

OHIO E.P.A.
MAY 10 2006

ENTERED DIRECTOR'S JOURNAL

**BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY**

In the Matter of:

C.J. Mahan Construction Company
3400 Southwest Blvd.
Grove City, Ohio 43123

Respondent

**Director's Final
Findings and Orders**

PREAMBLE

It is agreed by the parties hereto as follows:

I. JURISDICTION

These Director's Final Findings and Orders (Orders) are issued to C.J. Mahan Construction Company (Respondent) pursuant to the authority vested in the Director of the Ohio Environmental Protection Agency (Ohio EPA) under Ohio Revised Code (ORC) §§ 3734.13 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 of the Respondent or of the Facility 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 3734. and the rules promulgated thereunder.

IV. FINDINGS

All of the findings necessary for the issuance of these Orders pursuant to ORC §§ 3734.13 and 3745.01 have been made and are outlined below. Nothing in the findings shall be considered to be an admission by Respondent of any matter of law or fact. The Director of Ohio EPA has determined the following findings:

1. Respondent builds and removes bridges. Respondent sandblasts bridge beams at its Facility located at 3400 Southwest Blvd., Grove City, Ohio (Facility). Respondent is the owner and operator of the Facility. Respondent was authorized to do business in Ohio on July 11, 1977.
2. Respondent is a "person" as defined in ORC § 3734.01(G) and Ohio Administrative Code (OAC) rule 3745-50-10(A).
3. Respondent notified Ohio EPA of its hazardous waste activities and was issued generator identification number OHD987016292.
4. At the Facility, Respondent generates "hazardous waste" as that term is defined by ORC § 3734.01(J) and OAC rules 3745-50-10(A) and 3745-51-03. Respondent is identified as a large quantity generator of hazardous waste. The hazardous waste generated by Respondent at the Facility includes sandblasting waste (D008) and parts washer solvent (D001, D018, D038 and D040).
5. In April of 2004, Respondent began sandblasting bridge beams outside at the Facility. During sandblasting operations, sandblast waste was released to the ground at the Facility. On April 26, 2004, Respondent sampled the sandblasting waste to determine if it was a hazardous waste. The analytical results, which were received in May 2004, demonstrated that the sandblasting waste was hazardous for lead (D008). At this time, Respondent collected the hazardous sandblasting waste and some surrounding soils into 55-gallon drums.
6. In February 2005, Respondent emptied the 55-gallon drums of hazardous sandblasting waste out on tarpaulins and treated the hazardous waste with Ecobond, a metal binding agent. The treated sandblasting waste was then placed in roll-off boxes and on February 25, 2005, a composite sample was collected. The analytical results showed that the composite sample was non-hazardous.
7. On March 2, 2005 and March 4, 2005, Respondent shipped the treated sandblasting waste off-site to a non-hazardous waste facility.

8. On March 10, 2005, Ohio EPA conducted an inspection of the Facility. As a result of this inspection, Ohio EPA determined that Respondent had, *inter alia*:
 - a. Unlawfully treated and stored hazardous waste without a permit, in violation of ORC § 3734.02(E) and (F);
 - b. Failed to develop and follow a written Waste Analysis Plan (WAP) and meet Land Disposal Restriction (LDR) requirements, in violation of OAC rule 3745-270-07 and OAC rule 3745-270-09;
 - c. Failed to have a contingency plan, in violation of OAC rule 3745-65-52 and OAC rule 3745-65-53;
 - d. Failed to have a personnel training program, in violation of OAC rule 3745-65-16;
 - e. Failed to submit annual hazardous waste reports, in violation of OAC rule 3745-52-41;
 - f. Failed to conduct weekly inspections of the hazardous waste accumulation area, in violation of OAC rule 3745-66-74;
 - g. Failed to label universal waste lamps and failed to maintain a system that demonstrates the length of time that the universal waste lamps were being accumulated, in violation of OAC rule 3745-273-14(E) and OAC rule 3745-273-15(C); and
 - h. Failed to label two tanks of used oil, in violation of OAC rule 3745-279-22(C). This violation was abated at the time of the inspection.
9. The Director has also determined that Respondent unlawfully disposed of hazardous sandblasting wastes onto the ground in April of 2004, in violation of ORC § 3734.02(E) and (F). Additionally, because Respondent treated, stored and disposed of hazardous waste at the Facility without a permit, the Director has determined that Respondent violated numerous requirements found in OAC Chapters 3745-54 and 55.
10. By letter dated April 7, 2005, Ohio EPA notified Respondent of the violations referenced in Finding No. 8. of these Orders.
11. On April 25, 2005, and May 4, 2005, Respondent submitted responses to Ohio EPA's letter referenced in Finding No. 10. of these Orders.

