

BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY

OHIO E.P.A.
MAR 22 2007

ENTERED DIRECTOR'S JOURNAL

In the Matter of:

American Energy Corporation
43521 Mayhugh Hill Road
Beallsville, Ohio 43716

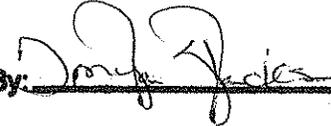
Director's Final
Findings and Orders

Respondent

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

PREAMBLE

It is agreed by the parties hereto as follows:

By:  Date: 3-22-07

I. JURISDICTION

These Director's Final Findings and Orders (Orders) are issued to American Energy Corporation (Respondent), pursuant to the authority vested in the Director of the Ohio Environmental Protection Agency (Ohio EPA) under Ohio Revised Code (ORC) §§6111.03 and 3745.01.

II. PARTIES BOUND

These Orders shall apply to and be binding upon Respondent and successors in interest liable under Ohio law.

III. DEFINITIONS

Unless otherwise stated, all terms used in these Orders shall have the same meaning as defined in ORC Chapter 6111. and the rules promulgated thereunder.

IV. FINDINGS

The Director of Ohio EPA has made the following findings:

1. Respondent, American Energy Corporation, is a corporation duly organized in the State of Ohio. Respondent is the owner and operator of the Century Mine, an underground coal mining facility located in Wayne Township, Belmont County, Ohio.
2. Between approximately June 2002 and August 2002, the Respondent installed and began operating a coal slurry pipeline. The pipeline runs from Respondent's coal preparation plant at the Century Mine approximately 15,000 feet to a coal slurry impoundment operated by the Ohio Valley Coal Company mine. The pipeline crosses Captina Creek.
3. The pipeline is a "disposal system" as that term is defined in ORC §6111.01(G).

4. Ohio Administrative Code (OAC) Rule 3745-42-02(A)(1) provides that no person shall cause, permit or allow the installation of a new disposal system without first obtaining a permit to install (PTI) or plan approval from the Director. ORC §6111.07(A) prohibits any person from violating, or failing to perform any duty imposed by sections 6111.01 to 6111.08 of the Revised Code or violating any order, rule, or term or condition of a permit issued or adopted by the Director of Environmental Protection pursuant to those sections. Each day of violation is a separate offense.
5. By installing the pipeline on or around June 2002 prior to being issued a PTI by the Director, Respondent violated OAC Rule 3745-42-02(A)(1) and ORC §6111.07.
6. On or before August 23, 2005, a hole developed from internal erosion in a metal coupling at a bend in the pipeline near the point where the pipeline ran under the railroad and SR 148. Coal waste slurry flowed out of the hole, overflowing a maintenance pond and into Captina Creek, and affected approximately 2300 feet of Captina Creek, covering portions of the creek bottom.
7. The coal waste slurry flowing in, and spilling out of the pipeline is an "industrial waste" or "other waste" as those terms are defined in ORC §§6111.01(C) and (D), respectively.
8. The waters flowing in Captina Creek are "waters of the state" as that term is defined in ORC §6111.01. The Creek is classified as an exceptional warmwater habitat stream in OAC Rule 3745-1-13, Table 13-1, and is classified as an outstanding state water in OAC Rule 3745-1-05(A)(10)(c). The discharge was not authorized by the Director. The discharge from the pipeline was a point source discharge.
9. Pursuant to §ORC 6111.04(A), no person shall place or discharge, or cause to be placed or discharged, in any waters of the state any sewage, sludge, sludge materials, industrial waste, or other wastes without a valid, unexpired permit.
10. Ohio Adm. Code §3745-38-02(A) provides that no person may discharge any pollutant or cause, permit, or allow a discharge of any pollutant from a point source without either applying for and obtaining an Ohio NPDES permit in accordance with requirements of Chapter 3745-33 of the Administrative Code, complying with the indirect discharge permit program pursuant to Chapter 3745-36 of the Administrative Code or obtaining authorization to discharge under an Ohio NPDES general permit in accordance with requirements of Chapter 3745-38 of the Administrative Code.
11. Respondent discharged coal waste slurry into Captina Creek on or around August 23, 2005, without obtaining an Ohio NPDES permit, complying with the indirect discharge permit program, or obtaining authorization to discharge under an Ohio NPDES general permit. In doing so, Respondent violated ORC §§6111.04 and 6111.07 and OAC Rule 3745-38-02(A).

