



State of Ohio Environmental Protection Agency

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P.O. Box 1049
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May 2, 2003

RE: Director's Final Findings & Orders

CERTIFIED MAIL

Henry County Commissioners
660 North Perry Road
Napoleon, OH 43545

Dear Sir or Madam:

Transmitted herewith are Final Findings and 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
309 South Front Street, Room 222
Columbus, Ohio 43215

Sincerely,

Brian Dearth
Systems Management Unit
Division of Solid & Infectious Waste Management

Enclosure: Director's Final Findings and Orders

cc: Scott Hester, CO, DSIWM
Mike Reiser, NWDO, DSIWM
Jon Lindsay, Henry County Health Department

Bob Taft, Governor
Jennette Bradley, Lieutenant Governor
Christopher Jones, Director

Issuance Date: _____

Effective Date: _____

**BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY**

In the Matter of:

Henry County Commissioners	:	Director's Final
660 North Perry Road	:	Findings and Orders
Napoleon, Ohio 43545	:	

I. JURISDICTION

These Director's Final Findings and Orders (Orders) are hereby issued to Henry County Commissioners (Henry County) pursuant to the authority vested in the Director of Environmental Protection (Director) under Ohio Revised Code (ORC) Section 3734.02(G) and Ohio Administrative Code (OAC) Rule 3745-27-19(F).

II. PARTIES

These Orders shall apply to and be binding upon Henry County and its successors in interest liable under Ohio law. No changes in ownership relating to Henry County will, in any way, alter Henry County's responsibilities under these Orders. Henry County's obligations under these Orders may only be altered by the written approval of the Director.

III. DEFINITIONS

Unless otherwise stated, all terms used in these Orders shall have the same meaning as used in ORC Chapter 3734 and the regulations promulgated thereunder. Unless otherwise stated, all citations of the OAC shall refer to regulations currently effective.

Pursuant to ORC Section 3734.02(G) and OAC Rule 3745-27-19(F), the Director hereby makes the following Findings and issues the following Orders.

IV. FINDINGS

1. The Henry County Landfill (Facility) is owned and operated by Henry County and is located at L-622 Township Road 11, Henry County, Malinta, Ohio. The Facility is a sanitary landfill facility as that term is defined in OAC Rule 3745-27-01. The Facility is operating pursuant to Permit to Install No. 03-6294, effective April 1995.

2. On February 28, 2003, the Facility submitted a letter to the Ohio Environmental Protection Agency (Ohio EPA) requesting to use contaminated soil as daily cover at the Facility.
3. The contaminated soil is being generated as part of an approved RCRA closure plan at the Campbell Soup Company in Napoleon, Ohio.
4. On February 28, 2003, and March 11, 2003, Henry County submitted results of the Toxicity Characteristic Leaching Procedure (TCLP), soil corrosivity, ignitability, reactive sulfide, and reactive cyanide tests performed on the contaminated soil. These results indicate that the contaminated soil is characteristically non-hazardous.
5. OAC Rule 3745-27-19(F)(3) authorizes the Director to approve alternative materials for use as daily cover if it can be demonstrated, to the satisfaction of the Director, that the material provides protection comparable to conventional soil cover and is protective of human health and the environment.
6. Pursuant to OAC Rule 3745-27-01(B)(43), the contaminated soil is a solid waste which is specifically prohibited by OAC Rule 3745-27-19(F) for use as daily cover.
7. ORC Section 3734.02(G) provides that 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 other requirements of ORC Chapter 3734.
8. Because the contaminated soil is characteristically non-hazardous and non-liquid, and because the contaminated soil is capable of providing protection comparable to conventional soil cover, and since the Facility must comply with the orders specified below, issuance of an exemption from the requirement of OAC Rule 3745-27-19(F), which prohibits the use of solid waste as daily cover, is unlikely to adversely affect the public health or safety or the environment.

V. ORDERS

1. Pursuant to OAC Rule 3745-27-19(F)(3), Henry County is hereby authorized to use contaminated soil as alternative daily cover material at the Facility in accordance with the following orders.

