

OHIO E.P.A.

MAR - 7 2011

ENTERED DIRECTOR'S JOURNAL

Issuance Date: MAR - 7 2011

Effective Date: MAR - 7 2011

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

**BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY**

[Signature]
Date: 3-7-11

In the Matter of:

City of Athens :
Service Garage : Director's Final Findings and Orders
West State Street :
Athens, Ohio 45701 :

I. JURISDICTION

These Director's Final Findings and Orders ("Orders") are hereby issued to the City of Athens, pursuant to the authority vested in the Director of the Ohio Environmental Protection Agency ("Ohio EPA") under Ohio Revised Code ("ORC") Section 3734.02, Ohio Administrative Code ("OAC") Rule 3745-27-03(B), and OAC Rule 3745-27-05(A)(4).

II. PARTIES

These Orders shall apply to and be binding upon the City of Athens and successors in interest liable under Ohio law. No changes in ownership relating to the Hope Reservoir Property, as hereinafter defined, shall in any way alter the City of Athens' 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. Unless otherwise stated, all OAC citations shall refer to rules in effect on the date of these Orders.

IV. FINDINGS

The Director of Ohio EPA ("Director") has determined the following findings:

1. The City of Athens owns property at the end of Hope Drive in eastern Athens ("Hope Reservoir Property") in Athens County, Ohio. Included on the Hope Reservoir Property is an approximately 2-mile long access road to the city's Hope Reservoir ("Hope Reservoir Access Road").

2. On October 22, 2010, Mr. Andrew Stone, representing the City of Athens, submitted a request to the Director for authorization to dispose up to 2500 cubic yards of chloride contaminated earth and gravel on the Hope Reservoir Access Road to improve trafficability by service vehicles to and from the city's reservoir. The chloride contaminated earth and gravel will be taken from directly under the existing road salt storage facility and loading area on West State Street in Athens. Removal of the material from the salt storage area is necessary to address chloride contamination of the City's well field.
3. ORC Section 3734.01(E) defines "solid wastes" in pertinent part to mean "such unwanted residual solid or semisolid material as results from industrial, commercial, agricultural, and community operations..."
4. ORC Section 3734.01(F) defines "disposal" in pertinent part to mean "the discharge, deposit, injection, dumping, spilling, leaking, emitting, or placing of any solid waste...into or on any land or ground or surface water or into the air..."
5. ORC Section 3734.01(N) defines "facility" in pertinent part to mean "any site, location, tract of land, installation, or building used for incineration, composting, sanitary landfilling, or other methods of disposal of solid wastes..."
6. The activities described in Finding 2, above, and in City of Athens' request, constitute disposal of solid waste at a facility.
7. ORC Sections 3734.02(C), 3734.05(A)(1), and 3734.05(A)(2), and OAC Chapters 3745-27 and 3745-37 require that a permit and license be obtained prior to establishment or modification of a solid waste facility.
8. The activities described in Finding 2, above, and in the City of Athens' request, constitute establishment or modification of a solid waste facility and require that a permit and license be obtained prior to initiating such activities.
9. OAC Rule 3745-27-05(A) specifies the methods of solid waste disposal which are authorized in Ohio. This rule authorizes sanitary landfilling, incineration, and composting as acceptable disposal methods. In addition, OAC Rule 3745-27-05(A)(4) states that solid wastes may be disposed as engineered fill or by land application, provided the Director determines that such alternative methods will not create a nuisance or harm human health or the environment and are capable of complying with other applicable laws.
10. The proposed disposal method, described in Finding 2, above, and in the City of Athens' request, is a method other than sanitary landfilling, incineration, or

composting and, therefore, requires authorization of the Director pursuant to OAC Rule 3745-27-05(A)(4).

11. The disposal of solid waste by the method described in Finding 2, above, and in the City of Athens' request, can be performed without creating a nuisance or harming human health or the environment, and in compliance with other applicable laws, provided the activities are performed in accordance with the City of Athens' request, as received on October 22, 2010, and the orders specified below.
12. Pursuant to ORC Section 3734.57(A), the owner or operator of a solid waste disposal facility must collect and remit to the state a disposal fee for each ton of solid waste disposed at the facility.
13. Pursuant to ORC Section 3734.57(B), the solid waste management policy committee of a single or joint solid waste management district is authorized to levy a disposal fee on solid wastes disposed at solid waste disposal facilities located within the solid waste management district. The Athens-Hocking Solid Waste Management District ("AHSWMD") has levied a disposal fee. ORC Section 3734.57(E) further requires the owner or operator of a solid waste disposal facility operating in a solid waste management district where a disposal fee has been ratified to collect and remit to the solid waste management district the fees on each ton of solid waste disposed at the facility.
14. Pursuant to ORC Section 3734.02(G) and OAC Rule 3745-27-03(B), the Director, by order, may exempt any person generating, storing, treating, disposing of, or transporting solid wastes in such quantities or under such circumstances that, in the determination of the Director, are unlikely to adversely affect the public health or safety or the environment from any requirement to obtain a permit or license or comply with other requirements of ORC Chapter 3734 and any rules adopted thereunder.
15. Based upon a review of the October 22, 2010, request, granting the City of Athens an exemption from the requirements to obtain a permit and license, as specified in Finding 8, is unlikely to adversely affect the public health or safety or the environment, provided the City of Athens complies with the following Orders.
16. Based upon a review of the October 22, 2010, request, granting the City of Athens exemptions from the requirements to remit the state disposal fee and the solid waste management district disposal fee, as specified in Findings 12 and 13, is unlikely to adversely affect the public health or safety or the environment, provided the City of Athens complies with the following Orders.

