

BEFORE THE

OHIO ENVIRONMENTAL PROTECTION AGENCY ENTERED DIRECTOR'S JOURNAL

In the Matter of:

JMW Trucking, Inc.	:	<u>Director's Final Findings</u>
512 45 <sup>th</sup> Street SW	:	<u>and Orders</u>
Canton, Ohio 44706	:	

**PREAMBLE**

It is agreed by the parties hereto as follows:

**I. JURISDICTION**

These Director's Final Findings and Orders ("Orders") are issued to JMW Trucking, 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 hereinafter 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 construction and demolition debris transfer station at 1800 Allen Ave in Canton, Ohio ("Facility"), which is known by Respondent as the "Luntz Rail Transfer Facility." At the Facility, Respondent brings waste in by rail car, transfers the waste to trucks, and transports the waste to an appropriate landfill. The Facility is permitted to transfer construction and demolition debris ("C&DD") and solid waste. It is identified by Ohio EPA as Facility ID number 1576051900.

2. On February 22, 2001, Respondent applied for an air Permit to Install ("PTI") for the Facility. In the PTI application, Respondent identified two areas of operation at the Facility as "air contaminant sources" as that term is defined in OAC Rule 3745-31-01(I). The two areas are: (1) the roadways to the unloading facility and (2) the rail car unloading/truck loading operation.

3. OAC Rule 3745-31-06(D) states, in part, that the Director of Ohio EPA may impose special terms and conditions in a PTI as are appropriate or necessary to ensure compliance with applicable laws and to ensure adequate protection of the environment. ORC § 3704.05(C) prohibits any person from violating any terms or conditions of any permit issued by the Director of Ohio EPA.

4. On June 14, 2001, PTI No. 15-01459 was issued for the Facility. It identified the paved roadways, yard area and parking lots as emissions unit ("EU") F001, and the unloading of C&DD materials from rail cars into trucks as EU F002. Emission limitations and operational restrictions were designated for each emissions unit. Specifically, Part I General Term and Condition A.2 required Respondent, in part, to submit quarterly deviation reports of operational restrictions. The reports were required to be submitted by January 31, April 30, July 31, and October 31 of each year and were to cover the previous calendar quarters. Additionally, the reports were required to be submitted even if no deviations occurred during the quarter.

5. On August 4, 2005, Canton issued a Notice of Violation ("NOV") to Respondent for violations of the terms and conditions of the Facility's PTI, and of the Ohio Revised Code. Specifically, Ohio EPA identified that Respondent had failed to submit quarterly deviation reports detailing whether any deviations from the Facility's operational restrictions had occurred in 2002, 2003, 2004, and 2005, in violation of the terms and conditions of the Facility's PTI and ORC § 3704.05(C).

6. On November 8, 2005, Respondent submitted the quarterly deviation reports required by its September 26, 2002 PTI. The reports were for the fourth quarter of 2002 through the third quarter of 2005. The fourth quarter 2002 was due on January 31, 2003. Respondent failed to comply with the terms and conditions of Respondent's PTI by not submitting timely quarterly deviation reports, in violation ORC § 3704.05(C). The violations occurred from January 31, 2003, the date the first report was due, to November 8, 2005, when Respondent submitted the required reports.

7. 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. Respondent shall pay the amount of seventeen thousand dollars (\$17,000) in settlement of Ohio EPA's claims for civil penalties, which may be assessed pursuant to ORC Chapter 3704. Within fourteen (14) days after the effective date of these Orders, payment to Ohio EPA shall be made by an official check made payable to "Treasurer, State of Ohio" for thirteen thousand and six hundred dollars (\$13,600) of the total amount. The official check shall be submitted to Brenda Case, Fiscal Specialist, or her successor, together with a letter identifying the Respondent, to the following address:

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

2. In lieu of paying the remaining three thousand and four hundred dollars (\$3,400) of the civil penalty to Ohio EPA, Respondent shall, within fourteen (14) days of the effective date of these Orders, fund a supplemental environmental project ("SEP") by making a contribution in the amount of \$3,400 to the Ohio EPA's Clean Diesel School Bus Program Fund (Fund 5CD0). Respondent shall tender an official check made payable to "Treasurer, State of Ohio" for \$3,400. The official check shall be submitted to Brenda Case, Fiscal Specialist, or her successor, together with a letter identifying the Respondent and Fund 5CD0, to the above-stated address.