12. By letter dated May 5, 2005, Ohio EPA notified Respondent that it had abated the violation referenced in Finding No. 8.g. of these Orders.
13. On May 5, 2005, Respondent submitted a response to Ohio EPA's letter referenced in Finding No. 12. of these Orders.
14. By letter dated May 11, 2005, Ohio EPA notified Respondent of the outstanding violations referenced in Finding No. 8. of these Orders.
15. On May 18, 2005, Respondent submitted a response to Ohio EPA's letter referenced in Finding No. 14. of these Orders
16. On May 19, 2005, Ohio EPA conducted a follow up inspection at the Facility. As a result of this inspection, Ohio EPA determined that Respondent had, *inter alia*:
 - a. Failed to develop and follow a written WAP and meet LDR requirements, in violation of OAC rule 3745-270-07 and OAC rule 3745-270-09; and
 - b. Failed to conduct weekly inspections of the hazardous waste accumulation area and failed to inspect emergency equipment, in violation of OAC rule 3745-66-74 and OAC rule 3745-65-33.
17. By letter dated June 3, 2005, Ohio EPA notified Respondent of the violations referenced in Finding No. 16. of these Orders. In this same letter, Ohio EPA notified Respondent that it had abated the violations referenced in Finding Nos. 8.c. 8.d. and 8.e. of these Orders.
18. On June 22, 2005, Respondent submitted a response to Ohio EPA's letter referenced in Finding No. 17. of these Orders.
19. By letter dated June 29, 2005, Ohio EPA notified Respondent that it had abated the violations referenced in Finding Nos. 8.f. and 16.b. of these Orders.
20. Because some soil has been removed from the area where the hazardous sandblasting waste was unlawfully treated and disposed and Respondent is now sandblasting the bridge beams in an enclosed area, the Director has determined that no further action is necessary at this time to abate the violations referenced in Finding Nos. 8.a. and 9. of these Orders.
21. Respondent informed Ohio EPA that Respondent is not now and will not in

the future treat hazardous wastes at the Facility. Therefore, the Director has determined that no further action is necessary to abate the violations referenced in Finding Nos. 8.b. and 16.a. of these Orders.

V. ORDERS

Respondent shall achieve compliance with Chapter 3734. of the ORC and the regulations promulgated thereunder according to the following compliance schedule:

1. Respondent shall pay Ohio EPA the amount of \$30,000.00 in settlement of Ohio EPA's claims for civil penalties, which may be assessed pursuant to ORC Chapter 3734. \$24,000.00 of this amount will be deposited into the hazardous waste cleanup fund established pursuant to ORC § 3734.28 pursuant to the following schedule:
 - a. Within 30 days after the effective date of these Orders, Respondent shall pay to Ohio EPA the amount of \$8,000.00;
 - b. Within 60 days after the effective date of these Orders, Respondent shall pay to Ohio EPA the amount of \$8,000.00; and
 - c. Within 90 days after the effective date of these Orders, Respondent shall pay to Ohio EPA the amount of \$8,000.00.

Payments shall be made by official checks made payable to "Treasurer, State of Ohio." The official checks shall be submitted to Ohio EPA, Office of Fiscal Administration, Department L-2711, Columbus, Ohio 43260-2711, together with a letter identifying Respondent. A copy of each check shall be submitted in accordance with Section X. of these Orders.

2. In lieu of paying the remaining \$6,000.00 of civil penalty to Ohio EPA, Respondent shall fund a supplemental environmental project (SEP) by making a contribution in the amount of \$6,000.00 to the Ohio EPA Clean Diesel School Bus Program (Fund 5CD) in accordance with the following schedule:
 - a. Within 30 days after the effective date of these Orders, Respondent shall pay to the Ohio EPA Clean Diesel School Bus Program the amount of \$2,000.00;
 - b. Within 60 days after the effective date of these Orders, Respondent shall pay to the Ohio EPA Clean Diesel School Bus Program the amount of \$2,000.00; and

- c. Within 90 days after the effective date of these Orders, Respondent shall pay to the Ohio EPA Clean Diesel School Bus Program the amount of \$2,000.00.

