

To be recorded with Deed  
Records - ORC § 317.08

## ENVIRONMENTAL COVENANT

This Environmental Covenant is entered into by \_\_\_\_\_ (“Owner”) [name all Owners of the Property], \_\_\_\_\_ (“Holders”) [name the owner and operator of the C&D landfill if different from the Owner of the Property], and the Ohio Environmental Protection Agency (“Ohio EPA”) pursuant to Ohio Revised Code (“ORC”) §§ 5301.80 to 5301.92 for the purpose of subjecting the Property to the activity and use limitations and specified obligations set forth herein.

This Environmental Covenant is created to facilitate the performance of the environmental response project consisting of the closure of the \_\_\_\_\_ construction and demolition debris landfill (“the Facility”), in accordance with ORC Chapter 3714. and the rules promulgated thereunder. The Facility is located at \_\_\_\_\_ in \_\_\_\_\_ County, Ohio. The administrative record for the environmental response project is contained in the files for the Facility located at the Ohio EPA’s \_\_\_\_\_ District Office in \_\_\_\_\_ County, Ohio, and at the \_\_\_\_\_ Health Department (“Health Department”) in \_\_\_\_\_ County, Ohio.

Closure of the Facility requires the construction of a cap system. The cap system requires the use of soils meeting the requirements of ORC Chapter 3714. and the rules promulgated thereunder. The Owner[s] and Holder[s] desire that the soils located at the Property, as described below, be used to construct the cap system and consent to and agree to be bound by the provisions of this Environmental Covenant.

Prior to the construction of the cap system and the completion of final closure of the Facility, the owner and operator of the Facility will need to establish and maintain financial assurance to guarantee funding for final closure, including funding for the cost of soils needed for the cap system. In light of the execution of this Environmental Covenant, the owner and operator of the Facility will not need to obtain financial assurance in one of the forms described in Ohio Administrative Code (“OAC”) Rules 3745-400-13(B) to (G) for the costs to a third party to purchase soils needed to complete closure, except as provided in this Environmental Covenant.

Now therefore, Owner[s] [name all Owners of the Property and add other “Holders”] and Ohio EPA agree to the following:

1. Environmental Covenant. This instrument is an environmental covenant developed and executed pursuant to ORC §§ 5301.80 to 5301.92.

2. Property. This Environmental Covenant concerns *[an approximately acre tract of real property; OR real property parcels numbered \_\_\_\_\_]* owned by \_\_\_\_\_, located at \_\_\_\_\_, in \_\_\_\_\_ County, Ohio, and more particularly described in Exhibit A attached hereto and hereby incorporated by reference herein ("Property"). *[Attach legal description and survey for the Property subject to the Environmental Covenant. Also attach the deed and title search for the Property. The deed and title search may be for a larger recorded tract of real property when the Property subject to the Environmental Covenant is only a portion of the recorded tract. The Property subject to the Environmental Covenant consists of that area from which prequalified soil to be used for closure purposes for the Facility are to be stored or removed together with areas necessary for access to such soil. The Property subject to the Environmental Covenant must include any land needed for site access. All documents will be supplied by owner and operator of the C&D landfill].*

3. Owner[s]. \_\_\_\_\_ ("Owner[s]") [who resides; OR which is located] at \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_ is the owner of the Property.

4. Holder[s]. Owner[s], whose address is listed above, and \_\_\_\_\_ [the owner and operator of the C&D landfill], which [is/are] located at \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_, are the holders of this Environmental Covenant.

5. Present Condition of Property. The Owner[s] and Holder[s] represent: that no buildings or other structures, paved or aggregate roads or surfaces, or improvements, except for fencing, exist on the Property; that no hazardous substances, hazardous wastes, solid wastes, construction and demolition debris or other wastes or pollutants as defined under federal or state law are located on the Property; and that the photographs and topographical maps and surveys of the Property attached as Exhibit B are true and accurate depictions of the Property as of the date of entry into this Environmental Covenant. *[At a minimum attach photographs and topographical maps of the Property].*

6. Activity and Use Limitations. To ensure that soils at the Property are available for use in the closure of the Facility in accordance with the requirements of ORC Chapter 3714. and the rules promulgated thereunder, Owner[s] hereby impose[s] and agree[s] to comply with the following activity and use limitations:

Construction on Property – There shall be no construction or installment of buildings or other structures, paved or aggregate roads or surfaces, or improvements on the Property, including but not limited to the construction of

any dwelling, recreational structure, landing strip, billboard, advertising display, antenna, tower, or storage tank.

