



**Environmental
Protection Agency**

John R. Kasich, **Governor**
Mary Taylor, **Lt. Governor**
Scott J. Nally, **Director**

August 25, 2011

CERTIFIED MAIL

The Honorable James Phipps
Village of Cedarville
57 N. Main Street, P.O. Box 51
Cedarville, Ohio 45314

Re: Director's Final Findings & Orders

Dear Mayor Phipps:

Transmitted herewith are Final Findings & Orders of the Director concerning the matter indicated.

Sincerely,

Kathleen Phillips
Processing & Records Management Unit
Division of Materials & Waste Management

Enclosure: Director's Final Findings and Orders

ec: Bruce McCoy, DMWM, CO
Kelly Jeter, DMWM, CO
Marty Cooper, Legal, CO
Jill Olberding, DMWM, SWDO
Tracy Buchanan, DMWM, SWDO

BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY

OHIO E.P.A.

AUG 25 2011

ENTERED DIRECTOR'S JOURNAL

In the Matter of:

Village of Cedarville
57 N. Main Street, PO Box 51
Cedarville, Ohio 45314

Amended 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 Jerry Hasler Date: 8-25-11

I. JURISDICTION

These Amended Director's Final Findings and Orders are issued to the Village of Cedarville ("Respondent") pursuant to the authority vested in the Director of the Ohio Environmental Protection Agency ("Ohio EPA") under Ohio Revised Code ("ORC") Sections 3734.02(G), 3734.13 and 3745.01, and to amend the Director's Final Findings and Orders dated August 27, 1998.

II. PARTIES

These Orders shall apply to and be binding upon the Respondent, and its agents, servants, assigns, and successors in interest. The Respondent's obligations under these Orders may only be altered by the written approval of the Director of Ohio EPA.

III. DEFINITIONS

Unless otherwise stated, all terms used in these Orders shall have the same meaning as used in ORC Chapter 3734. and the rules promulgated thereunder.

IV. FINDINGS

The Director has determined the following findings of fact:

1. The Respondent is the "owner" and was the "operator" and "licensee" of the Village of Cedarville Landfill ("Facility") as those terms are defined in Ohio Administrative Code (OAC) Rule 3745-27-01. The Facility is located at 152 West Cedar Street, Cedarville, Greene County, Ohio. Coordinates for the Facility are approximately north latitude 39 degrees 44' 36" and west longitude 83 degrees 49' 14".

2. Respondent is a "person" as that term is defined in ORC Section 3734.01 and in OAC Rule 3745-27-01.
3. The Facility is approximately one acre in size. Respondent ceased acceptance of solid waste at the Facility on October 25, 1990 and its last solid waste license expired on December 31, 1990.
4. Pursuant to ORC Sections 3734.02(G), 3734.13 and 3745.01, Respondent entered into the consensual Director's Final Findings and Orders on August 27, 1998 ("1998 Orders") to address landfill capping and closure violations at the Facility.
5. Pursuant to Order number 4 of the 1998 Orders, Respondent was required to establish post-closure care financial assurance for the Facility within 180 days of the effective date of the 1998 Orders, in accordance with OAC Rules 3745-27-16 and 3745-27-17.
6. The Facility was certified closed on January 21, 1999.
7. Currently, there are 12 years of post-closure care completed with 18 years of post-closure care remaining. The current post-closure care cost estimate for the remaining 18 years for the Facility is less than \$100,000.00.
8. Respondent has utilized the local government financial test to annually demonstrate compliance with the post-closure care financial assurance requirements for the Facility.
9. Pursuant to OAC Rule 3745-27-16(L)(5), to demonstrate that a local government meets the requirements of the local government financial test, the local government must submit various financial documents to the Director. A copy of the local government's independently audited year-end financial statements for the latest fiscal year, including the unqualified opinion of the auditor as prepared by an independent certified public accountant or auditor of state is one of the documents required pursuant to OAC 3745-27-16(L)(5)(b).

10. The cost of an annual audited financial statement prepared for the Respondent by the Auditor of State is estimated at \$9,000.00. Respondent has stated that with the current difficult economic times, the expense associated with preparing an annual audited financial statement for the Village puts an unnecessary financial burden on Respondent.
11. The Auditor of State must conduct an audit of each public office at least once every two fiscal years in accordance with ORC Section 117.11(A) and the rules promulgated thereunder.
12. Respondent wishes to continue to utilize the local government financial test set forth in OAC Rule 3745-27-16(L) to satisfy the post-closure care financial assurance requirements of the 1998 Orders. Respondent has requested that they be granted an exemption to allow the use of the most current Auditor of State biennial audit report prepared for the Village of Cedarville in accordance with ORC Section 117.11(A) to satisfy the requirements of OAC Rules 3745-27-16 (L)(5)(b) and 16(L)(5)(c) included in the requirements for the annual local government financial test for post-closure care set forth in OAC Rule 3745-27-16(L) and 17(H).
13. ORC Section 3734.02(G) states in pertinent part, "The director, by Order, may exempt any person generating, collecting, storing, treating, disposing of, or transporting solid wastes or hazardous waste, ***, in such quantities or under such circumstances that, in the determination of the director, are unlikely to adversely affect the public health or safety or the environment from any *** other requirements of this chapter."
14. Respondent has requested that Order number 4 of the 1998 Orders be modified to allow the Respondent an exemption from the annual audited financial report requirements of OAC Rules 3745-27-16(L)(5)(b) and 16(L)(5)(c) included as part of the requirements for the annual local government financial test for post-closure care set forth in OAC Rule 3745-27-16(L) and 17(H).
15. Ohio EPA has determined that utilizing the most current biennial audit report prepared by the Auditor of State for the Village of Cedarville in compliance with ORC Section 117.11(A) to satisfy the applicable requirements of OAC Rule 3745-27-16(L) and 17(H) is unlikely to adversely affect the safety and health of the public or the environment.

