

BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY

OHIO E.P.A.

DEC 22 2004

ENTERED DIRECTOR'S JOURNAL

In the Matter of:

Ohio Power Company
One Riverside Plaza
Columbus, Ohio 43215

Director's Final Findings
and Orders

Respondent

PREAMBLE

These Director's Final Findings and Orders ("Orders") are hereby issued to Ohio Power Company acting in place of its former wholly-owned subsidiary, Southern Ohio Coal Company, pursuant to the authority invested in the Director of the Ohio Environmental Protection Agency ("Ohio EPA") under Ohio Revised Code ("ORC") Chapter 6111. and Section 3745.01.

PARTIES BOUND

On March 22, 1996, the United States District Court for the Southern District of Ohio entered a Consent Decree and Settlement Agreement (Case No. C2-96-0097) that required, among other actions, that Southern Ohio Coal Company ("SOCCo") implement a plan to restore two streams from the effects caused by SOCCo's release of mine water in the Summer of 1993 from its "Meigs Mine No. 31" located in Meigs County, Ohio. SOCCo's restoration obligations are also reflected in Final Findings and Orders issued by the Director on July 26, 1993. In Paragraph 106 of the Consent Decree, Ohio Power Company ("Ohio Power") guaranteed the full performance of all payment and work obligations of its then subsidiary, SOCCo. The parties have negotiated an Amended Consent Decree which has been submitted to the Court for approval. Respondent Ohio Power and the Director seek to conform the obligations imposed on SOCCo, and to be undertaken by Ohio Power, under the terms of the July 26, 1993 Orders and the terms of the Amended Consent Decree. Respondent's obligations under these Orders may be altered only by the written approval of the Director of Ohio EPA.

FINDINGS

- 1 Meigs Division of SOCCo operated an underground coal mine identified as Meigs Mine Number 31 with associated wastewater treatment works, located on State

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

By:  Date: 22 DEC 04

Route 124, approximately 4 miles west of Langsville, Salem Township, Meigs County, Ohio.

2. SOCCo discharged "industrial waste," as defined by ORC Section 6111.01, to "waters of the state," as defined by ORC Section 6111.01.
3. SOCCo held an effective National Pollutant Discharge Elimination System (NPDES) Permit, Permit m 0IL00027*CD, for the discharge of industrial waste to the waters of the state from the company's treatment works.
4. Due to flooding of Meigs Mine Number 31, SOCCo proposed to pump and discharge untreated or partially treated mine water (U/PTMW) at an approximate rate of 35,000 gallons per minute (GPM) to the waters of the state for a period of 60 days. SOCCo proposed to discharge the U/PTMW to the following streams: Parker Run, a tributary of Leading Creek; Sugar Run, Strong's Run and Flat Lick Run, tributaries of Raccoon Creek; and to Campaign Creek. Under the proposal Parker Run would receive the largest volume of U/PTMW.
5. On July 26, 1993, the Director issued Final Findings and Orders to SOCCo ("July 26, 1993 Orders") which addressed the pumping of the flooded Meigs Mine Number 31.
6. Order No. 4 of the July 26, 1993 Orders states the following:

Within 120 days of the effective date of these Orders, SOCCo shall submit a comprehensive plan and time schedule to the Division of Water Pollution Control, Ohio EPA, SEDO, to facilitate and hasten the restoration of the receiving streams to the conditions that existed prior to the discharge. SOCCo shall initiate implementation of the plan upon approval by SEDO and complete all actions specified in the approved plan within 120 days of the approval by the Director. The Director may, at any time, order any or all discharges to cease due to ongoing potential environmental harm.
7. On September 22, 1993, the Director issued Final Findings and Orders to SOCCo which modified the July 26, 1993 Orders.
8. On January 27, 1994, the Director issued Final Findings and Orders to SOCCo which modified the July 26, 1993 Orders.
9. On November 23, 1993, SOCCo submitted a preliminary plan to facilitate restoration of the affected streams, and worked cooperatively with Ohio EPA on the development of appropriate biological criteria to measure stream recovery.

The restoration plan was revised and supplemented on numerous occasions to reflect the developing biological criteria. On July 26, 1995, SOCCo submitted to Ohio EPA the "Southern Ohio Coal Company Meigs Mine Number 31 Stream Restoration Plan" ("Plan") and on August 4, 1995, submitted revisions to the Plan, based on the biological criteria developed by Ohio EPA.

