

OHIO E.P.A.

AUG 25 2005

BEFORE THE

ENTERED DIRECTOR'S JOURNAL

OHIO ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

City of Columbus
910 Dublin Road
Columbus, Ohio 43215

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**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 the City of Columbus ("Respondent") pursuant to the authority vested in the Director of the Ohio Environmental Protection Agency ("Ohio EPA") under Ohio Revised Code (R.C.) 6111.03 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 the Facility shall in any way alter the 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 R.C. Chapter 6111 and the rules promulgated thereunder.

IV. FINDINGS

The Director of Ohio EPA makes the following findings:

1. Respondent is a municipality located in Franklin County, Ohio. Respondent owns

I certify this to be a true and accurate copy of the official document as filed in the records of the Ohio Environmental Protection Agency.

By: T. R. Ashmore Date 8/25/05

and operates two wastewater treatment works, Jackson Pike and Southerly, and the associated sanitary sewerage collection system.

2. OAC 3745-40-03(B), effective April 8, 2002, provides that "no person shall engage in the disposal, use, storage, or treatment of sewage sludge for which requirements are established in [Chapter 3745-40 of the Ohio Administrative Code], except pursuant to a valid Ohio NPDES permit or under an approved sewage sludge management plan, and such permit or plan identifies and regulates the specific disposal, use, storage or treatment of that sewage sludge.
3. Respondent holds a National Pollutant Discharge Elimination System (NPDES) permit number 4PF00000*KD for the discharge of non-exceptional sewage sludge from Jackson Pike to authorized sites via station 4PF00000581.
4. In 1992 Respondent submitted to Ohio EPA a Sludge Management Plan (SMP) that was approved by the Director. In 1996 the Director approved an update to the plan by Respondent. The approved SMP describes, among other things, the process for land application of sewage sludge.
5. Under the SMP and OAC 3745-40-03(K), the first step in the process for land application of non-exceptional sewage sludge is obtaining site authorization from Ohio EPA. In 1997, Ohio EPA authorized a field known as site 9707-19 for land application of Respondent's sewage sludge.
6. In approving Respondent's SMP and authorizing site 9707-19 for land application of Respondent's sewage sludge, the Director did not authorize Respondent to discharge sewage sludge into waters of the state in Respondent's NPDES Permit.
7. In order to implement its land application program, Respondent contracted with Burch Hydro, Inc. Burch Hydro, Inc., is the "applier" as that term is used in Title 40 of the Code of Federal Regulations, Part 503, and shall hereinafter be known as Applier. The contract between Respondent and Applier included the following requirements:
 - a. Applier shall comply with all applicable federal and state laws.
 - b. Applier shall comply with Respondent's approved SMP.
 - c. Applier was required to properly land-apply so as to avoid spillage.
 - d. Applier shall not surface apply without permission of Respondent.

8. On January 15, 2004, Respondent and Applier met with an Ohio EPA inspector at site 9707-19 to determine if the site met the minimum requirements of Ohio Administrative Code (OAC) 3745-40-04(K) for land application of sewage sludge on frozen or snow-covered ground. Ohio EPA confirmed authorized site 9707-19 met the following minimum requirements:

(1) An isolation distance of one hundred feet shall be maintained from waters of the state (excluding groundwater); and

(2) The following ground cover shall be maintained.

(a) Where slope is less than or equal to six per cent, the soil surface at the time of surface application shall have at least eighty per cent ground cover; or

(b) Where slope is greater than six per cent, the soil surface at the time of surface application shall have at least ninety per cent ground cover or shall be established and managed in contour strips with at least eighty per cent ground cover on the strips receiving sewage sludge land.

The Ohio EPA inspector did not authorize Respondent to discharge sewage sludge into waters of the state. Respondent authorized Applier to land apply sewage sludge on the surface of frozen or snow-covered authorized site 9707-19.

