

**BEFORE THE  
OHIO ENVIRONMENTAL PROTECTION AGENCY**

In the Matter of:

Don S. Cisle Contractor, Inc.  
1714 Fairgrove Avenue  
Hamilton, Ohio 35011

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Director's Final Findings  
and Orders

RESPONDENT

ENTERED DIRECTOR'S JOURNAL

MAY - 7 2002

OHIO E.P.A.

**PREAMBLE**

It is hereby agreed that:

**I. JURISDICTION**

These Director's Final Findings and Orders ("Orders") are issued to Don S. Cisle Contractor, Inc. ("Respondent"), pursuant to the authority vested in the Director of the Ohio Environmental Protection Agency ("Ohio EPA") under R.C. 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 relating to the facility identified in Finding 1 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 used in R.C. Chapter 3704 and the regulations promulgated thereunder.

**IV. FINDINGS OF FACT**

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

1. Respondent owns and operates an asphaltic concrete production facility located at 510 Augspurgen Road, New Miami (Butler County), Ohio, which is identified by Ohio EPA as facility ID 1409080017. Pursuant to Ohio Administrative Code ("OAC") Chapter 3745-31, on April 5, 2000, Ohio EPA granted Respondent a synthetic minor Permit to Install ("PTI") [number 14-04871] for a 350 ton per hour ("TPH") drum mix asphaltic concrete plant with a fabric filter to replace an existing plant. The drum mix asphaltic concrete plant is identified by Ohio EPA as "emissions unit P902."

2. Emissions unit P902 emits, among other air pollutants, carbon monoxide ("CO"), organic compounds ("OC"), particulate matter ("PM"), and particulate matter with an aerodynamic diameter of 10 microns or less ("PM<sub>10</sub>"), which are defined as "air pollutants" or "air contaminants" in Ohio Administrative Code ("OAC") Rule 3745-15-01(C). Additionally, emissions unit P902 is an "air contaminant source" as defined in OAC Rule 3745-31-01(D).

3. OAC Rule 3745-31-02(A)(2) allows, in part, the owner or operator of any air contaminant source to voluntarily request a PTI from Ohio EPA that would lower the allowable emissions from the air contaminant source. OAC Rule 3745-31-01(E) defines "allowable emissions," in part, as the emission rate of an air contaminant source calculated using the maximum rated capacity to emit, unless federally enforceable limitations restrict the operation rate or hours of operation. This type of permit is referred to as a "synthetic minor permit."

4. OAC Rule 3745-31-06(D) states, in part, that the Director of Ohio EPA may impose special terms and conditions as are appropriate or necessary to ensure compliance with applicable laws and to ensure adequate protection of the environment.

5. R.C. 3704.05(C) prohibits any person from violating any terms or conditions of any permit issued by the Director of Ohio EPA.

6. R.C. 3704.05(G) prohibits any person from violating any order, rule or determination of the Director of Ohio EPA issued, adopted, or made under R.C. Chapter 3704.

7. On December 17, 1999, Respondent submitted a PTI application for the installation of a 350 TPH drum mix asphaltic concrete plant. The facility's potential to emit ("PTE") CO, OC, PM, and PM<sub>10</sub> were estimated to be greater than the major source thresholds specified in OAC Rule 3745-31-01(II)(2)(a) and (WW). To preclude the applicability of preconstruction major source review, Respondent requested that self-imposed federally enforceable emission limitations be placed in the PTI to lower the facility's PTE.

8. Pursuant to OAC Rule 3745-31-06(D), Ohio EPA issued a synthetic minor PTI on April 5, 2000, with the following special terms and conditions to assure compliance with applicable rules and laws:

- a. a requirement to maintain daily records of the pressure drop across the fabric filter;
- b. a requirement to conduct compliance tests within 60 days of achieving the maximum production rate at which the emissions unit will be

operated but not later than 180 days after initial start-up, using the appropriate USEPA reference test methods, to demonstrate compliance with the OC, CO and PM limitations;

- c. a requirement to comply with the PM emission limitation, as specified in 40 CFR, Part 60, Subpart I, of 0.04 grain of PM per dry standard cubic foot (gr/dscf) of exhaust gas;
- d. a requirement to comply with emission limitations specified therein; and
- e. a requirement to submit the following written notifications, within the specified time frames, as stipulated in 40 CFR, Part 60 Subpart A:
  - the date that construction commenced, postmarked no later than 30 days after such date;
  - the anticipated date of initial start-up, postmarked not more than 60 days nor less than 30 days prior to such date;
  - the date of actual initial start-up, postmarked within 15 days after such date; and
  - the date of the performance tests, within 30 days of such date.

9. Hamilton County Department of Environmental Services ("HAMCO") inspected the facility on June 28, 2000, and discovered that Respondent was not maintaining records of the daily pressure drop across the fabric filter, in violation of the PTI's special terms and conditions and in violation of R.C. 3704.05(C). The violation occurred from the facility's start-up (April 20, 2000) until Respondent notified HAMCO that the specified records were being maintained (July 24, 2000).

