

OHIO E.P.A.

OCT 14 2009

ENTERED DIRECTOR'S JOURNAL

Effective Date OCT 14 2009

BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

DIRECTOR'S FINAL
FINDINGS AND ORDERS

Buckingham Coal Company, Inc. :
21525 State Route 13 :
Glouster, Ohio 43752 :

Respondent,

PREAMBLE

It is agreed by the parties hereto as follows:

I. JURISDICTION

These Director's Final Findings and Orders (Orders) are issued to the Buckingham Coal Company, Inc. (Respondent) pursuant to the authority vested in the Director of the Ohio Environmental Protection Agency (Ohio EPA) under Ohio Revised Code (ORC) Chapter 6111 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's Facility, as outlined in Finding #1, 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 6111 and the rules promulgated thereunder.

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.

{00632791.DOC;1 }

By: [Signature] Date: 10-14-09

IV. FINDINGS

The Director of Ohio EPA (Director) has determined the following findings:

1. Respondent owns and has operated two (2) injection wells classified as Class V injection wells, as defined by Ohio Administrative Code (OAC) Rule 3745-34-04(E), which are located at 21525 State Route 13, Glouster (Trimble Township, Athens County), Ohio 43752 (Facility).
2. On April 19, 2007, Respondent met with Ohio EPA, Underground Injection Control (UIC) staff to discuss Respondent's need for Class V wells at the Facility and the application process for Class V injection well permits. Respondent informed Ohio EPA, UIC that the purpose of the proposed Class V wells was to inject slurry consisting of water and fine coal reject from a portable barrel washer to the mined out portion of the Middle Kittanning coal seam.
3. During the April 19, 2007 meeting, pursuant to ORC § 6111.043 and OAC Rule 3745-34-06, Ohio EPA, UIC informed Respondent that Class V well installation activities could not commence prior to Director's issuance of Class V injection well permits.
4. On August 7, 2007, Respondent submitted to Ohio EPA an application for an UIC Class V Area Permit to Drill (PTD) and an application for an UIC Class V Area Permit to Operate (PTO).
5. On August 21, 2007, Respondent was sent a letter by Ohio EPA detailing inadequacies in the PTD and PTO applications submitted by Respondent.
6. On September 24, 2007, Respondent submitted revised UIC Class V Area PTD and UIC Class V Area PTO applications.
7. On January 25, 2008, the Director issued Respondent a UIC Class V Area PTD, Ohio Permit No. UIC-05-05-05-PTD-V, and an UIC Class V Area PTO, Ohio Permit No. UIC-05-05-05-PTO-V. Both permits were effective January 25, 2008, and copies of the permits are attached as Appendix A.
8. On January 5, 2009, Ohio EPA, UIC telephoned Respondent to determine if the injection wells had been installed. Respondent confirmed that injection had been occurring, but was unable to provide information concerning the date injection began or when the injection wells were installed.

9. On January 14, 2009, Ohio EPA, UIC sent Respondent a Notice of Violation (NOV) stating that Respondent was in violation of ORC § 6111.07(A) and the PTD and PTO. Ohio EPA, UIC requested that all required plans and reports in the PTD and PTO be submitted by Respondent within thirty (30) days of receipt of the NOV.
10. On February 24, 2009, Ohio EPA, UIC was contacted by Respondent's attorney Christopher Jones; Mr. Jones stated that he advised Respondent sometime during the week of February 16, 2009 to cease injection into the Class V wells until the permit situation was resolved. Respondent's Post-Construction Report, dated February 27, 2009, states that injection ceased on February 19, 2009.
11. On March 2, 2009, Strategic Environmental and Ecological Services, Respondent's consultant, submitted to Ohio EPA a copy of an invoice from Mine Services, Inc. which evidenced that construction of an injection well at Respondent's Facility began on November 5, 2007 and was completed on November 7, 2007.
12. On March 10, 2009, Strategic Environmental and Ecological Services informed Ohio EPA that further discussions with Respondent yielded additional invoices from Mine Services, Inc. which documented that an additional injection well was installed at Respondent's Facility on October 31, 2007.
13. In accordance with OAC Rule 3745-34-06, any underground injection, except as authorized by permit or rule issued under OAC Chapter 3745-34, is prohibited. The construction of any well required to have a permit is prohibited until the permit has been issued.
14. In accordance with OAC Rule 3745-34-13(A)(3), no person shall inject industrial wastes or other wastes, into or above an underground source of drinking water (USDW) without first obtaining a UIC PTD, where applicable, and a PTO under OAC Rule 3745-34-16.
15. In accordance with OAC Rule 3745-34-16(A), except for owners of Class V wells authorized by rule in accordance with OAC Rule 3745-34-13, all underground injection wells are prohibited unless authorized by permit.
16. In violation of OAC Rules 3745-34-06, 3745-34-13(A)(3), and 3745-34-16(A), Respondent failed to obtain the necessary permits prior to installing two (2) UIC Class V injection wells and beginning operation of one (1) UIC Class V injection well.
17. In accordance with OAC Rule 3745-34-16(E)(10), permittees shall provide in the permit application the type of drilling equipment to be used. Respondent stated in its permit application that a rotary air drill would be used to drill the bore hole and

install the steel casing.

