

Issuance Date: _____

Effective Date: _____

**BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY**

In the Matter of:

Terry Powell	:	
4710 State Route 309	:	Director's Final Finding and Orders
Galion, Ohio	:	

I. JURISDICTION

These Director's Final Findings and Orders (Orders) are hereby issued to Terry Powell (Mr. Powell) pursuant to the authority vested in the Director of the Ohio Environmental Protection Agency ("Ohio EPA") under Ohio Revised Code ("ORC") Section 3734.02 and Ohio Administrative Code ("OAC") Rule 3745-27-05(A)(4).

II. PARTIES

These Orders shall apply to and be binding upon Mr. Powell and his agents, servants, assigns, and successors in interest under Ohio law. No changes in ownership relating to Mr. Powell's property, as hereinafter defined, shall in any way alter Mr. Powell's responsibilities under these Orders. Mr. Powell's obligations under these Orders may only be altered by the written approval of the Director.

III. DEFINITIONS

Unless otherwise stated, all terms used in these Orders shall have the same meaning as used in ORC Chapter 3734 and the regulations promulgated thereunder. Unless otherwise stated, all citations of the OAC shall refer to regulations currently effective.

IV. FINDINGS

The Director of Ohio EPA ("Director") has determined the following findings:

1. Mr. Powell is the owner of property located at 4710 State Route 309, Galion, Ohio in Morrow County (the Property).
2. On October 2, 2008, Cliff and Pam Striker, representing Striker Sandblasting, Iberia, Ohio, submitted a request (Request) to the Director on behalf of the property owner, Mr. Powell, to allow the use of waste sand from their sandblasting operation as embankment fill material along Mr. Powell's driveway

on the Property. The proposal only includes waste sand that is generated from the sandblasting of unpainted metal surfaces and waste sand from the sandblasting of baking trays.

3. Specifically, Mr. Powell proposes to use enough of the waste sand to fill voids in his current driveway embankment on the Property.
4. ORC Section 3734.01(E) defines "solid wastes" in pertinent part to mean "...such unwanted residual solid or semisolid material as results from industrial, commercial, agricultural, and community operations...."
5. ORC Section 3734.01(F) defines "disposal" in pertinent part to mean "...the discharge, deposit, injection, dumping, spilling, leaking, emitting, or placing of any solid waste... into or on any land or ground or surface water or into the air...."
6. ORC Section 3734.01(N) defines "facility" in pertinent part to mean "...any site, location, tract of land, installation, or building used for incineration, composting, sanitary landfilling, or other methods of disposal of solid wastes"
7. The activities described in Findings 2 and 3 and in the Request constitute the disposal of solid waste at a facility.
8. ORC Sections 3734.02(C) and 3734.05(A)(1) and (2), and OAC Chapters 3745-27, 3745-29, 3745-30, 3745-31, and 3745-37 require that a permit and license be obtained prior to the establishment or modification of a solid waste facility.
9. The activities described in Findings 2 and 3 and in the Request constitute the establishment or modification of a facility and require that a permit and license be obtained prior to initiation of the proposed activities.
10. OAC Rule 3745-27-05(A) specifies the methods of solid waste disposal which are authorized in Ohio. This rule authorizes sanitary landfilling, incineration, and composting as acceptable disposal methods. In addition, OAC Rule 3745-27-05(A)(4) states that solid wastes may be disposed as engineered fill or by land application, provided the Director determines that such alternative methods will not create a nuisance or harm human health or the environment and are capable of complying with other applicable laws.
11. The proposed disposal method, described in Findings Number 2 and 3 and in the Request, is a method of disposal other than sanitary landfilling, incineration, or composting and, therefore, requires authorization from the Director pursuant to OAC Rule 3745-27-05(A).

