

Issuance Date: \_\_\_\_\_

Effective Date: \_\_\_\_\_

## **BEFORE THE OHIO ENVIRONMENTAL PROTECTION AGENCY**

In the Matter of:

Transco Railway Products, Inc.	:	<u>Director's Final Findings</u>
Mr. Harold Fitz	:	<u>and Orders</u>
820 Hopley Avenue	:	
P.O. Box 231	:	
Bucyrus, Ohio 44820	:	

### **I. JURISDICTION**

These Director's Final Findings and Orders ("Orders") are hereby issued to Transco Railway Products, Inc. ("Transco Railway") 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 Transco Railway and successors in interest liable under Ohio law. No changes in ownership relating to the Transco Railway property, as hereinafter defined, shall in any way alter Transco Railway'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 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. Transco Railway owns and operates a railcar repair facility located at 820 Hopley Avenue in Bucyrus, Ohio ("Transco Railway property").

2. On May 4, 2006, Harold Fitz, Director of Regulatory Affairs for Transco Railway, submitted a request to Ohio EPA for authorization to alternatively dispose of approximately 26,000 tons of used blast media ("Blast Media") as engineered structural fill at the Transco Railway property. The Blast Media will be used to create a road bed for the addition of railroad tracks used for railcar storage and will be used beneath tracks numbered 13 through 19. The Blast Media is a solid waste.
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 Transco Railway's 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-to-install and license be obtained prior to establishment or modification of a solid waste facility.
8. The activities described in Finding 2, above, and in Transco Railway's request constitute establishment or modification of a facility and require that a permit-to-install and license be obtained prior to initiating such activities.
9. OAC Rule 3745-27-05(A) specifies the methods of solid waste disposal that 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 Transco Railway'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).

11. The disposal of solid waste by the method described in Finding 2, above, and in Transco Railway's 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 Transco Railway's request, as received on May 4, 2006, and the orders specified below.
12. Pursuant to ORC Section 3734.02(G) and OAC Rule 3745-27-03(B), the Director, by order, may 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-to-install or license or comply with other requirements of ORC Chapter 3734 and any rules adopted thereunder.
13. Based upon a review of Transco Railway's May 4, 2006, request, granting Transco Railway an exemption from the requirement to obtain a permit-to-install and a license to establish and operate a solid waste facility, as specified in Finding 7 of these Orders, is unlikely to adversely affect the public health or safety or the environment, provided Transco Railway performs the activities in accordance with Transco Railway's request and these Orders.

## **V. ORDERS**

1. Pursuant to OAC Rule 3745-27-05(A)(4), Transco Railway is hereby authorized to use Blast Media as engineered fill material at the Transco Railway property, as specified in Finding 2 of these Orders and in Transco Railway's request, as an alternative disposal method.
2. The Property Owners shall utilize the Blast Media in accordance with the following placement procedures:
  - a. The Blast Media shall be placed in accordance with the proposal submitted by Transco Railway on May 4, 2006.
  - b. The Blast Media shall be placed during appropriate weather conditions to minimize blowing Blast Media, odors, and surface water runoff.
3. Pursuant to ORC Section 3734.02(G) and OAC Rule 3745-27-03(B), Transco Railway 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-to-install and license to establish and operate a solid waste facility.

4. The authorization granted in Order 1 and the exemption granted in Order 3 apply only to the use of Blast Media generated from railcar repair operations by Transco Railway as engineered fill at the Transco Railway property. This authorization shall not be construed to authorize the use of other materials or additional blast media resulting from future activities. Use of any such additional materials shall not occur unless Transco Railway obtains subsequent approval.
5. If the Blast Media is not used in accordance with these Orders and Transco Railway's request, the Blast Media shall be managed and/or disposed in accordance with all applicable requirements.
6. Ohio EPA, Northwest District Office and the Crawford County Health District shall be notified not later than five days prior to the start of the project so that use of the Blast Media can be inspected by Ohio EPA, Northwest District Office and the Crawford County Health District.
7. Nothing in these Orders shall be construed to authorize any activity, method, or waiver from the requirements of ORC Chapter 3734 or the regulations promulgated thereunder, except as expressly provided herein. These Orders shall not be interpreted to release Transco Railway from responsibility under ORC Chapters 3704, 3734, or 6111; under the Federal Clean Water Act, the Resource Conservation and Recovery 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 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 Transco Railway.

## **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 Transco Railway for noncompliance with these Orders. Nothing contained herein shall be construed to prevent Ohio EPA from exercising its lawful authority to require Transco Railway to perform additional activities pursuant to ORC Chapter 3734 or any other applicable law in the future. Nothing herein shall restrict the right of Transco Railway to raise any administrative, legal, or equitable claim or defense

with respect to such further actions that Ohio EPA may seek to require of Transco Railway. Nothing in these Orders shall be construed to limit the authority of Ohio EPA to seek relief for violations that may occur at the Transco Railway property.

**IT IS SO ORDERED:**

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Chris Korleski, Director  
Ohio Environmental Protection Agency