18. In violation of OAC Rule 3745-34-16(E)(10), Respondent provided information to Ohio EPA on February 24, 2009, that indicated that the well was not drilled as proposed in its permit application as the well was jetted in with water. Respondent failed to notify Ohio EPA of the change in the proposed drilling method.
19. In accordance with OAC Rule 3745-34-26(A), a permittee shall comply with all conditions of the permit. Any permit noncompliance constitutes a violation of ORC §§ 6111.043 and 6111.044 and is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or for denial of a permit renewal application.
20. In violation of OAC Rule 3745-34-26(A), Respondent failed to comply with the conditions of its Ohio Permit Nos. UIC-05-05-05-PTD-V and UIC-05-05-05-PTO-V, issued January 25, 2008 (The Permits).
21. A special condition of The Permits (Part II, Special Permit Conditions, A. Well Construction and Completion) requires that Respondent notify Ohio EPA in writing thirty (30) days prior to installation of each injection well; and within thirty (30) days of completion of each injection well and prior to use of each well, Respondent shall submit a construction report providing the actual well construction details including detailed, as-built drawings to scale for each well.
22. In violation of the special condition of The Permits (Part II, Special Permit Conditions, A. Well Construction and Completion), Respondent failed to notify Ohio EPA in writing thirty (30) days prior to installation of each injection well; and within thirty (30) days of completion of each injection well and prior to use of each well, Respondent failed to submit a construction report providing the actual well construction details including detailed, as-built drawings to scale for each well.
23. A special condition of The Permits (Part II, Special Permit Conditions, C. General) requires Respondent to demonstrate that the wells shall be constructed in such a manner that prevents the migration of injected fluid or mine water into USDW above, below or adjacent to the injection formation if that fluid may cause a violation of any primary drinking water regulation under OAC Chapter 3745-81 or may otherwise adversely affect the health of any person.
24. In violation of the special condition of The Permits (Part II, Special Permit Conditions, C. General), Respondent failed to demonstrate that the wells were constructed in such a manner that prevents the migration of injected fluid or mine water into USDW above, below or adjacent to the injection formation.
25. A special condition of The Permits (Part II, Special Permit Conditions, D. Well

- Operations 1. Injectate Quality) requires that Respondent shall monitor injectate quality in accordance with the schedule and parameter list established in Part II, Special Permit Conditions, E. Monitoring of The Permits.
26. A special condition of The Permits (Part II, Special Permit Conditions, E. Monitoring 1. Injected Fluids. To be monitored) requires that Respondent shall monitor with the following schedule and parameter list:
- a. Daily measure flow rate for each working day. Daily measured flow rate and monthly average shall be reported for each well in a monthly report.
 - b. Total solids, total dissolved solids, total iron, total manganese, arsenic, cadmium, chromium, lead, total acidity, total alkalinity, conductivity, pH and sulfate; reported monthly;
 - c. Quarterly for calcium, magnesium, sodium, carbonate, bicarbonate, chloride, cyanide, fluoride, nitrate, total dissolved solids, potassium, barium, boron, strontium, arsenic, cadmium, aluminum, antimony, cobalt, chromium, lead, mercury, phenol, selenium, silver, zinc and dissolved oxygen; reported quarterly.
27. In violation of the special conditions of The Permits (Part II, Special Permit Conditions, D. Well Operations 1. Injectate Quality and Part II, Special Permit Conditions, E. Monitoring 1. Injected Fluids. To be monitored), Respondent failed to monitor injectate quality in accordance with the schedule and parameter list established in Part II, Special Permit Conditions, E. Monitoring of The Permits (Finding #26 a through c) from the time injection began until February 10, 2009. Respondent's Post-Construction Report dated February 27, 2009 states that injection began a short time after construction of the second injection well on November 7, 2007.
28. A special condition of The Permits (Part II, Special Permit Conditions, E. Monitoring 2. Injection Zone. To be monitored) requires that Respondent shall:
- a. Within ninety (90) days of the effective date of the Permits, submit a plan for sampling and analysis of the water in the permitted injection zone. The plan shall include at a minimum: a map to scale showing the sampling location and a description of the sampling and analytical methodology.
 - b. Conduct sampling of the injection zone water and injectate according to the same parameter lists and monthly and quarterly schedules as listed in Part II(E)(1)(a) through (c) of The Permits. This monitoring shall be conducted to provide direct evidence that the injection operation complies with OAC Rule 3745-34-07(A) which prohibits the movement of fluid containing any contaminant into a USDW.

29. In violation of the special condition of The Permits (Part II, Special Permit Conditions, E. Monitoring 2. Injection Zone. To be monitored), Respondent failed to submit plan for sampling and analysis of the water in the permitted injection zone and failed to conduct sampling of the injection zone water.
30. A special condition of The Permits (Part II, Special Permit Conditions, F. Reporting) requires that Respondent shall submit monitoring reports by the 15th day of the month following each month that monitoring results are required in accordance with schedules described in Part II(E) of The Permits.
31. In violation of the special condition of The Permits (Part II, Special Permit Conditions, F. Reporting), Respondent failed to submit the required monitoring reports by the 15th day of the month following each month that monitoring results are required in accordance with schedules described in Part II(E) of The Permits from the time injection began, shortly after November 7, 2009, until the present.
32. On March 31, 2009, Respondent submitted the Revised Post-Construction Report, dated March 23, 2009. Ohio EPA, UIC reviewed the report and determined it to be substantively inadequate as outlined in the comments attached as Appendix B.
33. On March 31, 2009, Respondent submitted the Sampling and Analysis Plan (SAP), dated March 25, 2009. Ohio EPA, UIC reviewed the SAP and determined it to be substantively inadequate as outlined in the comments attached as Appendix C.
34. On April 2, 2009, Ohio EPA, UIC conducted an inspection of Respondent's Facility. Ohio EPA, UIC did not observe any injection of slurry taking place into the wells during this inspection visit.
35. Pursuant to ORC § 6111.07(A), no person shall violate or fail to perform any duty imposed by ORC § 6111.01 or violate any order, rule, or term or condition of a permit issued or adopted by the Director pursuant to those sections. Each day of violation is a separate offense.
36. Pursuant to ORC § 6111.044, the Director may issue orders to prevent or require cessation of violations of this section, ORC §§ 6111.043, 6111.045, 6111.046, or 6111.047, rules adopted under any of those sections, and the terms or conditions of permits issued under any of them. The orders may require the elimination of conditions caused by the violation.
37. Pursuant to OAC Rule 3745-34-18(D), the Director may terminate a Class V injection well area permit under OAC Rule 3745-34-24, or take enforcement action

upon a finding that any well authorized by the permit is not in compliance with the terms of the permit.

