

BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY

OHIO E.P.A.
JUL -9 2002

ENTERED DIRECTOR'S JOURNAL

In the matter of:

Fulton County
Board of Commissioners
125 Courthouse Plaza
Wauseon, Ohio 43567

Director's Final Findings
and Orders

Regarding: Fulton County Landfill

Respondent

Jurisdiction

Pursuant to Ohio Revised Code (ORC) Chapter 6111., the Director of the Environmental Protection Agency (Ohio EPA) hereby makes the following Findings and issues the following Orders.

Parties Bound

These Orders shall apply to and be binding upon the Fulton County Board of Commissioners, hereinafter "Respondent", and its successors in interest liable under Ohio law. No change in ownership or operation of the Respondent's Facility will in any way alter Respondent's obligations under these Orders. Respondent's obligations under these Orders may be altered only by the written approval of the Director of Ohio EPA.

Findings of Fact

1. Respondent is the owner and operator of the Fulton County Landfill, which is a 32 acre, inactive solid waste disposal facility located on the southeast corner of County Road F and County Road 9 in section 14, of York Township, Fulton County, Ohio. Boring logs for the area surrounding the Fulton County Landfill indicate that there is more than 110 feet of clay from the original grade of the surrounding land to the uppermost aquifer system.
2. Respondent is a "person" as defined in ORC Section 6111.01(I).

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: Imyee Gah Date: 7/9/02

3. Ohio EPA received a Verified Complaint dated April 2, 2000, submitted pursuant to ORC Section 3745.08, and assigned it verified complaint number VC0004W01. The verified complaint alleged that the unpermitted discharge of contaminants from the Fulton County Landfill is resulting in surface water pollution in violation of ORC Section 6111.04.
4. On at least March, 15, 1989, May, 24, 1991, August 2, 1996, August 6, 1996, August 19, 1996, March 14, 2000, May 4, 2000, and May 5, 2000, and February 20, 2002, representatives of Ohio EPA investigated the Fulton County Landfill and found evidence of releases of contaminants from the Fulton County Landfill to an unnamed tributary of Dry Creek.
5. The unnamed tributary of Dry Creek constitutes "waters of the state" as defined by ORC Section 6111.01(H).
6. On March 15, 1989, and August 19, 1996, Ohio EPA representatives took samples of the discharges from the Fulton County Landfill and the unnamed tributary of Dry Creek. The results of the analysis of these samples confirm the unauthorized discharge of pollutants to waters of the state.
7. ORC Section 6111.04 prohibits the discharge of sewage, industrial waste or other wastes to waters of the state except in accordance with a valid, unexpired permit from Ohio EPA. The discharges from the Fulton County Landfill constitute "industrial wastes" or "other wastes" as those terms are defined in ORC 6111.01. Respondent does not hold a National Pollutant Discharge Elimination System (NPDES) Permit for the aforementioned discharges from the Fulton County Landfill, and therefore, is in violation of ORC Sections 6111.04 and 6111.07.
8. On August 29, 1997, and September 4, 1997, Respondent requested from Ohio EPA, informal approval of a plan to regrade the cap at the Fulton County Landfill to address the unauthorized discharge of leachate to waters of the state.
9. On October 7, 1997, Ohio EPA informed Respondent that a system for containment, collection, and treatment of the leachate at the Landfill should be considered, requested additional information be collected on the Landfill cap thickness, and proposed leachate extraction, which would require authorization under Rule 3745-27-13 of the Ohio Administrative Code, as an acceptable technology to address the unauthorized discharge of leachate.
10. On December 4, 1997, Ohio EPA directed that Respondent cease the unauthorized discharge of leachate, via collection and transport to an approved disposal facility,

informed Respondent of the necessity for leachate collection and treatment facilities to permanently abate the unauthorized discharge, and requested that Respondent submit an application for a Permit to Install (PTI) for such facilities by no later than February 27, 1998.

11. On January 13, 1998, Respondent resubmitted its previous proposal for regrading of the landfill cap to correct leachate outbreaks. The additional information requested by Ohio EPA on October 7, 1997, was not included. Respondent also requested a variance from water quality standards for the discharge pursuant to "OAC Rule 3745-1-01(G) [sic]."
12. OAC Rule 3745-1-01(F) authorizes the Director to grant temporary water quality variances from compliance with water quality standards contained in OAC Chapter 3745-1 pursuant to the criteria in OAC Rule 3745-33-07. The information required by OAC Rule 3745-33-07(D)(4) was not submitted with Respondent's application.
13. OAC Rule 3745-33-07 applies only to point source discharges under an effective NPDES permit. As the discharge from the Fulton County Landfill is not permitted under ORC Chapter 6111. and OAC Chapter 3745-33, such a variance does not apply.
14. The following 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 requirement of ORC Sections 6111.44 and 6111.45, and OAC Chapter 3745-31.
15. Compliance with ORC Chapter 6111. is not contingent upon the availability or receipt of financial assistance.
16. 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 purposes of ORC Chapter 6111.

