

OHIO E.P.A.

SEP 25 2014

ENTERED DIRECTOR'S JOURNAL

BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY

In the Matter Of:

City Of Brooklyn : Modified Director's
7619 Memphis Avenue : Final Findings and Orders
Brooklyn, Ohio :

Respondent

PREAMBLE

The parties, having engaged in settlement discussions and desiring to avoid litigating disputed claims, have reached an agreement pursuant to Ohio Revised Code ("ORC") 3745.01 to resolve said claims through these Modified Director's Final Findings and Orders ("Orders").

I. JURISDICTION

These Orders are issued to the City of Brooklyn ("Respondent") pursuant to the authority vested in the Director of the Ohio Environmental Protection Agency ("Ohio EPA") under ORC Sections 3734.13 and 3745.01.

II. PARTIES BOUND

These Orders shall apply to and be binding upon Respondent and successors in interest liable under Ohio law. No change in ownership of the Facility as hereinafter defined shall in any way alter Respondent's obligations 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

The Director of Ohio EPA has determined the following findings:

1. The Brooklyn Landfill ("Facility") is located at 9400 Memphis Avenue, Brooklyn, Cuyahoga County, Ohio.
2. Respondent is the "owner" of the Facility and "operator" of the Facility as those terms are defined in Ohio Administrative Code ("OAC") Rules 3745-27-01(O)(7) and (O)(5), respectively.

3. The Facility is a "sanitary landfill facility" as that term is defined under OAC Rule 3745-27-01(S)(4) and is authorized to accept "solid waste" as that term is defined under ORC Section 3734.01(E) and OAC Rule 3745-27-01(S)(23).
4. The Respondent is a person as that term is defined in ORC Section 3734.01(G) and in Ohio Administrative Code ("OAC") Rule 3745-27-01(P)(3).
5. On January 28, 2014, the Director and Respondent consented to Director's Final Findings and Orders ("January 2014 Orders") to resolve violations at the Facility.
6. On February 27, 2014, the Director and Respondent consented to modifying Order #1 of the January 2014 Orders to require the submittal, by March 31, 2014, of a topographic map and a comparison of the actual vertical and horizontal limits of emplaced waste to the vertical and horizontal limits of waste placement authorized in PTI #02-4542 ("February 2014 Orders") .
7. In accordance with Order #2 of the January 2014 Orders, Ohio EPA concurred with Respondent's plan describing how it will manage solid waste located outside permitted limits on July 25, 2014.
8. Order #3 of the January 2014 Orders requires the Respondent to submit to Ohio EPA a revised final closure/post-closure plan not later than sixty (60) days after Ohio EPA's concurrence of Respondent's plan submitted pursuant to Order #2.
9. Order #4 of the January 2014 Orders requires the Respondent to submit to Ohio EPA an itemized closure cost estimate and an itemized post-closure cost estimate not later than sixty (60) days after Ohio EPA's concurrence of Respondent's plan submitted pursuant to Order #2.
10. On September 10, 2014, the Respondent requested the Director extend the deadlines referenced in Findings 8 and 9 above by thirty (30) days. The Director determines that such an extension is reasonable in order to provide sufficient time for the Respondent to address waste relocation at the Facility.

V. ORDERS

Respondent shall achieve compliance with ORC Chapter 3734 and the rules promulgated thereunder according to the following compliance schedule:

1. Section V of the January 2014 Orders, as modified by the February 2014 Orders, is hereby modified to replace Order #3 with the following:

"3. By October 24, 2014, Respondent shall submit to Ohio EPA a revised final closure/post-closure plan, in compliance with OAC Rule 3745-27-11 except that the plan shall provide for a final cap that is protective of public health, safety, and the environment and, at a minimum, is designed and constructed in such a manner as to meet the following requirements:

- A. Minimize the infiltration of surface water and the generation of leachate;
 - B. Controls surface water;
 - C. Serve as a barrier to leachate outbreaks;
 - D. Have a maximum slope based on a slope stability analysis;
 - E. Have at least a five percent grade;
 - F. Provide protection for all cap system components from the effects of the formation of landfill gas;
 - G. Control landfill gas migration;
 - H. Minimizes erosion;
 - I. Supports a dense vegetative cover."
2. Section V of the January 2014 Orders, as modified by the February 2014 Orders, is hereby modified to replace Order #4 with the following:

"4. By October 24, 2014, Respondent shall submit to Ohio EPA an itemized closure cost estimate and an itemized post-closure cost estimate. The cost for closure shall include the cost of managing waste that is disposed outside of the permitted limits of waste placement in accordance with Order #2."

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 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, in which case Respondent shall have an opportunity to address any such deficiencies and seek termination as described above.

The certification shall contain the following attestation: "The City certifies that the information contained in or accompanying this certification is true, accurate and

complete.”

This certification shall be submitted by the Respondent to Ohio EPA and shall be signed by a responsible official of Respondent. For purposes of these Orders, a responsible official is the principal executive officer, the ranking elected official, or other duly authorized employee.

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 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 local, state and federal laws and regulations. These Orders do not waive or compromise the applicability and enforcement of any other statutes or regulations applicable to Respondent.

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
Northeast District Office
Division of Materials and Waste Management
2110 East Aurora Road
Twinsburg, Ohio 44087

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 and causes of action, 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.

IT IS SO ORDERED AND AGREED:

Ohio Environmental Protection Agency



Craig W. Butler
Director

IT IS SO AGREED:

City of Brooklyn



Signature

9/25/14

Date

RICHARD H. BALBIER

Printed or Typed Name

MAYOR - CITY OF BROOKLYN

Title