

OHIO E.P.A.

NOV -3 2005

ENTERED DIRECTOR'S JOURNAL

BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

Pinnacle Gas Producers, L.L.C.
4220 Pinnacle Road
Dayton, Ohio 45418

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 Pinnacle Gas Producers, L.L.C. (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 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

The Director of Ohio EPA has determined the following findings:

1. Respondent operates a facility located at 4220 Pinnacle Road, in Dayton, Montgomery County (Facility). At the Facility, Respondent produces usable

methane from the processing of landfill gases. Respondent was authorized to do business in Ohio on December 26, 2001.

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 OHR000030346.
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 a large quantity generator of hazardous waste. The hazardous wastes generated by Respondent at the Facility include spent solvents (F003), sludge (D002) and hazardous wastes generated from the oil/water separator (D001, D005).
5. On March 29, 2004, Ohio EPA conducted an inspection at the Facility. As a result of this inspection, Ohio EPA determined that Respondent had, *inter alia*:
 - a. Failed to conduct personnel training and failure to ensure that the emergency coordinator is thoroughly familiar with the contingency plan, in violation of OAC rules 3745-65-16 and 3745-65-55;
 - b. Failed to conduct weekly inspections of emergency equipment and container accumulation areas, in violation of OAC rules 3745-65-33 and 3745-66-74;
 - c. Failed to label and date containers of hazardous waste, in violation of OAC rule 3745-52-34(A)(2) and (3);
 - d. Failed to list emergency equipment in the contingency plan, in violation of OAC rule 3745-65-52(E);
 - e. Failed to manifest shipments of hazardous waste and failed to properly package, label, mark and placard shipments of hazardous waste, in violation of OAC rules 3745-52-20 and 3745-52-30 through 3745-52-33; and
 - f. Failed to properly evaluate hazardous waste streams, in violation of OAC rule 3745-52-11.

6. On March 30, 2004, Ohio EPA received a fax from Respondent which included copies of manifests, a training certificate and analytical results from the oil/water separator waste.
7. On April 1, 2004 and April 5, 2004, Ohio EPA met with Respondent to discuss the violations listed in Finding No. 5.
8. By letter dated April 22, 2004, Ohio EPA sent a notice of violation letter to Respondent regarding the violations referenced in Finding No. 5. of these Orders.
9. After receiving waste profile information, Ohio EPA notified Respondent, by letter dated May 27, 2004, that further information is needed to address the violation referenced in Finding No. 5.f.
10. On August 5, 2004, Respondent submitted a process description to Ohio EPA via email.
11. By letter dated August 30, 2004, Ohio EPA notified Respondent that based upon the process description submitted to Ohio EPA on August 5, 2004, the wastes generated from the S-12 and frac tanks at the Facility are spent solvents and therefore F003 hazardous wastes.
12. By letter dated September 22, 2004, Ohio EPA notified Respondent that the violations referenced in Finding Nos. 5.a., 5.b., 5.c. and 5.d. had been abated.
13. By letter dated December 13, 2004, Ohio EPA notified Respondent that Respondent had been using the frac tank in a manner in which the frac tank is considered a tank system and not a container and as such Respondent had to comply with all applicable hazardous waste tank standards contained in OAC rules 3745-66-90 through 3745-66-992.
14. By letter dated January 26, 2005, Respondent submitted documentation demonstrating that the violation referenced in Finding No. 5.e. had been abated.
15. By letter dated February 9, 2005, Respondent submitted a response to Ohio EPA's December 13, 2004 letter. In this letter Respondent indicated that on December 29, 2004, Respondent temporarily changed the frac tank to a double walled frac tank. Respondent has since terminated the use of the frac tank as a storage tank and has resumed discharging the waste stream to the sewer system consistent with Respondent's revised indirect discharge

permit issued by Montgomery County. In this same letter, Respondent indicated that generator closure for the frac tank will be completed by March 31, 2005.