Industrial or Commercial Activity – There shall be no industrial or commercial activity undertaken or allowed on the Property, but the farming of agricultural crops and the grazing of livestock on the Property is permitted if done in accordance with all applicable federal, state, and local laws.

Drilling or Mining – There shall be no drilling or mining on the Property except that oil and gas exploration and extraction shall be permitted if the method of exploration and extraction is undertaken from the surface of land located outside of the boundaries of the Property; the oil and gas exploration and extraction will not interfere with the excavation of soils from the Property; and no drill cuttings, waste water, or other wastes associated with the oil and gas exploration are stored, treated, or disposed on the Property. In addition, deep underground mining will be permitted when such mining will not interfere with the excavation of soils from the Property; and no mining wastes, waste water, or other wastes associated with deep underground mining are stored, treated, or disposed on the Property. Finally, the excavation of soils for use in the closure of the Facility will be permitted.

Grading and Excavating – There shall be no grading or excavating on the Property and the topography of the Property shall not be changed, but re-grading to prevent the discharge of sediments to surface water, plowing for planting of agricultural crops, and the installation of field drainage tiles in accordance with applicable federal, state, and local laws is permitted.

Filling or Placement of Solid or Liquid Materials – There shall be no filling on the Property or placement of solid or liquid materials or other substances on the Property; but the placement of additional, prequalified soils on the Property is permitted when done in accordance with this Environmental Covenant, and the placement of fertilizer on the soil and the treatment and irrigation of crops for agricultural purposes is permitted when done in accordance with all applicable federal, state, and local laws.

Storage and Disposal of Waste – There shall be no storage or disposal of wastes on the Property including but not limited to the storage or disposal of: solid wastes; construction and demolition debris; hazardous wastes; hazardous substances; industrial liquid wastes; exempt or excluded wastes; agricultural wastes; drilling or mining wastes; or toxic substances as those wastes are defined under federal, state, or local laws.

Utilities - There shall be no utilities installed on or above the Property.

7. Addition of Prequalified Soils after Ohio EPA Approval. Pursuant to ORC §5301.84 and notwithstanding any other law or agreement to the contrary, the signees of this Environmental Covenant, including the Owner[s], Holders, mortgagees, and lienholders agree to be bound by the provisions of this paragraph. The Facility owner or operator may add additional soils to the Property provided: the Facility owner and operator has received written permission to do so from the Owner[s] of the Property; the soils have been prequalified as meeting all applicable regulatory requirements for soils to be used in closure of the Facility; the Facility owner or operator receives written approval from Ohio EPA to add the prequalified soils to the Property; and the Facility owner or operator places the soil on the Property in compliance with any restrictions in Ohio EPA's written approval and in such a manner as to ensure slope stability and to prevent the discharge of sediments to surface water.

8. Breach of Activity or Use Limitation. Pursuant to ORC §5301.84 and notwithstanding any other law or agreement to the contrary, the signees of this Environmental Covenant, including the Owner[s], Holders, mortgagees, and lienholders agree to be bound by the provisions of this paragraph. If any event or action by or on behalf of a person, including a person who owns an interest in or holds an encumbrance on the Property, constitutes a breach of the activity and use limitations, the Owner[s] or Transferee shall notify Ohio EPA and all Holders within three (3) days of becoming aware of the event or action, and shall remedy the breach of the activity and use limitations no later than sixty (60) days after becoming aware of the event or action, or after such other time frame as may be agreed to by the Owner or Transferee and Ohio EPA. If the Owner[s] or Transferee fail to remedy the breach of the activity or use limitation in accordance with the specified time frame, then no later than thirty (30) days after the expiration of that time frame, the owner and operator of the Facility shall obtain alternative financial assurance to guarantee the cost of performing closure of the Facility and shall not rely on the planned use of the soils located on the Property in determining the cost estimate to perform final closure of the Facility.

