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BEFORE THE OHIO ENVIRONMENTAL PROTECTION AGENCY

In the matter of:

Toledo-Lucas County Port Authority	:	Director's Final
One Maritime Plaza	:	Findings and Orders
Toledo, Ohio 43604-1866	:	

I. JURISDICTION

These Director's Final Findings and Orders (Orders) are hereby issued to the Toledo-Lucas County Port Authority (Authority), pursuant to the authority vested in the Director of Environmental Protection (Director) 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 Authority and its successors in interest liable under Ohio law. No changes in ownership relating to the Authority's Confined Disposal Facility (CDF) will in any way alter the Authority's responsibilities under these Orders. The Authority's obligations under these Orders may only be altered by the written approval of the Director.

III. DEFINITIONS

Unless otherwise stated, all terms used in these Orders shall have the same meaning as used in ORC Chapter 3734 and the rules promulgated thereunder. Unless otherwise stated, all OAC citations shall refer to rules currently in effect.

IV. ACTION

Pursuant to ORC Section 3734.02(G), OAC Rule 3745-27-03(B), OAC Rule 3745-27-05(A)(4), the Director hereby makes the following findings and issues the following orders.

(Certified to be a true and correct copy of the original as filed with the Director of Environmental Protection on 12/1/03)
 By: *Denise L. Peoples* 12/1/03

V. FINDINGS

1. The Bay Shore Power Company (Bay Shore) is a subsidiary of First Energy Corporation and operates on property owned by the First Energy Corporation located at 4711 Bay Shore Road, Oregon, Ohio 43616. Bay Shore utilizes a circulating fluidized bed combustion boiler to generate electricity.
2. On May 30, 2003, the Authority submitted a request to the Ohio Environmental Protection Agency (Ohio EPA) to alternatively dispose of circulating fluidized bed combustion boiler ash (FBC ash or CFB ash) generated from Bay Shore's circulating fluidized bed combustion boiler. The letter states, in part:

The Port Authority, in concert with S&L Fertilizer, would like to pursue through the IAWMP program of OEPA - DSIWM, the utilization of the FBC Ash in combination with dredgings when constructing any expanded dikes at CDF 3 . . . We anticipate S&L will be making the formal application forthwith.
3. On June 4, 2003, Soils Plus, LLC (Soils Plus), a newly formed LLC, submitted an addendum to the request which included additional details regarding the proposed dike construction project. The request proposes to use FBC ash from the circulating fluidized bed combustion boiler mixed with Maumee River dredgings to construct test dikes atop Facility 3, Cell 1 of the Authority's CDF. The dikes will be tested in order to generate field data regarding their performance. This portion of the project, referenced as "Phase 2", is expected to utilize approximately 10,000 tons of FBC Ash.
4. Soils Plus will be the general contractor for this proposed project and S&L Fertilizer will be a sub-contractor.
5. 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 wastes . . . into or on any land or ground or surface water or into the air. . . ."
6. 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. . . ."
7. The activities described in Findings 2 and 3 of these Orders and in the Authority's request are "disposal" at a "facility."

8. ORC Section 3734.02(C); ORC Sections 3734.05(A)(1) and 3734.05(A)(2); and OAC Chapters 3745-27, 3745-29, and 3745-37 require that a permit and license be obtained prior to the establishment or modification of a solid waste facility.
9. The activities described in Findings 2 and 3 of these Orders and in the Authority's request constitute establishment or modification of a facility and require that a permit and license be obtained prior to initiating such activities.
10. 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, solid wastes may be disposed as engineered fill or by land application, provided that the Director determines that such method will not create a nuisance or harm human health or the environment and is capable of complying with other applicable laws.
11. The disposal method described in Findings 2 and 3 of these Orders and the Authority's request is a method other than sanitary landfilling, incineration, or composting and, therefore, requires authorization from the Director pursuant to OAC Rule 3745-27-05(A)(4).
12. The disposal of solid wastes by the method described in Findings 2 and 3 of these Orders and the Authority's request can be performed without creating a nuisance or harming human health or the environment, and in compliance with other applicable laws, provided it is performed in accordance with the Authority's request, as received on May 30, 2003, and as amended on June 4, 2003, and the orders specified below.
13. 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 fee of \$2.00 per ton for the disposal of solid wastes at the facility.
14. Pursuant to ORC Section 3734.573(A), the solid waste management policy committee of a single or joint solid waste management district is authorized to levy a fee on each ton of solid waste generated within the district. The Lucas County Solid Waste Management District has a generation fee of \$2.00 per ton of solid waste generated within the district.
15. Pursuant to ORC Section 3734.02(G) and OAC Rule 3745-27-03(B), the Director may, by order, exempt any person generating, collecting, 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.

