

Issuance Date:

Effective Date:

**BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY**

In the matter of:

City of Zanesville	:	
Department of Public Service	:	Director's Final
401 Market Street	:	Findings and Orders
Zanesville, Ohio 43701	:	

I. JURISDICTION

These Director's Final Findings and Orders (Orders) are issued to the City of Zanesville (the "City"), pursuant to the authority vested in the Director of the Ohio Environmental Protection Agency (Ohio EPA) under Ohio Revised Code (ORC) Section 3734.02, Ohio Administrative Code (OAC) Rule 3745-27-03(B), and OAC Rule 3745-27-05(A)(4).

II. PARTIES

These Orders shall apply to and be binding upon the City and successors in interest liable under Ohio law. No changes in ownership relating to the City's water treatment plant (the "WTP") property, as defined herein, shall in any way alter the City'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. Unless otherwise stated, all OAC citations shall refer to rules in effect on the date of these Orders.

IV. FINDINGS

The Director of Ohio EPA has determined the following findings:

1. The City is the owner and operator of a WTP on property located at 1750 North River Road, Zanesville, Ohio 43701 (the "Property"). The City utilizes filter sand and gravel in the potable water filtering process at the WTP.
2. On September 19, 2003, the City submitted a request to Ohio EPA to alternatively dispose of filter sand and gravel generated from the WTP as a road bed aggregate for the access road at the Property.
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 2, above, and in the City's request are "disposal" at a "facility."
6. ORC Section 3734.02(C), ORC Sections 3734.05(A)(1) and 3734.05(A)(2), and OAC Chapters 3745-27 and 3745-37 require that a permit and license be obtained prior to the establishment or modification of a solid waste facility.
7. The activities described in Finding 2, above, and in the City's request constitute establishment or modification of a facility and require that a permit and license be obtained prior to initiating such activities.
8. 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, OAC Rule 3745-27-05(A)(4) states that solid wastes may be disposed as engineered fill or by land application, provided that the director determines that such method will not create a nuisance or harm human health or the environment and is capable of complying with other applicable laws.
9. The disposal method described in Finding 2, above, and the City's request is a method other than sanitary landfilling, incineration, or composting, and, therefore, requires authorization from the Director pursuant to OAC Rule 3745-27-05(A)(4).
10. The disposal of solid wastes by the method described in Finding 2, above, and the City's request can be performed without creating a nuisance or harming human health or the environment, and in compliance with other applicable laws, provided it is performed in accordance with the City's request, as received on September 19, 2003, and the orders specified below.

11. 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 \$2.00 per ton for the disposal of solid wastes at the facility. However, pursuant to ORC Section 3734.57(D)(1)(a), the fees levied under ORC Section 3734.57(A) do not apply to the disposal of solid waste that are disposed of at a facility owned by the generator of the wastes when the solid waste facility exclusively disposes of solid waste generated at one or more premises owned by the generator regardless of whether the facility is located on a premises where the wastes are generated. The City is the generator of the waste filter sand and gravel and is the owner of the Property where the waste will be disposed. Therefore, these fees are not applicable.
12. Pursuant to ORC Section 3734.573(A), 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 Southeastern Ohio Solid Waste Management District has a generation fee of \$2.00 per ton of solid waste generated within the district. However, pursuant to ORC Section 3734.57.3(H)(1), the fee levied under ORC Section 3734.573(A) does not apply to the management of solid wastes that are disposed of at a facility owned by the generator of the wastes when the solid waste facility exclusively disposes of solid wastes generated at one or more premises owned by the generator regardless of whether the facility is located on a premises where the wastes are generated. The City is the generator of the waste filter sand and gravel and is the owner of the Property where the waste will be disposed. Therefore, these fees are not applicable.
13. Pursuant to ORC Section 3734.02(G) and OAC Rule 3745-27-03(B), the director may, by order, exempt any person generating, collecting, storing, treating, disposing of, or transporting solid wastes, in such quantities or under such circumstances that, in the determination of the director, are unlikely to adversely affect the public health or safety or the environment from any requirement to obtain a permit or license or comply with other requirements of ORC Chapter 3734.
14. Because the filter sand and gravel from the WTP will be placed on the Property in the same manner as gravel is normally placed for roadbed aggregate, granting an exemption from the requirement to obtain a permit and a license to establish and operate a solid waste facility is unlikely to adversely affect the public health or safety or the environment, provided it is performed in accordance with the City's request and these Orders.

V. ORDERS

1. Pursuant to OAC Rule 3745-27-05(A)(4), OAC Rule 3745-27-03(B), and ORC Section 3734.02(G), the City is hereby authorized to use filter sand and gravel generated at its WTP for roadbed aggregate for the access road on the Property, as specified in Finding 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 Section 3734.02(G), ORC Sections 3734.05(A)(1) and 3734.05(A)(2), and OAC Chapters 3745-27 and 3745-37. Filter sand and gravel originating from any location other than the City's WTP as described in Finding 1, above, shall not be used in this project.

2. If any filter sand and gravel is removed from the access road at any time, the material will be subject to solid waste disposal requirements and shall be taken to a licensed solid waste disposal facility.
3. If any filter sand and gravel that is generated at the WTP is not used for roadbed aggregate for the access road on the Property, the material will be subject to solid waste disposal requirements and shall be taken to a licensed solid waste disposal facility.
4. Not later than 60 days after completion of this Integrated Alternative Waste Management Program (IAWMP) project, the City shall submit a report to Ohio EPA indicating the total quantity in weight (tons) of solid waste used for the project.
5. The exemptions granted in Order 1, above, shall apply only to the use of filter sand and gravel generated at its WTP as fill material for roadbed aggregate for the access road on the Property as proposed in the City's request described in Findings 1 and 2, above.
6. Nothing in these Orders shall be construed to authorize any activity, method, or waiver from the requirements of ORC Chapter 3734 or the regulations promulgated thereunder, except as expressly provided herein. These Orders shall not be interpreted to release the City 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.

VI. 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.

VII. NOTICE

All documents required to be submitted to Ohio EPA by the City pursuant to these Orders shall be addressed to:

Ohio Environmental Protection Agency
Southeast District Office
Division of Solid and Infectious Waste Management
2195 Front Street
Logan, Ohio 43138
Attn: Supervisor

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 the City for noncompliance with these Orders.

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

IT IS SO ORDERED:

Christopher Jones, Director
Ohio Environmental Protection Agency