

BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

Department of Public Utilities	:	<u>Director's Final Findings</u>
City of Orrville, Ohio	:	<u>and Orders</u>
1100 Perry Street	:	
P.O. Box 107	:	
Orrville, Ohio 44667	:	

PREAMBLE

It is agreed by the parties hereto as follows:

I. JURISDICTION

These Director's Final Findings and Orders ("Orders") are issued to Department of Public Utilities, City of Orrville, Ohio ("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. 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 Respondent's facility (as hereinafter identified) 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 Chapter 3704 and the regulations promulgated thereunder.

IV. FINDINGS

The Director of Ohio EPA has determined the following findings:

1. Respondent is a municipal corporation with its principal place of business at 207 North Main Street, Orrville, Ohio. Respondent operates a municipal electric plant at 1100 Perry Street, Orrville, Ohio, that is a Title V source, as defined in Ohio Administrative Code ("OAC") Rule 3745-77-01(LL), and is subject to the requirements of ORC Chapter 3704 and OAC Chapter 3745-77.

2. OAC Rule 3745-77-02(A) states, in part, that the owner or operator of a Title V source shall not operate such source after the date that a timely and complete Title V permit application is required.

3. OAC Rule 3745-77-04(E) requires that a Title V permit renewal application be filed no earlier than eighteen months and no later than six months prior to the expiration of any Title V permit.

4. OAC Rule 3745-77-06(A) states, in part, that if the owner or operator of Title V source submits a timely and complete application for permit renewal, the failure to have a Title V permit is not a violation of this Chapter until the Director takes final action on the application.

5. ORC § 3704.05(C) states, in part, that no person who is a holder of a permit issued under ORC § 3704.03(F) or (G) shall violate any of its terms or conditions.

6. ORC § 3704.05(G) states, in part, that no person shall violate any order, rule, or determination of the Director issued, adopted, or made under ORC Chapter 3704.

7. ORC § 3704.05(J)(2) states, in part, that, no person shall violate any filing requirement of the Title V permit program.

8. ORC § 3704.05(K) states, in part, that no person shall operate a source that is required to obtain a Title V permit unless a Title V permit has been issued authorizing operation of the source or unless a complete and timely application for the issuance, renewal, or modification of a Title V permit for the source has been submitted to the Director.

9. ORC § § 3704.06(C) provides, in part, that any person violating ORC § 3704.05 shall pay a civil penalty of not more than \$25,000 for each day of each violation.

10. On December 9, 2002, Ohio EPA, Northeast District Office, Division of Air Pollution Control ("NEDO") issued a Notice of Violation ("NOV") to Respondent, citing it with violation of Part I, Section A.12.d. of its Title V permit, for failing to submit an annual compliance certification for the facility for calendar year 2001, by April 30, 2002, as required. This certification was not received by NEDO until November 29, 2002. This is also a violation of ORC § 3704.05(C).

11. On December 18, 1998, Ohio EPA issued a final Title V permit for Respondent's facility (Ohio EPA facility identification number 02-85-01-0188). The permit's expiration date of December 18, 2003, was given in the Final Issuance cover page of the permit, as well as a statement that Title V permit renewal applications are to be filed no earlier than eighteen months and no later than six months prior to the expiration of any Title V permit.

12. In a letter dated December 18, 2002, Ohio EPA sent a notice of Title V permit expiration to Respondent. This letter stated that Respondent's Title V permit was to expire on December 18, 2003, and provided a description of the renewal application requirements and procedures.

13. Respondent failed to submit an application to renew its Title V permit to Ohio EPA six months prior to the permit expiration date (i.e., by June 18, 2003), in violation of OAC Rule 3745-77-04(E) and ORC § 3704.05(G) and (J)(2).