12. Pursuant to ORC Section 3734.57(A), the owner or operator of a solid waste disposal facility must collect and remit to the state a disposal fee for each ton of solid waste disposed at the facility.
13. Pursuant to ORC Section 3734.02(G), the Director may, by order, exempt any person generating, storing, treating, disposing of, or transporting solid wastes in such quantities or under such circumstances that, in the determination of the Director, are unlikely to adversely affect the public health or safety or the environment from any requirement to obtain a permit or license or comply with other requirements of ORC Chapter 3734 and any rules adopted thereunder.
14. Issuance of an exemption, pursuant to ORC Section 3734.02(G), from the requirements to obtain a permit and license to establish and operate a solid waste facility on the Property, as described in Findings 2 and 3 and in the Request, is unlikely to adversely affect the public health or safety or the environment if performed in accordance with the submitted request and the following Orders.
15. Issuance of an exemption, pursuant to ORC Section 3734.02(G), from the requirement to collect and remit the state disposal fee as specified in Finding 12 for the activities described in Findings 2 and 3 and in the Request, is unlikely to adversely affect the public health or safety or the environment.

V. ORDERS

1. Pursuant to ORC Section 3734.02(G) and OAC Rule 3745-27-05(A)(4), Mr. Powell is hereby authorized to use waste sand from Striker Sandblasting, as described in Finding 2, at the Property specified in Finding 1 for the purpose outlined in Finding 3 and in the Request as an alternative disposal method.
2. Pursuant to ORC Section 3734.02(G), Mr. Powell is hereby exempted from the requirements contained in ORC Sections 3734.02(C), 3734.05(A)(1), and 3734.05(A)(2), and OAC Chapters 3745-27 and 3745-37 to obtain a permit and license to establish and operate a solid waste facility for the disposal of waste sand from Striker Sandblasting at the location specified in Finding 1 in accordance with the Request and these Orders.
3. Pursuant to ORC Section 3734.02(G), Mr. Powell is hereby exempted from the requirement of ORC Section 3734.57(A) to collect and remit the state disposal fee levied pursuant to ORC Section 3734.57(A) on the waste sand disposed in accordance with the Request and these Orders.

4. Nothing in these Orders shall be construed to authorize any activity, method, or waiver from the requirements of any other provision of ORC Chapter 3734 or the regulations promulgated thereunder, except as expressly provided herein. These Orders shall not be interpreted to release Mr. Powell or Striker Sandblasting from responsibility under ORC Chapters 3704, 3734, or 6111; under the Federal Clean Water Act or the Comprehensive Environmental Response, Compensation, and Liability Act; or from other applicable requirements for remedying conditions resulting from any release of contaminants to the environment.

VI. OTHER APPLICABLE LAWS

All actions required to be taken pursuant to these Orders shall be undertaken in accordance with the requirements of all applicable federal, state, and local laws and regulations. Nothing in these Orders shall be construed as waiving or compromising in any way the applicability and enforcement of any other statutes or regulations applicable to Mr. Powell's operation, implementation, and performance using Striker Sandblasting sand as a fill material for his driveway embankment. Ohio EPA reserves all rights and privileges except as specified herein.

VII. RESERVATION OF RIGHTS

Nothing contained herein shall be construed to prevent Ohio EPA from seeking legal or equitable relief to enforce the terms of these Orders or from taking other administrative, legal, or equitable action as deemed appropriate and necessary, including seeking penalties against Mr. Powell for noncompliance with these Orders. Nothing contained herein shall be construed to prevent Ohio EPA from exercising its lawful authority to require Mr. Powell to perform additional activities pursuant to ORC Chapter 3734 or any other applicable law in the future. Nothing herein shall restrict the right of Mr. Powell to raise any administrative, legal, or equitable claim or defense with respect to such further actions which Ohio EPA may seek to require of Mr. Powell. Nothing in these Orders shall be construed to limit the authority of Ohio EPA to seek relief for violations that may occur at the Property.

IT IS SO ORDERED:

Chris Korleski
Ohio Environmental Protection Agency