9. Between January 19, 2004, and February 2, 2004, Applier surface applied 754,800 gallons of liquid, non-exceptional quality sewage sludge to site 9707-19. The application was done at agronomic rates, and appropriate isolation distances were maintained around the site.
10. On February 3, 2004, the Ohio Department of Natural Resources, Division of Wildlife Officer for the Fayette County area, received a telephone call from the Fayette County Engineers Office that Paint Creek was discolored. A Division of Wildlife employee investigated and observed the discoloration of Paint Creek. The discoloration was followed upstream, via Paint Creek and roadside ditches, to a sewage sludge land application site that was posted with a sign that indicated sewage sludge generated by the Respondent had been applied to the field. The Division of Wildlife reported the discharge, from authorized site 9707-19 via ditches to Paint Creek, to the Ohio EPA's Spill Hotline. Ditches tributary to Paint Creek, and Paint Creek, constitute "waters of the state" as defined by R.C. Section 6111.01
11. Ohio EPA contacted Respondent regarding the discharge. On February 3, 2004, Applier placed straw, metal plates and sand bags around the site in an attempt to contain the sewage sludge discharge. Applier also installed silt fences.

Respondent collected upstream and downstream samples of the sewage sludge discharge.

12. On February 4, 2004, staff from Ohio EPA, Respondent and Applier met at authorized site 9707-19. Sewage sludge continued to discharge from the site. Ohio EPA staff instructed Respondent to stop the discharge from authorized site 9707-19 utilizing compost berms or entrenched silt fencing backed with straw bales. At Ohio EPA's request Respondent collected and had analyzed numerous samples from various locations.
13. On February 4, 2004, Ohio EPA contacted the City of Washington, which has a raw water intake on Paint Creek downstream of authorized site 9707-19, and recommended the City of Washington cease using the Paint Creek raw water intake.
14. On February 5, 2004, Ohio EPA staff inspected authorized site 9707-19 and found the sewage sludge discharge was being collected and applied on adjacent authorized site 9707-18. Respondent was requested to dispose of the collected sewage sludge discharge at a wastewater treatment works for disposal.
15. On February 6, 2004, and again on February 9, 2004, Ohio EPA staff inspected authorized site 9707-19. Field tiles had been blocked, entrenched silt fences backed with straw bales were in place, samples of the discharge were being collected by Respondent for analysis, and the discharge was being collected in tank trucks and hauled to Jackson Pike.
16. Pursuant to OAC rule 3745-40-04(K), no person shall land apply bulk sewage sludge to land that is frozen or snow-covered so that the bulk sewage sludge enters waters of the state except as provided in a permit issued pursuant to R.C. Chapter 6111.
17. Pursuant to R.C. Section 6111.04(C), no person to whom a permit has been issued shall place or discharge, or cause to be placed or discharged, in any waters of the state any sewage, sludge, sludge materials, industrial waste, or other wastes in excess of the permissive discharges specified under an existing permit. The above mentioned NPDES permit does not permit discharges of sewage sludge to waters of the state.
18. Pursuant to R.C. Section 6111.07(A), no person shall violate or fail to perform any duty imposed by R.C. Sections 6111.01 to 6111.08 or violate any order, rule, or term or condition of a permit issued or adopted by the Director of Ohio EPA pursuant to those sections. Each day of violation is a separate offense.

19. The Director has given consideration to, and based his determination on, evidence relating to the technical feasibility and economic reasonableness of complying with these Orders and to evidence relating to conditions calculated to result from compliance with these Orders, and its relation to the benefits to the people of the state to be derived from such compliance in accomplishing the purposes of R.C. Chapter 6111.

