



AKRON REGIONAL  
AIR QUALITY MANAGEMENT DISTRICT

Agent of the Ohio Environmental Protection Agency • Division of the Akron Health Department  
Serving Medina, Portage and Summit Counties

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L. M. Malcolm, P.E.  
Administrator

June 14, 2007

Mr. Terry Monnolly, President  
DiGioia-Suburban Excavating, LLC  
11293 Royalton Road  
Cleveland, OH 44133

Dear Mr. Monnolly:

This letter is in response to a recent investigation regarding excessive fugitive dust emissions from construction activities at 250 Tallmadge Road in Brimfield Township (Portage County) and is intended to outline your obligations under Ohio air pollution regulations. The Akron Regional Air Quality Management District (ARAQMD) is a contractual agent for the Ohio Environmental Protection Agency (Ohio EPA) responsible for enforcing air pollution regulations in Summit, Portage, and Medina Counties.

Ohio Administrative Code (OAC) rule 3745-17-08 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 road to be used, constructed, altered, or repaired without taking or installing reasonably available control measures to prevent fugitive dust from becoming airborne. Such measures shall include, but not be limited to, one or more of the following which are appropriate to minimize or eliminate visible emissions of fugitive dust:

- 1) The use of water or other suitable dust suppression chemicals for the control of fugitive dust from construction operations, the grading of roads or the clearing of land;
- 2) The periodic application of asphalt, oil, water, or other suitable dust suppression chemicals on dirt or gravel roads and parking lots, and other surfaces which can cause emissions of fugitive dust;
- 3) The covering, at all times, of open bodied vehicles when transporting materials likely to become airborne;
- 4) The paving of roadways and the maintaining of roadways in a clean condition; and
- 5) The prompt removal, in such a manner as to minimize or prevent resuspension, of earth or other materials from paved streets onto which earth or other materials have been deposited by trucking or earth moving equipment or erosion by water or other means.

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For the purpose of determining compliance with the above, a control measure shall be considered adequate if it complies with the following visible emissions limitations contained in OAC rule 3745-17-07:

- 1) There shall be no visible particulate emissions from any paved roadway or parking area except for a period of time not to exceed six (6) minutes during any sixty-minute observation period;
- 2) There shall be no visible particulate emissions from any unpaved roadway or parking area except for a period of time not to exceed thirteen (13) minutes during any sixty-minute observation period; and
- 3) Except as otherwise provided, visible particulate emissions from any fugitive dust source shall not exceed twenty (20) percent opacity as a three minute average.

On June 20, 2005, a dust complaint was investigated by this Agency (at 5000 Akron-Cleveland Road in Cuyahoga Falls, Ohio), and an "order to comply" and a copy of OAC 3745-17-08 was given to a DiGioia representative. A water truck was parked and leaking water, allegedly out of fuel.

On March 31, 2006, an inspector from the ARAQMD investigated a dust complaint at the current Wal-Mart site on Route 18 in Brimfield Township. Upon arrival it was raining, however, a representative from DiGioia acknowledged a lot of dust just before the rain. No water truck was on the site. The DiGioia representative "will order two water trucks and keep them on-site." Verbal orders were given.

On April 6, 2006, during a follow-up visit an ARAQMD inspector found soil to have sufficient moisture content, no earthmoving being done, and no dust at this time. There was no water truck on-site.

On April 17, 2006, this Agency received complaints from golfers across the road regarding dust at the Wal-Mart site on April 12 and 13, 2006 and investigation of the complaints revealed no dust problem at the time, but no water truck on the site. A DiGioia representative promised the water truck would be there ASAP.

During a follow-up visit on April 19, 2006, a water truck was at the site and the dust was being controlled.

Most recently, on June 4, 2007, an ARAQMD inspector observed excessive amounts of fugitive dust from haul roads and active construction areas at 250 Tallmadge Road in Brimfield Township. Visible emissions readings of fugitive dust were taken on the haul road at the north end of the site (the residential development), and revealed that the operation exceeded the allowable limits outlined in the above-cited regulation. Visible emissions readings revealed sixteen minutes of visible particulate emissions during a forty-minute observation period. A DiGioia-Suburban Excavating representative was contacted at the site, the fugitive dust regulations were explained, and a written "order to comply" to control the excessive emissions from these affected areas was issued. Two water trucks were parked at the site, but no water was being applied.

Mr. Terry Monnolly

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Lack of dust control on this site has been ongoing. Be advised that this situation constitutes a violation of Ohio EPA air pollution control law and applicable regulations as described above. Please note that you may also be in violation of OAC rule 3745-15-07, Air Pollution Nuisances Prohibited, given the proximity to residences and commercial activities:

**In order to resolve this situation, you are requested to implement control measures on the haul roads and at the construction sites immediately. Secondly, provide a written detailed plan to this office within seven (7) days of receipt of this letter for dust control at all affected areas/sites. Your detailed plan must identify specific control methods and application frequency at each affected area/site.**

The acceptance of a plan and schedule to resolve air pollution violations in this case in no way waives the right of the U.S. EPA, the Ohio EPA, or this Agency to pursue additional enforcement action in this matter. Note that State law allows for monetary penalties of up to \$25,000 per day per violation. The decision to pursue or to decline to pursue additional enforcement action will be made at a later date.

If you have any questions, please contact our office at 330-375-2480 or 1-800-589-2480.

Yours truly,



L. M. Malcolm, PE  
Administrator

Certified Mail

cc Tom Kalman, Ohio EPA  
Frank Markunas, ARAQMD  
Bonetta Guyette, ARAQMD