10. On July 14, 2000, HAMCO sent Respondent a Notice of Violation ("NOV") for failure to maintain the daily pressure drop records as required by the PTI and requested that Respondent submit a plan to bring the facility into compliance. Additionally, the NOV requested Respondent to submit the facility's initial start-up date, the date the facility achieved the maximum production rate, and an Intent-to-Test notification.

11. On July 24, 2000, Respondent replied to the July 14, 2000, NOV and provided the requested dates and stated that the facility was maintaining the required records. The date provided for the actual initial start-up of emissions unit P902 indicated that Respondent did not submit the required written notification within the specified time frame. Likewise, Respondent did not conduct the required compliance tests within 60 days of achieving maximum production rate at which emissions unit P902 will be operated.

P902 achieved maximum production rate on June 2, 2000, thus requiring the compliance demonstration be conducted by August 1, 2000. Additionally, Respondent failed to provide written notification of the anticipated initial start-up of emission unit P902. Each of these omissions resulted in a violation of the special terms and conditions of Respondent's PTI and of R.C. 3704.05(C). (The duration of the violations can be found in Attachment 1 to these Orders.)

12. On September 9, 2000, Respondent conducted the required compliance demonstration emission tests for emissions unit P902, which were specified in its PTI.

13. On October 12, 2000, HAMCO received the results of the September 9, 2000, compliance demonstration, which revealed that the emissions of PM, CO, OC and the stack exhaust gas grain loading of PM exceeded the respective PTI emission limitations. Each exceedance constitutes a violation of R.C. 3704.07(C) and occurred from the day of the compliance demonstration (September 9, 2000) until the plant shut down for the 2000 season (estimated to be December 15, 2000). The specific test results are as follows:

Pollutant	Emission Limit	Measured Emissions
PM	9.1 lbs/hr	46.05 lbs/hr
OC	15.3 lbs/hr	41.8 lbs/hr
CO	102 lbs/hr	560 lbs/hr
PM	0.04 gr/dscf	0.1779 gr/dscf

14. On October 27, 2000, HAMCO sent Respondent a NOV for failure to comply with the terms and conditions of Respondent's PTI. Additionally, the NOV requested Respondent to submit a plan to bring the facility into compliance.

15. On November 6, 2000, Respondent replied to the October 27, 2000 NOV, informing HAMCO that a consultant had been hired to correct the emission violation problems. Respondent stated that once the problems had been corrected it would schedule new compliance demonstration tests.

16. On November 20, 2000, HAMCO requested Respondent to provide a time line for the actions specified in Respondent's November 6, 2000, response to the NOV.

17. Respondent informed HAMCO, on December 4, 2000, of the actions it had taken to bring its facility into compliance. Specific actions included correcting flaws in the fabric filter, adjusting the burner, scheduling an additional back light test and tentatively scheduling compliance demonstration tests.

18. During a telephone conversation on December 11, 2000, Respondent informed HAMCO that it would not be able to retest the facility because it would be shutting down for the winter.

19. Respondent started operating emission unit P902 for the 2001 season on March 28, 2001.

20. On May 31, 2001, Respondent conducted the new compliance demonstration tests for P902.

21. On July 3, 2001, HAMCO received the results of the May 31, 2001 compliance demonstration tests. During the performance tests, emissions unit P902 operated at an average of 248 tons per hour, or approximately 83 percent of the permitted maximum rated capacity. The special terms and conditions of Respondent's PTI required that compliance be demonstrated while the facility operated at or near its maximum rated capacity. The test results revealed compliance at the 83 percent production rate. The specific test results are as follows:

Pollutant	Emission Limit	Measured Emissions at 83% max. production
PM	9.1 lbs/hr	9.1 lbs/hr
OC	15.3 lbs/hr	2.63 lbs/hr
CO	102 lbs/hr	24.73 lbs/hr
PM	0.04 gr/dscf	0.04 gr/dscf

22. On September 21, 2001, HAMCO sent a letter advising Respondent that the May 31, 2001 compliance demonstration authorized the facility to operate at 83 percent of its permitted rated capacity, and that to operate at a higher capacity rate would require retesting.

23. During a meeting with Respondent on January 29, 2002, Ohio EPA was informed that baghouse pressure drop records had been kept at the facility. A copy of such records were provided to Ohio EPA by the Respondent. Also, in a March 20, 2002 letter, Respondent provided to Ohio EPA documentation indicating that repairs to the baghouse and burner were made by September 21, 2000 to correct the emission violations. As a result, revisions were made to the civil penalty in the proposed Orders. Additionally, the civil penalty was adjusted due to the relatively low amount of noncomplying emissions and the start-up problems the Respondent had with the new facility.

