

BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY

OHIO E.P.A.

JAN 12 2001

ENTERED DIRECTOR'S JOURNAL

In the Matter of:

Dravo Basic Materials Company, Inc. :	:	
c/o CT Corp. System :	:	<u>Director's Final Findings</u>
815 Superior Ave. NE :	:	<u>and Orders</u>
Cleveland, Ohio 44114 :	:	

PREAMBLE

It is hereby agreed that:

I. JURISDICTION

These Director's Final Findings and Orders ("Orders") are issued to Dravo Basic Materials Company, Inc. ("Dravo"), pursuant to the authority vested in the Director of the Ohio Environmental Protection Agency ("Ohio EPA") under R.C. Sections 3704.03 and 3745.01.

II. PARTIES

These Orders shall apply to and be binding upon Dravo, its assigns and successors in interest.

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 the Ohio EPA has determined the following findings of fact:

1. In 1993, Dravo constructed a limestone operation at 3818 Sharpsville Road in Lynchburg, Highland County, Ohio ("Facility"). Dravo operated this Facility until January 1995 at which time it sold the assets to Martin Marietta Aggregates.
2. On April 28, 1993, Ohio EPA issued PTI #05-5739 to Dravo for the Facility's

emissions units. The following table lists the required controls and the emissions limits specified for each emissions unit in the PTI.

#	Description	Controls (BAT)	Limits
F001	aggregate processing and material handling	fog spray	crushers, 15% maximum opacity; transfer points, 10% maximum opacity
F002	mineral extraction	water ring on drill	17.1 tons PM per year
F003	aggregate storage piles	watering	no visible emissions for greater than 1 minute in a 60-minute period
F004	roadways and parking areas	watering	no visible emissions for more than 3 minutes in a 60-minute period

The PTI also notified Dravo that emissions unit F001 was subject to the NSPS regulations found at 40 CFR 60 Subpart 000, as well as the requirements of OAC rule 3745-31-05. These regulations require compliance with the emissions limitations given in the PTI and also require reporting of the construction date, anticipated start-up date, actual start-up date and the performance testing date for emissions unit F001.

3. On August 13, 1993, Ohio EPA conducted an investigation at the Facility in response to complaints about dust problems. The Ohio EPA inspector found dirt and mud being deposited onto Sharpsville Road by trucks leaving the Facility. Other vehicles passing through the deposited dirt created dust that was visible to the inspector. This constituted violations of OAC rules 3745-17-08 and 3745-15-07 which, in turn, constituted violations of R.C. section 3704.05(C).
4. In a letter dated August 20, 1993, Ohio EPA informed Dravo of the situation found during the August 13, 1993 inspection and requested that Dravo submit corrective action steps to prevent the creation of a public nuisance.
5. In a letter dated September 10, 1993, Mary Cooper submitted a verified complaint to Ohio EPA alleging that Dravo was creating dust problems in the area and that construction at the Facility would obstruct the flow of Turtle Creek.
6. On September 28, 1993, Ohio EPA sent a letter to Mary Cooper acknowledging receipt of her verified complaint.
7. On October 21, 1993, in response to Mary Cooper's verified complaint, two inspectors from Ohio EPA, one from the Division of Surface Water and the other from the Division of Air Pollution Control, along with an inspector from the U.S. Army Corps of Engineers, conducted a complaint investigation at

the Facility. The inspectors found fugitive dust being generated at the Facility by rock crushers (F001) and by truck traffic leaving the Facility onto Sharpsville Road. This constituted violations of OAC rules 3745-17-08 and 3745-15-07 and R.C. section 3704.05(C).

