Ohio Environmental Protection Agency
John R. Kasich, Governor
Mary Taylor, Lt. Governor
Scott J. Nally, Director

November 30, 2011

CERTIFIED MAIL

Village of Baltimore
103 West Market Street
Baltimore, OH 43105

Re: Director's Final Findings & Orders
Village of Baltimore Landfill

Dear Sir or Madam:

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

Sincerely,

Georgia Frakes
Processing and Records Management Unit
Division of Materials and Waste Management

Enclosure: Director's Final Findings and Orders

cc: Matt Boyer, DMWM
Phil Farnlacher, CDO, DMWM
Marty Cooper, Legal

50 West Town Street, Suite 700
P.O. Box 1049
Columbus, OH 43216-1049

614 | 644 3020
614 | 644 3184 (fax)
www.epa.ohio.gov

OHIO E.P.A.
NOV 30 2011
ENTERED DIRECTOR'S JOURNAL

BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY

In the Matter Of:

Village of Baltimore
103 West Market Street
Baltimore, Ohio 43105

Respondent

Director's Final Findings and Orders

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.
By Jenya Lassiter Date: 11-30-11

PREAMBLE

It is agreed by the parties hereto as follows:

I. JURISDICTION

These Director's Final Findings and Orders ("Orders") are issued to the Village of Baltimore ("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 its assigns and successors in interest liable under Ohio law. No changes in ownership of the Facility shall in any way alter the Respondent's responsibilities 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 OF FACT

The Director of Ohio EPA makes the following findings:

1. The Respondent is both the owner and operator of the previously licensed Village of Baltimore Landfill, a former sanitary landfill disposal facility located in the Village of Baltimore, Fairfield County, Ohio (the "Facility"), which is further described in the Governor's Deed recorded at Record Deed Volume 333, Pages 584-586, of the Fairfield County Recorder's Official Records. The Facility may

have been constructed on part of the abandoned Erie Canal bed deeded to the Village of Baltimore.

2. The Facility is a formerly licensed and operating "sanitary landfill facility" as defined pursuant to OAC Rule 3745-27-01(effective July 29, 1976) and was authorized to accept "solid waste" as that term is defined under ORC Section 3734.01(E) and OAC Rule 3745-27-01(U) (effective July 29, 1976).

3. Respondent is the "owner" and the "operator" of the Facility as those terms are defined in OAC Rule 3745-27-01(P) and (O) respectively (effective July 29, 1976), and was also the license holder for the Facility.

4. By letter dated September 5, 1978, the Respondent was notified that the Fairfield County Board of Health revoked the Facility's 1978 operating license on September 1, 1978 due to ongoing violations of OAC Chapter 3745-27 (effective July 29, 1976). The facility was declared closed pursuant to OAC Rule 3745-27-10(A)(1) (effective July 29, 1976). Therefore, Respondent was to complete final closure of the Facility pursuant to OAC Rule 3745-27-10(C) (effective July 29, 1976) within sixty days from September 1, 1978.

5. On November 9, 1978, the Fairfield County Health Department ("FCHD") conducted an inspection of the Facility to determine compliance with the October 31, 1978 closure deadline. This inspection revealed ongoing violations of OAC Rule 3745-27-10(C) (effective July 29, 1976) for failure to complete closure activities.

   This inspection was documented in a Notice of Violation letter ("NOV") from FCHD to Respondent dated November 16, 1978.

6. On May 7, 1979, the FCHD conducted an inspection of the Facility and observed the Respondent had failed to comply with OAC Rule 3745-27-10(C) (effective July 29, 1976). Conditions noted during this inspection revealed uncovered solid waste, leachate ponding, and failure to divert surface water from the Facility.

   This inspection was documented in an NOV from FCHD to Respondent dated June 4, 1979.

7. On August 8, 1979, the FCHD conducted an inspection of the Facility and observed that the Respondent had failed to comply with OAC Rule 3745-27-10(C) (effective July 29, 1976). Conditions noted during this inspection revealed that Respondent failed to cover the Facility with well compacted cover material,

had exposed solid waste and leachate ponding, and failed to divert surface water from the Facility.

8. During a conversation between FCHD and Respondent on August 21, 1979, Respondent stated more cover material would be available soon and that the problems at the Facility would be corrected. Based on this information, FCHD granted the Respondent until October 1, 1979 to correct the ongoing violations.

The August 8, 1979 inspection and the August 21, 1979 conversation were documented in an NOV from FCHD to Respondent dated August 28, 1979.