38. Pursuant to OAC Rule 3745-34-24, the Director may terminate a permit during its term for noncompliance by the permittee with any condition of the permit, the permittee's failure in the application or during the permit issuance process to disclose fully all relevant facts, or the permittee's misrepresentation of any relevant facts at any time.
39. 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 ORC Chapter 6111.

V. ORDERS

1. Within forty-five (45) days from the effective date of these Orders and prior to the recommencement of any injection activities at the Facility, Respondent shall submit to Ohio EPA for review and acceptance, at the address listed in Section X, a revised SAP along with the Quality Assurance Project Plan. At a minimum the revised SAP shall include required test parameters for both monthly and quarterly sampling frequencies at the following sampling sites:
 - a. Monitoring well # 1 located at approximately N 0551248.9 E 2088838.78
 - b. Monitoring well # 2 located at approximately N 0552455.84 E 2089514.82
 - c. Monitoring well # 3 located at approximately N 0551856.19 E 2087975.59 [Monitoring well # 3 shall be installed within forty-five (45) days of receipt of the approved Incidental Boundary Revision (IBR) to Ohio Department of Natural Resources D-1163 Permit (Surface), unless an alternative timeframe is otherwise approved by Ohio EPA due to weather issues. The request for the IBR shall be applied for within thirty (30) from the effective date of these Orders.]
 - d. Water production well located at approximately N 0553662.79 E 2087543.99
2. Upon the effective date of these Orders, Respondent shall comply with all provisions, including any modifications thereto, of Respondent's UIC Permit to Drill and Permit to Operate Class V Injection Wells, Ohio Permit Nos. UIC 05-05-05-PTD-V and UIC 05-05-05-PTO-V.
3. Within forty-five (45) days from the effective date of these Orders, Respondent shall submit a Closure Plan for closure of the two (2) Class V injection wells at the Facility, UIC Well #1 located N 0552426.16 E 2089559.24 (Well #1) and UIC Well

#2 located N 0552047.56 E 2088878.18 (Well #2), in accordance with OAC Rule 3745-34-11(N).

4. Within sixty (60) days from the effective date of these Orders, Respondent shall submit a report to Ohio EPA, at the address listed in Section X, containing the following information:
 - a. The approximate date(s) that Respondent commenced injection into the Well #2 and the approximate date when injection ceased.
 - b. The estimated total volume of coal slurry injected during this period based on the total amount of coal processed minus the total of coarse refuse disposed of during the period.
 - c. The current chemical quality of the mine pool water. This shall include analysis data from both the water production well, if it is completed in the mine pool, and from Well #1.
 - d. The current chemical quality of the coal slurry produced by Respondent.
 - e. A description of the hydrology of the mine pool that the coal slurry is being deposited into.
 - f. Sampling information from Well #1 from Respondent's production facility, a determination if coal slurry has migrated to that part of the mine and, if so, to what depth.
5. Within sixty (60) days from approval of the Closure Plan, Respondent shall close the two (2) Class V injection wells at the Facility, identified in Order #3, in accordance with the approved Closure Plan and OAC Rule 3745-34-11(N).
6. Within thirty (30) days of closure of the two (2) Class V injection wells in Order #3, Respondent shall certify in a report to the Director, in accordance with OAC Rule 3745-34-17, that the two (2) Class V injection wells at the Facility were closed in compliance with OAC Rule 3745-34-11 and the approved Closure Plan.
7. Within thirty (30) days of notification, Respondent shall respond in writing to address any comments or deficiencies noted by Ohio EPA on any documentation submitted by Respondent under these Orders.
8. Respondent shall pay the amount of thirteen thousand four hundred six dollars and forty cents (\$13,406.40) in settlement of Ohio EPA's claim for civil penalties, which may be assessed pursuant to ORC Chapter 6111. Within thirty (30) days of the effective date of these Orders, payment to Ohio EPA shall be made by official check made payable to "Treasurer, State of Ohio" for ten thousand seven hundred twenty five dollars and twelve cents (\$10,725.12) of the total amount. The official check shall be submitted to Brenda Case, or her successor, together with a letter identifying the Respondent, to:

Ohio EPA
Office of Fiscal Administration
P.O. Box 1049
Columbus, Ohio 43216-1049

9. In lieu of paying the remaining two thousand six hundred eighty one dollars and twenty eight cents (\$2,681.28) of the civil penalty, Respondent shall within thirty (30) days of the effective date of these Orders, fund a Supplemental Environmental Project (SEP) by making a contribution in the amount of two thousand six hundred eighty one dollars and twenty eight cents to the Ohio EPA's Clean Diesel School Bus Fund (Fund 5CD). Respondent shall tender an official check made payable to "Treasurer, State of Ohio" for two thousand six hundred eighty one dollars and twenty eight cents. The official check shall be submitted to Brenda Case, or her successor, with a letter identifying the Respondent, to:

Ohio EPA
Office of Fiscal Administration
P.O. Box 1049
Columbus, Ohio 43216-1049

10. Should Respondent fail to fund the SEP within the required timeframe set forth in Order #9, Respondent shall pay to Ohio EPA two thousand six hundred eighty one dollars and twenty eight cents (\$2,681.28) of the civil penalty in accordance with the procedures in Order #8.

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 DDAGW 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 as defined in OAC Rule 3745-33-03(E).