12. OAC Rule 3745-1-04(A) provides that the following general water quality criteria shall apply to all surface waters of the state including mixing zones: To every extent practical and possible as determined by the director, these waters shall be: Free from suspended solids or other substances that enter the waters as a result of human activity and that will settle to form putrescent or otherwise objectionable sludge deposits, or that will adversely affect aquatic life; and free from substances entering the waters as a result of human activity in concentrations that are toxic or harmful to human, animal or aquatic life and/or are rapidly lethal in the mixing zone.
13. The slurry discharge by Respondent into Captina Creek on or around August 23, 2005 violated OAC Rule 3745-1-04(A) in that the slurry discharge resulted in suspended solids and other substances entering the waters that settled to form objectionable sludge deposits and that adversely affected aquatic life, and resulted in substances entering the waters in concentrations that were harmful to aquatic life.
14. On June 21, 2002, National Pollutant Discharge Elimination System (NPDES) permit No. 01L00091*FD, and subsequently modified on October 7, 2002, was issued to Respondent. The permit authorized, among other things, a discharge from Century Mine outfall number 601. This NPDES permit placed the following limitations on the following pollutants in the discharge from outfall number 601: total suspended solids – 18 mg/l maximum and 12 mg/l as a monthly average, 0.68 kg/day maximum and 0.45 kg/day as a monthly average; nitrogen in summer – 1.5 mg/l maximum and 1.0 mg/l as a monthly average, 0.06 kg/day maximum and 0.04 kg/day as a monthly average; nitrogen in winter – 4.0 mg/l maximum and 3.0 mg/l as a monthly average, 0.15 kg/day maximum and 0.11 kg/day as a monthly average; and cBOD₅ – 15 mg/l maximum and 10 mg/l as a monthly average, 0.56 kg/day maximum and 0.37 kg/day as a monthly average. (The discharge from outfall 601 previously entered pond 011. The 601 discharge has been rerouted to discharge directly to Piney Creek through outfall 017. Outfall 601 has been eliminated. Thus the Orders will address discharges from outfall 017.)
15. ORC §§6111.04(C) provides no person to whom a permit has been issued shall place or discharge, or cause to be placed or discharged, in any waters of the state any sewage, sludge, sludge materials, industrial waste, or other wastes in excess of the permissive discharges specified under an existing permit without first receiving a permit from the director to do so.
16. Respondent has, on at least the dates outlined in the chart attached hereto as Attachment I and incorporated by reference as if fully rewritten herein, exceeded the final effluent limitations in its NPDES permit from May 2004 through August 2005. Respondent's failure to comply with the final effluent limitations of its NPDES permit is a violation of the permit and ORC §§6111.04 and 6111.07.
17. These Orders do not constitute authorization or approval of the construction of any physical structure or facilities, or the modification of any existing treatment works or sewer system.

Any such construction or modification is subject to the PTI requirements of ORC §§6111.44 and 6111.45 and OAC Rule 3745-42.

18. This document does not modify the NPDES permit or any successor permit. A purpose of this document is to correct Respondent's noncompliance with the NPDES permit.
19. The Director has given consideration to, and based his determination on, evidence relating to the technical feasibility and economic reasonableness of complying with these Orders and to evidence relating to conditions calculated to result from compliance with these Orders, and its relation to the benefits to the people of the State to be derived from such compliance in accomplishing the purposes of ORC Chapter 6111.
20. To resolve violations described in these Findings, the Director makes the following Orders.

V. ORDERS

1. Respondent shall not install or modify disposal systems at any location in Ohio without first receiving a PTI or plan approval from the Director as required by OAC Rule 3745-42-02 and ORC § 6111.07(A). Respondent may request termination of this Order upon a demonstration to the satisfaction of Ohio EPA that Respondent has maintained compliance with this Order for a period of three hundred sixty-five (365) days from the effective date of these Orders. Such a request for termination shall be submitted in accordance with Section X of these Orders. Termination of this Order does not relieve Respondent of its obligation to comply with all applicable laws and regulations, including but not limited to the requirement to obtain a PTI and/or plan approval prior to installation or modification of sewerage systems, treatment works, or disposal systems. Respondent does not need a permit to install from Ohio EPA for activities covered by the exemption in OAC 3745-42-02.
2. SLURRY PIPELINE - Spill Prevention and Emergency Response Plan
 - a. Within ninety (90) days after the effective date of these Orders, Respondent shall submit to Ohio EPA Southeast District Office, in accordance with Section X of these Orders, for approval, a Slurry Pipeline Spill Prevention and Emergency Response Plan that identifies measures to protect public health and the environment. In this plan, Respondent shall, at a minimum:
 - i. Describe steps that will be taken to prevent spills from occurring. This shall include, but is not limited to, routine inspection of the pipeline;
 - ii. Describe devices and mechanisms that will be installed and operated to ensure that Respondent is made aware of all spills from the pipeline (to the greatest extent possible). This shall include installation of a flow monitoring and control system capable of identifying leaks in the pipeline, shutting off the flow and notifying the Respondent's responsible operator; the shutoff requirement in the preceding sentence may be satisfied either by equipment that automatically shuts off the flow in the pipeline, or by an alarm system that automatically alerts an individual of a leak, which

individual is on duty and in a position to both hear the alarm and immediately cause the shutoff of the flow in the pipeline, at all times that the pipeline is in operation.

