

BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY

OHIO E.P.A.
JUL -8 2009
ENTERED DIRECTOR'S JOURNAL

In the Matter of:

Precision Aggregates III, LLC : Director's Final Findings
100 North Brush Street : and Orders
Fremont, Ohio 43402 :

RESPONDENT

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.

PREAMBLE

It is agreed by the parties hereto as follows:

By: *[Signature]* Date: 7-8-09

I. JURISDICTION

These Director's Final Findings and Orders ("Order") are issued to Precision Aggregates III, 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 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 has determined the following findings:

1. Respondent owns and operates an aggregate processing plant and quarry ("facility") located at 100 North Brush Street, Fremont, Sandusky County, Ohio. The aggregate processing plant and quarry consist of primary and secondary crushing, screening and conveying operations (identified by Ohio EPA as "emissions unit F001"), mineral extraction operations including drilling, blasting and overburden removal (identified by Ohio EPA as "emissions unit F002"), aggregate storage piles (identified by Ohio EPA as "emissions unit F003") and roadways and parking areas (identified by Ohio EPA as

"emissions unit F004").

2. Emissions units F001 through F004 are "air contaminant sources" and "sources" as those terms are defined in Ohio Administrative Code ("OAC") Rules 3745-15-01(W), 3745-31-01(I) and former 3745-35-01(B)(4) and emit "particulate matter" ("PM"), which is defined as an "air pollutant" or "air contaminant" in OAC Rule 3745-15-01(C).

3. OAC Rule 3745-31-02 requires that a person not allow the installation of a new air contaminant source, as defined in OAC Rule 3745-15-01, without first applying for and obtaining (before June 30, 2008) a permit to install ("PTI") or (on or after June 30, 2008) a permit to install and operate ("PTIO"), except as otherwise provided by rule or law.

4. Current and former OAC Rule 3745-31-01(UUU) define, in part, a "new source" as any air contaminant source in which the owner or operator undertakes a continuing program of installation or modification on or after January 1, 1974, and is otherwise subject to the provisions of OAC Chapter 3745-31.

5. OAC Rule 3745-31-05(D) and former OAC Rule 3745-31-05(C) state, 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.

6. Except as otherwise provided by law, and except to the extent that a PTI allows for limited operation of an air contaminant source, OAC Rule 3745-31-02 requires, and until June 30, 2008 former OAC Rule 3745-35-02 required, any owner or operator of an air contaminant source (on or after June 30, 2008) to apply for and obtain a PTIO or (before June 30, 2008) a permit to operate ("PTO"), prior to operating an air contaminant source.

7. OAC Rule 3745-15-07 states that the emission or escape of smoke, ashes, dust, dirt, acids, fumes, gases, vapors, odors, or any other substances into the open air from any source or sources, 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 public nuisance and is unlawful.

8. 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 Chapter 3704. Any PTIs or PTOs issued by the Director of Ohio EPA are issued pursuant to ORC Chapter 3704.

9. 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. Any OAC rule identified in these Orders was adopted by the Director of Ohio EPA pursuant to ORC Chapter 3704.

10. Respondent installed emissions units F001 through F004 about June 2000 without obtaining a PTI, in violation of OAC Rule 3745-31-02(A) and ORC § 3704.05(G). Respondent then operated emissions units F001 through F004 from on or about June 2000 without obtaining a PTI, PTO or a PTIO. Despite notice of violation ("NOV") letters dated September 20, 2000, February 15, 2002, and August 28, 2002, and July 9, 2004, Respondent did not submit complete PTI and PTO applications to Ohio EPA until December 13, 2004. On May 17, 2005, Ohio EPA issued PTI #03-16291 to Respondent for emissions units F001 through F004. The PTO applications are still pending.

11. Respondent has continued to operate emissions units F001 through F004 until at least May 17, 2005 without obtaining a PTI, PTO, or PTIO, in violation of ORC § 3704.05(G) and current and former OAC Rule 3745-35-02(A).