9. Pursuant to OAC Rule 3745-27-10(C) (effective July 29, 1976) the Respondent was to have completed proper closure of the Facility within sixty (60) days after September 1, 1979. Through a series of inspections and NOV letters, the closure date was extended by the FCHD until October 1, 1979. Pursuant to OAC Rules 3745-27-10(E) through (H) (effective July 29, 1976), the Respondent was required to have maintained the site in such a manner as to ensure continued proper closure of the Facility.

10. On June 10, 2009, Ohio EPA Division of Solid and Infectious Waste Management ("DSIWM") received a Verified Complaint alleging that the Facility was never properly closed pursuant to ORC Chapter 3734. and that exposed waste is directly causing pollution to waters of the state, in violation of ORC Chapter 6111.

11. On August 6, 2009, Ohio EPA inspected the Facility to investigate the Verified Complaint. The inspection revealed open dumping of solid waste including scrap metal, appliances, and scrap tires. Solid waste was also exposed in a few very large blown-over tree root balls. These very large trees likely fell during or as a result of the extreme winds of Hurricane Ike that had occurred in central Ohio in September 2008. No leachate was observed during this inspection.

12. On August 6, 2009, Ohio EPA met with Ms. Marsha Hall, Village of Baltimore's Administrator, to go over the records for the Facility. Ms. Hall was asked if the Village had any documents or information on the Facility including the closure certification report. Ms. Hall informed Ohio EPA that around 1990 a lot of the Village of Baltimore's historical records were lost. No further information or documentation regarding the final closure in accordance with OAC 3745-27-10 (effective July 29, 1976) was available for the Facility. Ohio EPA does not have in its files a final closure certification report in accordance with OAC 3745-27-10 (effective July 29, 1976).

13. On August 19, 2009, Ohio EPA inspected the Facility to further investigate the thickness of the soil cover on the Facility. Where access to the facility was not impeded, the soil cap thickness measurement ranged from a few inches of soil cover in some spots to a maximum soil cap of 18 inches in depth. Measuring the thickness of the landfill cover was hampered by the dense ground cover from the significant growth of brush and woods on and around the Facility over the years.

14. The inspection conducted by Ohio EPA on August 6, 2009 revealed the presence of solid waste including scrap metal, old appliances, and scrap tires that had been open dumped on the Facility in violation of ORC 3734.03 and OAC 3745-27-05.

15. On December 8, 2010, Ohio EPA inspected the Facility to investigate whether the Respondent had removed the scrap metal, appliances, scrap tires and other solid wastes that were open dumped on the Facility as previously identified during the August 6, 2009 inspection by Ohio EPA. On December 10, 2010 Ohio EPA issued a Notice of Violation for open dumping of solid waste in violation of OAC 3745-27-05(C).

16. In light of the open dumping and exposed solid waste at the Facility as confirmed during inspections conducted on August 6, 2009 and December 8, 2010; and the potential for open dumping of solid waste to continue to occur, the Director issued an invitation to negotiate Final Findings and Orders to the Respondent to resolve outstanding violations occurring at the Facility.

17. On March 31, 2011, representatives from Ohio EPA met with Respondent to discuss the open dumping violations and the proposed remedy to resolve the violations at the Facility. Respondent advised that as weather would permit, all the scrap metal, appliances, solid waste and scrap tires open dumped at the facility would be removed and properly disposed.

18. Respondent further advised that evidence of trespassing by accessing the Facility from adjacent properties had been identified. Respondent proposed to construct chained gates across the tow path that runs along the Facility and across other apparent access points that have been created from adjacent properties. Respondent also proposed to post "No Trespassing" signs and surveillance cameras to try and prevent future trespassing and open dumping.

19. During the March 31, 2011 meeting with Respondent, Ohio EPA identified a prior set of Director's Orders dated September 17, 1993, and concerning explosive gas monitoring at the facility. The September 1993 Orders have not been formally concluded although the time period for explosive gas monitoring has

expired. Ohio EPA proposed to schedule a site walk over later in the spring at which time gas monitoring by Ohio EPA would be conducted to verify no explosive gas detections along the boundary of the Facility and adjacent to the Respondent's water treatment buildings.

20. On June 2, 2011, Ohio EPA conducted explosive gas monitoring at the Facility and verified that no explosive gas could be detected between the Facility and the Respondent's adjacent water treatment buildings.

