

BEFORE THE

OHIO ENVIRONMENTAL PROTECTION AGENCY

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In the Matter of:

City of Akron	:	<u>Director's Final Findings</u>
Suite 200 Municipal Building	:	<u>and Orders</u>
166 South High Street	:	
Akron, Ohio 44308	:	
	:	
Akron Energy Systems, LLC	:	
226 Opportunity Parkway	:	
Akron, Ohio 44307	:	

**PREAMBLE**

The parties agree as follows:

**I. JURISDICTION**

These Director's Final Findings and Orders ("Orders") are issued to the City of Akron ("Respondent City") and Akron Energy Systems, LLC ("Respondent Akron Energy," and, collectively, "Respondents") pursuant to the authority vested in the Director ("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 Respondents and successors in interest liable under Ohio law. No change in ownership of Respondents or of the facility (as hereinafter identified) shall in any way alter Respondents' obligations under these Orders.

**III. DEFINITIONS**

Unless otherwise stated, all terms used in these Orders shall have the same meanings as defined in ORC Chapter 3704 and the regulations promulgated thereunder.

#### IV. FINDINGS

The Director makes the following findings:

1. Respondent City owns heating (steam heat) and cooling (cold water production) facilities ("facilities") that include six boilers located at 226 Opportunity Parkway in Akron, three in one building and three in an adjacent building. One of these boilers has been shut down. The remaining five boilers make up a Title V source, as that term is defined in OAC 3745-77-01(PP).
2. The City leased the facilities to Akron Thermal, Limited Partnership and Akron Thermal Cooling, LLC (collectively, "Akron Thermal"). Akron Thermal operated these facilities and provided the heating and cooling services to the facilities' customers, which include three hospitals, University of Akron buildings, and various downtown Akron office buildings.
3. Akron Thermal's operation of any or all of these boilers was and is governed by a Title V permit issued by the Director. At the time the facilities were operated by Akron Thermal, the facilities were a public utility with rates that were governed by the Public Utilities Commission of Ohio ("PUCO").
4. On September 8, 2009, Akron Thermal ceased operating the heating and cooling facilities. Akron Thermal has since filed a petition in bankruptcy and sought the protection of the bankruptcy court. Faced with the need for uninterrupted heating and cooling services, Respondent City contracted with Respondent Akron Energy to operate the facilities. Respondent Akron Energy has been operating the facilities on behalf of Respondent City since September of 2009.
5. Pursuant to OAC 3745-77-02, a Title V source such as Respondent City's heating and cooling facilities, may not be operated by the owner or other operator without a "Title V permit," as that term is defined at OAC 3745-77-01(OO).
6. A Title V permit may be transferred. OAC 3745-77-01(C) provides that such change in ownership or operational control of a source may be treated as an "administrative permit amendment" where "no other change in the permit is necessary, provided that a written agreement containing a specific date for transfer of permit responsibility, coverage, and liability between the current and new permittee has been submitted to the director."
7. Since September of 2009, several actions have been taken with the goal of transferring the Title V permit issued to Akron Thermal, to the City. None of these actions has resulted in the transfer of the Title V permit to either Respondent. For example, within a September 30, 2009 objection to Debtor Akron Thermal's motion to reject its lease with the City, Respondent City requested the United States Bankruptcy Court for the

Northern District of Ohio to order the Debtor Akron Thermal to return to Respondent City "any and all permits." *Page 2, Order of the Court denying request, filed December 2, 2009.* On December 2, 2009, the Court entered an order denying Respondent City's motion.

8. In addition, on October 7, 2009, the PUCO ordered Akron Thermal to "transfer . . . any permits necessary to operate" the steam and hot water producing facilities to Respondent City. Akron Thermal has not made the transfer of the permits.

9. Since September of 2009, Respondents have operated the heating and cooling facilities without a Title V permit that was issued in the name of either Respondent, in violation of OAC 3745-77-02.

