

OHIO E.P.A.

SEP -6 2011

BEFORE THE

OHIO ENVIRONMENTAL PROTECTION AGENCY **ENTERED DIRECTOR'S JOURNAL**

In the Matter of:

Kenmore Construction Co., Inc.
700 Home Avenue
Akron, Ohio 44310

:
:
:

**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.

PREAMBLE

It is agreed by the parties hereto as follows:



Date: 9.6.2011

I. JURISDICTION

These Director's Final Findings and Orders ("Orders") are issued to Kenmore Construction Co., 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 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

All of the findings necessary for the issuance of these Orders pursuant to ORC §§ 3704.03 and 3745.01 have been made and are outlined below. Nothing in the findings shall be considered to be an admission by Respondent of any matter of law or fact. The Director of Ohio EPA makes the following findings:

1. Respondent is a general construction contractor with an office located at 700 Home Avenue in Akron, Summit County, Ohio. Respondent was incorporated with the Ohio Secretary of State to do business in Ohio since 1985.

2. Akron Regional Air Quality Management District ("ARAQMD") is a contractual agent for Ohio EPA in Summit County.

3. A "fugitive dust source," in part, is defined in Ohio Administrative Code ("OAC") Rule 3745-17-01(B)(7) as any air contaminant source that emits "fugitive dust" as defined in OAC Rule 3745-17-01(B)(6).

4. OAC Rule 3745-17-08(A)(1) states, in part, that the requirements of OAC Rule 3745-17-08(B) apply to any fugitive dust source which is located within the areas identified in Appendix A of such rule, unless otherwise provided in OAC Rule 3745-17-08(A)(3). The City of Akron and the City of Cuyahoga Falls are listed in Appendix A.

5. OAC Rule 3745-17-08(B) states, in part, that no person shall cause or permit any fugitive dust source to be operated; or any materials to be handled, transported, or stored; or a building to be constructed, altered, repaired, or demolished without taking or installing reasonably available control measures ("RACM") to prevent fugitive dust from becoming airborne. Such RACM shall include, but not be limited to, the use of water or other suitable dust suppression chemicals for control of fugitive dust from construction operations and/or the use of adequate containment methods.

6. OAC Rule 3745-17-07(B)(4) states, in part, 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.

7. OAC Rule 3745-17-07(B)(5) states, in part, there shall be no visible particulate emissions from any unpaved roadway or parking area except for a period of time not to exceed thirteen minutes during any sixty-minute observation period.

8. ORC § 3704.05(A) prohibits any person from causing, permitting, or allowing emission of an air contaminant in violation of any OAC rule adopted by the Director of Ohio EPA pursuant to ORC Chapter 3704. OAC Chapter 3745-17 was adopted by the Director pursuant to ORC Chapter 3704.

9. ORC § 3704.05(G) prohibits any person from violating any OAC rule adopted by the Director of Ohio EPA pursuant to ORC Chapter 3704. OAC Chapter 3745-17 was adopted by the Director pursuant to ORC Chapter 3704.

10. Respondent caused or permitted uncontrolled fugitive dust emissions to be generated without employing RACM to minimize or eliminate visible particulate emissions of fugitive dust, in violation of OAC Rule 3745-17-08(B) and ORC § 3704.05(A) and (G), at construction projects in Akron and Cuyahoga Falls, Ohio. The locations, dates, times, and sources of fugitive dust for the violations are identified in the following table:

Location	Date	Time	Fugitive Dust Source
1500 block of East Market Street, Akron	03/21/07	09:50 a.m.	Operating rotary broom/ sweeper on street
East Market Street at Seiberling, Akron	05/14/08	10:15 a.m.	Operating rotary broom/ sweeper on street
Power Street near Brown Street, Akron	05/19/08	02:45 p.m.	Sawing vitrified clay pipe
Union Street at Nash Street, Akron	05/21/08	02:15 p.m.	Sawing concrete pipe
Brown Street at west entrance/exit to U of A Stadium, Akron	05/23/08	02:15 p.m.	Construction traffic and dirt carryout
500 block of Brown Street near Crouse Street, Akron (U of A Stadium project)	05/23/08	02:15 p.m.	Construction traffic and dirt carryout
East entrance/exit to U of A Stadium corner Nash and Spicer streets, Akron	05/23/08	02:15 p.m.	Excavation activities/ construction traffic and dirt carryout
Brown Street from Ranklin Street to Crouse Street, Akron (City of Akron project)	05/28/08	11:20 a.m.	Excavation activities/ construction traffic and dirt carryout
Brown Street between Crouse and Power streets and at Brown and Nash streets, Akron	06/13/08	12:05 p.m.	Construction traffic and dirt carryout
Brown Street between Exchange and Power streets, Akron	06/20/08	02:55 p.m.	Construction traffic
400 block of E. Exchange Street and extending to one half mile east of construction site along E. Exchange Street to beyond State Route 8, Akron (U of A Stadium project)	06/25/08	11:45 a.m.	Construction traffic and dirt carryout/ operating rotary broom/sweeper on street
Crouse Street at Brown Street, Akron	09/24/08	01:35 p.m.	Operation of rotary broom/ sweeper; construction traffic and dirt carryout

Cascade Court at North Street, Akron	10/17/08	12:55 p.m.	Jackhammering concrete curbs
Brown Street at Vine Street, Akron (U of A Stadium project)	10/23/08	03:05 p.m.	Construction traffic and dirt carryout
Brown Street at Vine Street, Akron (U of A Stadium project)	10/24/08	10:30 a.m.	Construction traffic and dirt carryout
Spicer Street adjacent to stadium site, Akron (U of A Stadium project)	02/25/09	01:15 p.m.	Construction traffic and dirt carryout
Nash, East Exchange, Vine and Spicer streets, Akron	03/04/09	02:00 p.m.	Construction traffic and dirt carryout
U of A Site – Vine Street, Akron	03/05/09	02:40 p.m.	Construction traffic and dirt carryout
Spicer Street, Akron	07/16/09	12:30 p.m.	Unpaved haul road
Spicer Street, Akron	07/16/09	02:10 p.m.	Unpaved haul road
Spicer Street, Akron (U of A multiplex site)	07/28/09	12:10 p.m.	Unpaved haul road
1800 block of Front Street, Cuyahoga Falls	10/06/09	01:05 p.m.	Carryout onto paved streets and sawing of stone
East Mill Street bridge, Akron	12/02/09	01:10 p.m.	Demolition work
East Mill Street bridge, Akron	03/26/10	03:15 p.m.	Jackhammering concrete curbs

11. Respondent caused visible particulate emissions from paved roadways, which exceeded six minutes during any sixty-minute observation period, in violation of OAC Rule 3745-17-07(B)(4) and ORC § 3704.05(A) and (G), at multiple University of Akron ("U of A") construction projects. Respondent also caused visible particulate emissions from unpaved roadways, which exceeded thirteen minutes during any sixty-minute observation period, in violation of OAC Rule 3745-17-07(B)(5) and ORC § 3704.05(A) and (G), at multiple University of Akron ("U of A") construction projects. The locations, dates, times, and readings of visible particulate emissions for the violations are identified in the following table:

City of Akron Location	Date	VEs Observation Time (min./sec.)
Nash and Union streets (U of A Stadium project) (paved roadways)	05/23/08	07:46 over 60 minutes
414 Exchange Street (U of A Stadium project) (paved roadways)	06/25/08	52:25 over 60 minutes
Crouse Street at Kern Avenue (U of A Stadium project) (paved roadways)	09/24/08	07:46 over 60 minutes
Vine and Brown streets (U of A Stadium project) (paved roadways)	10/24/08	20:11 over 60 minutes
Nash Street (U of A Stadium project) (paved roadways)	03/04/09	14:08 over 60 minutes
Vine Street (U of A Stadium project) (unpaved roadways)	07/16/09	26:32 over 60 minutes
Vine Street (U of A Stadium project) (unpaved roadways)	07/28/09	15:07 over 60 minutes

12. The following table summarizes the dates of Notice of Violation ("NOV") letters that were sent to Respondent by ARAQMD and the dates that Respondent's responses were received. The warning letters required Respondent to cease illegally operating a fugitive dust source without employing RACM and to submit a plan describing the dust control measures that would be utilized in the future.