16. Accordingly, pursuant to Section II of the 1998 Orders, these Amended Director's Final Findings and Orders are intended to revise and modify Section V, Paragraph 4 of the 1998 Orders. To the extent not otherwise specifically modified herein, the terms and conditions of the 1998 Orders shall be incorporated herein and shall remain in full force and effect.

V. ORDERS

The Director hereby issues the following Orders:

1. Pursuant to ORC Section 3734.02(G), the Director hereby exempts Respondent from the requirement to submit an independently audited year-end financial statement for the latest fiscal year as set forth in OAC Rule 3745-27-16(L) and 17(H), provided Respondent submits the most current biennial audit report prepared by the Auditor of State for the Village of Cedarville in compliance with ORC Section 117.11(A) to satisfy requirements set forth in OAC Rules 3745-27-16(L)(5)(b) and 16(L)(5)(c) included in the requirements for the annual local government financial test for post-closure care. The Director has determined that granting said exemption is unlikely to adversely affect the safety and health of the public or the environment.
2. Section V, Order paragraph number 4 of the 1998 Orders is modified and superseded by the following language:

“Within one-hundred and eighty (180) days of the effective date of these orders, the Respondent shall establish post-closure care financial assurance for the Facility, in accordance with OAC Rules 3745-27-16 and 3745-27-17 to cover the costs to be associated with thirty years of post-closure care for the Facility. To the extent that Respondent elects to provide post-closure care financial assurance for the Facility in accordance with the local government financial test for post-closure care as set forth in OAC Rule 3745-27-16(L) and 3745-27-17(H), Respondent may utilize the most current biennial audit report prepared for Respondent by the Auditor of State in compliance with ORC Section 117.11(A) to satisfy the requirements of OAC Rules 3745-27-16 (L)(5)(b) and 16(L)(5)(c) included in the requirements for the annual local government financial test for post-closure care.”
3. Except as specifically set forth in Order number 2 above, all terms and conditions of the 1998 Orders remain unchanged and in effect.

VI. TERMINATION AND SATISFACTION

Respondent's obligations under these Orders and the 1998 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 1998 Orders, and the Chief of Ohio EPA's Division of Materials and Waste Management (formerly the Division of Solid and Infectious Waste Management acknowledges, in writing, the termination of these Orders.

This certification shall be signed by a responsible official of the Respondent. The certification shall make the following attestation: "I certify that the information contained in or accompanying this certification is true, accurate and complete."

For purposes of these Orders, responsible officials are the Mayor of the Village of Cedarville or the President of the Cedarville Village Council.

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 or political subdivision, not a party to these Orders, for any liability arising out of or relating 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 federal, state, and local 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 the Respondent's Facility. Ohio EPA reserves all rights and privileges except as specified herein.

IX. NOTICE

All documents demonstrating compliance with these Orders and all other documents required under these Orders to be submitted to Ohio EPA shall be addressed to:

Ohio Environmental Protection Agency
Southwest District Office
Attn. Supervisor, Division of Materials and Waste Management
401 East Fifth Street
Dayton, Ohio 45402-2911

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

X. 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 penalties against the Respondent for noncompliance with these Orders.

Nothing contained herein shall be construed to prevent Ohio EPA from exercising its lawful authority to require the 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 the 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 the 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.

XI. 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 addressed in the 1998 Orders and amended herein, Respondent agrees that these Orders are lawful and reasonable, that the items and time frames provided for compliance herein are reasonable and that the Respondent 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 in the 1998 Orders as incorporated herein.

Respondent hereby waives the right to appeal the issuance, terms 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 in the event if these Orders are appealed by any other party to the Environmental Review Appeals Commission, or any court, nothing in these Orders shall preclude the Respondent from seeking to intervene 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.

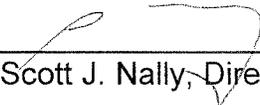
XII. EFFECTIVE DATE

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

XIII. SIGNATORY AUTHORITY

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

IT IS SO ORDERED AND AGREED:



Scott J. Nally, Director

8/25/11

Date

IT IS SO AGREED:

Village of Cedarville



Signature

7-11-2011

Date

JAMES R. PHIPPS

Printed or Typed Name

MAYOR

Title