10. On September 11, 1995, Ohio EPA approved the revised Plan.

11. The statement of purpose of the revised Plan contains the following language:

Recovery of the streams will be assessed using biological criteria ("Ecological Endpoints") found in Ohio EPA's "Ecological Recovery Endpoints for Streams Affected by the Meigs #31 Mine Discharge during July - September 1993" (March 2, 1994), as amended by an Errata Sheet dated July 10, 1995 (collectively referred to as "Endpoints Document"). The Endpoints Document is incorporated herein by reference.

12. As of the issuance date of these Orders, segments of Parker Run and Leading Creek have not achieved all of the Ecological Endpoints specified in Table 1 of the Endpoints Document.

13. The Endpoint Document states:

When final endpoints are reached, monitoring requirements for an organism group will cease after a second year of monitoring confirms that endpoints have been maintained; however, if final endpoints are not realized, specialized studies may be required to identify the impediments to recovery.

14. The Director's Final Findings and Orders listed above do not modify NPDES Permit number 0IL00027*CD or any other SOCCo permit.

15. SOCCo has met virtually all endpoints, including all of the endpoints relating to the Raccoon Creek portions of the affected streams. SOCCo has asserted, with substantial evidentiary basis, that the failure of two segments to meet endpoint biological criteria is due to factors beyond SOCCo's control and unrelated to the 1993 discharge of water from Meigs Mine No. 31. SOCCo's asserted factors are credible.

16. SOCCo has fully complied with all provisions of the July 26, 1993 Orders, as amended on September 22, 1993, and January 27, 1994, except for the obligations referenced in Order No. 4 of the July 26, 1993 Orders. After a review

of the data for Leading Creek, Ohio EPA determined that some of the original endpoints were inappropriate for certain segments of Leading Creek.

17. Respondent Ohio Power, as guarantor for SOCCo, agrees to satisfy the obligations required under these Orders.
18. Pursuant to the Amended Consent Decree, Ohio Power, as guarantor for SOCCo, has provided an additional \$1,400,000 to the Leading Creek Improvement Account, beyond the \$1,900,000 that SOCCo paid as part of the original Consent Decree. The money in the Leading Creek Improvement Account shall be used by the United States Fish and Wildlife Service to implement, or support the implementation of, projects intended to improve the aquatic life uses of the Leading Creek Stream System, and to monitor the progress and effect of such projects.
19. Pursuant to the Amended Consent Decree, Ohio Power, as guarantor for SOCCo, has also agreed to convey to the Meigs Soil and Water Conservation District, a conservation easement along Parker Run and Leading Creek in Meigs County, Ohio, such conveyance to be made by Ohio Power's subsidiary Franklin Real Estate Company.
20. 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 their relation to the benefits to the people of the state to be derived from such compliance in accomplishing the purpose of ORC Chapter 6111. As a result of the above information, Respondents' compliance with these Orders will release SOCCo and Ohio Power from obligations to comply with all obligations relating to stream restoration activities and monitoring set forth in the prior Director's Final Findings and Orders.

ORDERS

1. Respondent Ohio Power shall pay to Ohio EPA \$90,587.00 in settlement of Ohio EPA, Division of Surface Waters' (DSW) claims for civil penalties, which may be assessed pursuant to ORC Chapter 6111.
2. In lieu of payment of \$90,587.00 civil penalty to Ohio EPA, Respondent Ohio Power shall, within fourteen (14) days of the effective date of these Orders, fund the following two supplemental environmental projects (SEP):

- a. provide \$57,630.00 to the Meigs County Soil and Water Conservation District for the sole and exclusive purpose of implementing the habitat restoration component of the "Little Leading Creek Sediment Study" proposal attached hereto as Exhibit A. Exhibit A is incorporated into these Findings & Orders as if fully stated herein; and
 - b. provide \$32,957.00 to the "Columbus Zoo - Mussel Research Facility", Attn: Doug Warmolts, P.O. Box 400, Powell, Ohio 43065 for the sole and exclusive purpose of implementing the "Mussel Resurvey and Reintroductions to Leading Creek" proposal attached hereto as Exhibit B. Exhibit B is incorporated into these Findings & Orders as if fully stated herein.
3. Within thirty (30) days of the effective date of these Orders, Respondent Ohio Power shall submit to Ohio EPA a copy of the check and transmittal letter documenting SEP payment to the parties as outlined in Order No. 2.a and 2.b.
 4. Should Respondent Ohio Power fail to timely fund the SEPs outlined in Order No. 2.a and 2.b, Respondent Ohio Power shall pay to Ohio EPA the \$90,587.00 civil penalty. Payment shall be made by an official check made payable to "Treasurer, State of Ohio" for \$90,587.00. 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 the Respondent.

