

OHIO E.P.A.

BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY

ENTERED DIRECTOR'S JOURNAL

In the Matter Of:

Defiance County Board of Commissioners :
500 Court Street :
Defiance, Ohio 43512 :

Director's Final
Findings and Orders

Respondent

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.

PREAMBLE

It is agreed by the parties hereto as follows:

By: Dirk Lassiter Date: 9-24-13

I. JURISDICTION

These Director's Final Findings and Orders ("Orders") are issued to Defiance County Board of Commissioners (hereinafter "Respondent") pursuant to the authority vested in the Director of the Ohio Environmental Protection Agency ("Ohio EPA") under Ohio Revised Code ("ORC") Sections 3734.13 and 3745.01.

II. PARTIES BOUND

These Orders shall apply to and be binding upon Respondent, its assigns, 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 expressly 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 makes the following findings:

1. The Defiance County Landfill (the "Facility") is a "sanitary landfill facility" as that term is defined under OAC Rule 3745-27-01(S)(4) and is located at 13207 Canal Road, Defiance, Defiance County, Ohio.
2. Respondent is the "owner" and "operator" of the Facility as those terms are defined in OAC Rule 3745-27-01(O)(7) and Rule 3745-27-01(O)(5).

3. Respondent is the "permittee" as defined in OAC Rule 3745-27-01(P)(2), and the license holder for the Facility.
4. Respondent is a "person" as that term is defined in ORC Section 3734.01(G) and in OAC Rule 3745-27-01(P)(3).
5. On November 18, 1988 Ohio EPA issued the initial Permit to Install ("PTI") #03-2972 to Respondent.
6. On May 24, 2000 Ohio EPA issued PTI # 03-8986 to Respondent.
7. On December 19, 2006 Ohio EPA issued PTI #03-16690 to Respondent for a vertical and lateral expansion of the Facility.
8. OAC Rule 3745-27-08(A) provides: "Applicability. The construction requirements for a sanitary landfill facility specified in this rule are applicable to a particular facility or permit to install application as specified in rules 3745-27-06, 3745-27-07, 3745-27-11, 3745-27-19, and 3745-27-20 of the administrative code."
9. OAC Rule 3745-27-19(A) provides: "The owner or operator of a sanitary landfill facility shall comply with the requirements and operational criteria specified in this rule until all closure certifications required by paragraph (J) of rule 3745-27-11 of the Administrative Code are submitted and the post-closure care period begins."
10. OAC Rule 3745-27-19 (B)(6)(a) provides in relevant part: "The owner or operator shall comply with all of the following: The applicable design, construction and testing specifications in rule 3745-27-08 of the Administrative Code."
11. OAC Rule 3745-27-08(B)(1)(f) provides: "The owner or operator shall incorporate the following engineered components in the design and construction of a sanitary landfill facility: A composite cap system that includes the following: (i) A soil barrier layer. (ii) A flexible membrane liner. (iii) A drainage layer. (iv) A cap protection layer."
12. Pursuant to OAC Rule 3745-27-08(A), the design and construction requirements in OAC Rule 3745-27-08 were applicable pursuant to OAC Rule 3745-27-19 and OAC Rule 3745-27-11, to this Facility at the time that Respondent constructed final cap over 3.9 acres of Unit 1 during the 2009 and 2010 construction projects.

13. Pursuant to OAC Rule 3745-27-19(N), "Upon every tenth anniversary of the effective date of the initial permit to install issued to the owner or operator of the sanitary landfill facility pursuant to Chapter 3734. of the Revised Code and each tenth anniversary thereafter, the owner or operator shall submit to Ohio EPA an analysis demonstrating that the design of the unconstructed portions of the sanitary landfill facility continues to be consistent with the design standards established in the current version of rule 3745-27-08 of the Administrative Code. If the director determines that the design is no longer consistent with the standard established in the current version of rule 3745-27-08 of the Administrative Code, then the director may require the owner or operator to make the necessary changes to the sanitary landfill facility to bring the facility into compliance with the design standards in the current version of rule 3745-27-08 of the Administrative Code. Since these changes will represent deviations from what is contained in the current authorizing documents, the owner or operator shall obtain the appropriate authorization from Ohio EPA prior to making the changes. If a permit to install application is required, the director shall not apply the criteria outlined in paragraph (H) of rule 3745-27-07 of the Administrative Code, when considering the permit to install application."
14. On February 27, 2012, Ohio EPA NWDO sent a notice of violation ("NOV") letter to Respondent for failure to submit a best available technology ("BAT") demonstration in violation of OAC Rule 3745-27-19(N). The letter stated in relevant part:

The facility's Ten-Year Design Demonstration submittal was due to Ohio EPA no later than November 18, 2008. A review of Ohio EPA's files indicates that as of the date of this letter, Ohio EPA has not received Defiance County Landfill's Ten-Year Design Demonstration. Therefore, the failure of the facility's owner/operator to submit this demonstration is a violation of OAC Rule 3745-27-19(N).

Please be reminded that Ohio EPA expects the owner/operator of Defiance County Landfill to upgrade the current approved PTI design standards to ensure that all current BAT features in OAC Rule 3745-27-08 are incorporated into the landfill design.
15. In violation of OAC Rule 3745-27-19(N) Respondent failed to submit a ten-year design demonstration by November 18, 2008, upon every tenth anniversary of the effective date of the initial PTI #03-2972 issued on November 18, 1988.
16. On April 13, 2012 Respondent submitted a ten-year BAT design demonstration wherein Respondent indicated that the engineered component for the composite cap system does not meet the current design standard in OAC Rule 3745-27-08(B)(1)(f)(ii) to include FML.

17. Respondent failed to demonstrate by November 18, 2008 that the design of the unconstructed portions of the sanitary landfill facility continues to be consistent with the design standards established in the current version of rule 3745-27-08 of the Administrative Code.

V. ORDERS

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

1. Not later than sixty (60) days after the effective date of these Orders, Respondent shall submit an alteration request to include flexible membrane liner in the cap system in order to bring the unconstructed portions of the Facility into compliance with the current design standards in the current version of OAC Rule 3745-27-08(B)(1)(f)(ii).
2. Upon the effective date of these Orders and prior to constructing a cap system over any unconstructed portions of the landfill, including the 3 acres remaining in Unit 1, Phase 4, Respondent shall obtain written concurrence from Ohio EPA for an alteration to include FML in the cap system design.
3. Within thirty (30) days after the effective date of these Orders, Respondent shall pay to Ohio EPA the amount of twenty-two thousand seven hundred sixty-four dollars and thirty cents (\$22,764.30) in settlement of Ohio EPA's claim for economic benefit for the violations specifically cited herein, which may be assessed pursuant to ORC Chapter 3734., in accordance with the following provisions: payment shall be made by tendering an official check made payable to "Treasurer, State of Ohio" for the full amount, and shall be deposited in the environmental remediation fund established pursuant to ORC Section 3734.281. 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 Respondent and the Facility. A copy of the check shall be sent to Ohio EPA, Division of Materials and Waste Management, Supervisor, Processing and Records Management Unit, P.O. Box 1049, Columbus, Ohio 43216-1049.

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: "I certify that the information contained in or accompanying this certification is true, accurate and complete."

This certification shall be submitted by Respondent to Ohio EPA and shall be signed by a responsible official of Respondent.

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 or the Facility.

IX. MODIFICATIONS

These Orders may be modified by agreement of the parties hereto. Modifications shall be in writing and shall be effective on the date entered in the journal of the Director of Ohio EPA.

X. NOTICE

All documents required to be submitted by Respondent pursuant to these Orders shall be addressed to:

Ohio Environmental Protection Agency
Northwest District Office, DMWM
347 North Dunbridge Road
Bowling Green, Ohio 43402
Attn: Unit supervisor, DMWM

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



Scott J. Nally
Director

IT IS SO AGREED:

Defiance County Commissioners

Otto L. Nicely
Signature

Otto L. Nicely
Printed or Typed Name

Commissioner

Title

9-5-13

Date

Thomas L. Kime
Signature

Thomas L. Kime
Printed or Typed Name

Commissioner

Title

9-5-13

Date

James E. Harris, Jr.
Signature

James E. Harris, Jr.
Printed or Typed Name

Commissioner

Title

9-5-13

Date