OHIO E.P.A.
DEC 31 2008

BEFORE THE

OHIO ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

Mack Industries, Inc.
201 Columbia Road
Valley City, Ohio 44280

RESPONDENT

: 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.

By: _____ Date: 12.31.08

PREAMBLE

It is agreed by the parties hereto as follows:

I. JURISDICTION

These Director's Final Findings and Orders ("Orders") are issued to Mack Industries, 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 herein defined) shall in anyway 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

All of the findings necessary for the issuance of these Orders pursuant to ORC § 3745.01 have been made and are outlined below. Nothing in these findings shall be considered to be an admission by Respondent of any matter of law or fact.

The Director of Ohio EPA has determined the following findings:

1. Respondent owns and operates ready-mix concrete plants and facilities that produce several varieties of precast concrete products in Ohio, Michigan, North Carolina and Florida. The facility that is the origin of this enforcement action is located

at 201 Columbia Road, Valley City, Ohio (the "facility"). At this facility, Respondent operates material storage piles, material handling, and a stone yard to support the ready-mix and precast concrete plants. Additionally, the facility consists of paved and unpaved roadways and parking areas (collectively identified by Ohio EPA as emissions unit F001).

2. The emissions unit identified in Finding 1 is an "air contaminant source" as defined in Ohio Administrative Code ("OAC") Rules 3745-15-01 (C) and (W), and 3745-31-01(I) and emits "particulate matter" ("PM") and particulate matter with an aerodynamic diameter of 10 microns or less ("PM_{10}"), which are defined as "air pollutants" or "air contaminants" in OAC Rule 3745-15-01(C).

3. OAC Rule 3745-31-05(D) states, in part, that the Director of Ohio EPA may impose special terms and conditions in a PTI as are appropriate or necessary to ensure compliance with applicable laws and to ensure adequate protection of the environment.

4. ORC § 3704.03(R), in part, gives the Director the power to issue orders requiring emission control devices or measures in order to comply with applicable requirements adopted by the Director pursuant to ORC § 3704.03.

5. ORC § 3704.05(C) prohibits any person from violating any terms or conditions of any permit issued by the Director of Ohio EPA pursuant to ORC § 3704.03.

6. ORC § 3704.05(G) prohibits any person from violating any order, rule or determination of the Director of Ohio EPA issued, adopted, or made under ORC Chapter 3704.

7. On June 8, 2004, Ohio EPA issued PTI # 16-02354 to Respondent. This PTI limited visible particulate emissions ("VEs") to no more than one minute during any sixty-minute observation period for paved roadways and parking areas and to no more than three minutes during any sixty-minute observation period for unpaved roadways and parking areas. Additionally, Respondent is required to employ the best available technology ("BAT"), i.e., sweeping of paved surfaces and the application of dust suppressant to unpaved roads, to minimize or eliminate visible emissions of fugitive dust from emissions unit F001. Respondent's PTI also requires prompt removal of earth and/or other materials from paved streets where such materials were deposited as result of the facility's operations.

8. In May 2005, Akron Regional Air Quality Management District ("Akron"), a contractual representative of Ohio EPA in Medina County, inspected Respondent's facility as a result of a complaint of excessive dust. During the inspections Akron observed excessive visible fugitive dust emissions being emitted from Respondent's paved roadways and parking areas (specific observations are contained in Table 1,

which is attached to these Orders). Specifically, on two days (i.e., May 5 and 9, 2005) Akron observed VEs that exceeded the limit specified in Respondent's PTI as result of significant surface loading on Respondent's paved entrance area that had not been promptly removed. Each exceedance of the VE limitation is a violation of the terms and conditions of Respondent's PTI, and ORC § 3704.05(C). Additionally, Respondent's failure to promptly remove surface material from the facility's paved entrance and to adequately employ sweeping measures are violations of the BAT requirements specified in PTI # 16-02354 and ORC § 3704.05(C). On May 11, 2005, Akron sent Respondent a notice of violation ("NOV") letter for the observed VEs and BAT violations and asked that a written compliance plan and schedule, to correct the violations, be submitted within fourteen days of the receipt of the NOV.

9. In a letter dated May 20, 2005, Respondent replied to the May 11, 2005 NOV. Respondent proposed to use a pressurized wet sweep forklift attachment to sweep the paved areas and to continue the use of wet dust suppression to maintain the unpaved areas to correct the violations. Respondent also stated that an employee had been assigned to work on dust control for as long as needed.

