



John R. Kasich, Governor
Mary Taylor, Lt. Governor
Craig W. Butler, Director

October 26, 2017

CERTIFIED MAIL

Joseph A. Cifani
President
Perk Company, Inc.
8100 Grand Avenue, Suite 300
Cleveland, Ohio 44104

Re: Final Findings and Orders for air pollution
violations

Dear Mr. Cifani,

Transmitted herewith are the Final Findings and Orders ("Orders") of the Director of Ohio EPA concerning the above-referenced matter.

Please note that the effective date of the Orders is the date that the Orders were entered into the Ohio EPA Director's journal, which is the date that is stamped on the first page of the Orders.

Sincerely,



James Kavalec, Manager
Compliance/Enforcement Section
Division of Air Pollution Control

ec: James Lee, PIC
Lee Tullis, DAPC
Steve Feldmann, Legal
Bryan Sokolowski/Valencia White, CDAQ

BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

Perk Company, Inc.	:	<u>Director's Final Findings</u>
8100 Grand Avenue, Suite 300	:	<u>and Orders</u>
Cleveland, Ohio 44104	:	

PREAMBLE

It is agreed by the parties hereto as follows:

I. JURISDICTION

These Director's Final Findings and Orders ("Orders") are issued to Perk Company, 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 facilities (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 makes the following findings:

1. Respondent is a construction company that engages in concrete paving, bridge work, underground utilities rehabilitation, and highway construction. Respondent's facility is located at 8100 Grand Avenue, Suite 300, in Cleveland, Ohio (Cuyahoga County).
2. ORC § 3704.05(G) prohibits any person from violating any OAC rule adopted by the Director of Ohio EPA pursuant to ORC Chapter 3704. OAC Chapter 3745-17 was adopted by the Director pursuant to ORC Chapter 3704.
3. OAC Rule 3745-17-08(B) requires, in part, the owner or operator of a fugitive dust source to take or install reasonably available control measures to minimize or eliminate visible particulate emissions of fugitive dust during its operation.

4. On July 16, 2015, Cleveland Division of Air Quality ("CDAQ"), a contractual representative of Ohio EPA in Cuyahoga County, received a complaint about Respondent creating excessive dust while doing street work under the Main Avenue Bridge in Cleveland. The complainant stated that Respondent was creating concrete dust and using blowers to blow excess dust into the air.

5. On July 17, 2015, CDAQ conducted a complaint investigation and observed Respondent generating dust from cutting and jackhammering operations, in violation of OAC Rule 3745-17-08(B) and ORC § 3704.05(G). CDAQ issued a verbal warning for the fugitive dust violation and explained that further dust issues would result in an enforcement action. During a phone call on the same day with Respondent's representative, CDAQ was informed by Respondent that it would cease using fans to blow dust and start watering the site as a method to control the dust.

6. On September 28, 2015, CDAQ received a complaint about fugitive dust emanating from roadwork being done by Respondent near 10907 West Pleasant Valley Road in Parma. The complainant stated that Respondent was using a hand saw to create dust and was not using water to control it. On October 2, 2015, the same complainant called in another complaint. On that same day, Respondent called CDAQ stating that it always used water when cutting asphalt, or otherwise the blade would burn.

7. On October 8, 2015, CDAQ received another complaint from the same complainant, stating that Respondent was again generating dust at the site without using dust control measures. CDAQ conducted a complaint investigation and observed a considerable amount of dust being created by Respondent's employees using hand saws and two sweepers, in violation of OAC Rule 3745-17-08(B) and ORC § 3704.05(G). On October 16, 2015, CDAQ sent a notice of violation ("NOV") letter to Respondent for the violations that were documented during the October 8, 2015 inspection.

8. On November 10, 2015, CDAQ received a response letter from Respondent. In this letter Respondent stated that it would begin to employ water as a form of dust control for all concrete cutting operation.