V. ORDERS

1. Until rules contained in OAC Chapter 3745-40 are revised in regards to land application of sewage sludge during frozen or snow-covered conditions, Respondent shall not surface-apply sewage sludge from December 21 to March 1, or any time when the ground is frozen or snow-covered. Respondent may inject sewage sludge below the land surface during this time period.
2. Within sixty (60) days after the effective date of these Orders, Respondent shall pay Ohio EPA the amount of ten thousand dollars (\$10,000) in settlement of Ohio EPA's claims for civil penalties, which may be assessed pursuant to R.C. Chapter 6111. Payment shall be made by an official check made payable to "Treasurer, State of Ohio" for \$10,000. 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 Facility. A copy of the check should be sent to the Ohio EPA, Central District Office at the following address:

Ohio EPA, Central District Office
Attn: DSW Enforcement Unit Supervisor
3232 Alum Creek Drive
Columbus, Ohio 43207-3417

3. In lieu of paying the Two Thousand Dollars (\$2,000.00) of the civil penalty described in Order No. 2, Respondent shall fund a Supplemental Environmental Project (SEP) by making a contribution in the amount of Two Thousand Dollars (\$2,000) to the Ohio EPA's Clean Diesel School Bus Fund (Fund 5CD). Respondent shall make payment within sixty (60) days after the effective date of these Orders by tendering an official check made payable to "Treasurer, State of Ohio" for two thousand dollars (\$2000). The official check and a cover letter identifying the Respondent shall be submitted to Brenda Case, or her successor, at:

Ohio EPA
Office of Fiscal Administration
Attn: Brénda Case

P.O. Box 1049
Columbus, Ohio 43216-1049

The official check and cover letter shall both reference the Ohio EPA Clean Diesel School Bus Program.

A copy of each check submitted pursuant to paragraph 2 shall be sent to James A. Orlemann, Assistant Chief, SIP Development and Enforcement, or his successor, at the following address:

Ohio EPA
Division of Air Pollution Control
Attn: James A. Orlemann
P.O. Box 1049
Columbus, OH 43216 - 1049

4. Should Respondent fail to fund the SEP within the required timeframe set forth in Order No. 3, Respondent shall, within three (3) days after the SEP payment was due, pay to Ohio EPA two thousand dollars (\$2000.00) as civil penalty in accordance with the procedures in Order No. 2.
5. These Orders shall terminate after: (1) revisions to rules contained in OAC Chapter 3745-40 become effective after the effective date of these Orders, which revisions concern land application of sewage sludge during frozen or snow-covered conditions, and (2) Respondent has also complied with the provisions of Article VI ("Termination") of these Orders.

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 Surface Water, 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.

This certification shall contain the following attestation: "I certify **that to the best of my knowledge and belief after reasonable inquiry** 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 3745-33-03(D)(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 Respondent's activities at land application site 9707-19.

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 the 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 EPA, Central District Office
Attn: DSW Enforcement Unit Supervisor
3232 Alum Creek Drive
Columbus, Ohio 43207-3417

and to:

Ohio EPA, Division of Surface Water
Attn: DSW Enforcement Coordinator

P.O. Box 1049
Columbus, Ohio 43216-1049

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 those 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

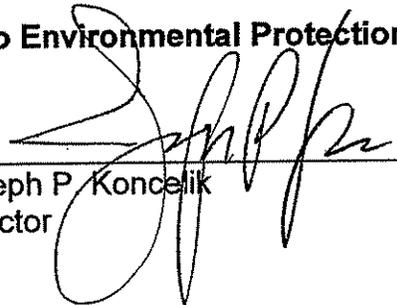
The effective date of these Orders is the date these Orders are entered into the Ohio EPA Director's journal.

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

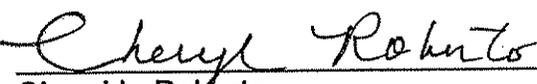


Joseph P. Koncelik
Director

8/19/05
Date

IT IS SO AGREED:

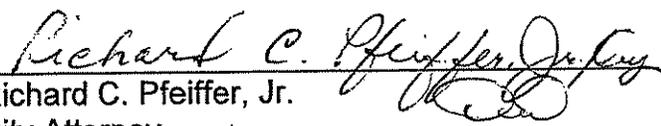
City of Columbus



Cheryl L. Roberto
Director, Department of Public Utilities

8/13/05
Date

Approved as to form:



Richard C. Pfeiffer, Jr.
City Attorney

8/9/05
Date