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
Division of Drinking and Ground Waters
Lazarus Government Building
P.O. Box 1049
Columbus, Ohio 43216-1049

Attn: Kenneth Baughman

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.

Appendix A

**Ohio Environmental Protection Agency
Division of Drinking and Ground Waters
Underground Injection Control 5X13 Area Permit to Drill and
Area Permit to Operate Class V Injection Wells**

**Buckingham Coal Company, Inc.
Ohio Permit Nos.
UIC-05-05-05-PTD-V
UIC-05-05-05-PTO-V**

OHIO E.P.A.

JAN 25 2008

OHIO ENVIRONMENTAL PROTECTION AGENCY
DIVISION OF DRINKING AND GROUND WATERS - NTI RED DIRECTOR'S JOURNAL
UNDERGROUND INJECTION CONTROL 5X13 AREA PERMIT TO DRILL AND
AREA PERMIT TO OPERATE CLASS V INJECTION WELLS

Ohio Permit Nos. UIC 05-05-05-PTD-V
UIC 05-05-05-PTO-V

Applicant: Buckingham Coal Company, Inc.
Address: 21525 State Route 13
Glouster, Ohio
Telephone: (740) 767-9902
Facility Name: Buckingham Coal Company
Facility Location: Located at Section 10, Trimble Township, Athens
County, Glouster, Ohio
Description: Up to five (5), Class V Underground Injection
Wells to inject a slurry consisting of water and fine
coal reject from a portable barrel washer to the
mined out portion of the Middle Kittanning coal
seam.
Issuance Date: January 25, 2008
Effective Date: January 25, 2008
Expiration Date: January 25, 2013

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.

By:  Date: 1-25-08

The above named applicant is hereby ISSUED an Area Permit to Drill and an Area Permit to Operate for the above described underground injection well pursuant to Sections 6111.043 and 6111.044 of the Ohio Revised Code and to Chapter 3745-34 of the Ohio Administrative Code. Issuance of this Area Permit to Drill and Area Permit to Operate does not constitute expressed or implied approval or agreement that, if constructed and/or modified in accordance with the specifications and/or information accompanying the permit applications, the above described activity will be in compliance with applicable State and Federal laws and rules and regulations. This Area Permit to Drill and Area Permit to Operate is issued subject to the attached conditions which are hereby incorporated and made a part hereof.

Expiration Date: This permit shall expire at midnight on the expiration date indicated above, unless terminated or modified under Chapter 3745-34 of the Ohio Administrative Code.



Chris Korleski, Director
OHIO ENVIRONMENTAL PROTECTION AGENCY

PART I
GENERAL PERMIT COMPLIANCE

A. EFFECT OF PERMIT

The permittee is authorized to engage in the operation of a Class V underground injection well in accordance with Chapter 3745-34 of the Ohio Administrative Code (OAC) and the conditions of this permit. Notwithstanding any other provisions of these permits, the permittee shall not construct, operate, maintain, convert, plug, abandon, or conduct any other injection activity in a manner that allows the movement of injection or formation fluids into underground sources of drinking water (USDWs) if the presence of that material may cause a violation of any primary drinking water regulation under OAC Chapter 3745-81 or may otherwise adversely affect the health of persons. Any underground injection activity not specifically authorized in this permit is prohibited. Compliance with this permit during its term constitutes compliance for purposes of enforcement, exclusively with Sections 6111.043 and 6111.044 of the Ohio Revised Code (ORC). Such compliance does not constitute a defense to any action brought under ORC Sections 6109.31, 6109.32 or 6109.33 or any other common or statutory law other than ORC Sections 6111.043 and 6111.044. Issuance of this permit does not convey property rights of any sort or any exclusive privilege; nor does it authorize any injury to persons or property, any invasion of other private rights, or any infringement of state or local law. Nothing in this permit shall be construed to relieve the permittee of any duties under applicable state and federal law, regulations, or permits.

B. PERMIT ACTIONS

1. Modification, Revocation, Reissuance and Termination. The Director may, for cause or upon request from the permittee, modify, revoke and reissue, or terminate this permit in accordance with OAC Rules 3745-34-07, 3745-34-23, and 3745-34-24. Also, the permit is subject to minor modifications for cause as specified in OAC Rule 3745-34-25. The filing of a request for a permit modification, revocation and reissuance, or termination, or the notification of planned changes, or anticipated noncompliance on the part of the permittee does not stay the applicability or enforceability of any permit condition.
2. Transfer of Permits. This permit may be transferred to a new owner or operator pursuant to OAC Rule 3745-34-22, 3745-34-23, 3745-34-24, 3745-34-25(D) or 3745-34-26(L)(3), as may become applicable.

C. SEVERABILITY

The provisions of this permit are severable, and if any provision of this permit or the application of any provision of this permit to any circumstance is held invalid, the application of such provision to any other circumstances and the remainder of this permit shall not be affected thereby.

D. CONFIDENTIALITY

In accordance with OAC Rule 3745-34-03 any information submitted to the Ohio EPA pursuant to this permit may be claimed as confidential by the submitter. Any such claim must be asserted at the time of submission by stamping words "confidential business information" on each page containing such information. If no claim is made at the time of submission, the Ohio EPA may make the information available to the public without further notice. If a claim is asserted, documentation for the claim must be tendered and the validity of the claim will be assessed in accordance with the procedures in OAC Rule 3745-34-03. If the documentation for the claim of confidentiality is not received, the Ohio EPA may deny the claim without further inquiry. Claims of confidentiality for the following information will be denied:

1. The name and address of the permittee;
2. Information which deals with the existence, absence or level of contaminants in receiving water and amounts or contents of fluids injected.

