



State of Ohio Environmental Protection Agency

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Issuance Date: _____

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BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

Penn-Ohio Coal Company :
dba Kimble Sanitary Landfill : Director's Final
3596 State Route 39, N.W. : Findings and Orders
Dover, Ohio 44622 :

I. JURISDICTION

These Director's Final Findings and Orders ("Orders") are issued to Penn-Ohio Coal Company, doing business as Kimble Sanitary Landfill, ("Penn-Ohio") pursuant to the authority vested in the Director of the Ohio Environmental Protection Agency ("Ohio EPA") under Ohio Revised Code ("ORC") Section 3734.02(G) and Ohio Administrative Code ("OAC") Rule 3745-27-03(B).

II. PARTIES BOUND

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

III. DEFINITIONS

Unless otherwise stated, all terms used in these Orders shall have the same meaning as defined in ORC Chapter 3734. and the rules promulgated thereunder.

Bob Taft, Governor
Jennette Bradley, Lieutenant Governor
Joseph P. Koncelik, Director

IV. FINDINGS

The Director of Ohio EPA ("Director") has determined the following findings:

1. Penn-Ohio is the owner, operator, permittee, and licensee of the Kimble Sanitary Landfill ("Facility") located at 3596 State Route 39, N.W., Dover, Tuscarawas County, Ohio. The Facility is a "sanitary landfill facility" as that term is defined in OAC Rule 3745-27-01(S)(4).
2. Penn-Ohio is currently operating the Facility pursuant to Permit-to-Install ("PTI") Number 06-4554, effective December 16, 1998. PTI Number 06-4554 established the Facility's authorized maximum daily waste receipt ("AMDWR") to be 5,000 tons.
3. The Facility receives solid waste from an average of one hundred ninety (190) vehicles per day. Up to ten (10) percent of these vehicles are personal passenger cars and pick-up trucks. However, the weight of solid waste delivered to the Facility by personal passenger cars and pick-up trucks represents less than one (1) percent of the total waste weight.
4. OAC Rule 3745-27-19(I) requires the owner or operator of a sanitary landfill facility, with an AMDWR greater than two hundred (200) tons, to use scales as the sole means of determining gate receipts. The Facility is subject to this requirement.
5. OAC Rule 3745-27-19(I), therefore, requires that all solid waste delivered to the Facility be weighed, regardless of the method of delivery or volume of solid waste transported by each vehicle. Penn-Ohio has represented to Ohio EPA that because of the large number of personal passenger cars and pick-up trucks that transport waste to the Facility, weighing each vehicle as it enters and exits the Facility can result in substantial delay in processing the waste received at the Facility.
6. On April 21, 2004, Ohio EPA received a request from Penn-Ohio for an exemption, pursuant to ORC Section 3734.02(G), from the requirement of OAC Rule 3745-27-19(I) to use scales as the sole means of determining gate receipts at the Facility. Specifically, Penn-Ohio requested to determine the amount of waste transported by personal passenger cars and pick-up trucks by visually estimating the waste volume received and converting the volume to weight using a ratio of three (3) cubic yards to one (1) ton of solid waste or another ratio, as appropriate.
7. Pursuant to ORC Section 3734.02(G) and OAC Rule 3745-27-03(B), the Director may, by order, exempt any person generating, collecting, storing, treating, disposing of, or transporting solid wastes, or processing solid waste that consists of scrap tires, 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 registration certificate, permit, or license or comply with other requirements of ORC Chapter 3734.

8. ORC Section 3734.57 authorizes fees for disposal of waste and provides for recording the amount of solid waste delivered to the facility in cubic yards and converting the volume to tons using a factor of three (3) cubic yards of solid waste to one (1) ton of solid waste.
9. Based upon a review of the April 21, 2004, request, we believe that the volume of solid waste disposed of at the Facility can be determined and accurately documented through visual methods. In addition, because the solid waste brought to the Facility by personal passenger cars and pick-up trucks represents less than one (1) percent of the solid waste disposed at the Facility, granting Penn-Ohio an exemption from the requirement in OAC Rule 3745-27-19(I) to use scales as the sole means of determining gate receipts at the Facility is unlikely to adversely affect public health or safety or the environment, provided Penn-Ohio complies with the following Orders.

V. ORDERS

1. Pursuant to ORC Section 3734.02(G) and OAC Rule 3745-27-03(B), Penn-Ohio is hereby exempted from the requirement in OAC Rule 3745-27-19(I) to use scales as the sole means of determining gate receipts at the Facility in accordance with these Orders and the April 21, 2004, request.
2. This exemption shall apply only to solid waste transported to the Facility by personal passenger cars and pick-up trucks with an empty weight of six thousand (6000) pounds or less and which are not primarily used for the collection, separation, transportation, transfer, or disposal of solid, infectious, or hazardous wastes as those wastes are defined by ORC Chapter 3734. or any other applicable laws or regulations.
3. For the purposes of determining the amount of solid waste delivered to the Facility by personal passenger cars and pick-up trucks, Penn-Ohio shall visually estimate the volume of solid waste brought to the Facility by such vehicles and convert to weight using the ratio of three (3) cubic yards of solid waste to one (1) ton of solid waste.
4. Scales shall be the sole means of determining gate receipts, as required by OAC 3745-27-19(I), for all vehicles which are not subject to the exemption as specified above.
5. Nothing in these Orders shall be construed to authorize any waiver from the requirements of any applicable federal or state laws or regulations except as specified herein. These Orders shall not be interpreted to release Penn-Ohio 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.

VI. 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 Penn-Ohio and/or the Facility.

VII. 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 Penn-Ohio for noncompliance with these Orders.

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

Joseph P. Koncelik, Director
Ohio Environmental Protection Agency