



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

April 26, 2018

CERTIFIED MAIL

Mr. Kyle Mooney
Blackstone Asphalt, Inc.
11 Hollingshead Road
Wellston, Ohio 45692

Re: Final Findings and Orders for air pollution
violations

Dear Mr. Mooney,

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,

A handwritten signature in black ink, appearing to read "James Kavalec", is written over a horizontal line.

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

ec: James Lee, PIC
Brandon Schwendeman, DAPC
John Paulian, DAPC
Lee Tullis, DAPC
Steve Feldmann, Legal
Jessica Kuenzli, SEDO

BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

**Blackstone Asphalt, Inc.
0 Hollingshead Road
Wellston, Ohio 45692**

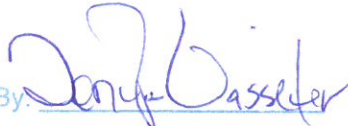
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**Director's Final Findings
and Orders**

I certify this to be a true and accurate copy of the official documents as filed in the records of the Ohio Environmental Protection Agency.

PREAMBLE

It is agreed by the parties hereto as follows:

By:  Date: 4-26-18

I. JURISDICTION

These Director's Final Findings and Orders ("Orders") are issued to Blackstone Asphalt, 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 owns and operates a hot mix asphalt plant (facility identification number 0640025002) located at 11 Hollingshead Road, in Wellston, Ohio. At this facility Respondent operates a 180 TPH Barber Greene batch hot mix asphalt plant which is controlled by a baghouse (identified by Ohio EPA as emissions unit P901). On April 8, 2013, Ohio EPA issued a permit-to-install and operate ("PTIO") (P0113451), which covers roadways/parking areas and stock piles (emissions units F001 and F002). On January 31, 2014, Ohio EPA issued a federally enforceable permit-to-install and operate ("FEPTIO") (P0113016) which authorized the construction and operation of emissions unit ("EU") P901.

2. ORC § 3704.05(C) prohibits any person who is a holder of a permit issued by the Director of Ohio EPA pursuant to ORC § 3704.03 from violating any of its terms and

conditions. FEPTIO P0113016 was issued pursuant to ORC § 3704.03.

3. ORC § 3704.05(G) prohibits a person from violating any order, rule, or determination of the Director that was issued, adopted, or made under ORC Chapter 3704.

4. Ohio Administrative Code ("OAC") Rule 3745-31-02(A)(1) prohibits any air contaminant source from being installed and operated without first obtaining a permit-to-install and operate.

5. OAC Rule 3745-17-07(A)(1) states, in part, that visible particulate emissions from any stack shall not exceed 20% opacity, as a six-minute average.

6. OAC Rule 3745-15-06(B) states, in part, that in the event that any emission source, air pollution control equipment, or related facility breaks down in such a manner as to cause the emission of air contaminants in violation of any applicable law, the person responsible for such equipment shall immediately notify the Ohio EPA district office or delegate agency of such failure or breakdown.

7. 40 CFR Part 60, Subpart I states, in part, that on and after the date on which the performance test required to be conducted by is completed, no owner or operator subject to the provisions of this subpart shall discharge or cause the discharge into the atmosphere from any affected facility any gases which contain particulate matter in excess of 0.04 gr/dscf or exhibit twenty percent opacity, or greater.

8. On June 12, 2015, Ohio Environmental Protection Agency Southeast District Office ("SEDO") conducted a full compliance evaluation of facility number 0640025002. According to the installation date provided by Respondent in Air Services, P901 was installed on August 19, 2013. However, the final permit was not issued until January 31, 2014. FEPTIO P0113016 issued on January 31, 2014, requires Respondent to conduct emissions testing within 120 days after issuance of the permit or after beginning operation after the issuance of the permit, whichever date is later, and within 6 months prior to the permit expiration, to demonstrate compliance with emissions limitations and to provide reasonable assurance of ongoing compliance.