Payments shall be made by official checks made payable to "Treasurer, State of Ohio." The official checks shall be submitted to Brenda Case, or her successor, Ohio EPA, Office of Fiscal Administration, Department L-2711, Columbus, Ohio 43260-2711, together with a letter identifying Respondent. A copy of each check shall be submitted in accordance with Section X. of these Orders, and an additional copy of this check shall be sent to James A. Orlemann, Assistant Chief, SIP Development and Enforcement, or his successor, Ohio EPA, Division of Air Pollution Control, P.O. Box 1049, Columbus, Ohio 43216-1049.

3. Should Respondent miss a scheduled payment as described in Order Nos. 2.a., 2.b., and 2.c. of these Orders, Respondent shall pay to Ohio EPA the missed payment amount no later than 7 days after the payment was due. Payment shall be made in accordance with the procedures established in Order No. 1. A copy of each check shall be submitted in accordance with 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 Ohio EPA's Division of Hazardous Waste Management 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 Respondent. For purposes of these Orders, a responsible official is a corporate officer who is in charge of a principal business function of Respondent.

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 operation of Respondent's Facility.

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
Central District Office
Division of Hazardous Waste Management
Attn: DHWM Manager
3232 Alum Creek Drive
Columbus, Ohio 43207

and Ohio EPA Central Office at the following address:

For mailings, use the post office box number:

Joseph P. Koncelik, Director
Ohio Environmental Protection Agency
Lazarus Government Center
Division of Hazardous Waste Management
P.O. Box 1049
Columbus, Ohio 43216-1049
Attn: Manager, Compliance Assurance Section

For deliveries to the building:

Joseph P. Koncelik, Director
Ohio Environmental Protection Agency
Lazarus Government Center
Division of Hazardous Waste Management
122 South Front Street
Columbus, Ohio 43215
Attn: Manager, Compliance Assurance Section

or to such persons and addresses as may hereafter be otherwise specified in writing by Ohio EPA.

XI. RESERVATION OF RIGHTS

Ohio EPA reserves its rights to exercise its lawful authority to require Respondent to perform closure as well as corrective action at the Facility at some time in the future, pursuant to ORC Chapter 3734. or any other applicable law. Respondent reserves its rights to raise any administrative, legal or equitable claim or defense with respect to any final action of the Director regarding such closure or corrective action. Ohio EPA and Respondent each reserve all other 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. Except for the rights to seek closure of hazardous waste units and corrective action at the Facility, which rights Ohio EPA does not waive, 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

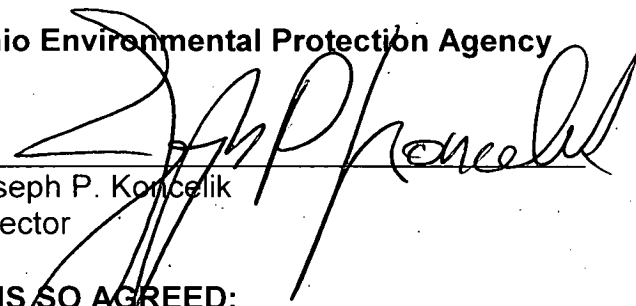
The effective date of these Orders is the date these Orders are entered into the Ohio EPA Director's journal.

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

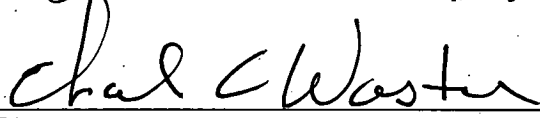


Joseph P. Koncelik
Director

5/19/06
Date

IT IS SO AGREED:

C.J. Mahan Construction Company



Signature

4/27/06
Date

CHARLES C. WOOSTER
Printed or Typed Name

VICE PRESIDENT
Title



State of Ohio Environmental Protection Agency

STREET ADDRESS:

Lazarus Government Center
122 S. Front Street
Columbus, Ohio 43215

TELE: (614) 644-3020 FAX: (614) 644-3184
www.epa.state.oh.us

MAILING ADDRESS:

P.O. Box 1049
Columbus, OH 43216-1049

June 20, 2006

RE: Director's Final Findings and Orders
Dayton Power and Light Company,
Hutchings Generating Station - OEPA
Permit No. 0IB00004*ID

Daniel W. Sweeney, Manager
Dayton Power & Light Company, O.H. Hutchings Generating Station
9200 Chautauqua Road
Miamisburg, Ohio 45342

Transmitted herewith is one copy of the Director's Final Findings and Orders in the referenced matter.

