

OHIO E.P.A.
APR 30 2002
ENTERED DIRECTOR'S JOURNAL

Issuance Date: APR 30 2002

Effective Date: APR 30 2002

**BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY**

In the matter of:

FirstEnergy Corporation :
East Point Disposal Facility : Director's Final
76 South Main Street : Findings and Orders
Akron, Ohio 44308 :

Pursuant to Ohio Revised Code (ORC) Section 3734.02(A), the Director of Environmental Protection (director) hereby makes the following findings and issues the following orders.

FINDINGS

1. On May 1, 1997, Ohio EPA issued a permit (PTI Number 02-8856) to FirstEnergy Corporation – formerly known as Centerior Energy Corporation – for the proposed East Point Disposal Facility. The proposed facility is a new Class III residual waste disposal facility to be located off Middle Road in Ashtabula Township, Ashtabula County.

2. Ohio Administrative Code (OAC) Rule 3745-31-06(A) states:

“A permit to install shall terminate within eighteen months of the effective date of the permit to install if the owner or operator has not undertaken a continuing program of installation or modification or has not entered into a binding contractual obligation to undertake and complete within a reasonable time a continuing program of installation or modification.”

3. OAC Rule 3745-31-06(C) states, in part:

“The director may modify a permit to install or plan approval to extend these dates of expiration by up to twelve months if the applicant submits, within a reasonable time before the termination date, an application for modification, containing information that, in the judgement of the director, adequately justifies an extension of time.”

4. In accordance with OAC Rule 3745-31-06(A), PTI Number 02-8856 would have expired on November 1, 1998. However, by correspondence dated August 26, 1998, FirstEnergy requested a 12-month extension of the 18-month construction period in accordance with OAC Rule 3745-31-06(C).

I certify this to be a true and accurate copy of the original as recorded in the Ohio Environmental Protection Agency files.
Zona Clements 4-30-02

5. On October 30, 1998, Ohio EPA granted a 12-month extension to the expiration date of PTI Number 02-8856. The extension established a new permit expiration date of November 1, 1999.
6. By written correspondence dated July 6, 1999, FirstEnergy requested to further extend the construction period of the facility until May 1, 2002.
7. On September 7, 1999, Ohio EPA granted a 30-month extension to the expiration date of PTI Number 02-8856. The extension established a new permit expiration date of May 1, 2002.
8. By written correspondence dated December 5, 2001, and March 8, 2002, FirstEnergy Corporation requested to further extend the construction period of the facility until November 1, 2004 via a variance pursuant to ORC Section 3734.02(A). FirstEnergy lists the following reasons in support of the extension:
 - a. Granting this variance will not create a nuisance or hazard to the public health or safety or the environment in accordance with ORC Section 3734.02(A).
 - b. The East Point Facility was permitted to receive fly ash, bottom ash, and gypsum from the Cleveland Electric Illuminating Company (CEI) generating stations at Eastlake and Ashtabula. Of these waste streams, FirstEnergy Corporation anticipated that gypsum from sulfur dioxide control equipment would represent a very large majority of the solid waste to be managed at the East Point Facility. This gypsum would be produced as a by-product of air pollution control equipment that may be installed at these generating stations. The FirstEnergy Corporation is continuing to evaluate the need for this air pollution control equipment. The decision to install additional air pollution control equipment at CEI's Eastlake and Ashtabula generating stations will be based on the ongoing implementation of the Clean Air Act Amendments of 1990. Our decision on the need for additional air pollution control equipment at these power plants will be based on decisions that have not yet been made by US EPA. For this reason the FirstEnergy Corporation does not have sufficient information to make a final decision on the need to construct the East Point Facility.
 - c. The regulatory authority used in the issuance of this permit has remained unchanged throughout the term of this approval.
9. ORC Section 3734.02(A) states, in part:

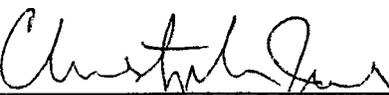
“The director shall grant a variance only if the applicant demonstrates to the director’s satisfaction that construction and operation of the solid waste facility in the manner allowed by the variance and any terms or conditions imposed as part of the variance will not create a nuisance or a hazard to the public health or safety or the environment. In granting any variance, the director shall state the specific provision or provisions whose terms are to be varied and also shall state specific terms or conditions imposed upon the applicant in place of the provision or provisions.”

10. Ohio EPA has reviewed the request referenced in Finding Number 8, above, and has determined that granting a variance to extend the expiration date of PTI Number 02-8856 for the reasons noted in Finding Number 8, above, will not create a nuisance or a hazard to the public health or safety or the environment.

ORDERS

1. Pursuant to ORC Section 3734.02(A), FirstEnergy Corporation is hereby granted a variance from the requirement to begin a program of installation or modification, or enter into a binding contractual obligation to undertake and complete within a reasonable time a continuing program of installation or modification, within the 18-month period following issuance of PTI Number 02-8856 as specified in OAC Rule 3745-31-06(A).
2. The variance granted in Order Number 1, above, shall expire on November 1, 2004.
3. Nothing in these Findings and Orders shall be construed to authorize any waiver from the requirements of any other applicable state solid waste law or regulation, except as specified herein. This variance shall not be interpreted to release FirstEnergy Corporation from responsibility under ORC Chapters 3704, 3714, 3734, or 6111; the Federal Clean Water Act or the Comprehensive Environmental Response, Compensation, and Liability Act; or from other applicable laws for remedying conditions resulting from any release of contaminants from the facility to the environment.

IT IS SO ORDERED:



Christopher Jones, Director