OHIO E.P.A.
APR - 9 2009
DIRECTOR'S JOURNAL

BEFORE THE

OHIO ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

Liberta Construction Company	:	**Director's Final Findings**
1001 Eastwood Avenue	:	**and Orders**
Akron, Ohio 44305	:	

PREAMBLE

It is agreed by the parties hereto as follows:

I. JURISDICTION

These Director's Final Findings and Orders ("Orders") are issued to Liberta Construction Company ("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

The Director of Ohio EPA has determined the following findings:

1. Respondent is a masonry contractor with an office located at 1001 Eastwood Avenue in Akron, Summit County, Ohio. Respondent was licensed to do business in Ohio on April 21, 1993 under the name Cioffi & Sons Construction Company, Inc. On November 9, 2006, Cioffi & Sons Construction Company, Inc. merged with Liberta Construction Company. When conducting masonry operations, Respondent employs concrete sawing equipment, which are equipped with water hose connections for dust control.

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 OAC Rule 3745-17-01(B)(7) as any source which emits fugitive dust as defined in OAC Rule 3745-17-01(B)(6). "Fugitive dust" means particulate matter which is emitted from any source by means other than a stack. The outdoor operation of masonry cutting and sawing equipment and jack-hammering emits fugitive dust and constitutes a fugitive dust source and an "air contaminant source," as defined in OAC Rule 3745-15-01(C) and (W).

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 is 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," as defined in OAC Rule 3745-17-01(B)(15), to prevent fugitive dust from becoming airborne. Such reasonably available control measures 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. On June 27, 2006, Respondent conducted concrete sawing operations at the intersection of Glenwood Avenue and Dayton Street in Akron, Ohio. Respondent generated visible emissions of fugitive dust as a result of sawing concrete sidewalks and curbs. Respondent failed to employ reasonably available control measures to minimize or eliminate such emissions, in violation of OAC Rule 3745-17-08(B).

7. On July 11, 2006, Respondent conducted concrete sawing operations at the intersection of Akron Street and Burn Avenue in Akron, Ohio. Respondent generated visible emissions of fugitive dust as a result of sawing concrete sidewalks and curbs. Respondent failed to employ reasonably available control measures to minimize or eliminate such emissions, in violation of OAC Rule 3745-17-08(B).

8. On November 17, 2006, Respondent conducted concrete sawing operations at the northwest corner of North Adams and East Market streets in Akron, Ohio. Respondent generated visible emissions of fugitive dust as a result of sawing concrete block. Respondent failed to employ reasonably available control measures to minimize or eliminate such emissions, in violation of OAC Rule 3745-17-08(B).

9. On November 30, 2006, ARAQMD issued a Notice of Violation ("NOV") to Respondent indicating that Respondent had failed to use reasonably available control measures to control dust emissions associated with concrete sawing operations on June 27, 2006, July 11, 2006, and November 17, 2006, in violation of OAC Rule 3745-17-08(B).

The NOV concluded with a request that Respondent submit a written statement outlining its plan to control fugitive dust emissions at construction sites where cutting or sawing of concrete is taking place. On December 11, 2006, Respondent replied to the November 30, 2006 NOV and indicated that water would be used to control fugitive dust emissions at concrete sawing operations conducted by Respondent in the future.

10. On April 29, 2008, Respondent conducted concrete sawing operations at North Howard Street between Vesper Avenue and Tallmadge Avenue in Akron, Ohio. Respondent generated visible emissions of fugitive dust as a result of sawing concrete curbs. Respondent failed to employ reasonably available control measures to minimize or eliminate such emissions, in violation of OAC Rule 3745-17-08(B). On April 29, 2008, ARAQMD issued a cease and desist notice to Respondent, directing it to minimize or eliminate fugitive dust emissions through the use of water during concrete sawing operations.

11. On May 9, 2008, ARAQMD issued a NOV to Respondent indicating that Respondent had failed to control dust emissions associated with concrete sawing operations on April 29, 2008, in violation of OAC Rule 3745-17-08(B). The NOV concluded with a request that Respondent submit a written statement outlining its plan to control fugitive dust emissions at construction sites where cutting or sawing of concrete is taking place.

