



**Environmental  
Protection Agency**

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

October 21, 2011

**CERTIFIED MAIL**

City of Elyria  
Attn: Terry Shilling, City Law Director  
131 Court Street, Suite 301  
Elyria, OH 44035

And

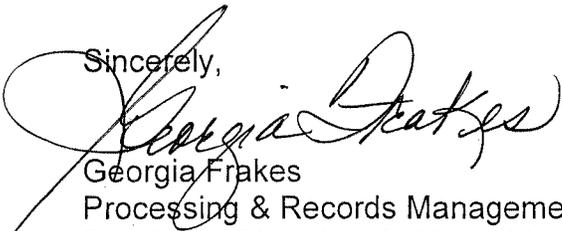
Madden Brothers, Inc.  
66 Pearl Road  
Brunswick, OH 44212

**Re: Director's Final Findings & Orders**

Dear Sir or Madam:

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

Sincerely,



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

Enclosure: Director's Final Findings and Orders

ec: Bruce McCoy, CO, DMWM  
Kelly Jeter, CO, DMWM  
Janine Maney, Legal

BEFORE THE  
OHIO ENVIRONMENTAL PROTECTION AGENCY

OHIO E.P.A.

OCT 21 2011

ENTERED DIRECTOR'S JOURNAL

In the Matter Of:

City of Elyria  
131 Court Street, Suite 301  
Elyria, Ohio 44035

Director's Final Findings  
and Orders

And

Madden Brothers, Inc.  
66 Pearl Road  
Brunswick, Ohio 44212

Respondents

**PREAMBLE**

It is agreed by the parties hereto as follows:

**I. JURISDICTION**

These Director's Final Findings and Orders ("Orders") are issued to the City of Elyria ("City") and Madden Brothers, Inc. ("Madden Bros., Inc.") (collectively "Respondents") 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 Respondents and successors in interest liable under Ohio law. No change in ownership of the Landfill or Composting Facility (as hereinafter defined) shall in any way alter Respondents' 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.

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: Jim Lassiter Date: 10-21-11

#### IV. FINDINGS

The Director of Ohio EPA makes the following findings:

1. Respondent City of Elyria is the owner or operator, as defined by OAC 3745-27-01 (O)(5), (6) & (7), of a closed solid waste disposal facility, as defined by ORC 3734.01(N), which accepted municipal solid wastes, industrial wastes, and industrial wastes in drums, known as the Garden Street Landfill (Hereinafter "Landfill" and also referred to as "Site"), located at 851 Garden Street, Elyria Township Road 326, Elyria, Lorain County, Ohio.
2. ORC Section 3734.02(H) provides, in part, "[n]o person shall engage in filling, grading, excavating, building, drilling, or mining on land where a hazardous waste facility, or a solid waste facility, was operated without prior authorization from the director, who shall establish a procedure for granting such authorization by rules adopted in accordance with Chapter 119. of the Revised Code."
3. OAC Rule 3745-27-13(A) (effective June 12, 1989), as amended by OAC Rule 3745-27-13(A) (effective August 15, 2003), states, in part, "[n]o person shall, without authorization from the director, engage in filling, grading, excavation, building, drilling, or mining on land where a hazardous waste facility or solid waste facility was operated. Any person proposing to engage in these activities on land where a hazardous waste facility or solid waste facility was operated shall comply with the requirements of this rule."
4. Respondent City of Elyria constructed a Class IV Solid Waste Composting Facility, as that term is defined under OAC Rule 3745-27-01(C)(5), on top of the closed Garden Street Landfill.
5. The Class IV Solid Waste Composting Facility ("Composting Facility"), is authorized to accept "type A feed stocks, bulking agents, and additives limited to urea and bacterial or fungal inoculums."
6. Respondent City of Elyria is the "owner" or "operator" of the Landfill as that term is defined in Ohio Administrative Code ("OAC") Rule 3745-27-01(O)(5) & (O)(7).
7. Respondent City of Elyria is the "owner" or "operator" and "registrant" of the Composting Facility as those terms are defined in Ohio Administrative Code ("OAC") Rule 3745-27-01(O)(5) & (O)(7) & (R)(4).
8. Respondent Madden Bros., Inc. is the "operator" of the Composting Facility as that term is defined in Ohio Administrative Code ("OAC") Rule 3745-27-01(O)(5).
9. Each Respondent is a person as that term is defined in ORC Section 3734.01(G) and in OAC Rule 3745-27-01(P)(3).

10. On October 16, 2003, Ohio EPA received a request pursuant to OAC 3745-27-13 from Respondent City of Elyria to construct a Class IV Composting Facility at the closed Garden Street Landfill. Revisions to the request were received by Ohio EPA on November 7, 2003, and November 18, 2003. The request and subsequent revisions were prepared by Respondent Madden Bros., Inc. in conjunction with an environmental consultant and submitted pursuant to OAC Rule 3745-27-13.
11. On January 15, 2004, by a Director's Final Action, Ohio EPA issued an authorization to Respondent City of Elyria pursuant to OAC Rule 3745-27-13 ("Rule 13 Authorization") to allow Respondents to construct, establish and operate the Composting Facility on the closed garden Street Landfill, provided that Respondent City of Elyria and Respondent Madden Brothers, Inc. comply with all conditions set forth in numbers 1 through 10 of the Rule 13 Authorization, including but not limited to the following:
  - a. All on-site activities shall be in compliance with all applicable state and federal laws and regulations pertaining to environmental protection [No. 1];
  - b. All activities undertaken shall not create a nuisance and shall not adversely affect public safety, human health, or the environment [No. 2];
  - c. Any solid waste encountered during activities on site shall be transported to a licensed solid waste facility for disposal [No. 3];
  - d. Drainage must be controlled to prevent any ponding or leachate run off from the site; surface water must be diverted away from material placement areas [No. 4];
  - e. Any leachate produced on site shall be contained for reintroduction into the composting process or transported and discharged to an approved treatment facility [No. 5];
  - f. [The Rule 13 Authorization] only authorizes the construction activities at the Garden Street Landfill in accordance with the October 16, 2003, November 7, 2003, and November 18, 2003 submittals. All activities must be conducted in strict accordance with the plans, specifications, and information submitted as part of the request. There may be no deviation from the approved plans without the express written approval of Ohio EPA [No. 7];
  - g. Any portions of the landfill where the final cover system has been disturbed or damaged by construction or operation activities shall have a final cover system re-established in accordance with the capping requirements established in OAC Rule 3745-27-10 as effective on July 29, 1976. [No. 8].

