

BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY

2019 SEP 3 1 AM 10:39

In the Matter of:

AES Ohio Generation, LLC
1065 Woodman Drive
Dayton, OH 45432

Respondent

Director's Final Findings
and Orders

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:

Sam Wilson Date: 11/8/19

I. JURISDICTION

These Director's Final Findings and Orders ("Orders") are issued to AES Ohio Generation, LLC ("Respondent") pursuant to the authority vested in the Director of the Ohio Environmental Protection Agency ("Ohio EPA") under Revised Code ("R.C.") Chapters 3745 and 6111.

II. PARTIES BOUND

These Orders shall apply to and be binding upon Respondent and successors in interest liable under Ohio law. No change in the composition of Respondent or the ownership of the Site or the ownership or operation of the Facility, as hereinafter defined, 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 R.C. Chapter 6111 and the rules adopted thereunder.

IV. FINDINGS

The Director has determined the following findings:

1. Respondent, an active Ohio domestic limited liability company (entity number 1237867), is a person as defined in R.C. 6111.01(I) and R.C. 1.59(C).
2. Respondent owns the Killen Electric Generating Station, ("Facility"), located adjacent to the Ohio River at 14869 U.S. Route 52, Manchester, Adams County, Ohio, ("Site").

3. On the Site is situated a 600-megawatt (nominally) coal-fired electric generating station which used fuel oil as a supplemental fuel for boiler startup, and an 18-megawatt, fuel oil combustion turbine. Respondent ceased generating electricity at the Facility at the end of May 2018.
4. In October 1994, No. 2 fuel oil was discovered seeping through cracks in the concrete floor near the southern wall of the boiler building. The leakage was from a hole in the underground piping, which served two 1,350,000-gallon capacity aboveground storage tanks, that provided supplemental fuel oil to the boilers. Fuel oil was found floating on the water table of the sand and gravel aquifer beneath the Facility.
5. To address both dissolved hydrocarbons and PSH¹, in 1995, pursuant to Permit to Install Application No. 06-4437, ("permit"), three groundwater/PSH recovery wells, were installed and connected to a recovery and treatment system. The permit required Respondent's predecessor² and subsequently, Respondent, to determine the concentration, rate, and extent of contamination and to implement a groundwater monitoring program to monitor the adequacy of the recovery and treatment system. Since early 1996, reports have been submitted to Ohio EPA on a quarterly basis.
6. The permit is silent as to criteria for terminating the recovery and treatment system or ending monitoring and reporting requirements.
7. On October 26, 2015, Ohio EPA received a groundwater monitoring report from Respondent's predecessor, which included a request to terminate the recovery and treatment system and associated monitoring at the Site. Ohio EPA informed Respondent's predecessor that if it developed an approvable plan, consideration may be given to terminate the recovery and treatment system.
8. On March 29, 2018, Respondent submitted a *Fuel Oil Release Evaluation Work Plan* to Ohio EPA.
9. As of February 2018, approximately 350,000,000 gallons of groundwater have been treated, and 81,000 gallons of fuel oil recovered, by the recovery and treatment system. The amount of fuel oil recovered has decreased over time, with the recent amounts deemed insignificant when compared to the volume recovered during the first several years of the recovery and treatment system's operation.
10. Respondent and Ohio EPA have engaged in discussions and exchanged comments regarding the October 26, 2015, report and the March 29, 2018, *Fuel Oil Release Evaluation Work Plan*.

¹ Phase separated hydrocarbons, which is fuel oil that has not dissolved into the ground water and is floating on the water table.

² The Dayton Power and Light Company.

11. Respondent submitted a revised *Fuel Oil Release Evaluation Work Plan*, which included a request that:

Should the Site data indicate that these criteria have been met for Killen Station, AES Ohio Generation, LLC will request termination and closure of the obligations associated with the fuel oil recovery system and associated groundwater monitoring including obligations associated with the Permit to Install Application No. 06-4437.

12. The *Fuel Oil Release Evaluation Work Plan* as revised, is attached hereto, incorporated by reference as if fully rewritten herein, and is hereinafter referred to as the "Work Plan."
13. The Work Plan is acceptable to Respondent and Ohio EPA.
14. R.C. 3745.01(C) authorizes the Director to advise, consult, cooperate, and enter into contracts or agreements, including consensual administrative order agreements, with persons and industries in furtherance of the purposes of R.C. Chapters 3745 and 6111.
15. R.C. 6111.03(H)(1) authorizes the Director to issue, modify, or revoke orders to prevent, control, or abate water pollution by such means as prohibiting or abating discharges of sewage, industrial waste, or other wastes into the waters of the state.
16. R.C. 6111.03(N) authorizes the Director to exercise all incidental powers necessary to carry out the purposes of R.C. Chapter 6111.
17. The following Orders do not constitute authorization or approval of the construction of any physical structures or facilities, or the modification of any disposal system. Any such construction or modification is subject to R. C. 6111.44; R.C. 6111.45 and Ohio Administrative Code ("Ohio Adm.Code") Chapter 3745-42.
18. The Director considered 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 their relation to the benefits to the people of the state to be derived from such compliance in accomplishing the purposes of R.C. Chapter 6111.

V. ORDERS

1. Respondent shall comply with the Work Plan, and as such plan may be revised by Ohio EPA, and R.C. Chapter 6111 and the rules adopted and permits issued, thereunder.

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."

The certification shall be submitted by Respondent to Ohio EPA and shall be signed by a responsible official of Respondent. For purposes of these Orders, a responsible official is defined in Ohio Adm.Code 3745-33-03(F).

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 site.

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
Enforcement Manager
Southeast District Office
Division of Surface Water
2195 Front Street
Logan, Ohio 43138

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, 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.

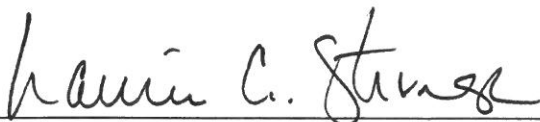
XIII. EFFECTIVE DATE

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**

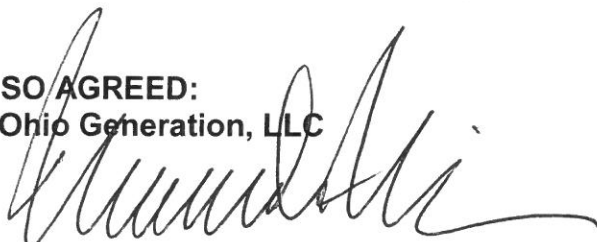


Laurie A. Stevenson
Director

11/7/15

Date

**IT IS SO AGREED:
AES Ohio Generation, LLC**



Signature

9/27/19

Date

MARK UICKER

Name (Print)

PRESIDENT

Title