



Mike DeWine, Governor
Jon Husted, Lt. Governor
Laurie A. Stevenson, Director

December 27, 2022

James Wilson
Enviro Recycling Group LLC
PO Box 30604
Gahanna, Ohio 43230

Re: Final Findings and Orders for air pollution
violations

Dear Mr. Wilson:

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 that reads "Joshua S. Koch". The signature is written in a cursive style.

Joshua S. Koch, Manager
Compliance/Enforcement Section
Division of Air Pollution Control

ec: James Kavalec/John Paulian, DAPC
Kim Rhoads/Drew Bergman, Legal Office
Stephanie Habinak/Kelly Saavedra/Zach Peterson, CDO-DAPC

By: *Holly A. Mack* Date: 12/27/2022

BEFORE THE

OHIO ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

Enviro Recycling Group LLC	:	<u>Director's Final Findings</u>
PO Box 30604	:	<u>and Orders</u>
Gahanna, Ohio 43230	:	

PREAMBLE

It is agreed by the parties hereto as follows:

I. JURISDICTION

These Director's Final Findings and Orders ("Orders") are issued to Enviro Recycling Group LLC (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 makes the following findings:

1. Respondent owns and operates a concrete crushing facility located at 1155 Bonham Avenue, in Columbus, Franklin County, Ohio (Ohio EPA facility ID 0125044194).
2. The following emission units (EU) at the facility are the subject of these Orders and they are subject to Ohio EPA rules and regulations:

EU ID	Description	Installation Date
F001	Unpaved Roadways and Parking Areas	01/01/2013
F002	Storage Piles, including load-in and load-out	01/01/2013
F003	Inertia Metso Hawk 500 tons/hr crusher	06/01/2013

3. 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.

4. ORC § 3704.05 (A) and (G), respectively, prohibits a person from causing, permitting or allowing the emission of an air contaminant unless the person is the holder of an operating permit and prohibits a person from violating any order, rule, or determination of the Director that was issued, adopted, or made under ORC Chapter 3704.

5. OAC Rule 3745-15-07(A) states that “[T]he emission or escape into the open air from any source or sources whatsoever, of smoke, ashes, dust, dirt, grime, acids, fumes, gases, vapors, or any other substances or combinations of substances, in such manner or in such amounts as to endanger the health, safety or welfare of the public, or cause unreasonable injury or damage to property, is hereby found and declared to be a public nuisance. It shall be unlawful for any person to cause, permit or maintain any such public nuisance.”

6. OAC Rule 3745-17-08 states, in part, that “[N]o person shall cause or permit any fugitive dust source to be operated... without taking or installing reasonably available control measures to prevent fugitive dust from becoming airborne.”

7. 40 CFR Part 60, Subpart OOO, § 60.675 states, in part, that the owner or operator shall determine compliance with the opacity standard by using Method 9 and the procedures in § 60.11.

8. 40 CFR § 60.8(a) states, in part, that within 60 days after achieving the maximum production rate at which the affected facility will be operated, but not later than 180 days after initial startup of such facility, or at such other times specified by this part, and at such other times as may be required by the Administrator under section 114 of the Act, the owner or operator of such facility shall conduct performance test(s) and furnish the Administrator a written report of the results of such performance test(s).

9. Permit-to-install and operate (PTIO) P0116781 includes the terms and conditions for EUs F001, F002 and F003 and it has an effective date of May 6, 2014.

10. For F001, PTIO P0116781 states, in part, that there shall be no visible PE except for 3 minutes during any 60-minute period.

11. For F001, PTIO P0116781 states, in part, that Respondent shall employ, best available control measures on all unpaved roadways and parking areas for the purpose of ensuring compliance with the above-mentioned applicable requirements. In accordance with the permittee's application, the permittee has committed to treat the unpaved roadways and parking areas by application of chemical stabilization/dust suppressants and/or watering at sufficient treatment frequencies to ensure compliance. Nothing in this paragraph shall prohibit the permittee from employing other control measures to ensure compliance.

12. For F001, PTIO P0116781 states, in part, that Respondent shall promptly remove, in such a manner as to minimize or prevent resuspension, earth and/or other material from paved streets onto which such material has been deposited by trucking or earth moving equipment or erosion by water or other means.

13. For F001, PTIO P0116781 states, in part, that open-bodied vehicles transporting materials likely to become airborne shall have such materials covered at all times if the control measure is necessary for the materials being transported.

14. For F001, PTIO P0116781 states, in part, that Respondent shall perform daily inspections and maintain records of each of the roadway segments and parking areas.

15. For F002, PTIO P0116781 states, in part, that Respondent shall employ best available control measures for wind erosion from the surfaces of all storage piles for the purpose of ensuring compliance with the above-mentioned applicable requirements. In accordance with the application, the permittee has committed to perform one or more of the following: chemical stabilization, watering/sprinkling systems/hoses, covering the storage piles to ensure compliance. Nothing in this paragraph shall prohibit the permittee from employing other control measures to ensure compliance.

16. For F003, PTIO P0116781 states, in part, that Respondent shall conduct, or have conducted, visible emissions testing for all fugitive emissions points of this emissions unit, that are subject to 40 CFR Part 60, Subpart OOO, within 60 days after achieving the maximum production rate at which the affected facility will be operated, and by not later than 180 days after initial startup. The emission testing shall be conducted to demonstrate compliance with the allowable visible emission rates for particulate emissions.

17. PTIO P0116781 states, in part, Respondent shall submit annual Permit Evaluation Report (PER) forms by the date in the Authorization section. The PER shall cover a reporting period of no more than twelve months for each EU in the permit.