10. Respondents' violation of OAC 3745-77-02 is also a violation of ORC 3704.05(G), which provides that no person shall violate any order, rule or determination of the director issued, adopted, or made under ORC Chapter 3704. OAC 3745-77-02 is a rule adopted under ORC Chapter 3704.

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 relation to benefits to the people of the State to be derived from such compliance.

## **V. ORDERS**

The Director hereby orders that by no later than September 1, 2010, Respondent City shall submit a complete application (or two separate applications) for a permit-to-install for the inclusion of shredded tires as a fuel component in Boiler Nos. 1 and 2, and to burn a restricted quantity of waste oil in Boiler No. 3. By no later than November 15, 2010, Respondent City shall submit a complete application for a Title V permit authorizing Respondent City (on its own and/or through an agent such as Respondent Akron Energy) to operate the boilers at the heating and cooling facilities. Respondent City shall make all reasonable efforts to obtain the permit(s)-to-install and Title V permit as expeditiously as possible. Prior to issuance of the permit(s)-to-install and Title V permit to Respondent City, Respondents shall operate the boilers only in compliance with the terms and conditions contained in the attached Exhibits A, B and C. Respondent City shall not be required to submit either application and/or obtain a permit-to-install or Title V permit as required by these Orders if the Director approves a transfer of the existing permits-to-install and Title V permit for the heating and cooling facilities from Akron Thermal to Respondent City.

## **VI. TERMINATION**

Respondents' obligations under these Orders shall terminate when Respondents

certify in writing and demonstrate to the satisfaction of Ohio EPA that Respondents have 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 Respondents of the obligations that have not been performed, in which case Respondents 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 Respondents to Ohio EPA and shall be signed by a responsible official of each Respondent. For purposes of these Orders, a responsible official is as defined in OAC 3745-77-01(II)(1) for a corporation or a duly authorized representative of each Respondent as that term is defined in the above-referenced rule.

## **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 operation of Respondents' 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 Respondents.

## **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 Respondents, or either of them, pursuant to these Orders shall be addressed to:

Akron Air Pollution Control  
146 South High Street  
Room 904  
Akron, Ohio 44308  
Attention: Frank Markunas, Director

and to:

Ohio Environmental Protection Agency  
Lazarus Government Center  
Division of Air Pollution Control  
P.O. Box 1049  
Columbus, Ohio 43216-1049  
Attention: 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 Respondents 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, Respondents consent to the issuance of these Orders and agree to comply with these Orders. Compliance with these Orders shall be a full accord and satisfaction for the Respondents' liability for the violations specifically cited herein.

Respondents hereby waive the right to appeal the issuance, terms and conditions, and service of these Orders, and Respondents waive any and all rights Respondents may have to seek administrative or judicial review of these Orders either in law or equity.

Notwithstanding the preceding, Ohio EPA and the Respondents agree that if these Orders are appealed by any other party to the Environmental Review Appeals Commission, or any court, Respondents retain the right to intervene and participate in such appeal. In such an event, Respondents shall continue to comply with these Orders notwithstanding such appeal and intervention unless said 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.

**ORDERED AND AGREED:**

Ohio Environmental Protection Agency

  
Chris Korleski  
Director

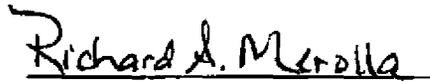
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Date

**AGREED:**

City of Akron

  
Signature

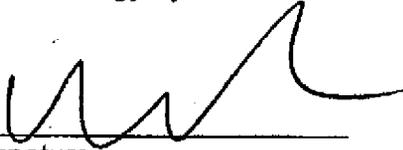
6/25/10  
Date

  
Printed or Typed Name

Director of Public Service  
Title

**AGREED:**

Akron Energy Systems, LLC

  
\_\_\_\_\_  
Signature

6-25-10  
Date

Charles Evans  
Printed or Typed Name

Managing Member  
Title