

**BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY**

In the Matter Of:

Penn-Ohio Coal Company	:	<u>Director's Final Findings</u>
dba Kimble Transfer and Recycling -	:	<u>and Orders</u>
Twinsburg Township Transfer and	:	
Recycling Facility	:	
3596 State Route 39 NW	:	
Dover, Ohio 44622	:	

Respondent

PREAMBLE

It is agreed by the parties hereto as follows:

I. JURISDICTION

These Director's Final Findings and Orders ("Orders") are issued to the Penn-Ohio Coal Company ("Respondent") pursuant to the authority vested in the Director of the Ohio Environmental Protection Agency ("Ohio EPA") under Ohio Revised Code ("ORC") §§ 3734.13 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 the Respondent, or of the Property (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 Penn-Ohio Coal Company dba Kimble Transfer and Recycling-Twinsburg Township Transfer and Recycling Facility (the "Respondent") is the "owner" of Parcel No. 6205387 located at 8500 Chamberlin Road, Twinsburg, Summit County, Ohio (the "Property").
2. OAC Rule 3745-27-01(O)(7) states an "(o)wner" or "property owner" means the person who holds title to the property on which the solid waste facility, infectious waste treatment facility, or scrap tire transportation business is located."
3. Respondent is a "person" as that term is defined in ORC Section 3734.01(G) and in Ohio Administrative Code ("OAC") Rule 3745-27-01(P)(3).
4. On October 18, 2004, Respondent submitted to Ohio EPA its original Permit-To-Install Application #02-20084 (the "PTI") for the construction of a new solid waste transfer facility to be located at the Property. Respondent submitted revisions to the PTI on October 20, 2004, November 30, 2004, January 24, 2005, March 25, 2005, and August 25, 2005.
5. Ohio Administrative Code ("OAC") Rule 3745-27-02(A) states, "no person shall establish or modify a solid waste facility... without obtaining a permit to install issued by the director."
6. OAC Rule 3745-27-02(B) states, "For the purposes of this rule, 'establish' or 'establishment' of a... transfer facility means to construct or install any of the proposed facility components, and includes excavation that is related to the construction of a facility or any components thereof."
7. Ohio Revised Code ("ORC") § 3734.02(C) states, "no person shall establish a new solid waste 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... ."
8. ORC § 3734.05(A)(2)(b) states, "each person proposing to open a new solid waste transfer facility... shall submit an application for a permit with accompanying engineering detail plans, specifications, and information regarding the facility and its method of operation to the environmental protection agency for required approval under those rules at least two hundred seventy days before commencing proposed operation of the facility and concurrently shall make application for the issuance of a license under division (A)(1) of this section with the board of health of the health district in which the facility is located or proposed."

9. OAC Rule 3745-27-21(A) states, "(a) permit to install application, as required by section 3734.05 of the Revised Code, shall be submitted to and approved by the director, before the establishment... of the solid waste transfer facility is begun... ."
10. By letter dated December 2, 2005, Ohio EPA notified the Respondent, in part, of Ohio's solid waste regulations indicating that a PTI application must be applied for and approved by the Director of Ohio EPA prior to the establishment of a solid waste transfer facility.
11. By letter dated April 10, 2006, which was delivered to Ohio EPA that day via hand-delivery, Respondent notified Ohio EPA that it intended to begin construction of the remaining buildings and improvements associated with the recycling facility in order to avoid losing construction time and cost overruns despite the Agency's December 2, 2005, correspondence. Ohio EPA again verbally advised Mr. Keith Kimble, President of the Penn-Ohio Coal Company, that he could not begin construction on any area delineated as part of the waste handling area in the pending PTI.
12. On April 11, 2006, Mr. Kimble left a voice mail with Ohio EPA that the Respondent may have inadvertently commenced construction of the transfer station building identified in the PTI.
13. On April 12, 2006, Ohio EPA conducted an inspection of the Facility. Ohio EPA observed that a building footer had been poured and that concrete forms and rebar were staged to place a second footer along the west side of the transfer station building.
14. By letter dated April 19, 2006, Ohio EPA notified the Respondent that by excavating for the foundation, grading to elevations and pouring footers for the transfer station building, Respondent established a solid waste transfer facility without obtaining a PTI issued by the Director, in violation of ORC §§ 3734.02(C) and 3734.05(A)(2)(b), and OAC Rules 3745-27-02(A) and 3745-27-21(A).

V. ORDERS

The Director hereby issues the following Orders:

1. The Respondent shall immediately cease all further construction activities associated with the proposed solid waste transfer facility until Respondent has received the appropriate permit(s) authorizing construction and operation of the solid waste transfer facility.
2. Within thirty (30) days after the effective date of these Orders, Respondent shall pay Ohio EPA the amount of \$2,875.00 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 remediation fund established pursuant to ORC § 3734.21. Payment to Ohio EPA shall be made by an official check made payable to "Treasurer, State of Ohio" for \$2,875.00. 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 the Respondent and the Property. A copy of the check shall also be sent to Ohio EPA, Division of Solid and Infectious Waste Management, Supervisor, Systems Management Unit, P.O. Box 1049, Columbus, Ohio 43216-1049.

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 Mr. Keith Kimble, President of the Penn-Ohio Coal Company.

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 or the Property.

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 Property.

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
Attn: DSIWM Supervisor

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.

IT IS SO ORDERED AND AGREED:

Ohio Environmental Protection Agency

Joseph P. Koncelik
Director

IT IS SO AGREED:

Penn-Ohio Coal Company

Signature

Date

Printed or Typed Name

Title