12. Ohio EPA conducted an inspection of the Composting Facility on top of the Landfill on May 4, 2004. In correspondence dated June 10, 2004, Ohio EPA notified Respondents of the following violations:
  - a. Condition #1 of the Rule 13 Authorization and OAC Rule 3745-27-13(H)(5) for failure to conduct all activities on site in compliance with all applicable state and federal laws pertaining to environmental protection including but not limited to the control of air pollution, leachate, surface water run-on and run-off, and the protection of groundwater. Specifically, the leachate containment berm structure surrounding the windrow/compost area to contain leachate was breached at the northeast corner of the compost area allowing leachate to leave the site;
  - b. Condition #3 of the Rule 13 Authorization for failure to transport all solid waste encountered during the activities on site to a licensed solid waste facility for disposal. Specifically, during unauthorized removal of the leachate containment berm, Respondents excavated a drainage pathway from the compost area to the marsh area located northeast of the leachate containment berm. This unauthorized trench intercepted solid waste from the closed landfill and the commingled solid waste and soil from the excavation are being stockpiled along the sides of the trench;
  - c. Condition #4 of the Rule 13 Authorization for failure to divert surface water from material placement areas and control drainage to prevent ponding and leachate run-off from the site. Specifically, large ponds of leachate were observed on the northwestern portion of the composting area.
  - d. Condition #5 of the Rule 13 Authorization and ORC Chapter 6111.04 for failure to manage all leachate produced on-site, and for causing pollution to waters of the State respectively. Specifically, Respondents' activities generated leachate on site and Respondents failed to contain the leachate for reintroduction into the composting process or to transport leachate to an approved treatment facility. Instead it was observed that the unauthorized trench constructed by Respondents at the landfill allowed the leachate to discharge into the marshy area northeast of the composting area;
  - e. Condition #7 of the Rule 13 Authorization for failure to conduct construction at the closed landfill in strict accordance with the approved plans, specifications, and information submitted as part of the Rule 13 Authorization request. Specifically Respondents deviated from the approved plans by removing the berm without the express, written approval of Ohio EPA;
  - f. Condition #8 of the Rule 13 Authorization for failure to re-establish final cover in the areas where the final cover system has been damaged by the

construction activities at the closed landfill. Specifically, Respondents damaged the final cover system of the closed landfill by the unauthorized excavation of a trench to the marshy area northeast of the composting area.

13. Ohio EPA conducted a re-inspection of the Composting Facility on top of the Landfill on May 27, 2004, to determine if the violations noted during the May 4, 2004, inspection had been corrected. In correspondence dated June 10, 2004 Ohio EPA notified Respondents that the inspection revealed that the berm surrounding the composting area was re-established; however the landfill cap in the trenched area had not been repaired. Additionally Ohio EPA noted the following violations:
  - a. Condition #3 of the Rule 13 Authorization for failure to transport all solid waste encountered on site to a licensed solid waste facility for disposal. Specifically, the waste encountered during the unauthorized removal of the containment berm remained on site in violation of Condition #3;
  - b. Condition #4 of the Rule 13 Authorization for failure to divert surface water from material placement areas and control drainage to prevent ponding and leachate run-off. Specifically, large ponds of leachate were observed on the northwestern portion of the composting area;
  - c. Condition #5 of the Rule 13 Authorization and ORC Chapter 6111.04 for failure to manage all leachate produced on site, and for causing pollution to waters of the State respectively. Specifically, leachate generated on site has not been contained for reintroduction into the composting process nor transported to an approved treatment facility;
  - d. Condition #8 of the Rule 13 Authorization for failure to re-establish final cover in the areas where the final cover system has been damaged by the construction activities at the landfill. Specifically the final cover system damaged by the unauthorized excavation of a trench to the marshy area northeast of the composting area had yet to be repaired.
  - e. OAC 3745-27-13(H)(5) for failure to conduct all filling, grading, excavating, building, drilling, or mining activities in accordance with Chapters 3704, 3734, 6111 and all other applicable state and federal laws.
14. In response to the June 10, 2004, Notice of Violation ("NOV") Ohio EPA received correspondence from Respondent Madden Bros., Inc., signed by Brian Madden, Vice President of Respondent Madden Bros., Inc. dated July 26, 2004, stating in part the following:
  - a. "The containment berm located at the northeast corner of the compost area has been rebuilt to meet the specifications submitted on our Rule 13 application;"

- b. "All solid waste encountered due to the breach in #1 was collected and discarded, under the permission of the City of Elyria, in one of the [...] dumpsters located at the service garage at 851 Garden Street;"
  - c. "Leachate collected at the facility is being reintroduced on to the existing storage piles. Unfortunately, due to an unseasonably wet spring, the piles reached a quick saturation point, thus ponding the unabsorbed leachate."
  - d. "Reconstruction of the unauthorized trench has begun and will be completed by August 30, 2004;"
  - e. "All areas between the compost piles have been graded and are regularly maintained so as to divert all ponding to the designated areas for collection."
15. Ohio EPA conducted a site inspection on August 26, 2004 to determine compliance with Condition #8 of the Rule 13 Authorization which requires that any portion of the landfill where the final cover system has been disturbed or damaged by construction or operation activities shall be repaired in accordance with the capping requirements established in OAC Rule 3745-27-10 as effective July 29, 1976.

In correspondence dated October 7, 2004, Ohio EPA notified Respondents that while it appears that the landfill cap was re-established, a report certifying the repairs has not been submitted to Ohio EPA. Ohio EPA further informed Respondents that the certification shall be certified by a Professional Engineer and include information detailing the procedures taken to re-establish the landfill cap in accordance with Ohio EPA Guidance Documents #0111 (Measurable Criteria for Questionable pre-1990 Landfill Caps) and #0123 (Standards for Current Construction of a 1976 Cap System) which were previously provided to Respondents by Ohio EPA.