12. Ohio EPA sent Respondent Notice of Violation ("NOV") letters dated February 27, 2002, and August 28, 2002, informing Respondent of exceedances of particulate emissions limits or nuisance emissions and requesting abatement of nuisance emissions from emissions units F001 and/or F004, which were observed on August 15, 2000, January 22, 2002, February 13, 2002, February 19, 2002 and August 7, 2002. Despite these NOV letters, on at least June 23, 2004, Respondent operated emissions units F001 and/or F004 in such manner as to cause an air pollution nuisance through dust deposition on nearby private property, in violation of OAC Rule 3745-15-07 and ORC § 3704.05(G).

13. PTI #03-16291 requires Respondent to limit visible particulate emissions from the paved surfaces of emissions unit F004 to one minute during any 60-minute period. Also, the PTI requires the Respondent to use Best Available Technology ("BAT") to control PM emissions from emissions unit F004. BAT, as specified in the PTI, requires Respondent to treat paved roadways and parking areas by watering and sweeping at sufficient frequencies to ensure compliance with the visible particulate emission limitation.

14. Between April 27, 2006 and November 21, 2006, Ohio EPA conducted Method 22 visible particulate emissions observations to determine whether the roadways at the facility were in compliance with PTI #03-16291. On the dates and times listed in the following table, Respondent operated emissions unit F004 to cause visible particulate emissions in violation of the visible particulate emission limit of one minute during any 60-minute period for paved roadways, in violation of PTI #03-16291 and ORC § 3704.05(C):

Date	VEs in observation period, minutes : seconds	Observation time in minutes : seconds
April 27, 2006	3:43	55:00
September 8, 2006	3:15	12:00
November 21, 2006	1:50	20:00

NOV letters dated May 4, 2006 and September 19, 2006 were sent to Respondent by Ohio EPA requesting abatement of the violations.

15. Although Respondent has paved portions of its roadways, Respondent failed to employ BAT for the paved roadways of emissions unit F004 on at least April 27, 2006, September 8, 2006, and November 21, 2006, in violation of PTI #03-16291 and ORC § 3704.05(C). Specifically, Respondent has failed to adequately apply water and sweep its paved roadways at a frequency reflective of BAT. NOV letters dated May 4, 2006, September 19, 2006, and November 27, 2006, were sent to Respondent by Ohio EPA to request correction of these violations.

16. Respondent has failed to submit or was late in submitting quarterly deviation reports to Ohio EPA. PTI # 03-16291 requires Respondent to submit quarterly reports for the facility for deviations from control measure requirements, emission limitations, control device operating parameter limitations, and operating restrictions, by April 30, July 31, October 31, and January 31 for the preceding calendar quarter. Respondent failed to submit quarterly deviation reports for the following calendar quarters: 2nd, 3rd and 4th quarters of 2005; 1st, 2nd, 3rd and 4th quarters of 2006; and 1st, 2nd, 3rd and 4th quarters of 2007 (submitted late on January 31, 2008). NOV letters were sent to Respondent by Ohio EPA on November 3, 2006 and November 15, 2007, which requested the submittal of the delinquent reports. The delinquent remaining reports have not been submitted.

17. Respondent has failed to timely submit to Ohio EPA its annual report for calendar year 2005. PTI #03-16291 requires Respondent to submit annual reports to Ohio EPA for each calendar year identifying any exceedances of annual limits on blasting for emissions unit F002 and the amount of material processed for emissions unit F001. Although annual reports are due by January 31 for each preceding calendar year, Respondent failed to submit to Ohio EPA its annual report for 2005 by the January 31, 2006 due date. A NOV letter was sent to Respondent by Ohio EPA on November 3, 2006, which requested the submittal of the delinquent report. The 2005 annual report was not submitted until November 15, 2006, in violation of PTI #03-16291 and ORC § 3704.05(C).