9. Use of the Soils on the Property Obligation. Pursuant to ORC §5301.84 and notwithstanding any other law or agreement to the contrary, the signees of this Environmental Covenant, including the Owner[s], Holders, mortgagees, and lienholders agree to be bound by the provisions of this paragraph. Provided the Holder that owns the Facility is acting in accordance with applicable construction and demolition debris requirements related to closure of the Facility, the Holder that owns the Facility shall have access to the Property and the right to use the soils on the Property for closure of the Facility, or portions thereof. The Ohio EPA and Health Department shall have access to the Property and the right to use the soils on the Property at no cost to the State of Ohio or the Health Department in order to address conditions at the Facility in the event that owner or operator of the Facility triggers mandatory closure and fails to perform closure of the

Facility in accordance with applicable requirements, and the State of Ohio or the Health Department is authorized by a court or other tribunal to enter onto the Property and to excavate and remove soils from the Property.

10. Indemnification and Hold Harmless. Pursuant to ORC §5301.84 and notwithstanding any other law or agreement to the contrary, the signees of this Environmental Covenant, including the Owner[s], Holders, mortgagees, and lienholders agree to be bound by the provisions of this paragraph. The Owner[s] agree to indemnify, defend, and hold harmless Ohio EPA and the Health Department, their respective employees, agents, and assigns, from any and all claims, causes of action, liabilities, demands, losses, expenses, damages, fines, fees, penalties, suits, proceedings, costs, or sanctions arising from or related to: the Owner[s]' negligent acts or omissions, violations of law, or breach of any provision of this Environmental Covenant; and the State of Ohio or Health Department's entry onto the Property and excavation of soils from the Property. The owner and operator of the Facility agree to indemnify, defend, and hold harmless Ohio EPA and the Health Department, their respective employees, agents, and assigns, from any and all claims, causes of action, liabilities, demands, losses, expenses, damages, fines, fees, penalties, suits, proceedings, costs, or sanctions arising from or related to: the Owner[s] or the Facility owner or operator's negligent acts or omissions, violations of law, or breach of any provision of this Environmental Covenant; and the State of Ohio or Health Department's entry onto the Property, excavation of soils from the Property, transportation of soils from the Property to the Facility, and use of the soils to address conditions at the Facility.

11. Running with the Land. This Environmental Covenant shall be binding upon the Owner[s] and all assigns and successors in interest, including any Transferee, and shall run with the land, pursuant to ORC § 5301.85, subject to amendment or termination as set forth herein. The term "Transferee," as used in this Environmental Covenant, shall mean any future owner of any interest in the Property or any portion thereof, including, but not limited to, owners of an interest in fee simple, mortgagees, easement holders, and/or lessees.

12. Compliance Enforcement. Compliance with this Environmental Covenant may be enforced pursuant to ORC § 5301.91. Failure to timely enforce compliance with this Environmental Covenant or the activity and use limitations contained herein by any party shall not bar subsequent enforcement by such party and shall not be deemed a waiver of the party's right to take action to enforce any non-compliance. Nothing in this Environmental Covenant shall restrict the Director of Ohio EPA from exercising any authority under applicable law.

13. Rights of Access. Owner[s] hereby grant[s] to Ohio EPA and the Health Department, their respective employees, agents, and assigns, and the Holders the right of access to the Property for implementation or enforcement of this Environmental Covenant.

14. Compliance Reporting. Owner[s] or any Transferee or the Holder that owns the Facility shall submit to Ohio EPA and the Health Department by the first (1<sup>st</sup>) of August of each year written documentation verifying that the activity and use limitations remain in place and are being complied with.

