

- Lawrence County, Ohio.
2. Respondent is a "person" as that term is defined in ORC Section 3734.01(G) and OAC Rule 3745-27-01(B).
 3. ORC 3734.01(E) defines solid wastes as "unwanted residual solid. . .material as results from industrial, commercial, agricultural and community operations. . .and includes, but is not limited to, garbage, scrap tires, combustible and noncombustible material, street dirt and debris."
 4. ORC 3734.03 provides that "[n]o person shall dispose of solid wastes by. . .open dumping, except as authorized by the director of environmental protection. . . ."
 5. ORC 3734.01(F) provides that "disposal" of solid waste means the "discharge, deposit. . .dumping, spilling, leaking, emitting or placing of any solid waste. . .into or on any land or ground. . . ."
 6. ORC 3734.01(I) defines "open dumping" as the depositing of solid waste. . .onto the surface of the ground at a site that is not licensed as a solid waste facility under section 3734.05 of the Revised Code. . . ." OAC 3745-27-05(C) provides that "[n]o person shall conduct, permit or allow open dumping."
 7. ORC 3734.02(C) states in pertinent part ". . . no person shall establish a new solid waste facility. . .without submitting an application for a permit with accompanying detail plans, specifications, and information regarding the facility and method of operation and receiving a permit issued by the director. . . ."
 8. ORC Section 3734.05 provides that "no person . . . shall maintain a solid waste facility without a license." OAC 3745-37-01(A) provides that "[n]o person shall conduct municipal solid waste landfill, industrial solid waste landfill, or residual solid waste landfill . . . operations without possessing a separate, valid license for each such operation. . . ."
 9. The Property was formerly part of the South Point Plant Superfund Site which consisted of a total of 640 acres. Located on the Property is the Northern Fly Ash Pond which has been closed and is subject to institutional controls as part of a remedial action led by US EPA under the Comprehensive Environmental Response, Compensation and Liability Act of 1980.
 10. Situated on the Property are coal-fired boiler facilities that were used by South Point Ethanol. Respondent was issued an air permit by Ohio EPA on July 15, 1998 to allow the facility to burn wood, coal, and gas fuels in the boilers. In February, 2002 Ohio EPA issued a modified air permit to Respondent which would allow it to burn

exclusively wood based fuels in the boilers to generate electrical energy.

11. On December 12, 2002 Respondent entered into a contract with the United States Department of Agriculture ("USDA") to accept 121,448 tons of tobacco and 10,030 tons of corrugated cardboard (collectively referred to as "Tobacco Waste") for "total destruction" by Respondent by burning in its boilers for "energy recovery." In consideration for Respondent's agreement to accept and destroy the Tobacco Waste, USDA agreed to pay Respondent the total amount of \$2,337,874.00. Paragraph 3 of the contract requires that Respondent accept delivery of all Tobacco Waste within six (6) months of the date of the contract. In addition, Paragraph 2 of the contract requires that "[t]otal destruction must be completed no later than 18 months after contract award."
12. USDA shipped to Respondent an initial delivery of 10,181 tons of tobacco contained in cardboard boxes. The boxes of Tobacco Waste were stored on site and some boxes were dumped on the ground and broken open with bulldozers. The Tobacco Waste was then spread on the ground and placed in two large and one small uncovered piles.
13. One of the large piles of Tobacco Waste was located directly on top of the closed Northern Fly Ash Pond. Respondent used a bulldozer to spread the Tobacco Waste over the fly ash pond, destroying the vegetative cover and other remedial components such as monitoring well SPMW-10 which were required as part of US EPA's Superfund remedy.
14. In response to several citizen complaints, on March 11, 12, and 14, 2003, Ohio EPA's Southeast District Office ("SEDO") conducted an inspection of the Property and observed the Tobacco Waste being disposed on the Property by Respondent. In addition to the Tobacco Waste, Ohio EPA observed approximately 35,000 tons of coal and coke fines ("Coke Waste") which were contained in an on-site concrete building. The Coke Waste was generated by Honeywell Corporation f/k/a Allied Signal, who contracted with Respondent to accept and process these waste materials as a fuel in its energy recovery operation. Also located on the Property was a large pile of uncovered particle board chips and sawdust waste ("Wood Waste"). Ohio EPA conducted follow-up inspections on April 7 and April 15, 2003.
15. The Tobacco Waste, Coke Waste and Wood Waste are all solid wastes as defined in ORC 3734.01(E).
16. On March 27, 2003 Ohio EPA-SEDO sent a notice of violation ("NOV") letter to Respondent which documented the violations observed during the March 11, 2003 inspection. The NOV stated that Respondent has disposed of the Tobacco Waste, Coke Waste and Wood Waste on the Property without a license or other authorization from the Director in violation of the prohibition against open dumping of solid waste set

forth in ORC 3734.03. In addition, the NOV notified Respondent that Respondent has established an unlicensed and unpermitted solid waste disposal facility in violation of ORC 3734.05, ORC 3734.02(C) and OAC 3745-37-01(A).