3. A copy of each of the above checks 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  
Lazarus Government Center  
P.O. Box 1049  
Columbus, Ohio 43216-1049

4. Should Respondent fail to fund the SEP within the required timeframe set forth in Order 2, Respondent shall immediately pay to Ohio EPA \$3,400 of the civil penalty in accordance with the procedures in Order 1.

#### **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 Respondent's activities at the 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.

#### **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 Respondent pursuant to these Orders shall be addressed to:

Air Pollution Control Division  
Canton City Health Department  
420 Market Avenue, North  
Canton, Ohio 44702-1544  
Attention: Dan Aleman

and to:

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

P.O. Box 1049  
Columbus, Ohio 43216-1049  
Attention: 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 specifically 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.

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**

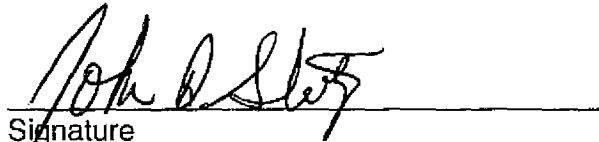


Chris Korleski  
Director

12/27/07  
Date

**IT IS SO AGREED:**

**JMW Trucking, Inc.**



Signature

John D. Stutz

Printed or Typed Name

President

Title

12-18-07  
Date

**IT IS SO ORDERED AND AGREED:**

**Ohio Environmental Protection Agency**

\_\_\_\_\_  
Chris Korleski  
Director

\_\_\_\_\_  
Date

**IT IS SO AGREED:**

**JMW Trucking, Inc.**

*John D. Slet*  
\_\_\_\_\_  
Signature

*12-18-07*  
\_\_\_\_\_  
Date

*John D. Slet*  
\_\_\_\_\_  
Printed or Typed Name

*President*  
\_\_\_\_\_  
Title

BEFORE THE  
OHIO ENVIRONMENTAL PROTECTION AGENCY

OHIO E.P.A.

SEP 28 2007

ENTERED DIRECTOR'S JOURNAL

In the Matter of:

Case No. 06-AI-004

JMW TRUCKING, INC.,

DIRECTOR'S FINAL  
FINDINGS AND ORDERS

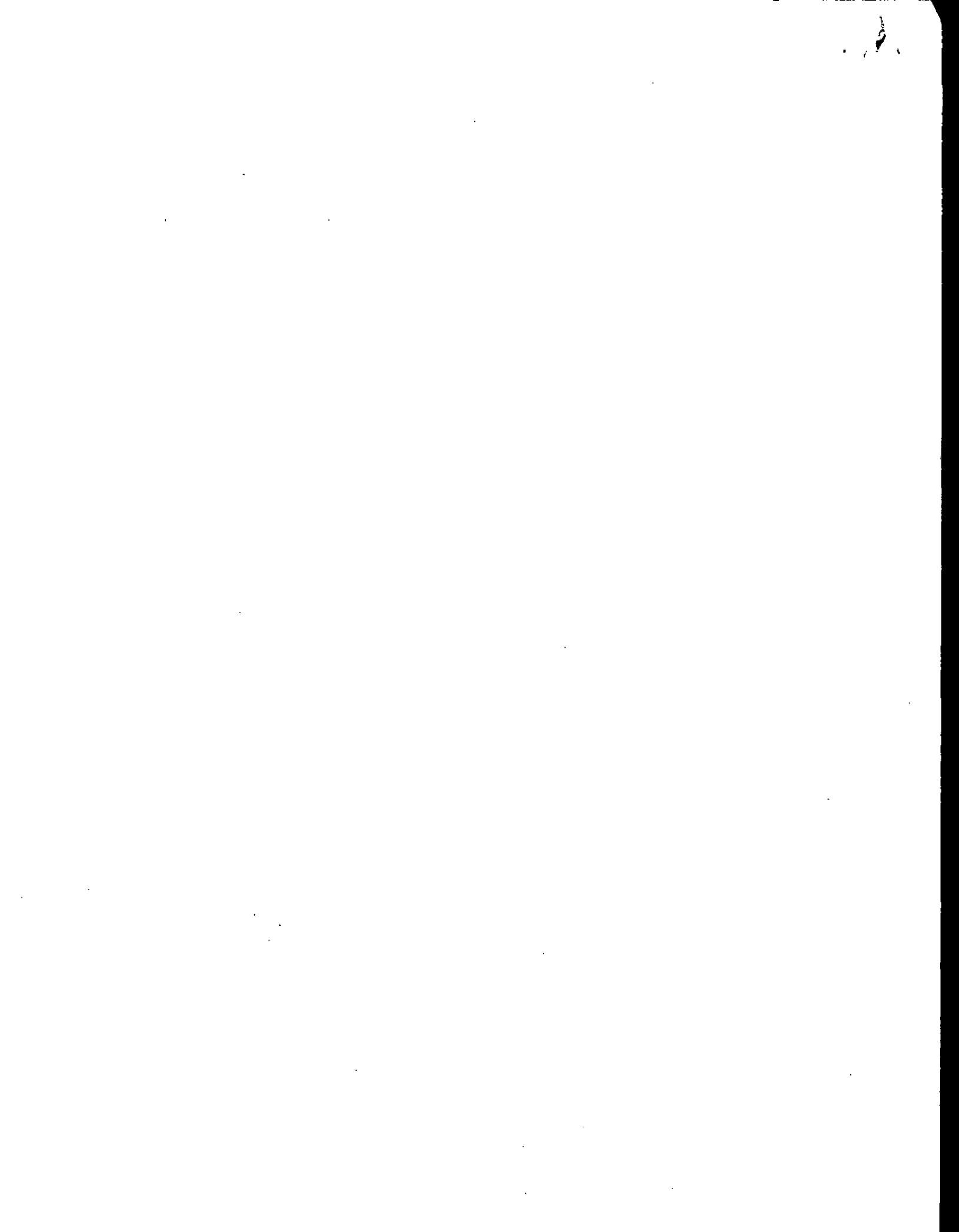
Applicant.