16. Ohio EPA received a document dated November 15, 2004, from the City of Elyria, Office of the Engineer on behalf of Respondents entitled "*City of Elyria Garden Street Landfill Class IV Compost Facility*." This document was intended to represent a certification report for cap repair and restoration activities. Ohio EPA reviewed the document and in correspondence dated April 11, 2005, notified the City of Elyria, Office of the Engineer of the following violations and deficiencies:
- a. Violation 1, the November 15, 2004, document does not contain all information required in a certification report as outlined in the October 7, 2004 NOV;
  - b. Violation 2, based upon the information contained in the November 15, 2004, document it appears that the cap repair and restoration activities were not in accordance with the requirements outlined in the October 7, 2004 NOV.

- c. Deficiency 1, the November 15, 2004 document does not contain the revised existing plat or new plat of the landfill, nor does it contain evidence that such information was submitted to the Elyria City Health Department as required by OAC Rule 3745-27-13(H)(10)(a)(i);
  - d. Deficiency 2, the November 15, 2004 document does not contain the required deed notification as required by OAC 3745-27-13(H)(10)(a)(ii);
  - e. Deficiency 3, the November 15, 2004, document does not contain the notarized statement required by OAC Rule 3745-27-13(H)(10)(b).
- 17. Ohio EPA received correspondence from Respondent Madden Bros., Inc. dated June 1, 2005, and submitted by Brian Madden, Vice President of Respondent Madden Bros., Inc., stating that Respondent Madden Bros., Inc. had contracted with a geotechnical consulting firm and that the consulting firm would be conducting the required testing to be completed the week of June 6, 2005, and that a certification report would be submitted upon completion.
- 18. Ohio EPA conducted a site inspection on July 12, 2005, in response to an anonymous complaint alleging that unauthorized activities were occurring at the Composting Facility. In correspondence dated July 25, 2005, Ohio EPA notified Respondents of the following violations:
  - a. Condition #8 of the Rule 13 Authorization for failure to re-establish final cover in the areas where the final cover system has been disturbed or damaged by construction or operation activities on the landfill. Specifically, soils from the landfill cap have been removed and placed in large mounds on the western portion of the landfill and soils from the landfill cap are being removed during work conducted on the compost windrows thus damaging the landfill cap;
  - b. Condition #7 of the Rule 13 Authorization for failure to conduct all activities in accordance with the approved plans, specifications, and information submitted as part of the Rule 13 Authorization request. Specifically, Respondents deviated from the approved plans by removing soils from the landfill cap and by placing piles of unknown sand-like material near the compost windrows. This material was not identified in the Rule 13 Authorization.
  - c. In addition to the violations listed above, the owner/operator failed to submit a report by a Professional Engineer certifying the repair/construction to the landfill cap to Ohio EPA by July 15, 2004.
- 19. The Elyria City Health Department ("Health Department") conducted an inspection of the landfill on July 12, 2005. In correspondence dated July 29, 2005, the Health Department notified Respondent City of Elyria of the following:

- a. Street sweepings/ street dirt has been dumped on the property. The Health Department further informed Respondents that this material was considered a solid waste and as such should be removed and disposed of at a licensed solid waste facility;
  - b. The site is only authorized to be used for composting, as such disposing or storing clean hard fill on the landfill is a violation of OAC Rule 3745-27-13.
20. Ohio EPA conducted an inspection of the Composting Facility located at the Landfill on March 17, 2006. In correspondence dated March 23, 2006, Ohio EPA notified Respondents of the following violations of the Rule 13 Authorization issued by Ohio EPA for activities on the Landfill:
  - a. Condition # 1 of the Rule 13 Authorization for failure to conduct all activities at the site in compliance with all applicable state and federal laws pertaining to environmental protection including but not limited to the control of air pollution, leachate, surface water run-on and run-off, and the protection of groundwater. Specifically, several areas of ponded leachate were observed at the landfill and composting facility as documented in photos; also noting, the owner/operator must immediately remove all leachate which has accumulated on top of the landfill;
  - b. Condition #3 of the Rule 13 Authorization, which provides "any solid waste that is encountered during the activities on the site shall be transported to a licensed solid waste facility for disposal." Specifically, the owner/operator is in violation of this condition due to the presence of large quantities of bagged leaves at the property. The plastic bags are considered solid waste and must be removed and transported to a licensed solid waste facility for disposal. Scrap tires were also observed at the Composting Facility. The tires are considered solid waste and must be removed and transported to a licensed scrap tire disposal facility;
  - c. Condition #4 of the Rule 13 Authorization for failure to divert surface water from material placement areas and control drainage to prevent ponding and leachate run-off. Specifically, large ponds of leachate were observed near the material placement areas as well as on the northwestern portion of the composting area; also noting, the owner/operator must immediately remove all leachate which has accumulated on top of the landfill;
  - d. Condition #5 of the Rule 13 Authorization for failure to manage leachate at the Landfill by either containing it for reintroduction to the composting process or disposing of the collected leachate at an approved treatment facility. Specifically, the leachate generated at the site has been accumulating at the site and has not been removed for appropriate disposal;

- e. Condition #7 of the Rule 13 Authorization for failure to conduct all activities at the Landfill in accordance with the approved plans, specifications, and information submitted as part of the Rule 13 request. Specifically Respondents deviated from the approved plans by allowing the presence of solid waste in the compost piles, the accumulation of leachate at the site, and the piling of leaves in a large static mound;
  - f. ORC Rule 3734.03 and OAC Rule 3745-27-05(C) for open dumping of solid waste. Specifically, by allowing the disposal of the scrap tires and plastic bags at the Landfill.
21. Ohio EPA received correspondence from Respondents Madden Bros., Inc. dated April 7, 2006, stating in part that the following remedial actions were taken at the site:
- a. "A dozer was mobilized to the site and used to clear obstructions that led to the ponding of water on top of the landfill;"
  - b. "All of the bagged leaves had been debagged, the leaves windrowed, and the plastic bags hauled for... disposal;"
  - c. "The large static pile of raw leaves has been windrowed;"
  - d. "All of the leachate has been reintroduced on to the windrowed leaves."
22. Ohio EPA conducted a site inspection on June 13, 2007. In correspondence dated June 15, 2007, Ohio EPA notified Respondents of the following violations:
- a. ORC Rule 3734.03 and OAC Rule 3745-27-05(C) for open dumping of solid waste;
  - b. OAC Rule 3745-27-45(H)(3)(b) for failure to take action to minimize the production of leachate or eliminate the ponding of leachate;
  - c. OAC Rule 3745-27-45(C)(2) for failure to prevent the acceptance of prohibited material at the Composting Facility and for failure to remove the prohibited material once it was accepted;
  - d. Condition # 1 of the Rule 13 Authorization for failure to conduct all on site activities in compliance with all applicable state and federal laws pertaining to environmental protection including but not limited to the control of air pollution, leachate, surface water run-on and run-off, and the protection of groundwater. Specifically, several areas of ponded leachate were observed at the Landfill;