17. On May 12, 2003 Ohio EPA-SEDO sent an additional NOV to Respondent documenting the violations observed during the April 7 and April 15, 2003 inspections. The NOV stated that Respondent has disposed of the Tobacco Waste, Coke Waste and Wood Waste on the Property without a license or other authorization from the Director in violation of the prohibition against open dumping of solid waste set forth in ORC 3734.03. In addition, the NOV notified Respondent that Respondent has established an unlicensed and unpermitted solid waste disposal facility in violation of ORC 3734.05, ORC 3734.02(C) and OAC 3745-37-01(A).
18. The March 27, 2003 and May 12, 2003 NOV's also notified Respondent that the Tobacco Waste had been placed in locations on the Property where it could cause pollution to waters of the state because it would likely generate leachate and contaminated surface water runoff. Additional inspections by Ohio EPA have confirmed the presence of leachate on the Property from the Tobacco Waste.
19. As of the date hereof, Respondent has not completed the physical modifications to the boiler facilities necessary to enable it to burn biomass fuels to generate electricity. Respondent has not obtained the necessary modifications to its air permit from Ohio EPA to allow it to burn the Tobacco Waste as contemplated under the contract. In addition, the operation of the boiler facilities as proposed by Respondent will result in the discharge of waste water and other sewage to "waters of the state" as defined by ORC 6111.01(H). As of the date hereof, Respondent has not applied for, and Ohio EPA has not issued, an NPDES permit authorizing the discharge of waste water to waters of the state.

V. ORDERS

Respondent shall achieve compliance with Chapter 3734. of the ORC and the rules promulgated thereunder according to the following compliance schedule:

1. Immediately upon the effective date of these Orders, Respondent shall cease acceptance and disposal of solid waste at the Property.
2. Immediately upon the effective date of these Orders, Respondent shall prevent the generation of leachate from the Tobacco Waste by placing impermeable, temporary covers over all three piles located on the Property.
3. Within forty-five (45) days after the effective date of these Orders, Respondent shall

- excavate and remove the Wood Waste from the Property and dispose of these solid wastes at a licensed solid waste disposal facility. Respondent shall obtain disposal receipts from the licensed solid waste disposal facility indicating weight or volume of wastes disposed.
4. Within sixty (60) days after the effective date of these Orders, Respondent shall excavate and remove all of the on-site Tobacco Waste from the Property and dispose of these solid wastes at a licensed solid waste disposal facility. Respondent shall obtain disposal receipts from the licensed solid waste disposal facility indicating weight or volume of wastes disposed. The removal of the Tobacco Waste shall be in accordance with all applicable federal, state, and local laws and rules.
 5. Within seventy-five (75) days after the effective date of these Orders, Respondent shall remove the Coke Waste from the Property and either dispose of the Coke Waste at a licensed solid waste disposal facility or remove and take them to another facility that is legally authorized to accept such materials. Respondent shall obtain concurrence from Ohio EPA that the facility is permitted to accept such materials for disposal. In either case, Respondent shall obtain receipts from the licensed solid waste disposal facility or other facility indicating weight or volume of the wastes disposed. If the Coke Waste is sent to an out-of-state facility for disposal, Respondent shall provide to Ohio EPA proof that Respondent notified that state's appropriate environmental protection agency of the nature of the Coke Waste, the proposed disposal facility, location, and method of disposal.
 6. Initiation of the removal activities in Order Nos. 3, 4, and 5 shall begin no later than fifteen (15) days after the effective date of these Orders.
 7. Immediately upon the effective date of these Orders, Respondent shall collect and properly dispose of all leachate located at the Property. Respondent shall obtain concurrence from Ohio EPA that the facility is permitted to accept such material for disposal. Collection and disposal of the leachate shall continue until all of the solid wastes are removed from the property.
 8. On a weekly basis, Respondent shall submit to Ohio EPA a progress report that shall contain the following information: specific activity dates, dates of disposal, amount disposed, where disposed, approvals obtained for disposal, and receipts for disposal. These reports shall be signed by a Biomass official verifying that the information contained in the report is true and accurate.
 9. Within fourteen (14) days after completion of Order Nos. 3, 4, and 5, Respondent shall submit to Ohio EPA a written notice of completion, along with documentation of proper removal and disposal, including receipts from the solid waste disposal facility or, with

respect to the Coke Waste, other facility that is legally authorized to accept such materials. This report shall be signed by a Biomass official verifying that the information contained in the report is true and accurate.

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 Division of Solid and Infectious 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 Respondent.

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 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.

VIII. NOTICE

All documents required to be submitted by Respondent 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: Steve Rine, DSIWM - Unit Supervisor

or to such persons and addresses as may hereafter be otherwise specified in writing by Ohio EPA.

IX. 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 Respondent for noncompliance with these Orders and/or for the violations described herein. Nothing contained herein shall be construed to prevent Ohio EPA from exercising its lawful authority to require Respondent to perform additional activities pursuant to ORC Chapter 3734 or any other applicable law in the future. Nothing herein shall restrict the right of Respondent to raise any administrative, legal or equitable claim or defense with respect to such further actions which Ohio EPA may seek to require of Respondent. Nothing in these Orders shall be construed to limit the authority of Ohio EPA to seek relief for violations not addressed in these Orders.

X. EFFECTIVE DATE

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

IT IS SO ORDERED:

Ohio Environmental Protection Agency

Christopher Jones
Director

Date