12. On June 12, 2008, Respondent conducted concrete sawing operations at the intersection of Shelburn Avenue and Stetler Avenue in Akron, Ohio. Respondent generated visible emissions of fugitive dust as a result of sawing concrete sidewalks and curbs. Respondent failed to employ reasonably available control measures to minimize or eliminate such emissions, in violation of OAC Rule 3745-17-08(B). On June 12, 2008, ARAQMD issued a cease and desist notice to Respondent, directing it to minimize or eliminate fugitive dust emissions through the use of water during concrete sawing operations.

13. On June 27, 2008, Respondent conducted concrete sawing operations at the intersection of North Howard Street and Vesper Street in Akron, Ohio. Respondent generated visible emissions of fugitive dust as a result of sawing a concrete manhole. Respondent failed to employ reasonably available control measures to minimize or eliminate such emissions, in violation of OAC Rule 3745-17-08(B). On June 27, 2008, ARAQMD issued a cease and desist notice to Respondent, directing it to minimize or eliminate fugitive dust emissions through the use of water during concrete sawing operations.

14. On July 28, 2008, ARAQMD issued a NOV to Respondent indicating that Respondent had failed to control dust emissions associated with concrete sawing operations on April 29, 2008, June 12, 2008, and June 27, 2008, in violation of OAC Rule

3745-17-08(B). The NOV concluded with a request that Respondent submit a written statement outlining its plan to control fugitive dust emissions at construction sites where cutting or sawing of concrete is taking place. On August 12, 2008, Respondent replied to the July 28, 2008 NOV and indicated that water would be used to control fugitive dust emissions at concrete sawing operations conducted by Respondent in the future.

15. On October 3, 2008, Respondent conducted concrete jack-hammering operations at 527 North Howard Street in Akron, Ohio. Respondent generated visible emissions of fugitive dust as a result of sawing concrete block. Respondent failed to employ reasonably available control measures to minimize or eliminate such emissions, in violation of OAC Rule 3745-17-08(B). On October 3, 2008, ARAQMD issued a cease and desist notice to Respondent, directing it to eliminate fugitive dust emissions through the use of water during concrete jack-hammering and sawing operations.

16. On October 23, 2008, ARAQMD issued a NOV to Respondent indicating that Respondent had failed to control dust emissions associated with concrete jack-hammering and sawing operations on October 3, 2008, in violation of OAC Rule 3745-17-08(B). The NOV concluded with a request that Respondent submit a written statement outlining its plan to control fugitive dust emissions at construction sites where jack-hammering, cutting or sawing of concrete is taking place.

17. The OAC violations cited in the above findings also constituted violations of ORC § 3704.05(G), which 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.

18. 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 sawing activities, by equipping each saw with a hose and canister assembly unit or equivalent device that will minimize or eliminate visible emissions of fugitive dust from all masonry sawing operations at its Ohio construction sites located in the Appendix A areas identified in OAC Rule 3745-17-08. Respondent shall maintain compliance with OAC Rule 3745-17-08(B) thereafter.

2. Respondent shall pay the amount of eight thousand five hundred dollars ($8,500) in settlement of Ohio EPA's claims for civil penalties, which may be assessed pursuant to ORC Chapter 3704. Within fourteen (14) 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 six thousand eight hundred dollars ($6,800) 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 one thousand seven hundred dollars ($1,700) of the civil penalty, Respondent shall, within fourteen (14) days of the effective date of these Orders, fund a Supplemental Environmental Project ("SEP") by making a contribution in the amount of $1,700 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 $1,700. 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 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

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 $1,700 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 duty 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: Bonetta Guyette

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.

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

Date 4/2/09

IT IS SO AGREED:

Liberta Construction Company

Signature

Date 3/23/09

Dominic Ciofi
Printed or Typed Name

PRES.
Title