E. DUTIES AND REQUIREMENTS (OAC RULE 3745-34-26)

1. Duty to Comply. The permittee shall comply with all applicable UIC regulations and conditions of this permit. Any permit noncompliance constitutes a violation of ORC Chapter 6111. and is grounds for enforcement action, permit termination, revocation and reissuance, modification, or denial of a permit renewal application. Such noncompliance also may be grounds for enforcement action under other applicable state and federal law.
2. Penalties for Violations of Permit Conditions. Any person who violates a requirement of this permit is subject to injunctive relief, civil penalties, fines and/or other enforcement action under ORC Chapter 6111. Any person who knowingly or recklessly violates permit conditions may be subject to criminal prosecution.
3. Continuation of Expiring Permits. Duty to Reapply. If the permittee wishes to continue an activity regulated by this permit after the expiration date of this

permit, the permittee shall submit a complete application for a new permit at least 180 days before expiration of this permit.

4. Need to Halt or Reduce Activity Not a Defense. It shall not be a defense, for a permittee in an enforcement action, that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.
5. Duty to Mitigate. The permittee shall take all reasonable steps to minimize or correct any adverse impact on the environment resulting from noncompliance with this permit.
6. Proper Operation and Maintenance. The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the permittee to achieve compliance with the conditions of this permit. Proper operation and maintenance includes effective performance, adequate funding, adequate operator staffing and training, and adequate laboratory and process controls, including appropriate quality assurance procedures. This provision requires the operation of back-up or auxiliary facilities or similar systems only when necessary to achieve compliance with the conditions of this permit.
7. Duty to Provide Information. The permittee shall furnish to the Director, within a time specified, any information which the Director may request in order to determine whether cause exists for modifying, revoking and reissuing, or terminating this permit, or to determine compliance with the permit. The permittee shall furnish to the Director, upon request, copies of all records required to be kept by the permittee.
8. Inspection and Entry. The permittee shall allow the Director, or an authorized representative, upon the presentation of credentials and other documents as may be required by law to:
 - a. Enter permittee's premises where a regulated facility or activity is located or conducted, or where records are kept under the conditions of this permit;
 - b. Have access to and copy, at reasonable times any records that are required to be kept under the conditions of this permit;
 - c. Inspect at reasonable times any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under this permit; and

- d. Sample or monitor at reasonable times for the purposes of assuring permit compliance or as otherwise authorized by ORC Chapter 6111. and OAC Chapter 3745-34, any substances or parameters at any location.

9. Records.

- a. The permittee shall retain records of all monitoring information, including all calibration and maintenance records and all reports required by this permit for a period of at least five (5) years from the date of the sample, measurement or report or for the duration of the permitted life of the well, whichever is longer.
- b. The permittee shall maintain records of all data used to complete the permit application forms and any supplemental information submitted under OAC Rule 3745-34-16 for a period of at least five (5) years from the date the applications were signed. These periods may be extended by request of the Director during that period of time.
- c. The permittee shall retain records concerning the nature and composition of all injected fluids for three (3) years after completion of plugging and abandonment of the well.
- d. The permittee shall continue to retain such records after the retention period specified by paragraphs (a) to (c) above, unless he delivers the records to the Director or obtains written approval from the Director to discard the records.
- e. Samples and measurements taken for the purpose of monitoring shall be representative of the monitored activity.
- f. Records of monitoring information shall include the following as applicable pursuant to OAC Rule 3745-34-26(J)(3):
 - i. The date, exact place, and time of sampling or measurements;
 - ii. The name(s) of the individual(s) who performed the sampling or measurements;
 - iii. A precise description of sampling methodology;
 - iv. The date(s) analyses or measurements were performed;
The name(s) of the individual(s) who performed the analyses or measurements and the laboratory that performed the analyses or measurements;

vi. The analytical techniques or methods used; and

vii. All results of such analyses.

10. Signatory Requirements.

All reports or other information, required to be submitted by these permits or requested by the Director, shall be signed and certified in accordance with OAC Rule 3745-34-17. Within thirty (30) days of the effective date of this permit, the permittee shall designate the duly authorized representative for all submissions required under this permit, in written form to the Director, in compliance with OAC Rule 3745-34-17(B)(1)-(3).

11. Reporting Requirements.

- a. Planned Changes. The permittee shall give written notice to the Director, as soon as possible, of any planned physical alterations or additions to the permitted facility. Such notice shall be given at least ten (10) days prior to the commencement of construction or implementation of any planned change. The permittee shall include as part of such written notice to the Director justification of any planned physical alterations to the permitted well.
- b. Anticipated Noncompliance. The permittee shall give advance notice to the Director of any planned changes in the permitted facility or activity which may result in noncompliance with permit requirements.
- c. Compliance Schedules. Reports of compliance or noncompliance with, or any progress reports on, interim and final requirements contained in any compliance schedule of these permits shall be submitted no later than thirty (30) days following each schedule date.
- d. Twenty-four (24) Hour Reporting.
 1. The permittee shall report to the Director any noncompliance which may endanger health or the environment. Appropriate information shall be provided orally within 24 hours from the time the permittee becomes aware of the circumstances. The following shall be included as information which must be reported orally within 24 hours:
 - i. Any monitoring or other information which indicates that any contaminant may cause an endangerment to an underground source of drinking water.