- e. Condition #3 of the Rule 13 Authorization for failure to transport all solid waste encountered at the property to a licensed solid waste facility for disposal. Specifically, a large quantity of solid waste was observed at the property; also noting, the material placed on the ground (construction and demolition debris and clean hard fill comingled with solid waste) must be transported to an approved solid waste facility for disposal; Copies of the receipts of acceptance of the waste from the approved solid waste facility must be forwarded to this office;
  - f. Condition #4 of the Rule 13 Authorization for failure to divert surface water from material placement areas and control drainage to prevent ponding and leachate run-off. Specifically, large ponds of leachate were observed near the material placement areas as well as on the northwestern portion of the composting area;
  - g. Condition #5 of the Rule 13 Authorization for failure to manage all leachate by either containing it for reintroduction to the composting process or disposing of the collected leachate at an approved treatment Facility. Specifically, the leachate generated on site has been accumulating at the site and has not been removed for appropriate disposal;
  - h. Condition #7 of the Rule 13 Authorization for failure to conduct all activities on site at the landfill in accordance with the approved plans, specifications, and information submitted as part of the Rule 13 Authorization request. Specifically, Respondents deviated from the approved plans by allowing the presence of solid waste at the Composting Facility and by allowing leachate to accumulate at the Landfill.
23. Ohio EPA conducted a site inspection on April 16, 2008 and April 18, 2008. In correspondence dated May 8, 2008, Ohio EPA notified Respondents of the following violations:
- a. OAC Rule 3745-27-45(H)(3)(a-c) for failure to manage leachate in accordance with ORC Chapter 6111, failure to take action to minimize the production of leachate or eliminate the ponding of leachate, and for failure to maintain the structures or mechanisms used for the collection of leachate. Specifically many large areas of leachate accumulation were observed at the Composting Facility and there were three distinct areas of leachate discharge to drainage ditches and/or to the wetland areas, located at the northern portion of the property, which ultimately drain to a tributary of the West Branch of the Black River. Additionally the structures used for the containment of leachate were not being maintained;

- b. OAC 3745-27-45(C)(1)(e) for failure to manage the Composting Facility in such a manner that water pollution is not created;
- c. OAC Rule 3745-27-45(A)(4) and OAC Rule 3745-27-45(C)(2) for the acceptance of prohibited material at the Composting Facility and the failure to remove prohibited material from the Composting Facility if detected;
- d. Condition # 1 of the Rule 13 Authorization for failure to conduct all on site activities in compliance with all applicable state and federal laws pertaining to environmental protection including but not limited to the control of air pollution, leachate, surface water run-on and run-off, and the protection of groundwater. Specifically, the leachate containment berm surrounding the windrow/ compost area was breached in several locations at the northeast corner of the composting area allowing leachate to leave the site;
- e. Condition #2 of the Rule 13 Authorization for adversely affecting public safety, human health, and the environment by allowing leachate to leave the Composting Facility;
- f. Condition #3 of the Rule 13 Authorization for failure to transport all solid waste encountered at the Composting Facility and Landfill to a licensed solid waste facility for disposal. Specifically, scrap tires and bagged leaves were observed on site;
- g. Condition #4 of the Rule 13 Authorization for failure to divert surface water from material placement areas and control drainage to prevent ponding and leachate run-off. Specifically, large ponds of leachate were observed on the northeastern, northwestern, and southwestern portion of the Facility. Additionally the leachate located in the northeastern portion of the composting area was not contained and was running into the wetland located northeast of the composting area;
- h. Condition #5 of the Rule 13 Authorization for failure to manage all on site leachate by either containing it for reintroduction to the composting process or disposing of the collected leachate at an approved treatment Facility. Specifically, the leachate generated at the site has been accumulating and has not been removed for appropriate disposal;
- i. Condition #7 of the Rule 13 Authorization for failure to conduct all activities at the Landfill in accordance with the approved plans, specifications, and information submitted as part of the Rule 13 Authorization request. Specifically Respondents deviated from the approved plans in the following manner: the extent of the existing compost piles exceeds the approved compost area limits identified in the site plan of the authorization; the turning frequency of the compost piles does not enable biological decomposition

under primarily aerobic conditions to be maintained throughout the compost process and therefore, is not in strict accordance with the plans; and leachate is not being appropriately managed at the Landfill;

24. In response to the May 8, 2008, NOV Ohio EPA received correspondence from Respondent Madden Bros., Inc. signed by Brian Madden, Vice President of Respondent Madden Bros., Inc. and dated May 19, 2008, stating in part the following:
- a. "Both a dozer and an excavator were mobilized to the site and used to clear obstructions that lead to the ponding of water between the windrows." "Additionally, necessary repairs were made to the berm surrounding the compost area to eliminate any threats of leachate contamination;"
  - b. "All of the miscellaneous debris has been removed from the Facility and disposed of properly;"
  - c. "[T]wo - 20,000 frac tanks were mobilized to the property."
  - d. "On May 7, 2008, we were issued a permit from the city of North Ridgeville to accept leachate from the Garden Street site. To date, we have hauled approximately 63,000 gallons of leachate to their facility;"
  - e. "New Procedures have been developed with our staff to inspect the Facility on a daily basis."
25. Ohio EPA conducted a site inspection on May 20, 2008. In correspondence dated May 27, 2008, Ohio EPA notified Respondents of the following violations:
- a. OAC 3745-27-45(A) for failure to operate the Composting Facility in compliance with all applicable authorizing documents;
  - b. OAC Rule 3745-27-45(H)(3) (a-c) for failure to manage leachate in accordance with ORC Chapter 6111, minimize the production of leachate, control or eliminate ponding of leachate, and maintain structures or mechanisms used for the collection of leachate to prevent blockage, clogging, or breakage that may impede proper collection or containment of leachate;
  - c. OAC Rule 3745-27-45(E)(3) for failure to use methods of composting at the Composting Facility that enables biological decomposition and ensure control of leachate, surface water, and ponding of liquids. Specifically, many large areas of leachate accumulation were present at the Composting Facility, and during the time of the May 20, 2008 inspection, no activities were being taken to remove the leachate from the Composting Facility;