You are hereby notified that this action of the Director is final and may be appealed to the Environmental Review Appeals Commission pursuant to Section 3745.04 of the Ohio Revised Code. The appeal must be in writing and set forth the action complained of and the grounds upon which the appeal is based. It must be filed with the Environmental Review Appeals Commission within thirty (30) days after notice of the Director's action. A copy of the appeal must be served on the Director of the Ohio Environmental Protection Agency and the Environmental Law Division of the Office of the Attorney General within three (3) days of filing with the Commission. An appeal may be filed with the Environmental Review Appeals Commission at the following address:

Environmental Review Appeals Commission
309 South Fourth Street, Room 222
Columbus, Ohio 43215

Patti Smith, Supervisor
Permit Processing Unit
Division of Surface Water

PS/mlm

Certified Mail

cc: George Elmaraghy, DSW
Mark Mann, DSW
Rick Shoemaker, SWDO
Journal Room
File

Bob Taft, Governor
Bruce Johnson, Lieutenant Governor
Joseph P. Koncelik, Director

OHIO E.P.A.

JUN 20 2006

Date Issued: June 20, 2006

Date Effective: June 20, 2006

ENTERED DIRECTOR'S JOURNAL

**BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY**

In the matter of: : Director's Final Findings
Cooling Water Additive Request : And Orders

Pursuant to the Ohio Revised Code Section 6111.03(H)(4), the Director of the Ohio Environmental Protection Agency (Ohio EPA) hereby makes the following Findings and issues the following Orders:

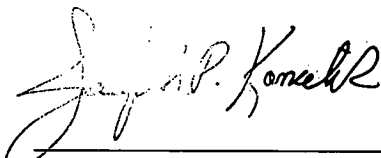
FINDINGS

1. The Dayton Power & Light Company owns and operates the O. M. Hutchings Station, an electric power generating station, hereinafter referred to as the "Hutchings Station", located at 9200 Chautauqua Road, Miamisburg, Ohio.
2. The Hutchings Station currently holds an NPDES permit (No. 0IB00004*ID, OH0009261) for the discharge of wastewater to the Great Miami River.
3. Part II, Other Requirements, E. of the aforementioned NPDES permit requires that, "In the event that the permittee's operation shall require the use of a cooling water treatment additive, written permission must be obtained from the Ohio Environmental Protection Agency. The permittee shall demonstrate that the use of the additive in the concentrations expected will not be harmful or inimical to aquatic life as determined by acute static bioassays."
4. On April 10, 2006, the Hutchings Station applied to the Ohio EPA to receive written permission for the use of the cooling water treatment additive Nalco H-130 in the cooling water systems for zebra mussel and Asiatic clam control.
5. The proposed discharge concentration contained in the final effluent entering the Great Miami River from outfall 0IB00004001 is 0.0 milligrams per liter (mg/l).
6. The static acute bioassay information contained in the Hutchings Station's April 10, 2006 application adequately demonstrates that the proposed discharge concentration shown above in Finding #5 should not be harmful or inimical to aquatic life, as determined by the procedures in OAC Rule 3745-1-36 and OAC Chapter 3745-2.
7. 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 Chapter 6111 of the Ohio Revised Code.

ORDERS

1. The proposed use of the cooling water additive Nalco H-130 at the Hutchings Station is approved and is subject to compliance with all applicable laws, regulations, standards, and the conditions contained herein.
 - a. The application of Nalco H-130 at the Hutchings Station shall be limited to no more than two treatments per year.
 - b. Since the detection level for Nalco H-130 is greater than the levels of concern for this product based upon waste load allocation analysis, Nalco coagulant aid 35 shall be added to the wastewater whenever it has been treated with Nalco H-130 prior to discharge to the Great Miami River.
 - c. During each treatment, Nalco H-130 feed rates must be monitored so that the concentration of the active ingredient remains consistent throughout the treatment. In addition, the discharge of treated wastewater shall be monitored for Nalco H-130 to ensure that concentrations remain below detectable values.
2. In order to make an alternative proposal, or if additional cooling water additives are needed, a separate request must be submitted to the Ohio EPA, Division of Surface Water, Water Resources Management Section, Industrial Permits Unit.
3. The cooling water additive treatment program may only be applied in accordance with the proposal approved by the Director of the Ohio Environmental Protection Agency. There may be no deviation from the approved proposal without the express, written approval of the Agency. Any deviation from the proposal or the above conditions may lead to revocation of these Findings and Orders and/or other sanctions and penalties provided under Ohio law. Approval of this proposal does not constitute an assurance that the cooling water additive treatment program will operate in compliance with all Ohio laws and regulations. Additionally, the terms and conditions of this approval do not relieve a permitted facility from complying with all monitoring requirements and effluent limitations that have been established in its NPDES permit.



Joseph P. Koncelik
Director

June 20, 2006

Date