

OHIO E.P.A.

DEC 18 2013

ENTERED DIRECTOR'S JOURNAL

BEFORE THE

OHIO ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

Kokosing Materials Inc. : Director's Final Findings
P.O. Box 334 : and Orders
Fredericktown, Ohio 43019 :

PREAMBLE

It is agreed by the parties hereto as follows:

I. JURISDICTION

These Director's Final Findings and Orders (Orders) are issued to Kokosing Materials 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 the 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 makes the following findings. Nothing in the findings shall be considered to be an admission by Respondent of any matter of law or fact:

1. Respondent has corporate offices located at 17531 Waterford Road, Fredericktown, Knox County, Ohio and owns and operates several asphalt production plants in Ohio. Kokosing Materials Inc.'s Plant 504 is located at 6326 County Highway 61, Upper Sandusky, Wyandot County, Ohio (Facility ID# 0142000091). Kokosing Materials Inc.'s Plant 509 is located at 4755 South High Street, Columbus, Franklin County, Ohio (Facility ID# 0125042093).

Kokosing Materials Inc. Plant 504

2. On July 4, 2010, Ohio EPA issued permit-to-install and operate (PTIO) P0105647 to Respondent. The terms and conditions of PTIO P0105647 contain applicable emission limitations and operational control and reporting requirements for emissions unit (EU) P901 (Portable Hot Mix Asphalt plant controlled by a baghouse). Specifically, PTIO P0105647 established emissions limitations of 28.2 lbs/hr of volatile organic compound (VOC) emissions when burning on-spec used oil; 7.1 lbs/hr of nitrogen oxides (NO_x) emissions when burning on-spec used oil; and 27.0 lbs/hr of sulfur dioxide (SO₂) emissions when burning number 2 fuel oil. EU P901 is an "air contaminant source" as defined in Ohio Administrative Code (OAC) Rules 3745-15-01(C) and (X).

3. On September 4, 2010, Respondent performed emissions testing on EU P901. On October 28, 2010, Respondent submitted the test results to Ohio EPA. After reviewing the report, Ohio EPA determined that Respondent had failed to comply with terms and conditions of PTIO P0105647 for NO_x and SO₂ emissions. Specifically, the emissions testing showed average emissions of 18.15 lbs/hr for NO_x and 63.7 lbs/hr for SO₂, in violation of terms and conditions of PTIO P0105647 and ORC § 3704.05(C). By letter dated February 25, 2011, Ohio EPA notified Respondent of these violations.

4. On January 20, 2011, Ohio EPA and Respondent had discussions with regards to compliance issues with EU P901. In these discussions, Respondent indicated that compliance would be achieved through a physical inspection, tuning of the plant, replacement of the burner, and an emissions retest.

5. On July 7, 2011, Respondent submitted an administrative permit modification request for EU 901 which requested new emission limitations for VOCs, NO_x, and SO₂. On July 18, 2011, Respondent performed and passed emissions testing on EU P901. On August 8 and August 17, 2011, Respondent submitted the test results to Ohio EPA. On December 7, 2011, Respondent was issued PTIO P0108429. The terms and conditions of PTIO P0108429 established new emission limitations of 37.11 lbs/hr for VOCs, 24.45 lbs/hr for NO_x, and 25.24 lbs/hr for SO₂. After reviewing the August 8 and August 17, 2011 test reports, Ohio EPA determined that Respondent was in compliance with terms and conditions of PTIO P0108429 for the NO_x and SO₂ emission limitations.

Kokosing Materials Inc. Plant 509

6. On July 4, 2010, Ohio EPA issued PTIO P0105646 to Respondent. The terms and conditions of PTIO P0105646 contain applicable emission limitations and operational control and reporting requirements for EU P901 (Portable Hot Mix Asphalt plant controlled by a baghouse). Specifically, PTIO P0105646 established emission limitations of 27.9 lbs/hr of VOC emissions when burning on-spec used oil. EU P901 is an "air contaminant source" as defined in OAC Rules 3745-15-01(C) and (X).

7. On October 6, 2010 and July 22, 2011, Respondent performed emissions testing on EU P901. After reviewing the test reports, Ohio EPA determined that Respondent had failed to comply with terms and conditions of PTIO P0105646 for VOC emissions. On September 20 and 22, 2011, Respondent performed additional emissions testing on EU P901. After reviewing the test reports, Ohio EPA determined that EU P901's VOC emissions were below the VOC emission limitations established in PTIO P0105646.

8. During the July 22, 2011 emissions tests, test run #1 showed VOC concentrations of 207.76 lbs/hr. Respondent has indicated that the high test results may have been due to the limestone aggregate which was used in that test and the other runs that day. In addition, Respondent indicated that the limestone aggregate was not used during the October 2010 and September 2011 emissions tests and that the limestone aggregate is used on a limited basis. Respondent has stated that it plans on conducting additional hydrocarbon testing of limestone aggregate, and due to the potential variability in limestone aggregate hydrocarbons, request a modification to PTIO P0105646 for an increase in VOC emissions. To date, Ohio EPA has not received a permit modification request.

