91 7108 2133 3932 4444 9845

Ohio | Environmental Protection Agency
John R. Kasich, Governor
Mary Taylor, Lt. Governor
Scott J. Nally, Director

February 24, 2011

Summit County Executive
175 South Main Street
Akron, OH 44308

Re: Director's Final Findings & Orders

Dear Sir or Madam:

Transmitted herewith are Final Findings & Orders of the Director concerning the matter indicated.

You are hereby notified that this action of the Director of Environmental Protection (Director) is final and may be appealed to the Environmental Review Appeals Commission pursuant to Section 3745.04 of the Ohio Revised Code. The appeal must be in writing and set forth the action complained of and the grounds upon which the appeal is based. The appeal must be filed with the Commission within thirty (30) days after notice of the Director's action. The appeal must be accompanied by a filing fee of $70.00, made payable to "Treasurer, State of Ohio." The Commission, in its discretion, may reduce the fee if by affidavit it is demonstrated that payment of the full amount of the fee would cause extreme hardship. Notice of the filing of the appeal shall be filed with the Director within three (3) days of filing with the Commission . Ohio EPA requests that a copy of the appeal be served upon the Ohio Attorney General's Office, Environmental Enforcement Section. An appeal may be filed with the Environmental Review Appeals Commission at the following address:

Environmental Review Appeals Commission
309 South Fourth Street, Room 222
Columbus, Ohio 43215

Sincerely,

Kimberly Reese

Kimberly Reese
Systems Management Unit
Division of Solid & Infectious Waste Management

Enclosure: Director's Final Findings and Orders

cc: Kelly Jeter, CO, DSIWM
Jeff Hurdley, OEPA, Legal
Lynn Sowers, NEDO, DSIWM

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OHIO E.P.A.

FEB 24 2011

ENTERED DIRECTOR'S JOURNAL

BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY

In the Matter Of:

Summit County Executive	:	Director's Final
175 South Main Street	:	Findings and Orders
Akron, Ohio 44308	:	

Respondent

I certify this to be a true and accurate copy of the official documents as filed in the records of the Ohio Environmental Protection Agency.

By: Dorothy Lassiter Date: 2-24-11

PREAMBLE

It is agreed by the parties hereto as follows:

I. JURISDICTION

These Director's Final Findings and Orders ("Orders") are issued to Summit County Executive ("Respondent") pursuant to the authority vested in the Director of the Ohio Environmental Protection Agency ("Ohio EPA") under Ohio Revised Code ("ORC") Sections 3734.13, 3745.01, and 6111.03.

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 Facility (as hereinafter defined) 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 Chapters 3734. and 6111. and the rules promulgated thereunder.

IV. FINDINGS

The Director of Ohio EPA makes the following findings:

1. The Summit County Wastewater Treatment Plant #36, a.k.a. Upper Tuscarawas Wastewater Treatment Plant (hereinafter, "WWTP #36") is located at 1100 Loamshire Drive, Springfield Township, Summit County, Ohio.

2. Respondent Summit County Executive is the "owner" or "property owner" of WWTP #36 as that term is defined in Ohio Administrative Code ("OAC") Rule 3745-27-01(O)(7) and holds title to property on which WWTP #36 is located.

3. Respondent Summit County Executive owns and operates WWTP #36, a "treatment works" as that term is defined in OAC Rule 3745-40-01(A)(80), serving several communities in Summit County.

4. Pursuant to OAC Rule 3745-40-03(B), "a permittee is responsible that any disposal, use, storage, or treatment of sewage sludge is in compliance with OAC Chapter 3745-40 and the conditions of its NPDES permit or sewage sludge management plan."

5. On August 25, 1975, Ohio EPA issued the Permit to Install ("PTI"), PTI #02-195, for the Summit County Upper Tuscarawas Wastewater Treatment Facility ("WWTP #36") and Temporary Sludge Storage Area. On May 27, 1980, Ohio EPA approved the Operations and Maintenance Manual ("O & M") submitted by Respondent which included a plan drawing of the "Temporary Sludge Storage Area" at WWTP #36, as depicted in Figure 1-2 of the O & M, labeled Upper Tusc Regional W.W.T.P. Plant Layout. The Temporary Sludge Storage Area located at WWTP #36 is the sole subject of these Director's Final Findings and Orders.