2. Pursuant to ORC Section 3734.02(G), Henry County is hereby exempted from the prohibition in OAC Rule 3745-27-19(F) to use solid waste as alternative daily cover at the Facility, provided Henry County complies with all of the following orders.
3. Henry County may only use the contaminated soil consistent with the waste characterization profile included in the February 28, 2003, and March 11, 2003, submittals. No other types of contaminated soil or other solid waste may be used as daily cover without prior approval from Ohio EPA.
4. If Henry County determines that the contaminated soil is not satisfactory in controlling fire hazards, blowing litter, odors, insects, vectors, dust, birds, or rodents due to temporary site conditions, Henry County shall immediately revert to the daily cover requirements of OAC Rule 3745-27-19(F) until conditions improve such that the contaminated soil can perform effectively. Temporary conditions may include, but are not limited to, adverse weather conditions that could affect the performance of the contaminated soil or odors produced by the contaminated soil detected temporarily outside the Facility property. Under such conditions, Henry County may apply another alternative daily cover material that has been approved for use at the Facility, provided the alternative daily cover material is able to perform effectively under the inclement conditions.
5. If Henry County determines the contaminated soil is ineffective or unsatisfactory under normal operating conditions, Henry County shall immediately cease using the contaminated soil as alternative daily cover and shall revert to the daily cover requirements of OAC Rule 3745-27-19(F). Henry County shall verbally notify the Ohio EPA, Northwest District Office (NWDO) of this action by the end of the next working day and shall submit written notification to Ohio EPA NWDO within 14 calendar days. Under such circumstances, Henry County may apply another alternative daily cover material that has been approved for use at the Facility.
6. If Ohio EPA determines that the use of contaminated soil as alternative daily cover material is ineffective or otherwise unsatisfactory under normal operating conditions, the exemption in Order No. 2 to use contaminated soil as alternative daily cover may be revoked upon written notification of the Director. Immediately upon such revocation, Henry County shall cease using the contaminated soil as alternative daily cover material at the Facility and shall revert to using conventional soil cover in accordance with OAC Rule 3745-27-19(F). Under such circumstances, Henry County may apply another alternative daily cover material that has been approved for use at the Facility.

7. The contaminated soil shall not be stockpiled on-site for longer than one business day. If the contaminated soil is stockpiled prior to use as daily cover, it must be placed so that leachate produced is directed to the leachate collection system.
8. Appropriate state and local solid waste fees shall be applied to the contaminated soil, regardless of whether it is used as alternative daily cover or disposed at the working face.
9. The contaminated soil shall be counted against the Facility's authorized maximum daily waste receipt of 150 tons.
10. The contaminated soil shall not be used as intermediate or final cover. No contaminated soil shall be exposed for more than seven (7) days. Any solid waste disposal area which remains inactive for a period of seven (7) days and has the contaminated soil as daily cover shall be covered with at least six (6) inches of soil in accordance with OAC Rule 3745-27-19(F) by the end of the seventh day.
11. The contaminated soil shall be applied in layers with a minimum six (6) inches of thickness. Daily cover must be prepared so as to not impede flow to the leachate management system within the limits of solid waste placement prior to the placement of the next layer of solid waste in that area. All water coming in contact with waste or the contaminated soil must be collected as leachate. A berm or berms shall be constructed in such a manner that any runoff is directed to the leachate collection system.
12. The use of the contaminated soil as alternate daily cover material shall be documented on the required Municipal Solid Waste Disposal Facility Daily Log of Operations, Form 3 on each day it is used as alternative daily cover material.
13. The Facility shall comply at all times with Ohio EPA Division of Surface Water regulations adopted pursuant to ORC Chapter 6111.
14. Not later than 120 days after the effective date of this exemption, a certification report shall be submitted to Ohio EPA, NWDO comparing the effectiveness of the contaminated soil to traditional soil cover and to other alternative daily covers that have been used at the Facility. If, as provided in Orders No. 5 or 6, above, the Facility ceases to use the contaminated soil prior to the end of the 180-day period, the report shall be due not later than thirty days after use ceases.

15. At least one photograph of the working face shall be taken each day after the contaminated soil has been applied. These photographs shall be made available to Ohio EPA upon request and shall be included in the certification report.
16. The exemption granted in Order No. 2, above, shall terminate 180 days after issuance unless the owner/operator receives approval for continued use based on Ohio EPA's review of the certification report required by Order No. 14, above.
17. Nothing in these Findings and Orders shall be construed to authorize any waiver from any other requirements of applicable state solid waste laws or regulations except as specified herein. This exemption shall not be interpreted to release Henry County from responsibility under ORC Chapters 3704, 3714, 3734, or 6111; under the Federal Clean Water Act, the Resource Conservation and Recovery 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. Nothing in these orders shall be construed to indicate that Henry County has operated, is operating, or will operate the facility in compliance with applicable laws, regulations, and authorizing documents.

VI. 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 Henry County for noncompliance with these Orders.

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

IT IS SO ORDERED

Christopher Jones
Director