

OHIO E.P.A.
JUL 17 2002
ENTERED DIRECTOR'S JOURNAL

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**BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY**

IN THE MATTER OF:

Apex Energy, Inc.	:	Director's Final
Attn: David Krulock	:	Findings and Orders
P. O. Box 1298	:	
Steubenville, Ohio 43952	:	

Pursuant to Section 3734.02(A) of the Ohio Revised Code (ORC), the Director of Environmental Protection hereby makes the following Findings and issues the following Orders.

FINDINGS

- Apex Energy, Inc. (Apex) is the owner and permittee of the Apex Sanitary Landfill, a proposed municipal solid waste landfill. The landfill is to be located east of Jefferson County Road 78 and Harrison County Road 51 approximately one mile north of State Route 646 on a 1741-acre property in Springfield Township, Jefferson County, Ohio. The Ohio Environmental Protection Agency (Ohio EPA) issued Permit-to-Install (PTI) Number 17-1194 to Apex on January 21, 1998.
- Ohio Administrative Code (OAC) Rule 3745-31-06(A) states:

"A permit to install shall terminate within eighteen months of the effective date of the permit to install if the owner or operator has not undertaken a continuing program of installation or modification or has not entered into a binding contractual obligation to undertake and complete within a reasonable time a continuing program of installation or modification."
- OAC Rule 3745-31-06(C) states, in part:

"The director may modify a permit to install or plan to extend these dates of expiration by up to twelve months if the applicant submits, within a reasonable time before the termination date, an application for modification, containing information that, in the judgement of the director, adequately justifies an extension of time."

I certify this to be a true and accurate copy of the official document as filed in the records of the Ohio Environmental Protection Agency.

By: Zona L. Clements Date: 7/17/02

4. In accordance with OAC Rule 3745-31-06(A), the PTI issued to Apex would have expired on July 21, 1999 unless Apex had undertaken a continuing program of installation or modification at the facility. Pursuant to OAC Rule 3745-31-06(C), Apex requested by correspondence, dated April 26, 1999, an extension of the 18-month period. The request contained information that adequately justified an extension of the expiration date of the PTI.
5. On June 1, 1999, Ohio EPA granted a 12-month extension of the expiration of the PTI. The extension established a PTI expiration date of July 21, 2000.
6. By correspondence dated May 23, 2000, Apex requested an additional 24-month extension of the PTI. Apex was planning to submit a PTI application to modify the facility design to improve its development and construction. The extension was requested to accommodate the review and potential approval of the anticipated PTI application submittal.
7. On June 16, 2000, Apex submitted a PTI application (PTI Application No. 06-6219) proposing to modify the facility design as authorized by PTI Number 17-1194.
8. On July 20, 2000, Ohio EPA granted a 24-month extension of the expiration of the PTI. The extension established a PTI expiration date of July 21, 2002.
9. On February 28, 2002, Ohio EPA issued a draft approval of PTI Number 06-6219.
10. By correspondence dated March 21, 2002, Apex requested an additional 12-month extension of PTI No. 17-1194. The letter stated, in part: "Apex has experienced significant delays on final approval of our modification due to scheduling and coordination issues relative to the public hearing and providing appropriate public notice." Apex requested the extension as a contingency pending the final issuance of PTI Number 06-6219.
11. ORC Section 3734.02(A) states, in part:

"The director shall grant a variance only if the applicant demonstrates to the director's satisfaction that construction and operation of the solid waste facility in the manner allowed by the variance and any terms or conditions imposed as part of the variance will not create a nuisance or a hazard to the public health or safety or the environment. In granting any variance, the director shall state the specific provision or provisions whose terms are to be varied and also shall state specific terms or conditions imposed upon the applicant in place of the provision or provisions."

12. The granting of a variance to Apex to extend the July 21, 2002 expiration date to undertake a continuing program of installation or modification at the facility, as authorized by PTI number 17-1194, will not create a nuisance or hazard to the public health or safety or the environment.

ORDERS

1. Pursuant to ORC Section 3734.02(A), Apex is hereby granted a variance from the requirement to begin a program of installation or modification or enter into a binding contractual obligation to undertake and complete within a reasonable time a continuing program of installation or modification at the facility in accordance with PTI Number 17-1194 by July 21, 2002.
2. The variance granted in Order number 1, above, applies only to the authorization provided by the solid waste component of PTI Number 17-1194. Prior to construction of the facility, Apex shall apply for and obtain an air pollution control PTI in accordance with Ohio Revised Code 3704 and the rules promulgated thereunder.
3. The variance granted in Order number 1, above, shall expire on July 21, 2003.
4. The granting of this variance shall not be construed to authorize any waiver from the requirements of any other applicable state or federal solid waste laws or regulations. This variance shall not be interpreted to release Apex from responsibility under ORC Chapters 3704, 3714, 3734, or 6111; under the Federal Clean Water Act, the Resource Conservation and Recovery Act, the Toxic Substances Control Act, the Comprehensive Environmental Response, Compensation, and Liability Act; or from other applicable laws for remedying conditions resulting from any release of contaminants to the environment.

IT IS SO ORDERED:



Christopher
Ohio Environmental Protection Agency