

**BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY**

In the Matter Of:

Columbus Southern Power Company
d.b.a. American Electric Power
1 Riverside Plaza
Columbus, Ohio 43215-2373

Director's Final Findings
and Orders

Respondent

PREAMBLE

It is agreed by the parties hereto as follows:

I. JURISDICTION

These Director's Final Findings and Orders ("Orders") are issued to Columbus Southern Power Company dba American Electric Power ("Respondent") pursuant to the authority vested in the Director of the Ohio Environmental Protection Agency ("Ohio EPA") under Ohio Revised Code ("ORC") Section 3734.13 and 3745.01.

II. PARTIES BOUND

These Orders shall apply to and be binding upon Respondent and its successors in interest liable under Ohio law. No change in ownership of Respondent or 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 Chapter 3734. and the rules promulgated thereunder.

IV. FINDINGS

The Director of Ohio EPA has determined the following findings:

1. The Conesville Residual Solid Waste Landfill (the "Facility") is located at the intersection of State Route 83 and County Road 275, Coshocton County, Ohio.

2. Respondent is the "owner" and "operator" of the Facility as those terms are defined in Ohio Administrative Code ("OAC") Rule 3745-27-01(O)(7) and (O)(5), respectively, and is also the license holder for the Facility.
3. The Facility is a "residual solid waste landfill facility" as that term is defined under OAC Rule 3745-30-01(C) and is authorized to accept "residual solid waste" as that term is defined under OAC Rule 3745-30-01(B).
4. Respondent is a "person" as that term is defined in ORC Section 3734.01(G) and in OAC Rule 3745-27-01(P)(3).
5. In accordance with former OAC Rule 3745-30-14(A), now OAC Rule 3745-30-14(B)(2) (effective July 1, 2004), the owner or operator shall conduct all construction and operation at a residual solid waste landfill facility in strict compliance with the applicable authorizing document(s), including permit(s) to install, a plan approval, an operational report, an approved final closure plan, or any revisions to such documents to which the Director concurs in writing.
6. On May 21, 1993, the Director issued to Respondent a permit to install for the Facility ("the May 21, 1993 PTI"). In the May 21, 1993 PTI, the Director authorized Respondent to place waste in various areas of the Facility, two of which areas are referred to as the Phase C and Phase D areas. The Director also imposed vertical and horizontal limits where Respondent could place waste in these areas.
7. On March 21, 2003, Ohio EPA's Southeast District Office, Division of Solid and Infectious Waste Management ("SEDO-DSIWM"), received the Facility's 2002 annual operational report ("the Report") as required by OAC Rule 3745-30-14. The Report showed that Respondent had placed waste in Phase D of the Facility above vertical limits of waste placement imposed in the May 21, 1993 PTI.
8. On May 13, 2003, Ohio EPA, SEDO-DSIWM, sent a Notice of Violation ("NOV") letter to Respondent notifying Respondent that Respondent had placed waste in Phase D of the Facility above authorized vertical limits in violation of OAC Rule 3745-30-14(A). (The NOV actually referred to Phase IIIA and IIIB instead of Phase D. This erroneous reference was later corrected.)
9. On June 18, 2003, Ohio EPA, SEDO-DSIWM, met with Respondent at the Facility. During the meeting, Respondent confirmed that it had placed waste in Phase D above approved vertical limits. Respondent also informed Ohio EPA that Respondent had also placed waste in Phase C of the Facility above the vertical limits and outside the horizontal limits imposed in the May 21, 1993 PTI.
10. In a July 22, 2003 NOV, Ohio EPA, SEDO-DSIWM, cited Respondent for placing waste in the Facility's Phase D and Phace C above or outside of approved vertical and/or horizontal limits of waste placement, in violation of OAC Rule 3745-30-14(A).

11. On August 19, 2003, Ohio EPA inspected the Facility and on September 3, 2003, cited Respondent for violating OAC Rule 3745-30-14(A).
12. On September 8, 2003, Ohio EPA received a written response from Respondent. Respondent stated that it would not be feasible to remove the excess waste and rebuild the Phase C and D areas in accordance with the May 21, 1993 PTI. With its letter, Respondent also submitted a report entitled *Conesville Residual Waste Landfill - Phase C and D Overbuild Areas*. This report contained information offered to support leaving the unauthorized waste in place.
13. On October 27, 2003, Ohio EPA wrote Respondent and asked for additional information so that Ohio EPA could complete an evaluation of Respondent's report. Ohio EPA also notified Respondent of its continuing violation of OAC Rule 3745-30-14(A).
14. On November 28, 2003, Ohio EPA received a request from Respondent for more time to submit additional test data regarding the slope stability analysis of Phase D. On January 9, 2004, Ohio EPA received the revised slope stability analysis from Respondent.
15. On January 28, 2004, Ohio EPA conducted an inspection the Facility and, on February 4, 2004, cited Respondent for being in violation of OAC Rule 3745-30-14(A).
16. On June 15, 2004, August 24, 2004, and November 2, 2004, Ohio EPA conducted inspections of the Facility and, in correspondence dated June 22, 2004, September 8, 2004, and November 12, 2004, cited Respondent in violation of OAC Rule 3745-30-14(B)(2) for not complying with all authorizing documents.

V. ORDERS

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

1. Within eighteen (18) months after the effective date of these Orders, Respondent shall:
 - a. Remove all waste from outside the lateral and vertical limits of waste placement imposed in the May 21, 1993 PTI and bring such restored waste placement areas into compliance with the requirements of the May 21, 1993 PTI; or
 - b. obtain the necessary authorizations from Ohio EPA to modify the construction of the Facility so as to allow the current overfilled residual solid waste to remain in place.

2. Except as otherwise noted in Order No. 1 above, Respondent shall continue to comply with all terms and conditions as specified in the May 21, 1993, PTI.
3. Within thirty (30) days after the effective date of these Orders, Respondent shall pay Ohio EPA the amount of \$25,584.00 in settlement of Ohio EPA's claims for civil penalties, which may be assessed pursuant to ORC Chapter 3734. and which will be deposited into the environmental protection remediation fund established pursuant to ORC Section 3734.281. Payment shall be made by an official check made payable to "Treasurer, State of Ohio" for \$25,584.00. The official check shall be submitted to Ohio EPA, Office of Fiscal Administration, P.O. Box 1049, Columbus, Ohio 43216-1049, together with a letter identifying Respondent and the Facility. A copy of the check shall be sent to Ohio EPA, Division of Solid and Infectious Waste Management, Supervisor, Systems Management Unit.

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, 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.

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
Southeast District Office
Division of Solid and Infectious Waste Management
Attn: Unit Supervisor, DSIWM
2195 Front Street
Logan, Ohio 43138

and

Coshocton County Health District
724 South Seventh Street
Coshocton, Ohio 43812-2362
Attn: Ralph Fogle

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 the 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:

Joseph P. Koncelik, Director

IT IS SO AGREED:

**Columbus Southern Power Company
d.b.a. American Electric Power**

Signature

Date

Printed or Typed Name

Title