

BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

The Akron Brick & Block Co., Ltd	:	<u>Director's Final Findings</u>
3225 Mogadore Road	:	<u>and Orders</u>
Akron, Ohio 44312	:	

PREAMBLE

It is hereby agreed that:

I. JURISDICTION

These Director's Final Findings and Orders ("Orders") are issued to The Akron Brick & Block Co., Ltd. ("ABB") 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 ABB and successors in interest liable under Ohio law. No change in ownership of ABB shall in any way alter ABB'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. ABB owns and operates a facility that manufactures concrete blocks for decorative and constructive use and is located at 3225 Mogadore Road, Akron, Summit County, Ohio. ABB is a subsidiary of Oldcastle APG, which has its principal place of business at 375 Northridge Road, Suite 350, Atlanta, Georgia.

2. At the above-referenced facility, ABB owns and operates roadways/parking areas, aggregate storage piles, a material handling operation, and a concrete block plant, which are identified by Ohio EPA as "sources F001, F002, unassigned state ID (hereinafter "X001"), and P901," respectively. These sources were installed in 1946 and began operation

soon thereafter. At the time of inspection of the facility on May 10, 2001 by Akron Regional Air Quality Management District, a contractual representative of Ohio EPA in Summit County, ABB was operating additional roadways/parking areas (hereinafter "X002"), storage piles (hereinafter "X003"), and material handling (hereinafter "X004") associated with a 300 ton-per-hour portable aggregate processing plant ("F004"). ABB rented the portable aggregate processing plant from CON/AGG Machinery of 11649 Reading Road, Cincinnati, Ohio, and subsequently contracted with Progressive Excavating, Inc. of 4320 Wilcor Drive, Akron, Ohio, to operate it. The portable aggregate processing plant was used to crush recycled concrete and rock. The Permit to Install ("PTI") for source F004 was issued to CON/AGG by Ohio EPA on June 14, 2001. On August 9, 2001, ABB shut down sources F004, X002, X003 and X004. In May, 2002, ABB replaced source F004, X002, X003 and X004 with the new Pegson Trackpactor Impact Crusher (hereinafter "X005"), new additional roadways/parking areas (hereinafter "X006"), new storage piles (hereinafter "X007"), and new material handling (hereinafter "X008"), respectively.

3. Sources F001, F002, P901, F004, X001 through X008 were or are "air contaminant sources" as defined in OAC Rules 3745-15-01(C) and (W), 3745-31-01(D), and 3745-35-01(B)(1), and ORC 3704.01(C).

4. OAC Rule 3745-15-07(A) prohibits, in part, any person from causing a public nuisance by emitting excessive fugitive dust. OAC Rule 3745-17-07(B)(4) requires that there shall be no visible particulate emissions from any paved roadway or parking area except for a period of time not to exceed six minutes during any sixty-minute observation period. OAC Rule 3745-17-07(B)(5) requires that there shall be no visible particulate emission from any unpaved roadway or parking area except for a period of time not to exceed thirteen minutes during any sixty-minute observation period. OAC Rule 3745-17-08(B) requires, in part, that reasonably available control measures ("RACM") be used to minimize or eliminate visible particulate emissions of fugitive dust from any fugitive dust source as defined in OAC Rule 3745-17-01(B)(7).

5. OAC Rule 3745-31-02 prohibits any person from installing an air contaminant source unless a PTI has been applied for and obtained, except as provided by rule or law. OAC Rule 3745-35-02 prohibits any person from operating an air contaminant source unless a Permit to Operate ("PTO") has been applied for and obtained, except as provided by rule or law.

6. ORC 3704.05(A) prohibits any person from allowing any emission from any source in excess of that permitted in any rule adopted by the Director of Ohio EPA. ORC 3704.05(G) prohibits any person from violating any rule adopted by the Director of Ohio EPA.

7. Between May 29, 1997 and August 15, 2001, there have been seventeen (17) documented complaints received by the ARAQMD from nearby residents concerning fugitive

dust from ABB's facility. Each of these complaints was thoroughly investigated by the ARAQMD and followed with a warning letter to ABB. Based on its investigation of these complaints, ARAQMD concluded that ABB violated OAC Rule 3745-15-07(A).