- ii. Any noncompliance with a permit condition, or malfunction of the injection system, which may cause unpermitted fluid migration into or between underground sources of drinking water.
2. A written submission also shall be provided within five (5) business days of the time the permittee becomes aware of the circumstances of such noncompliance. The written submission shall contain a description of the noncompliance and its cause; the period of noncompliance, including exact dates and times, the anticipated time it is expected to continue; and if the noncompliance has or has not been corrected, and steps taken or planned to reduce, eliminate and prevent recurrence of the noncompliance.
- e. Other Noncompliance. The permittee shall report all other instances of noncompliance not otherwise reported under paragraph (E)(11)(d) above at the time monitoring reports are submitted. The reports shall contain the information listed in permit condition 11(d)(2) above.
- f. Other Information. When the permittee becomes aware of failure to submit any relevant facts in the permit applications or that incorrect information was submitted in a permit application or in any report to the Director, the permittee shall submit such facts and corrected information within ten (10) days.
- g. If the authorization under Part I (E)(10) of this permit is no longer valid, a new authorization satisfying the requirements of OAC Rule 3745-34-17(B) and (C) shall be submitted in written form prior to or together with any reports, information or applications requiring the signature and certification of the authorized signatory.
- h. Monthly Operating Reports shall be submitted as required in Part II of this permit.

F. PLUGGING AND ABANDONMENT

1. Plan for Plugging and Abandonment. At least thirty (30) days before any well installed pursuant to this permit is taken out of service, the permittee shall submit to the Ohio Environmental Protection Agency a plan for the plugging and abandonment of such well per OAC Rule 3745-34-13(F). The required plan shall specify procedures and contain such other provisions as are necessary to ensure that no movement of fluids into an underground source of drinking water is allowed. After review and acceptance of this plan by the Ohio Environmental Protection Agency, that plan shall automatically become a condition of this permit.

2. Abandonment Requirements. Injection wells declared as temporarily abandoned shall be maintained in strict compliance with Rule 3745-9-09 of the OAC to ensure that the well will not endanger underground sources of drinking water during the period of temporary abandonment. Injection wells declared as permanently abandoned shall be plugged in accordance with Rule 3745-9-10(c) of the OAC.
3. Abandonment Report. Within thirty (30) days after abandoning the well, the permittee shall submit a report to the Director. The report shall be certified as accurate by the person who performed the abandonment operation and by the permittee and shall contain a statement defining the abandonment procedure. At a minimum, the report shall include: Surface and subsurface diagrams locating the position at which the plugs are situated (if applicable); and, a description of all casing, subsurface structures and piping left in the well or subsurface.

G. FINANCIAL RESPONSIBILITY

1. Financial Responsibility. The permittee is required to maintain financial responsibility and resources to close, plug, and abandon the underground injection operation in a manner consistent with Chapters 3745-9 and 3745-34 of the OAC. The permittee is required to show evidence of current financial responsibility to the Director in the form of a surety bond submitted within 45 days of the effective date of this permit, and once every twelve (12) months thereafter.

H. CORRECTIVE ACTION

1. The permittee shall develop a corrective action plan in the event that routine monitoring or any other information indicates that primary drinking water standards as defined in Chapter 3745-81 of the OAC, are or may be exceeded in any USDW as a result of injection activities.

Such plan shall include a determination of the nature, rate, and extent of the degradation. The Director may also require the plan to include appropriate remedial actions including, but not limited to discontinuance of injection operations.

2. The plan for corrective action shall be submitted to the Director within thirty (30) days of the date the permittee discovers evidence, or is notified by the Director, that an exceedance of one or more primary drinking water standards as defined in Chapter 3745-81 is resulting or may be resulting in a USDW from the injection well operation. The corrective action plan shall be subject to review and approval by Ohio EPA prior to implementation.

PART II
SPECIAL PERMIT CONDITIONS

A. WELL CONSTRUCTION AND COMPLETION

1. Up to five (5) injection wells may be installed through ten (10) inch diameter boreholes. The wells shall be constructed using eight (8) inch diameter steel casing extending from ground surface to approximately five (5) feet above the mine roof. From approximately five feet above the mine roof down to the mine void, the well shall be constructed of six (6) inch steel casing. Both the eight (8) inch and six (6) inch casings shall be continuously grouted from the mine void to ground surface.

Ohio EPA must be notified in writing thirty (30) days prior to the installation of each injection well. Within thirty (30) days of completion of each injection well, and prior to use of each well, Buckingham Coal Company shall submit a construction report providing the actual well construction details including detailed, as-built drawings to scale for each well.

Per OAC Rule 3745-34-21(D)(1), this permit to drill shall terminate within eighteen (18) months of the effective date of this permit if Buckingham Coal Company has not undertaken a continuing program of installation or has not entered into a binding contractual obligation to undertake and complete within a reasonable time a continuing program of installation.

2. The wells shall be constructed such that the injection zone is the mined out portion of the Middle Kittanning Coal Seam, approximately 134 to 295 feet below ground surface.

B. AGENCY INVOLVEMENT

Personnel from Ohio EPA have unrestricted right of entry to the wells during normal business hours.

C. GENERAL

The wells shall be constructed in such a manner that prevents the migration of injected fluids or mine water into underground sources of drinking water (USDWs) above, below or adjacent to the injection formation if that fluid may cause a violation of any primary drinking water regulation under OAC Chapter 3745-81 or may

otherwise adversely affect the health of any person. The applicant shall have the burden of showing that these requirements are met.

Issuance of these permits presumes compliance with all applicable sections of OAC Rules 3745-34-26, 3745-34-27, all parts of OAC Rule 3745-34-20, Effect of a Permit, and Chapter 6111. of the Ohio Revised Code (ORC).

D. WELL OPERATION

All well construction and operations shall be conducted in accordance with the specifications submitted with the applications for this permit. Activities conducted under this permit include, but are not limited to, the following:

1. Injectate Quality. The permittee shall monitor injectate quality in accordance with the schedule and parameter list established in Part II(E) of this permit. If at any time it is determined that the wells are not in compliance with OAC Rule 3745-34-07(A), the Director shall take, or require the permittee to take, corrective action in accordance with OAC Rule 3745-34-07(C).