9. Based on the June 12, 2015 site visit, review of facility records and review of SEDO files on the facility, it was determined that Respondent had, *inter alia*:

a. From August 19, 2013 until January 31, 2014, installed and operated emissions unit P901 without first obtaining a PTIO, in violation of OAC Rule 3745-31-02(A)(1) and ORC § 3704.05(G);

b. For EU F001, failed to properly maintain records, in violation of the terms and conditions of PTIO P0113451 and ORC § 3704.05(C);

c. For EU F002, failed to properly maintain records, in violation of the terms and conditions of PTIO P0113451 and ORC § 3704.05(C);

d. For EU P901, failed to properly maintain records, in violation of the terms and conditions of FEPTIO P0113016 and ORC § 3704.05(C);

e. Failed to receive sampling plan approval prior to the initial use of slag, in violation of permit terms and conditions of FEPTIO P0113016 and ORC § 3704.05(C);

f. Failed to submit an annual Permit Evaluation Report ("PER") to Ohio EPA for calendar year 2013, in violation of FEPTIO P0113016 and P0113451 and ORC § 3704.05(C);

g. Failed to include required information in the PER submitted to Ohio for calendar year 2014, regarding EU P901, in violation of FEPTIO P0113016 and ORC § 3704.05(C);

h. For EU P901, failed to submit ongoing quarterly and semi-annual deviation reports from April 30, 2014 to June 30, 2015, in violation of FEPTIO P0113016 and ORC § 3704.05(C); and

i. For EU P901, failed to conduct emissions test, in violation of 40 CFR Part 60, Subparts A and I, the terms and conditions of FEPTIO P0113016 and ORC § 3704.05(C).

10. Respondent was informed of these violations by way of a Notice of Violation ("NOV") letter dated June 30, 2015. Respondent was given thirty days from receipt of the June 30, 2015 NOV to submit a compliance plan and schedule detailing what actions will be taken to regain and maintain compliance with PTIO P011345 and FEPTIO P0113016.

11. On April 29, 2016 SEDO conducted a follow-up inspection of the facility. As a result of this inspection, SEDO determined that Respondent had, *inter alia*:

a. Failed to provide records required by the facility's permits, including daily production records, monitoring data, test results, strip-chart recordings, calibration data, maintenance records, and any other record required by the permit for five years from the date the record was created, in violation of permit terms and conditions of FEPTIO P0113016, PTIO P0113451 and ORC § 3704.05(C);

b. Failed to establish and maintain the baghouse stack at a minimum of 50 feet above ground prior to commencing the use of slag, in violation of terms and conditions of FEPTIO P0113016 and ORC § 3704.05(C);

c. For EU P901, failed to submit ongoing quarterly and semi-annual deviation reports from April 30, 2014 to May 19, 2016, in violation of FEPTIO P0113016 and ORC § 3704.05(C); and

d. Failed to conduct emissions testing within 120 days after the issuance of FEPTIO P0113016 (issued final January 31, 2014) or after beginning operation after the issuance of FEPTIO P0113016, whichever date is later for EU P901, in violation of permit

terms and conditions of FEPTIO P0113016, 40 CFR Part 60 Subparts A and I, and ORC § 3704.05(C).

12. By letter dated May 19, 2016, Respondent was issued a NOV for the violations discovered during the April 29, 2016 site visit.

13. On July 26, 2016, Respondent performed the required compliance emission tests on emissions unit P901. The emissions test was performed to demonstrate compliance

with the allowable emissions rate for particulate emissions ("PE"), sulfur dioxide ("SO2"), nitrogen oxides ("NOx"), carbon monoxide ("CO"), volatile organic compounds ("VOC") and visible emissions as outlined in the terms and conditions of FEPTIO P0113016. During the emissions testing conducted July 26, 2016, Respondent did not employ slag.

14. After reviewing the July 26, 2016 emissions test results SEDO determined that

emissions unit P901 is in compliance with NOx, CO and SO2 emissions rates allowed by FEPTIO P0113016. No further action is required to demonstrate initial compliance with the NOx, CO or SO2 emissions, as long as slag is not reemployed in the mix. SEDO did determine that emissions unit P901 exceeded the permitted allowable emissions rates for PE, VOC and visible emissions, in violation of the terms and conditions of FEPTIO P0113016, OAC 3745-31-05(A)(3), 40 CFR Part 60, Subpart I and ORC § 3704.05(C). The test report identified the following emissions rate exceedances:

Emissions Unit P901	Particulate Emissions
Tested Emissions Rate	0.121 gr/dscf
Allowable Emissions Rate	0.03 gr/dscf
Source Operating Rate	146 tons/hr

Emissions Unit P901	Volatile Organic Compounds
Tested Emissions Rate	0.247 lb/ton
Allowable Emissions Rate	0.036 lb/ton
Source Operating Rate	146 tons/hr

Emissions Unit P901	Visible Emissions
Tested Emissions Rate	23% as a six-minute average
Allowable Emissions Rate	20% as a six-minute average
Source Operating Rate	146 tons/hr

15. On September 23, 2016, SEDO sent a NOV letter to Respondent for the failure to comply with terms and conditions of FEPTIO P0113016 regarding the PE and VOC emission limitations and visible emissions. The NOV requested that within thirty days

of receipt of the letter Respondent submit a compliance plan and schedule to SEDO which will address how the facility will address the emissions exceedances identified above, detail the cause(s) of the emissions exceedances, detail any corrective actions(s) taken and include an ITT to retest for the failed pollutants.