18. PTI #03-16291 (Part II, E.3) required Respondent to conduct visible emissions testing of emissions unit F001 to demonstrate compliance with the visible emission limitation specified in 40 CFR, Part 60, Subpart OOO, within 60 days after achieving the maximum production rate, but no later than 180 days after startup of that unit. NOV letters were sent to Respondent by Ohio EPA on November 3, 2006 and November 15, 2007, which requested that the required testing be performed. In violation of PTI #03-16291 and ORC § 3704.05(C), Respondent did not conduct visible emissions testing of emissions unit F001 until December 27, 2007. The test report was submitted to Ohio EPA on January 2, 2008.

19. PTI #03-16291 (Part II, C.1) requires Respondent to maintain for inspection monthly records of the amount of aggregate processed through the primary crusher of emissions unit F001. On November 9, 2007, Ohio EPA inspected the facility and Respondent was unable to provide for inspection monthly records of the amount of aggregate processed through the primary crusher of emissions unit F001, in violation of PTI #03-16291 and ORC § 3704.05(C). Respondent pulled monthly information from blasting reports and submitted a month-by-month report to Ohio EPA later in the day of the November 9, 2007 inspection.

20. PTI #03-16291 (Part I, A.5 and Part II, C.2 and C.5) requires Respondent to keep and provide upon request records of daily inspections performed of emissions unit F001. PTI #03-16291 (Part I, A. 5) requires Respondent to make those records available to Ohio EPA. From May 17, 2005 through November 9, 2007, Respondent was unable to make available to Ohio EPA any records of daily inspections, in violation of PTI #03-16291 and ORC § 3704.05(C). Respondent informed Ohio EPA that records prior to February 17, 2007 were destroyed by a fire at the facility.

21. 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. Respondent has submitted financial documentation showing that it has limited ability to pay a civil penalty.

V. ORDERS

The Director hereby issues the following Orders:

1. Respondent shall pay the amount of fifteen thousand dollars (\$15,000) in settlement of Ohio EPA's claims for civil penalties, which may be assessed pursuant to ORC Chapter 3704. Partial payment to Ohio EPA shall be made by an official check made payable to "Treasurer, State of Ohio" for twelve thousand dollars (\$12,000). 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 43216-1049

2. In lieu of paying the remaining three thousand dollars (\$3,000) of the civil penalty, Respondent shall fund a Supplemental Environmental Project ("SEP") by making a contribution in the amount of \$3,000 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 \$3,000. 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. The payments in Orders 1 and 2 shall be made according to the following schedule: On or before September 15, 2009, Respondent shall pay to Ohio EPA \$3,000 in funding the SEP described in Order 2 and shall also pay to Ohio EPA \$4,500 of the civil penalty described in Order 1. On or before September 15, 2010, Respondent shall pay to Ohio EPA the remaining \$7,500 of the civil penalty described in Order 1.

5. Should Respondent fail to fund the SEP within the required time frame set forth in Order 4, Respondent shall immediately pay to Ohio EPA \$3,000 of the civil penalty in accordance with the procedures in Order 1.

6. Upon the effective date of these Orders, Respondent shall maintain the facility in compliance with the visible emission limitation and control requirements specified in PTI #03-16291.

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 principal executive officer of at least the level of vice president, or his duly authorized representative, if such representative is responsible for the overall operation of the facility.

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:

Ohio Environmental Protection Agency
347 North Dunbridge Road
Bowling Green, Ohio 43402-9398
Attn: Melanie Ray

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



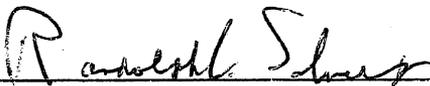
Chris Korleski
Director

6/29/09

Date

IT IS SO AGREED:

Precision Aggregates III, LLC



Signature

6-12-09

Date

RANDOLPH G. SCHMELTZ
Printed or Typed Name

MANAGING MEMBER
Title