8. On July 7, 1998, ARAQMD sent a letter requesting ABB to submit renewal applications for the PTOs for sources F001 and P901 because the PTOs for these source expired on June 30, 1998.

9. On August 14, 1998, ABB submitted to ARAQMD the renewal applications for the PTOs for sources F001 and P901 and a PTO application for source X001. The PTOs for sources F001 and P901 were issued by Ohio EPA on December 3, 1998.

10. On September 11, 1998, December 9, 1999, and August 2, 2001, ARAQMD conducted visible particulate emission ("VE") readings at ABB's facility for the paved roadways/parking areas of source F001. The results of these VE readings revealed that visible particulate emissions exceeded six minutes during a sixty-minute observation period for the paved roadways/parking areas, in violation of OAC Rule 3745-17-07(B)(4) and ORC 3704.05(A) and (G). ABB was also in violation of OAC Rule 3745-17-08(B) and ORC 3704.05(G) for not employing RACM in controlling visible particulate emissions of fugitive dust.

11. From December 19, 1990 through August 23, 1991, August 23, 1994 through June 30, 1995, and June 30, 1998 through December 3, 1998, ABB operated source F001 without applying for and obtaining a PTO from Ohio EPA, in violation of OAC Rule 3745-35-02 and ORC 3704.05(G).

12. From December 19, 1990 through December 3, 1998, ABB operated source F002 without applying for and obtaining a PTO from Ohio EPA, in violation of OAC Rule 3745-35-02 and ORC 3704.05(G).

13. From December 19, 1990 through August 23, 1991, August 23, 1994 through June 30, 1995, and June 30, 1998 through December 3, 1998, ABB operated source P901 without applying for and obtaining a PTO from Ohio EPA, in violation of OAC Rule 3745-35-02 and ORC 3704.05(G).

14. From December 19, 1990 through February 14, 1999, ABB operated source X001 without applying for and obtaining a PTO from Ohio EPA, in violation of OAC Rule 3745-35-02 and ORC 3704.05(G).

15. On August 9, 2001, ABB informed ARAQMD that it had just stopped the operation of sources F004, X002, X003 and X004 at its facility.

16. In the beginning of 2001, ABB installed sources X002, X003 and X004 without

applying for and obtaining PTIs from Ohio EPA, in violation of OAC Rule 3745-31-02 and ORC 3704.05(G). From January 2001 through August 9, 2001, ABB operated sources F004, X002, X003 and X004 without applying for and obtaining a PTO from Ohio EPA, in violation of OAC Rule 3745-35-02 and ORC 3704.05(G).

17. On August 2 and 6, 2001, ARAQMD conducted VE readings at ABB's facility for the unpaved roadways/parking areas of source F001. The results of these VE readings revealed that visible particulate emissions exceeded thirteen minutes during a sixty-minute observation periods for the unpaved roadways/parking areas, in violation of OAC Rule 3745-17-07(B)(4) and ORC 3704.05(A) and (G). On these days, ABB was also in violation of OAC Rule 3745-17-08(B) and ORC 3704.05(G) for failing to employ RACM. On August 6, 2001, ARAQMD sent a facsimile to ABB outlining the results of the VE readings and violations observed by ARAQMD during August 2 and 6, 2001.

18. On August 9, 2001, ARAQMD sent Oldcastle APG a Notice of Violation ("NOV") by certified mail citing ABB for violations of OAC Rules 3745-15-07(A), 3745-17-07(B)(4) and (5), and 3745-17-08(B) that occurred on August 2 and 6, 2001.

19. On August 9, 2001, ABB sent a compliance plan and schedule to correct the violations that were observed by ARAQMD during its investigation on August 2 and 6, 2001. The plan consisted of additional paving for some roadways, installation of a sprinkler system for the loader working area, and the cover of other unpaved areas and storage with a dust inhibitor.

20. On August 10, 2001, ARAQMD sent NOVs to CON/AGG Machinery and Progressive Excavating, Inc., citing these parties with violations of OAC Rules 3745-15-07(A) and 3745-17-08(B), and requesting each party to submit a compliance plan and schedule within fourteen (14) days after its receipt of the NOV.