18. Between January 2018 through May 17, 2022, Ohio EPA received fifty complaints regarding fugitive dust and drag out at the facility.

19. Between January 2018 through May of 2022, Ohio EPA conducted seventeen investigations and/or inspections related to the complaints in Finding No. 18.

20. As a result of these investigations and inspections, Ohio EPA determines that Respondent, inter alia:

a. On at least ten occasions, has failed to implement best available control measures required to treat its unpaved roadways and to prevent fugitive dust from the facility from being deposited onto the public street and failed to promptly remove, in such a manner as to minimize or prevent resuspension, earth and/or other material from paved streets, in violation of the terms and conditions of PTIO P0116781, OAC Rule 3745-17-08(B)(2) and (9) and ORC § 3704.05(C) and (G);

b. On at least three occasions, exceeded the visible emissions limits of 3 minutes during any 60-minute period, in violation of the terms and conditions of PTIO P0116781 and ORC § 3704.05(C) and (G);

c. Failed to maintain records, including submitting PER forms for 2018, 2019, 2020, and the fee report for 2018 and 2019, in violation of the terms and conditions of PTIO P0116781 and ORC § 3704.05(C) and (G);

d. Failed to timely conduct Method 9 testing, in violation of the terms and conditions of PTIO P0116781, 40 CFR 60 Subpart OOO and ORC § 3704.05(C) and (G); and

e. Failed to obtain a PTIO prior to installation and operation of a crusher and screen in violation of ORC § 3704.05 (A) and (G).

21. On July 24, 2018, April 14, 2019, May 8, 2019, July 30, 2019, September 6, 2019, January 30, 2020, July 14, 2020, August 6, 2021 and October 8, 2021, Ohio EPA sent notice of violation (NOV) letters to Respondent for the violations listed above.

22. On March 19, 2020, Method 9 visible emissions testing was conducted on emissions unit F003. The test results were submitted to Ohio EPA on May 19, 2020 and demonstrated that the visible emissions were below the opacity limitations established in 40 CFR Part 60, Subpart OOO; therefore, abating the violation referenced in Finding No. 19.d. of these Orders.

23. As a result of the ongoing fugitive dust and drag out issues at the facility along with the complaint investigations, inspections and ongoing noncompliance, the Director has determined that Respondent has caused or is causing a public nuisance in violation OAC Rule 3745-15-07(A) and ORC § 3704.05(C) and (G).

24. The Director has given consideration to, and based her 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 continue to utilize spray bars or a wheel wash near the entrance of the facility to clean truck tires before exiting on to the public roadways and all trucks exiting the facility must go through the spray bars/wheel wash. The use of the spray bars/wheel wash is not necessary when the roadway is covered with snow and/or ice or if precipitation has occurred that is sufficient to mitigate dust from the roadway.
2. On or before December 31, 2022, Respondent shall submit to Ohio EPA, Central District Office, the requested qualifying criteria information necessary to complete the PTIO application previously submitted for the crusher and screen which were installed without Director's authorization.
3. On or before December 31, 2022, Respondent shall pay in full the \$3,300 in outstanding air emissions fees owed to Ohio EPA.
4. Within thirty (30) days from the effective date of these Orders, Respondent shall submit the fee report for 2018/ 2019.
5. Within thirty (30) days from the effective date of these Orders, Respondent shall submit documentation demonstrating that the maximum annual material throughput for EU F003 has not exceed 3,000,000 tons based on the material throughput of the primary feeder.
6. Respondent shall continue to submit to Ohio EPA/ CDO the facility log and photographs demonstrating compliance with the dust suppression plan on a monthly basis until the completion of the penalty payment plan outlined in Finding #7 below.
7. Respondent shall pay the amount of ten thousand dollars (\$10,000) in settlement of Ohio EPA's claims for civil penalties, which may be assessed pursuant to ORC Chapter 3704, via twenty (20) monthly payments of five hundred dollars (\$500). On the fifteenth (15th) of each month, beginning January 15, 2023 and ending with the final payment on August 15, 2024, payment to Ohio EPA shall be made by official checks made payable to "Treasurer, State of Ohio" for five hundred dollars (\$500). The official checks shall be submitted to Carol Butler, or her successor, together with a letter identifying the 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 when Respondent certifies in writing and demonstrates to the satisfaction of Ohio EPA that Respondent has performed all obligations under these Orders, these obligations have been embedded in operation permits where appropriate, 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 purposes of these Orders, a responsible official is as defined in OAC Rule 3745-77-01(JJ) for a corporation, or a corporate officer who is in charge of a principal business function of Respondent.

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 submitted through the Ohio EPA's eBusiness Center: Air Services web service and emailed to Josh Koch at Joshua.Koch@epa.ohio.gov; Kelly Saavedra at Kelly.Saavedra@epa.ohio.gov; 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 and all violations of ORC Chapter 3704 known to Ohio EPA up through the effective date of these Orders.

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**

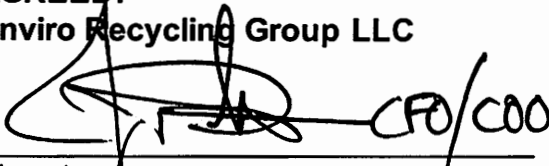


Laurie A. Stevenson, Director

12/27/2022

Date

**AGREED:
Enviro Recycling Group LLC**


CFO/COO

Signature

Date

12/8/22

James T. Wilson CFO/COO
Printed or Typed Name and Title