



3. The New York Organic Fertilizer Company, a wholly owned subsidiary of Respondent, owns and operates a direct heat drying/pelletizing facility in Bronx, New York, which treats a large portion of the biosolids (sewage sludge) produced by New York City. The annual production of heat dried pellets ("pellets") is approximately 45,000 tons.
4. The pellets, which may be used as fertilizer for many crops, including corn, wheat, soybeans, pasture, sod, grapes, fruit trees, silviculture, and in home and garden, are transported into Ohio via rail or truck. When the pellets are transported in bulk, the railcars are covered and sealed so as not to allow water to reach the pellets. The pellets are transferred from the railcars via a standard fertilizer industry belt conveyer, to trucks for local distribution.
5. The pellets, marketed under the trade name "Granulite" as either a bulk or bagged fertilizer product, are registered with the Ohio Department of Agriculture.
6. Respondent distributes and markets the pellets under approved, statewide, Ohio Sewage Sludge Management Plan No. 07-092-PW, issued January 3, 2002.
7. On or before June 25, 2003, Respondent staged two railcars containing pellets within the municipal limits of the Village of Chauncey, at a site where residences were located on both the east and west sides of the tracks, and the nearest residences being approximately 125 feet away. Also, a community park was located 0.2 miles from the railcars.
8. On June 25 and June 27, 2003, the Ohio EPA received complaints of a nuisance odor emanating from the railcars.
9. On July 2, 2003, Ohio EPA conducted an inspection of the two railcars and observed a nuisance odor emanating from the two railcars. Pellets were observed underneath one of the railcars and the conveyer. The release of dust was observed when unloading from the railcars into a dump truck.
10. On July 3, 2003, Ohio EPA requested Respondent to find a different site for distribution of the pellets, one preferably not located in a residential neighborhood. Respondent stated that it would finish unloading the railcars and remove them from the siding, and find a different location in the future.
11. On July 14, 2003, the Ohio EPA was informed that two additional railcars containing pellets were staged at the same railroad siding.
12. On July 15, 2003, the Ohio EPA, by letter, memorialized the July 3, 2003 discussion with Respondent, as set forth in Finding No. 10, above.

13. On July 18, 21, 23, and 30, 2003, the Ohio EPA received additional odor complaints regarding the railcars.
14. On August 1, 2003, the railcars were removed from the siding located in the Village of Chauncey, Ohio.
15. Similar nuisance odor problems occurred in the Village of Chauncey in October, 2002, and in the Village of Cairo in September, 2002.
16. The application submitted by Respondent and approved under Ohio Sewage Sludge Management Plan No. 07-092-PW, on page 5, provided that:

Should field storage of the product, or storage at any distribution facility, cause a nuisance, such as odor, Synagro will take immediate steps to alleviate the problem. (Emphasis added.)
17. In regard to the nuisance odor problems associated with the railcars containing pellets in the Village of Chauncey, Respondent did not take immediate steps to alleviate the nuisance problems, as is required in Ohio Sewage Sludge Management Plan No. 07-092-PW.
18. ORC § 6111.07 provides that no person shall violate or fail to perform any duty imposed by ORC §§ 6111.01 to 6111.08.
19. Violation of an Ohio Sewage Sludge Management Plan is a violation of ORC § 6111.07.
20. Pursuant to ORC § 6111.03(S)(1), the Director may administer and enforce a program for the regulation of sludge management in this state. In administering the program, the Director, in addition to exercising the authority provided in any other applicable sections of ORC Chapter 6111., may issue modify, or revoke orders to prevent, control, or abate the use and disposal of sludge and sludge materials or the effects of the use of sludge and sludge materials on land located in the state and on the air and waters of the state;
21. Ohio Sewage Sludge Management Plan No. 07-092-PW, special condition No. 7, provides that Ohio EPA may prohibit the distribution of sewage sludge by Respondent when such distribution "promotes the development of nuisance odors."
22. The distribution of the pellets by Respondent in the Village of Chauncey promoted the development of nuisance odors.

23. Compliance with ORC Chapter 6111. is not contingent upon the availability or receipt of financial assistance.
24. 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.

#### **V. ORDERS**

1. Respondent shall not dispose, use, store, or treat pellets or other forms of sewage sludge within the municipal limits of the Village of Chauncey, Ohio.
2. Respondent shall provide Ohio EPA with electronic or written notice of Respondent's placing of pull or release orders with the railroad, which orders cause Respondent's pellets or other forms of Respondent's sewage sludge to enter the State of Ohio or have railcars leaving the place of staging. Such notice shall be received by Ohio EPA, at the location specified below, within five (5) days after placing the pull or release orders with the railroad, and shall set forth the number of railcars, the location, including address, municipality or township and county, of the siding to be used or used to stage the railcars, and an estimated date the railcars will arrive at or depart from, the staging place.

For deliveries located within the geographical jurisdiction of the Northeast District Office or Northwest District Office, notification shall be sent to:

Megan Carr  
Sewage Sludge Coordinator  
Ohio EPA, Northwest District Office  
347 Dunbridge Road  
Bowling Green, OH 43402

megan.carr@epa.state.oh.us  
phone: (419) 373-3003  
fax: (419) 352-8468

For deliveries in all other locations within the state, notification shall be sent to:

Suzanne Matz  
Sewage Sludge Coordinator  
Ohio EPA, Central Office  
P.O. Box 1049  
Columbus, OH 43216-1049

suzanne.matz@epa.state.oh.us  
phone: (614) 644-2034  
fax: (614) 644-2745

3. Within forty-five (45) days after the effective date of these Orders, Respondent shall submit to Ohio EPA, a modification, with appropriate fee, of Ohio Sewage Sludge Management Plan No. 07-092-PW, which modification shall describe the procedures to be implemented to alleviate any nuisances, such as odors, which may occur during the field storage of the pellets or storage or unloading of the pellets at any distribution facility or staging location. Such modification shall be sent to:

Ohio EPA  
Division of Surface Water  
Sewage Sludge Management Program  
122 South Front Street  
P.O. Box 1049  
Columbus, Ohio 43216-1049

#### **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 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 the Respondent. For purposes of these Orders, a responsible official is defined in OAC Rule 3745-33-03(D).

#### **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 activities occurring on or at the 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. RESERVATION OF RIGHTS**

Ohio EPA reserves its rights to seek civil or administrative penalties against Respondent for violations specifically cited in these Orders. Ohio EPA and Respondent each reserve all other rights, privileges and causes of action, except as specifically waived in Section XI of these Orders.

### **XI. WAIVER**

In order to resolve disputed claims, without admission of fact, violation or liability, Respondent consents to the issuance of these Orders and agrees to comply with these Orders. Except for the right to seek civil or administrative penalties against Respondent for violations specifically cited in these Orders, which right Ohio EPA does not waive, 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.

### **XII. EFFECTIVE DATE**

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

**XIII. 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 AGREED:  
Synagro~WWT, Inc.**

Alvin L. Thomas II  
Signature

10/20/03  
Date

ALVIN L. THOMAS II  
Printed or Typed Name

VICE PRESIDENT / SECRETARY  
Title

**IT IS SO ORDERED AND AGREED:  
Ohio Environmental Protection Agency**

Christopher Jones  
Christopher Jones  
Director

11-10-03  
Date