Orders

1. Within thirty (30) days after the effective date of these Orders, and then monthly thereafter, Respondent shall inspect the Fulton County Landfill for leachate outbreaks. Within ninety (90) days after the effective date of these Orders, and then

monthly thereafter until the completion of Orders No. 5 and 6 of these Orders to Ohio EPA's satisfaction, Respondent shall inspect the Fulton County Landfill and place soil on any leachate outbreaks encountered in sufficient quantities as to minimize such outbreaks from occurring. Respondent shall notify Ohio EPA at least forty-eight (48) hours prior to each inspection.

2. Before the tenth (10) day of each month following the effective date of these Orders, Respondent shall provide Ohio EPA with a written report which contains the following information:
 - a. A description of the date Respondent inspected the Fulton County Landfill in compliance with Order No. 1 of these Orders, the number and location of any leachate outbreaks encountered and an estimate of the amount of soil placed on each leachate outbreak.
 - b. A description of Respondent's efforts to comply with Orders No. 4, 5, 6 and 11 of these Orders, any problems encountered, and any efforts taken by Respondent to correct such problems.
3. Within thirty (30) days after the effective date of these Orders, Respondent shall submit to Ohio EPA for review ground water sample results obtained from wells located within one (1) mile of the Fulton County Landfill. If Ohio EPA concludes, upon its review of these sample results, that additional sample results need to be obtained, Ohio EPA shall notify Respondent in writing. Within sixty (60) days after receiving such notification from Ohio EPA, Respondent shall submit for review and approval a ground water sampling and analysis plan for a representative number of residential wells located within (1) mile of the Fulton County Landfill. Within fourteen (14) days of receiving any comments on the sampling and analysis plan from Ohio EPA, Respondent shall revise the plan and resubmit it to Ohio EPA for approval. Ohio EPA may approve the plan with conditions and/or modify the plan and approve it as modified. Respondent shall implement the sampling and analysis plan upon approval by Ohio EPA in accordance with the schedules contained therein.
4. Within ninety (90) days after the effective date of these Orders, Respondent shall provide a topographic map that delineates all areas of waste placement at the Fulton County Landfill and shows the current Landfill topography. The survey points on the topographical map shall not be greater than 100' grid spacing and shall include the perimeter and all drainage swales. The map shall show areas where the existing Landfill cap is inadequate and where new cap construction is necessary to provide adequate surface water drainage and contribute to the prevention of leachate seeps.

5. Within one hundred and twenty (120) days after the effective date of these Orders, Respondent shall submit to Ohio EPA for review and approval a cap enhancement plan, which shall contain a detailed description and design drawings of proposed cap enhancements and valid calculations that demonstrate that the enhanced cap will significantly reduce the amount of leachate generated by the Landfill and a proposed schedule for the implementation of cap enhancements. The cap enhancement plan shall comply with the requirements of OAC Rule 3745-27-13. Within twenty-one (21) days after receiving any comments from Ohio EPA on the cap enhancement plan, Respondent shall revise the plan and resubmit it to Ohio EPA for approval. Ohio EPA may approve the plan with conditions and/or modify the plan and approve it as modified. Respondent shall implement the cap enhancement plan upon approval by Ohio EPA in accordance with the schedules contained therein.
6. Within one hundred and twenty (120) days after the effective date of these Orders, Respondent shall submit to Ohio EPA for approval a complete application for a PTI and approvable detail plans for a system designed to collect Landfill leachate for disposal in order to eliminate the discharge of pollutants to waters of the state. The leachate collection system shall be designed to ensure that landfill leachate is maintained below 734 feet mean sea level, or lower, as necessary to maintain the leachate head below the bottom-most point of surface water control ditches or drainage systems at the Fulton County Landfill.
7. Respondent shall abate and eliminate the unauthorized discharge of pollutants from the Fulton County Landfill in accordance with plans and applications submitted in accordance with Orders No. 5 and 6., as approved by Ohio EPA, and the following schedule of compliance:
 - a. As soon as possible, but not later than one hundred and twenty (120) days after the date of approval of the plans submitted in accordance with Orders No. 5 and 6., above, Respondent shall initiate construction.
 - b. Respondent shall complete construction as soon as possible, but not later than fifteen (15) months from the effective date of these Orders. Respondent may request that the Director extend this time frame by providing a written explanation of why additional time is necessary. The Director shall review and consider such a written request for an extension of time in accordance with applicable law.
8. Within one hundred and twenty (120) days after the effective date of these Orders, Respondent shall submit a survey of the Fulton County Landfill to the Fulton County Board of Health, the Fulton County Recorder, and the Director of Ohio EPA which

shall accurately locate and describe the completed Landfill, and include information relating to the area, depth, volume, and nature of wastes disposed in the Landfill, to achieve compliance with OAC Rule 3745-27-10(C)(8), as effective on July 29, 1976.

