

BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY

ENTERED DIRECTOR'S JOURNAL

SEP 18 2002

OHIO E.P.A.

In the Matter of:

Schloss Materials Company	:	<u>Director's Final</u>
13700 McCracken Road	:	<u>Findings and Order</u>
Cleveland, Ohio	:	

PREAMBLE

It is hereby agreed that:

I. JURISDICTION

These Director's Final Findings of Fact and Orders are issued to Schloss Materials Company (Schloss), pursuant to the authority vested in the Director of the Ohio Environmental Protection Agency (Ohio EPA) under Sections 3704.03 and 3745.01 of the Ohio Revised Code (ORC).

II. PARTIES BOUND

These Orders shall apply to and be binding upon Schloss and its assigns and successors in interest. No change in ownership of the Respondent shall in any way alter Respondent's obligations under these Orders.

III. DEFINITIONS

Unless otherwise stated, all terms used in these Findings of Fact and Orders shall have the same meaning as used in ORC Chapter 3704 and the regulations promulgated thereunder.

IV. FINDINGS OF FACT

The Director of Ohio EPA has determined the following findings of fact:

1. Schloss owns and operates an asphalt batching plant identified by Ohio EPA as source number P901, located at 13700 McCracken Rd., in Cleveland, Ohio (Ohio EPA facility ID number 1318224741).
2. Source P901 is an "air contaminant source" as defined by Ohio Administrative Code (OAC) rules 3745-31-01 (D) and 3745-35-01(B)(1).
3. Source P901 was installed in 1990, and is considered a new source, as defined by OAC rule

Schloss Materials

Page 2 of 6

3745-31-01(K).

4. An inspection of the facility by staff from the Cleveland local air agency (CLAA) on August 11, 1999, revealed that Schloss had violated special term and condition (C) (3) of its permit to install (PTI) (application number 13-03664) by not having at least a ten percent supply of spare bags for the baghouse control system serving P901. This is also a violation of ORC 3704.05(C).

5. On August 18, 1999, representatives from CLAA inspected the facility in response to a citizen complaint regarding excessive odors. During the inspection, a Method 9 visible emissions reading was conducted for P901. Visible emissions in excess of sixty (60) percent opacity were documented. A representative from Schloss informed the CLAA inspectors that holes in two of the bags had occurred at the time of the complaint and the recorded Method 9 readings. A Notice of Violation (NOV) was issued for the violation of OAC rule 3745-17-07(A) on September 21, 1999.

6. The August 18, 1999 inspection also revealed that Schloss had violated special term and condition (D) of its permit to operate for P901 by failing to immediately report a malfunction to CLAA, in violation of OAC rule 3745-15-06 and ORC 3704.05(C).

7. Schloss responded to the NOV in a letter dated October 1, 1999. The response letter addressed the violations cited by CLAA, and informed CLAA that Schloss was retaining the services of a consultant, Poly Science Engineering, to review the facility operations and maintenance programs and to prevent the possibility of future violations occurring.

8. A letter from Schloss to CLAA, dated October 21, 1999, outlined Schloss' intentions to submit a corrective action plan in response to a request from CLAA that was made on September 21, 1999. The PTI application submitted by Schloss on February 3, 2000, satisfied CLAA's request for a corrective action plan.

9. On March 31, 2000, CLAA received a citizen complaint that Schloss was installing a new drum mix plant at the facility. CLAA staff confirmed that the installation of this new source was in violation of OAC rule 3745-31-02(A)(1). CLAA staff determined that the new drum mix plant was designed with best available technology and on June 1, 2000, PTI # 13-03664 was issued. On April 5, 2000, Schloss was issued an NOV for this violation and told to immediately discontinue construction and installation of the source until a final PTI has been issued.

10. On April 12, 2001, in response to a smoke complaint, CLAA inspected the facility. During the inspection, a Method 9 visible emissions reading was conducted for P901. Visible emissions in excess of twenty six (26) percent opacity were documented as a three-minute average, and as a result Schloss was issued an NOV for an opacity violation. As of this date, Schloss has not submitted a written response to the NOV.

11 The Director has given consideration to, and based his determination on, evidence relating

Schloss Materials

Page 3 of 6

to the technical feasibility and economic reasonableness of complying with the following Orders and their benefits to the people of the State to be derived from such compliance.

V. ORDERS

The Director hereby issues the following Orders:

1. Schloss shall operate the new drum mix plant in compliance with the terms and conditions of PTI number 13-03664, issued June 1, 2000, and any subsequent modifications to this PTI.
2. Schloss shall continue to implement the June 1994 Preventive Maintenance and Malfunction Abatement Program (PMMAP) that is designed to ensure continued compliance with OAC Chapter 3745-17 and OAC rule 3745-15-07.
3. Schloss shall not install any new air contaminant source without first applying for and obtaining a PTI as required by OAC Chapter 3745-31.
4. Schloss shall continue to maintain and employ the deodorizing equipment installed in 1993 to ensure that odor nuisance conditions do not occur in violation of OAC rule 3745-15-07.
5. Pursuant to R.C. 3704.06, Schloss is assessed a civil penalty in the amount of ten thousand dollars (\$10,000) in settlement of Ohio EPA's claim for civil penalties. Within fourteen (14) days after the effective date of these Orders, Schloss shall pay to Ohio EPA the amount of four thousand dollars (\$4,000) of the total penalty amount. Payment shall be made by certified check made payable to "Treasurer, State of Ohio" and sent to Brenda Case, Fiscal Specialist, or her successor, at the following address:

Brenda Case
Fiscal Administration
Ohio Environmental Protection Agency
P.O. Box 1049
Columbus, OH 43216-1049

A copy of the check shall be sent to Jim Orlemann at the following address:

Division of Air Pollution Control
Ohio Environmental Protection Agency
P.O. Box 1049
Columbus, OH 43216-1049

In lieu of payment to the Ohio EPA of the remaining six thousand dollars (\$6,000) Schloss shall perform the supplemental environmentally beneficial projects identified in Orders 6 and 7. Of

Schloss Materials

Page 4 of 6

the \$6,000, \$4,000 shall be paid to fund the project specified in Order 6, and \$2,000 shall be used to fund the project specified in Order 7.

6. By no later than October 31, 2002, Schloss shall pave the entrance and access road to their facility. The annual total vehicle miles traveled on this road is approximately seven thousand five hundred sixty miles (7560 miles). Using emissions factors from AP 42 it is estimated that this should reduce particulate emissions by 2.9 tons per year. Within 14 days of completion of the paving, Schloss shall submit all relevant expenses to Ohio EPA. Any difference between the actual expenses to fund the SEP and the penalty amount of \$4,000 shall be paid to Ohio EPA. Payment shall be made within 14 days of completion of the project and shall be made by certified check made payable to "Treasurer, State of Ohio" and sent to Brenda Case, Fiscal Specialist, or her successor, at the following address:

Brenda Case
Fiscal Administration
Ohio Environmental Protection Agency
P.O. Box 1049
Columbus, OH 43216-1049

A copy of the check shall be sent to Jim Orlemann at the following address:

Division of Air Pollution Control
Ohio Environmental Protection Agency
P.O. Box 1049
Columbus, OH 43216-1049

7. Schloss shall perform the supplemental environmentally beneficial project consisting of funding urban tree-planting projects in Ohio. Specifically within thirty (30) days after the effective date of these Orders, Schloss shall deliver a certified check in this amount and made payable to the Ohio Department of Natural Resources, Division of Forestry, State Forest Fund for the purpose of funding urban tree-planting projects in Ohio. This check shall specify that such monies are to be deposited into Fund No. 509. The check shall be sent to John Dorka, Deputy Chief, or his successor, at the following address:

Division of Forestry
Ohio Department of Natural Resources
1855 Fountain Square Court, H-1
Columbus, Ohio 43224-1327

VI. OTHER APPLICABLE LAWS

All actions required to be taken pursuant to these Orders shall be undertaken in

Schloss Materials

Page 5 of 6

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 Schloss' Cleveland facility.

VII. NOTICE

All documents required by these Orders, unless otherwise specified in writing, shall be submitted to:

City of Cleveland
Department of Public Health and Welfare
1925 St Clair Avenue
Cleveland, OH 44114
Attn: Mike Krzywicki

and to:

Ohio Environmental Protection Agency
Division of Air Pollution Control
P.O. Box 1049
Columbus, OH 43216-1049
Attn: Paul Cree

VIII. 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.

IX. RESERVATION OF RIGHTS

Nothing contained herein prevents Ohio EPA from seeking legal or equitable relief to enforce the terms of these Orders or from taking other administrative, legal, or equitable action as deemed appropriate and necessary, including seeking penalties against Schloss for noncompliance with these Orders. Nothing contained herein prevents Ohio EPA from exercising its lawful authority to require Schloss to perform additional activities at the facility pursuant to ORC Chapter 3704 or any other applicable law in the future. Nothing herein restricts the right of Schloss to raise any administrative, legal or equitable claim or defense with respect to such further actions that Ohio EPA may seek to require of Schloss.

X. SIGNATORIES

Each undersigned representative of a party to these Orders certifies that she or he is fully authorized to enter into these Orders and to legally bind such party to this document.

Schloss Materials
Page 6 of 6

XI. WAIVER


In order to resolve disputed claims, without admission of fact, violation or liability, Schloss agrees to comply with these Orders. Compliance with these Orders shall be a full accord and satisfaction for Schloss' civil liability for the specific violations cited herein. Schloss hereby waives the right to appeal the issuance, terms and service of these Orders and it hereby waives any and all rights it might have to seek administrative or judicial review of these Orders either in law or equity.

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 Schloss agree that if these Orders are appealed by any other party to the Environmental Review Appeals Commission, or any court, Schloss retains the right to intervene and participate in such an appeal. In such event, Schloss shall continue to comply with these Orders unless these Orders are stayed, vacated, or modified.

IT IS ORDERED AND AGREED:

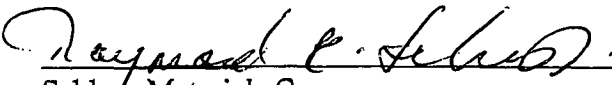
Ohio Environmental Protection Agency



Christopher Jones
Director


9-12-02
Date

IT IS AGREED:



Schloss Materials Company

9/30/02
Date



Title