

Place in Jntzbook

IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO

STATE OF OHIO, ex rel.	:	CASE NO. 61780
ANTHONY J. CELEBREZZE, JR.	:	
ATTORNEY GENERAL OF OHIO,	:	JUDGE JOSEPH F. McMANAMON
	:	
Plaintiff,	:	
	:	
v.	:	
	:	
THE CLEVELAND TRINIDAD PAVING	:	<u>JUDGMENT ENTRY</u>
CO.,	:	
	:	
Defendant.	:	

By the agreement of the parties, this case is to be marked "settled and dismissed with prejudice", with the exception that the Court shall retain jurisdiction of this matter in accordance with Settlement Agreement executed by the parties to this matter.

IT IS SO ORDERED.

RECEIVED FOR FILING

JUL 21 1984

JENNIFER V. FUERNST, CLERK
of the Court

APPROVED:

ANTHONY J. CELEBREZZE, JR.
ATTORNEY GENERAL OF OHIO

BY: Margaret A. Malone
MARGARET A. MALONE
Assistant Attorney General
Attorney for Plaintiff

Robert S. Stone
ROBERT S. STONE
Attorney for Defendant,
The Cleveland Trinidad Paving Co.

Joseph F. McManamon
JUDGE JOSEPH F. McMANAMON

SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT is entered into at Cleveland, Ohio, this 20th day of December, 1984, between the State of Ohio, including its Environmental Protection Agency and the Cleveland Division of Air Pollution Control, a contract agency of the Ohio Environmental Protection Agency in Cuyahoga County, (hereinafter "State") and the Cleveland Trinidad Paving Co. (hereinafter "Cleveland Trinidad").

RECITALS:

WHEREAS, Cleveland Trinidad owns and operates a Boeing MS-300 drum mix asphalt plant (hereinafter "Drum Mix Plant") at a facility location at East 37th Street, Cleveland, Ohio 44115; and

WHEREAS, State has filed a lawsuit, that being Cuyahoga County Common Pleas Case No. 61780, against Cleveland Trinidad with respect to Cleveland Trinidad's operation of its drum mix plant and charging in its Amended Complaint various violations of Ohio Revised Code, including alleged violations of Sections 3704.05(A), 3704.05(H) and 3704.05(C); and

WHEREAS, Cleveland Trinidad denies the allegations set forth in State's Amended Complaint and further denies that it has committed any environmental violations of statute or regulation as alleged in State's Amended Complaint or otherwise; and

WHEREAS, the parties wish to resolve all legal actions and/or differences and all matters in controversy between them relating to Cleveland Trinidad's operation of its drum mix plant up to the date of this Settlement Agreement and to avoid further expense and delay which would be occasioned by the continuation of any further legal proceedings; and

WHEREAS, the parties have indicated their willingness to execute a full and complete settlement of claims; and

WHEREAS, Cleveland Trinidad had a formal stack test conducted in accordance with U.S. EPA methods 1, 2, 3, 4 and 5 in order to demonstrate that the drum mix plant is in compliance with the maximum allowable particulate emission rate of 0.04 grains per dry standard cubic foot of gas; and

WHEREAS, State has reviewed the results of the aforementioned stack test and has determined that the drum mix plant, source 1318001799 P902, can be operated in compliance with the aforesaid particulate emission rate when operated at a maximum production capacity not in excess of the rate of 200 tons per hour of aggregate materials that contain recycled asphalt in amounts not exceeding thirty percent (30%) of the aggregate materials as introduced into the plant.

AGREEMENTS

NOW, THEREFORE, in consideration of the mutual promises contained herein, the parties agree as follows:

1. This Settlement Agreement is intended to settle all matters and controversy between the parties to the date set forth above.
2. The provisions of this Settlement Agreement shall apply to and be binding upon the parties to this action, their officers, directors, agents, servants, employees, successors and assigns.
3. Based upon the aforesaid stack test, the Ohio EPA previously agreed that it would, subsequent to agreement in this matter, issue a permit to operate the drum mix plant, source 1318001799 P902, with special terms and conditions identical to those set forth in Exhibit A attached hereto. That permit will be issued promptly upon execution of this document.

Cleveland Trinidad hereby waives any right to contest or appeal the lawfulness or reasonableness of the permit to operate before the Environmental Board of Review or any Court of competent jurisdiction.

4. Cleveland Trinidad agrees to perform the following:

- a) By July 1, 1985, Cleveland Trinidad shall install a continuous weighing feeder system capable of metering the amount of recycled asphalt materials in the feed materials to the drum mix plant with plus or minus 1.5% accuracy of the feed rate of the recycled aggregate materials. The system shall incorporate appropriate instrumentation of the analog or digital type to display the metered weight of recycled asphalt materials in the feed materials to the drum mix plant.
- b) By July 1, 1985, Cleveland Trinidad shall pave approximately 1,000 square yards of roadway and, to the extent all roadways are paved, other areas of its plant at its facilities at East 37th Street, Cleveland, Ohio. Such paving shall involve the application of 4 inches of asphalt over the roadway.
- c) By July 1, 1985, Cleveland Trinidad shall enlarge its settling tank associated with the venturi scrubber water recirculation system by approximately fifty percent (50%) volume at a minimum. Such enlargement shall have concrete bottom and sides of material substantially similar to those of the present existing settling tank.