21. On June 2, 2011, representatives from Ohio EPA and Respondent conducted a complete walk over of the facility to determine its condition. The vegetation was very thick and the woods were dense with a large number of well-established trees growing on the historic Facility as well as immediately adjacent to the historic Facility. The number, size and variety of trees indicated that they had been growing for many years. Some trees were split or knocked down with medium root balls but no discernable waste was observed in these root balls.

22. During the walk-over, Ohio EPA observed that a couple of very large trees were fallen with exposed root balls that were from six to ten feet in diameter and several feet thick. There was some evidence of solid waste embedded in these very large root balls, but solid waste was not observed to be blowing. The dense woods on and around the Facility would prevent the removal of these large fallen trees without significant clear cutting of many other healthy trees to gain access for the type of equipment that would be needed to remove the large root balls.

23. There was no leachate observed either ponding on the Facility or migrating off the Facility to the adjacent stream. There was no solid waste observed in the stream.

24. A couple of pieces of old metal or equipment were observed open dumped on the Facility. All scrap tires appeared to be removed from the Facility. Several "No Trespassing" signs had been installed, although some had been damaged by apparent illegal gun fire.

25. Respondent has installed several blocked gates using large fence posts with chains and pad locks at several of the path crossings to prevent trespassing onto the Facility property using access paths from properties adjacent to the Facility. Respondent also installed an access fence and chain at the Facility entrance off Leonard Road with additional no trespassing signage. Respondent proposes to use surveillance cameras to try and identify future trespassers and to prevent future illegal open dumping on the Facility.

V. ORDERS

The Director hereby issues the following Orders:

1. Within thirty (30) days after the effective date of these Orders, Respondent shall remove any remaining scrap metal, appliances, scrap tires and other solid wastes open dumped at the Facility and shall recycle or dispose of such wastes at a licensed solid waste facility. Respondent shall provide OEPA with copies of all waste recycling or disposal receipts for solid wastes removed from the Facility.

2. Beginning with the fourth quarter of 2011 and no less than quarterly thereafter for a period of five years after the effective date of these orders, Respondent shall conduct an inspection and make appropriate repairs to the access gates at the Facility in order to prevent trespassing and open dumping at the Facility.

3. Beginning with March, 2012, and no less than annually thereafter for a period of five years, Respondent shall conduct an inspection of the entire Facility to determine if there has been any open dumping of scrap metal, appliances, scrap tires or other solid waste on the Facility in violation of ORC 3734.03 and OAC 3745-27-05. Respondent shall remove any scrap metal, appliances, scrap tires or other solid waste that has been open dumped on the Facility for recycling or disposal at a licensed disposal facility. Respondent shall also cover with soil, as needed, any areas of exposed waste on the Facility that could create a threat to human health or the environment.

4. Respondent shall submit annually to Ohio EPA a written statement regarding the condition of the Facility including the access fences constructed at the Facility, the application of soil cover on any portion of the Facility, and the disposition of any solid waste open dumped at the Facility. The Respondent shall include a copy of all receipts for recycling and/or disposal of any scrap metal, appliances, scrap tires or other solid waste removed from the facility with the annual written statement. The annual written statement shall be signed by the authorized representative of the Village of Baltimore and submitted annually by June 15 beginning June 15, 2012 and continuing annually through June 15, 2016.

5. In accordance with OAC Rule 3745-27-12(G) and based on the explosive gas monitoring conducted by Ohio EPA, the Director has determined that Respondent's obligations under the September 17, 1993 Orders have been satisfied and the September 17, 1993 Director's Orders are hereby terminated upon the effective effective date of these Orders.

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 Materials and Waste Management approves and 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. Respondent shall have an opportunity to address any such deficiencies and seek termination of these Orders 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. For purposes of these Orders, a responsible official is the Mayor of the Village of Baltimore or the duly authorized representative, if such a representative is responsible for the overall maintenance 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 Respondent or 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 or other legal obligations applicable to Respondent or the Facility.

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
Central District Office-DSIWM
P.O. Box 1049
Columbus, Ohio 43216-1049
Attn: Unit Supervisor, DSIWM

and:

Fairfield County Health Department
1587 Granville Pike
Lancaster, Ohio 43130
Attn: Health Commissioner

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, causes of action and defenses, 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.

ORDERED AND AGREED:

Ohio Environmental Protection Agency

Scott J. Nally, Director

AGREED:

Village of Baltimore

Marsha A. Hall
Signature

MARSHA A. HALL
Printed or Typed Name

10/25/2011
Date

Administrator
Title