

BEFORE THE OHIO ENVIRONMENTAL PROTECTION AGENCY OHIO E.P.A.

AUG -3 2005

ENTERED DIRECTOR'S JOURNAL

In the Matter of: Synagro ~ WWT, Inc. 3501 Asiatic Avenue Baltimore, MD 21226

Director's Final Findings and Orders

Respondent

DIVISION LEGAL SECTION

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PREAMBLE

It is agreed by the parties hereto as follows:

I. JURISDICTION

These Director's Final Findings and Orders ("Orders") are issued to Synagro ~ WWT, Inc. ("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 and successors in interest liable under Ohio law. No change in ownership or composition of Respondent 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 promulgated thereunder.

IV. FINDINGS

The Director of Ohio EPA has determined the following findings:

- 1. Synagro Technologies, Inc., a Delaware corporation, is a national wastewater residuals management company serving more than 1,000 municipal and industrial wastewater treatment plants, having operations in 35 states and the District of Columbia.
2. Respondent, a Maryland corporation and formerly known as Wheelabrator Water Technologies, Inc., is a subsidiary of Synagro Technologies, Inc.
3. Respondent distributes and markets, in the State of Ohio, sewage sludge generated by the wastewater treatment facilities serving the City of New York.

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: [Signature] Date 8/3/05

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4. On November 12, 2003, Director's Final Findings and Orders ("the 2003 Orders") were issued to Respondent for violations of ORC Chapter 6111.
5. Order No. 2. of the 2003 Orders required Respondent to provide Ohio EPA with electronic or written notice of Respondent's placing of pull or release orders with any railroad upon which railcars of Respondent's sewage sludge would enter the State of Ohio or leave a siding in the state of Ohio where the railcars had been staged.
6. On May 27, 2004, in response to a odor complaint, Ohio EPA staff investigated railcars on a siding located within the Village of Edison, Morrow County, Ohio. The railcars contained Respondent's sewage sludge. A subsequent check of the pull and release orders submitted by Respondent determined that no pull or release orders for the railcars in the Village of Edison had been received by Ohio EPA. Ohio EPA staff confirmed that odors were emanating from a spill of sewage sludge in the ditch adjacent to the staged railcars. Village residents stated that odors previously emanated from the railcars.
7. On July 8, 2004, in response to a odor complaint, Ohio EPA staff investigated railcars on a siding located near the Village of Cairo, Allen County, Ohio. The railcars contained Respondent's sewage sludge. A subsequent check of the pull and release orders submitted by Respondent determined that no pull or release orders for the railcars near the Village of Cairo had been received by Ohio EPA.
8. The source of the odor was the railcars which were sitting at the site for approximately 10 days and rain water was able to leak into the cars. The rain water caused a change in the pH, causing the material to have "hot spots" and a strong odor.
9. On July 9, 2004, in response to a question from Ohio EPA as to what could be done to minimize the chance of the sludge getting wet and causing nuisances odors, Respondent stated that it will stop using railcars rented from CSX, and will use only Synagro railcars which are properly sealed and maintained. Respondent further stated that it would inquire into acquiring a probe to test the railcars for temperature before they are opened, therefore avoiding nuisance odors.
10. Similar nuisance odor problems from staged railcars occurred near the Village of Cairo in September, 2002.
11. Respondent distributes and markets the sewage sludge under approved, statewide, Ohio Sewage Sludge Management Plan No. 07-092-PW, issued January 3, 2002, which states in part:

"Should field storage of the product, or storage at any distribution facility, cause a nuisance, such as odor, Synagro will take immediate steps to alleviate the problem".

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12. During the May 27, 2004 and July 8, 2004 incidents, Respondent did not take immediate steps to alleviate the odor problems, as is required by Ohio Sewage Sludge Management Plan No. 07-092, and are violations thereof.
13. Respondent's failure to provide pull and release orders for railcars of Respondent's sewage sludge are violations of the 2003 Orders.
14. Pursuant to ORC § 6111.07(A), no person shall violate or fail to perform any duty imposed by ORC §§ 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.
15. 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 ORC Chapter 6111.

#### V. ORDERS

1. As of the effective date of these Orders, Respondent shall not dispose, use, store, or treat pellets or other forms of sewage sludge at the railroad siding located at 40°50'55" N latitude and 84°4'37" W longitude (Ohio state plane south) near the municipal limits of the Village of Cairo, Allen County, Ohio, and within the municipal limits of the Village of Edison, Morrow County, Ohio. As used in these Orders, the term "pellets" shall have the same meaning as is used in the 2003 Orders.
2. As of the effective date of these Orders, Respondent shall not dispose, use, store, or treat pellets or other forms of sewage sludge at any railroad siding located in the state of Ohio without first receiving from the Ohio EPA, Division of Surface Water, prior authorization for such use of the railroad siding.
3. As of the effective date of these Orders, Respondent shall inform the Ohio EPA, Division of Surface Water, at the addresses in Section X. of these Orders, of the date when railcars of pellets or other types of sewage sludge leave the generating or loading facility, and the number of said railcars.
4. Respondent shall only transport pellets and/or sewage sludge into the state of Ohio by railcars which are properly sealed and maintained to prevent infiltration of precipitation.
5. Within forty-five (45) days of the effective date of these Orders, Respondent shall purchase and use a probe designed to test the railcars for temperature before they are opened, and avoid the release of nuisance odors.

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6. Respondent shall pay to Ohio EPA the amount of ten thousand dollars (\$10,000.00) in settlement of Ohio EPA's claims for civil penalties which may be assessed pursuant to ORC Chapter 6111. Payment shall be made by tendering an official check made payable to "Treasurer, State of Ohio" for \$10,000.00. 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. A copy of the check shall be sent to the addresses listed in Section X. 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.

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 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 the Respondent's SSOs.

#### **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.

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### **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. NOTICES**

Unless otherwise specified herein, all documents required to be submitted by Respondent pursuant to these Orders shall be addressed to:

Ohio Environmental Protection Agency  
Northwest District Office  
Division of Surface Water  
Attn: DSW Enforcement Unit Supervisor  
347 North Dunbridge Road  
Bowling Green, Ohio 43402

and to:

Ohio Environmental Protection Agency  
Lazarus Government Center  
Division of Surface Water  
Attn: Manager, Stormwater and Enforcement Section  
122 South Front Street  
P.O. Box 1049  
Columbus, OH 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, 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.

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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.

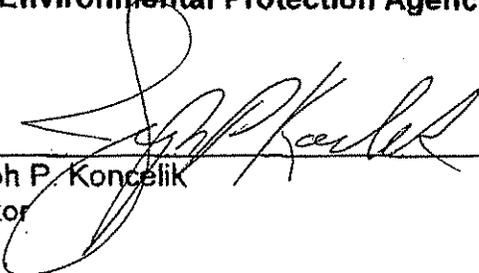
**XIII. EFFECTIVE DATE**

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

8/2/05  
Date

**IT IS SO AGREED:**  
Synagro WWT, Inc.

  
\_\_\_\_\_  
Signature

6-10-05  
Date

Alvin L. Thomas  
Printed or Typed Name

Vice President  
Title