6. The PTI provided as follows: "The proposed facility may be constructed only in accordance with plans approved by the Director of the Ohio Environmental Protection Agency. There may be no deviation from the plans without the express, written approval of the Agency. Any deviation from the approved plans or the above conditions may lead to the denial of a discharge permit or other sanctions and penalties provided under Ohio law."

7. The PTI approval for WWTP #36 is subject to the condition that Respondent complies with all applicable laws, rules, regulations, and standards.

8. Ohio EPA conditioned approval of the WWTP #36 Temporary Sludge Storage Area upon its use solely as a sewage sludge storage area.

9. Beginning in the early 1980s through 2008, Respondent disposed of sludge as defined by ORC Section 6111.01(N), grits, screenings, grease and other solid wastes as defined by ORC Section 3734.01(E) into the Temporary Sludge Storage Area.

10. The Temporary Sludge Storage Area located at WWTP #36 is 1.4 acres and approximately 15 feet deep at the center.

11. Ohio EPA has never permitted the WWTP #36 Temporary Sludge Storage Area for the disposal of sludge.

12. Ohio EPA has never permitted the WWTP #36 Temporary Sludge Storage Area for the disposal of solid wastes.

13. Respondent has not obtained the express written approval of the Director of Ohio EPA to deviate from the approved plan or to modify the PTI as to the use of the Temporary Sludge Storage Area for the sole purpose of the storage of sewage sludge prior to disposal at a designated off-site facility.

Solid Waste Findings and Violations

14. Respondent is a "person" as that term is defined in ORC Section 3734.01(G) and in OAC Rule 3745-27-01(P)(3).

15. Pursuant to ORC Section 3734.03, "[n]o person shall dispose of solid wastes by open burning or open dumping, except as authorized by the director of environmental protection in rules adopted in accordance with division (V) of section 3734.01, section 3734.02, or sections 3734.70 to 3734.73 of the Revised Code..."

16. Pursuant to ORC Section 3734.01(E) "'Solid wastes' means such unwanted residual solid or semisolid material as results from industrial, commercial, agricultural, and community operations, excluding earth or material from construction, mining, or demolition operations, or other waste materials of the type that normally would be included in demolition debris, nontoxic fly ash and bottom ash, including at least ash that results from the combustion of coal and ash that results from the combustion of coal in combination with scrap tires where scrap tires comprise not more than fifty per cent of heat input in any month, spent nontoxic foundry sand, and slag and other substances that are not harmful or inimical to public health, and includes, but is not limited to, garbage, scrap tires, combustible and noncombustible material, street dirt, and debris. 'Solid wastes' does not include any material that is an infectious waste or a hazardous waste."

17. ORC Section 3734.01(I) provides in part: "'Open dumping' means the depositing of solid wastes into a body or stream of water or onto the surface of the ground at a site that is not licensed as a solid waste facility under section 3734.05 of the Revised Code..."

18. Respondent disposed of approximately 25,000 cubic yards of solid wastes as defined by ORC 3734.01(E), including sewage sludge, grits, grease and other solid wastes in the Temporary Sludge Storage Area located at WWTP #36.

19. Pursuant to ORC Section 3734.02(C), ... "no person shall establish a new solid waste facility or infectious waste treatment facility, or modify an existing solid waste facility or infectious waste treatment facility, without submitting an application for a permit with accompanying detail plans, specifications, and information regarding the facility and method of operation and receiving a permit issued by the director, except that no permit shall be required under this division to install or operate a solid waste facility for sewage sludge treatment or disposal when the treatment or

disposal is authorized by a current permit issued under Chapter 3704. or 6111. of the Revised Code."

20. Respondent did not obtain a permit from the Director under ORC Section 3734.02(C) to establish a new solid waste facility at WWTP #36.

21. The disposal of sewage sludge and other solid wastes into the Temporary Sludge Storage Area at WWTP #36 is not treatment or disposal of sewage sludge authorized by a current permit issued under ORC Chapter 3704. or 6111.

22. Pursuant to ORC Section 3734.05(A), ... "no person shall operate or maintain a solid waste facility without a license issued under this division by the board of health of the health district in which the facility is located or by the director of environmental protection when the health district in which the facility is located is not on the approved list under section 3734.08 of the Revised Code."

23. The Temporary Sludge Storage Area at WWTP #36 is not licensed as a solid waste disposal facility pursuant to ORC Section 3734.05.