8. A "Memorandum for Record" concerning the complaint investigation of October 21, 1993 was prepared by the U.S. Army Corps of Engineers and dated October 25, 1993. The document indicated that Dravo must replace the culvert crossing Turtle Creek with a clear span crossing and must obtain approval for this change from the U.S. Army Corps of Engineers prior to making the change.
9. On November 2, 1993, Ohio EPA inspected the Facility and found visible emissions between 30% and 50% opacity from the crusher (F001). This constituted a violation of OAC rule 3745-17-08 and R.C. section 3704.05(C).
10. In a letter to Ohio EPA dated November 3, 1993, Dravo attributed the Facility dust problems to the fact that there was no water supply at the Facility. Dravo outlined a compliance plan to create an on-site water supply to use for dust control.
11. In an internal communication dated November 22, 1993, Ohio EPA's Division of Surface Water indicated that no violations of water quality standards, attributable to Dravo's operation, were found during the October 21, 1993 verified complaint inspection at the Facility.
12. In a letter to Ohio EPA dated January 5, 1994, Dravo indicated that the installation of a water supply to control fugitive dust, as specified in their November 3, 1993 compliance plan, would occur by March 1994.
13. In letters to Ohio EPA dated January 19, February 1, and March 14, 1994, Dravo indicated that severe weather was causing delays with implementation of their compliance plan and the March 1994 compliance date would not be met.
14. In a letter dated October 18, 1994, Ohio EPA informed Dravo of violations found at the Facility during an inspection conducted on October 12, 1994. Violations included excess visible emissions at the primary crusher (F001) and transfer points (F003). These emissions violated the New Source Performance Standards (40 CFR 60 Subpart OOO), the PTI terms and conditions and OAC rule 3745-31-05. Ohio EPA informed Dravo that they would not be issued a PTO until they demonstrated compliance with the requirements of PTI #05-5739.
15. Dravo submitted a draft "Compliance Plan" to Ohio EPA on November 4, 1994 to bring the Facility into compliance with the PTI requirements and submitted a modified "Compliance Plan" on November 17, 1994.
16. In a letter to Ohio EPA dated November 18, 1994, Dravo indicated that dust

complaints received by Ohio EPA on November 10 and 11, 1994 were probably due to operating the Facility after a water pump, used to pump water for dust control, had failed.

17. On January 3, 1995, Martin Marietta Materials, Inc. purchased the Facility from Dravo and became the owner and operator of the Facility.
18. Dravo began operation of the primary crusher (F001) in July 1993. The PTI required that fog sprays be installed on F001 when it was operating. Dravo did not install the required fog sprays on this unit while it owned the Facility. This is a violation of OAC rule 3745-31-05.
19. Dravo began operating the Facility on July 31, 1993. The PTI and 40 CFR 60.8 required compliance testing be done within one hundred eighty (180) days of start-up: i.e., by January 28, 1994. Dravo did not conduct compliance testing at any time while it owned the Facility.
20. Dravo failed to obtain the required permits to operate ("PTO") for its air emissions units while it owned the Facility, in violation of OAC rule 3745-35-02.
21. The Director makes the following findings in reference to the verified complaint submitted by Mary Cooper dated September 10, 1993:
 - a. The Director determined that a violation, as alleged in the verified complaint, has occurred. R.C. 3745.08(B) provides that if the Director determines that a violation, as alleged, has occurred, the Director may enter such Order as may be necessary. Pursuant to R.C. 3745.08(B) the Director has issued the Orders enumerated below.
 - b. Sometime following the filing of the verified complaint, complainant Mary Cooper moved from her known address without leaving a forwarding address or other means of locating her. The Director has tried via various means at his disposal to locate and/or notify complainant Mary Cooper to inform her of an opportunity to attend a conference with the Director concerning the alleged violation, but has been unsuccessful.
 - c. On 26 September 2000, the Director learned that complainant Mary Cooper was a member of a group of citizens that filed a civil suit against Dravo that included allegations as alleged in her verified complaint. The civil suit was subsequently settled with the group (including Mary Cooper) and Martin Marietta Materials, Inc., the subsequent owner and operator of the Facility.
22. 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 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 R.C. 3704.06, Dravo is assessed a civil penalty in the amount of fifteen thousand dollars (\$15,000) in settlement of Ohio EPA's claim for civil penalties. Within fourteen (14) days after the effective date of these Orders, Dravo shall pay to Ohio EPA the amount of twelve thousand dollars (\$12,000) 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
Lazarus Government Center
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 above address.

Dravo shall pay twenty percent (20%) of the total civil penalty to fund a supplemental environmentally beneficial project. Specifically, within thirty (30) days after the effective date of these Orders, Dravo shall deliver a certified check for three thousand dollars (\$3,000) 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. These checks shall specify that such monies are to be deposited into Fund No. 509. The checks 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 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 Dravo.

VII. NOTICE

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

Tammy VanWalsen
Environmental Supervisor
Ohio EPA/DAPC
P.O. Box 1049
Columbus, OH 43216-1049

and to:

Phil Hinrichs
Ohio EPA
Southwest District Office
401 E. Fifth Street,
Dayton, Ohio 45402-2911

VIII. RESERVATION OF RIGHTS

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

IX. 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.

X. WAIVER

In order to resolve disputed claims, without admissions of fact, violation or liability, Dravo agrees to comply with these Orders. Compliance with these Orders shall be a full accord and satisfaction for Dravo's liability for the specific violations cited herein. Dravo 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.

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

Christopher Jones
Christopher Jones
Director

1-5-01
Date

IT IS SO AGREED:

Dravo Basic Materials Company, Inc.

James E. Ryan
By: James E. Ryan
Exec VP
Title:

12/29/00
Date