21. ARAQMD has not received a compliance plan and schedule from CON/AGG Machinery or Progressive Excavating, Inc. as requested in its August 10, 2001 NOVs.

22. On April 16, 2002, Progressive Excavating informed ARAQMD in writing that it would begin to install and operate sources X005 through X008 at ABB's facility on or about April 22, 2002. Progressive Excavating informed ARAQMD that it submitted the complete PTI applications to Ohio EPA for sources X005 through X008 on June 10, 2002. PTIs for sources X005 through X008 were issued by Ohio EPA on June 18, 2002.

23. On June 4, 2002, ARAQMD inspected ABB's facility and documented that it had paved additional roadways as stated in its August 9, 2001 letter to ARAQMD. ARAQMD observed that there were no excessive fugitive dust emissions during its visit. During this inspection, ARAQMD was informed by ABB that sources F004, X002, X003 and X004 were

removed from its facility in the beginning of August, 2001 and that sources X005, X006, X007 and X008 were installed and began operation in the middle of May, 2002. Since ABB installed sources X005 through X008 without PTIs and operated these sources without PTOs, it violated OAC Rules 3745-31-02 and 3745-35-02, respectively, and ORC 3704.05(G).

24. 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. By not later than June 17, 2003, ABB shall submit to Ohio EPA complete and approvable PTO applications for sources X005, X006, X007 and X008.

2. ABB shall maintain compliance with OAC Rules 3745-15-07(A), 3745-17-07(B)(4) and (B)(5), and 3745-17-08(B) and the terms and conditions of PTI # 16-02226.

3. Pursuant to ORC 3704.06, ABB is assessed a civil penalty in the amount of fifty-eight thousand eight hundred and eighty-five dollars (\$58,885) in settlement of Ohio EPA's claim for civil penalties. Within fourteen (14) days after the effective date of these Orders, ABB shall pay to Ohio EPA the amount of forty-two thousand one hundred and eight dollars (\$42,108) of the total penalty amount. Payment shall be made by official check made payable to "Treasurer, State of Ohio." The official check shall be submitted to Ohio EPA, Office of Fiscal Administration, P.O. Box 1049, Columbus, Ohio 43216-1049, together with a letter identifying ABB and the facility.

A copy of the official check shall be submitted to James A. Orlemann, Manager, Engineering Section, or his successor, Division of Air Pollution Control, Ohio EPA, P.O. Box 1049, Columbus, Ohio 43216-1049.

In lieu of payment to Ohio EPA of the remaining sixteen thousand seven hundred and seventy-seven dollars (\$16,777) of the total penalty amount, ABB shall perform the supplemental environmentally beneficial projects identified in Orders 4 and 5. Of the \$16,777, \$5,000 shall be used to fund the project in Order 4 and \$11,777 shall be used to fund the project in Order 5. In the event ABB defaults or otherwise fails to complete the project as specified in Order 4, the \$5,000 shall immediately become due and payable to Ohio EPA. Such payment shall be made by official check made payable to "Treasurer, State of Ohio" and submitted to Ohio EPA, Office of Fiscal Administration at the above-stated address. A copy of the official check shall be submitted to James A. Orlemann, or his successor, at the above-stated address.

4. As outlined below, and with reference to the chapters described in Ohio EPA's 1993 "Ohio Pollution Prevention and Waste Minimization Planning Guidance Manual" (the Manual), ABB shall conduct a pollution prevention study ("P2 Study") at the facility. The P2 Study is an assessment of selected facility processes to identify and evaluate specific source reduction and environmentally sound recycling opportunities.

- a. Within ninety (90) days after the effective date of these Orders, ABB shall submit a detailed narrative report to Ohio EPA for review and approval containing the following:
 - i. a list of the members of a cross-functional team for the P2 Study, including the name of a designated team leader;
 - ii. an identification of the processes selected for study and the methods used to select the processes; and
 - iii. a description of the processes being studied, including types and quantities of raw materials used, waste generated (i.e., air emissions, hazardous waste, solid waste, wastewater), and the intermediate or final products.