24. During an inspection on September 3, 2008, which included an inspection of the Temporary Sludge Storage Area at WWTP #36, the Ohio EPA inspector observed the following violations:

    a) ORC Section 3734.03 and OAC Rule 3745-27-05(C) – open dumping of solid waste;
    b) ORC Section 3734.05(A)(1) and OAC Rule 3745-37-01(A) – operating a solid waste facility without a license;
    c) ORC Sections 3734.02(C) and 3734.05(A)(2) – failure to submit an application and obtain a permit prior to establishing a solid waste facility.

    By notice of violation ("NOV") letters dated October 3, 2008 and October 9, 2008, Ohio EPA notified Respondent of these violations.

25. On November 6, 2008, Ohio EPA received a response to the October 9, 2008 NOV letter via e-mail. In the letter Respondent stated, among other things, that it had ceased use of the Temporary Sludge Storage Area.

26. On January 7, 2009, Ohio EPA sent an NOV letter to Respondent noting that the materials in the Temporary Sludge Storage Area are solid wastes.

27. In correspondence dated March 23, 2009, Ohio EPA requested a compliance plan from Respondent, including a schedule for waste characterization, as well as removal and disposal.

28. On December 15, 2009, Ohio EPA received a compliance plan, including a schedule for waste characterization as well as removal and disposal, from Respondent.

29. On November 22, 2010, Ohio EPA conducted an inspection at WWTP #36 and observed that the Temporary Sludge Storage Area is mostly covered with weedy vegetative growth. It appeared that no recent activity has occurred at the Temporary Sludge Storage Area. Respondent remains in violation of ORC Sections 3734.02(C), 3734.03 and 3734.05(A), and OAC Rule 3745-27-05(C), for maintaining an unpermitted, unlicensed solid waste disposal facility and for open dumping as those terms are defined in ORC Section 3734.01(N) and 3734.01(I).

Water Pollution Control Findings and Violations

30. ORC Section 6111.07(A) prohibits any person from violating, or failing to perform any duty imposed by ORC Sections 6111.01 to 6111.08 or violating any order, rule, or term or condition of a permit issued or adopted by the Director of Environmental Protection pursuant to those sections. Each day of violation is a separate offense.

31. In the PTI and O & M approval, Ohio EPA approved the WWTP #36 Temporary Sludge Storage Area for use as a sludge storage area.

32. The Temporary Sludge Storage Area at WWTP #36 contains sludge as defined under ORC Section 6111.01(N).

33. ORC Section 6111.01(P) provides "'Storage of sludge' means the placement of sludge on land on which the sludge remains for not longer than two years, but does not include the placement of sludge on land for treatment."

34. The sludge within the Temporary Sludge Storage Area at WWTP #36 has remained in place for more than two years; it is estimated that the sludge has remained in the Temporary Sludge Storage Area for more than a decade.

35. On January 7, 2009, Ohio EPA sent an NOV letter notifying Respondent that the PTI did not authorize solid waste disposal in the Temporary Sludge Storage Area, and any deviation from the PTI is a violation of OAC Chapter 3745-42.

36. Respondent did not obtain authorization from the director of Ohio EPA to deviate from the PTI or O & M, which provided for the temporary storage of sludge in the Temporary Sludge Storage Area at WWTP #36.

37. Respondent did not obtain authorization or approval to dispose of sewage sludge in the Temporary Sludge Storage Area at WWTP #36.

38. OAC Rule 3745-40-03(A) states that "(A) Except as provided in paragraph (D) of this rule, no person shall engage in the disposal, use, storage, or treatment of sewage sludge for which requirements are established in this chapter, except pursuant to a valid NPDES permit or under an approved sewage sludge management plan, and such permit or plan identifies and regulates the specific disposal, use, storage or treatment of that sewage sludge."

39. The sewage sludge remaining in the Temporary Sludge Storage Area at WWTP #36 for more than two years constitutes the unpermitted disposal of sewage sludge in violation of ORC Sections 6111.44(A) and 6111.03(J) and OAC Rule 3745-40-03(A).

40. Respondent's current National Pollutant Discharge Elimination System (NPDES) permit does not identify the disposal of sludge in the Temporary Sludge Storage Area at WWTP #36 as an approved method of disposal of the sewage sludge from Respondent's treatment works.

41. Respondent did not obtain a National Pollutant Discharge Elimination System (NPDES) permit or modification to dispose of sewage sludge in the Temporary Sludge Storage Area at WWTP #36 pursuant to ORC Section 6111.03, OAC Rule 3745-40-03(A) or OAC Chapter 3745-42. Respondent is not otherwise authorized or approved to dispose of sewage sludge in the Temporary Sludge Storage Area at WWTP #36.