16. On October 14, 2016, SEDO received a complaint concerning this facility. In response to this complaint, SEDO conducted a partial compliance inspection of the facility on October 18, 2016. During the inspection, SEDO conducted Method 9 visible emissions observations from the stack serving emissions unit P901 and also from the pug mill side of the plant at the point where product was being fed in. The highest 6-minute averages recorded during these readings were 40.6% opacity and 47.5% opacity respectively, in violation of ORC § 3704.05(C) and (G), OAC 3745-31-05(A)(3), 3745-17-07(A)(1), 40 CFR Part 60, Subpart I and multiple violations of the Terms and Conditions of FEPTIO P0113016.

17. SEDO reviewed facility records during the October 18, 2016 inspection. Upon review of the records, SEDO determined that Respondent had, *inter alia*:

a. failed to accurately record the amount of asphalt produced in the month of June, 2016, using propane fuel;

b. failed to record the rolling 12-month production in tons, for each fuel type, for each month (July, August and September 2016);

c. failed to record the total number of operating hours and the number of operating hours while employing slag, the average hourly slag usage, in percent and the type of slag used;

d. failed to maintain records of all raw material composition forms; and failed to accurately record daily stack and fugitive visible emissions checks required by FEPTIO P0113016.

18. By letter dated November 28, 2016, Respondent was issued a NOV citing the above violations referenced in Finding No. 17.

19. On December 9, 2016, Respondent submitted an air permit modification application to modify emissions units P901, F001 and F002 (FEPTIO P0113016). The emissions modeling included in the application was not considered to be acceptable by SEDO because the modeling submitted did not include emissions from combustion. Respondent's emissions are from combustion and slag; therefore, the modeling is required to include emissions from combustion. On January 9, 2017, Respondent submitted an

updated air permit modification application that included SO₂ emissions in the dispersion modeling. A Chapter 31 permit modification (P0121997) was issued final on June 22, 2017, allowing the batch mix plant to be changed to a twin shaft continuous flow mix plant.

20. On August 10 and 11, 2017, Respondent performed another compliance emissions test on emissions unit P901. The emissions test results identified that the measured PE, VOC and visible emissions were in compliance with permit limits, resolving the violations of the terms and conditions of FEPTIO P0113016, OAC 3745-31-05(A)(3), 40 CFR Part 60, Subpart I and ORC § 3704.05(C).

21. 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 Order:

1. Respondent shall pay the amount of thirty thousand dollars (\$30,000) in settlement of Ohio EPA's claims for civil penalties, which may be assessed pursuant to ORC Chapter 3704. Payment to Ohio EPA shall be made by official checks made payable to "Treasurer, State of Ohio" in twenty-four (24) monthly installments. The first monthly payment is one thousand two hundred and fifty dollars (\$1,250) and the remaining equal twenty-three (23) monthly payments are one thousand two hundred and fifty dollars (\$1,250) each. The installments are due on the first (1st) day of each month for twenty-four (24) months beginning with the month of June 2018 and ending on May 1, 2020. The official checks 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 valid 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:

Ohio EPA
Southeast District Office
Air Pollution Control Division
2195 Front Street
Logan, Ohio 43138-8637
Attention: Jessica Kuenzli

and to:

Ohio EPA
Division of Air Pollution Control
P.O. Box 1049
Columbus, Ohio 43216-1049
Attention: Jim Kavalec

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,

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 agree 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

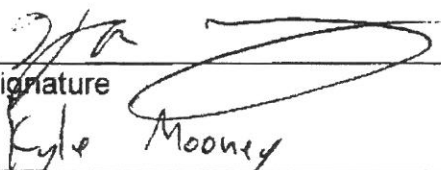


Craig W. Butler
Director

4/25/18
Date

AGREED:

Blackstone Asphalt, Inc.



Signature
Kyle Mooney

Printed or Typed Name
VP

Title

4-17-18

Date