NOV Date	Projects Involved	Date Response was Received
05/16/08	East Market Street by U of A area	05/23/08
08/01/08	Brown Street between Exchange and Power Streets	08/13/08
11/19/08	Vine and Brown Streets	12/10/08

13. In the May 23, 2008, response to the May 16, 2008 NOV letter, the Respondent stated the weather conditions for the dates of inspection were average with wind gusts of 20 miles per hour. Respondent did not address any dust control plan in the response letter. Additionally, the Respondent requested ARAQMD to contact them immediately when any significant fugitive dust is observed at any of its sites.

14. On March 26, 2010, ARAQMD notified Respondent of the fugitive dust emissions violations on and around the University of Akron's construction sites referenced in Finding No. 10 of these Orders. On March 29, 2009, Respondent requested a meeting with ARAQMD to discuss the fugitive dust emission violations at the construction sites.

15. 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 be derived from such compliance.

V. ORDERS

The Director hereby issues the following Orders:

1. Upon the effective date of these Orders, Respondent shall employ reasonably available control measures as required pursuant to OAC Rule 3745-17-08(B), for all fugitive dust sources identified in the tables of Finding No. 10 and No. 11 that will minimize or eliminate visible emissions of fugitive dust from all operations at its Ohio construction sites located in the Appendix A areas identified in OAC Rule 3745-17-08 and shall achieve compliance with OAC Rules 3745-17-07(B)(4) and 3745-17-07(B)(5). Respondent shall maintain such sources in compliance with OAC Rules 3745-17-07(B)(4), 3745-17-07(B)(5), and 3745-17-08(B) thereafter.

2. Respondent shall pay the amount of twenty thousand dollars (\$20,000) in settlement of Ohio EPA's claims for civil penalties, which may be assessed pursuant to ORC Chapter 3704. Within thirty (30) 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 sixteen thousand dollars (\$16,000) of the total amount. The official check shall be submitted to Brenda Case, 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

3. In lieu of paying the remaining four thousand dollars (\$4,000) of the civil penalty, Respondent shall, within thirty (30) days of the effective date of these Orders, fund a Supplemental Environmental Project ("SEP") by making a contribution in the amount of \$4,000 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 \$4,000. 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.

4. A copy of each of the above checks shall be sent to Thomas Kalman, Acting 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

5. Should Respondent fail to fund the SEP within the required time frame set forth in Order 3, Respondent shall immediately pay to Ohio EPA \$4,000 of the civil penalty in accordance with the procedures in Order 2.

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 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 the 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.

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 addressed to:

Akron Regional Air Quality Management District
146 South High Street, Room 904
Akron, Ohio 44308
Attn: Duane LaClair

and to:

Ohio Environmental Protection Agency
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.

All documents required to be submitted by Ohio EPA pursuant to these Orders shall be addressed to:

Kenmore Construction Co., Inc.
700 Home Avenue
Akron, Ohio 44310
Attn: William A. Scala

and to:

Shane A. Farolino, Esq.
Roetzel & Andress
222 South Main Street
Suite 400
Akron, Ohio 44308-2098

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

XI. RESERVATION OF RIGHTS

Ohio EPA and Respondent each reserve all rights, privileges, defenses, 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

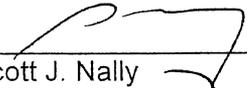
The effective date of these Orders is the date these Orders are entered into the Ohio EPA Director's journal.

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.

ORDERED AND AGREED:

Ohio Environmental Protection Agency



Scott J. Nally
Director

8/21/11

Date

AGREED:

Kenmore Construction Co., Inc.



Signature

8/23/11

Date

William A. Scale, President

Printed or Typed Name

Title