16. Because the proposed facility lies atop an existing dredging disposal site authorized in accordance with sections 401/404 of the Clean Water Act, and because the FBC Ash/dredging mixture reacts to form a material with less leaching potential, and because this authorization is limited to 10,000 tons of FBC Ash, granting an exemption from the requirement to obtain a permit and a license to establish and operate a solid waste facility in order to use FBC Ash to construct test dikes as described in their request is unlikely to adversely affect the public health or safety or the environment, provided it is performed in accordance with the Authority's request and these Orders.
17. Granting an exemption from the requirements to collect and remit disposal and generation fees adopted pursuant to ORC Sections 3734.57 and 3734.573 for the activities described in the Authority's request is unlikely to adversely affect the public health or safety or the environment.

VI. ORDERS

1. Pursuant to OAC Rule 3745-27-05(A)(4), OAC Rule 3745-27-03(B), and ORC Section 3734.02(G), the Authority is hereby authorized to use FBC Ash from the Bay Shore Power Company circulating fluidized bed combustion boiler, as specified in Findings 2 and 3 of these Orders and the Authority's request as a method of disposal and is hereby exempted from the requirement to obtain a permit and a license to establish and operate a solid waste facility pursuant to ORC Section 3734.02(C); ORC Sections 3734.05(A)(1) and 3734.05(A)(2); and OAC Chapters 3745-27, 3745-29, and 3745-37. Solid waste originating from any location other than Bay Shore Power Company's power plant as described in Finding 1 of these Orders shall not be used in this project.
2. Pursuant to ORC Section 3734.02(G), the Authority is hereby exempted from the requirements of paragraph (A) of ORC Section 3734.57 to collect and remit the state disposal fee of \$2.00 per ton on those wastes disposed in accordance with the Authority's request and these Orders.
3. Pursuant to ORC Section 3734.02(G), the Authority is hereby exempted from the requirement to collect and remit the district generation fee of \$2.00 per ton adopted in accordance with ORC Section 3734.573(A) on those wastes

generated within the Lucas County Solid Waste Management District as utilized in accordance with the Authority's request and these Orders.

4. The amount of FBC Ash disposed in accordance with this authorization shall not exceed 10,000 tons. Neither the FBC Ash, nor the dredging/ash mixture, shall be placed outside the limits of Facility 3, Cell 1 of the Authority's CDF.
5. The Authority shall establish a notice on the property deed identifying the presence of solid waste in the form of FBC Ash on the property.
6. Not later than 60 days after completion of this Integrated Alternative Waste Management Program (IAWMP) project, the Authority shall submit a report to Ohio EPA indicating the total quantity in weight (tons) of solid waste used for the project.
7. The facility where the IAWMP project is occurring shall be maintained in substantial compliance with all applicable environmental laws and regulations unless specifically exempted herein.
8. The exemptions granted in Orders 1, 2, and 3 shall apply only to the use of FBC Ash for the construction of test dikes as proposed in the Authority's request described in Findings 2 and 3 of these Orders on Facility 3, Cell 1 of the Authority's CDF.
9. If use of the FBC Ash or the dredging/ash mixture proves unsatisfactory to NWDO or Lucas County Health Department, the exemptions granted in these Orders may be revoked at any time, with or without prior warning. Upon revocation, the Authority shall cease the use of the FBC Ash or the dredging/ash mixture and dispose of it in accordance with all applicable regulations.
10. Nothing in these Orders shall be construed to authorize any activity, method, or waiver from the requirements of Chapter 3734 or the regulations promulgated thereunder, except as expressly provided herein. These Orders shall not be interpreted to release the Authority 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.

VII. OTHER APPLICABLE LAWS

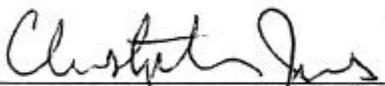
All actions required to be taken pursuant to these Orders shall be undertaken in accordance with the requirements of all applicable federal, state, and local laws and regulations. Nothing in these Orders shall be construed as waiving or compromising in any way the applicability and enforcement of any other statutes or regulations applicable to the Authority.

VIII. 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 Authority for noncompliance with these Orders.

Nothing contained herein shall be construed to prevent Ohio EPA from exercising its lawful authority to require the Authority 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 Authority to raise any administrative, legal, or equitable claim or defense with respect to such further actions which Ohio EPA may seek to require of the Authority. Nothing in these Orders shall be construed to limit the authority of Ohio EPA to seek relief for violations which may occur at the facility.

IT IS SO ORDERED:



Christopher Jones, Director
Ohio Environmental Protection Agency