10. On October 12, 2005, Akron observed excessive visible dust emissions being generated by vehicular traffic on Columbia Road near Respondent's entrance (specific observations are contained in Table 2, which is attached to these Orders). The excessive dust was due to surface material deposited from Respondent's operations. Respondent failed to promptly remove the material in violation of the BAT requirements specified in PTI # 16-02354 and ORC § 3704.05(C). A NOV dated October 19, 2005, was sent to Respondent requesting that immediate measures be taken to control emissions of fugitive dust resulting from Respondent's operation and informing Respondent that the failure to remove the surface material deposition was a violation of its PTI terms and conditions. The NOV required that Respondent evaluate and implement additional control measures to prevent the facility's material from being deposited on the road's surfaces and required that a compliance plan and schedule be submitted with fourteen days of the receipt of the NOV.

11. On October 31, 2005, Respondent replied to the October 19, 2005, NOV. The response specified the following additional steps to correct the violations: contract with a street sweeper to remove material from the State Route 252 and the facility's apron; commit $25,000 toward paving driveways and yards; and evaluate the use of more paving, gravel roads or a wheel washer system.

12. On April 11 and 28, 2006, June 13 and 15, 2006, and May 28, 2008, Akron observed VEs associated with Respondent's operation of emissions unit F001 that exceeded the visible emission limitation established in Respondent's PTI (specific observations are contained in Table 1), in violation of the terms and conditions of Respondent's PTI and ORC § 3704.05(C). Similarly, on April 18 and 25, 2006 and June 6, 2006, Akron found that Respondent had failed to promptly remove concrete materials that had been deposited on State Route 252 by Respondent's operations, in violation of

the BAT requirements specified in PTI # 16-02354 and ORC § 3704.05(C). The specific VEs readings are identified in the attached Table 2.

13. On June 6, 2007, Akron received a complaint regarding the excessive dust connected with Respondent's operations. The complaint stated that the problem had been ongoing since 2005 and listed damages associated with the excessive fugitive dust.

14. On September 8, 2007, Akron received a complaint that the properties surrounding Respondent were chronically being covered with excessive concrete dust generated by Respondent's facility. On that same day, Akron contacted Respondent to inform it of the complaint.

15. On October 5, 2007, Ohio EPA's Director sent a NOV to Respondent for violations the terms and conditions of PTI #16-02354 and ORC § 3704.05(C) and (G) due to excessive dust emissions identified in these findings. The NOV requested that Respondent submit a compliance plan and schedule, within fourteen days of the receipt of the NOV, to correct the ongoing excessive VE permit violations. The NOV stated that the compliance plan and schedule needed to evaluate the installation of a wheel wash system and/or other control measures to correct the ongoing violations as expeditiously as possible.

16. On October 30, 2007, Respondent replied to the October 5, 2007 NOV stating that it was in the process of analyzing three different manufacturers of wheel wash systems and that it planned to be under contract with a manufacturing company by November 12, 2007.

17. On or around November 9, 2007, Ohio EPA talked with Respondent via telephone. During the conversation Respondent stated that it had evaluated both passive and pressurized tire wash stations. Respondent intended to install the pressurized tire wash station. Ohio EPA requested that Respondent submit the specifications and installation dates of the wheel wash system it planned to install.

18. In a letter dated December 5, 2007 to Ohio EPA, Respondent sent a drawing of the wheel wash system it was planning on installing to correct the VE and control measures violations. The letter stated that Respondent felt strongly that this system would be the easiest to maintain and that it would be effective. It later was identified as a passive system.

19. Along with a letter dated April 2, 2008, Respondent submitted to Ohio EPA a new copy of detailed plans for the proposed wheel wash system.

20. On or around April 24, 2008, Respondent informed Ohio EPA that it had decided to install a different wheel wash system costing approximately $80,000 that was a pressurized system and that it would take nine weeks to obtain delivery of the system.

21. On or about August 1, 2008, Respondent installed a vehicle wheel wash system designed to bring and maintain emissions unit F001 into compliance with the VE limitations and the BAT control measure requirements contained in Respondent's PTI.

22. 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. Respondent shall pay the amount of twenty-four thousand five hundred dollars ($24,500) in settlement of Ohio EPA's claims for civil penalties, which may be assessed pursuant to ORC Chapter 3704. Within forty-five (45) 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 nineteen thousand six hundred dollars ($19,600). The official check shall be submitted to Brenda Case, or her successor, together with a letter identifying Respondent, to:

Ohio EPA
Office of Fiscal Administration
P.O. Box 1049
Columbus, Ohio 43216-0149

A copy of the check shall be sent to James A. Orlemann, Assistant Chief, SIP Development and Enforcement, or his successor, at the following address:

Ohio EPA
Division of Air Pollution Control
Lazarus Government Center
P.O. Box 1049
Columbus, Ohio 43216-1049

2. In lieu of payment to Ohio EPA of the remaining four thousand nine hundred dollars ($4,900) of the civil penalty, Respondent shall, within forty-five (45) days of the effective date of these Orders, fund a Supplemental Environmental Project ("SEP") by making a contribution in the amount of $4,900 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 $4,900. The official check shall

be submitted to Brenda Case, or her successor, together with a letter identifying the Respondent and Fund 5CD0, to the above-stated address.

