

Issuance Date: _____

Effective Date: _____

**BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY**

In the Matter of:

FirstEnergy Corporation	:	Director's Final
76 South Main Street	:	Findings and Orders
Akron, Ohio 44308	:	

I. JURISDICTION

These Director's Final Findings and Orders (Orders) are hereby issued to FirstEnergy Corporation pursuant to the authority vested in the Director of Environmental Protection (Director) under sections 3734.02 and 3745.01 of the Ohio Revised Code (ORC).

II. PARTIES

These Orders shall apply to and be binding upon FirstEnergy Corporation and its successors in interest, including the Bay Shore Power Company, liable under Ohio law. No changes in ownership relating to the FirstEnergy Corporation will, in any way, alter FirstEnergy Corporation's responsibilities under these Orders. FirstEnergy Corporation's obligations under these Orders may only be altered by the written approval of the Director.

III. DEFINITIONS

Unless otherwise stated, all terms used in these Orders shall have the same meaning as used in ORC Chapter 3734 and the regulations promulgated thereunder. Unless otherwise stated, all citations of the Ohio Administrative Code (OAC) shall refer to regulations currently effective.

IV. ACTION

Pursuant to ORC Section 3734.02(G) and OAC Rule 3745-27-05(A)(4), the Director hereby makes the following Findings and issues the following Orders.

V. FINDINGS

1. The Bay Shore Power Company is a subsidiary of FirstEnergy Corporation and operates on property owned by the FirstEnergy Corporation located at 4711 Bay Shore Road, Oregon, Ohio, 43616. This property is currently being operated as a power plant and includes an area approximately two-thousand (2,000) feet by seven hundred (700) feet referenced as the "Dupont Ponds" that is proposed for alternative disposal of solid waste.
2. On November 13, 2002, FirstEnergy Corporation submitted a request to the Ohio Environmental Protection Agency (Ohio EPA) to use circulation fluidized bed combustion boiler ash (FBC ash or CFB ash) from the circulation fluidized bed combustion boiler at the Bay Shore Power Company to construct research test strips on the Dupont Ponds.
3. ORC Section 3734.01(F) defines "disposal" in pertinent part to mean "... the discharge, deposit, injection, dumping, spilling, leaking, emitting, or placing of any solid wastes... into or on any land or ground or surface water or into the air..."
4. ORC Section 3734.01(N) defines "facility" in pertinent part to mean "... any site, location, tract of land, installation, or building used for incineration, composting, sanitary landfilling, or other methods of disposal of solid wastes..."
5. The activities described in Finding No. 2, above, include placing solid waste on or into the ground or surface waters, which is considered "disposal" at a "facility."
6. ORC Sections 3734.02(C) and 3734.05(A)(1) and (2) and OAC Chapters 3745-27, 3745-29, or 3745-30, OAC Chapter 3745-31, and OAC Chapter 3745-37, require that

a permit and license be obtained prior to the establishment or modification of a solid waste facility.

7. OAC Rule 3745-27-05(A) specifies the methods of solid waste disposal which are authorized in Ohio. This rule authorizes sanitary landfilling, incineration, and composting as acceptable disposal methods. In addition, other methods of disposal may be used provided that such methods are demonstrated to the satisfaction of the Director to be capable of disposing of solid wastes without creating a nuisance or a health hazard, without causing water pollution, and without violating ORC Chapters 3704 and 3734 and any rules adopted thereunder.
8. The disposal method proposed in the request as described in Finding No. 2, above, is a method other than sanitary landfilling, incineration, or composting and, therefore, requires authorization of the Director pursuant to OAC Rule 3745-27-05(A)(4).
9. Pursuant to ORC Section 3734.57(A), the owner or operator of a solid waste disposal facility must collect and remit to the state a fee of \$1.75 per ton for the disposal of solid wastes at the facility.
10. Pursuant to ORC Section 3734.573, the solid waste management policy committee of a single or joint solid waste management district is authorized to levy a fee on each ton of solid waste generated within the district. The Lucas County Solid Waste Management District has a generation fee which is currently \$2.00 per ton.
11. Pursuant to ORC Section 3734.57(D) and 3734.573(H), fees collected under 3734.57(A) or 3734.573(A) do not apply to the disposal of solid wastes at a facility owned by the generator, if the facility exclusively disposes of solid wastes generated at one or more premises owned by the generator. FirstEnergy Corporation has proposed to dispose of solid waste as described in Finding No. 2 above, at the Bay Shore Power Company facility, owned by FirstEnergy Corporation. Therefore fees do not apply to this project.
12. The disposal of solid wastes via the method proposed in the request can be performed without creating a nuisance or a health hazard, without causing water pollution, and

without violating ORC Chapters 3704 and 3734 and any rules adopted thereunder, provided it is performed in accordance with the request received November 13, 2002, and the Orders specified below.