Should Cleveland Trinidad fail to perform the conditions as set forth in a), b) and c) of this Paragraph 4, State may, at its option, file an Affidavit with a copy of this Settlement Agreement attached with the Cuyahoga County Court of Common Pleas in Case No. 61780, stating specifically the manner of non-compliance with this Paragraph 4. In the event State files such an Affidavit, the Court shall thereupon enter a supplemental judgment entry consisting of Paragraph 4 of the Settlement Agreement and the Court may then enforce the provisions of this Paragraph 4 by the entry of any order or decree within its powers which it may deem necessary to enforce the terms of the supplemental entry including a finding of contempt.

5. Except as noted in Paragraph 4 above and the Judgment Entry to be signed by the parties and filed with the Court, it is further agreed that neither State nor Cleveland Trinidad nor any of their officers, directors, agents, employees or attorney will disclose or publicize the terms of this Settlement Agreement or any of the consideration to be performed by Cleveland Trinidad pursuant to this Settlement Agreement, but the same shall be treated as confidential by the parties, their agents and respective counsel.

6. It is further understood that Cleveland Trinidad herein makes no admission of liability and expressly denies any and all culpability or wrongdoing concerning the claims made against it.

Signed in duplicate originals.

WITNESS:

STATE OF OHIO

Susan Flannery
Susan Flannery, Assistant
Attorney General

Margaret A. Malone
ANTHONY J. CELEBREZZE, JR.
Attorney General of Ohio by
MARGARET A. MALONE, Assistant
Attorney General

Robert S. Stone
Robert S. Stone, Attorney
for The Cleveland Trinidad
Paving Co.

Simon Zahben
~~GARY HELF~~, President
The Cleveland Trinidad Paving Co.
SIMON ZAHBEN V.P.

J. McManamon
JUDGE JOSEPH McMANAMON
Cuyahoga County Court of
Common Pleas

APPLICATION NUMBER: 13-18-00-1799 P902

FACILITY NAME: Cleveland Trinidad Paving Co.

EQUIPMENT DESCRIPTION: Portable Asphalt Batching Plant

COMPANY ID: Boeing MS-300 Drum Mix Asphalt Plant

SPECIAL TERMS AND CONDITIONS

1. Particulate emissions from the Boeing MS-300 Drum Mix Asphalt Plant stack are subject to the New Source Performance Standard (NSPS) requirements of 40 CFR Part 60.90 Subpart I of "Standards of Performance of Asphalt Concrete Plants" as follows:
 - a. Emissions of particulate matter shall not exceed 0.04 gr/dscf
 - b. Emissions of visible air contaminants shall not exceed or equal 20 percent opacity (6 - minute average basis).

2. The Boeing Drum Mix Asphalt Plant MS-300 covered by this Permit to Operate as well as sources of fugitive dust with their respective applicable regulations are as follows:

<u>Emission Sources Included Under This Permit to Operate P902</u>	<u>Type of Source</u>	<u>Applicable Rules OAC 3745</u>
Aggregate Handling and Storage Bins (two)	Fugitive	17-08
Sand Handling and Storage Bin (one)	Fugitive	17-08
Boeing Drum Mix Dryer (one)	Process	NSPS Requirements
Hot Elevator & Asphalt Bins (one)	Fugitive	17-08

3. The facility shall employ and maintain, as needed, the water spray system located at the sand storage bins such that there are no visible emissions of fugitive dust into the ambient air from such bins or any subsequent sand handling operations prior to the drum mixer.
4. The Cleveland Trinidad Paving Company may substitute recycled asphalt aggregates in the raw material feed mix in amounts not to exceed 30%

Facility Name: Cleveland Trinidad Paving Company
Application No.:: 13-18-00-1799 P902
Page Two

of all aggregate materials introduced at any given time. When recycled asphalt materials are used, the maximum production capacity shall not exceed a rate of 200 tons per hour of aggregate materials as fed into the plant. The Cleveland Trinidad Paving Company shall maintain records of the hourly amounts and percentages of recycled asphalt material being used. Such records shall be made available to the Division of Air Pollution Control upon request.

5. The drum mix plant is equipped with a low pressure drop venturi scrubber rated at 42,000 ACFM. Accordingly, this venturi scrubber shall be operated according to the manufacturer's operating instructions, including those pertaining to startups, shutdowns, and inspections for maintenance and repairs. The Cleveland Trinidad Paving Company shall keep records of all inspections and repairs for a period of two years thereafter. Such records shall be made available to the Division of Air Pollution Control upon request.

Facility Name: The Cleveland Trinidad Paving Company
Application No.: 13-18-00-1799 P902
Page Four

8. All malfunctions and scheduled shutdowns that may cause violations of the emission limitations in this permit must be reported to the Division of Air Pollution Control not later than four (4) hours by phone and no more than five (5) days by certified mail. In addition, the Cleveland Trinidad Paving Company shall comply with the maintenance/malfunction reporting requirements in O.A.C. rule 3745-15-06.
9. The condensed vapor plume from the stack shall be monitored at all times during operation in order to detect any traffic hazard on the I-77 overpass. Further, the operation of this plant shall cease immediately when the atmospheric conditions result in the condensed vapor plume having the potential to cause any traffic hazard on the I-77 overpass.
10. If the Cleveland Trinidad Paving Company will relocate the Boeing Drum Mix Asphalt Plant within the limits of Cuyahoga County, prior written notification of relocation must be submitted to Cleveland Air Pollution Control Division within thirty (30) days prior to such relocation. If the plant will be relocated outside Cuyahoga County, prior written notification of relocation must also be submitted within thirty (30) days of such relocation to the Ohio EPA and/or local air pollution control agency having jurisdiction.