15. Notice upon Conveyance. Each instrument hereafter conveying any interest in the Property or any portion of the Property shall contain a notice of the activity and use limitations set forth in this Environmental Covenant, and provide the recorded location of this Environmental Covenant. The notice shall be substantially in the following form:

THE INTEREST CONVEYED HEREBY IS SUBJECT TO AN ENVIRONMENTAL COVENANT, DATED \_\_\_\_\_, 201\_, RECORDED IN THE DEED OR OFFICIAL RECORDS OF THE \_\_\_\_\_ COUNTY RECORDER ON \_\_\_\_\_, 201\_, IN [DOCUMENT \_\_\_\_\_, or BOOK \_\_\_\_\_, PAGE \_\_\_\_\_]. THE ENVIRONMENTAL COVENANT CONTAINS THE FOLLOWING ACTIVITY AND USE LIMITATIONS:

Construction on Property – There shall be no construction or installment of buildings or other structures, paved or aggregate roads or surfaces, or improvements on the Property, including but not limited to the construction of any dwelling, recreational structure, landing strip, billboard, advertising display, antenna, tower, or storage tank.

Industrial or Commercial Activity – There shall be no industrial or commercial activity undertaken or allowed on the Property, but the farming of agricultural crops and the grazing of livestock on the Property is permitted if done in accordance with all applicable federal, state, and local laws.

Drilling or Mining – There shall be no drilling or mining on the Property except that oil and gas exploration and extraction shall be permitted if the method of exploration and extraction is undertaken from the surface of land located outside of the boundaries of the Property; the oil and gas exploration and extraction will not interfere with the excavation of soils from the Property; and no drill cuttings, waste water, or other wastes associated with the oil and gas exploration are stored, treated, or disposed on the Property. In addition, deep underground mining will be permitted when such mining will not interfere with the excavation of soils from the Property; and no mining wastes, waste water, or other wastes associated with deep underground

mining are stored, treated, or disposed on the Property. Finally, the excavation of soils for use in the closure of the Facility will be permitted.

Grading and Excavating – There shall be no grading or excavating on the Property and the topography of the Property shall not be changed, but re-grading to prevent the discharge of sediments to surface water, plowing for planting of agricultural crops, and the installation of field drainage tiles in accordance with applicable federal, state, and local laws is permitted.

Filling or Placement of Solid or Liquid Materials – There shall be no filling on the Property or placement of solid or liquid materials or other substances on the Property; but the placement of additional, prequalified soils on the Property is permitted when done in accordance with this Environmental Covenant, and the placement of fertilizer on the soil and the treatment and irrigation of crops for agricultural purposes is permitted when done in accordance with all applicable federal, state, and local laws.

Storage and Disposal of Waste – There shall be no storage or disposal of wastes on the Property including but not limited to the storage or disposal of: solid wastes; construction and demolition debris; hazardous wastes; hazardous substances; industrial liquid wastes; exempt or excluded wastes; agricultural wastes; drilling or mining wastes; or toxic substances as those wastes are defined under federal, state, or local laws.

Utilities - There shall be no utilities installed on or above the Property.

Owner[s] shall notify Ohio EPA, the Health Department and the Holders within ten (10) days after each conveyance of an interest in any portion of the Property. Owner's[s]' notice shall include the name, address, and telephone number of the Transferee, a copy of the deed or other documentation evidencing the conveyance, and a survey map that shows the boundaries of the property being transferred.

17. Subordination of Property Interest to Environmental Covenant. Pursuant to R.C. § 5301.86(A) and (C), all mortgagees, lienholders, and other parties with an interest in the Property have, for valuable consideration exchanged, and as evidenced by their respective signature on this Environmental Covenant, agreed to waive and subordinate the priority of their respective mortgage, lien, or other property interest in favor of this Environmental Covenant for all legal or equitable purposes and with the same effect as though this Environmental Covenant had been executed and recorded prior to the filing for

record of their respective mortgage, lien, or other property interest, but without otherwise affecting the priority of the respective mortgage, lien, or other property interest.