24. 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 the 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 maintain emissions unit P902 in compliance with the terms and conditions of PTI 14-04871 and any PTO issued by Ohio EPA for this emission unit.

2. Pursuant to R.C. 3704.06, Respondent is assessed a civil penalty in the amount of thirty thousand dollars (\$30,000) in settlement of Ohio EPA's claim for civil penalties. Within fourteen (14) days after the effective date of these Orders, Respondent shall pay to Ohio EPA the amount of twenty-four thousand dollars (\$24,000) of the total penalty amount. Payment shall be made by certified check made payable to "Treasurer, State of Ohio" and sent to Vicki Galilei, Fiscal Specialist, or her successor, at the following address:

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

A copy of the check shall be sent to James A. Orlemann, Manager, Engineering Section, or his successor, at the following address:

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

In lieu of payment to Ohio EPA of the remaining six thousand dollars (\$6,000) of the total penalty amount, Respondent shall perform the supplemental environmentally beneficial project identified in Order 3.

3. Respondent shall perform the supplemental environmentally beneficial project consisting of funding urban area tree-planting projects in Ohio. Specifically, within thirty (30) days after the effective date of these Orders, Respondent shall deliver a certified check in the amount of six thousand dollars (\$6,000) made payable to the Ohio Department of Natural Resources, Division of Forestry, State Forest Fund for this purpose. 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

A copy of the check shall be sent to James A. Orlemann, Manager, Engineering Section, or his successor, at the above-stated address.

## **VI. 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 the Respondent's facility.

## **VII. NOTICE**

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

Hamilton County  
Department of Environmental Services  
Air Quality Programs  
250 William Howard Taft Road  
Cincinnati, Ohio 45219-2660  
Attention: Harry Schwietering

and to:

Ohio Environmental Protection Agency  
Division of Air Pollution Control  
P.O. Box 1049  
Columbus, OH 43216-0149  
Attention: Thomas Kalman

## **VIII. 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

Respondent for noncompliance with these Orders. Nothing contained herein prevents Ohio EPA from exercising its lawful authority to require Respondent to perform additional activities at its facilities pursuant to R.C. Chapter 3704 or any other applicable law in the future. Nothing herein restricts the right of the Respondent to raise any administrative, legal or equitable claim or defense with respect to such further actions that Ohio EPA may seek to require of Respondent.

## **IX. MODIFICATIONS**

These Orders may be modified by mutual 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. SIGNATORIES**

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 this document.

## **XI. WAIVER**

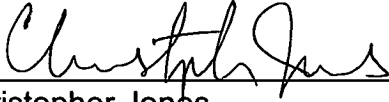
In order to resolve disputed claims, without admission of fact, violation or liability, Respondent agrees to comply with these Orders. Compliance with these Orders shall be a full accord and satisfaction for Respondent's civil liability for the specific violations cited herein. Respondent hereby waives the right to appeal the issuance, terms and service of these Orders and it hereby waives any and all rights it 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 an appeal. In such event, Respondent shall continue to comply with these Orders unless Orders are stayed, vacated, or modified.



**IT IS SO ORDERED AND AGREED:**

Ohio Environmental Protection Agency

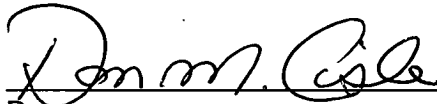


Christopher Jones  
Director

5-1-02  
Date

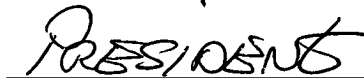
**IT IS AGREED:**

Don S. Cisle Contractor, Inc.



By

4/19/02  
Date



Title

**ATTACHMENT 1: ADMINISTRATIVE VIOLATIONS**

<b>violation</b>	<b>rule/permit required start time</b>	<b>required date or start of violation</b>	<b>date the violation ended</b>	<b>days / months of occurrence</b>
failure to keep records of pressure drop	start-up on 4/20/00	4/20/00	7/24/00 (the date of the company's letter stating that the records were being kept)	95 days / ~ 3 months
failure to notify the date of:  commenced construction  anticipated date of initial start-up  actual initial start-up	no later than 30 days of such date  not more than 60 days nor less than 30 days prior to such date  within 15 days after such date	not known  3/21/00 (est. at 30 days prior to actual start-up (4/20/00))  5/5/00 (15 days after start-up (4/20/00))	notification was not submitted  notification was not submitted, but start-up occurred on 4/20/00  7/24/00 (per letter dated 7/24/00)	not known  30 days / 1 month  80 days / ~ 3 months
failure to conduct compliance tests within required time frame	within 60 days of maximum production rate but not later than 180 days after start-up	8/1/00 (60 days after maximum production rate achieved- 6/2/00)	9/9/00 (date of tests)	39 days / ~ 1 month
failure to comply with emission limits:		9/9/00 (date of tests)	12/15/00 (~ day of winter shutdown)	97 days / ~ 3 months