

BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY

OHIO E.P.A.

NOV - 8 2010

ENTERED DIRECTOR'S JOURNAL

In the Matter of:

Ohio Valley Electric Corporation
Kyger Creek Station
3932 U.S. Route 23
P.O. Box 468
Piketon, OH 45661

Director's Final Findings
and Orders

Respondent

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

PREAMBLE

It is agreed by the parties hereto as follows:

By: Donna Cassider Date: 11-8-10

I. JURISDICTION

These Director's Final Findings and Orders ("Orders") are issued to the Ohio Valley Electric Corporation ("Respondent") pursuant to the authority vested in the Director of the Ohio Environmental Protection Agency ("Ohio EPA") under Ohio Revised Code ("ORC") §§ 6111.03 and 3745.01.

II. PARTIES BOUND

These Orders shall apply to and be binding upon Respondent, assigns and successors in interest liable under Ohio law. No change in the composition of Respondent or the ownership or operation of the Kyger Creek Station and all associated wastewater treatment facilities and discharges defined herein, 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 6111. and the rules adopted thereunder.

IV. FINDINGS

The Director of Ohio EPA has determined the following findings:

Background

1. Respondent, a corporation for profit in good standing with the Ohio Secretary of State's Office, owns and operates the Kyger Creek Station located at 5758 State Route 7, near Cheshire, Addison Township, Gallia County.

2. Authorized discharges from all wastewater treatment facilities associated with the Kyger Creek Station are regulated pursuant to Ohio National Pollutant Discharge Elimination System ("NPDES") Permit No. OIB00005*ND, ("permit") and discharge to the Ohio River, Kyger Creek, unnamed tributaries to Little Kyger Creek and an unnamed tributary to Little Campaign Creek.
3. Relevant to these Orders is the South Fly Ash Pond ("pond") Outfall 005, which discharges to Kyger Creek ("creek"), which is a water of the state.
4. Outfall 005 is not authorized to discharge ammonia in amounts that would violate Respondent's NPDES Permit.

Selective Catalytic Reduction Units

5. On April 7, 2003, Respondent notified Ohio EPA of the installation and operation of new air pollution control equipment (selective catalytic reduction units) that could potentially result in an increase in the concentration of ammonia in Outfall 005. Respondent stated that it would monitor and inform Ohio EPA if any significant increases are detected.
6. The new pollution control equipment included an ammonia on demand ("AOD") recycle tank ("tank").
7. Respondent has not informed Ohio EPA of the detection of any significant increases of ammonia concentration in Outfall 005.
8. In the April 7, 2003 letter, Respondent did not disclose to Ohio EPA that ammonia may be discharged as a result of the draining of the AOD tank or the concentration of that discharge to the creek.

Discharge From AOD System Recycle Tank

9. During the period of July 25-27, 2009, commencing at 0200 hours on Saturday, July 25, Respondent determined that it was necessary to drain solution from the AOD tank due to an abnormal operating condition that caused a high level of solution to build up in the tank. A 3/4 inch hose was used to drain the tank solution to the AOD sump, which was designed to discharge to the pond via permanent piping to the coal yard sump. Clean water was added to the sump through a 2 inch fire water hose to provide dilution.
10. Respondent did not notify Ohio EPA of this activity.
11. Respondent's laboratory personnel monitored the pond on Saturday, July 25, with no abnormal conditions noted.

12. The draining process continued until approximately 0930 hours Monday, July 27, whereupon Respondent's laboratory personnel observed several dead fish in the southwest corner of the pond and stopped the tank draining process. Two stop logs were added to the pond discharge structure to increase the retention time in the pond and reduce the discharge from the pond to the creek.
13. On the afternoon of July 27, Ohio EPA was notified by an anonymous caller of a fish kill in the creek, and on July 28, Ohio EPA and Ohio Department of Natural Resources ("ODNR") personnel were on site to investigate.
14. Respondent did not notify Ohio EPA of the fish kill, or the discharge of the high concentration of ammonia to the creek.
15. On July 28 at approximately 1430 hours, Ohio EPA sampled the creek upstream from Outfall 005 and at the Outfall. At Outfall 005, ammonia was detected at concentrations lethal to aquatic species in the creek.
16. The discharge of ammonia from Outfall 005, in its nature and concentration was not a discharge authorized by the NPDES permit.
17. On July 29, ODNR conducted a fish kill assessment and found 4,917 dead fish in the creek downstream of the Outfall 005 discharge. ODNR stated to Ohio EPA that the suspected source of the fish kill appeared to be the pond and that the section of the creek immediately downstream of the pond's discharge appeared discolored, with numerous dead fish observed, including large catfish. In contrast, the creek immediately upstream of the outfall appeared clear and live fish were observed. The kill zone existed throughout the entire section of the creek between the pond's discharge point and the Ohio River (an estimated 1.5 miles downstream).
18. ODNR calculated the cost of the dead fish at \$1,191.87, which Respondent paid to ODNR, plus investigative and administrative cost. The total amount paid was \$2,085.42.
19. In a letter dated July 31, 2009, Respondent stated that a review of the draining process indicated that due to high levels of fly ash stored in the pond, the tank solution short-circuited through the pond directly to discharge to the creek without normal retention time or mixing.
20. In the July 31, 2009 letter, Respondent further stated that alternative methods for reducing the tank level and disposing of the solution are currently being reviewed, with the pond no longer consideration for the disposal of tank solution.