Monitoring specified in Part II(E) of these permits shall continue throughout the term of the permit, unless such permit conditions are modified in accordance with Chapter 3745-34 of the OAC.

The data required to be collected under these permits shall be used by Ohio EPA to determine whether the Director shall require additional or modified conditions as part of continued authorization for the project under this permit. Such additional or modified conditions shall be incorporated into conditions of this permit either through minor modification in accordance with OAC Rule 3745-34-25, or for modification, or revocation and reissuance, in accordance with OAC Rule 3745-34-23. All monitoring data information collected under this permit shall be considered cause for modification or revocation and reissuance under OAC Rule 3745-34-23(A)(2).

Monitoring specified in Part II(E) of these permits shall continue throughout the term of the permit, unless such permit conditions are modified in accordance with Chapter 3745-34 of the OAC.

2. Injection Pressure Limitation. Injection pressure at each of the well heads shall be limited to atmospheric pressure (gravity flow) at all times.
3. Injection Well. The permittee shall, at all times, operate the injection wells in such a way that will not result in the migration of injected fluids or mine water into any underground sources of drinking water above, below or adjacent to the

injection zone. Only those substances listed on the cover page of these permits and as described in the Permit to Operate application shall be injected. Disposal of any other fluids, including hazardous wastes (as defined in Chapter 3745-51 of the OAC), into this well is strictly prohibited.

4. Injection Rate. Injection of fluids shall not exceed a total of 500 gallons per minute for each well.

E. MONITORING

1. Injected Fluids. To be monitored:

- a. Daily measured flow rate for each working day. Daily measured flow rate and monthly average flow rate shall be reported for each well in the monthly report.
- b. Total solids, total dissolved solids, total iron, total manganese, arsenic, cadmium, chromium, lead, total acidity, total alkalinity, conductivity, pH and sulfate; reported monthly;
- c. Quarterly for calcium, magnesium, sodium, carbonate, bicarbonate, chloride, cyanide, fluoride, nitrate, total dissolved solids, potassium, barium, boron, strontium, arsenic, cadmium, aluminum, antimony, cobalt, chromium, lead, mercury, phenol, selenium, silver, zinc and dissolved oxygen; reported quarterly.

2. Injection Zone. To be monitored:

- a. Within ninety (90) days of the effective date of these permits, the permittee shall submit a plan for sampling and analysis of the water in the permitted injection zone. The plan shall include at a minimum: a map to scale showing the sampling location and a description of the sampling and analytical methodology.
- b. Sampling of the injection zone water and injectate shall be conducted according to the same parameter lists and monthly and quarterly schedules as listed in Part II(E)(1)(a) through (c) of these permits. This monitoring shall be conducted to provide direct evidence that the injection operation complies with OAC Rule 3745-34-07(A) which prohibits the movement of fluid containing any contaminant into a USDW.

F. REPORTING

The permittee shall submit monitoring reports to the Ohio EPA, Division of Drinking and Ground Waters, Underground Injection Control Unit by the 15th day of the month following each month that monitoring results are required in accordance with schedules described in Part II(E) of this permit at the following address:

Ohio EPA
Division of Drinking and Ground Waters
Underground Injection Control Unit
50 W. Town Street, Suite 700
P.O. Box 1049
Columbus, Ohio 43216-1049

Reports shall contain information regarding types of tests and methods used to generate monitoring data, as specified in Part I(E)(9) of this permit.

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Appendix B

April 22, 2009

**Ohio EPA Comments on
Revised Post-Construction Report**

Buckingham Coal Post Construction Comments

The report submitted to Ohio EPA's Division of Drinking and Ground Waters, Underground Injection Control (UIC) Program on March 31, 2009, lacks necessary detail for Ohio EPA to be assured that these wells were installed to UIC requirements despite the fact that the wells were installed in violation of Ohio Administrative Code (OAC) Rules 3745-34-06; 3745-34-13(A)(3) and 3745-34-16(A). Specific comments are as follows:

Page 1, 1.0 INTRODUCTION

The introduction states that the Post-Construction Report describes the details associated with the installation of two (2) Class V injection wells *"authorized and constructed for the Buckingham Coal Company (Owner), per Ohio Permit Nos. UIC 05-05-05-PTD-V and UIC 05-05-05-PTO-V, issued January 25, 2008.*

The wells were not authorized by the aforementioned UIC permits because the wells were installed illegally prior to the issuance of the UIC permits. (Page 2, Section 6 DATE OF COMPLETION states that UIC well #1 was installed on October 31, 2007 and well #2 was installed on November 7, 2007.)

The introduction also states that "In addition to the UIC wells, the Buckingham Coal Company has also installed one (1) water supply well for supplying water to the Power Head Machines Barrel washer.

Ohio EPA discussions with a former Buckingham Coal Company employee, Shawn Ray on 2/11/09, indicated that three (3) wells were installed right below the pit. A pilot hole, and two injection wells. On 4/2/09, Ohio EPA staff observed what appeared to be three (3) steel well casings at the site. The first well observed was the injection well with the injection piping located near the pit on the west side of State Route 13.

On the east side of State Route 13, a steel well casing was observed covered with an overturned black plastic bucket. There was no cap on the well. Also on the east side of State Route 13, a slightly larger diameter steel casing was observed (near the conveyor system) with an overturned orange plastic barrel on top. This was not described or identified in the report. Please identify this structure.

Page 2, 5.0 OPERATING STATUS

The first paragraph of this section states that the well was never used as an injection well and that the intent of the owner is to use the well as a monitoring well.

The well should have had a locking, vented cap and not simply be covered by an overturned plastic bucket.

Paragraph 2 of this section states that UIC well #2 was put into operation shortly after construction. Please provide additional information concerning this time frame for beginning injection.

This paragraph also states that the owner will commence injection upon approval of a Sampling and Analysis Plan.

