

OHIO E.P.A.

NOV 12 2009

ENTERED DIRECTOR'S JOURNAL

BEFORE THE  
OHIO ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

Great Plains Exploration, LLC : Director's Final Findings  
220 Blackbrook Road : and Orders  
Painesville Township, Ohio 44077 :

**PREAMBLE**

It is agreed by the parties hereto as follows:

**I. JURISDICTION**

These Director's Final Findings and Orders (AOrders) are issued to Great Plains Exploration, 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**

These Orders shall apply to and be binding upon Respondent and successors in interest liable under Ohio law. No change in ownership of 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 regulations promulgated thereunder.

**IV. FINDINGS**

The Director of Ohio EPA makes the following findings:

1. Respondent operates a portable nonmetallic mineral aggregate recycling plant, with a portable impact crusher, which is located at 220 Blackbrook Road, Painesville Township, in Lake County, Ohio. Respondent crushes material including concrete, asphalt and/or natural aggregate materials.

Director's Final Findings and Orders  
Great Plains Exploration, LLC  
Page 2 of 6

2. At the facility, Respondent operates three emissions units (identified by Ohio EPA as "emissions units F001, F002, and F003"), which are "air contaminant sources," as defined in Ohio Administrative Code ("OAC") Rule 3745-15-01(C) and (W). Emissions unit F001 is comprised of a portable impact crusher with a manufacturer's rating of 100-300 tons per hour of stone processed, a screener, and the rest of the material handling system. Emissions unit F002 is comprised of the roadways and parking areas, and emissions unit F003 is comprised of the storage piles located at the facility.

3. Except as otherwise provided by law, and except to the extent that a permit to install ("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 permit to install and operate ("PTIO") or (before June 30, 2008) a permit to operate ("PTO"), prior to operating an air contaminant source.

4. 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 (APTI<sup>®</sup>) or (on or after June 30, 2008) a permit to install and operate (PTIO), except as otherwise provided by rule or law.

5. ORC § 3704.05(G) states, in part, that no person shall violate any order, rule, or determination of the Director, issued, adopted, or made under ORC Chapter 3704. All rules of the Director referred in these Orders were adopted pursuant to ORC Chapter 3704.

6. On April 17, 2008, representatives of the Ohio EPA Northeast District Office ("NEDO") and Lake County General Health District ("the District") inspected the facility after the District received citizen complaints.

7. As of April 17, 2008 and since April 2007, Respondent had installed emissions units F001, F002, and F003 without applying for and obtaining a PTI, in violation of OAC Rule 3745-31-02 and ORC § 3704.05(G). As of April 17, 2008 and since April 2007, Respondent had also operated the three emissions units without applying for and obtaining a PTO, in violation of former OAC Rule 3745-35-02, OAC Rule 3745-31-02, and ORC § 3704.05(G). On May 1, 2008, NEDO sent a Notice of Violation ("NOV") letter to the Respondent citing the Respondent for these violations and requesting submission of complete PTIO applications by May 22, 2008.

8. On May 16, 2008, NEDO received the PTI and PTO applications from the Respondent. On May 28, 2008, NEDO returned the PTI and PTO applications to the Respondent due to incompleteness. Finally, on July 24, 2008, NEDO contacted the Respondent for the lack of response to the returned applications.

9. On July 30, 2008, NEDO inspected operations at the facility and met with Mr. Papp, the Superintendent at the facility. Mr. Papp informed NEDO about a negotiated injunction which required the crusher and all piles, except for those of clay/soil, be moved a distance away from the complaining neighbors and closer to Blackbrook Road.

Director's Final Findings and Orders  
Great Plains Exploration, LLC  
Page 3 of 6

10. On August 27, 2008, NEDO received a PTIO application from the Respondent for installation of emissions units F001, F002, and F003. Ohio EPA issued a PTIO to Respondent for these emissions units on April 1, 2009.

11. 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 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 nineteen thousand dollars (\$19,000) in settlement of Ohio EPA's claims for civil penalties, which may be assessed pursuant to ORC Chapter 3704.06. Of this amount, Respondent shall pay to Ohio EPA the amount of fifteen thousand dollars (\$15,000) in 15 equal monthly installments of one thousand dollars (\$1,000) each, with the first of such payments due by March 1, 2010 and the last payment due by May 1, 2011. Each payment shall be made by an official check made payable to "Treasurer, State of Ohio." Each 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  
50 West Town Street  
Suite 700  
P.O. Box 1049

2. A copy of each 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  
50 West Town Street  
Suite 700  
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 fund a Supplemental Environmental Project ("SEP") by making a contribution to the Ohio EPA's Clean Diesel School Bus Program Fund (Fund 5CD0). Respondent shall pay to Ohio EPA the amount of four thousand dollars (\$4,000) in four equal monthly installments of one thousand dollars (\$1,000) each, with the first payment due by November 1, 2009 and the last payment due by February 1, 2010. Each payment shall be made by an official check made payable to "Treasurer, State of Ohio" for \$1,000. Each official check shall be submitted to Brenda Case, or her successor, together with a letter identifying the Respondent and Fund 5CD0, to the above-referenced address. A

Director's Final Findings and Orders  
Great Plains Exploration, LLC  
Page 4 of 6

copy of each check shall be sent to James A. Orlemann, or his successor, at the above-referenced address.

**VI. TERMINATION**

Respondent's obligations under these Orders shall terminate upon Ohio EPA's receipt of the official checks required by Section V of these Orders.

**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 Respondent's activities at the 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:

Director's Final Findings and Orders  
Great Plains Exploration, LLC  
Page 5 of 6

Ohio Environmental Protection Agency  
Northeast District Office  
2110 E. Aurora Road  
Twinsburg, Ohio 44087  
Attention: Nancy Meli, Environmental Specialist

and to:

Ohio Environmental Protection Agency  
Lazarus Government Center  
Division of Air Pollution Control  
50 West Town Street  
Suite 700  
P.O. Box 1049  
Columbus, Ohio 43216-1049  
Attn: Thomas Kalman, Manager, Enforcement Section

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.

Director's Final Findings and Orders  
Great Plains Exploration, LLC  
Page 6 of 6

**XIII. EFFECTIVE DATE**

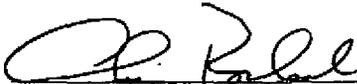
The effective date of these Orders is the date these Orders are entered into the Ohio EPA Director's journal.

**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

  
\_\_\_\_\_  
Chris Korleski  
Director

11/9/09  
Date

**AGREED:**

Great Plains Exploration, LLC

  
\_\_\_\_\_  
Signature

10-29-09  
Date

  
\_\_\_\_\_  
Printed or Typed Name

Operator Supervisor  
Title