



State of Ohio Environmental Protection Agency

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December 31, 2002

RE: Director's Final Findings & Orders

CERTIFIED MAIL

Hardin County Commissioners
Hardin County Courthouse
55 North Main Street
Kenton, Ohio 43326

Dear Sir or Madam:

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

You are hereby notified that this action of the Director of Environmental Protection (Director) is final and may be appealed to the Environmental Review Appeals Commission pursuant to ORC Section 3745.04. The appeal must be in writing and set forth the action complained of and the ground upon which the appeal is based. It must be filed with the Appeals Commission within thirty (30) days after notice of the Director's action. A copy of the appeal must be served on the Director within three (3) days of filing with the Appeals Commission. An appeal may **be** filed at the following address:

Environmental Review Appeals Commission
236 East Town Street
Columbus, Ohio 43215

Sincerely,

Kimberly Reese
Systems Management Unit
Division of Solid & Infectious Waste Management

Enclosure: Director's Final Findings and Orders

cc: Scott Hester, CO, DSIWM
Ellen Gerber, NWDO, DSIWM
Hardin County Health Department

Bob Taft, Governor
Maureen O'Connor, Lieutenant Governor
Christopher Jones, Director

IV. ACTION

Pursuant to ORC Section 3734.02(G) and OAC Rule 3745-27-05(A)(4), the Director hereby makes the following Findings and issues the following Orders.

V. FINDINGS

The Hardin County Commissioners are the owners of the closed Hardin County Landfill located at 45 Jones Road, Kenton, Hardin County, Ohio.

On September 3, 2002, Ohio EPA received a request from the Mannick & Smith Group, Inc., on behalf of the Hardin County Commissioners, to use soil removed while constructing a slurry wall and dewatering system at the Hardin County Landfill. The request proposes to use soils that are excavated from within the defined plums of ground water contamination for cap enhancement projects within the limits of waste placement.

The cap enhancement project will be limited to the portion of the landfill cap which was constructed in accordance with the solid waste landfill regulations as effective July 29, 1976, (see plan sheet 2 of 7 from the Closure Plan approved May 17, 1994), and will improve the quality of the existing cap by increasing the cap thickness, promoting runoff in areas which have settled, and limiting infiltration into the landfill.

ORC Section 3734.01(F) defines "disposal" in pertinent part to mean "... the discharge, deposit, injection, dumping, spilling, leaking, emitting, or placing of any solid wastes ... into or on any land or ground or surface water or into the air..."

ORC Section 3734.01(N) defines "facility" in pertinent part to mean "... any site, location, tract of land, installation, or building used for incineration, composting, sanitary landfilling, or other methods of disposal of solid wastes ..."

The activities described in Finding No. 2, above, include placing solid waste on or into the ground or surface waters, which is considered "disposal" at a "facility."

7. ORC Sections 3734.02(G) and 3734.05(A)(1) and (2) and OAC Chapters 3745-27, 3745-29, or 3745-30, OAC Chapter 3745-31, and OAC Chapter 3745-37, require that a permit and license be obtained prior to the establishment or modification of a solid waste facility.
8. OAC Rule 3745-27-05(A) specifies the methods of solid waste disposal which are authorized in Ohio. This rule authorizes sanitary landfilling, incineration, and composting as acceptable disposal methods. In addition, other methods of disposal may be used provided that such methods are demonstrated to the satisfaction of the Director to be capable of disposing of solid wastes without creating a nuisance or a health hazard, without causing water pollution, and without violating ORC Chapters 3704 and 3734 and any rules adopted thereunder.
9. The proposed disposal method proposed in the request as described in Finding No. 2, above, is a method other than sanitary landfilling, incineration, or composting and, therefore, requires authorization of the Director pursuant to OAC Rule 3745-27-05(A)(4).
10. Pursuant to ORC Section 3734.57(A), the owner or operator of a solid waste disposal facility must collect and remit to the state a fee of \$1.75 per ton for the disposal of solid wastes at the facility.
11. Pursuant to ORC Section 3734.573, the solid waste management policy committee of a single or joint solid waste management district is authorized to levy a generation fee on wastes generated within the district. The North Central Ohio Solid Waste District (NCOSWD) has a generation fee of \$4.00 per ton in effect for solid wastes generated within their district.
12. Pursuant to ORC Section 3734.02(G), the Director may, by order, exempt any person generating, storing, treating, disposing of, or transporting solid wastes in such quantities or under such circumstances that, in the determination of the Director, are unlikely to adversely affect the public health or safety or the environment from any requirement to obtain a permit or license or comply with requirements of ORC Chapter 3734 and any rules adopted thereunder.