As previously stated in e-mail communications, Buckingham Coal Company may not resume injection until the Director has provided written permission to do so.

Page 2, 6.0 DATE OF COMPLETION

The report states that the wells were installed by Mine Services, Inc. out of Morristown, Ohio on 10/31/07 and 11/7/07.

How were the wells installed? What drilling method was used? Buckingham Coal Company's attorney stated that the wells were "jetted in". Additional information is needed on the installation of these wells. Copies of invoices provided in attachment 3 mention installation and grouting but there is no information as to how the casings were installed or how the grout was emplaced.

Page 3, 11.0 AVERAGE AND MAXIMUM INJECTION RATE

The report states that the average daily injection rate will be calculated using a magnetic flow meter and transmitter that has been installed on the 6" gravity feed line and that the data will be transmitted to an indoor receiver.

Where on the gravity feed line was the flow meter installed? Please provide additional details on both the flow meter and the indoor receiver.

Appendix C

April 22, 2009

**Ohio EPA Comments on
Sampling and Analysis Plan (SAP)**

Buckingham Coal Sampling and Analysis Plan (SAP) Comments

The SAP submitted to Ohio EPA's Division of Drinking and Ground Waters, Underground Injection Control (UIC) Program on March 31, 2009, has been reviewed and appears that the plan was prepared by persons completely unfamiliar with the site and the wells. The plan was obviously not prepared for Buckingham Coal Company but inadequately edited from a plan for the Newcomerstown Landfill. Specific comments are as follows:

Page 1, 1.0 INTRODUCTION

The introduction states that the SAP describes the procedures and analytical methods the Buckingham Coal Company will implement to satisfy the monitoring requirements for the installation and operation of Class V Underground Injection Control (UIC) wells, *"authorized and constructed per Ohio Permit Nos. for the Buckingham Coal Company (Owner), per Ohio Permit Nos. UIC 05-05-05-PTD-V and UIC 05-05-05-PTO-V, issued January 25, 2008.*

The wells were not authorized and constructed per the aforementioned UIC permits because the wells were installed illegally prior to the issuance of the UIC permits.

Page 1, 1.0 INTRODUCTION, 1.2 Background

The first paragraph of this section states that the well was never used as an injection well and that the intent of the owner is to use the well as a monitoring well.

There is no information provided on the construction details of this well and the suitability of the well for monitoring purposes. At a minimum, the well should have a locking, vented cap. On April 2, 2009, UIC staff conducted an inspection of the wells and observed that the well had no cap of any type and was merely covered by an overturned plastic bucket.

Page 3, 2.0 FILED METHODS AND PROCEDURES – INJECTED FLUIDS

The Table of Contents and the section title contain the word *"FILED"*.

It is unclear whether the word is intentional or if it should read : "Field". The same is true for Page 5, Section 3.0 FILED METHODS AND PROCEDURES – INJECTION ZONE.

Page 3, 2.0 FILED METHODS AND PROCEDURES – INJECTED FLUIDS

2.1 Sampling Location

The plan states that prior to discharge into the 6" gravity line, the water is held in a sump.

There are no details regarding the sump such as the construction, dimensions and capacity. How will the sample be collected at the sump?

2.2 Sample Timing

The plan states that the sample will be collected from the sump only after the Power Head Machines barrel washer and UIC well #2 has been operational for at least two (2) consecutive hours.

Please explain the significance of the barrel washer and the well being operational for two hours prior to collecting a sample from the sump.

2.4.1 Flow Rate Measurement

The report states that "a magnetic flowmeter and transmitter has been installed on the 6" gravity feedline..."

What are the equipment specifications and where on the 6" line is the flowmeter located? A certified calibration record should be submitted for the flowmeter.

Attachment 2

Sampling and Analysis Plan and Quality Assurance Project Plan

Page 4, INTRODUCTION, Section 1.1 Purpose

"This site sampling and analysis plan is written for the Buckingham Coal Company."

The header on pages 4–15 reads "SAP – Buckingham Coal Company". The header on pages 16–28 reads "SAP Newcomerstown Landfill". The plan was not written for Buckingham Coal Company.

The plan states that "Observations should include the condition of the well protector; any degradation in the lock and hasp; evidence of frost heaving, vandalism, insect or animal intrusion; and any degradation in the condition of the well cap..."

On April 2, 2009, UIC staff observed an unevenly cut off piece of 6" steel well casing with an overturned plastic bucket resting on top. There is no well protector, lock and hasp or well cap.

Page 7, Section 3: FIELD SAMPLING, Section 3-2: Measurement of Ground Water Elevations

The plan states that "ground water will be measured in all wells..."

The plan should read "ground water will be measured in the well..."

The plan states "The black mark at the top of the PVC well casing, will always be the reference measuring point."

The casing is steel.

Page 7, Section 3: FIELD SAMPLING, Section 3-3: Well evacuation

Why is there a reference to purge volume for each well? What are the calculations to purge three well volumes given the fact that the only well is 6" open hole into a mine void. These instructions do not seem appropriate for collecting a sample from the coal mine. Why isn't a bailer to be used rather than a Grundfos Redi Flow 2 pump? What are the equipment specifications for this pump?

Page 8, Section 3-3: Detection of Immiscible Layers

The plan states "The presence of any immiscible layers will be determined..."

Why is there a reference to immiscible layers? Has something other than water and coal fines been injected?

Page 9, Section 3-7: Sampling Parameters

The plan states that "Approved analytical methods for each parameter and PQL are summarized on Table 4.6 attachment."

Nearly half of the parameters listed in Table 4.6 indicate analytical methods that are not approved for drinking water analyses. Parameters must be analyzed in accordance with Drinking Water Regulations using methods listed in OAC Rule 3745-81-27.