Pursuant to Ohio Revised Code Section 119.09, Ohio Revised Code Chapter 3704., and the Rules of the Ohio Environmental Protection Agency, the Director of Environmental Protection makes the following Final Findings and Orders:

**FINDINGS**

1. JMW Trucking, Inc., owns and operates a construction and demolition debris ("C&DD") transfer station located at 1800 Allen Avenue, Canton, Ohio. The transfer station is used to facilitate the transfer of C&DD material from railcars to trucks.
2. In the process of transferring C&DD material, air contaminants are emitted.
3. The Applicant, JMW Trucking, Inc. ("Applicant" or "JMW Trucking"), holds air pollution permits for the current transfer station including permit-to-install number 15-01459, issued September 26, 2002. The Ohio Environmental Protection Agency ("Ohio EPA") has identified the transfer station by facility identification number 1576051900.
4. The existing, effective air pollution permits restrict the facility to no more than 100,000 tons of C&DD material processed per calendar year.
5. On June 6, 2005, JMW Trucking submitted an application for a permit-to-install ("PTI") modification in order to increase the C&DD material processing limit from 100,000 tons per year to 400,000 tons per year. This application is identified as PTI application number 15-01603.
6. On April 25, 2006, the Director of the Ohio EPA ("Director") issued to Applicant a proposed action denying JMW Trucking's June 6, 2005 PTI modification application number 15-01603 to increase the C&DD material processing limit from 100,000 tons





per year to 400,000 tons per year.

7. On May 23, 2006, Applicant filed a timely request for an adjudication hearing to contest the Director's proposed action.
8. Throughout the course of this proceeding, the parties have engaged in settlement discussions in an attempt to resolve this matter.
9. On March 20, 2007, the parties filed a "Joint Stipulation and Settlement Agreement."
10. Paragraph 4. of the Settlement Agreement portion of the March 20, 2007 Joint Stipulation and Settlement Agreement states:
  4. The Staff has agreed to issue to the Applicant, as a final action, a PTI for its Canton, Ohio facility with terms and conditions that are the same as, or substantially equivalent to, the terms contained in the settlement proposal letter attached hereto as Attachment A. The Applicant's agreement to such terms are contained in a letter attached hereto as Attachment B.
11. No hearing has been held in this matter.
12. Because the parties have entered into a Stipulation and Settlement Agreement, there remain no unresolved issues of law or fact requiring the convening of an adjudication hearing in this case. Therefore, Ohio EPA Case No. 06-AI-004 is moot and should be dismissed.
13. Given the fact that the parties have entered into a Stipulation and Settlement Agreement, and the fact that the parties agree that a PTI should be issued for Applicant's Canton, Ohio facility with terms and conditions that are the same as, or substantially equivalent to, the terms contained in the settlement proposal letter attached to the parties' Stipulation and Settlement Agreement as "Attachment A", a PTI for Applicant's Canton, Ohio facility, with terms and conditions that are the same as, or substantially equivalent to, the terms contained in the settlement proposal letter attached hereto, should be issued. (A copy of said settlement proposal letter is attached hereto and labeled "Attachment A".)
14. The Hearing Officer assigned to this case has filed a Report and Recommendation recommending that the Director dismiss Ohio EPA Case No. 06-AI-004 and that the Director order that a PTI for Applicant's Canton, Ohio facility be issued to JMW Trucking with terms and conditions that are the same as, or substantially equivalent to, the terms contained in the settlement proposal letter attached hereto as Attachment A.
15. No objections to the Hearing Officer's recommendations have been filed.