42. Pursuant to OAC Rule 3745-40-07(D), the surface disposal of sewage sludge is prohibited.

43. OAC Rule 3745-40-01(A)(76) provides, "'Surface disposal' means the placement of sludge on an area of land for disposal including, but not limited to, monofills, surface impoundments, lagoons, waste piles, or dedicated disposal sites."

44. The Temporary Sludge Storage Area at WWTP #36 is not a licensed Sanitary Landfill; WWTP #36 generates sewage sludge; and, Respondent is not authorized pursuant to ORC Section 6111.03(J) to dispose of sewage sludge into the Temporary Sludge Storage Area at WWTP #36.

45. Respondent disposed of sludge in the Temporary Sludge Storage Area in violation of ORC Chapter 6111 and OAC Chapter 3745-40.

46. Pursuant to OAC Rule 3745-40-03(G), "The director may specify in NPDES permits or impose in orders, any terms and conditions, including schedules of compliance, necessary to achieve compliance with this chapter."

47. The Director has given consideration to, and based his determination on, evidence relating to the technical feasibility and economic reasonableness of complying with these Orders and to evidence relating to conditions calculated to result from compliance with these Orders, and its relation to the benefits to the people of the State to be derived from such compliance in accomplishing the purposes of ORC Chapter 6111.

48. The following Orders do not constitute authorization or approval of the construction of any physical structure or facilities, or the modification of any existing treatment works or sewer system. Any such construction or modification is subject to the permit to install requirement of ORC Sections 6111.44 and 6111.45 and OAC Chapter 3745-42.

V. ORDERS

Respondent shall achieve compliance with ORC Chapters 3734. and 6111. and the rules promulgated thereunder according to the following compliance schedule:

1. Upon the effective date of these Orders, Respondent shall immediately and permanently cease disposal of sewage sludge into the Temporary Sludge Storage Area at WWTP #36.

2. Upon the effective date of these Orders, Respondent shall immediately and permanently cease disposal of solid waste into the Temporary Sludge Storage Area at WWTP #36.

3. Within forty-five (45) days after the effective date of these Orders, Respondent shall submit a compliance plan to Ohio EPA, NEDO for approval, which shall include a compliance schedule consistent with these Orders for the characterization of the waste, the removal and proper disposal of the entire contents of the Temporary Sludge Storage Area at a licensed sanitary landfill, the removal of the liner system, and to restore, stabilize and grade the site.

4. Within one hundred and eighty (180) days after the effective date of these Orders, Respondent shall complete the characterization of the waste within the Temporary Sludge Storage Area and submit a sampling and analysis report to Ohio EPA.

5. Not later than one (1) year after the effective date of these Orders, Respondent shall begin the process of removal and proper disposal of the contents of the Temporary Sludge Storage Area at WWTP #36 into a sanitary landfill licensed to accept the type of waste being disposed.

6. On or before October 1, 2015, Respondent shall complete the removal and proper disposal of the entire contents of the Temporary Sludge Storage Area at WWTP

#36 as well as the removal and proper disposal of the liner system, and restore, stabilize and grade the site. All removal and disposal operations shall be conducted and finalized in a manner which is protective of human health, safety and the environment, and which is consistent with all applicable federal and state laws and regulations.

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 Solid and Infectious Waste Management 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 purposes of these Orders, a responsible official is a principal executive officer of at least one level of vice president or his duly authorized representative, if such a representative is responsible for the overall operation of the Facility.

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 Respondent's 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 Respondent or the Facility.

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:

Ohio Environmental Protection Agency
Northeast District Office
Division of Solid and Infectious Waste Management
2110 East Aurora Road
Twinsburg, Ohio 44087-1969
Attn: Unit supervisor, DSIWM

and to:

Ohio Environmental Protection Agency
Northeast District Office
Division of Surface Water
2110 East Aurora Road
Twinsburg, Ohio 44087-1969
Attn: Unit supervisor, DSW

and to:

Summit County Health District
1100 Graham Road Circle
Stow, Ohio 44224
Attn: Health Commissioner

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.

ORDERED AND AGREED:

Ohio Environmental Protection Agency

Scott J. Nally
Director

AGREED:

Summit County Executive

Signature

Date 2/14/11

Russell M. Pry
Printed or Typed Name

Executive
Title

Approved as to form:

Deborah S. Matz, Director
Department of Law