13. Because the proposed facility lies atop an existing exempt waste disposal site and because the run-off from the facility is managed through a National Pollutant Discharge Elimination System (NPDES) permit which has had no measurable flow and because the FBC Ash solidifies through a cementitious reaction when hydrated, exempting FirstEnergy Corporation from the requirement to obtain a permit and a license to establish and operate a solid waste facility in order to use FBC Ash to construct research test strips as described in their request is unlikely to adversely affect the public health or safety or the environment, provided it is performed in accordance with the Orders specified below.

VI. ORDERS

1. Pursuant to OAC Rule 3745-27-05(A)(4) and ORC Section 3734.02(G), FirstEnergy Corporation is hereby authorized to use FBC Ash from the Bay Shore Power Company circulation fluidized bed combustion boiler, as specified in Finding No. 2, above, as a method of disposal and is hereby exempted from the requirement to obtain a permit and a license to establish and operate a solid waste facility pursuant to ORC Chapter 3734 and OAC Chapters 3745-27, 3745-29, 3745-30, 3745-31, and 3745-37. Solid waste originating from any location other than Bay Shore Power Company's power plant as described in Findings No. 1 and No. 2 above shall not be used in this project. This approval supersedes the February 12, 2003, authorization.
2. The amount of FBC Ash disposed in accordance with this authorization shall not exceed the amount necessary to successfully perform the desired research and shall not be placed to a thickness which exceeds forty (40) inches or outside the limits of the Dupont Ponds as depicted in Figure No. 1 of the November 13, 2002, request except as authorized in accordance with Order No. 3.
3. Should FirstEnergy find a need to place the FBC Ash to a thickness which exceeds forty (40) inches, in order to perform the desired testing, a plan shall be submitted to

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Ohio EPA, Northwest District Office, Division of Solid and Infectious Waste Management not later than thirty (30) days prior to the anticipated date of such placement. The plan shall outline the specific testing that is intended to be performed and justify the need for placement which exceeds forty (40) inches in thickness. Written concurrence from Ohio EPA, Northwest District Office, Division of Solid and Infectious Waste Management shall be obtained prior to implementation of any FBC Ash placement in accordance with these Orders which exceeds forty (40) inches in thickness.

4. FirstEnergy Corporation shall establish a notice on the facility's property deed identifying the presence of solid waste in the form of FBC Ash on the property. A copy of the amended deed shall be submitted to the Ohio EPA.
5. Not later than sixty (60) days after completion of this Integrated Alternative Waste Management Program (IAWMP) project, FirstEnergy Corporation shall submit a report to Ohio EPA indicating the total quantity in weight (tons) or volume (cubic yards) of solid waste used for the IAWMP project and a copy of the amended deed.
6. The facility where the IAWMP project is occurring shall be maintained in substantial compliance with all applicable environmental laws and regulations unless specifically exempted herein.
7. The exemption granted in Order No. 1, above, shall apply only to the use of FBC Ash for the construction of research test strips as proposed in the request described in Finding No. 2, on the Dupont Ponds at the Bay Shore Power Company located at 4711 Bay Shore Road in Oregon, Ohio.
8. Nothing in these Orders shall be construed to authorize any activity, method, or waiver from the requirements of Chapter 3734 or the regulations promulgated thereunder, except as expressly provided herein. These Orders shall not be interpreted to release FirstEnergy Corporation from responsibility under ORC Chapters 3704, 3734, or 6111; under the Federal Clean Water Act or the Comprehensive Environmental Response, Compensation, and Liability Act; or from other applicable requirements for remedying conditions resulting from any release of contaminants to the environment.

VII. OTHER APPLICABLE LAWS

All actions required to be taken pursuant to these Orders shall be undertaken in accordance with the requirements of all applicable federal, state, and local laws and regulations. Nothing in these Orders shall be construed as waiving or compromising in any way the applicability and enforcement of any other statutes or regulations applicable to FirstEnergy Corporation. Ohio EPA reserves all rights and privileges except as specified herein.

VIII. RESERVATION OF RIGHTS

Nothing contained herein shall be construed to prevent Ohio EPA from seeking legal or equitable relief to enforce the terms of these Orders or from taking other administrative, legal, or equitable action as deemed appropriate and necessary, including seeking penalties against FirstEnergy Corporation for noncompliance with these Orders.

Nothing contained herein shall be construed to prevent Ohio EPA from exercising its lawful authority to require FirstEnergy Corporation to perform additional activities pursuant to ORC Chapter 3734 or any other applicable law in the future. Nothing herein shall restrict the right of FirstEnergy Corporation to raise any administrative, legal, or equitable claim or defense with respect to such further actions which Ohio EPA may seek to require of FirstEnergy Corporation. Nothing in these Orders shall be construed to limit the authority of Ohio EPA to seek relief for violations which may occur at the facility.

IT IS SO ORDERED:

Christopher Jones, Director
Ohio Environmental Protection Agency