14. Respondent's Title V permit expired on December 18, 2003. Respondent continued to operate a Title V source without a Title V permit or a timely filed and complete renewal application, in violation of OAC Rule 3745-77-02(A) and ORC § 3704.05(G) and (K). Once Respondent realized that it had not complied with Ohio EPA's earlier notice to renew the permit and had continued to operate with an expired permit, Respondent promptly opened telephone discussions with NEDO personnel on February 16, 2004, to correct the violations. These discussions resulted in the formal correspondence described in Findings 15 and 16.

15. On February 23, 2004, NEDO issued a NOV to Respondent, citing it with violation of OAC Rules 3745-77-04(E), for failing to submit a timely and complete application for renewal of its Title V permit, and 3745-77-02(A), for operating a Title V facility without a Title V permit or a timely filed and complete application. NEDO requested that Respondent submit a complete Title V application within 14 days of receipt of the NOV.

16. In a letter dated February 23, 2004, Respondent acknowledged that it had not submitted a Title V permit renewal application and committed to do so as soon as possible. Respondent committed to continue to comply with the terms and conditions of its expired Title V permit as if it were still in effect. In this letter, Respondent also noted that it had submitted reports and certifications required by its Title V permit that did not account for the expiration of the permit. Specifically, Respondent:

- a. submitted fourth quarter deviation reports pursuant to Part I.A.1.c. ii. of its Title V Permit that did not identify either the permit's expiration or Respondent's failure to submit a renewal application as deviations pursuant to OAC Rule 3745-77-07(A)(3)(c)(i), (ii), and (iii);
- b. submitted semi-annual reports pursuant to Part I.A.1.c.iii. of its Title V permit that did not identify either the permit's expiration or Respondent's failure to submit a renewal application as deviations pursuant to OAC Rule 3745-77-07(A)(3)(c)(i) and (ii); and
- c. submitted an annual compliance certification pursuant to Part I.A.12.d. of its Title V permit that did not identify either the permit's expiration or Respondent's failure to submit a renewal application as non-compliance.

Respondent stated in the letter that it had reviewed these reports and found that the information in them remained true and accurate as submitted and re-certified the reports as such.

17. Respondent submitted a complete Title V permit renewal application to Ohio EPA on March 8, 2004.

18. 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 issues the following Orders:

1. Within fourteen (14) days after the effective date of these Orders, Respondent shall pay the amount of twelve thousand dollars (\$12,000) to Ohio EPA in settlement of Ohio EPA's claim for civil penalties, which may be assessed pursuant to ORC Chapter 3704. Payment shall be made by an official check made payable to "Treasurer, State of Ohio" and shall be submitted to Brenda Case, or her successor, with a letter identifying the Respondent and the facility, to:

Ohio EPA, Office of Fiscal Administration
P.O. Box 1049
Columbus, Ohio 43216-1049

A copy of the check shall be sent to James A. Orlemann, Assistant Chief, Compliance and Enforcement Section, or his successor, at the following address:

Division of Air Pollution Control
Ohio Environmental Protection Agency
P.O. Box 1049
Columbus, Ohio 43216-1049

2. Respondent shall continue to comply with all terms and conditions of its Title V permit, as issued on December 18, 1998, until the Director takes final action on the application submitted on March 8, 2004.

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 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 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 as defined in OAC Rule 3745-35-02(B)(4) for a municipal, state, or other public 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 the Respondent.

IX. MODIFICATIONS

These Orders may be modified by mutual 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 by these Orders, unless otherwise specified in writing, shall be addressed to:

Ohio Environmental Protection Agency
Northeast District Office
Division of Air Pollution Control
2110 E. Aurora Road
Twinsburg, Ohio 44087
Attention: Ken Djukic, Environmental Specialist

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, Supervisor, Enforcement Section

or to such persons and addresses as may hereinafter 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 the 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 the 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 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.

IT IS SO ORDERED AND AGREED:

Ohio Environmental Protection Agency

Christopher Jones
Director

Date

IT IS SO AGREED:

Department of Utilities, City of Orrville, Ohio

By

Date

Printed or Typed Name

Title