V. ORDERS

1. Pursuant to OAC Rule 3745-27-05(A)(4), the City of Athens is hereby authorized to use up to 2,500 cubic yards of chloride contaminated earth and gravel identified in the October 22, 2010, request to improve the access road to the City of Athens Hope Reservoir as specified in Finding 2 and the City of Athens' request, as an alternative disposal method.
2. The City of Athens shall utilize the chloride contaminated earth and gravel in accordance with the following placement procedures:
 - a. The chloride contaminated earth and gravel shall be placed according to the request submitted by the City of Athens on October 22, 2010.
 - b. The chloride contaminated earth and gravel shall be placed in such a manner as necessary to prevent creation of nuisance caused by surface water runoff or release of contaminants to the environment.
 - c. The chloride contaminated earth and gravel placement shall occur during appropriate weather conditions to minimize surface water runoff.
 - d. The chloride contaminated earth and gravel shall not be placed within one hundred (100) feet of any ground water well in the area.
3. Pursuant to ORC Section 3734.02(G), the City of Athens is hereby exempted from the requirements contained in ORC Sections 3734.02(C), 3734.05(A)(1), and 3734.05(A)(2), and OAC Chapters 3745-27 and 3745-37 to obtain a permit and license to establish and operate a solid waste facility for the disposal of chloride contaminated earth and gravel on the Hope Reservoir Access Road in accordance with the request and these Orders.
4. Pursuant to ORC Section 3734.02(G) and OAC Rule 3745-27-03(B), the City of Athens is hereby exempted from the requirement of ORC Section 3734.57(A) to collect and remit the state disposal fee on chloride contaminated earth and gravel disposed on the Hope Reservoir Access Road in accordance with the request and these Orders.
5. Pursuant to ORC Section 3734.02(G) and OAC Rule 3745-27-03(B), the City of Athens is hereby exempted from the requirement of ORC Section 3734.57(E) to collect and remit the disposal fees levied pursuant to ORC Section 3734.57(B) on

chloride contaminated earth and gravel disposed on the Hope Reservoir Access Road in accordance with the request and these Orders.

6. The authorization granted in Order 1 and the exemptions granted in Orders 3, 4, and 5, apply only to the use of the 2500 cubic yards of chloride contaminated earth and gravel identified in the request submitted by the City of Athens on October 22, 2010, to improve trafficability for service vehicles on the Hope Reservoir Access Road. This authorization shall not be construed as approval for use of other materials or additional contaminated earth and gravel resulting from future activities. Use of any such additional materials shall not occur unless the City of Athens obtains subsequent approval.
7. If the chloride contaminated earth and gravel is not used in accordance with these Orders and the City of Athens' request, the chloride contaminated earth and gravel shall be managed and/or disposed in accordance with all applicable requirements.
8. Ohio EPA, Southeast District Office shall be notified not later than five (5) days prior to start of the project so that use of the chloride contaminated earth and gravel can be routinely inspected by Ohio EPA, Southeast District Office.
9. Authorization to conduct the activities authorized in these Orders shall expire if the activities have not been completed within eighteen (18) months of the effective date of this authorization.
10. Nothing in these Orders shall be construed to authorize any activity, method, or waiver from the requirements of any other provision of ORC Chapter 3734 or the regulations promulgated thereunder, except as expressly provided herein. These Orders shall not be interpreted to release the City of Athens from responsibility under ORC Chapters 3704, 3734, or 6111; under the Federal Clean Water Act or the Comprehensive Environmental Response, Compensation, and Liability Act; or from other applicable requirements for remedying conditions resulting from any release of contaminants to the environment.

VI. OTHER APPLICABLE LAWS

All actions required to be taken pursuant to these Orders shall be undertaken in accordance with the requirements of all applicable federal, state, and local laws and regulations. Nothing in these Orders shall be construed as waiving or compromising in any way the applicability and enforcement of any other statutes or regulations applicable to the City of Athens. Ohio EPA reserves all rights and privileges except as specified herein.

VII. RESERVATION OF RIGHTS

Nothing contained herein shall be construed to prevent Ohio EPA from seeking legal or equitable relief to enforce the terms of these Orders or from taking other administrative, legal, or equitable action as deemed appropriate and necessary, including seeking penalties against the City of Athens for noncompliance with these Orders.

Nothing contained herein shall be construed to prevent Ohio EPA from exercising its lawful authority to require the City of Athens to perform additional activities pursuant to ORC Chapter 3734 or any other applicable law in the future. Nothing herein shall restrict the right of the City of Athens to raise any administrative, legal, or equitable claim or defense with respect to such further actions that Ohio EPA may seek to require of the City of Athens. Nothing in these Orders shall be construed to limit the authority of Ohio EPA to seek relief for violations that may occur at the Hope Reservoir Property.

IT IS SO ORDERED:



Scott J. Nally
Director
Ohio Environmental Protection Agency