

Issuance Date: \_\_\_\_\_

Effective Date: \_\_\_\_\_

**BEFORE THE  
OHIO ENVIRONMENTAL PROTECTION AGENCY**

In the Matter of:

|                                |   |                            |
|--------------------------------|---|----------------------------|
| C&D Disposal Technologies, LLC | : |                            |
| 3250 County Road 26            | : | <u>Director's Final</u>    |
| P.O. Box 2219                  | : | <u>Findings and Orders</u> |
| Wintersville, Ohio 43953       | : |                            |

**I. JURISDICTION**

These Director's Final Findings and Orders ("Orders") are issued to C&D Disposal Technologies, LLC ("C&DDT") pursuant to the authority vested in the Director of the Ohio Environmental Protection Agency ("Ohio EPA") under Ohio Revised Code ("ORC") Section 3714.04 and Ohio Administrative Code ("OAC") Rule 3745-400-15(D).

**II. PARTIES BOUND**

These Orders shall apply to and be binding upon C&DDT and successors in interest liable under Ohio law. No change in ownership of C&DDT or of the Facility, as hereinafter defined, shall in any way alter C&DDT'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 3714. and the rules promulgated thereunder.

**IV. FINDINGS**

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

1. C&DDT is the owner, operator, and licensee of the C&D Disposal Technologies, LLC Facility ("Facility") located at 3250 County Road 26, Wintersville, Jefferson County, Ohio. The Facility is a "construction and demolition debris facility" as that term is defined in OAC Rule 3745-400-01(G). C&DDT is currently operating the Facility pursuant to its 2006 Construction and Demolition Debris Facility License, effective February 7, 2006.

2. OAC Rule 3745-400-08(C)(2) requires the owner or operator to verify the permeability of each lift of the recompacted soil liner, soil barrier layer, or added geologic material on undisturbed samples at least once per every two acres. Any penetrations shall be repaired using methods acceptable to the licensing authority.
3. On July 11, 2005, Ohio EPA received a request from C&DDT for an exemption, pursuant to ORC Section 3714.04 and OAC Rule 3745-400-15(D), from the permeability testing requirements in OAC Rule 3745-400-08(C)(2) at the Facility. In lieu of following the requirements in OAC Rule 3745-400-08(C)(2), C&DDT requested the option of using a test pad as an alternate means of permeability testing in accordance with OAC Rule 3745-27-08(E).
4. OAC Rule 3745-27-08(E) provides that a test pad can be used to determine the construction details required to achieve the permeability standard for recompacted soil liners and to establish parameters for the certification of the soils to be used in the construction of any recompacted soil liner.
5. Pursuant to ORC Section 3714.04 and OAC Rule 3745-400-15(D), the licensing authority may exempt any person disposing of or proposing to dispose of construction and demolition debris in such quantities or under such circumstances that, in the determination of the licensing authority, are unlikely to adversely affect the public health or safety or the environment, or create a fire hazard, from any provision of ORC Chapter 3714 or any rule adopted or order issued thereunder, except for the sole source aquifer location prohibition or asbestos requirements.
6. Based upon a review of the July 11, 2005, request, and because C&DDT has requested to use a test pad as an alternate means of permeability testing, granting C&DDT an exemption from the permeability testing requirements in OAC Rule 3745-400-08(C)(2) is unlikely to adversely affect the public health or safety or the environment, or create a fire hazard, provided C&DDT complies with the following Orders.

## **V. ORDERS**

1. Pursuant to ORC Section 3714.04 and OAC Rule 3745-400-15(D), C&DDT is hereby exempted from the permeability testing requirements in OAC Rule 3745-400-08(C)(2) at the Facility in accordance with these Orders and the July 11, 2005, request.
2. In lieu of following the requirements in OAC Rule 3745-400-08(C)(2), C&DDT may utilize a test pad to determine soil material and construction specifications for the recompacted soil liner, soil barrier layer, or added geologic material. Any test pad

utilized for this purpose shall be constructed in accordance with all of the specifications in OAC Rule 3745-27-08(E) and shall determine the construction details required to achieve the permeability standards for the recompacted soil liner, soil barrier layer, or added geologic material and shall establish parameters for certification of the soils to be used in the construction of these components.

3. If the test pad is constructed and the permeability tests fails, or if C&DDT chooses not to construct the test pad, then C&DDT shall comply with the permeability testing requirements in OAC Rule 3745-400-08(C)(2).
4. 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 C&DDT 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 C&DDT 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 C&DDT for noncompliance with these Orders.

Nothing contained herein shall be construed to prevent Ohio EPA from exercising its lawful authority to require C&DDT to perform additional activities pursuant to ORC Chapter 3714. or any other applicable law in the future. Nothing herein shall restrict the right of C&DDT to raise any administrative, legal, or equitable claim or defense with respect to such further actions which Ohio EPA may seek to require of C&DDT. 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.

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**IT IS SO ORDERED**

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Joseph P. Koncelik, Director  
Ohio Environmental Protection Agency