3. A copy of each of the above checks shall be sent to James A. Orlemann, Assistant Chief, SIP Development and Enforcement, or his successor, at the following address:

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

4. Should Respondent fail to fund the SEP within the required timeframe set forth in Order 2, Respondent shall immediately pay to Ohio EPA $4,900 of the civil penalty in accordance with the procedures in Order 1.

5. Upon the effective date of these Orders, Respondent shall maintain all existing dust control measures in a manner as to minimize or eliminate the formation of fugitive dust and the "carry-out" of the facility's surface materials on to any public roadway.

6. The vehicle wheel wash system installed by Respondent shall be maintained and operated in accordance with the manufacturer's specifications. Operation of the wheel washer system may be suspended during the winter season or during periods of freezing temperatures; however, alternative measures shall be implemented to maintain compliance during such periods.

7. Respondent shall direct all commercial vehicular traffic exiting the facility through the wheel wash system. This requirement applies to all vehicles associated with the facility's processes.

8. Respondent shall maintain records specifying the dates and times the wheel wash system was not in operation and the facility was operating, except that only the beginning and ending dates of any wheel wash system shutdown period for the winter season or for extended periods of freezing temperatures may be recorded and the reason for shutdown identified. The records shall state the reason(s) the wheel washer was not in operation and, if applicable, any corrective measures taken to bring the wheel wash system into proper operation. During the winter season or periods of freezing temperatures, Respondent shall keep daily records of all other measures being implemented to maintain compliance and the date(s) the measures are implemented. All records shall be maintain for a period of at least 5 years and made available for inspection upon request by the Ohio EPA and/or its representatives.

9. Respondent shall submit quarterly deviation reports identifying the days the wheel wash system did not operate and the facility was operating (this excludes the days during the winter season or otherwise when freezing temperatures prohibited operation), the reason(s) why it did not operate, the corrective measure(s) taken to eliminate any problem that prevented the wheel wash system from operation, and any other control measures that were implemented during the time the wheel wash system did not operate. The quarterly deviation reports shall be submitted by January 15, April 15, July 15, and October 15 for the preceding 3-month period (i.e., quarter). A report shall be submitted for the first quarter after installation even if the wheel washer did not operate the entire 3-month period. Respondent shall submit the quarterly deviation reports even if no deviations occurred.

10. Upon the effective date of these Orders, Respondent shall maintain all paved and unpaved roadways and parking areas at the facility in such a manner to prevent and/or minimize the formation of fugitive dust and the carry-out of the facility's surface materials.

11. Upon the effective date of these Orders, Respondent shall promptly remove any surface materials that are or have been deposited by facility operations, including but not limited to, vehicular traffic, on the facility's paved roadways and the public roadway near the facility. The removal shall be conducted in a manner to minimize the formation of VEs of fugitive dust.

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, 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 a president, secretary, treasurer, or vice president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation, or a duly authorized representative 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, the operation of Respondent's facility.

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:

Akron Regional Air Quality Management District
Division of Akron Health Department
146 South High Street, Suite 904
Akron, Ohio 44308
Attention: Frank Markunas

and to:

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

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

Chris Korleski
Director

12/31/08
Date

IT IS SO AGREED:

Mack Industries, Inc.

Signature

12-31-08
Date

James A. Thompson
Printed or Typed Name

General Mgr. V.P.
Title

Table 1 VEs Readings for Emissions Unit F001			
Date	**Total time of VEs in observation period in minutes : seconds**	**Total observation time in minutes : seconds**	**Location**
May 05, 2005	6:18	23:06	Paved roadway
May 09, 2005	6:08	60:00	Paved roadway
April 11, 2006	7:11	15:00	Roadways & parking area
April 28, 2006	2:00	50:00	Roadways and parking
June 13, 2006	3:11	60:00	Unpaved parking area
June 15, 2006	4:34	45:00	Adj. Paved Roadway
May 28, 2008	16:26	57:11	Paved roadway

Table 2 VEs Readings on Public Roadway Near the Facility's Exit			
Date	**Total time of VEs in observation period in minutes : seconds**	**Total observation time in minutes : seconds**	**Location**
October 12, 2005	19:41	60:00	SR 252 and plant exit
April 18, 2006	8:12	30:00	SR 252 and plant exit
April 25, 2006	1:40	25:00	SR 252 and plant exit
June 6, 2006	8:19	60:00	SR 252 and plant exit