The above items shall be completed following the guidance provided in Chapters 8 and 9 of the Manual.

- b. Within one hundred eighty (180) days after the effective date of these Orders, ABB shall submit a detailed narrative report to Ohio EPA for review and approval containing the following:
 - i. an analysis of the process-related factors contributing to waste generation;
 - ii. a description of the specific pollution prevention opportunities identified; and
 - iii. a discussion of the approach used in screening and prioritizing pollution prevention opportunities for future implementation.

The above items shall be completed following the guidance provided in Chapters 11 and 12 of the Manual.

- c. Within two hundred seventy (270) days after the effective date of these Orders, ABB shall submit a detailed narrative final report to Ohio EPA for review and approval containing the following:

- i. an evaluation of the cost considerations and feasibility analysis of the identified pollution prevention opportunities;
- ii. a discussion of those projects that have been eliminated as well as those that have been implemented, planned for implementation, or under consideration for possible implementation; and
- iii. a description of the other items bulleted in Table 7 of Chapter 15 of the Manual.

The above items shall be completed following the guidance provided in Chapters 13, 14 and 15 of the Manual.

- d. Within three hundred and thirty (330) days after the effective date of these Orders, ABB shall submit an approvable detailed narrative final report to Ohio EPA, unless the report submitted to Ohio EPA pursuant to the above paragraph c is approved by Ohio EPA.

Ohio EPA shall provide ABB with its comments and an indication of approval or disapproval of the reports submitted pursuant to this Order in a timely manner.

5. ABB shall perform the supplemental environmentally beneficial project consisting of funding urban area tree-planting projects in Ohio. Specifically, within thirty (30) days after the effective date of these Orders, ABB shall deliver an official check in the amount of eleven thousand seven hundred and seventy-seven dollars (\$11,777) and made payable to the Ohio Department of Natural Resources, Division of Forestry, State Forest Fund for this purpose. This official check shall specify that such monies are to be deposited into Fund No. 509. The official check shall be submitted to John Dorka, Deputy Chief, or his successor, at the following address:

Division of Forestry
Ohio Department of Natural Resources
1855 Fountain Square Court, H-1
Columbus, Ohio 43224-1327

A copy of the official check shall be submitted to James A. Orlemann, Manager, Engineering Section, or his successor, at the above-stated address.

6. Within thirty (30) days after the completion and approval by Ohio EPA of the project identified in Order 4, ABB shall submit documentation to Ohio EPA of the total cost of the P2 Study. If the total cost of the P2 Study is less than \$5,000, ABB shall submit along with the final report identified in Order 4 and in the manner described in Order 3, an official

check to Ohio EPA for the difference in cost between \$5,000 and the total cost of the P2 Study.

VI. TERMINATION

Respondent's obligations under these Orders shall terminate when Respondent certifies in writing and demonstrates to the satisfaction to 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."

The 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 a corporate officer who is in charge of a principle 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 ABB.

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 ABB's facility.

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 ABB pursuant to these Orders shall be

addressed to:

Akron Regional Air Quality Management District
CitiCenter - Suite 904
146 South High Street
Akron, Ohio 44308
Attn: Russell H. Risley

and to:

Ohio Environmental Protection Agency
Division of Air Pollution Control
Lazarus Government Center
P.O. Box 1049
Columbus, Ohio 43216-1049
Attn: Thomas Kalman

XI. RESERVATION OF RIGHTS

Ohio EPA and ABB each reserve all rights, privileges and causes of action, except as specially waived in Section XI 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, ABB 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 ABB's liability for the violations specifically cited herein.

ABB hereby waives the right to appeal the issuance, terms and service of these Orders and ABB hereby waives any and all rights ABB may have to seek administrative or judicial review of these Orders either in law or equity.

Notwithstanding the preceding, Ohio EPA and ABB agree that if these Orders are appealed by any other party to the Environmental Review Appeals Commission, or any court, ABB retains the right to intervene and participate in such an appeal. In such event, ABB shall continue to comply with these Orders notwithstanding such appeal and intervention unless said 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

Christopher Jones
Director

Date

IT IS AGREED:

The Akron Brick & Block Co., Ltd.

By

Date

Title