Plant 504 and 509 – VOC Emissions

9. The U.S. EPA Method 25 VOC emissions tests conducted at these plants in 2010 and 2011 were not performed in accordance with the requirements specified in the method. Specifically, the temperature used to recover the VOC emissions from the Method 25 traps was above the level authorized by the method. The emissions test reports indicated that the trap recovery temperature for the VOC emission tests conducted at these plants was 300 degrees Celsius. The maximum trap recovery temperature authorized by Method 25 is 200 degrees Celsius.

Because the Method 25 VOC emissions tests conducted at these plants were not performed in accordance with the requirements specified in the method, the VOC emission data from these emissions tests can only be used as a general indication of the VOC emission levels emitted from the plants under the specific operating conditions documented during the emissions tests.

Respondent failed to conduct the required emissions tests in accordance with the specified U.S. EPA approved reference test method and, therefore, failed to demonstrate compliance with the allowable emission limitations, in violation of the terms and conditions of the PTIOs issued for each of these plants and ORC § 3704.05(C).

10. 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. If Plant 509 is operated after November of 2013 using an asphalt mix that contains limestone aggregate, Respondent shall (1) submit an intent-to-test notification to the Ohio EPA, Central District Office 30 days prior to the proposed emission testing date(s); (2) conduct VOC emission tests in accordance with the requirements specified in the U.S. EPA Methods 1 through 4 and 25 while Plant 509 is operating at or near its maximum rated production capacity using limestone aggregate; (3) identify the quarry from which the limestone aggregate was obtained and date the limestone aggregate shipment was received; (4) collect a representative sample of the limestone aggregate used during the emission tests, analyze the representative sample in accordance with Method 8015M, and provide the results of the sample analysis in both milligram/kilogram and pounds of releasable VOC per dry ton; and (5) submit the results of the VOC emission tests and the sample analysis to the Ohio EPA, Central District Office 30 days after completion of the emission tests.

The VOC emission test results will either serve as a demonstration of compliance with the VOC limitation in PTIO P0105646 or as the basis for applying for and obtaining a new modified PTIO that establishes an appropriate plant-specific VOC emission limitation and any necessary operation restrictions, monitoring, record keeping, and reporting requirements for the type of limestone aggregate used in Plant 509.

2. Respondent shall pay the amount of thirty-five thousand dollars (\$35,000) 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" for twenty-eight thousand dollars (\$28,000) of the total amount [Split to Fund 6960 and Fund 6A10]. The official check shall be submitted to Carol Butler, or her successor, together with a letter identifying the Respondent, to:

Ohio EPA
Office of Fiscal Administration
50 West Town Street, Suite 700
P.O. Box 1049
Columbus, Ohio 43216-1049

3. In lieu of paying the remaining seven thousand dollars (\$7,000) of the civil penalty, Respondent shall, within thirty (30) days of the effective date of these Orders, fund a Supplemental Environmental Project ("SEP") by making a contribution in the amount of \$7,000 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 \$7,000. The official check shall be submitted Carol Butler, or her successor, together with a letter identifying the Respondent and Fund 5CD0, to the above-stated address.

4. A copy of each of the above checks shall be sent to Bruce Weinberg, Manager Enforcement Section, or his successor, at the following address:

Ohio EPA
Division of Air Pollution Control
50 West Town Street, Suite 700
P.O. Box 1049
Columbus, Ohio 43216-1049

5. Should Respondent fail to fund the SEP within the required time frame set forth in Order 3, Respondent shall immediately pay to Ohio EPA \$7,000 of the civil penalty in accordance with the procedures in Order 2.

VI. TERMINATION

Respondent's obligations under these Orders shall terminate when Respondent certifies in writing and demonstrates to the satisfaction of Ohio EPA that Respondent has performed all obligations under these Orders and the Chief of Ohio EPA's Division of Air Pollution Control acknowledges, in writing, the termination of these Orders. If Ohio EPA does not agree that all obligations have been performed, then Ohio EPA will notify Respondent of the obligations that have not been performed, in which case Respondent shall have an opportunity to address any such deficiencies and seek termination as described above.

The certification shall contain the following attestation: "I certify that the information contained in or accompanying this certification is true, accurate and complete."

This certification shall be submitted by Respondent to Ohio EPA and shall be signed by a responsible official of Respondent. For the purposes of these Orders, a responsible official is a principal executive officer of at least the level of vice president or his duly authorized representative.

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 of 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 Environmental Protection Agency
Central District Office
Division of Air Pollution Control
50 West Town Street, Suite 700
Columbus, Ohio 43215
Attn: Kelly Toth

and to:

Ohio Environmental Protection Agency
Division of Air Pollution Control
50 West Town Street, Suite 700
P.O. Box 1049
Columbus, Ohio 43216-1049
Attn: Bruce Weinberg

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



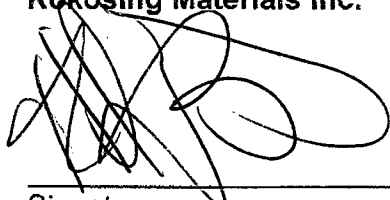
Scott J. Nally
Director

12/17/13

Date

IT IS SO AGREED:

Kokosing Materials Inc.



Signature

12-10-13

Date

Robert D. Bailey

Printed or Typed Name

President

Title