16. By letter dated March 25, 2005, Respondent submitted sampling data demonstrating that the violation referenced in Finding No. 5.f. had been abated.
17. By letter dated June 3, 2005, Ohio EPA certified generator closure of the frac tank referenced in Finding No. 15.

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 \$19,000 in settlement of Ohio EPA's claims for civil penalties, which may be assessed pursuant to ORC Chapter 3734., in accordance with the following provisions:
 - a. Within 30 days after the effective date of these Orders, Respondent shall pay Ohio EPA the amount of \$11,400 in settlement of Ohio EPA's claims for civil penalties which will be deposited into the hazardous waste cleanup fund established pursuant to ORC § 3734.28. Payment shall be made by an official check made payable to "Treasurer, State of Ohio" for \$11,400. The official check shall be submitted to Ohio EPA, Office of Fiscal Administration, P.O. Box 1049, Columbus, Ohio 43216-1049, together with a letter identifying Respondent. A copy of this check shall be submitted in accordance with Section X. of these Orders.
 - b. Within 30 days after the effective date of these Orders, and in lieu of payment of \$3,800 of the above civil penalty settlement, Respondent shall implement a supplemental environmental project (SEP). The SEP shall consist of a one-time contribution in the amount of \$3,800 to the Bowling Green State University mercury reclamation program. Payment shall be made by an official check made payable to BGSU Foundation, Inc. (Account 30-000633). A copy of this check shall be submitted in accordance with Section X. of these Orders.
 - c. Should Respondent fail to fund the SEP within the required time frame established in Order No. 1.b. of these Orders, Respondent shall pay to Ohio EPA within 7 days of failing to comply with Order No. 1.b.

the amount of \$3,800 in accordance with the procedures in Order No. 1.a.

- d. In lieu of paying the remaining \$3,800 of the civil penalty to Ohio EPA, Respondent shall fund an additional SEP by making a contribution in the amount of \$3,800 to the Ohio EPA Clean Diesel School Bus Program (Fund 5CD). Respondent shall make the payment within 30 days after the effective date of these Orders by tendering an official check made payable to "Treasurer, State of Ohio" for \$3,800. The official check shall be submitted to Brenda Case, or her successor, Ohio EPA, Office of Fiscal Administration, P.O. Box 1049, Columbus, Ohio 43216-1049, together with a letter identifying Respondent. A copy of this 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.
- e. Should Respondent fail to fund the SEP within the required time frame established in Order No. 1.d., Respondent shall pay to Ohio EPA within 7 days of failing to comply with Order No. 1.d. the amount of \$3,800 in accordance with the procedures in Order No. 1.a.

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
Southwest District Office
Division of Hazardous Waste Management
401 East Fifth Street
Dayton, Ohio 45402-2911
Attn: DHWM Manager

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 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, 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

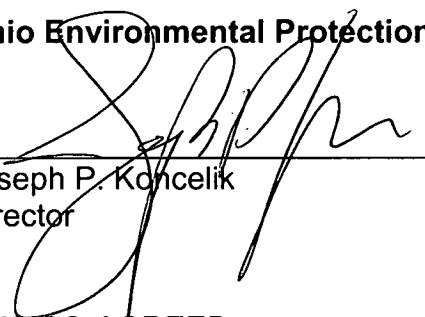
The effective date of these Orders is the date these Orders are entered into the Ohio EPA Director's journal.

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

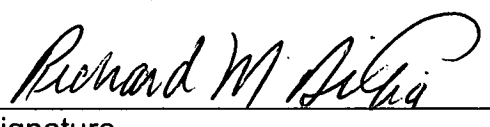


Joseph P. Koncelik
Director

NOV 3 2005
Date

IT IS SO AGREED:

Pinnacle Gas Producers, L.L.C.



Signature

October 10, 2005
Date

RICHARD M DiGLIA
Printed or Typed Name

VICE PRESIDENT
Title