9. On November 19, 2015, CDAQ issued Respondent a Resolution of Violation ("ROV") letter.

10. On July 15, 2016, CDAQ received another complaint about fugitive dust emanating from a site being operated by Respondent near the corner of East 40th Street and St. Clair Avenue in Cleveland, Ohio. On the same day, CDAQ performed a complaint investigation and documented that Respondent was dry concrete cutting and creating large clouds of dust near East 33rd Street and St Clair Avenue, in violation of OAC Rule 3745-17-08(B) and ORC § 3704.05(G).

11. On July 20, 2016, CDAQ issued Respondent a second NOV letter for the violations that were documented on July 15, 2016.
12. On July 28, 2016, CDAQ received a complaint regarding fugitive dust emanating from a project performed by Respondent on East 93th Street in Cleveland. CDAQ made a site visit on the same day and documented that Respondent was creating excessive fugitive dust from dry concrete cutting.
13. On July 29, 2016, CDAQ received a response to the July 20, 2016 NOV letter in which Respondent claimed that its employees operated outside of its company's policy when there was a late arrival of the water truck during the July 15, 2016 inspection. Further, Respondent stated that it would make sure that its employees used water in the concrete cutting operation.
14. On August 9, 2016, CDAQ issued Respondent a third NOV letter for the violations that were documented on July 28, 2016. On August 23 and 25, 2016, Respondent submitted a response to CDAQ's August 9, 2016 NOV letter stating that it would remind its employees to use water in future concrete cutting operation.
15. On October 6, 2016, CDAQ observed Respondent dry cutting concrete and generating fugitive dust on the sidewalk of St. Clair Avenue near East 23th Street in Cleveland. After being reminded by the CDAQ, Respondent began to apply water to its concrete cutting.
16. On October 11, 2016, CDAQ issued Respondent a fourth NOV letter for the violations that were documented on October 6, 2016.
17. On October 19, 2016, Ohio EPA issued Respondent a Division of Air Pollution Control Chief's Warning Letter for all the violations that were documented on and prior to October 6, 2016.
18. On October 25, 2016, CDAQ received Respondent's response to the October 11, 2016 NOV letter stating that those employees who had not followed the policy of using water when cutting concrete were disciplined and that the company would enforce this policy in its future projects.
19. On May 30, 2017, CDAQ observed Respondent dry cutting concrete and creating a large amount of fugitive dust without using dust controls on Clark Avenue near West 73th Street in Cleveland. Respondent began to apply water to its concrete cutting process after being reminded by CDAQ.
20. On June 2, 2017, CDAQ issued Respondent a fifth NOV letter for the violations that were documented on May 30, 2017.
21. Respondent failed to employ water to control fugitive dust during its concrete cutting operations on July 17, 2015, September 28, 2015, October 8, 2015, July 15, 2016,

July 28, 2016, October 6, 2016, and May 30, 2017, in violation of OAC Rule 3745-17-08(B) and ORC § 3704.05(G).

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 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. Respondent shall pay the amount of seven thousand dollars (\$7,000) in settlement of Ohio EPA's claims for civil penalties, which may be assessed pursuant to ORC Chapter 3704. Within thirty (30) 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" seven thousand dollars (\$7,000) of the total amount. The official check shall be submitted to Carol Butler, or her successor, together with a letter identifying Respondent, to:

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

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, operations by Respondent.

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 hereto. 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:

City of Cleveland
Department of Health
Division of Air Quality
75 Erieview Plaza, Second Floor
Cleveland, Ohio 44114-1839
Attention: Valencia S. White

and to:

Ohio EPA
Division of Air Pollution Control
P.O. Box 1049
Columbus, Ohio 43216-1049
Attn: Jim Kavalec, Manager
Compliance and Enforcement Section

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

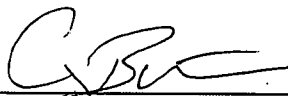
The effective date of these Orders is the date these Orders are entered into the Ohio EPA Director's journal.

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.

ORDERED AND AGREED:

Ohio Environmental Protection Agency

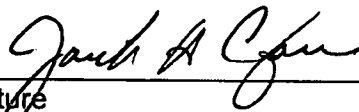


Craig W. Butler
Director

10/24/17
Date

AGREED:

Perk Company, Inc.



Signature
Joseph A. Cifani

Printed or Typed Name
President

Title

10-11-2017
Date