

III. DEFINITIONS

Unless otherwise stated, all terms used in these DFFOs shall have the same meaning as defined in ORC Chapter 3704 and the rules promulgated thereunder. References to "Respondents" in these DFFOs refer to all Respondents and each of them.

IV. FINDINGS

Nothing in these Findings shall be considered to be an admission by Respondents of any matter of law or fact. The Director makes the following findings:

1. Respondents are Ohio corporations authorized to do business in Ohio. Respondents own and/or operate hot mix asphalt ("HMA") plants throughout Ohio. Respondents dispute whether air permits issued by the Director for certain of those HMA plants authorize the use of slag as a raw material in HMA plants. These DFFOs do not address that dispute as to events occurring prior to 2008.
2. Without any admission by either Respondents or the Director about events occurring prior to the issuance of these DFFOs, Respondents and the Director are willing to specifically address the use of slag in accordance with the provisions of these DFFOs.
3. The Director has given consideration to, and based his determination on, evidence relating to the technical feasibility and economic reasonableness of complying with these DFFOs and to evidence relating to conditions calculated to result from compliance with these DFFOs, and its relation to the benefits to the people of the State to be derived from such compliance in accomplishing the purposes of ORC Chapter 3704.

V. ORDERS

The Director hereby issues the following Orders:

1. "Slag" for the purposes of these DFFOs means the types of slag referred to in the current version of the State of Ohio, Department of Transportation's "Construction and Material Specifications," including air-cooled blast furnace slag, granulated slag, open hearth slag, electric arc furnace slag, and basic oxygen furnace slag.
2. Respondents shall be allowed to use slag as a raw material in their HMA plants during the 2008 asphalt season in accordance with these DFFOs. Slag usage after the 2008 asphalt season shall be in accordance with the modified permits referenced in Orders 9.a. through 9.c. Respondents shall maintain records of all slag used at their HMA plants

during 2008. Respondents shall make such records available to the Ohio EPA upon request by an authorized representative of the Ohio EPA. In the records, Respondents shall record the quantity of slag, the facility at which the slag was generated, the type of process from which the slag was generated, the type of slag used (e.g., granulated slag, air-cooled blast furnace slag, etc.), and the sulfur content of the slag based on representative analytical data, whether the analysis is conducted by the supplier or Respondents.

Emission Testing

3. Prior to conducting emission testing at any given asphalt plant, Respondents shall calculate for that plant the hypothetical worst case emission rate of sulfur dioxide while using slag. Modeling shall be done at this worst case emission rate to determine if compliance with the NAAQS for sulfur dioxide will be maintained. If compliance will not be maintained, Respondents shall determine the maximum emission rate at which the NAAQS for sulfur dioxide can be maintained and shall ensure that this maximum emission rate is not exceeded.

4. At each HMA plant that uses slag during the 2008 asphalt season, Respondents shall conduct emission testing for particulate and SO₂ emissions in order to determine if, and/or the extent to which, the use of slag will increase particulate and/or SO₂ emissions. Respondents shall conduct these tests as expeditiously as conditions allow, but not later than December 1, 2008. During each emission test, Respondent shall use the worst-case (for SO₂) fuels it intends to use during normal production. Each emission test for particulate and SO₂ shall consist of three sixty-minute test runs during which slag is used in the raw material mix. Respondents may decrease the number of asphalt plants at which emission testing must occur if Respondents demonstrate to the satisfaction of, and obtain the written approval from, the Director that fewer emission tests will provide representative information about the use of slag and that results demonstrate relatively consistent emission rates for the type of slag for which decreased testing is sought.

Respondents' emission testing shall follow U.S. EPA-approved test methods 1 through 5 and 6C or other U.S. EPA-approved test methods acceptable to, and approved by, Ohio EPA. During emission testing, Respondents shall operate the HMA plant at the maximum process weight rate possible for the environmental conditions (e.g., ambient air temperature, moisture present in aggregate, etc.) and the production requirements existing on the day of testing. Testing shall be scheduled to be on days during which production will be as close as possible to the maximum process weight rate.

5. Not later than 30 days prior to a proposed test date, Respondents shall submit an "Intent to Test" notification pursuant to Article X of these DFFOs and to Ohio EPA. The

"Intent to Test" notification shall describe in detail the proposed test methods and procedures, the emissions unit operating parameters, the time(s) and date(s) of the test(s), and the person(s) who will be conducting the test(s). Failure to submit such notification for review and approval prior to the test(s) may result in the Ohio EPA District Office's or local air agency's refusal to accept the results of the emission test(s). If Ohio EPA cancels a properly noticed test or a properly noticed test is cancelled due to weather conditions, Respondents and the Director agree that the emission testing will be rescheduled and performed, if possible, within fourteen calendar days. Personnel from the appropriate Ohio EPA District Office or local air agency shall be permitted to witness the test(s), examine the testing equipment, and acquire data and information necessary to ensure that the operation of the emissions unit and the testing procedures provide representative and accurate data for the emissions from the emission unit and the performance of the control equipment.