OTHER APPLICABLE LAWS

All actions required to be taken pursuant to these Orders shall be taken in accordance with the requirements of all applicable local, state, and federal laws and regulations. Nothing in these Orders shall be construed as waiving or compromising in any way the applicability and enforcement of any other statutes or regulations applicable to Respondent and its operations.

RESERVATION OF RIGHTS

These Orders do not prevent Ohio EPA from enforcing 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. These Orders do not prevent Ohio EPA from exercising its authority to require Respondent to perform additional activities pursuant to Chapter 6111. of the Ohio Revised Code or any other applicable law in the future. These Orders do not restrict the right of

Respondent to raise any administrative, legal or equitable claim or defense for any additional activities that Ohio EPA may seek to require of Respondent. These Orders do not limit the authority of Ohio EPA to seek relief for violations not cited in these Orders.

These Orders are not, and shall not be construed to be, a permit, plan approval or other authorization issued pursuant to any statute or regulation. These Orders specifically do not authorize the construction of any new disposal system or sewerage or treatment works for sewage disposal at the Facility or any other location. Nothing in these Orders shall be construed to be or to represent, an adjudication of any claim or an admission of liability.

TERMINATION

Respondent's obligations under these Orders and Order No. 4 of the July 26, 1993 Orders shall be satisfied and these Orders shall terminate when Respondent demonstrates in writing, and certifies to the satisfaction of Ohio EPA, that all obligations under these Orders have been performed, and the Chief of Ohio EPA's Division of Surface Water acknowledges in writing this demonstration and certification.

This certification shall be submitted by Respondent to the Southeast District Office (Attention: DSW Enforcement Group Leader), 2195 Front Street, Logan, Ohio 43138 (telephone: 614-385-8501), and shall be signed by a responsible official of Ohio Power. A "responsible official" is as defined in Ohio Administrative Code (OAC) 3745-33-03(D)(1) for a corporation, OAC 3745-33-03(D)(2) for a partnership, OAC 3745-33-03(D)(3) for a sole proprietorship, and OAC 3745-33-03(D)(4) for a municipal, state or other public facility. The certification shall contain the following attestation:

"I certify under the penalty of law that I have personally examined and am familiar with the information contained in or accompanying this certification, and based on my inquiry of those individuals immediately responsible for obtaining the information, I believe the information contained in or accompanying this certification is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine or imprisonment."

WAIVER

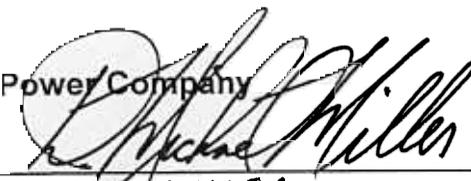
In order to resolve disputed claims, without admission of fact, violation or liability, and in lieu of further enforcement action by the Ohio EPA for only the matter addressed in these Orders, Respondent agrees that these Orders are lawful and reasonable, that the schedules provided for compliance herein are reasonable and that Respondent agrees to comply with these Orders.

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

Notwithstanding the preceding, in the event that 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 event, Respondent agrees to continue to comply with these Orders notwithstanding such appeal and intervention unless said Orders are stayed, vacated or modified.

Each undersigned representative of a signatory to these Orders certifies that he or she is fully authorized to enter into the terms and conditions of these Orders and to legally bind such signatory to this document.

Ohio Power Company

By: 
D. MICHAEL MILLER
VICE PRESIDENT & DEPUTY GENERAL COUNSEL
AMERICAN ELECTRIC POWER SERVICE CORPORATION
AS ATTORNEY & AGENT FOR OHIO POWER COMPANY

Date: DECEMBER 13, 2004

Print/Type Name and Title:

IT IS SO ORDERED AND AGREED:
Ohio Environmental Protection Agency


Christopher Jones, Director

Date: 12-21-04