- d. OAC Rule 3745-27-45(A)(4), OAC Rule 3745-27-45(A)(5) and OAC Rule 3745-27-45(C)(2)(a) for acceptance of prohibited material at the Composting Facility, failure to properly manage any containers used to transport authorized materials to the composting Facility so that the containers are not introduced into the composting process, and failure to remove prohibited materials from the Composting Facility. Specifically, prohibited materials such as scrap tires and bagged leaves were present in the compost material at the Composting Facility. It was further noted that although the Composting Facility may accept leaves in plastic bags, these bags must be removed prior to placing the leaves into the compost windrows;
- e. Condition # 1 of the Rule 13 Authorization for failure to conduct all on site activities in compliance with all applicable state and federal laws pertaining to environmental protection including but not limited to the control of air pollution, leachate, surface water run-on and run-off, and the protection of groundwater. Specifically, the following activities are not in compliance with state and federal laws and regulations:
  - i. The landfill cap has been disturbed and damaged by construction activities at the Landfill;
  - ii. The leachate containment berm surrounding the windrow/ compost area was expanded vertically at the northeast portion of the compost facility; the landfill cap was scraped from the area adjacent to the berm and placed atop the old berm to increase the berm's height; also noting, that the Ohio EPA inspector issuing the within NOV instructed Brian Madden and Robert (Bobby) Madden, agents of Respondent Madden Bros., Inc., not to increase the height of the Berm
  - iii. A trench in the southerly direction has been dug through the landfill cap to the north of the composting area, apparently to drain ponded surface water;
- f. Condition #3 of the Rule 13 Authorization for failure to transport all solid waste encountered on site to a licensed solid waste facility for disposal. Specifically, bagged leaves and scrap tires were observed at the Landfill and Composting Facility;
- g. Condition #4 of the Rule 13 Authorization for failure to divert surface water from material placement areas and control drainage to prevent ponding and leachate run-off from the site. Specifically, large ponds of leachate were observed near northwestern, northeastern, and southwestern portions of the composting area;



the compost pile. Additionally, large ponds of leachate were observed at the Composting Facility and no activity was taking place to remove the accumulated leachate;

- d. OAC Rule 3745-27-45(A)(4), OAC Rule 3745-27-45(A)(5) and OAC Rule 3745-27-45(C)(2)(a) for acceptance of prohibited material at the Composting Facility, failure to properly manage any containers used to transport authorized materials to the composting Facility so that the containers are not introduced into the composting process, and failure to remove prohibited materials from the Composting Facility. Specifically, it appeared that the same prohibited materials identified in the May 8, and May 27, 2008, NOVs remained;
- e. Condition # 1 of the Rule 13 Authorization for failure to conduct all activities on site in compliance with all applicable state and federal laws pertaining to environmental protection including but not limited to the control of air pollution, leachate, surface water run-on and run-off, and the protection of groundwater. Specifically, the leachate containment berm was expanded vertically at the northeast portion of the Composting Facility. Additionally a trench was dug through the landfill cap;
- f. Condition #3 of the Rule 13 Authorization for failure to transport all solid waste encountered on site to a licensed solid waste facility for disposal.
- g. Condition #4 of the Rule 13 Authorization for failure to divert surface water from material placement areas and control drainage to prevent ponding and leachate run-off. Specifically, large ponds of leachate were observed near northeastern, northwestern, southeastern, and southwestern portions of the composting area;
- h. Condition #5 of the Rule 13 Authorization for failure to manage all leachate on site by either containing it for reintroduction to the composting process or disposing of the collected leachate at an approved treatment facility. Specifically, the leachate generated at the landfill has been accumulating at the site and has not been removed for appropriate disposal;
- i. Condition #7 of the Rule 13 Authorization for failure to conduct all activities at the Landfill in accordance with the approved plans, specifications, and information submitted as part of the Rule 13 request. Specifically Respondents deviated from the approved plans because the extent of the composting piles exceed the compost area limits identified in the Rule 13 Authorization; the windrow construction and turning frequency do not enable biological decomposition under primarily aerobic conditions to be maintained throughout the compost process and therefore, is not in accordance with the

plans, specifications and information submitted as a part of the authorization request; leachate is not being controlled; and Composting Facility operations have damaged the landfill cap;

- j. Condition # 8 of the Rule 13 Authorization for failure to re-establish final cover on the landfill in accordance with the capping requirements established in OAC Rule 3745-27-10, as effective July 29, 1976, in the areas where the final cover system has been damaged by construction or operation activities of the Composting Facility. Specifically, the cap has been breached in two distinct areas and no efforts to repair the cap have occurred at this time;
28. In Response to the June 27, 2008 NOV, Ohio EPA received electronic correspondence from Brian Madden, Vice President of Respondent Madden Bros., Inc., dated July 11, 2008, stating that efforts are continuing to bring the Facility into compliance.
  29. Ohio EPA conducted a site inspection on October 21, 2008. In correspondence dated December 30, 2008, Ohio EPA notified Respondents of the following violations:
    - a. OAC 3745-27-45(A) for failure to operate the Composting Facility in compliance with all applicable authorizing documents;
    - b. OAC Rule 3745-27-45(H)(3) (a-c) for failure to manage leachate in accordance with ORC Chapter 6111, minimize the production of leachate, control, or eliminate ponding of leachate, and maintain structures or mechanisms used for the collection of leachate;
    - c. OAC Rule 3745-27-45(E)(3) for failure to use methods of composting at the Composting Facility that enables biological decomposition and ensures control of leachate, surface water, and ponding of liquids. Specifically, although leachate was being removed from the leachate pond during the inspection, it was noted that a large amount of leachate had been allowed to pond on the landfill cap;
    - d. OAC Rule 3745-27-45(A)(4), OAC Rule 3745-27-45(A)(5) and OAC Rule 3745-27-45(C)(2)(a) for acceptance of prohibited material at the Composting Facility, failure to properly manage any containers used to transport authorized materials to the composting Facility so that the containers are not introduced into the composting process, and failure to remove prohibited materials from the Composting Facility. Specifically, it appeared that the same prohibited materials identified in the May 8, May 27, and June 23, 2008 NOVs remained at the Facility;