- iii. Establish procedures to be followed in the event of a spill in order to ensure that spills are appropriately and immediately responded to; these procedures shall include procedures to ensure immediate appropriate notification to the Ohio EPA, Ohio Department of Natural Resources Division of Mineral Resource Management, and Division of Wildlife, and the public (if public safety is threatened). These procedures should be developed in consultation with potentially affected entities; and
 - iv. Establish procedures to ensure that appropriate personnel are aware of and follow the Slurry Pipeline Spill Prevention and Emergency Response Plan and are appropriately trained.
 - b. If Ohio EPA requests that Respondent revise the Slurry Pipeline Spill Prevention and Emergency Response Plan as originally submitted, Respondent shall submit to Ohio EPA a revised plan or other written response to Ohio's suggested revision within thirty (30) days after receiving Ohio EPA's suggested revision. Within ninety (90) days after acceptance of the Slurry Pipeline Spill Prevention and Emergency Response Plan by the Ohio EPA, Respondent shall implement the Slurry Pipeline Spill Prevention and Emergency Response Plan.
3. Respondent has forwarded to Ohio EPA information documenting that Respondent has contracted with a Class 4 Ohio Certified Wastewater Operator who is supervising the operation of the sewage treatment plant at outfall 017 and who is training an employee of Respondent to be a Class 1 Ohio Certified Wastewater Operator. Respondent shall maintain supervision of the sewage treatment plant at outfall 017 by the Class 4 operator under contract, or by a newly certified or other Class 1 Ohio Certified Wastewater Operator, for three hundred sixty-five (365) days after the effective date of these Orders.
4. Respondent shall not discharge effluent from outfall 017 in excess of effluent limitations contained in NPDES permit No. 0IL00091*FD.
5. Respondent shall pay the amount of fifty thousand dollars (\$50,000.00) in settlement of Ohio EPA's claim for civil penalties, which may be assessed pursuant to ORC Chapter 6111. The fifty thousand dollar civil penalty shall be paid, part as a cash payment, and part as a payment to the Clean Diesel School Bus Fund, as set forth in paragraphs 5, 6 and 7 of these Orders. Payment of the civil penalty shall be made in four equal installments over the period of one year as follows: Within ninety (90) days after the effective date of these Orders, as the first installment Respondent shall comply with Orders No. 6 and 7 and shall make a cash payment to Ohio EPA by an official check made payable to "Treasurer, State of Ohio" for two thousand five hundred dollars (\$2,500.00). As the remaining three

installments, Respondent shall also submit three additional official checks to Ohio EPA, each in the amount of twelve thousand five hundred dollars (\$12,500.00), and each made payable to "Treasurer, State of Ohio." The first of these additional checks shall be submitted to Ohio EPA on or before the end of one hundred eighty (180) days after the effective date of these Orders, the second shall be submitted to Ohio EPA on or before two hundred seventy (270) days after the effective date of these Orders, and the third and last check shall be submitted to Ohio EPA on or before Three hundred sixty-five (365) days after the effective date of these Orders. The official check shall be submitted to Brenda Case, or her successor, together with a letter identifying the Respondent, to:

Ohio EPA
Office of Fiscal Administration
P.O. Box 1049
Columbus, Ohio 43216-1049

A photocopy of the check shall be sent to Ohio EPA Southeast District Office in accordance with Section X of these Orders.

6. In lieu of paying the remaining ten thousand dollars (\$10,000.00) as part of the first installment of the civil penalty, Respondent shall within ninety (90) days of the effective date of these Orders, fund a Supplemental Environmental Project (SEP) by making a contribution in the amount of ten thousand dollars (\$10,000.00) to the Ohio EPA's Clean Diesel School Bus Fund (Fund 5CD). Respondent shall tender an official check made payable to "Treasurer, State of Ohio" for the SEP amount. The official check shall be submitted to Brenda Case, or her successor, together with a letter identifying the Respondent, to:

Ohio EPA
Office of Fiscal Administration
P.O. Box 1049
Columbus, Ohio 43216-1049

A copy of each check shall be sent to Mark Mann, Manager, DSW, or his successor, at the following address:

Ohio EPA
Division of Surface Water
P.O. Box 1049
Columbus, Ohio 43216 -1049

7. Should Respondent fail to fund the SEP within the required time frame set forth in Order No. 5, Respondent shall immediately pay to Ohio EPA the remaining ten thousand dollars (\$10,000.00) of the first installment of the civil penalty in accordance with the procedures in Order No. 5.

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 Ohio EPA's Division of Surface Water 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 a responsible official of Respondent.

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 Site.

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
Southeast District Office
Division of Surface Water
2195 Front Street
Logan, Ohio 43138

Attn: Enforcement Supervisor

XI. RESERVATION OF RIGHTS

Ohio EPA and Respondent each reserve all rights, privileges and causes of action, except as specifically waived in Section XI 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 or 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



~~Laura Powell, Acting Director~~
Chris Korleski, Director

3/21/07
Date

IT IS SO AGREED:

American Energy Corporation



Signature

03/05/07
Date

RYAN M. MURRAY, GENERAL MANAGER
Printed or Typed Name and Title