9. Within one hundred and twenty (120) days after the effective date of these Orders, Respondent shall record a notation on the deed to the property comprising the Fulton County Landfill, or on some other instrument which is normally examined during title search, that will in perpetuity notify any potential purchaser of the property that the land has been used as a sanitary landfill facility. The notation shall include information describing the acreage, exact location, depth, volume, and nature of solid waste deposited in the Fulton County Landfill, to achieve compliance with OAC Rule 3745-27-11(H)(5)(b), as effective on June 1, 1994.
10. Within sixty (60) days after the capping/leachate collection activities are completed, Respondent shall submit a certification and a quality assurance/quality control report, that includes test results and as-built drawings, prepared by a registered professional engineer in the state of Ohio, certifying that the activities specified in these Orders have been completed in accordance with the specifications in these Orders.
11. Respondent shall conduct post-construction monitoring at the Fulton County Landfill to ensure the leachate collection system and enhanced cap design is functioning in accordance with the approved plans. Beginning upon completion of construction activities and continuing weekly for a period of three (3) months and then monthly for a period of an additional sixty (60) months, and quarterly thereafter, the effectiveness of the leachate collection system shall be determined by the absence of leachate outbreaks on the surface of the landfill, and by measuring the level of leachate at the lowest point(s) of the leachate collection system that receive leachate by gravity. The leachate level shall be maintained at a level below 734 feet mean sea level, or lower, as necessary to maintain the leachate head below the bottom-most point of surface water control ditches or drainage systems at the Fulton County Landfill. The results of these leachate level measurements shall be included in the monthly report in accordance with Order No. 2.
12. Respondent shall submit all documents required by these Orders to Ohio EPA's Northwest District Office at the following address:

Ohio Environmental Protection Agency
Northwest District Office
347 North Dunbridge Road
Bowling Green, Ohio 43402

ATTN: DSW Enforcement Group Leader.

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. 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 and the Fulton County Landfill.

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 Chapters 3734. and 6111. of the Ohio Revised Code or any other applicable law in the future, including but not limited to additional activities to address any ground water contamination from the Fulton County Landfill. 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.

Termination

Respondent's obligations under these Orders shall be satisfied and 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 the termination of these Orders in writing.

This certification shall be submitted by Respondent to the Northwest District Office (ATTN: DSW Enforcement Group Leader) and shall be signed by a responsible official of Respondent. 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 certification:

"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, Respondent agrees to comply with these Orders, and Respondent agrees that these Orders are lawful and reasonable, and that the schedules provided for compliance herein are reasonable. Ohio EPA specifically does not waive its right to pursue actions and civil penalties as set forth in the Reservation of Rights paragraph of 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 administrative or judicial review of these Orders either in law or equity.

Notwithstanding the preceding, Ohio EPA and Respondent agree that 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 an event, Respondent agrees to continue to comply with these Orders notwithstanding such appeal and intervention unless these 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.

IT IS SO AGREED:

Respondent

By: _____

Title: _____

Date: _____

By: _____

Date: _____

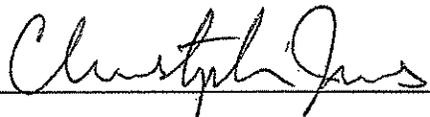
Title: V-Pres

By: 

Date: 5-13-02

Title: _____

IT IS SO ORDERED AND AGREED:
Ohio Environmental Protection Agency



Date: 6-28-02

Christopher Jones
Director

RESOLUTION 2002-~~374~~ 379

In the Matter of Executing EPA's Final) Office County Commissioners
Findings and Orders for Fulton County) Fulton County, Ohio
Landfill) May 13, 2002

Commissioner Graf moved for the adoption of the following resolution:

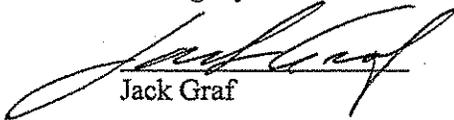
BE IT RESOLVED, that the Fulton County Board of Commissioners approve and execute the EPA's final finding and orders for the Fulton County Landfill.

Commissioner Genter seconded the resolution and upon calling the roll, the following vote was taken:

Voting Aye thereon:

Voting Nay thereon:

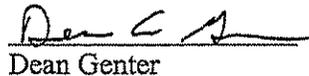
Abstain:



Jack Graf

Jack Graf

Jack Graf.



Dean Genter

Dean Genter

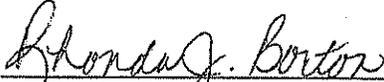
Dean Genter

Paul Barnaby

Paul Barnaby

Paul Barnaby

**BOARD OF COUNTY COMMISSIONERS
FULTON COUNTY, OHIO**

Attest: 

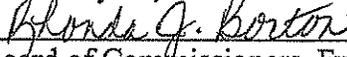
Rhonda J. Borton, Clerk

cc: Fulton County Landfill
Sanitary Engineer

File: ApprvTR

CERTIFICATE

I, Rhonda J. Borton, Clerk of the Commissioners of Fulton County, Ohio, do hereby certify that the above is a true and correct copy of a resolution adopted by the Board of County Commissioners of Fulton County, Ohio, and recorded in the Commissioner's Journal 100 Page on May 13, 2002.


_____, Clerk
Board of Commissioners, Fulton County,