

OHIO E.P.A.

MAY 30 2013

ENTERED DIRECTOR'S JOURNAL

BEFORE THE

**OHIO ENVIRONMENTAL PROTECTION AGENCY**

In the Matter of:

Trupointe Cooperative, Inc.	:	<u>Director's Final Findings</u>
P.O. Box 360	:	<u>and Orders</u>
Wapakoneta, Ohio 45895	:	

**PREAMBLE**

It is agreed by the parties hereto as follows:

**I. JURISDICTION**

This Expedited Settlement Agreement and Director's Order ("ESA") is issued to Trupointe Cooperative, 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. FINDINGS**

1. Respondent owns and operates a grain and bulk fertilizer facility located at 400 West Walnut Street, Botkins, Ohio (Ohio EPA facility ID number 0575000001). The bulk plant fertilizer plant includes the following dry fertilizer emissions units: rail and truck receiving [emissions units F015 and F016, respectively], material handling and storage [emissions unit F018], truck loading new building and old building [emissions units F017 and F019, respectively].

2. Each of the emissions units identified in Finding 1 is an "air contaminant source" as defined in Ohio Administrative Code ("OAC") Rules 3745-31-01(I) and 3745-15-01(C) and (X).

3. OAC Rule 3745-31-02(A) prohibits any person from installing and operating an air contaminant source unless a permit-to-install and operate ("PTIO") has been applied for and obtained, except provided by rule or law.

4. ORC § 3704.05(G) prohibits any person from violating any rule adopted by the Director of Ohio EPA pursuant to ORC Chapter 3704. All rules identified in these Orders were adopted by the Director pursuant to ORC Chapter 3704.

5. On July 26, 2012, Ohio EPA's Southwest District Office inspected the facility and discovered that Respondent had installed a fertilizer plant consisting of emissions units F015, F016, F017, P018 and P018 prior to applying for and obtaining a PTIO, in violation of OAC Rules 3745-31-02(A) and ORC § 3704.05(G).

6. On July 27, 2012, Ohio EPA issued a Notice of Violation ("NOV") letter citing Respondent with the violations identified in Finding 5. The NOV requested Respondent to submit the required PTIO applications within 30 days of receipt of the NOV.

7. On August 30, 2012, Respondent submitted PTIO applications for the fertilizer plant and on October 2 and 4, 2012, Ohio EPA issued PTIO P0110999 and P0111354, respectively, authorizing the installation and operation of the fertilizer plant.

8. In consideration of the benefits of Respondent's prompt compliance to the public, efficiency in Ohio EPA resources, other factors as justice may require, and upon consideration of the entire record, this ESA is an appropriate mechanism to resolve the noncompliance detailed in these Findings.

### III. ORDER

The Director hereby issues the following Order:

1. Respondent shall pay Ohio EPA the amount of two thousand and six hundred and seventy-five dollars (\$2,675) 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 this ESA, payment to Ohio EPA shall be made by an official check made payable to "Treasurer, State of Ohio" for the full amount. The official check shall be submitted to Carol Butler, or her successor, together with a letter identifying Respondent, to:

Ohio EPA  
Office of Fiscal Administration  
50 West Town Street, Suite 700  
P.O. Box 1049  
Columbus, Ohio 43216-1049

A copy of the above check shall be sent to Bruce Weinberg, Manager, Compliance/Enforcement Section, 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

#### **IV. TERMINATION**

Respondent's obligations under this ESA shall terminate upon both Ohio EPA's entry of this ESA in the Ohio EPA Director's journal and Ohio EPA's receipt of the civil penalty payment required by this ESA.

#### **V. RESERVATION OF RIGHTS AND WAIVER**

Ohio EPA and Respondent each reserve all rights, privileges and causes of action, except as specifically waived herein.

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 this ESA, Respondent consents to the issuance of this ESA and agrees to comply with this ESA. Compliance with this ESA shall be a full accord and satisfaction of Respondent's liability for the violations specifically cited herein.

Respondent hereby waives the right to appeal the issuance, terms and conditions, and service of this ESA, and Respondent hereby waives any and all rights Respondent may have to seek administrative or judicial review of this ESA either in law or equity.

Notwithstanding the preceding, Ohio EPA and Respondent agree that if this ESA is 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 comply with this ESA notwithstanding such appeal and intervention unless this ESA is stayed, vacated, or modified.

#### **VI. EFFECTIVE DATE**

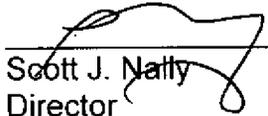
The effective date of this ESA is the date this ESA is entered into the Ohio EPA Director's journal.

**VII. SIGNATORY AUTHORITY**

Each undersigned representative or party to this ESA certifies that he or she is fully authorized to enter into this ESA and to legally bind such party to this ESA.

**ORDERED AND AGREED:**

**Ohio Environmental Protection Agency**

  
\_\_\_\_\_  
Scott J. Nally                      Date  
Director

5/22/13

**AGREED:**

**Trupointe Cooperative, Inc.**

Keith Martin  
\_\_\_\_\_  
Signature                      Date

5/15/13

KEITH MARTIN  
\_\_\_\_\_  
Printed or Typed Name

Director of Safety  
\_\_\_\_\_  
Title