13. The Director has determined that the disposal of solid wastes via the method proposed in the request can be performed without creating a nuisance or a health hazard, without causing water pollution, and without violating ORC Chapters 3704 and 3734 and any rules adopted thereunder, provided it is performed in accordance with the request and the Orders specified below.
14. Because the excavated soils are expected to be utilized within the horizontal limits of waste placement of an existing solid waste disposal facility and because any contamination in the soils is expected to pose minimal risk to human health or the environment and because the soils will be mixed with clean soils, exempting the Hardin County Commissioners from the requirement to obtain a permit and a license for the activities proposed in the request is unlikely to adversely affect the public health or safety or the environment provided such activities are performed in accordance with the Orders specified below.
15. The Director has determined that granting an exemption to the Hardin County Commissioners from the requirement to collect and remit state disposal fees and solid waste management district generation fees for solid wastes disposed in accordance with these Orders is unlikely to adversely affect the public health or safety or the environment.

VI. ORDERS

1. Pursuant to OAC Rule 3745-27-05(A)(4) and ORC Section 3734.02(G), the Hardin County Commissioners are hereby authorized to use soils excavated from within the limits of the plume of ground water contamination, as proposed in the request specified in Finding No. 2, above, an other method of disposal and are hereby exempted from the requirement to obtain a permit and a license, pursuant to ORC Chapter 3734 and OAC Chapters 3745-27, 3745-31, and 3745-37, for the activities proposed in the request. This exemption is subject to the following:

Director's Final Findings and Orders

Hardin County Commissioners

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- a. All soils utilized in accordance with this action shall be covered with a minimum of six (6) inches of soil excavated from areas outside the plume of ground water contamination or soils from other sources which are not affected by ground water contamination.
 - b. A certification report for the cap enhancement construction shall be submitted within 30 days of the completion of the construction project. The report shall document the extent of the construction, the volume of contaminated soil used, and the methodologies used to transport, place, compact, cover, and re-seed the affected areas.
2. Pursuant to ORC Section 3734.02(G), the Hardin County Commissioners are hereby exempted from the requirement of ORC Section 3734.57(A) to collect and remit the state disposal fee of \$1.75 per ton on those wastes disposed in accordance with these Orders. This exemption shall not apply to any solid wastes other than those which will be disposed as proposed in the request described in Finding No. 2, above. This exemption does not apply to any solid wastes originating from any point other than the soil excavations associated with the Hardin County Landfill ground water corrective measures activities as described in the request and Finding No. 2, above.
3. Pursuant to ORC Section 3734.02(G), the Hardin County Commissioners are hereby exempted from the requirements of ORC Sections 3734.573(E) and (F), to collect and remit any solid waste management district generation fees levied pursuant to ORC Section 3734.573 on those wastes generated and disposed in accordance with these Orders.
4. The exemptions granted in Orders No. 1, 2, and 3, above, shall apply only to the use of soils excavated from within the plume of ground water contamination during the excavations associated with the ground water corrective measures activities at 45 Jones Road, Kenton, Ohio as proposed in the request described in Finding No. 2, above.
5. Pursuant to OAC Rule 3745-27-13(B)(2), the Hardin County Commissioners are not required to obtain authorization in accordance with OAC Rule 3745-27-13(A) for cap enhancement activities associated with the ground water corrective measure project.

If Hardin County chooses to use soils excavated from areas outside the defined plume of ground water contamination for cap enhancement in the portion of the landfill cap, which was constructed in accordance with the solid waste landfill regulations as effective July 29, 1976, no additional authorizations are required.

6. Nothing in these Orders shall be construed to authorize any activity, method, or waiver from the requirements of Chapter 3734 or the regulations promulgated thereunder, except as expressly provided herein. These Orders shall not be interpreted to release the Hardin County Commissioners from responsibility under ORC Chapters 3704, 3734, or 6111; under the Federal Clean Water 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.

VII. OTHER APPLICABLE LAWS

All actions required to be taken pursuant to these Orders shall be undertaken in accordance with the requirements of all applicable federal, state, and local laws and regulations. Nothing in these Orders shall be construed as waiving or compromising in any way the applicability and enforcement of any other statutes or regulations applicable to the Hardin County Commissioners. Ohio EPA reserves all rights and privileges except as specified herein.

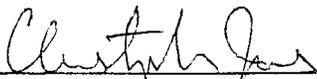
VIII. RESERVATION OF RIGHTS

Nothing contained herein shall be construed to prevent Ohio EPA from seeking legal or equitable relief to enforce the terms of these Orders or from taking other administrative, legal, or equitable action as deemed appropriate and necessary, including seeking penalties against Hardin County Commissioners for noncompliance with these Orders.

Nothing contained herein shall be construed to prevent Ohio EPA from exercising its lawful authority to require Hardin County Commissioners to perform additional activities pursuant to ORC Chapter 3734 or any other applicable law in the future. Nothing herein shall restrict the right of Hardin County Commissioners to raise any administrative, legal, or equitable claim or defense with respect to such further actions which Ohio EPA may seek to require

of Hardin County Commissioners. Nothing in these Orders shall be construed to limit the authority of Ohio EPA to seek relief for violations which may occur at the facility.

IT IS SO ORDERED:



Christopher Jones, Director
Ohio Environmental Protection Agency