- e. Condition # 1 of the Rule 13 Authorization for failure to conduct all on site activities in compliance with all applicable state and federal laws pertaining to environmental protection including but not limited to the control of air pollution, leachate, surface water run-on and run-off, and the protection of groundwater. Specifically, the landfill cap has been damaged by construction activities on site;
  - f. Condition #3 of the Rule 13 Authorization for failure to transport the solid waste encountered on site to a licensed solid waste facility for disposal.
  - g. Condition #4 of the Rule 13 Authorization for failure to divert surface water from material placement areas and control drainage to prevent ponding and leachate run-off. Specifically, large ponds of leachate were observed near northeastern, and southwestern portions of the composting area;
  - h. Condition #5 of the Rule 13 Authorization for failure to manage all leachate by either containing it for reintroduction to the composting process or disposing of the collected leachate at an approved treatment Facility. Specifically, the leachate generated on site has been accumulating at the site and has not been removed for appropriate disposal;
  - i. Condition #7 of the Rule 13 Authorization for failure to conduct all activities at the Landfill in accordance with the approved plans, specifications, and information submitted as part of the Rule 13 request. Specifically Respondents deviated from the approved plans in the following manner: the extent of the composting piles exceeds the compost area limits identified in the Rule 13 Authorization; the windrow construction and turning frequency do not enable biological decomposition under primarily aerobic conditions to be maintained throughout the compost process and therefore, is not in accordance with the plans, specifications and information submitted as a part of the authorization request; leachate is not being controlled; and Composting Facility operations have damaged the landfill cap;
  - j. Condition # 8 of the Rule 13 Authorization for failure to re-establish final cover on the landfill in accordance with the capping requirements established in OAC Rule 3745-27-10, as effective July 29, 1976, in the areas where the final cover system has been damaged by the operation of the Composting Facility. Specifically, the cap has been breached in two distinct areas and no efforts to repair the cap have occurred at this time;
30. In response to the December 30, 2008 NOV, Ohio EPA received correspondence from Respondent Madden Bros., Inc. stating in part the following:
- a. "Work has been completed so as to properly compost the existing leaf piles through further windrowing and turning;"

- b. "All of the miscellaneous debris has been removed and disposed of properly. We continue to walk the property to pick-up and remove any other prohibited material. No receipts are available as the prohibited materials are disposed of in the dumpster [...] located just behind the Elyria Central Maintenance Garage;"
  - c. "[W]e continue to pump leachate from the ponding area into the existing tanker and haul it to French Creek;"
  - d. "As weather allows, we are continuing to move from the area that is apparently beyond the original of our Rule 13;"
31. Ohio EPA conducted a partial site inspection on March 26, 2009, conducted solely to determine the status of leachate removal from the Landfill and Composting Facility. Per an e-mail received from Brian Madden on March 9, 2009, leachate removal was to be conducted as a priority operation to bring the facility into compliance. However a large amount of leachate was observed on top of the landfill cap at the time of Ohio EPA's inspection. Accordingly, in correspondence dated April 1, 2009, Ohio EPA notified Respondents of the following violations:
- a. OAC 3745-27-45(A) for failure to operate the Composting Facility in compliance with all applicable authorizing documents;
  - b. OAC Rule 3745-27-45(H)(3)(a-c) for failure to manage leachate in accordance with ORC Chapter 6111, minimize the production of leachate, control or eliminate ponding of leachate and the conditions that contribute to the discharge of leachate from the Composting Facility, and maintain structures or mechanisms used for the collection of leachate;
  - c. OAC Rule 3745-27-45(E)(3) for failure to use methods of composting that enable biological decomposition and ensures control of leachate, surface water, and ponding of liquids. Specifically, although some leachate has been removed from the Composting Facility, a large amount of leachate remains and ponded on the landfill cap;
  - d. Condition #4 of the Rule 13 Authorization for failure to divert surface water from material placement areas and control drainage to prevent ponding and leachate run-off. Specifically, large ponds of leachate were observed near northeastern portion of the composting area and south of the composting area;
  - e. Condition #5 of the Rule 13 Authorization for failure to manage all on site leachate by either containing it for reintroduction to the composting process or disposing of the collected leachate at an approved treatment Facility.

Specifically, the leachate generated on site has been accumulating at the site and has not been removed for appropriate disposal;

- f. Condition #7 of the Rule 13 Authorization for failure to conduct all activities at the Landfill in accordance with the October 16, 2003, November 7, 2003 and November 18, 2003 submittals and in strict compliance with approved plans, specifications, and information submitted as part of the Rule 13 request.
32. Ohio EPA conducted a partial inspection of the Composting Facility located at the landfill on November 20, 2009, conducted solely to determine the status of leachate removal. Per an e-mail received from Brian Madden on March 9, 2009, leachate removal was to be conducted as a priority operation to bring the site into compliance. However a large amount of leachate was observed on top of the landfill cap at the time of Ohio EPA's inspection. Accordingly, in correspondence dated December 14, 2009, Ohio EPA notified Respondents of the following violations:
- a. OAC 3745-27-45(A) for failure to operate the Composting Facility in compliance with all applicable authorizing documents;
  - b. OAC Rule 3745-27-45(H)(3)(a-c) for failure to manage leachate in accordance with ORC Chapter 6111, minimize the production of leachate, control or eliminate ponding of leachate and the conditions that contribute to the discharge of leachate from the Composting Facility, and maintain structures or mechanisms used for the collection of leachate;
  - c. OAC Rule 3745-27-45(E)(3) for failure to use methods of composting at the Composting Facility that enable biological decomposition and ensures control of leachate, surface water, and ponding of liquids. Specifically, a large amount of leachate remains ponded on the landfill cap;
  - d. Condition #4 of the Rule 13 Authorization for failure to divert surface water from material placement areas and control drainage to prevent ponding and leachate run-off. Specifically, large ponds of leachate were observed near northeastern portion of the composting area and south of the composting area;
  - e. Condition #5 of the Rule 13 Authorization for failure to manage all leachate on site by either containing it for reintroduction to the composting process or disposing of the collected leachate at an approved treatment Facility. Specifically, the leachate generated on site has been accumulating at the site and has not been removed for appropriate disposal;
  - f. Condition #7 of the Rule 13 Authorization for failure to conduct all activities at the Landfill in accordance with the October 16, 2003, November 7, 2003 and

November 18, 2003 submittals and in strict compliance with approved plans, specifications, and information submitted as part of the Rule 13 request.