18. Representations and Warranties. Owner[s] hereby represent[s] and warrant[s] to the other signatories hereto:

- A. that the Owner[s] is [are] the sole owner[s] of the Property;
- B. that the Owner[s] hold[s] fee simple title to the Property which is  
*[use either of the following, as appropriate:]*  
*free, clear and unencumbered; [or]*  
*subject to the interests or encumbrances identified in paragraph 17*  
*above;*
- C. that the Owner[s] has [have] the power and authority to enter into this Environmental Covenant, to grant the rights and interests herein provided and to carry out all obligations hereunder;
- D. that the Owner[s] has [have] identified all other persons that own an interest in or hold an encumbrance on the Property and notified such persons of the Owner's[s'] intention to enter into this Environmental Covenant; and
- E. that this Environmental Covenant will not materially violate or contravene or constitute a material default under any other agreement, document or instrument to which Owner[s] is [are] a party or by which Owner[s] may be bound or affected;

19. Mining Permit. Pursuant to ORC §5301.84 and notwithstanding any other law or agreement to the contrary, the signees of this Environmental Covenant, including the Owner[s], Holders, mortgagees, and lienholders agree to be bound by the provisions of this paragraph. The owner and operator of the Facility agree to maintain, and shall not surrender, the permit obtained from the Ohio Department of Natural Resources for surface mining on the Property, and further agree to grant access to the permit to the State of Ohio or the Health Department, if necessary, for use of the soils at the Facility consistent with this Environmental Covenant.

20. Amendment or Termination. This Environmental Covenant may be amended or terminated by consent of all of the following: the Owner[s] or a Transferee; the Holders; and the Ohio EPA, pursuant to ORC § 5301.90 and other applicable law. The term, "Amendment," as used in this Environmental Covenant, shall mean any changes to the

Environmental Covenant, including the activity and use limitations set forth herein, or the elimination of one or more activity and use limitations when there is at least one limitation remaining. The term, "Termination," as used in this Environmental Covenant, shall mean the elimination of all activity and use limitations set forth herein and all other obligations under this Environmental Covenant.

This Environmental Covenant may be amended or terminated only by a written instrument duly executed by the Director of Ohio EPA and the Owner[s] or Transferee and Holders of the Property or portion thereof, as applicable. Within thirty (30) days of signature by all requisite parties on any amendment or termination of this Environmental Covenant, the Owner[s] or Transferee shall file such instrument for recording with the \_\_\_ County Recorder's Office, and shall provide a file- and date-stamped copy of the recorded instrument to Ohio EPA.

21. Severability. If any provision of this Environmental Covenant is found to be unenforceable in any respect, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired.

22. Governing Law. This Environmental Covenant shall be governed by and interpreted in accordance with the laws of the State of Ohio.

23. Recordation. Within thirty (30) days after the date of the final required signature upon this Environmental Covenant, Owner[s] shall file this Environmental Covenant for recording, in the same manner as a deed to the Property, with the \_\_\_\_\_ County Recorder's Office.

24. Effective Date. The effective date of this Environmental Covenant shall be the date upon which the fully executed Environmental Covenant has been recorded as a deed record for the Property with the \_\_\_\_\_ County Recorder.

25. Distribution of Environmental Covenant. The Owner[s] shall distribute a file- and date-stamped copy of the recorded Environmental Covenant to: Ohio EPA; the Health Department; the Holders; and each person who signed the Environmental Covenant.

26. Notice. Unless otherwise notified in writing by or on behalf of the current owner of Ohio EPA, any document or communication required by this Environmental Covenant shall be submitted to:

[title or position]  
Division of [\_\_\_\_\_]



OHIO ENVIRONMENTAL PROTECTION AGENCY

\_\_\_\_\_  
Scott J. Nally, Director

\_\_\_\_\_  
Date

State of Ohio

County of Franklin            )     ss:  
  )

Before me, a notary public, in and for said county and state, personally appeared Scott J. Nally, the Director of Ohio EPA, who acknowledged to me that he did execute the foregoing instrument on behalf of Ohio EPA.

IN TESTIMONY WHEREOF, I have subscribed my name and affixed my official seal this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Notary Public

[NAME OF HOLDER]

\_\_\_\_\_  
Signature of Holder

\_\_\_\_\_  
Printed Name and Title

\_\_\_\_\_  
Date

State of \_\_\_\_\_ )  
  )     ss:  
County of \_\_\_\_\_ )

Before me, a notary public, in and for said county and state, personally appeared \_\_\_\_\_, a duly authorized representative of \_\_\_\_\_, who acknowledged to me that [he/she] did execute the foregoing instrument on behalf of \_\_\_\_\_.