

**BEFORE THE  
OHIO ENVIRONMENTAL PROTECTION AGENCY**

In the Matter of:

Cinergy Corp.	:	<u>Director's Final Findings</u>
139 East Fourth Street	:	<u>and Orders</u>
P.O. Box 960	:	
Cincinnati, OH 45201	:	

Respondent

**PREAMBLE**

It is agreed by the parties hereto as follows:

**I. JURISDICTION**

These Director's Final Findings and Orders ("Orders") are issued to Cinergy Corp. ("Respondent") pursuant to the authority vested in the Director of the Ohio Environmental Protection Agency ("Ohio EPA") under Ohio Revised Code ("ORC") §§ 3734.13 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, or of the Facility (as hereinafter defined) owned by Respondent, 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 3734. and the rules promulgated thereunder.

**IV. FINDINGS**

The Director of Ohio EPA has determined the following findings:

1. Respondent is the owner, operator, permittee and licensee of the operating Wm. H. Zimmer Residual Waste Landfill ("Facility") located at 1781 U.S. Route 52, Moscow, Clermont County, Ohio.

2. The Facility is a “residual waste landfill facility” as that term is defined in Ohio Administrative Code (“OAC”) Rule 3745-30-01(C).
3. On November 2, 1988, Respondent received approval for Permit to Install (“PTI”) #14-1393 for construction and operation of a landfill for the Wm. H. Zimmer Power Plant. The Facility was licensed as a Sanitary Landfill Facility on November 12, 1992 and is currently licensed as a Class III Residual Solid Waste Landfill.
4. On August 7, 1998, Respondent submitted a solid waste landfill permit modification application to Ohio EPA.
5. On October 14, 1999, Respondent received approval for PTI #05-9747 which included vertical and horizontal expansions for the Facility as well as redesignation as a Class III Residual Solid Waste Landfill.
6. By documents submitted January 28, 2000, Respondent requested an alteration to PTI #05-9747 which, among other features, reduced the elevation of the Facility and reduced the footprint from 323 acres to 199 acres through the elimination of sequences four and five from the Facility. This alteration was approved on April 18, 2000.
7. On June 11, 2001, Ohio EPA received a revised annual report for the Facility in which Respondent notified Ohio EPA that waste placement during 1999 and 2000 had, in some cases, exceeded the limits of waste placement for the Facility per the most recent approved alteration to PTI #05-9747.
8. OAC Rule 3745-30-14(A) states that “[a]ll operations at residual waste landfill facilities, including the operation of all monitoring and control systems, shall be conducted in strict compliance with this rule, the approved detail plans, specifications, information, and terms and conditions of the permit to install issued in accordance with Chapter 3745-30 of the Administrative Code, and the residual waste landfill license issued in accordance with Chapter 3745-37 of the Administrative Code.”
9. OAC Rule 3745-30-14(U) states that “[t]he permittee shall not begin filling in a new phase, without completing the previous phase, except to the extent necessary for the proper operation of the residual waste landfill facility.”
10. During 1999 and 2000 approximately 274,800 cubic yards (“CY”) of waste were placed outside the limits of waste placement approved in the PTI for the Facility. However, the 274,800 CY of waste were placed in the previously approved airspace in PTI #05-9747 before the alteration was approved on April 18, 2000. Due to the

failure to strictly comply with the PTI this is a violation of OAC Rule 3745-30-14(A).

11. During 1999 and 2000 approximately 226,000 CY of waste were placed in inactive sequences of the Facility. This constitutes a violation of OAC Rule 3745-30-14(U).
12. In addition, approximately 127,000 CY of waste were placed in exceedance of the new limits of waste placement established in the April 18, 2000 alteration of PTI #05-9747. This constitutes a violation of OAC Rule 3745-30-14(A). However, the 127,000 CY of waste were placed in airspace that was previously approved in PTI #05-9747 before the alteration was approved.
13. In correspondence dated September 17, 2001, the Clermont County Health Department notified Respondent that exceeding final design grades of the PTI in 1999 and 2000 was a failure to comply with the authorizing documents and therefore a violation of OAC Rule 3745-30-14(A).
14. In correspondence dated April 10, 2002, Ohio EPA notified Respondent that it was in violation of OAC Rule 3745-30-14(U) for placing waste out of phase and that Respondent exceeded the elevation approved in the permit.

## **V. ORDERS**

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

1. Within twelve (12) months after the effective date of these Orders, Respondent shall:
  - a. attain compliance with the lateral and vertical limits of solid waste placement as specified in the 2000 PTI; or
  - b. obtain the necessary authorizations from Ohio EPA to modify the construction of the Facility. Said authorization shall not be unreasonably withheld.
2. Except as otherwise noted in Order No. 1 above, Respondent shall continue to comply with all terms and conditions as specified in the 2000 PTI.
3. Within thirty (30) days after the effective date of these Orders, Respondent shall pay Ohio EPA the amount of \$24,828 in settlement of Ohio EPA's claims for civil penalties, which may be assessed pursuant to ORC Chapter 3734. and which will be deposited into the hazardous waste cleanup fund established pursuant to ORC § 3734.28. Payment shall be made by an official check made payable to "Treasurer, State of

Ohio" for \$24,828. The official check shall be submitted to Ohio EPA, Office of Fiscal Administration, P.O. Box 1049, Columbus, Ohio 43216-1049, together with a letter identifying Respondent and the Facility and a copy of the check shall be sent to Elissa Miller, Ohio EPA Legal.

## **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. If this notification is necessary, the notification will be sent to Dan McNeal, Zimmer Station, EG 343, 1781 U.S. Route 52, Moscow, Ohio 45153-9705.

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 a principal executive officer of at least the level of vice-president, or his duly authorized representative, if such representative is responsible for the overall operation of the facility.

## **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  
Southwest District Office  
Division of Solid and Infectious Waste Management  
401 East Fifth Street  
Dayton, Ohio 45402-2911  
Attn: Russell B. Brown, District Engineer, DSIWM

and to:

Clermont County Health Department  
2275 Bauer Rd, Suite 300  
Batavia, Ohio 45103  
Attn: Eric Ratliff, Environmental Health Sanitarian

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.

Respondent hereby waives the right to appeal the issuance, terms and conditions, and service of these Orders, and Respondent hereby waives any and all rights Respondent may have to seek administrative or judicial review of these Orders either in law or equity.

Notwithstanding the preceding, Ohio EPA and Respondent agree that if these Orders are appealed by any other party to the Environmental Review Appeals Commission, or any court, Respondent retains the right to intervene and participate in such appeal. In such an event, Respondent shall continue to comply with these Orders notwithstanding such appeal and intervention unless these Orders are stayed, vacated or modified.

**XIII. EFFECTIVE DATE**

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

**XIV. SIGNATORY AUTHORITY**

Each undersigned representative of a party to these Orders certifies that he or she is fully authorized to enter into these Orders and to legally bind such party to these Orders.

**IT IS SO ORDERED AND AGREED:**

**Ohio Environmental Protection Agency**

\_\_\_\_\_  
Christopher Jones  
Director

\_\_\_\_\_  
Date

**IT IS SO AGREED:**

**Cinergy Corp.**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Printed or Typed Name

\_\_\_\_\_  
Title