## **V. ORDERS**

The Director hereby issues the following Orders:

1. Immediately upon the effective date of these Orders, pursuant to OAC Rule 3745-27-13(O), Respondent City of Elyria's Rule 13 Authorization to conduct composting operations at the closed Garden Street Landfill, located at 851 Garden Street, Elyria Township Road 326, Elyria, Lorain County, Ohio is hereby revoked.
2. Immediately upon the effective date of these Orders, in accordance with OAC 3745-27-47, it is ordered and agreed that the Class IV Composting Facility, located atop the closed Garden Street Landfill, at 851 Garden Street, Elyria Township Road 326, Elyria, Ohio, shall close.
3. Immediately upon the effective date of these Orders Respondents shall cease operations at the Facility and shall commence final closure activities in accordance with the following schedule:
  - a. Not later than thirty (30) days after the effective date of these Orders Respondents shall collect all accumulated leachate at the Closed Landfill and shall dispose of the accumulated leachate at an approved wastewater treatment facility;
  - b. Not later than thirty-one (31) days after the effective date of these Orders Respondents shall begin collecting all newly generated leachate from the Composting Facility and shall dispose of the leachate at an approved wastewater treatment facility. At a minimum collected leachate shall be disposed of on a weekly basis or more frequently as necessary to prevent leachate run-off from the Composting Facility. Respondents shall continue to collect and dispose of all newly generated leachate until all solid waste, feedstocks, curing compost, cured compost, bulking agents, and additives have been removed from the Composting Facility;
  - c. Not later than thirty-one (31) days after the effective date of these Orders Respondents shall begin collecting all newly generated leachate on the Landfill and shall dispose of the leachate at an approved wastewater treatment facility. At a minimum collected leachate shall be disposed of on a weekly basis or more frequently as necessary to prevent leachate run-off from the Landfill. Respondents shall continue to collect and dispose of all

newly generated leachate until all solid waste, feedstocks, curing compost, cured compost, bulking agents, and additives have been removed from the Landfill;

- d. Not later than sixty (60) days after the effective date of these Orders Respondents shall remove all solid waste and comingled feedstock/solid waste from the Composting Facility and dispose of the solid waste and comingled feedstock/solid waste at a licensed solid waste disposal facility;
  - e. Not later than one hundred eighty (180) days after the effective date of these orders Respondents shall remove all compost products and curing compost additives from the Landfill.
  - f. Notwithstanding the specific compliance schedule set forth in "a" through "e" of this Order Number 3, Respondents shall comply with all applicable closure requirements as provided in OAC Rule 3745-27-47.
4. Not later than one hundred ninety (190) days after the effective date of these Orders Respondents shall repair all damaged areas of the final cover system, and shall re-establish a final cover system in accordance with the capping requirements established in OAC Rule 3745-27-10 as effective July 29, 1976 (Attachment I);
  5. Respondents shall pay to Ohio EPA the amount of thirty-six thousand, eight hundred forty eight dollars (\$36,848.00) in settlement of Ohio EPA's claim for civil penalties, which may be assessed pursuant to ORC Chapter 3734. in accordance with the following provisions:
    - a. Within thirty (30) days after the effective date of these Orders, Respondents shall pay the amount of twenty-nine thousand four hundred seventy eight dollars (\$29,478.00) of the total amount which will be deposited into the environmental protection remediation fund established pursuant to ORC Section 3734.281. Payment to Ohio EPA shall be made by an official check made payable to "Treasurer, State of Ohio" for twenty-nine thousand four hundred seventy eight dollars (\$29,478.00). The official check shall be submitted to Ohio EPA, Office of Fiscal Administration, P.O. Box 1049, Columbus, Ohio 43216-1049, together with a letter identifying the Respondents and the Facility. A copy of the check shall be sent to Ohio EPA, Division of Materials and Waste Management, Supervisor, Systems Management Unit, P.O. Box 1049, Columbus, Ohio 43216-1049.
    - b. In lieu of paying the remaining seven thousand three hundred seventy dollars (\$7,370.00) of the civil penalty identified in Order No. 5-a above,

Respondents shall fund a Supplemental Environmental Project (SEP) by making a contribution in the amount of seven thousand three hundred seventy dollars (\$7,370.00) to the Ohio EPA Clean Diesel School Bus Program. Respondents shall make payment within thirty (30) days after the effective date of these Orders by tendering an official check made payable to "Treasurer, State of Ohio" for seven thousand three hundred seventy dollars (\$7,370.00). The official check shall be submitted to Ohio EPA, Office of Fiscal Administration, P.O. Box 1049, Columbus, Ohio 43216-1049, together with a letter identifying Respondents and the Facility. A copy of the check shall be sent to Ohio EPA, Division of Materials and Waste Management, Supervisor, Systems Management Unit, P.O. Box 1049, Columbus, Ohio 43216-1049 and to Ohio EPA, Division of Air Pollution Control, Assistant Chief, SIP Development and Enforcement, P.O. Box 1049, Columbus, Ohio 43216-1049.

- c. Should Respondents fail to fund the Diesel Bus SEP in accordance with Order No. 5-b above, Respondents shall pay Ohio EPA seven thousand three hundred seventy dollars (\$7,370.00) of the civil penalty in accordance with the procedures in Order No. 5-a.