Relevant NPDES Permit Conditions and Violations Thereof

21. NPDES permit Part III, Item 2, requires that the effluent shall, at all times, be free of substances:
 - a. In amounts that will adversely affect aquatic life or water fowl;
 - b. In amounts that will alter the natural color or odor of the receiving water to such degree as to create a nuisance; and
 - c. In amounts that either singly or in combination with other substances are toxic to human, animal, or aquatic life.
22. As disclosed in these Findings, Respondent has violated NPDES permit Part III, Item 2.
23. NPDES permit Part II.E. provides that no other discharges are permitted, other than those in this permit and intake screens backwashes.
24. As disclosed in these Findings, Respondent has violated NPDES permit Part II.E.
25. NPDES permit Part III, Part 16(c) requires that a permittee report to Ohio EPA, as soon as practicable, any proposed facility expansions, production increases, or process modifications, which will result in new, different, or increased discharges of pollutants.
26. As disclosed in these Findings, Respondent has violated NPDES permit Part III, Item 16(c).

Statutory Violations

27. ORC § 6111.04 prohibits:
 - a. Any person from causing pollution or causing any sewerage, industrial waste or other waste to be placed in any location where they cause pollution to waters of the state, except if such discharges occur in accordance with an NPDES permit issued by the Director, and
 - b. Any person to whom a permit has been issued from placing or discharging or causing 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 without first receiving a permit from the director to do so.

28. ORC § 6111.07(A) prohibits any person from violating, or failing to perform, any duty imposed by ORC §§ 6111.01 to 6111.08, or violating any order, rule, or term or condition of a permit issued by the Director pursuant to those sections.
29. ORC § 6111.07(A) provides that each day of violation represents a separate violation.

Violations

30. Respondent has violated ORC § 6111.04 and ORC § 6111.07, with each day of violation a separate violation.

Director's Consideration

31. 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 purpose of ORC Chapter 6111.

V. ORDERS

1. Within one hundred twenty (120) days of the effective date of these Orders, Respondent shall submit to Ohio EPA, in accordance with Section X of these Orders, for review and approval, a plan for eliminating the potential for similar ammonia solution discharges to waters of the state.
2. Respondent shall respond in writing to any questions or comments Ohio EPA may have on the plan submitted under Order No. 1, within thirty (30) days of the date on the correspondence from Ohio EPA.
3. Upon approval by Ohio EPA, Respondent shall implement said plan.
4. Respondent shall pay the amount of fifty thousand dollars (\$50,000.00) in settlement of Ohio EPA's claim for civil penalties, which may be assessed pursuant to ORC Chapter 6111. Within thirty (30) days after the effective date of these Orders, payment to Ohio EPA shall be made by an official check made payable to "Treasurer, State of Ohio" for forty thousand dollars (\$40,000.00) of the total amount. The official check shall be submitted to Brenda Case, or her successor, together with a letter identifying Respondent, to:

Ohio EPA
Office of Fiscal Administration
P.O. Box 1049
Columbus, Ohio 43216-1049

A photocopy of the check shall be sent to Ohio EPA, Southeast District Office, in accordance with Section X of these Orders.

5. In lieu of paying the remaining ten thousand dollars (\$10,000.00) of the civil penalty, Respondent shall within thirty (30) days of the effective date of these Orders, fund a Supplemental Environmental Project ("SEP") by making a contribution in the amount of ten thousand dollars (\$10,000.00) to Ohio EPA's Clean Diesel School Bus Fund (Fund 5CD). Respondent shall tender an official check made payable to "Treasurer, State of Ohio" for said amount. The official check shall be submitted to Brenda Case, or her successor, together with a letter identifying Respondent, to:

Ohio EPA
Office of Fiscal Administration
P.O. Box 1049
Columbus, Ohio 43216-1049

A copy of each check shall be sent to Mark Mann, Environmental Manager, Storm Water and Enforcement Section, or his successor, at the following address:

Ohio EPA
Division of Surface Water
P.O. Box 1049
Columbus, Ohio 43216-1049

6. Should Respondent fail to fund the SEP within the required time frame set forth in Order No. 5 Respondent shall immediately pay to Ohio EPA the ten thousand dollars (\$10,000.00) of the civil penalty in accordance with the procedures in Order No. 4.

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.

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 the Respondent. For purposes of these Orders, a responsible official is as defined in OAC Rule 3745-33-03(D).

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 activities occurring on or at the Kyger Creek Station.

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
2195 Front Street
Logan, Ohio 43138
(ATTN: Enforcement Group Leader)

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.

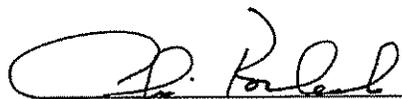
XIII. EFFECTIVE DATE

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

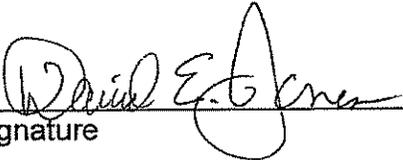


Chris Korleski
Director

11/5/10
Date

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IT IS SO AGREED:
Ohio Valley Electric Corporation



Signature

David E. Jones

Printed or Typed Name

Vice President-Operations

Title

October 19, 2010

Date