(4) and (5), and 3745-17-08(B) that occurred on August 2 and 6, 2001.

19. On August 9, 2001, ABB sent a compliance plan and schedule to correct the violations that were observed by ARAQMD during its investigation on August 2 and 6, 2001. The plan consisted of additional paving for some roadways, installation of a sprinkler system for the loader working area, and the cover of other unpaved areas and storage with a dust inhibitor.

20. On April 16, 2002, Progressive Excavating informed ARAQMD in writing that it would begin to install and operate sources X005 through X008 at ABB's facility on or about April 22, 2002. Progressive Excavating informed ARAQMD that it submitted complete PTI applications to Ohio EPA for sources X005 through X008 on June 10, 2002. PTIs for sources X005 through X008 were issued by Ohio EPA on June 18, 2002.

21. On June 4, 2002, ARAQMD inspected ABB's facility and documented that it had paved additional roadways as stated in its August 9, 2001 letter to ARAQMD. ARAQMD observed that there were no excessive fugitive dust emissions during its visit. During this inspection, ARAQMD noted that sources F004, X002, X003 and X004 were removed from its facility in the beginning of August, 2001 and that sources X005, X006, X007 and X008 were installed and began operation in the middle of May, 2002. Since ABB installed sources X005 through X008 without PTIs and operated these sources without PTOs, it violated OAC Rules 3745-31-02 and 3745-35-02, respectively, and ORC §3704.05(G).

22. On October 21, 2002, Progressive Excavating submitted PTO applications to ARAQMD for sources X005 through X008.

23. By December 1, 2003, ABB intends to submit to ARAQMD renewal PTO applications for sources F001 (Roadways), F002 (Storage Piles), and P901 (Concrete Block). ABB also plans to submit a new PTO application for source X001 (Material Handling). ABB also intends to submit to ARAQMD applications for sources X006 (Roadways), X007 (Storage Piles), and X008 (Material Handling) so that ABB can use these sources throughout the year, even if no outside crushing operation is operating at the ABB facility.

24. In 2003, ABB informed ARAQMD that an additional air contaminant source, a block saw, was being operated at the facility. As an air contaminant source, ABB needs to obtain a PTI and a PTO for the block saw.

25. 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. Pursuant to ORC §3704.06, ABB is assessed a civil penalty in the amount of nineteen thousand two hundred and ninety dollars (\$19,290) in settlement of Ohio EPA's claim for civil penalties. Within thirty (30) days after the effective date of these Orders, ABB shall pay to Ohio EPA the amount of seventeen thousand and ninety dollars (\$17,090) of the total penalty amount. Payment shall be made by official check made payable to "Treasurer, State of Ohio." The official check shall be submitted to Brenda Case, Fiscal Specialist, Ohio EPA, Office of Fiscal Administration, P.O. Box 1049, Columbus, Ohio 43216-1049, together with a letter identifying ABB and the facility.

A copy of the official check shall be submitted to James A. Orlemann, Assistant Chief, Enforcement, or his successor, Division of Air Pollution Control, Ohio EPA, P.O. Box 1049, Columbus, Ohio 43216-1049.

2. In lieu of payment to Ohio EPA of the remaining twenty-two hundred dollars (\$2,200) of the total penalty amount, ABB shall perform the penalty credit project identified in Order 3. In the event ABB defaults or otherwise fails to complete the project as specified in Order 3, the \$2,200 shall immediately become due and payable to Ohio EPA. Such payment shall be made by official check made payable to "Treasurer, State of Ohio" and submitted to Ohio EPA, Office of Fiscal Administration at the above-stated address. A copy of the official check shall be submitted to James A. Orlemann, or his successor, at the above-stated address.

3. Within sixty (60) days after the effective date of these Orders, ABB shall install, operate and maintain a new water sprinkler system with the following specifications as a penalty credit project for additional dust control at the ABB facility. The sprinkler system need not be operated during freezing weather conditions.

- a. The sprinkler system shall consist of three (3) sprinkler heads. At a minimum, one head shall be located at the entrance of the facility from Mogadore Road and two other heads shall be located between the stock piles and the material shed, and shall be positioned to cover the most active areas.
- b. The sprinkler lines shall be one inch Class 200 PVC, or equivalent, on the outside, along with a one inch copper line, or equivalent, on the inside. The lateral lines of the system shall be one inch NFS 100 psi test polyethylene, or equivalent. The lines shall each have electric valves, or equivalent. All of the valves shall be placed in valve boxes and all wire will be UL-approved direct burial, or equivalent. The sprinkler heads shall be Rainbird Falcon heads with stainless steel risers, or equivalent. The system shall also be equipped with at least a one-half inch booster pump.
- c. The water coverage around each sprinkler head shall be at least 60 feet (i.e., a diameter of 120 feet). Any area not treated by this additional control measure shall continue to be treated by existing control measures (i.e., calcium chloride application).
- d. The water capacity for the sprinkler system shall be at least 8-10 gallons per minute.
- e. The sprinkler system shall be installed with a timer so that the system can be automatically run. The sprinkler system shall also be equipped with a manual override option that would allow plant personnel to treat affected areas as necessary at any time.
- f. Freeze protection on the sprinkler system shall be conducted annually during the fall season by draining the lines, or by the use of another freeze protection measure that is acceptable to ARAQMD.
- g. The system shall be designed and operated to further minimize or eliminate visible fugitive dust emissions from the treated areas.

4. By December 1, 2003, ABB shall submit PTI and PT0 applications for the block saw being operated at its facility.

## **VI. TERMINATION**

Except for the specific requirements outlined in Orders 2 and 3, 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 other 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, other than those in Orders 2 and 3, 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."

The 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 a corporate officer who is in charge of a principle 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 ABB.

## **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 ABB's facility.

## **IX. MODIFICATIONS**

These Orders may be modified by agreement of the parties. 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 ABB 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: Russell H. Risley

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

#### **XI. RESERVATION OF RIGHTS**

Ohio EPA and ABB 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, ABB 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 ABB's liability for the violations specifically cited herein.

ABB hereby waives the right to appeal the issuance, terms and service of these Orders, and ABB hereby waives any and all rights ABB may have to seek administrative or judicial review of these Orders either in law or equity.

Notwithstanding the preceding, Ohio EPA and ABB agree that if these Orders are appealed by any other party to the Environmental Review Appeals Commission, or any court, ABB retains the right to intervene and participate in such an appeal. In such event, ABB shall continue to comply with these Orders notwithstanding such appeal and intervention unless said 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.

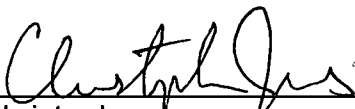


**XIV. SIGNATORY AUTHORITY**

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

  
\_\_\_\_\_  
Christopher Jones  
Director

11-06-03  
Date

**IT IS SO AGREED:**

The Akron Brick & Block Co., Ltd.

  
\_\_\_\_\_  
Signature

10/31/03  
Date

KEVIN P. CALANDRA  
Printed or Typed Name

VP & General Manager  
Title