## **VI. TERMINATION**

Respondents' obligations under these Orders shall terminate when Respondents certify in writing and demonstrate to the satisfaction of Ohio EPA that Respondents have performed all obligations under these Orders and the Enforcement Coordinator 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 Respondents of the obligations that have not been performed, in which case Respondents shall have an opportunity to address any such deficiencies and seek termination 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 Respondents to Ohio EPA and shall be signed by Respondents and a responsible official of the Respondents. For purposes of these Orders, a responsible official is a principal executive officer, the ranking elected official, or other duly authorized employee of the county.

## **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 City of Elyria's Landfill and Respondent City of Elyria and Respondent Madden Bros., Inc.'s Composting 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 City of Elyria's Landfill and Respondent City of Elyria and Respondent Madden Bros., Inc.'s Composting 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 Respondents 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  
Ashtabula, Ohio 4405-2450  
Attn: Unit Supervisor, DMWM

And to:

Elyria City Health Department  
202 Chestnut Street  
Elyria, Ohio 44035  
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 Respondents 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, Respondents consent to the issuance of these Orders and agree to comply with these Orders. Compliance with these Orders shall be a full accord and satisfaction for Respondents' liability for the violations specifically cited herein.

Respondents hereby waive the right to appeal the issuance, terms and conditions, and service of these Orders, and Respondents hereby waive any and all rights Respondents may have to seek administrative or judicial review of these Orders either in law or equity.

Notwithstanding the preceding, Ohio EPA and Respondents agree that if these Orders are appealed by any other party to the Environmental Review Appeals Commission, or any court, Respondents retain the right to intervene and participate in such appeal. In such an event, Respondents shall continue to comply with these Orders notwithstanding such appeal and intervention unless these Orders are stayed, vacated or modified.

## **XIII. EFFECTIVE DATE**

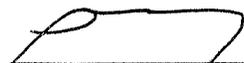
The effective date of these Orders is the date these Orders are entered into the Ohio EPA Director's journal.

## **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:**

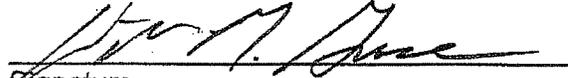
Ohio Environmental Protection Agency



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

**AGREED:**

City of Elyria

  
\_\_\_\_\_  
Signature

William M. Grace  
Printed or Typed Name

10-19-11  
Date

Mayor  
Title

**APPROVED AS TO FORM:**

  
\_\_\_\_\_  
**Terry S. Shilling, Law Director**

**AGREED:**

Madden Brothers, Inc.

Brian M. Madden  
Signature

BRIAN M. MADDEN  
Printed or Typed Name

10-5-11  
Date

Vice president  
Title

# ATTACHMENT I

1. Any portions of the landfill where the final cover system is removed or damaged by activities conducted at the Facility shall have the final cover system re-established in accordance with the following specifications:
  - a. Material specifications:
    - i. 100% of the material particles shall pass a 10 inch screen, with no more than two particles from a 50 cubic foot sample retained on a six inch screen;
    - ii. At least 95% of the material particles shall pass a three inch screen;
    - iii. At least 70% of the material particles shall pass the Number 10 sieve;
    - iv. The material that passes the Number 10 sieve (sand, silt, and clay fractions) shall be classified using the USDA textural classification chart as loam, sandy loam, silty loam, clay loam, silty clay, or sandy clay, or an acceptable alternative soil type with concurrence from Ohio EPA.
  - b. Construction Specifications:
    - i. Compaction criteria:
      - (a). The material shall be compacted to at least 95% of the maximum Standard Proctor Density (ASTM D-698) or 90% of the maximum Modified Proctor Density (ASTM D-1557).
      - (b). The material shall be compacted using loose lifts, no greater than eight inches thick prior to compaction.
    - ii. The cap shall have a permeability determined by field permeability methods of no greater than  $1 \times 10^{-5}$  cm/sec or a permeability determined by laboratory permeability methods of no greater than  $1 \times 10^{-6}$  cm/sec as determined by the acceptable testing methods outlined in Condition 6. c. iv.
  - c. Testing Specifications:
    - i. The suitability of the soils shall be determined prior to their intended use in cap construction. The following tests shall be performed on representative soil samples at least once for every 3,000 cubic yards of material intended for use.
      - (a). Sieve and hydrometer testing (ASTM D-422) for particle size gradation; and

- (b). Moisture/density relationship using either Standard Proctor (ASTM D-698) or Modified Proctor (ASTM D-1557) method.
  - ii. Prior to testing, the samples shall be screened to remove any particles larger than three inches. Written results of testing shall be submitted to Ohio EPA, NWDO in the form of a soils prequalification report not later than seven days prior to its intended use in cap construction.
  - iii. During construction of the cap, compaction shall be monitored to ensure that the proper specifications are met. This can be accomplished by a number of methods, including nuclear densimeter (ASTM D-2922), sand cone (ASTM D-1556), and rubber balloon (ASTM D-2167). The nuclear densimeter test, if used, shall be performed at least five times per acre per lift. The sand cone or rubber balloon methods shall be performed at least three times per acre per lift.
  - iv. Upon completion of construction, the permeability of the cap shall be determined through either field permeability testing (ASTM D-6391: Boutwell two-stage permeameter, ASTM D-5093: SDRI) or through laboratory testing of cap samples brought to the lab for analysis (ASTM D-5084: Shelby tubes, soil blocks). The permeability requirements for each type of permeability determination are as follows:
    - (a). For field permeability tests (ASTM D-6391, ASTM D-5093), the required permeability of the cap is  $1 \times 10^{-5}$  cm/sec.
    - (b). For laboratory permeability tests (ASTM D-5084: Shelby tubes, soil blocks), the required permeability of the cap is  $1 \times 10^{-6}$  cm/sec.
  - v. Any penetrations into the cap layer resulting from either compaction or permeability testing shall be repaired using bentonite or a bentonite/soil mixture.
2. Nothing in this attachment shall be construed to authorize any waiver from any requirements of applicable state solid waste laws or regulations. This attachment shall not be interpreted to release Respondents or others from responsibility under ORC Chapters 3704, 3714, 3734, or 6111; under the Federal Clean Water Act, the Resource Conservation and Recovery Act, the Toxic Substances Control Act, or the Comprehensive Environmental Response, Compensation, and Liability Act; or from other applicable requirements for remedying conditions resulting from any release of contaminants to the environment.