6. During each testing event, Respondents agree to document the following during each of the three sixty-minute emission test runs:

- (a) The total sulfur content and the total amount (by weight) of liquid asphalt used in the process;
- (b) The total sulfur content and the total amount (in tons) of slag used in the process;
- (c) The total amount of the mix (in tons), including the liquid asphalt, slag, and any other aggregate used in the process;
- (d) The supplier of the slag, the facility from which the slag was generated, the process in which the slag was generated, and the type (air cooled blast furnace slag, granular slag, etc) of the slag;
- (e) The type (e.g., No. 2 oil, used oil, etc.), amount (gallons or cubic feet) and total sulfur content (pounds per gallon or pounds per cubic foot) of the fuel used;
- (f) The date of the most recent burner tuning; and
- (g) The tons of asphalt produced per hour in the HMA plant.

As set forth above, Respondents shall identify the total sulfur content of the slag used in each emission test. Total sulfur content information can be obtained by Respondents by (1) sampling and analysis of the slag using representative ASTM or U.S. EPA-approved and applicable analytical and sampling methods, or (2) information, shown to be reliable and representative of the total sulfur content of the slag, obtained from the provider of the slag or other third-party source. (ASTM or U.S. EPA-methods shall also be followed not only in deciding how to take an individual sample, but also in deciding

how to obtain a representative number and the locations of samples from a pile of slag or load of slag.)

7. At each plant at which emission testing is conducted during slag use, Respondents shall also conduct emission testing during asphalt production when slag is not used in order to provide data with which slag-use emission testing data can be compared. These tests shall be conducted in the same manner and with the same reporting and notice requirements as for the slag-use emission testing conducted pursuant to these Orders, except that information on slag use and content will not be reported as slag will not be used.

8. A written report on the results of the emission tests shall be signed by the person or persons responsible for the tests and submitted pursuant to Article X of these DFFOs to Ohio EPA within 30 days following completion of the tests. The appropriate Ohio EPA District Office or local air agency may extend the time for the submittal of the written report, where Respondents show sufficient cause for such an extension. The report shall include, at a minimum, the information required by Paragraph 6 of these Orders and the results of the emission testing.

Activities Subsequent to Emission Testing

9. Once the emission testing for an individual HMA plant is completed, the results of the testing have been submitted to Ohio EPA, and the Director has determined that the requirements for testing and reporting described under these DFFOs have been met if Respondents choose to use slag, Respondents shall follow one of the following as applicable:

a. If the results of the testing show that the SO₂ or particulate emission rates (in pounds per ton of asphalt produced) using slag do not result in an increase in the emission rates during operation without slag, and, neither the currently-effective air permit-to-install nor a permit-to-operate (i) identify slag as a raw material authorized to be used under the permit or (ii) expressly limit raw materials to "virgin aggregate," then Respondents may use slag in the HMA plant once Respondents have submitted a revised application for the HMA plant that documents the use of slag as one of the raw materials. The revised application shall include, at a minimum, a revised Emissions Activity Category form, and shall identify the maximum sulfur content of the slag to be used and the maximum percentage of slag expected to be used in the HMA plant.

b. If the results of the testing show that the SO₂ or particulate emission rates (in pounds per ton of asphalt produced) using slag do not result in an increase in the emission rates during operation without slag, and, the currently-effective air permit-to-install or permit-to-operate (i) do not identify slag as a raw material authorized to be

used under the permit and (ii) do expressly limit raw materials to "virgin aggregate," then Respondents may apply to the Director for an administrative permit modification. The administrative permit modification request shall include the maximum expected sulfur content (by weight) of the slag to be used and the maximum percentage of slag expected to be used in the HMA plant. If the permit is modified to expressly allow the use of slag, Respondents may use slag at that HMA plant in accordance with any conditions contained in the administratively modified permit.

c. If the results of the testing show that the SO₂ and/or particulate emission rate (in pounds per ton of asphalt produced) during the use of slag is more than the emission rate during operation without slag, then Respondents shall not use slag in the asphalt plant after the 2008 asphalt season unless and until the Respondents have obtained a final modified permit-to-install that expressly allows for the use of slag. The permit modification request shall include the maximum expected sulfur content (by weight) of the slag to be used and the maximum percentage of slag expected to be used in the plant.