16. The recommendations of the Hearing Officer are lawful and reasonable and are hereby adopted.

**ORDERS**

1. Ohio EPA Case No. 06-AI-004 is hereby dismissed.
2. A Permit to Install for Applicant's Canton, Ohio facility shall be issued to JMW Trucking, Inc. with terms and conditions that are the same as, or substantially equivalent to, the terms contained in the settlement proposal letter attached hereto as Attachment A.

**IT IS SO ORDERED:**



CHRIS KORLESKI  
Director

SEP 28 2007

Date



STATE OF OHIO  
OFFICE OF THE ATTORNEY GENERAL  
MARC DANN, ATTORNEY GENERAL

Environmental Enforcement  
30 E. Broad St.  
Columbus, OH 43215-3400  
Telephone: (614) 466-2766  
Facsimile: (614) 644-1926  
www.ag.state.oh.us

March 13, 2007

Michael A. Cyphert, Esquire  
Walter and Haverfield, LLP  
1301 East Ninth Street, Ste. 3500  
Cleveland, OH 44114

RE: *In the Matter of JMW Trucking, Inc.*, 06-AI-004

Dear Mike:

This letter is intended to memorialize our settlement discussion on March 7, 2007 in the above-captioned matter. The Ohio EPA appreciates your time and consideration of this case and believes we have agreed upon terms that are reasonable and beneficial for both parties. As a result of our discussion this afternoon, Ohio EPA agrees to issue a modified permit to install ("PTI") to JMW Trucking, Inc. ("JMW") for its 400,000 tons per year construction and demolition debris ("C&DD") transfer facility if JMW agrees to the following terms and conditions:

1. JMW agrees to continue use of its wet suppression system to control fugitive dust emissions from its C&DD unloading/loading operation and to direct its employees to employ the use of the system at any time they see any amount of dust during such operations.
2. JMW further agrees to use its current solid waste enclosure for unloading/loading C&DD whenever freezing temperatures prevent the use of the wet suppression system except as discussed in item three below.
3. In the alternative, if JMW determines that use of their solid waste enclosure to unload/load C&DD is not possible due to an increase in their solid waste transfer business, JMW agrees to use a chemical additive in their wet suppression system that would prevent the system and the water from freezing during the weather conditions described in paragraph two.
4. JMW agrees to include the transfer of C&DD from roll-off containers to landfill trucks in their air PTI to use a wet suppression system to control fugitive dust emissions from the roll-off transfer portion of their facility, and to follow the same procedures set forth in paragraph two and/or three when the wet suppression system cannot be used due to freezing temperatures.
5. JMW agrees to send the workers who operate their C&DD transfer facility excavators to some type of asbestos training that would enable the workers

Attachment A

to identify possible asbestos containing materials that may be included in the C&DD railcar and truck loads that enter the JMW facility.

If you are in agreement with the above settlement terms, please let me know via written correspondence. Once I receive such notification from you, I will forward our letters to Angela Glosser at the Division of Air Pollution Control, Canton City Health Department, so that she can begin making our agreed-upon changes to the PTH as soon as reasonably possible. Please feel free to contact me or Ben Franz if you have any questions or concerns. Thank you.

Sincerely,

A handwritten signature in cursive script, appearing to read "Karla Gebel Perrin".

Karla Gebel Perrin  
Assistant Attorney General