Permit terms and conditions, and emissions limits will be based on types and quantities of slag used during the emission testing (i.e., sulfur content of slag, type of slag, percentage of slag in the mix, etc.). Nothing in these DFFOs is intended, or shall be construed, to allow Respondents to operate an HMA plant in excess of applicable emissions limitations.

VI. TERMINATION

These DFFOs will terminate on the date that the Director issues a decision on the last permit modification application contemplated in paragraph V.9. If the Director denies the permit modification, slag use will cease at the particular HMA plant until a modification is issued allowing slag use. If the modification is granted, slag shall be used in accordance with the modified permit.

VII. OTHER CLAIMS

Nothing in these DFFOs 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 DFFOs, for any liability arising from, or related to, the operation of Respondents' asphalt plants.

VIII. OTHER APPLICABLE LAWS

All actions required to be taken pursuant to these DFFOs shall be undertaken in accordance with the requirements of all applicable local, State, and federal laws and regulations. These DFFOs do not waive or compromise the applicability and enforcement of any other statutes or regulations applicable to Respondents, except as expressly contemplated within these DFFOs.

IX. MODIFICATIONS

These DFFOs 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, including Intent-To-Test notifications and emission test reports, required to be submitted by Respondents pursuant to these DFFOs shall be submitted to the appropriate Ohio EPA district office or the appropriate local air agency and to the following:

Ohio Environmental Protection Agency
Lazarus Government Center
50 West Town Street, Suite 700
P.O. Box 1049
Columbus, Ohio 43216-1049
Attention: James Orlemann, Division of Air Pollution Control

or to such persons and addresses as may hereafter be otherwise specified in writing by Ohio EPA.

XI. RESERVATION OF RIGHTS

The Director and Respondents each reserve all rights, privileges and causes of action, except as specifically waived in Section XII of these DFFOs.

XII. EXTENT OF WAIVER

In order to resolve the current disagreement between Respondents and the Director and without admission of fact, violation, or liability, Respondents and the Director consent to the issuance of these DFFOs and agree to comply with these DFFOs. These DFFOs do not satisfy, waive, settle, supersede, or otherwise eliminate any of the claims raised by Respondents or claims or defenses raised by the Director in Respondents' pending appeals, docketed as ERAC 645916 and ERAC 646187, of the Director's action with respect to the Director's inclusion of the term "virgin aggregate" in PTI 06-07724 and PTI 06-08370, and shall be inadmissible as evidence in those appeals. These DFFOs will govern Respondents use of slag regardless of the outcome of ERAC appeal 645916 or 646187. Nothing in these DFFOs is intended, and shall not be construed, to authorize Respondents to operate any asphalt plant in a manner that that creates a nuisance in violation of OAC §3745-15-07, or to use slag that is a hazardous waste or causes emissions that violate any applicable emissions limitation.

Respondents hereby waive the right to appeal the issuance, terms and conditions, and service of these DFFOs.

Notwithstanding the preceding, the Director and Respondents agree that if these DFFOs are appealed by any other party to the Environmental Review Appeals Commission, or any court, Respondents retain the right to intervene and participate in such appeal. In such an event, Respondents shall continue to comply with these DFFOs notwithstanding such appeal and intervention unless these DFFOs are stayed, vacated, or modified.

XIII. EFFECTIVE DATE

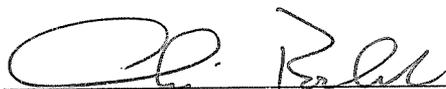
The effective date of these DFFOs is the date these DFFOs are entered into the Ohio EPA Director's journal.

XIV. SIGNATORY AUTHORITY

Each undersigned representative of a party to these DFFOs certifies that he or she is fully authorized to enter into these DFFOs and to legally bind such party to these DFFOs.

IT IS SO ORDERED AND AGREED:

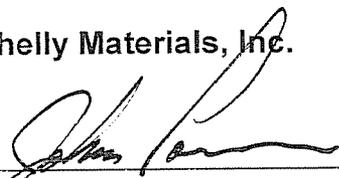
Ohio Environmental Protection Agency



Chris Korleski
Director

8/15/08
Date

IT IS SO AGREED:

Shelly Materials, Inc.


Signature
JOHN POWERS

Printed or Typed Name
President

Title

08-04-08
Date

Allied Corporation, Inc.

John Powers
Signature

08-01-08
Date

JOHN POWERS
Printed or Typed Name

PRESIDENT
Title

Stoneco, Inc.

John Powers
Signature

08-01-08
Date

JOHN POWERS
Printed or Typed Name

PRESIDENT
Title